

1:01:02 AGREEMENT/CONTRACT POLICY

The following policy is based on Tennessee Board of Regents policy and guidelines concerning approval of agreements and/or contracts and is the standard wordings for those agreements/ contracts. The purpose of the policy is to outline requirements and procedures for processing contractual documents other than employment contracts. Services to be performed under any agreement or contract shall not be commenced and payment for such services shall not be made until an agreement/contract is executed in accordance with this policy and all requirements are met.

1.0 General

- 1.1 Only the President and those individuals who are specifically authorized in writing by the President through published policies/procedures or other authorizing documents have the authority to enter into agreement/contracts as agents of the College. No other employees except for those expressly identified in policy shall sign contracts without prior written approval.
- 1.2 This policy makes reference to the Tennessee Board of Regents Guideline No. G-030. This guideline contains recommended procedures as well as specific examples of agreements/contracts and shall be carefully reviewed prior to submitting any agreement/contract for approval. Tennessee Board of Regents Guidelines are maintained in the President's Office.
- 1.3 Supplemental Tennessee Board of Regents Guidelines B-025, P-010, and Policies 1:03:02:10, 3:02:02:00, and 4:02:10:00 shall also be reviewed in the preparation of agreements/contracts.

2.0 Approvals

- 2.1 All agreements/contracts involving or related to the purchase or lease of real property or data processing, the purchase of insurance or agreements providing insurance or other benefits for employees, the purchase of professional, personal, or consultative services, and purchases related to capital outlay projects, shall be expressly subject to the approval of the Chancellor, President, or Vice President for Business and Finance in accordance with TBR policies and guidelines.
- 2.2 The President or his/her designee is the final approving authority for any agreement/contract which is prepared consistent with Guideline G-030; except that the approval of the Chancellor or designee shall be required for agreements/contracts with foundations or similar campus-related not-for-profit organizations, campus-sanctioned performances exceeding \$249,999.99 hardware and software contracts as specified here in agreements/contracts requiring the Chancellor's approval under other policies and guidelines.
- 2.3 Inter-agency agreements or contracts, except dual service agreements, with state agencies other than U.T. or TBR institutions, must be approved by the Commissioner of the Department of Finance and Administration, in addition to the Tennessee Board of Regents.
- 2.4 Dual service agreements which are for the services of a particular employee and which are for amounts in excess of \$1,500 (between state agencies other than those between TBR institutions or a TBR institution and U.T.) must be approved by the Department of Finance and Administration, in addition to the Tennessee Board of Regents.

2.5 Refer to TBR Guideline B-026 for lease procedures & guidelines.

2.6 All agreements/contracts require the approval of the applicable vice president of the initiating department before being received by the Purchasing and Contracts Office.

3.0 Preparation of Agreements and Contracts

3.1 Before entering into an agreement/contract, funds must be available in the current year's budget. If funds are not available, a budget revision must be processed prior to payment of the agreement/contract. If a budget revision is not attached, the contract will be returned to the department.

3.2 The initiating department requiring or providing personal, professional, or consultant services is responsible for the preparation of the agreement/contract, utilizing examples in Tennessee Board of Regents Guideline G-030. The Director of Purchasing & Contracts, or the President's Office should be contacted if you have any questions concerning agreement/contract preparation.

3.3 All necessary signature approval lines shall be prepared by the initiating department, including lines for the corporation or individual and the applicable vice president. Signature approval lines for the President, and the Tennessee Board of Regents should be prepared when necessary.

(a) If the other party or contractor is a corporation, its name must be stated in the agreement/contract exactly as it appears in its charter. If the agreement/contract is with a corporation, the federal identification number and address of that corporation must be indicated on the contract. The person signing on behalf of the corporation must have legal authority to do so, and his/her title/position shall 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.

(b) If the agreement/contract is with an individual, his/her social security number and complete mailing address (home address) must be indicated on the agreement/contract before it is routed for approvals.

(c) The applicable vice president's signature must be affixed to all agreement/contracts. The President of the College must sign agreements/contracts required to be submitted to the Tennessee Board of Regents. The President may delegate his/her authority to sign agreements/contracts only if such delegation is specifically permitted in TBR policy or if the delegation is specifically approved in writing by the Chancellor.

3.4 The department requiring an agreement/contract must initiate the process sufficiently in advance to allow final approval before services are rendered. Agreements/Contracts not meeting the provisions of TBR Guideline G-030 (such as vendor generated contracts, etc...) must be submitted to the Purchasing & Contracts Office a minimum of four (4) weeks prior to the desired service. Those agreements/contracts meeting TBR Guideline G-030 should be submitted one (1) week prior to the desired service. **Faxed copies of agreements/contracts are not acceptable unless prior approval has been granted by the Director of Purchasing & Contracts.** Agreements/Contracts with other state agencies, which must go to the Tennessee Department of Finance and Administration, may require additional weeks. Sufficient time must be allowed so that an executed contract is in place prior to any services being performed under the contract. **Extreme caution should be used in preparation of agreements/contracts to ensure all provisions meet TBR Guideline G-030. TBR Legal Counsel has stated possible personal liability in not adhering to state law.**

3.5 Legal questions relating to an agreement/contract will be referred to the Tennessee Board of Regents, Office of General Counsel, by the Purchasing & Contracts Office.

3.6 Add the following language to any contract in which contractor is serving as a service provider handling "covered accounts", that is, any consumer account involving multiple transactions or multiple payments in arrears: " Service provider/Contractor shall have and maintain throughout the term of this agreement an identity theft prevention program for new and existing accounts which complies with the FTC regulations known as Red Flags Rule."

4.0 Routing Agreements and Contracts for Approval

4.1 After preparation of an agreement/contract (utilizing the formats in TBR Guideline No. G-030), the department should forward the appropriate number of copies of the agreement/contract to the Purchasing & Contracts Office. (blank copies of these agreements are available, upon request, by the Purchasing & Contracts Office)

4.2 The applicable vice president shall forward, with the contract, the cover letter (SEE EXHIBIT 1) showing all appropriate items have been checked by the originating department, written explanation of the need and purpose of the services, and any applicable justifying documents.

4.3 Contracts presented to the Purchasing & Contracts Office will be reviewed for the following:

- (a) The Contract Cover Page must be attached.
- (b) The contract must have already been accepted and signed by the other party and the applicable vice president of the department executing the agreement/contract.
- (c) The required number of copies of the agreement/contract shall be presented. For completed contracts (those having all necessary signatures and meeting TBR Guideline G-030), five (5) copies should be submitted to the Purchasing & Contracts Office, with two (2) copies having original signatures. For incomplete contracts, submit one (1) copy. Additional copies may be required, depending upon the type and amount of the agreement/contract.

4.4 If the agreement/contract does not meet TBR Guideline G-030, the agreement/contract will be returned to the department for corrective action, unless it is a vendor generated contract, which will be forwarded to TBR for review.

4.5 Once it has been determined that the agreement/contract is complete, it will be processed in the Purchasing & Contracts Office. If the agreement/contract requires the President's signature, the Purchasing & Contracts Office will forward it for signature. If required, the President's Office will then forward the agreement/contract to the Tennessee Board of Regents.

4.6 Once the appropriate signatures have been obtained, the Purchasing & Contracts Office will process the agreement/contract and assign the agreement/contract a number.

4.7 The Purchasing & Contracts Office will distribute copies of the fully executed contract to the vendor, Accounts Payable, Central Receiving, and the initiating department, with the department being responsible for distribution of copies to other on-campus and off-campus offices.

- 4.8 One (1) copy of all executed contracts should be maintained by the initiating department and will also be maintained in the Purchasing & Contracts Office.

5.0 Standard Guidelines

- 5.1 No agreement/contract of any nature which requires the expenditure of funds by an institution shall extend beyond the end of the fiscal year in which it is entered into unless expressly subject to the condition that the institution shall have the right to terminate the agreement/contract at the end of any fiscal year in the event that sufficient funds are not appropriated by the General Assembly and/or budgeted for continuation of the agreement/contract.
- 5.2 No agreement/contract of any nature shall be entered into which contains one or more of the following (SEE ALSO EXHIBIT 2):
- (a) Provisions requiring the College to pay for taxes, late penalties, liquidated damages, incidental or consequential damages, etc..
 - (b) Payment of travel/per diem expenses in excess of maximum limitations set forth in TBR policy.
 - (c) Provisions designating the governing law of a state other than Tennessee.
 - (d) Provisions requiring the College to make advance deposits or payments.
 - (e) Provisions requiring the College to purchase or obtain liability insurance, performance bond, or property insurance.
 - (f) Provisions requiring the College to insure, indemnify, or hold harmless any party from claims which may arise out of the agreement or be brought by third parties.
 - (g) Provisions requiring the College to obtain or pay for outside labor of persons not employed by the College is prohibited unless such cost is included as part of the total contract price.
 - (h) Provisions requiring the College to consent to the arbitration by a third party of claims arising out of or relating to the agreement.
 - (i) Disclaimer of vendor's liability for incidental, liquidated, exemplary, or consequential damages.
 - (j) Disclaimer by vendor of express or implied warranties of merchantability and fitness for a particular purpose.
 - (k) Limitation on dollar amount of damages recoverable by state from vendor.
 - (l) Unless vendor provides shipment insurance protecting the College's interest, passing of risk of loss or title to College before delivery and/or installation of products.
 - (m) Right of vendor to enter College's premises without notice, to remove equipment or product upon alleged default by the College.

- (n) Award of attorney's fees to vendor in the event of legal action against College.
- (o) Consent to jurisdiction in courts outside Tennessee.
- (p) Provisions requiring the College to pay late charges, finance charges, collection costs, or interest in excess of that provided under Tennessee Prompt Pay Act (T.C.A. Section 12-4-701 et seq.).
- (q) Term of the agreement/contract being longer than one (1) calendar year.
- (r) Provisions requiring the College to keep vendor's information confidential (Tennessee Open Records Act, T.C.A. Sections 10-7-503-10-7-506).
- (s) Provisions requiring the College to carry or maintain commercial or general liability insurance.
- (t) Provisions requiring the survival of paragraphs upon termination of the agreement/contract when those paragraphs are not in accordance with TBR Policies and Guidelines.

- 5.3 Only the President can approve applications for all grants from agencies or organizations, acceptance of the award of the grant, and enter into agreements confirming grants, provided that where matching funds or services in lieu of funds are required by the College. No applications 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; further provided that the acceptance of grants and agreements confirming the award of grants shall be subject to paragraphs 5.1 and 5.2.
- 5.4 Any agreement/contract between the College and any other institution, agency, organization, or entity which involves programs relating to matters of system-wide interest, or any agreement/contract which provides for the coordinated and cooperative offering of any credit or non-credit programs or activities or in which certificate or degree requirements are not met or credit is given for coursework or activities offered by another institution or school, shall be expressly subject to the approval of the Chancellor. Examples of such agreements/contracts include provisions for either credit or non-credit academic programs or public service activities to private or state agencies and institutions in the fulfillment of that agency's responsibility for state-wide services or governmental training, and agreements/contracts which require consortia or cooperative arrangements with other institutions, agencies, or associations. This section does not apply to agreements/contracts concerning informal, locally arranged activities generally considered to be in the purview of the College on the fulfillment of its role in community services or in providing student teaching experiences at local public school systems.
- 5.5 In any agreement/contract which requires participation by an applicant, student, or employee of the College in an education program or activity conducted in whole or in part by any other person or organization, or which facilitates, permits or considers participation by such persons as part of or equivalent to an education program or activity of the College, the College shall require the person or organization to agree that no person shall, on the basis of sex, race, color, religion, handicap, veteran status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under the education program or activity. Breach of this provision shall be cause for termination of the agreement.

- 5.6 All agreements, contracts, and subcontracts shall contain all necessary non-discrimination requirements provided by federal or state laws and regulations.
- 5.7 All agreements/contracts not expressly requiring the approval of the Chancellor may become effective upon the approval of the President of the College or his/her designee, subject to the general requirements of this policy. In the event there is any question as to whether an agreement or contract shall be submitted for the approval of the Chancellor or the General Counsel, the agreement or contract should be routed to the Purchasing & Contracts Office. The General Counsel shall provide assistance to the College in drafting agreements and contracts, and shall recommend to the Chancellor any standard form agreements or contracts for use by the College which are deemed necessary or feasible. The General Counsel has provided standard-form agreements and contracts as part of TBR Guideline No. G-030 and are available in the Purchasing & Contracts Office.
- 5.8 The Chancellor may direct that copies of any and all agreements/contracts entered into by the College be submitted for informational and record-keeping purpose, or to ensure compliance with this policy, and may direct that certain or all agreements/contracts of the College be submitted for prior review and approval when deemed necessary to ensure such compliance. In addition, the Chancellor may require annual reports on the type and number of agreements/contracts entered into by the College, with additional information when necessary.
- 5.9 When the President of the College is absent from campus and a situation arises where an agreement or application must be submitted prior to his/her return, the Vice President of Business and Finance is authorized to approve for the President.

6.0 Requests for Payment

- 6.1 After the service has been performed and an invoice has been received, the department must prepare a check request form and send it, with the invoice, to Accounts Payable. **The contract number must be referenced on the check request.** At no time will the contractor receive payment before the service has been completed and an invoice has been received by the College. For payments to individuals, information required for the preparation of Form 1099 (see paragraph 6.2 below) must be included on the check request.
- 6.2 Payment made to non-employees for personal services are not subject to any deductions. Neither is it required that these payments be included on Form W-2. Internal Revenue Service regulations do require, however, that consultant fees, etc., be reported on Form 1099. The Social Security number and the home (not business or educational institution) mailing address of each individual must be provided on the check in order that they may be reported on Form 1099. Form 1099 will be prepared and submitted at year-end by the College and will indicate the total payments that have been made to an individual or group during the preceding year.
- 6.3 For agreements/contracts requiring payment to the College, the initiating department shall submit a memorandum to the Business Office requesting payment, referencing the contract number in the memorandum.

TBR Source: 1:03:02:10: TBR. Meetings, March 5. 1976; June 26. 1981; September 30, 1.983; December 1.3, 1985; September 22, 1989; .June 28, 1991.; December 5, 1997; December 2. 2005. G-030: 030: 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; February 17, 2009 Presidents' Meeting.

VSCC Source: August 1, 1996, President; August 2002, President; May 2008, President; May 18, 2009, President

CONTRACT COVER PAGE

EXHIBIT 1

Account Number: _____

Description (please provide a brief description of the services to be performed):

Essential Elements (please mark that the following are present in the agreement/contract):

- _____ Complete vendor information (Name, address, federal ID No. or Social Security Number)
- _____ Term of the agreement/contract
- _____ Maximum liability of agreement/contract
- _____ Civil Rights paragraph (Title VI & VII)
- _____ Non-discrimination paragraph
- _____ Termination paragraph
- _____ Liability insurance statement (for independent contractors)
- _____ Modification by writing paragraph
- _____ Compliance with Federal and State laws/regulations paragraph)
- _____ Conflict of interest paragraph
- _____ Hold Harmless Statement
- _____ Funds Available & Account Number indicated

Items to be Reviewed (please mark that the following have been checked and are in compliance with TBR Guideline No. G-030; see the Exhibit 2 for acceptable substitute statements):

1. _____ No paying of taxes, late penalties, liquidated damages, incidental or consequential damages, etc.
2. _____ No provisions designating another state as governing law.
3. _____ No paying of deposits or any other type of early payments.
4. _____ No insuring, indemnifying, or holding harmless any party from claims.
5. _____ No consenting to arbitration by a third party
6. _____ No paying of late charges, finance charges, or interest in excess of the Tennessee Prompt Pay Act (T.C.A. Section 12-4-701).
7. _____ No term longer than one (1) calendar year.
8. _____ No statements saying the College will hold information confidential.

Questionable Items (please make sure these items are not present in agreement/contracts):

- _____ Requirements to pay or obtain outside labor (other than what is stated in the agreement/contract).
- _____ Requirements of liability or property insurance or performance bond.
- _____ Payments of travel/per diem expenses in excess of maximum limitation set forth in TBR Policy No. 04:03:03:00.
- _____ Disclaimer of vendor's liability for incidental, exemplary, or consequential damages.
- _____ Disclaimer by vendor of express or implied warranties of merchantability and fitness for a particular purpose.
- _____ Limitation on dollar amount of damages recoverable by state from vendor.
- _____ Passing of risk of loss or title to institution before delivery and/or installation of products.
- _____ Rights for the vendor to enter College premises without notice or remove equipment/product.
- _____ Awarding of attorney's fees to vendor.
- _____ Jurisdiction in courts outside Tennessee.

IMPORTANT NOTE: The items listed above are not all-inclusive these are some of the most common elements found in agreement/contracts. TBR Policy/Procedures and Guidelines must also be referenced when preparing agreement/contracts.

Signature
(applicable Vice President)

EXHIBIT 2

UNACCEPTABLE PROVISIONS, EXAMPLES, AND SOLUTIONS

1. Provisions requiring the institution to pay for taxes, late penalties, incidentals, liquidated or consequential damages, etc.

EXAMPLE: In addition to the charges included herein, the Customer agrees to pay any taxes, fees, fines, or charges relating to the installation or services provided under this agreement which are authorized or imposed by are governing body.

SOLUTION: Volunteer State Community College shall not be liable for the payment of any damages, taxes, or attorney fees associated with this Agreement.

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

EXAMPLE: This agreement shall be construed in accordance with the laws of the state of New Jersey.

SOLUTION: This agreement shall be governed by the laws of the State of Tennessee.

3. Provisions requiring the institution to make advance deposits or payments.

EXAMPLE: A deposit of twenty-five percent (25%) is required before service: can be rendered.

SOLUTION: A contract will be issued after terms and conditions are negotiated. Full payment will be made upon completion of contract and receipt of invoice.

4. Provisions requiring the institution to insure, indemnify, or hold harmless any party from claims which may arise out of the agreement or be brought by third parties.

EXAMPLE: Seller shall not be liable for any special, incidental, indirect, or consequential damages of any nature whatsoever including, but limited to, lost profits or lost data, or any costs of obtaining substitute goods or services, for any breach of this agreement or for any action arising out of its performance under agreement even if seller has been informed of the possibility there of. The foregoing limitation shall apply notwithstanding any failure of essential purpose of any limited remedy provided herein.

EXHIBIT 2

SOLUTION: Any and all claims against Volunteer State Community College for property damages or loss resulting from the acts or omissions of Volunteer State Community College through its employees or agents in performing its responsibilities under this agreement shall be submitted to the Claims Commission of the State of Tennessee for disposition in accordance with the application provisions of the Tennessee Code Annotated. Damages recoverable against Volunteer State Community College shall be expressly limited to claims paid by the commission.

5. Provisions requiring the institution to consent to the arbitration by a third party of claims arising out of or relating to the agreement.

EXAMPLE: There is no example.

SOLUTION: Should delete this statement from contract.

6. Provisions requiring the institution to pay late charges, finance charges, collection costs, or interest in excess of that provided under Tennessee Prompt Pay Act (T.C.A. Section 12-4-701 et seq.)

EXAMPLE: If invoice is not paid within thirty (30) days, X Corporation shall have the right to charge interest of 1.5% per month on the unpaid balance until the balance is paid in full.

SOLUTION: If Volunteer State Community College does not remit payment within forty-five (45) days after receipt of an invoice, the College will pay a late charge of the lesser of 1.5% a month or the maximum amount permitted under the Prompt Pay Act of 1985 (Tennessee Code Annotated Section 12-4-701 et. seq.).

7. Term of the agreement/contract being longer than one (1) calendar year.

EXAMPLE: The term of this agreement shall be one (1) year and will be automatically renewed for successive one (1) year terms unless either party gives ninety (90) days notice.

SOLUTION: The term of this agreement shall be one (1) year, unless terminated by either party upon (a) mutual consent, (b) upon ninety (90) days written notice, with or without cause, or (c) as otherwise set forth herein. After the initial one-year term, the agreement may be renewed annually for a period of no more than a total of sixty (60) months, with either party giving notice of non-renewal at least ninety (90) days prior to the next renewal date.

8. Provisions requiring the institution to keep vendor's information confidential (Tennessee Open Records Act, T.C.A. Section 10-7-503-10-7-506)

EXAMPLE: At no time during the term of this agreement, or after the date that this agreement shall terminate, shall the College, its agents, employees, or students, disclose to anyone any confidential or secret information concerning the business, affairs, patients, or operations; any trade secrets, new product developments, special or unique processes or methods; any marketing, sales, adverting, or other concepts or plans of X Corporation, the facility, or any of X Corporation's affiliates or subsidiaries.

SOLUTION: Any provision in the agreement regarding confidentiality and disclosure of information by the College shall be subject to the provisions of the Tennessee Open Act, T.C.A. Sections 10-7-503-10-7-506.