

FP-14: Third Party Contracts and Agreements

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I. General Instructions on form and Execution of Contracts

The following represents excerpts from the [Tennessee Board of Regents Guideline No. G-030](#). Please refer to the guideline for complete rules, regulations, and procedures regarding contracts or contact the [Assistant Vice President for Procurement and Contracts](#) in the Comptroller's Office.

A. The purpose of a written contract is to embody the complete agreement in writing. 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 are 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 whether the new terms are in place of or in addition to terms expressed in the original contract. If the new terms are replacing prior terms, the form should be entitled "Amendment." If the new terms, are adding to previous terms, the form should be entitled "Addendum." The Institution shall negotiate the terms, draft the amendments and/or addenda, execute them properly, then forward them to TBR for approval, if necessary, along with a photocopy of the original agreement and any prior amendment or addendum.

D. All necessary signature approval lines should be prepared by the Institution, including that for the Tennessee Board of Regents.

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's signature, or his designee's signature must be affixed to all contracts. The president of the institution must sign contracts required to be submitted to the Board office. If the president's signature has been omitted from contracts prepared and delivered to the Board office by other institution personnel, such contracts will be returned to campus. The president may delegate his authority to sign contracts only if such delegation is specifically permitted in Board policy or if the delegation is specifically approved in writing by the Chancellor.

E. Other approvals which may be required:

1. All contracts or inter-agency agreements, except dual service agreements, with state agencies other than UT 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. 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 an TBR institution and UT) must be approved by the Department of Finance and Administration in addition to the Tennessee Board of Regents.

3. Lease agreements for real property over \$15,000/year or for more than five years require the approval of the State Attorney General and the State Building Commission.

Contracts for personal, professional or consultant services and dual services agreements with other state agencies which are subject to approval by the Department of Finance and Administration should be on legal size paper (8 1/2 x 14) with a colored paper backing of uniform color selected by the institution.

F. Institutions should prepare five (5) copies of all contracts with other state agencies. Each copy should be executed and delivered to the Board office for approval. This number should assure that the Department of Business and Finance, the Board, the institution and the other state agency receive the number of copies they need. Four (4) copies, with original signatures, of all contracts between a System institution and a non-state agency should be sufficient, since no further approval by and other authority is necessary. Each of the copies of the contract should bear the original signatures of the parties.

G. All contracts required to be submitted to the Tennessee Board of Regents should be submitted prior to the beginning of the contract's original term or renewal.

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

I. A contract review sheet or letter of introduction must accompany all agreements submitted to the Tennessee Board of Regents for review.

J. Agreements containing blank spaces or omitting necessary terms, such as the contract period or non-discrimination language, will be returned to the institution for correction and must be resubmitted to the Board for approval.

K. Food and Vending Services Contracts

The guidelines for Personal, Professional and Consultant Services contracts and bidding requirements outlined in guidelines for the Acquisition of Hardware, Software and Related Services should be used, where applicable, for Food and Vending Services Contracts.

Note that under State law no contract for vending services for our institutions whether a new service or a renewal of existing services, may be entered without first notifying the Division of Blind Services for the State of Tennessee.

L. Telephone Systems

The guidelines for Acquisition of Hardware, Software and Related Services should be adapted and used where applicable for telephone systems and services contracts.

M. Unacceptable Provisions - The following provisions should be deleted from all contracts. (Certain warranty disclaimers are permissible subject to the approval of the Office of General Counsel.)

1. Provisions requiring the institution to pay for taxes, late penalties, liquidated damages, incidental or consequential damages, etc.
2. Payment of travel/per diem expenses in excess of maximum limitations set forth in TBR policy.
3. Provisions designating the governing law of a state other than Tennessee.
4. Provisions requiring the institution to make advance deposits or payments except as is allowed under Board policy.
5. Provisions requiring the institution to purchase or obtain liability insurance or performance bond or property insurance.
6. 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.
7. 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.
8. Provisions requiring the institution to consent to the arbitration by a third party of claims arising out of or relating to the agreement.
9. Disclaimer of vendor's liability for incidental, exemplary, or consequential damages.

10. Disclaimer by vendor of express or implied warranties of merchantability and fitness for a particular purpose. (The Office of General Counsel is available for assistance in negotiating modifications with the Vendor. Negotiations will be conducted by the University Comptroller who has been designated as the University's Contract Officer.)
 11. Limitation on dollar amount of damages recoverable by state from vendor.
 12. Unless vendor provides shipment insurance protecting the Institution's interest, passing of risk of loss or title to Institution before delivery and/or installation of products.
 13. Right of vendor to enter institution's premises without notice to remove equipment or product upon alleged default by institution.
 14. Award of attorneys fees to vendor in the event of legal action against institution.
 15. Consent to jurisdiction in courts outside Tennessee.
 16. Provisions requiring the Institution to pay late charges, finance charges or interest in excess of that provided under the Tennessee Prompt Pay Act (TCA, Section 12-4-701 et seq.).
- N. Please submit "drafts" of all contracts to the University Comptroller for review prior to obtaining signatures.

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II. Procedure for Processing Contracts

A. Clinical Affiliation, Hardware/Software License Agreements, and other Agreements

The [Agreement Routing Form](#) must be completed and forwarded with the proposed contract to the Comptroller's Office for review. **No one is authorized to sign an agreement that has not been reviewed by the Comptroller's Office. Individuals who sign agreements that contain language unacceptable to the State may be held personally liable for any damages that may result from subsequent litigation.** This section contains guidance as it relates to these types of contracts. Hardware/Software License Agreements are most likely to contain language unacceptable to the State. If you plan to purchase Hardware/Software that requires a License Agreement, please obtain an example agreement as soon as possible and forward to the Comptroller's Office for review. These negotiations often take a considerable amount of time and the sooner this begins the quicker the license agreement can be signed.

B. Personal Service Contracts

The IRS has begun vigorous enforcement of rules related to whether a person is an independent contractor or an employee. It is extremely important that the two questions on the [Agreement Routing form](#) or the [Request for Payment form](#), as well as the [Employee vs. Independent Contractor Classification Criteria](#), be properly answered. If the evidence indicates that the person should be an employee, he/she must be hired in accordance with University Personnel Policies and Procedures. The [Agreement Routing form](#) or [Request for Payment form](#) must be completed and signed by the University employee who will supervise and monitor the work to be performed. Certification by clerical staff and others with insufficient knowledge of, or responsibility for, the work to be performed is not acceptable.

If the amount of the agreement is under \$2,000 (\$1,999.99 or less), no formal contract is required if the total expenses for the work performed is less than \$2,000. After the services have been received, the [Request for Payment form](#), along with a completed [W-9 form](#) and the [Employee vs. Independent Contractor Classification Criteria](#), if appropriate, should be forwarded to the Accounts Payable Office so payment can be made. Payments will NOT be made without a properly completed and signed W-9 form on file. These amounts will not be encumbered. If the person with whom we are contracting requires a contract, the contract must be processed in the same manner as contracts over \$2,000.

If the amount of the agreement is \$2,000 or more, the [Agreement Routing Form](#) must be completed and signed. A completed [W-9 form](#), a copy of the contract signed by the person with whom the university is contracting, and the [Agreement Routing Form](#) should be routed to the

Comptroller's Office at least two weeks prior to the beginning term of the contract. This will allow sufficient time for appropriate university signatures to be obtained. Payments will NOT be made until a properly completed and signed [W-9 form](#) and a fully executed contract are on file in the Comptroller's Office.

If the form of the contract is different than the standard form presented in this section, a copy of the contract must be sent to the [Associate Vice President for Procurement and Contracts](#) for review and approval prior to its execution.

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The following sample contracts and forms may be found on the University Comptroller's Office forms web page

<https://www.etsu.edu/bf/forms.php>

Clinical Affiliation Contract

[Word Format](#)

Standard Contract

[Word Format](#)

Standard Contract Terms and Conditions

[Word Format](#)

Dual Service Agreements with State Agencies

[PDF Format](#)

Contract Amendment/Addendum

[PDF Format](#)

Use of Campus Facilities

[Word Format](#)

Agreement Routing Form

[PDF Format](#)

Agreement Routing Form - Division of Health Sciences

[PDF Format](#)

W-9 Form

[PDF Format](#)

Request for Payment under \$5,000

[Excel Format](#)

Employee vs. Independent Contractor Classification Criteria

[PDF Fomat](#)

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