



REVISED AGENDA

PRESIDENTS MEETING

Wednesday, November 5, 2008 – 9:00 A.M. (CT)

TBR Board Room

1. Legislative Initiatives (Vice Chancellor David Gregory)
2. Budget Issues (Vice Chancellor Bob Adams)
3. Workforce Development (Chancellor Manning)
4. Environmental, Health & Safety Program (Jerry Preston, Executive Director, Facilities)
5. Proposed Revision to TBR Guideline P-050—Part-Time Faculty Compensation (Vice Chancellor Paula Myrick Short) - Attachment
6. Revision to TBR Guideline G-030 – Contracts and Agreements (Chris Modisher, General Counsel) - Attachment
7. Public Records Charge (Chris Modisher, General Counsel) - Attachment
8. Policy and Guideline Revisions under Business and Finance (Vice Chancellor Bob Adams) - Attachment
 - 4:01:03:00 – Payment of Student Fees and Enrollment of Students
 - 4:02:10:00 – Purchasing Policies and Procedures
 - B-010 – Collection of Accounts Receivable
 - B-062 – Other Education Assistance Programs
9. Proposed TBR Policy on Telecommuting - TBR Policy 5:01:01:20 (Vice Chancellor Bob Adams) - Attachment

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10. Update on 403(b) Plan and Proposed Revision to TBR Guideline P-045 –
Deferred Compensation Plans (Vice Chancellor Bob Adams) - Attachment
11. Update on Roth 401K – Effective January 1, 2009
(Vice Chancellor Bob Adams) - Attachment
12. Banner (Tom Danford, Chief Information Officer)
 - Modification Recommendations – Attachment
 - Contract Negotiations – Attachment
13. Extension of TAF for Banner (Chancellor Manning/Vice Chancellor Bob Adams)

TBR Guideline No. P-050

Subject: Part-Time Faculty Compensation

Section D.3 of the Tennessee Board of Regents' General Personnel Policy (5:01:00:00) provides that "Part-time instructional personnel shall be paid on the basis of the credit hours taught, pursuant to such guidelines and/or schedules as may be established by the Board." The rates set forth in this schedule shall be considered maximum rates for compensation of part-time faculty.

A. Universities and Community Colleges:

<u>Level</u>	<u>Rate per Semester Credit Hour</u>
4	\$1000
3	\$950
2	\$900
1	\$850

B. Technology Centers

<u>Level</u>	<u>Rate per Clock Hour</u>
4	\$30
3	\$25
2	\$22
1	\$20

Each institution will develop criteria for assigning part-time faculty to the four levels. The criteria may include such factors as educational qualifications, market differentials, and professional experience. Exceptions to the schedule may be approved by presidents or directors based on bona fide market studies which can be documented.

Source: March 5, 1977 SBR meeting. Revised March 4, 1977; September 18, 1981; November 8, 1982; September 30, 1983; September 21, 1984; November 10, 1987; May 16, 1989; February 9, 1993 Presidents Mtg.; May 5, 1998 Presidents Mtg.

PRESIDENTS/DIRECTORS **QUARTERLY MEETINGS**

DATE: November 5, 2008

AGENDA ITEM: Proposed Revisions to Guideline G-030 under Business Affairs

ACTION: Approval

PRESENTER: Chris Modisher, General Counsel

BACKGROUND INFORMATION:

A proposed revision to specific sections* and forms in the following guideline are being presented for approval:

Guideline G-030: General Instructions on Forms and Execution of Contracts

*Guideline G-030 is an extremely large document. Revisions are being made to:

- Section 3 - PERSONAL SERVICE, PROFESSIONAL SERVICE, AND CONSULTANT SERVICE CONTRACTS
- Section 7 - CONTRACTS FOR ACQUISITION OF HARDWARE, SOFTWARE AND RELATED SERVICES
- Section 8 - INTELLECTUAL PROPERTY AGREEMENTS
- Software License Agreement Form
- Proforma Agreement Form
- Intellectual Property – Research Agreement Form

Only those sections and forms are attached

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 Section 3. (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. The **first** form contract in this Section 3 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 3 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.**

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:

Deleted: and TBR Guideline B-030. Provisions required by TBR Policy 4:02:10:00 and TBR Guideline B-030 must also be clearly stated in all requests for proposals (bids), invitations to bid and bid specifications.

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).

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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

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. In such a contract, the vendor must warrant something in relation to / in proportion to what is being paid for under the agreement, and the agreement cannot contain impermissible clauses other than the disclaimer regarding the internet.
3. If software is provided at a nominal cost or free, an acceptable warranty would provide that the vendor warrants that the vendor has the right to license the software as provided in the agreement. However, the agreement cannot contain impermissible clauses other than a disclaimer of warranties (as long as 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:

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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.

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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](#)

Deleted: A list of form/sample contracts provided in the General Counsel section of the TBR web page follows: IP Agreement – Employee Intellectual Property Disclosure and Assignment Agreement Forms pertinent to Digital distance Education and Copyright: A. Employee Work for Hire Agreement B. Copyright License Agreement C. Partial Assignment of Copyright Ownership Agreement D. Independent Contractor Work Made for Hire Agreement E. 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](#)

SOFTWARE LICENSE AGREEMENT BETWEEN (INSTITUTION) AND (VENDOR)

This Agreement is made this day of ____, 20__, by and between (institution), (Licensee), and (vendor) (Licensor).

WITNESSETH

The parties agree to the terms and conditions set forth below.

1. Licensor hereby grants to Licensee a license to use the software described below subject to the terms and conditions set forth herein:
Licensor grants institution a worldwide, (perpetual), non-exclusive, irrevocable, fully paid up license to use any proprietary software delivered under this Agreement. The software to be delivered under this Agreement is (name of software).

Deleted: nonexclusive

2. In addition to the software described above, Licensor shall provide the following documentation/instruction:

(Examples: training materials, implementation services)

3. Licensee agrees to the following restrictions on use of the software:

(Example: The license granted herein shall inure to the benefit of Licensee for internal business operations only.)

4. This **Agreement** shall be effective upon execution by all parties.

The license granted under this Agreement shall be perpetual.

OR

The term of the license granted hereunder shall be one year and may be renewed for up to four additional annual terms.

5. In consideration of the license granted, Licensee shall pay to Licensor the total sum of \$_____ pursuant to the payment schedule set forth below:

Deleted: for

(Examples, add deadlines/milestones)

6. Licensor shall deliver the software according to the following terms:

(Example: deliver software within 15 days of the effective date)

7. Licensor hereby warrants and represents as follows:

- a. Licensor is the owner of the software system or otherwise has the right to grant to Licensee the license granted herein without violating the rights of any third party, and

there is no actual or threatened suit by any such third party based on an alleged violation of such right by Licensor;

- b. Licensor understands the purposes for which the Software shall be used by Licensee and warrants that the software is fit for such intended use;
- c. For a period of () from the date of Licensee's acceptance of the software, the software shall not contain any defects and shall function properly and in conformity with the product description and specifications.
- d. In addition, Licensor makes the following warranty:

(Examples, warranty will be compatible with Banner, warranty of delivery date, warranty of services if applicable, warranty of system if applicable)

- e. Licensor makes no other express or implied warranties.

- 8. Unless otherwise specified herein, Licensee shall be permitted to make one copy of the Software for archival purposes only. **The** copy shall bear all copyright, trademark and other proprietary notices included in the original Software package.
 - 9. Neither party may assign this **Agreement** without the other party's prior written consent, which shall not be unreasonably withheld.
 - 10.
 - a. The Licensor shall, at his own expense, be entitled to and shall have the duty to defend any suit which may be brought against the State of Tennessee to the extent that it is based on a claim that the products or services furnished infringe a United States copyright or patent. The Licensor shall further indemnify the State against any award of damages and costs made against the State by a final judgment of a court of last resort in any such suit. The Licensee or Tennessee Board of Regents shall provide Licensor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable Licensor to do so. No costs or expenses shall be incurred for the account of the Licensor without its written consent. The Attorney General for the State of Tennessee reserves the right to participate in the defense of any such action. Licensor shall not be liable for any award of judgment against Licensee or the State of Tennessee reached by compromise or settlement unless the Licensor accepts the compromise or settlement. Licensor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon the Licensee and the State of Tennessee unless approved by the Attorney General.
 - b. If, in Licensor's opinion, the products or services furnished under the contract are likely to, or do become, the subject of a claim of infringement of a United States copyright or patent, then without diminishing the Licensor's obligation to satisfy the final award, the Licensor may at its option and expense:
 - 1. Procure for the Licensee the right to continue using the products or services.
 - 2. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the Licensee, so that they become non-infringing.
 - 3. Remove the products or discontinue the services and cancel any future charges pertaining thereto.
- Provided, however, that the Licensor will not exercise option b. 3. until the Licensor and Licensee have determined that options b. 1. and b. 2. are impractical.

- c. The Licensor shall have no liability to the Licensee, however, if any such copyright or patent infringement or claim thereof is based upon or arises out of:
1. The use of the products or services in combination with apparatus or devices not supplied or approved by Licensor.
 2. The use of the products or services in a manner for which the products or services were neither designated nor contemplated.
 3. The claimed infringement of any copyright or patent in which Licensee or the State of Tennessee has any direct or indirect interest by license or otherwise (apart from this License).

11. The Licensor shall maintain documentation for all charges against the Licensee under this Agreement. The books, records, and documents of the Licensor, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of three (3) 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 Licensee, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

12. The Licensor 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 Licensor in connection with any work contemplated or performed relative to this contract.

Deleted: Licensor shall maintain records pertaining to this for a period of three years from final payment. Such records shall be subject to audit by the State of Tennessee.¶

13. All notices required or permitted to be given by one party to the other under this Agreement shall be sufficient if sent by certified mail, return receipt requested, to the parties at the respective addresses set forth below or to such other address as the party to receive the notice has designated by notice to the other party.

(party and address information here)

14. This Agreement shall be governed by and construed under the laws of the State of Tennessee.
15. 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.

16. Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that **Licensor** attest in writing that **Licensor** will not knowingly utilize the services of illegal immigrants in the performance of this **Agreement** and will not knowingly utilize the services of any subcontractor, if permitted under this **Agreement**, who will utilize the services of illegal immigrants in the performance of this **Agreement**. 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.

Deleted: Prohibition on Hiring Illegal Immigrants

If **Licensor** is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Licensor 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. Licensor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, Chapter 0620.

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Deleted: Licensor

17. The entire contract between the parties consists of this **Agreement**, the Licensee's Purchase Order No. _____, the Licensee's Request for Bids No. _____, Licensor's Bid dated _____, and any addenda and/or amendments to this **Agreement** hereafter executed. In the event of conflicting provisions, the documents shall be construed according to the following priority: Addenda and/or amendments (most recent with first priority), this **Agreement**, Purchase Order, Request for Bids and Bid.

18. If any provision of this **Agreement** is held **to be** invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.

19. The failure by any party to exercise any right provided for herein shall not be deemed a waiver of any right hereunder.

20. **Licensor shall not refer to this Agreement or the Licensor's relationship with Licensee hereunder in commercial advertising in such a manner as to state or imply that Licensor or Licensor's products or services are endorsed by Licensee. Licensor shall not use the Licensee's name or other intellectual property in any promotional or marketing materials or press release without prior written approval of the Licensee with the exception of use on a customer list.**

21. (Additional provisions, if any.)

(Example, if the license is perpetual, a provision for access to the source code should be added)

In witness whereof, the parties, through their authorized representatives, have affixed their signatures below.

(Name of Licensor)

(Name of Institution/Licensee)

BY:

BY:

Title:

Title:

Date:

Date:

Approved: TBR (When
Required)

Chancellor, Date

.....The *pro forma* contract detailed in this attachment contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from this RFP/RFQ.

**CONTRACT
BETWEEN , [INSTITUTION NAME]
AND
[CONTRACTOR NAME]**

This Contract, by and between [INSTITUTION NAME], hereinafter referred to as the “Institution” and [CONTRACTOR LEGAL ENTITY NAME], hereinafter referred to as the “Contractor,” is for the purpose of providing [SHORT DESCRIPTION OF THE SERVICE], as further defined in the “SCOPE OF SERVICES.”

The Contractor is a [AN INDIVIDUAL / A FOR-PROFIT CORPORATION / A NONPROFIT CORPORATION / A SPECIAL PURPOSE CORPORATION OR ASSOCIATION / A FRATERNAL OR PATRIOTIC ORGANIZATION / A PARTNERSHIP / A JOINT VENTURE / A LIMITED LIABILITY COMPANY]. The Contractor’s address is:

[ADDRESS]

The Contractor’s place of incorporation or organization is [STATE OF ORGANIZATION].

A. SCOPE OF SERVICES:

- A.1. **[DESCRIBE IN DETAIL THE SERVICES THE CONTRACTOR IS TO PROVIDE TO THE INSTITUTION AND THE SERVICES THAT THE INSTITUTION IS TO PROVIDE TO THE CONTRACTOR – THIS COULD BE A SUMMARY WITH DETAILED SPECIFICATIONS IN AN ATTACHMENT 6.4 LABELED “PROJECT NARRATIVE AND DOCUMENTATION”]**

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on [START DATE] and ending on [END DATE]. The Institution shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2. Term Extension. The Institution reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than [[WRITTEN NUMBER] ((NUMBER)) NO GREATER THAN FIVE] years, provided that the Institution notifies the Contractor in writing of its intention to do so at least [WRITTEN NUMBER] ((NUMBER)) days prior to the Contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the Institution’s maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original Contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the Institution under this Contract exceed [WRITTEN DOLLAR AMOUNT] (\$[NUMBER AMOUNT]). The Service Rates in Section C.3 include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the Institution requests work and the Contractor performs satisfactory work.

- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the Institution under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless the Contract is amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the Institution in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

<u>SERVICE UNIT/MILESTONE</u>		<u>AMOUNT</u>
[UNIT/MILESTONE EVENT]	[DATE IF APPLICABLE]	\$(NUMBER AMOUNT)
[UNIT/MILESTONE EVENT]	[DATE IF APPLICABLE]	\$(NUMBER AMOUNT)

The Contractor shall submit monthly invoices, in form and substance acceptable to the Institution with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation. (PICK ONE OF THESE OPTIONS)

The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

OR

Compensation to the Contractor for travel, meals and/or lodging in connection to work performed under this Contract shall be in the amount of actual cost to the Contractor, subject to the maximum amounts and limitations specified in the Tennessee Board of Regents Policies, as they may be from time to time amended.

- C.5. Payment of Invoice. The payment of the invoice by the Institution shall not prejudice the Institution's right to object to or question any invoice or matter in relation thereto. Such payment by the Institution shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Institution, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The Institution reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the Institution any amounts which are or shall become due and payable to the Institution by the Contractor.
- C.8. Retention of Final Payment. An amount of [WRITTEN DOLLAR AMOUNT] (\$(NUMBER AMOUNT)), representing [WRITTEN NUMBER] percent ([NUMBER] %) of the maximum total compensation payable under this Contract, shall be withheld by the Institution until [WRITTEN NUMBER] ([NUMBER]) days after final completion of the services to be performed by the Contractor under this Contract.
- D. STANDARD TERMS AND CONDITIONS:
- D.1. Required Approvals. The Institution is not bound by this Contract until it is approved by the appropriate officials in accordance with applicable Tennessee state laws and regulations.

- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate officials in accordance with applicable Tennessee state laws and regulations.
- D.3. Ethnicity. This Contract shall not be executed until the Contractor has completed the Minority/Ethnicity Form.
- D.4. Termination for Convenience. The Institution may terminate this Contract without cause for any reason. Such termination shall not be deemed a Breach of Contract by the Institution. The Institution shall give the Contractor at least [WRITTEN NUMBER] ([NUMBER]) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the Institution be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.5. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the Institution shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the Institution for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.6. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the Institution. If such subcontracts are approved by the Institution, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.7. and D.8.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.7. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.8. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, veteran status, national origin, or any other classification protected by Federal, or Tennessee constitutional or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.9. Records. The Contractor shall maintain documentation for all charges against the Institution under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) 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, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the Institution, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the Institution as requested. (SPECIFY TIME PERIOD – MONTHLY, QUARTERLY, SEMI-ANNUALLY, ANNUALLY, ETC.)
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or

condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that the parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the Institution, agrees to carry adequate liability and other appropriate forms of insurance, including workers' compensation coverage as required by applicable law on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.14. Institution Liability. The Institution shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, epidemics or any other similar cause.
- D.16. Institution and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations, including Institution policies and guidelines in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the Tennessee Claims Commission in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the Institution or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under ***Tennessee Code Annotated***, Sections 9-8-101 through 9-8-407.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Communications and Contacts.

The Institution:

[NAME AND TITLE OF INSTITUTION CONTACT PERSON]
[INSTITUTION NAME]
[ADDRESS]
[TELEPHONE NUMBER]
[FACSIMILE NUMBER]
[EMAIL ADDRESS]

The Contractor:

[NAME AND TITLE OF CONTRACTOR CONTACT PERSON]
[CONTRACTOR NAME]
[ADDRESS]
[TELEPHONE NUMBER]
[FACSIMILE NUMBER]
[EMAIL ADDRESS]

All instructions, notices, consents, demands, or other communications shall be sent in a manner that verifies proof of delivery. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission. Changes to the Contract shall not be effective until agreed to, in writing, by both parties.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Institution reserves the right to terminate the Contract upon written notice to the Contractor. Such termination shall not be deemed a breach of Contract by the Institution. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. **Breach. A party shall be deemed to have breached the Contract if any of the following, including but not limited to, occurs:**

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a “Breach.”

a. Contractor Breach— Institution shall notify Contractor in writing of a Breach.

(1) In event of a Breach by Contractor, the Institution shall have available the remedy of Actual Damages and any other remedy available at law or in equity.

(2) Liquidated Damages— (INCLUDE THIS SECTION ONLY IF APPLICABLE AND ADD ATTACHMENT AS DESCRIBED BELOW) In the event of a Breach, the Institution may assess Liquidated Damages. The Institution shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Contractor’s obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Attachment [NUMBER] and agrees that the amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the Institution in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the Institution pursuant to the indemnity provision or other section of this Contract.

The Institution may continue to withhold the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the Institution exercises its option to declare a Partial Default, or the Institution terminates the Contract. The Institution is not obligated to assess Liquidated Damages before availing itself of any other remedy. The Institution may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or in equity; provided, however, Contractor shall receive a credit for Liquidated Damages previously withheld except in the event of a Partial Default.

- (3) Partial Default— In the event of a Breach, the Institution may declare a Partial Default. In which case, the Institution shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the Institution will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the Institution may revise the time periods contained in the notice written to the Contractor.

In the event the Institution declares a Partial Default, the Institution may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the Institution of providing the defaulted service, whether the service is provided by the Institution or a third party. To determine the amount the Contractor is being paid for any particular service, the Institution shall be entitled to receive within five (5) days any requested material from Contractor. The Institution shall make the final and binding determination of the amount.

The Institution may assess Liquidated Damages against the Contractor for any failure to perform. Upon Partial Default, the Contractor shall have no right to recover from the Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the Institution in the event a Partial Default is declared.

- b. Institution Breach— In the event of a Breach of contract by the Institution, the Contractor shall notify the Institution in writing within 30 days of any Breach of contract by the Institution. The notice shall contain a description of the Breach. In the event of Breach by the Institution, the Contractor may avail itself of any remedy at law in the Claims Commission; provided, however, failure by the Contractor to give the Institution written notice and opportunity to cure as described herein operates as a waiver of the Institution's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

- E.5. Institution Ownership of Work Products. The Institution shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, installed, or delivered to the Institution under this Contract. The Institution shall have unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all such work products. The Contractor shall furnish such information and data upon request of the Institution, in accordance with the Contract and applicable state law.
- E.6. Performance Bond. (INCLUDE ONLY IF APPLICABLE) Upon approval of the Contract by all appropriate Institution officials in accordance with applicable state laws and regulations, the Contractor shall furnish a performance bond in the amount equal to [WRITTEN DOLLAR AMOUNT] (\$[NUMBER AMOUNT]), guaranteeing full and faithful performance of all undertakings and obligations under this Contract for the initial Contract term and all extensions thereof. The bond shall be in the manner and form prescribed by the Institution, must be issued through a company licensed to issue such a bond in the State of Tennessee, and be provided it to the Institution no later than [DATE]. Failure to provide the performance bond prior to the deadline as required shall result in contract termination.
- In lieu of a performance bond, a surety deposit, in the sum of [WRITTEN DOLLAR AMOUNT] (\$[NUMBER DOLLAR AMOUNT]), may be substituted if approved by the Institution prior to its submittal.
- E.7. Insurance. The Contractor shall maintain a commercial general liability policy. The policy shall provide coverage which includes, but is not limited to, bodily injury, personal injury, death, property damage and medical claims, with minimum limits of \$1,000,000 per occurrence, \$3,000,000 in the aggregate. The Contractor shall maintain workers' compensation coverage or a self-insured program as required under

Tennessee law, with Employer's Liability Limits of \$100,000. The Contractor shall deliver to the Institution a certificate of insurance no later than the effective date of the Contract. If any policy providing insurance required by the Contract is cancelled prior to the policy expiration date, the Contractor, upon receiving a notice of cancellation, shall give immediate notice to the Institution.

The enumeration in the Contract of the kinds and amounts of liability insurance shall not abridge, diminish or affect the Contractor's legal responsibilities arising out of or resulting from the services under this Contract.

- E.8. Competitive Procurements. If this Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or services. Such procurements shall be made on a competitive basis, where practical.
- E.9. Equipment/Inventory. **The Contractor agrees to be responsible for the accountability, maintenance, management, and inventory of all property purchased totally or in part with funds provided under this Contract. The Contractor shall maintain a perpetual inventory system for all equipment purchased with funds provided under this Contract and shall submit an inventory control report with the required progress reports.**

The Contractor shall notify the Institution, in writing, of any equipment loss describing reason(s) for the loss. Should the equipment be destroyed, lost, or stolen, the Contractor shall be responsible to the Institution for the *pro rata* amount of the residual value at the time of loss based upon the Institution's original contribution to the purchase price.

Upon completion or cancellation of this Contract, all equipment purchased with funds provided under this Contract shall be returned to the Institution.

[OR]

Equipment/Inventory. No equipment shall be purchased under this Contract.

- E.10. Institution Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the Institution for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the Institution in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the Institution for the residual value of the property at the time of loss.
- E.11. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:
- This Contract document, its attachments and amendments
 - All Clarifications and addenda made to the Contractor's Proposal
 - The Request for Proposal and its associated amendments
 - The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in the order of precedence detailed above.

- E.12. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

- E.13. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the Institution hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.
- E.14. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the Institution for infringement of any laws regarding patents or copyrights which may arise from the performance of this Contract. In any such action brought against the Institution, the Contractor shall satisfy and indemnify the Institution for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the Institution in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the Institution. The Institution shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.
- E.15. Authorized Individuals. Each party has provided the other party with a list identifying the individuals from whom the other party is authorized to accept any notices, requests, demands, or other advice which may be given hereunder by the party providing such list. Lists, which are attached hereto as Attachment [NUMBER], shall be valid until revoked or amended by further written notice. The parties shall only be entitled to rely on notices, requests, demands, or other advice given by such individuals.
- E.16. Hold Harmless. The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the Institution in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the Institution.

In the event of any such suit or claim, the Contractor shall give the Institution immediate notice thereof and shall provide all assistance required by the Institution in the Institution's defense. The Institution shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the Institution in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

- E.17. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or Institution department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of

embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false Statements, or receiving stolen property;

- c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

E.18. 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 as Attachment A.

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.

E.19. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.

- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
- b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
- c. With reference to either subsection a. or b. above, a Contractor may make a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

IN WITNESS WHEREOF:

[CONTRACTOR LEGAL ENTITY NAME]:

[NAME AND TITLE]

Date

[INSTITUTION AGENCY NAME]:

[NAME AND TITLE]

Date

APPROVED:

TENNESSEE BOARD OF REGENTS (IF APPLICABLE):

Charles W. Manning, Chancellor

Date

ATTACHMENT 1

**ATTESTATION RE PERSONNEL USED IN CONTRACT
PERFORMANCE**

CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

**SIGNATURE &
DATE:**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

INTELLECTUAL PROPERTY / RESEARCH AGREEMENT

THIS AGREEMENT, effective this ____ day of _____, 20__, is made by and between:

(company name) (street address) a (insert state of incorporation) corporation, (hereinafter referred to as "Sponsor") and (institution name) (street address) a member of the Tennessee Board of Regents System, (hereinafter jointly referred to as "Institution").

WITNESSETH:

WHEREAS, the research project contemplated by this Agreement is of mutual interest and benefit to Sponsor and to Institution, will further the instructional and research objectives of Institution in a manner consistent with its status as a non-profit, tax-exempt, public institution of higher education, and may derive benefits for both Sponsor and Institution through inventions, improvements, and/or discoveries;

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties hereto agree to the following:

Article 1 - Definitions

As used herein, the following terms shall have the following meanings:

1.1 "Project" shall mean the project described in Appendix A hereof, under the direction of (), as principal investigator. The principal investigator is responsible for directing research activity.

1.2 "Contract Period" is _____ until _____.

Article 2 - Research Work

2.1 Institution shall commence the performance of Project promptly after the effective date of this Agreement, and shall use reasonable efforts to perform such Project substantially in accordance with the terms and conditions of this Agreement. Anything in this Agreement to the contrary notwithstanding, Sponsor and Institution may at any time amend the scope of the Project by mutual written agreement.

2.2 In the event that the principal investigator becomes unable or unwilling to continue Project, and a mutually acceptable substitute is not available, Institution and/or Sponsor shall have the option to terminate the Project.

Deleted: said

2.3 Sponsor understands that the Institution's primary mission is education and advancement of knowledge and the Project will be designed to carry out this mission. The manner of performance of the Project will be determined solely by the Principal Investigator. The Institution will perform the Project on a "best efforts" research basis only and does not guarantee specific results. The Institution specifically disclaims all warranties or representations, either express or implied, for implied merchantability or for warranty of fitness for a particular purpose, including, without limitation, that any product does not infringe any patent, copyright or trademark right, as to any work performed under this Agreement, except as expressly set forth herein.

2.4 Sponsor understands that the Institution may be involved in similar research through other researchers on behalf of itself and others. Institution shall be free to continue such research provided that, during the term of this Agreement, it is conducted separately and by different investigators from the Project, and Sponsor shall not gain any rights via this Agreement to other research.

Article 3 - Reports and Conferences

3.1 If so requested, a final written report shall be submitted by Institution within 60 days of the conclusion of the Contract Period, or early termination of this Agreement.

3.2 If so requested by the Sponsor during the term of this Agreement, representatives of Institution will meet with representatives of Sponsor at times and places mutually agreed upon to discuss the progress and results, as well as ongoing plans, or changes therein, of Project to be performed hereunder.

Article 4 - Cost, Billings and Other Support

4.1 As consideration for the Institution's performance, Sponsor will pay the Institution an amount equal to its expenditures and reasonable overhead in conducting the Project. (It is agreed to and understood by the parties hereto that ~~the total costs to Sponsor hereunder shall not exceed the sum of Dollars (\$ _____)).~~ Payment shall be made by Sponsor according to the following schedule:

Deleted: pursuant to Section 2.1

(insert payment schedule).

4.2 In the event of early termination of this Agreement by Sponsor for convenience, Sponsor shall pay all costs accrued by the Institution as of the date of termination, including non-cancelable obligations, which shall include all non-cancelable contracts and fellowships or post-doctoral associates, which shall end no later than the end of the Institution's academic year following termination.

4.3 Institution shall retain title to all equipment purchased and/or fabricated by it with funds provided by Sponsor under this Agreement.

4.4 Sponsor agrees to obtain, at Sponsor's expense, a non-exclusive license for the Institution, the Principal Investigator, and any research assistant engaged by the Institution to work on the Project, to practice and/or use any patented technology or copyrighted material necessary to carry out the research contemplated by the scope of the Project. In the event that Sponsor is the owner of any patents or copyrights the practice of use of which is necessary for carrying out the Project, the Sponsor hereby grants the Institution, the Principal Investigator, and any research assistant engaged by the Institution to work on the Project, a non-exclusive license to practice and/or use any such patented technology or copyrighted material.

Article 5 - Publicity

Sponsor and Institution agree to cooperate, each with the other, in the preparation of any publicity, advertising, or news release related to the Project. At least seven days prior to any release or publication, the issuing party will provide the other party with a copy of the proposed material for approval. Sponsor will not thereafter make any use of the name of the Institution or

any employee within the institution without the prior written approval of an authorized representative of the Institution. Authorized institution representatives include but are not limited to: (_____)

Article 6 - Publications

6.1 Sponsor recognizes that under Institution policy, the results of Project must be publishable and agrees that Researchers engaged in Project shall be permitted to present at symposia, national or regional professional meetings, and to publish in journals, theses, dissertations, or otherwise of their own choosing, the methods and results of Project; provided, however, that Sponsor shall have been furnished copies of any proposed publication or presentation at least thirty days in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party to permit Sponsor to object to such proposed presentation or proposed publication if Sponsor believes there is patentable subject matter or proprietary information which needs protection. Sponsor shall provide the Institution with such objection in writing within thirty days of receiving a proposed publication or forever waive its rights in this regard.

In the event that Sponsor makes objection, Institution shall refrain from making such publication or presentation for a maximum of three months from date of receipt of such objection in order for patent application(s) to be filed by the appropriate party and/or for the proprietary information to be removed or redacted.

6.2 In the event that the results of the Project are published or any product resulting from the Project is marketed to third parties, the Institution and/or the Project Director shall, at their option, have the right to receive attribution for their contribution to the published material or to have the Institution's and Project Director's names displayed on the product (in the case of published works, books CDs, DVDs or similar media) or the product packaging or literature (in the case of other types of products).

Article 7 - Intellectual Property

It is understood that during the course of the Sponsored Research, valuable intellectual property may be generated by Institution personnel alone or jointly with Sponsor personnel. The following terms concerning intellectual property and inventions shall apply to this Agreement:

7.1 All rights and title to inventions and intellectual property, including but not limited to US and foreign patent applications and patents resulting therefrom, which are invented solely by Institution personnel, will belong to Institution. All rights and title ~~to inventions and intellectual property, including but not limited to US and foreign patent applications and patents resulting therefrom, which are invented jointly by Institution and Sponsor personnel shall belong jointly to Sponsor and Institution.~~

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7.2 At Sponsor's option, Institution and Sponsor agree to negotiate in good faith regarding the transfer of rights to inventions or other intellectual property held by the Institution that may have arisen from Project. Sponsor shall have three (3) months from disclosure of any invention or discovery to notify Institution that it wants to enter into such a license agreement. The parties shall negotiate in good faith for a period not to exceed six (6) months from Sponsor's notification or a longer period of time if the parties mutually agree to extend negotiations. If Sponsor and Institution fail to enter into such an agreement, the rights to such inventions or other intellectual property shall be disposed of in accordance with Institution policies, with no obligation to Sponsor. In the event that Sponsor elects to obtain said license, Sponsor shall bear the expense of the prosecution of any related patent applications, including without limitation, patentability investigation expenses, on behalf of Institution and Institution personnel.

7.3 In the event that Institution declines to file patent applications in the US or in any foreign countries on any patentable inventions, the rights to file will, with prior agreement of all persons engaged in the Project, and to the extent that any Inventions growing out of the Project also relied upon governmental sponsored research, the appropriate governmental agency, be transferred by Institution and those persons to Sponsor, if Sponsor so requests. Under these circumstances, patent applications filed by Sponsor will be made with the understanding that a share in royalties equivalent to that provided to the inventor(s) under the current Institution patent policy will be provided to the inventor(s) by Sponsor and provided further that the Institution shall be granted a world wide, fully paid-up, non-exclusive license to any Inventions so patented.

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Article 8 - Term and Termination

8.1 This agreement shall become effective upon execution and shall continue in effect for the full duration of the Contract Period unless sooner terminated in accordance with the provisions of this Article. The parties hereto may, however, extend the term of this Agreement for additional periods as desired under mutually agreeable terms and conditions that the parties reduce to writing and sign.

Deleted: the date first herein above written

8.2 Either party may terminate this Agreement for convenience upon ____ days prior written notice to the other, subject to Section 4.2 hereof.

8.3 If the Sponsor fails to fulfill in a timely and proper manner its obligations under this Agreement or if the Sponsor shall violate any of the terms of this Agreement, the Institution shall have the right to immediately terminate this Agreement and withhold payment in excess of fair compensation for work completed. Notwithstanding the foregoing, the Sponsor shall not be relieved of liability to the Institution for damages sustained by virtue of any breach of this Agreement by the Sponsor.

8.4 Any provisions of this Agreement which by their nature extend beyond termination, e.g., without limitation, Articles 4-7, 10-11, shall survive such termination.

Article 9 - Independent Contractor

In the performance of services hereunder:

9.1 Institution shall be deemed to be and shall be an independent contractor and, as such, neither Institution nor its employees shall be entitled to any benefits applicable to employees of Sponsor, nor shall Sponsor or its employees be entitled to any benefits applicable to employees of Institution.

9.2 Neither party is authorized or empowered to act as agent for the other for any purpose and shall not on behalf of the other enter into any contract, warranty, statement, commitment or representation as to any matter. Neither shall be bound by the acts or conduct of the other.

Article 10 - Indemnification

Sponsor shall indemnify and hold harmless Institution against any and all actions, claims, costs, or liabilities, including attorneys' fees and court costs at both trial and appellate levels, for any loss, damage, injury, or loss of life caused by (a) the actions of Sponsor, its officers, servants, agents or of any third party acting under authorization from Sponsor, or (b) for products developed or made by or as a result of information or materials received from the Institution.

Article 10 shall apply with the proviso that (a) Institution promptly notifies Sponsor in writing after Institution receives notice of any claim, (b) Sponsor shall defend the Institution or may be given

the opportunity, at Institution's option, to participate and associate with Institution in control, defense, and trial of any claim and any related settlement negotiations, (c) Institution fully cooperates with Sponsor in the defense of any such claim, and (d) no settlement shall binding against the Institution without the consent of the Tennessee Attorney General. The defense and indemnity provisions of Sponsor shall survive the termination or natural expiration of this Agreement.

Article 11 - Insurance

Sponsor shall procure and maintain the following insurance coverage:

11.1 Workers' compensation and employers' liability insurance at statutory limits for workers' compensation and no less than \$1,000,000 for employers liability.

11.2 Commercial general liability insurance, including contractual liability coverage and products and completed operations liability coverage, and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 each occurrence. If such insurance includes a general aggregate limit, it shall apply separately to this Project. The Institution shall be included as an additional insured under the CGL policy.

Article 12 - Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee, without resort to its choice or conflict of laws principles. Sponsor hereby submits to the jurisdiction of the State of Tennessee.

Article 13 - Assignment

This Agreement shall not be assigned by either party without the prior written consent of the other.

Article 14 - Agreement Modification

Any agreement to change the terms of this Agreement in any way shall be valid only if the change is made in writing and executed by authorized representatives of the parties hereto.

Article 15 - Notices

Notices, invoices, communications, and payments hereunder shall be deemed made if given by United States registered or certified mail, postage prepaid, and addressed to the party to receive such notice, invoice, or communication at the address given below, or such other address as may hereafter be designated by notice in writing:

If to Sponsor: (insert information) If to Institution: (insert information)

Article 16 - Non-discrimination

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.

Article 17 – 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.

Deleted: as Attachment I

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.

Article 18 – Conflict of Interest

The Sponsor 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 Sponsor in connection with any work contemplated or performed relative to this contract. Notwithstanding anything to the contrary in the foregoing, nothing in this Paragraph shall be construed to prevent the Institution from paying any of its employees working on the Project from funds received from Sponsor.

Article 19. - Debarment and Suspension.

The Contractor certifies, to the best of its knowledge and belief, that it and its principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or state department or agency;**
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;**
- c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses listed in section b. of this certification; and**

d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

Article **20** – Entire Agreement

This written Agreement constitutes the entire and only agreement between the parties relating to the Project and supersedes all prior negotiations, representations, agreements and understandings. The parties expressly disclaim reliance on any such prior negotiations, representations, agreements or understandings.

IN WITNESS WHEREOF, the parties have caused these presents to be executed in duplicate as of the day and year first above written.

AGREED TO AND ACCEPTED BY:

(SPONSOR)

(INSTITUTION)

By: _____ By: _____

Title: _____ Date: _____ Title: _____ Date: _____

ATTACHMENT (___)

(Should be able to paste the attestation form here.)

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

CONTRACT NUMBER:

CONTRACTOR LEGAL ENTITY NAME:

FEDERAL EMPLOYER IDENTIFICATION
NUMBER: (or Social Security Number)

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

SIGNATURE & DATE:

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRESIDENTS/DIRECTORS QUARTERLY MEETINGS

DATE: November 5, 2008

AGENDA ITEM: Public Records Charge

ACTION: Approval

PRESENTER: Chris Modisher, Chris Modisher

BACKGROUND INFORMATION:

Attached is proposed TBR Policy 4:07:10:00 – Charges for Producing Copies of Public Records for review.



Tennessee Board of Regents

OFFICE OF GENERAL COUNSEL

1415 Murfreesboro Road, Suite 336

Nashville, TN 37217

Phone (615) 366-4437 Fax (615) 366-3910

MEMORANDUM

TO: Presidents
Directors

FROM: Christine Modisher
General Counsel

DATE: October 28, 2008

RE: *Public Records Charge*

During the 2008 legislative session, the Tennessee General Assembly amended the Tennessee Public Records law. A copy of the statute is attached. Among other things, the new law:

1. prohibits charging for record inspection only,
2. permits charging for actual cost of providing copies, including employee time, pursuant to properly adopted reasonable rules,
3. sets a seven day period within which to respond to a public records request (T.C.A. § 10-7-503(a)(2)(B)) by:
 - making the record available
 - denying the request in writing
 - stating the time reasonably necessary to produce the record
4. creates an office of open records counsel to establish a schedule of reasonable charges to be used as a guideline for Tennessee public entities and to:
 - provide information to public officials and the public regarding public records
 - answer questions and issue informal opinions
5. creates a legal cause of action for failure to comply with the law but creates a safe harbor for agencies that adhere to the policies and guidelines of the Office of Open Records Counsel.

Under this law public entities, including the Tennessee Board of Regents, can charge for providing copies of public records pursuant to a reasonable rule. Since the law creates a safe harbor provision for those using the guidelines established by the Office of Open Records Counsel, we recommend following those guidelines. They were issued October 1, 2008 in their current form.

Currently, each TBR institution has its own guidelines for copying charges. Because of the new language in the Public Records Act, we are recommending adoption of a uniform policy for use by all TBR institutions. The proposed policy is attached.

CM:ms
Attachments

POLICY 4:07:10:00
CHARGES FOR PRODUCING COPIES OF PUBLIC RECORDS

I. PURPOSE

The Tennessee Public Records Act (T.C.A. § 10-7-503 *et seq.*) (TPRA) grants Tennessee citizens the right to inspect public records. The law allows records custodians to charge a fee to supply copies of public records pursuant to properly adopted policies. Under T.C.A. § 8-4-601 *et seq.*, the Tennessee General Assembly in 2008 created the Office of Open Records Counsel (OORC). The law directs the OORC to develop a schedule of reasonable charges which may be used by a records custodian as a guideline to charge a citizen requesting copies of public records. While these guidelines are not mandatory, they do create a safe harbor for a records custodian who adheres to the policies and guidelines established by the OORC. The Board of Regents adopts this policy with the intent of incorporating the OORC guidelines as they may be from time to time amended.

II. DEFINITIONS

- (1) "Labor" means the time reasonably necessary to produce the requested records and includes the time spent locating, retrieving, reviewing, redacting, and reproducing the records.
- (2) "Labor threshold" means the labor of the employee(s) reasonably necessary to produce requested records for the first hour incurred by the institution in producing the records.
- (3) "Production costs" means all reasonable costs the institution incurred to produce the public records requested by the requesting party. Production costs include copying costs, labor costs, and delivery costs, as described in this policy.
- (4) "Public record" means any record of the institution that is required to be open to inspection under the provisions of Tennessee and United States laws.
- (5) "Public Records Designee" or "PRD" means the person at each campus, institute, or other unit who receives and coordinates public records requests and maintains documentation of public records requests, responses, and charges.
- (6) "Requesting party" means the person who requests to inspect or copy public records. To have access to public records, a requesting party must be a citizen of the State of Tennessee.

III. COPYING COSTS

Each institution will establish the charge for making copies of public records by photographic or other means of duplication at the rate established by the Office of Records

Counsel as they may be from time to time amended. (See <http://comptroller.state.tn.us/openrecords>) The schedule sets a per page fee for copying that does not include labor charges as described below.

- A. If the requested records exist electronically, but not in the format requested or a new or modified computer program or application is necessary to put the records in a readable and reproducible format or it is necessary to access backup files, the PRD shall charge the requesting party the actual costs incurred in producing the records in the format requested or in creating or modifying a computer program or application necessary to put the records in a readable and reproducible format or in accessing backup files.
- B. Electronic records will be produced only in a read-only format.

IV LABOR COSTS. The PRD shall charge the requesting party the hourly wage of the employee(s) reasonably necessary to produce copies of the requested records above the labor threshold defined in Section II above. The “hourly wage” is based upon the employee(s) base salary and does not include benefits. In calculating the labor costs to be charged to the requesting party, the PRD shall:

- (1) First, determine the number of hours each employee spent producing the requested public records.
- (2) Second, subtract the one (1) hour threshold from the number of hours the highest paid employee spent producing the request.
- (3) Third, multiply the total number of hours to be charged for the labor of each employee by that employee’s hourly wage; and
- (4) Fourth, add together the totals for all the employees involved in the request to determine the total amount of the labor costs to be charged to the requesting party.

V. DELIVERY COSTS. The PRD shall charge the requesting party for the costs incurred by the PRD in delivering the records to the requesting party, in addition to any other charge permitted by these rules.

- (1) Delivery of copies of records to a requestor is anticipated to be by hand delivery.
- (2) In the discretion of the PRD, copies of public records may be delivered through other means, including electronically or by U.S. Postal Service.

VI. PAYMENT. If the requesting party requests copies of public records, the following provisions concerning payment of production costs shall apply:

- (1) The PRD shall provide the requesting party an estimate of the production costs before initiating the production of copies of the requested public records.
- (2) The PRD may require payment in full of all production costs before copies of public records are delivered or otherwise made available to the requesting party.

- (3) Production costs must be paid by cash or check. Cash payments must be for the exact amount of the publication costs.
- (4) The PRD will provide a receipt to the requesting party upon receipt of payment of the production costs.

VII. WAIVER OF PRODUCTION COSTS. The PRD is authorized in its discretion to waive payment for providing copies of public records on a case to case basis.

VII. REQUESTS FOR COPIES FOLLOWING INSPECTION. The PRD shall not assess a charge to inspect public records, unless otherwise required by law. However, if the requesting party, after requesting to inspect public records, requests copies of public records, the PRD shall charge the requesting party for all production costs.

GUIDELINE ON CHARGES FOR COPIES OF PUBLIC RECORDS

The Tennessee Public Records Act (T.C.A. § 10-7-503 *et seq*) (“TPRA” grants citizens the right to request a copy of a public record. The law (T.C.A. § 10-7-503(a)(7)(A)) prohibits a records custodian from charging a fee for inspection only unless otherwise provided by law. The law (T.C.A. § 10-7-506) does permit records custodians to charge for copies or duplication pursuant to properly adopted reasonable rules. This guideline will serve as the rule for the Tennessee Board of Regents system.

Copy Charges

- A records custodian may assess a charge of 15 cents per page for each standard 8 ½ x 11 or 8 ½ x 14 black and white copy produced. A records custodian may assess a requestor a charge for a duplex copy that is the equivalent of the charge for two (2) separate copies.
- If a public record is maintained in color, the records custodian shall advise the requestor that the record can be produced in color if the requestor is willing to pay a charge higher than that of a black and white copy. If the requestor then requests a color copy, a records custodian may assess a charge of 50 cents per page for each 8 ½ x 11 or 8 ½ x 14 color copy produced.
- If a records custodian’s actual costs are higher than those reflected above or if the requested records are being produced on a medium other than 8 ½ x 11 or 8 ½ x 14 paper, the records custodian may develop its own charges. The records custodian must establish a schedule of charges documenting “actual cost” and state the calculation and reasoning for its charges in a properly adopted policy. A records custodian may charge less than those charges reflected above. Charges greater than 15 cents for black and white, and 50 cents for color, can be assessed or collected only with documented analysis of the fact that the higher charges actually represent such governmental entity’s cost of producing such materials; unless there exists another basis in law for such charges.
- The TPRA does not distinguish requests for inspection of records based on intended use, be it for research, personal, or commercial purposes. Likewise, this Schedule of Reasonable Charges does not make a distinction in the charges assessed an individual requesting records under the TPRA for various purposes. Other statutory provisions, such as T.C.A. §10-7-506(c), enumerate fees that may be assessed when specific documents are requested for a specific use. Any distinctions made, or waiver of charges permitted, must be expressly permitted in the adopted policy.

Additional Production Charges

- A records custodian shall utilize the most cost efficient method of producing the requested records.
- Delivery of copies of records to a requestor is anticipated to be by hand delivery when the requester returns to the custodian's office to retrieve the requested records. If the requestor chooses not to return to the records custodian's office to retrieve the copies, the records custodian may deliver the copies through means of the United States Postal Service and the cost incurred in delivering the copies may be assessed in addition to any other means, including electronically, and to assess the costs related to such delivery.
- If a records custodian utilized an outside vendor to produce copies of requested records because the custodian is legitimately unable to produce the copies in his/her office, the cost assessed by the vendor to the governmental entity may be recovered from the requestor.
- If the records custodian is assessed a charge to retrieve requested records from archives or any other entity having possession of requested records, the records custodian may assess the requestor the cost assessed the governmental entity for retrieval of the records.

Labor Charges

- "Labor" is defined as the time reasonably necessary to produce the requested records and includes the time spent locating, retrieving, reviewing, redacting, and reproducing the records.
- "Labor threshold" is defined as the labor of the employee(s) reasonable necessary to produce requested material for the **first hour** incurred by the records custodian in producing the material. A records custodian is not required to charge for labor or may adopt a labor threshold higher than the reflected above.
- A records custodian is permitted to charge the hourly wage of the employee(s) reasonably necessary to produce the requested records above the "labor threshold." The hourly wage is based upon the base salary of the employee(s) and does not include benefits. If an employee is not paid on an hourly basis, the hourly wage shall be determined by dividing the employee's annual salary by required hours to be worked per year. For example, an employee who is expected to work a 37.5 hour week and receives \$39,000 in salary on an annual basis will be deemed to be paid \$20 per hour. Again, a records custodian shall utilize the most cost efficient method of producing the requested records.
- In calculating the charge for labor, a records custodian shall determine the number of hours each employee spent producing a request. The records custodian shall then subtract the one (1) hour threshold from the number of hours the highest paid employee(s) spent producing the request. The records custodian will then multiply the total number of hours to be charged for the labor of each employee by that employee's hourly wage. Finally, the records custodian will add together the totals

for all the employees involved in the request and that will be the total amount of labor that can be charged.

Example:

- The hourly wage of Employee #1 is \$15.00. The hourly wage of Employee #2 is \$20.00. Employee #1 spends 2 hours on a request. Employee #2 spends 2 hours on the same request. Because employee #2 is the highest paid employee, subtract the one hour threshold from the hours employee #2 spent producing the request. Multiply the number of hours each employee is able to charge for producing the request by that employee's hourly wage and then add the amounts together for the total amount of labor that can be charged (i.e. $(2 \times 15) + (1 \times 20) = \50.00). For this request, \$50.00 could be assessed for labor.

PUBLIC CHAPTER NO. 1179

SENATE BILL NO. 3280

By McNally, Haynes, Burchett, Tracy, Williams, Watson

Substituted for: House Bill No. 3637

By McDaniel, Eldridge, DuBois

AN ACT to amend Tennessee Code Annotated, Title 8, Chapter 4; Title 8, Chapter 44 and Title 10, Chapter 7, relative to open government.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 10-7-503, is amended by deleting subsection (a) in its entirety and substituting instead the following:

(a)(1) As used in this part and Title 8, Chapter 4, Part 6, "public record or records" or "state record or records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

(2)(A) All state, county and municipal records shall at all times, during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

(B) The custodian of a public record or the custodian's designee shall promptly make available for inspection any public record not specifically exempt from disclosure. In the event it is not practicable for the record to be promptly available for inspection, the custodian shall within seven (7) business days:

(i) Make such information available to the requestor;

(ii) Deny the request in writing or by completing a records request response form developed by the office of open records counsel. The response shall include the basis for the denial; or

(iii) Furnish the requestor a completed records request response form developed by the office of open

records counsel stating the time reasonably necessary to produce such record or information.

(C)(i) Until the office of open records counsel develops a schedule of reasonable charges in accordance with § 8-4-604(a), a records custodian may require a requestor to pay the custodian's actual costs incurred in producing the requested material; provided that no charge shall accrue for the first five (5) hours incurred by the records custodian in producing the requested material. Such actual costs shall include but not be limited to:

(a) The making of extracts, copies, photographs or photostats; and

(b) The hourly wage of employee(s) reasonably necessary to produce the requested information.

(ii) When such schedule of reasonable charges is developed, the provisions of subsection (a)(7)(C)(1) shall become effective.

(iii) Following the development of the schedule of reasonable charges by the office of open records counsel, the office of open records counsel shall notify the Tennessee Code Commission and when the code commission receives such notice this subdivision (C) shall no longer apply and the language in this subdivision (C) shall be repealed and deleted by the code commission as volumes are replaced or supplements are published.

(3) Failure to respond to the request as described in subdivision (a)(2) shall constitute a denial and the person making the request shall have the right to bring an action as provided in § 10-7-505.

(4) This section shall not be construed as requiring a governmental entity or public official to sort through files to compile information; however a person requesting such information shall be allowed to inspect the non-exempt records.

(5) This section shall not be construed as requiring a governmental entity or public official to create a record that does not exist; however the redaction of confidential information from a public record or electronic database shall not constitute a new record.

(6) A governmental entity is prohibited from avoiding its disclosure obligations by contractually delegating its responsibility to a private entity.

(7)(A) A records custodian may not require a written request or assess a charge to view a public record unless otherwise required

by law. However, a records custodian may require a request for copies of public records to be in writing or that such request be made on a form developed by the office of open records counsel. Such custodian may also require any citizen making a request to view a public record or to make a copy of a public record to present a photo identification, if the person possesses a photo identification, issued by a governmental entity, which includes the person's address. If a person does not possess a photo identification, the records custodian may require other forms of identification acceptable to the records custodian.

(B) Any request for inspection or copying of a public record shall be sufficiently detailed to enable the records custodian to identify the specific records to be located or copied.

(C)(1) A records custodian may require a requestor to pay the custodian's reasonable costs incurred in producing the requested material and to assess such reasonable costs in the manner established by the office of open records counsel pursuant to § 8-4-604.

(2) The records custodian shall provide a requestor an estimate of such reasonable costs to provide copies of the requested material.

SECTION 2. Tennessee Code Annotated, Section 10-7-505(b), is amended by adding the language "or circuit court" immediately after the language "chancery court" in the first sentence.

SECTION 3. Tennessee Code Annotated, Section 10-7-505(b), is further amended by adding the language "or circuit court" after the language "chancery court" every time it appears in the second sentence.

SECTION 4. Tennessee Code Annotated, Section 10-7-505(g), is amended by adding the following language at the end of the subsection:

In determining whether the action was willful the court may consider any guidance provided to the records custodian by the office of open records counsel as created in Title 8, Chapter 4.

SECTION 5. Tennessee Code Annotated, Title 8, Chapter 44, Part 1, is amended by adding the following as a new section thereto:

§ 8-44-109.

(a) The municipal technical advisory service (MTAS) for municipalities and the county technical assistance service (CTAS) for counties, in order to provide guidance and direction, shall develop a program for educating their respective public officials about the open meetings laws codified in this chapter, and how to remain in compliance with such laws.

(b) The Tennessee School Board Association shall develop a program for educating elected school board members about the open meetings laws and how to remain in compliance with such laws.

(c) The utility management review board shall develop a program for board members of water, wastewater and gas authorities created by private act or under the general law and of utility districts in order to educate such board members about the open meetings laws and how to remain in compliance with such laws.

(d) The state emergency communications board created by § 7-86-302 shall develop a program for educating emergency communications district board members about the open meetings laws and how to remain in compliance with such laws.

(e) The office of open records counsel established in Title 8, Chapter 4, shall establish educational programs and materials regarding open meetings laws in Tennessee, to be made available to the public and to public officials.

SECTION 6. Tennessee Code Annotated, Title 8, Chapter 4, is amended by adding the following sections as a new part thereto:

8-4-601.

(a) There is created the office of open records counsel to answer questions and provide information to public officials and the public regarding public records. The role of such office shall also include collecting data on open meetings law inquiries and problems and providing educational outreach on the open records laws codified in Title 10, Chapter 7, and the open meetings laws codified in Title 8, Chapter 44.

(b) The office of open records counsel shall answer questions and issue informal advisory opinions as expeditiously as possible to any person including local government officials, members of the public and the media. State officials shall continue to consult with the office of the attorney general and reporter for such opinions. Any opinion issued by the office of open records counsel shall be posted on the office's Web site.

(c) The office of open records counsel is hereby authorized to informally mediate and assist with the resolution of issues concerning the open records laws codified in Title 10, Chapter 7.

8-4-602.

(a) There is created an advisory committee on open government to provide guidance and advice for the office of open records counsel.

(b)(1) The advisory committee shall consist of ten (10) members to be appointed for a term of four (4) years; provided that the four (4) members listed in subdivisions (b)(1)(A)-(E) shall be appointed for an initial term of four (4) years and the four (4) members listed in subdivisions (b)(1)(F)-(J)

shall be appointed for an initial term of two (2) years. The advisory committee shall be made up of one (1) member from each of the following groups who will be appointed by the comptroller from a list of three (3) nominees submitted from each group:

(A) One (1) member from the Tennessee Coalition for Open Government;

(B) One (1) member from the Tennessee Press Association;

(C) One (1) member from the Tennessee Municipal League;

(D) One (1) member from either the Tennessee County Services Association or the County Officials Association of Tennessee;

(E) One (1) member from the Tennessee School Boards Association;

(F) One (1) member from Common Cause;

(G) One (1) member from the League of Women Voters;

(H) One (1) member from public hospitals submitted by the Tennessee Hospital Association;

(I) One (1) member from the Tennessee Association of Broadcasters; and

(J) One (1) member representing the Tennessee board of regents or the University of Tennessee.

(2) The advisory committee shall also consist of the chairs of the House and Senate State and Local Government Committees and the attorney general or the attorney general's designee.

(c) The non-legislative members shall not receive compensation for serving on the committee but shall be reimbursed for attendance at meetings in accordance with the comprehensive travel regulations promulgated by the Commissioner of Finance and Administration and approved by the attorney general.

8-4-603.

(a) The advisory committee, with the guidance and assistance of the office of open records counsel, may review and provide written comments on any proposed legislation regarding the open meetings laws codified in Title 8, Chapter 44, and the open records laws codified in Title 10, Chapter 7.

(b) The office of open records counsel and the advisory committee shall provide a report to the general assembly and to the governor by March 1 of each year.

8-4-604.

(a) The office of open records counsel shall establish:

(1) A schedule of reasonable charges which a records custodian may use as a guideline to charge a citizen requesting copies of public records pursuant to Title 10, Chapter 7, Part 5. In establishing such a schedule, the office of open records counsel shall consider:

(A) Such factors as the size, by population, of the county or municipality; the complexity of the request; the number of man hours involved in retrieving the documents, redacting confidential information from the documents, and any other costs involved in preparing the documents for duplication; the costs of duplication; the costs of mailing such documents if the requestor is not returning to retrieve the requested documents; and any other costs which the office of open records counsel deems appropriate to include in such charge; and

(B) The principles presented by the study committee created by Chapter 887 of the Public Acts of 2006:

(i) The state policies and guidelines shall reflect the policy that providing information to the public is an essential function of a representative government and an integral part of the routine duties and responsibilities of public officers and employees;

(ii) That excessive fees and other rules shall not be used to hinder access to non-exempt, public information;

(iii) That, in accordance with § 10-7-503(a)(7)(A), no charge shall be assessed to view a public record unless otherwise required by law;

(iv) That the requestor be given the option of receiving information in any format in which it is maintained by the agency, including electronic format consistent with Title 10, Chapter 7, Part 1; and

(v) That when large-volume requests are involved, information shall be provided in the most efficient and cost-effective manner, including but not limited to permitting the requestor to provide copying equipment or an electronic scanner.

The schedule established pursuant to this subsection(a) shall be revised at least annually.

(2) A separate policy related to reasonable charges which a records custodian may charge for frequent and multiple requests for public records.

(3) A safe harbor policy for a records custodian who adheres to such policies and guidelines established by the office of open records counsel.

(b) The office of open records counsel shall make such policies and guidelines available on the Internet.

(c) Such policies and guidelines shall not be deemed to be rules under the provisions of Title 4, Chapter 5.

SECTION 7. This act shall take effect July 1, 2008, the public welfare requiring it.

PASSED: May 20, 2008



RON RAMSEY
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 19th day of June 2008



PHIL BREDESEN, GOVERNOR

PRESIDENTS/DIRECTORS QUARTERLY MEETING

DATE: November 5, 2008

AGENDA ITEM: Proposed Revisions to Policies and Guidelines under Business Affairs

ACTION: Approval

PRESENTER: Bob Adams

BACKGROUND INFORMATION: Proposed revisions to the following policies and guidelines are being presented for approval:

Policy 4:01:03:00 – Payment of Student Fees and Enrollment of Students

Policy 4:02:10:00 – Purchasing Policies and Procedures

Guideline B-010 – Collection of Accounts Receivable

Guideline B-062 – Other Education Assistance Programs

Policy No. 4:01:03:00

SUBJECT: PAYMENT OF STUDENT FEES AND ENROLLMENT OF STUDENTS

(1) An applicant for admission to an institution or Tennessee Technology Center governed by the Tennessee Board of Regents will be considered and counted as a student when all assessed fees have been paid in cash, or when the initial minimum payment due under the deferred payment plan has been paid, or when an acceptable commitment from an agency or organization approved by the institution or center has been received by the institution or center. An applicant shall possess an acceptable commitment when he/she has timely submitted an application(s) for financial aid with the reasonable probability of receiving such.

(2) When an applicant tenders payment of fees by means of a personal check, the applicant may be considered and counted as a student. When the check is subsequently dishonored and returned, unless the student then pays the fees in cash, the institution has the option to not consider that student as enrolled for the term. At the discretion of the institution, the student may be considered enrolled and will be assessed the applicable returned check fee, the applicable late registration fee, and will be denied grade reports, transcripts and future registration privileges until such dishonored check is redeemed.

Pursuant to TCA 49-9-108, diplomas, certificates of credit, and grade reports cannot be withheld for debts that are both less than \$25 and more than 10 years in age.

Institutions and centers may deny future check writing privileges to students that have paid registration fees with checks that are subsequently dishonored. While institutions have discretion in how these situations will be handled, all students must be treated the same at that institution.

(3) An acceptable commitment from an agency or organization shall be limited to a commitment which identifies the applicant and promises to pay all unpaid assessed fees for such applicant.

(4) Agencies or organizations which may be approved by the institution for purposes of making acceptable commitments for applicants shall be limited to agencies of the federal or state governments authorized to provide financial aid, established financial institutions within the state, established in-state and out-of-state corporations which employ the applicant, foreign embassies and foreign corporations, and other organizations within the state which have previously demonstrated the ability to pay the commitment. No commitments from individuals will be accepted on behalf of applicants.

(5) This policy shall not affect enrollment of students receiving financial assistance from any federal or state financial aid program(s). All state financial aid granted to a student shall be applied to pay maintenance fees or tuition, student dormitory or residence hall rental, board, and other assessed fees before any excess may be distributed to the student.

(6) All assessed fees shall include maintenance fees, tuition, debt service fees, service charges, and any other incidental fees assessed at the time of registration, and shall include any and all assessed fees outstanding from prior enrollment at the institution by an applicant. All fees shall be assessed and payable at the time of registration to the extent determinable. Assessed fees shall include rental and board fees where such fees are payable in full at the time of registration. Otherwise, assessed fees shall include the first periodic payment of rental and board fees in advance.

(7) Assessed fees for student dormitory and residence hall units may be payable on a monthly basis in advance in accordance with the provisions of an optional monthly payment plan which shall be established by each institution in accordance with the provisions of the policy on student residence regulations and agreements.

(8) No applicant will be considered for admission as a student until all due and payable outstanding fees and charges from prior terms, of whatever nature, have been paid by the applicant.

(9) The institutions are authorized, subject to approval by the Board, to establish charges for late registration and/or checks which are returned dishonored, and such charges shall become assessed fees for purposes of admission.

(10) In accordance with these guidelines, the president of an institution has the authority to determine the applicability of certain fees, fines, charges, and refunds, and to approve exceptions in instances of unusual circumstances. The Vice Chancellor for Technology Centers shall have this authority for the Tennessee Technology Centers. All such actions should be properly documented for auditing purposes.

Source: TBR Meetings, June 20, 1975; September 30, 1983; June 24, 1988; June 29, 1990; June 21, 1996; December 8, 2006.

SUBJECT: Purchasing Policy and Procedures

The following policy and procedures, Minimum General Bid Conditions (Attachment A), and Code of Ethics in Procurement and Contracting (Attachment B) are adopted as minimum standards for exercise by the TBR Central Office, Presidents of the institutions and Directors of the technology centers, governed by the Tennessee Board of Regents, of their delegated authority to purchase materials, supplies, equipment and services. Except as specifically provided in this policy or other TBR policies or guidelines, the authority of the Presidents and Technology Center Directors pursuant to these policies and procedures shall not include the purchase or lease of real property, purchase of data processing equipment over \$249,999.99, the purchase of insurance, or purchases for capital outlay projects from any fund source whatsoever. Goods and services may be procured without competitive bidding only if such purchases are justified in writing and approved by the Chancellor, President, or Director as required by TBR policies and guidelines. In cases where the TBR policies and procedures do not address a specific procedure for purchase of a particular item, the Department of General Services' rules and regulations will govern, if applicable. The Chancellor, President, Director, Chief Business Officer, or Chief Procurement Officer may delegate approval authority as specified in this policy to designees. Time periods specified in this policy shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it shall also be excluded.

I. COMPETITIVE BIDDING AND SPECIFICATIONS

All purchases shall be based upon the principle of competitive bidding except as herein provided. Required documentation related to competitive bidding shall be routed through the institution's procurement/contract office, prior to the purchase, to ensure compliance with applicable policies and guidelines. Unless original signatures are otherwise required (e.g., easements, deeds and other real property documents), electronic procurement is permitted for formal procurements when the required rules and procedures are developed in accordance with TBR Guideline B-095, and TCA §12-3-704, which provides that state agencies shall not require small and minority owned businesses to receive or respond to invitations to bid/request for quotations or request for proposals, or other solicitations electronically. Whenever possible, all specifications for materials, supplies, equipment and services shall be worded or designed so as to permit open and competitive bidding for the supplying of the article, commodities or services to which they apply. For all RFPs and RFQs exceeding \$100,000, written certification from the author or committee that the specifications, to the best of their knowledge, are not proprietary shall be documented in the bid file. It is the responsibility of the procurement officer to ensure all competitive bidding is considered fair and open in a bid process. It will be considered open and competitive bidding by utilizing one of the following procurement techniques:

- A. Requests for Quotation (RFQ)/Invitation to Bid (ITB) – a competitive process soliciting bids from possible suppliers for a one-time procurement of product(s) and/or service(s).

Specifications based on brand names and product numbers - reference to brand names, trade names, model numbers or other descriptions peculiar to specific brand products is made to establish a required level of quality and functional capabilities; it is not intended to exclude other products of that level. Comparable products of other manufacturers will be considered if proof of comparability is contained in the bid. Vendors are required to notify the Chief Procurement Officer whenever specifications procedures are not perceived to be fair and open. All suggestions or objections shall be made in writing and received by the Chief Procurement Officer at least three (3) working days prior to the bid opening. It shall be the responsibility of the vendors, including vendors whose product is referenced, to furnish with the bid such specifications, catalog pages, brochures or other data as will provide an adequate basis for determining the quality and functional capabilities of the product offered. Failure to provide this data may be considered valid justification for rejection of a bid;

Specifications based on standard specifications;

Specifications based on qualified products list; or

Specifications based on catalogs, price lists, or price schedules.

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. Requests for Proposals (RFP) – a competitive process in which bids are solicited from possible suppliers, with a source or sources of supply established for a specified period of time at agreed upon unit pricing for goods and/or services.

1. Request for Proposal – Under \$25,000, sealed bid with cost and technical proposal submitted as one document (under \$25,000 does not require sealed bids; can be written, telephone or electronic as provided in Section IV.B).
2. Request for Proposal – \$25,000 and over, sealed bid with separate sealed technical and cost proposals which must be submitted at the same time. Acceptability of technical offers shall be determined by an evaluation team selected by the president or designee.

Members of the evaluation team should be adequate and appropriate to the scope and nature of the RFP. **Procurement department representatives shall review the proposals to ensure procurement procedures were followed and shall offer guidance to the evaluation team but shall not serve on the evaluation team and shall not score technical proposals received, except in instances where the RFP is directly related to a good/service needed by the procurement department.** Any technical offer submitted which contains pricing information shall be rejected. Technical offers not deemed acceptable will not proceed to the pricing phase. Cost proposals shall not be opened if the associated technical proposal has been deemed non-responsive and is rejected by the institution. Technical and cost proposals shall not be made public until the inspection period following the evaluation of the cost proposals; or

3. Additional Procedures for Multi-step Sealed Bidding – the use of a multi-step sealed bidding process is required in the bidding process for the procurement of products and/or services when it is not practical to prepare initially definitive specifications.

Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which proposers submit unpriced technical offers to be evaluated and a second phase in which those proposers whose technical offers are determined to be responsive during the first phase have their price proposals considered.

For any contract that results from an RFP, 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)

C. Procurement Under the Authority of Another Entity's Bid Process:

Purchase of materials or services, for which any TBR or UT institution or the State of Tennessee Department of General Services, Purchasing Division, has awarded a contract to a vendor through the competitive bidding process may be made without adherence to Section IV, Minimum Notice and Number of Bids, provided the vendor meets the bid specifications. Note: the competitive bidding process of another entity (except the State Purchasing Division) must have specified that other institutions would be permitted to purchase under the bid. This section does not preclude institutions from utilizing an SWC as a bid in accordance with the competitive bidding process outlined in Section IV,

Minimum Notice and Number of Bids, if so desired. (F&A Rule 0690-3-1-.01 (5) and Section XVII of this policy.)

D. Procurement of State Manufactured Articles and Services:

All institutions and technology centers are required to purchase items (goods) and services from other State agencies, e.g., Department of Correction, Blind Services, Tennessee Rehabilitative Initiative in Correction (TRICOR), Community Rehabilitation Agencies (CMRA) / TRUST in Tennessee, whenever such items or services are available there from and meet the desired conditions and standards. (General Services Rule 0690-3-1-.01 (7) (d).)

In addition, for personal, professional and consultant service contracts only, no competitive process is required when the contractor is a state agency (as provided in the immediately preceding paragraph), a political subdivision of the state, any other public entity in Tennessee, or an entity of the federal government. The non-competitive negotiation process in Section XV B. of this Policy may be used for such contracts. (F&A Rule 0620-3-3-.03).

E. Procurement Under Contracts with Group Purchasing Organizations (See Section XXI for Reporting and Documentation Requirements):

Institutions and technology centers are permitted to make purchases of goods and services under a contract with a group purchasing program as provided in TCA 49-7-127. The statute specifically permits such purchases when the price for goods or services under a group purchasing program is lower than the price available on a state contract. A state contract is defined in this section as a TBR institution contract, a TBR system contract, a UT contract, or a General Services contract. Comparison pricing must have been obtained within twelve (12) months of the date of comparison.

F. Gifts:

Gifts do not require a procurement process subject to this policy. See TBR Policy 4:01:04:00 Solicitation and Acceptance of Gifts and TBR G-030 Section 3.

For purposes of this policy, a gift to the institution shall be defined as a voluntary transfer of goods or services to the institution made gratuitously and without consideration. Essential elements of a gift are:

- (1) Capacity of the donor of the gift,
- (2) Intention of donor to make a gift,

- (3) Completed delivery of the gift to or for the institution, and
- (4) Acceptance of the gift by the institution.

Nothing in this policy shall be construed to mean that the institution must accept any gift.

II. PROCUREMENT OF GOODS, MATERIALS AND SUPPLIES/ SERVICES

- A. Goods. Goods, materials, and supplies (cumulatively called "goods") should be awarded to the lowest responsive and responsible* bidder pursuant to a Request for Quotation, sometimes called an Invitation to Bid. (A sample Request for Quotation is available at the TBR web site.)

*"Responsive" means that the bid meets the requirements and criteria set forth in the Request for Quotation or Request for Proposal. "Responsible" means that the bidder is capable of performing or is not otherwise disqualified. In the event a bidder is not responsive and/or not responsible, then the bid is to be disqualified.

- B. Goods and Services. Certain services or a combination of goods and services may be procured as a "good", based on a Request for Quotation rather than a Request for Proposal, if the end product is more important than the service that goes toward its production or when the vendor has little discretion in determining its actual content or form.

- (1) Examples of this type of service may include, but are not limited to:
 - (a) pest control; (b) security services; (c) moving and hauling; (d) refuse collections; (e) charter services; (f) printing services, and (g) maintenance services.
- (2) Mischaracterization of an item to be procured as a good or service shall not constitute an error in the procurement if the requirements of this policy are met, but it may be grounds for the institution to terminate the procurement process. For competitive procurement of goods, an Invitation to Bid (or Request for Quotation) is appropriate, and in general, a purchase order may be used to finalize the purchase. For competitive procurement of services, a Request for Proposal is more appropriate, and a purchase order is generally not sufficient to serve as the written contract for the services. **For procurement of services which will require Central Office approval, the Request for Proposal format approved by the Central Office shall be used.**

- C. Services. A contract for personal, professional, 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. 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. Detailed information regarding service contracts is provided in TBR Guideline G-030. A sample Request for Proposal for service contracts is available at the TBR web site. Each institution's RFP should contain, at a minimum, the requirements of the sample RFP provided by TBR Central Office.

A contract for consulting services hereunder which exceeds \$25,000 shall not be allowed unless it is determined by the Chancellor, President, or Director, in writing that the services are in fact needed and that they cannot be satisfactorily or economically performed by a state agency. A cover form will be required to be completed by the requisitioning department, submitted to the institution's procurement office, certifying the need for the service(s) and that appropriate consideration has been given to the use of state resources (sample language is available through the TBR Central Office).

- D. Outsourcing. Institutions are encouraged to determine whether some services can be delivered more economically by the private rather than the public sector. The following process is hereby permitted and encouraged:
- (1) The state's cost of the service may be ascertained and kept confidential as part of the evaluation process. This cost must be finally determined and provided to the Chancellor, President, or Director, as appropriate, in a sealed envelope prior to bid/proposal due date.
 - (2) The service may be the subject of an RFQ/RFP, as appropriate, which approximately describes the services heretofore provided by the TBR/institution.
 - (3) The RFP/RFQ may require that if the proposer's/bidder's price exceeds the state's confidential cost, the proposal/bid may be rejected.
- E. Monitoring of Services. Institutions shall have a monitoring plan for all service contracts*, including grants and grant subcontracts, to ensure the following:
- (1) that deliverables are received,
 - (2) financial obligation of the institution does not exceed the contract pricing, and
 - (3) services are in compliance with the terms and conditions of the contract.

*Service contracts shall have the same meaning as provided in Section II of this policy. Procurement of goods under this policy shall not require a monitoring plan, but shall comply with TBR and institution internal controls and audit procedures.

- F. Illegal Immigrants. No person may enter into a contract to supply goods or services to the state or other state entities without first attesting in writing that the person will not knowingly utilize the services of illegal immigrants in the performance of the contract, and will not knowingly utilizing the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract. The procedures for implementing this Policy and the attestation form are provided in TBR Guideline G-030. Language to be included in bids/proposals is included in Attachment A, Minimum General Bid Conditions.

III. REQUESTS FOR QUOTATION AND REQUESTS FOR PROPOSAL

- A. Requests for Quotation and Requests for Proposal shall specify:

- (1) The time and place that bids will be received and opened,
- (2) Information describing the purpose of the procurement, technical requirements, bidder qualifications, and any other information considered relevant to the goods or services being acquired,
- (3) the amount or number of articles or services required,
- (4) For all RFPs and RFQs exceeding \$100,000, in estimated expenditure or revenue, a question/answer period and/or pre-bidders' conference, with all questions and responses forwarded to all prospective bidders,
- (5) the time of delivery,
- (6) the amount, if any, of any bid bond or certified checks to accompany the bid/proposal,
- (7) the amount, if any, of any performance bond which may be required if the vendor is the successful bidder,
- (8) a declaration of the contract terms and conditions which shall be required by the institution,
- (9) a description of the factors to be considered in evaluating bids/proposals, if applicable,

- (10) date bid/proposals evaluations will be available for viewing,
- (11) if applicable, whether other TBR institutions and/or UT institutions may purchase from the contract, and
- (12) the period of time during which each bidder/proposer will hold its bid open and the period during which the contract awarded will be available to other institutions, if applicable.

B. RFQs/RFPs may specify any other requirements, conditions, or information in reference to the purchase deemed necessary.

C. RFQ/RFP files (hard-copy or electronic) shall contain, at a minimum, the following:

- (1) a copy of the RFQ/RFP issued (including specifications),
- (2) a list of vendors for solicitation,
- (3) the date vendors were sent the RFQ/RFP,
- (4) for RFPs and applicable RFQs, any pre-bid questions/responses or addendums to the RFQ/RFP,
- (5) for RFPs and applicable RFQs, all documentation relating to the composition of the evaluation team and the evaluation documentation used to make the award,
- (6) as applicable, any documentation that warrants a re-bid of the RFQ/RFP,
- (7) any informal bid complaints and the respective responses/actions,
- (8) as applicable, copies of intent to award letters, and
- (9) the executed purchase order and/or contract.

IV. MINIMUM NOTICE AND NUMBER OF BIDS

The number of bids required and the notice to bidders for solicitation of bids for purchases and revenue contracts shall be as follows:

- A. If the estimated amount of the purchase (or revenue) is \$25,000 or more, written sealed bids must be solicited from fifteen (15) vendors or the number of vendors on the Vendors List--whichever is less and to all that

request the specific RFQ/RFP. (The Chief Procurement Officer must approve the solicitation of less than 15 bids). If the **annual** estimated amount of the purchase is \$100,000 or more, solicitations must be sent in a manner that verifies proof of delivery. ~~The An RFQ/RFP for goods~~ must be sent at least fourteen (14) days (ten (10) days when all vendors are local vendors) before the date that the bids are scheduled to be opened. For RFPs and applicable RFQs, **(for example, those RFQs having requirements in addition to or other than the purchase of goods), a minimum of four (4) to six (6) weeks** ~~additional time~~ should be allowed ~~when fourteen (14) days is not sufficient~~ for vendors to adequately prepare a competitive proposal based on the method of RFP or RFQ delivery, bid specifications and pre-bidders questions/responses. **Examples of types of bids which would need to allow at least six (6) weeks include, but are not limited to, banking and other financial services, bookstore and food services, custom software and or IT system services, advertising management services and any other bid for which the additional time is appropriate.** A vendor's general or standing request for notice for all RFQs/RFPs or all RFQs/RFPs of a given type shall not suffice as a request for a specific RFQ/RFP and shall create no obligation on the institution.

- B. If the estimated amount of the purchase (or revenue) is at least \$5,000 but less than \$25,000, written, telephone or electronic bids must be solicited from at least three (3) qualified vendors (with the exception of Section I. E. above). When telephone bids are solicited, a written record of the bidders and amounts bid shall be maintained.

V. BID WITHDRAWAL, BID REVISION, AND BID REJECTION

Before bid opening, a vendor may be permitted to withdraw a bid entirely and/or submit a substitute bid. The vendor making such a request must submit suitable identification.

After bid opening, a vendor will be permitted to withdraw a bid only where there is obvious clerical error in the bid such as a misplaced decimal point, or when enforcement of the bid would impose unconscionable hardship due to an error in the bid resulting in a quotation substantially below the other bids received. Withdrawal will be considered only upon written request from the vendor.

In cases of errors in the extension of prices in the bid, the unit price will govern.

Incorrect proposal information – If the institution determines that a proposer has provided, for consideration in a contractor selection process or in negotiations, information which the proposer knew or should have known was materially incorrect, the subject proposal may be determined non-responsive, the proposal may be rejected and the vendor may be removed from the vendor list.

A bid may not be revised after bid opening.

However, after evaluation is complete and the successful bidder/proposer selected, the institution may initiate negotiations which serve to alter the bid/proposal in a way favorable to the institution. For example, prices may be reduced, time requirements may be revised, the bid/proposal may be revised to supply omitted contract terms, etc. In no event shall negotiations increase the cost or amend the proposal such that the apparent successful proposer no longer offers the best proposal.

Any proposal that restricts the rights of the institution or otherwise qualifies or limits the proposal may be considered to be non-responsive, and the proposal may be rejected.

When it becomes necessary to reject all bids, the reason for such rejection must be set out in complete detail and made available to all bidders who submitted a bid.

Action to reject all bids shall be taken only for unreasonably high prices, errors in the RFQ/RFP, cessation of need, unavailability of funds, failure of all proposals to meet technical specifications, a determination that the goods/services can be more economically delivered pursuant to an agreement with another TBR institution or other state agency, or a determination that proceeding with the procurement would be detrimental to the best interests of the institution, the reason for which must be documented and approved by the Chancellor, President, or Director.

If another RFP is to be issued, all prior offers and/or proposals shall remain closed to inspection by the proposers and/or the public until the evaluation of the re-bid is complete.

VI. ACCEPTANCE OF BIDS / NO RIGHTS CREATED

Notwithstanding any provision contained herein or in any solicitation document, submission of a bid or a proposal shall not create rights, interests or claims of entitlement in any bidder or proposer, including the successful bidder or proposer. Notwithstanding any action or agreement to the contrary, no such right, interest, or claim shall exist unless and until a purchase order has been issued or a contract is fully executed.

For RFPs and applicable RFQs, a notice of intent to award shall be sent to all proposers containing, at a minimum, the content provided by the TBR Central Office.

All bids shall be subject to rejection by the Chancellor, President, or Director. If awarded, the contract for purchase shall be awarded to the lowest qualified and responsible bidder, taking into consideration quantifiable factors including but not limited to the apparent ability of the bidder to perform the proposed contract, the conformity of the articles or services to the specifications, any discount allowed for prompt payment or for any other reason, transportation charges, and the date of delivery specified in the RFP/RFQ.

A bond for the faithful performance of any contract may be required at the discretion of the institution or technology center.

A complete written record on all procedures and justifications shall be maintained on each procurement transaction in order to provide a clear audit trail on the purchase.

Bids must be received in the specified location on or before the date and hour designated for bid opening. All bids received must be date and time stamped to show compliance with the designated opening date and time. Late bids will not be considered in contract award.

All RFQs received shall be publicly opened and examined by a designated institutional representative at the time and place specified in the RFQ. Whenever sealed bidding is utilized, bidders shall have no less than five (5) working days after the opening before a purchase order/contract may be awarded.

All RFQs/RFPs conforming to the RFQ/RFP specifications, together with the name of the bidders, shall be recorded. Only after the completion of evaluation shall the complete procurement files become a matter of public record and open to public inspection.

Each bid should give the full name and business address of the bidder; if the vendor is a corporation, the name shall be stated as it is in the corporate charter. Each bid must be signed in ink by the vendor's authorized agent. Unsigned bids will be rejected. The person signing the bid must show his title, and if requested by the institution or technology center, must furnish satisfactory proof of his or her authority to bind his or her company in contract. Bids must be typewritten or in ink; otherwise they may not be considered. However, institutions may conduct informal procurement electronically, and if the institution requests or permits electronic bidding, no bidder's signature shall be required. TCA §12-3-704. Unless original signatures are otherwise required (e.g., easements, deeds and other real property documents), electronic procurement is permitted for formal procurements when the required rules and procedures are developed in accordance with TBR Guidelines B-095 and TCA §12-3-704, which provides that state agencies shall not require small and minority owned businesses to receive or respond to invitations to bid/request for quotations or request for

proposals, or other solicitations electronically. A purchase order, if applicable, will be issued to the firm name appearing on the bid.

When more than one item is specified in the RFQ/RFP, the institution may provide in the RFQ/RFP that the institution shall have the right to determine the low vendor(s) either on the basis of each individual item, a group of items, or the total of all items.

Alternate bids will not be considered unless specifically called for in the bid.

All material, supplies, and equipment offered and furnished must be new unless the RFQ/RFP specifically permits offers of used, remanufactured, or reconditioned items. RFQs/RFPs which specifically permit offers of used, remanufactured, or reconditioned items shall require a warranty; however, the Chancellor, President, or Director shall have the authority to waive this requirement.

VII. PROTESTED BIDS

A. Right to Protest

- (i) Any actual proposer who claims to be aggrieved in connection with a specific solicitation process may submit a protest in writing to the Chief Procurement Officer within seven (7) calendar days after he or she knows or should have known the facts giving rise to the protest.

All proposers should know and shall be deemed responsible for knowing the facts documented in the institution's procurement files on the day the institution opens the bid files for public inspection.

Any issues raised by the protesting party after the seven (7) calendar day period shall not be considered as part of the protest.

- (ii) *Signature on Protest Constitutes Certificate.* The signature of an attorney or protesting party on a request for consideration, protest, motion, or other document constitutes a certificate by the signer that the signer has read such document, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay, or needless increase in the cost of the procurement or of the litigation. If a request for consideration, protest, pleading, motion, or other document is signed in violation of this subsection before or after appeal to the Chancellor, the Chancellor upon motion or upon his/her own initiative, may impose upon the person who

signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties, including the affected institution, the amount of the reasonable expenses incurred because of the filing of the protest, a petition for a stay of award, pleading, motion, or other paper, including reasonable attorneys' fees.

(iii) Neither a protest nor a stay of award shall proceed under this section unless the protesting party posts a protest bond (See Appendix I). The protesting party shall post, with the Chief Procurement Officer of the institution, at the time of filing a notice of protest, a bond payable to the institution in the amount of five percent (5%) of the lowest cost proposal evaluated or five percent (5%) of the highest revenue proposal evaluated. Such protest bond shall be in form and substance acceptable to the institution and shall be immediately payable to the institution conditioned upon a decision by the Chancellor that:

1. A request for consideration, protest, pleading, motion, or other document is signed, before or after appeal to the Chancellor, in violation of subsection VII A. (ii);
2. The protest has been brought or pursued in bad faith; or
3. The protest does not state on its face a valid basis for protest.

(iv) The institution shall hold such protest bond for at least eleven (11) calendar days after the date of the final determination by the institution. If the protesting party appeals the determination in accordance with subdivision (vii), the institution shall hold such protest bond until instructed by the Chancellor to either keep the bond or return it to the protesting party.

(v) At the time of filing notice of a protest of a procurement in which the lowest evaluated cost proposal is less than one million dollars (\$1,000,000), or in which the highest evaluated revenue proposal is less than one hundred thousand dollars (\$100,000), a minority or small business protesting party may submit a written petition to the Chief Procurement Officer for exemption from the protest bond requirement of subsection VII.A.(iii). Such a petition must include clear evidence of minority or small business status. On the day of receipt, the petition shall be given (may be faxed) to the Chancellor or designee. The Chancellor has five (5) business days in which to make a determination. If an exemption from the protest bond requirement is granted, the protest shall proceed as though the bond were posted. Should the Chancellor deny an exemption from the requirement, the protesting party shall post the bond with the Chief Procurement Officer of the institution as required in subsection VII.A.(iii) within three (3) business days of the determination.

For the purposes of this section, “minority business” is defined as solely owned or at least fifty-one percent (51%) owned by a person or persons who control the daily operation of such business and who is disabled (a person having a physical or mental impairment that in the written opinion of the person’s licensed physician, substantially limits one (1) or more of the major life activities of such person, including caring for oneself, and performing manual tasks, which include writing, walking, seeing, hearing, speaking, and breathing); African American (persons having origins in any of the Black racial groups of Africa); Asian American (persons having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the subcontinent, or the Pacific Islands); Hispanic American (persons of Cuban, Mexican, Puerto Rican, Central or South American, or other Spanish or Portuguese origin, culture, or descent, regardless of race,); or Native American (persons having origins in any of the original peoples of North America). For purposes of this section, “small business” is defined as one which is independently owned and operated, has total gross receipts of no more than two million dollars (\$2,000,000) for the most recently ended federal tax year, and employs no more than thirty (30) persons on a full-time basis.

B. Authority to Resolve Protest

- (i) The Chief Procurement Officer of the institution has the authority to resolve the protest. If deemed necessary, the Chief Procurement Officer may request a meeting with the protesting party to seek clarification of the protest issues.
- (ii) The final determination of the Chief Procurement Officer shall be given in writing and submitted to the protesting party.
- (iii) The protesting party may request that the final determination of the Chief Procurement Officer be considered by the Chief Business Officer of the institution. The request for consideration shall be made in writing to the Chief Business Officer within seven (7) calendar days from the date of the final determination by the Chief Procurement Officer.
- (iv) The Chief Business Officer has the authority to review and resolve the protest. If deemed necessary, the Chief Business Officer may request a meeting with the protesting party to seek clarification of the protest issues. The final determination of the Chief Business Officer shall be given in writing and submitted to the protesting party.
- (v) The protesting party may request that the final determination of the Chief Business Officer be considered by the President or

Director of the institution. The request for consideration shall be made in writing to the President or Director within seven (7) calendar days from the date of the final determination by the Chief Business Officer.

- (vi) The institution shall have no longer than sixty (60) calendar days from receipt of the protest to resolve the protest.
- (vii) The protesting party may request that the final determination of the President/Director be considered by the Chancellor. The request for consideration shall be made in writing to the Chancellor within seven (7) calendar days from the date of the final determination by the President/Director. The determination of the Chancellor or designee is final and shall be given in writing and submitted to the protestor.
- (viii) In the event that the institution fails to acknowledge receipt of a protest within fifteen (15) days of receipt of a protest or fails to resolve the protest within sixty (60) calendar days, the protesting party may request that the Chancellor consider the protest at a meeting.

C. Stay of Award

Prior to the award of a contract, a proposer who has protested may submit to the Chief Business Officer a written petition for stay of award. Such stay shall become effective upon receipt by the Chief Business Officer. The Chief Procurement Officer shall not proceed further with the solicitation process or the award of the contract until the protest has been resolved in accordance with this section, unless the Chancellor makes a written determination that continuation of the solicitation process or the award of the contract without delay is necessary to protect substantial interests of the institution. It shall be the responsibility of the Chief Business Officer to seek such determination by the Chancellor.

D. Protest Subsequent to Award

The Tennessee Claims Commission has exclusive jurisdiction to determine all monetary claims against the state for the negligent deprivation of statutory rights.

E. Appeal to Chancery Court

Protests appealed to the chancery court from the Chancellor's decision shall be by common law writ of certiorari. The scope of review in the proceedings shall be limited to the record made before

the Chancellor and shall involve only an inquiry into whether the Chancellor exceeded his/her jurisdiction, followed an unlawful procedure, or acted illegally, fraudulently or arbitrarily without material evidence to support his/her action.

Æ F. Appendix I

A protest bond may be presented to the institution in form and substance compliant with the Protest Bond format attached in Appendix I. Any protest bond presented to the institution that represents a deviation from the Appendix I format shall be considered for acceptability by the institution on a case by case basis.

VIII. TIE BIDS

A. Goods - A tie bid exists when two or more bidders offer goods and/or services that meet all specifications, terms and conditions at identical prices, including cash discount offered. In such case, a tie bid will be broken by the following methods, in descending order of preference:

(1) Tennessee businesses will be given preference. **Tennessee business means a business (TCA 12-4-121(c)(2):**

- (a) incorporated in this state;**
- (b) that has its principal place of business in this state; or**
- (c) that has an established physical presence in this state.**

(2) Small, minority and women-owned business will be given preference (business classifications defined in Section XII).

(3) Award item(s) to vendor who was low bidder on other item(s) being bid per the same requisition.

(4) Best delivery.

(5) By lot or coin toss (properly witnessed and documented).

B. Personal, professional and consultant services - In the event that a proposal evaluation process results in two or more proposals receiving evaluation scores that tie for the rank of highest score, the institution shall request best and final cost proposals from only those proposers with scores that tie. The institution may calculate new evaluation scores for the tying proposals by adding the original technical scores to the recalculated cost scores. Should another tie result, the contract shall be awarded by coin toss.

IX. RECEIVING REPORTS

When any supplies, equipment, or materials are received by an institution or technology center, the receiving agent thereof shall maintain a record of receipt that the supplies, equipment, or materials received were equal in quality and quantity to those requisitioned. Appropriate documentation of contract performance or specific deliverables shall be provided by the requisitioning department prior to payment for services, supplies, equipment, and materials. Complete records on all receiving reports/documentation shall be maintained in order to provide for a clear audit trail on the receipt of all purchases.

X. VENDORS LIST

Each institution and technology center shall maintain a list of vendors which shows the types or classes of materials, supplies, equipment or services which the person, firm or corporation is willing and able to furnish to the institution or technology center. The institution or technology center may require the person, firm or corporation to submit sufficient information to demonstrate ability to perform any future commitment prior to inclusion on the list of bidders.

XI. REMOVAL FROM VENDORS LIST

Vendors who fail to respond to a reasonable number of bids or fail to provide adequate goods and/or services shall be removed from the vendors list. Reported failure to comply with bids, awards, and/or orders becomes a part of the bidder's application file. If a qualified bidder repeatedly fails to respond to Invitations to Bid, the bidder will be removed from all commodity groups. Examples of failure to comply include but are not limited to:

- Overshipments
- Undershipments
- Early Shipments
- Late Shipments
- Damaged Products
- Defective Products
- Shipments not in Conformance with Specifications
- Unauthorized Substitutions
- Billing Errors
- Service Deficiencies
- Failure to Ship

Other principal causes for temporary or permanent removal from the bid list are:

- Unethical Practices
- Misrepresentation of Merchandise

Failure of a vendor to perform satisfactorily in any of the above areas may result in a vendor's liability for damages to the institution.

XII. PURCHASES FROM SMALL/MINORITY/WOMEN OWNED BUSINESSES

All institutions, in accordance with state and federal law, shall actively promote and encourage diversity participation with small, minority, and women-owned businesses in order to obtain a fair proportion of goods and services from such businesses as further defined in Attachment C to this policy. Information regarding small, minority, and women-owned business solicitations and purchases will be filed with the Governor's Office of Diversity Business Enterprise and the Department of General Services which will consolidate this information into reports to the Legislature.

XIII. EMERGENCY PURCHASES

Purchases of specific materials, supplies, equipment or services may be made in the open market for immediate delivery only to meet bona fide emergencies arising from any unforeseen cause. All bona fide emergency purchases must be approved by the Chancellor, President, or Director, and a written report on the circumstances of any such emergency justifying the purchase shall be prepared and maintained. All emergency purchases shall, if practicable, be made on the basis of competitive bids.

XIV. SPECIAL PURCHASE CATEGORIES

A. Competitive Negotiation

A contract may be entered into by competitive negotiation only in cases when the institution or technology center is unable to obtain needed goods and/or services by the competitive bid process. In addition, competitive negotiation may be appropriate for personal, professional and consultant service contracts when one of the following is true:

1. public need will not permit the delay incident to the RFP process;
2. no acceptable proposals have been received after the RFP process;
3. rates payable for the services are regulated by law; or
4. as provided in IV B. of this Policy. (F&A Rule 0620-3-3-.03)

The Chancellor, President, or Director shall prescribe the procedures under which negotiation is to be conducted. These procedures shall provide for the safeguarding of the information and provide fairness to the vendors in the negotiation process; procedures shall mandate communication of the requirements of the institution, clarify best interests of the institution, and solicit bids from at least three (3) potential providers (including minority, disadvantaged and small business providers as otherwise required by TBR policy and

guidelines), and require documentation of the solicitation process. In the event it appears the competitive negotiation process is to be implemented, such an action must be approved by the Chancellor, President, or Director. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the Chancellor, President, or Director, and he or she shall approve the results prior to entering into a contract.

- B. Non-competitive negotiation for sole source procurement – the negotiation of the terms of a contract with only one provider.

Personal, professional and consultant service contracts may be obtained by non-competitive negotiation when the contractor is a state agency, a political subdivision of the state, and any other public entity in Tennessee, or an entity of the federal government. (See Section I. D. of this policy and F&A Rule 0620-3-3-.03.)

Sole source or proprietary purchases may be allowed pursuant to the following:

Sole Source Procurement - Sole source purchases are made only when items are unique and possess specific characteristics that can be filled by only one source. The vendor must furnish a letter indicating that it is the sole source and the letter must be signed by an authorized company representative

Proprietary Purchase - A proprietary product is one that is manufactured and marketed by a person or persons having the exclusive right to manufacture and sell the product. Marketing is generally controlled by franchises that may include competitive sales at wholesale or retail levels. When it is found that bids may be obtained from different franchises, bid invitations must be issued unless the estimated purchase is less than \$5,000.

Factors to be considered in sole source and proprietary purchases include the following:

1. Whether the vendor possesses exclusive and/or predominant capabilities or the items contain a patented feature providing superior utility not obtainable from similar products.
2. Whether the product or service is unique and easily established as one of a kind.
3. Whether the program requirements can be modified so that competitive products or services may be used.
4. Whether the product is available from only one source and not merchandised through wholesalers, jobbers, and retailers.

5. Whether items must be interchangeable or compatible with in-place items.
6. Whether the cost of conversion, including but not limited to disruption, re-training, and replacement precludes bidding competitively.
7. Whether the product is to be used in an instructional setting and the intent is to provide instruction on the specific product or diversity of products.
8. For personal, professional and consultant services, whether the use of non-competitive negotiation is in the best interests of the institution. (F&A Rule 0620-3-3-.03)
9. Other justifications as approved by the Chancellor, President, Director.

Only authorized sole source may be procured utilizing non-competitive negotiation and a completed non-competitive justification form.

Whenever specifications are not so worded or designed to provide competitive bidding, or specify a single brand, the person responsible for the recommendation shall be required to justify the necessity for the specification in writing, and the request shall be approved by the Chancellor, President, or Director. The TBR Justification for Non-Competitive Purchases and Contracts Form must be completed and approved by the institution's procurement office or TBR Central Office (when applicable).

C. Purchases for Resale in Auxiliary Enterprises

Purchases of items for resale shall be made as follows:

1. Textbooks and other course related materials may be purchased without adherence to Section IV of this policy, Minimum Notice and Number of Bids. All textbook ordering lists and authorization forms must be maintained for audit purposes.
2. Certain items for resale for which customers have expressed a preference, and/or promotional items procured under accepted retail merchandising practices, may be purchased without adherence to Section IV of this Policy, Minimum Notice and Number of Bids. Appropriate documentation shall be maintained which supports the action taken.

D. Purchases for Libraries, Excluding Materials and Supplies Identified for Consumption by the Library

Purchases of materials for additions to a library collection include cost of books, catalogs, periodicals, binding, audio-visual media, and other general publications.

These items are capital expenditures. Each institution and technology center shall be responsible for developing procurement policies and procedures for the library. These purchases may be made without formal bids or quotations, and appropriate documentation shall be maintained on these purchases to support sole source procurement.

Purchases of electronic journals, subscriptions, and databases for libraries shall be procured through the institution's procurement or contract office in instances when a competitive process can be used. In addition, any required electronic or written agreements to license journals, subscriptions, or databases shall be routed through the institution's procurement or contracts office for review and approval prior to use. Appropriate documentation must be maintained for purchases to support sole source procurement. Additionally, these items may require the approval of the Fiscal Review Committee if the purchase exceeds the Fiscal Review Committee threshold.

E. Federal Guidelines

Purchases utilizing federal funding are to follow federal guidelines regarding such purchases. Purchases for goods or services shall not be made from vendors on the List of Parties Excluded From Federal Procurement and Non-procurement Programs.

F. Utility Contracts

The institution or technology center shall purchase or contract for all telephone, telegraph, electric light, gas, power, postal and other services for which a rate for the use thereof has been established by a public authority in such manner as the institution deems to be in the best interest of the State of Tennessee. Each such purchase or contract shall be made on a competitive basis, whenever possible, in accordance with this policy, unless it has been determined that such purchase is single source. If such purchase has been determined to be single source, the purchase shall then be made pursuant to Section XV. B., Non-competitive negotiation, of this TBR Purchasing Policy.

XV. CONTRACTS AND AGREEMENTS

All contracts and agreements will be in conformance with TBR Policy 1:03:02:10 Approval of Agreements and TBR Guideline G-030, Contracts and Agreements.

A. No agreement of any nature which requires the expenditures of funds shall extend beyond the end of fiscal year in which it is entered into unless expressly subject to the condition that the institution or technology center shall have the right to terminate the agreement 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.

- B. All agreements, contracts and subcontracts shall contain all necessary affirmative action and nondiscrimination requirements provided by Federal or State laws and regulations.
- C. No contract for purchase of materials, supplies, equipment or services shall be awarded pursuant to these procedures unless funds have been appropriated and are available for the purchase. No contract shall be entered into in addition to the contract resulting from acceptance of a bid and issuance of a purchase order except pursuant to TBR Policy No. 1:03:02:10, Approval of Agreements.
- D. Contracts containing no financial consideration may be negotiated.
- E. Expenditure contracts, other than real property contracts, may not have a contract term for a period in excess of sixty (60) months. Revenue contracts may not have a contract term for a period in excess of one hundred twenty (120) months.
- F. A revenue contract shall be used to formalize an agreement in which a TBR institution provides specific deliverable goods or services for monetary compensation. Revenue contracts shall conform to the requirements of this policy, TBR Policy 1:03:02:10 and G-030.
- G. Individuals who execute agreements, contracts or subcontracts containing impermissible clauses may be subject to personal liability (TCA 12-3-105)
- H. Limitation of Liability. The Chancellor or designee may approve limitations of liability and limitations of warranty in contracts for personal services, professional services, and consultant services.

Approval Process. The request made under this Section must be submitted in writing to the Chancellor and must be signed by the President or Director.

Not Authorized. The Chancellor is not authorized to approve limitations of contractor liability which may reduce TBR's potential recovery from a contractor below two (2) times the value of the contract without the written permission of the Commissioner of Finance and Administration. In no event shall a limitation of liability or warranty permitted under this Section limit the liability of the contractor for intentional torts, criminal acts, or fraudulent conduct. This Section does not authorize any further limitation of the legal rights of TBR as a state entity, does not constitute a waiver of sovereign immunity, and does not authorize a cause of action against TBR in any jurisdiction.

- I. Limitations of Liability – Materials, Supplies, Equipment and Services. The Chancellor or designee may approve contracts for the purchase of materials, supplies, equipment and services when such contracts contain limitations of the liability of contractors for damage claims.

Not Authorized. The Chancellor is not authorized to approve limitations of contractor liability for intentional torts, criminal acts, or fraudulent conduct; nor is the Chancellor authorized to accept limitation of liability for an amount less than two times the value of the contract. Further, this section H. does not authorize TBR or its institutions to indemnify contractors for the acts or negligence of the contractors or third parties.

Approval Timeliness. Any request to the Chancellor under this section H. must be made at an appropriate time in the procurement process to ensure that no such decision shall detrimentally impact the fairness of the procurement or the interests of the state in competitive procurements. In a formal ITB process, the procuring institution may determine to request the Chancellor's approval under this section H. after receiving written comments from potential proposers. If the Chancellor approves such request, an amendment to the ITB may be made. An institution may request, and the Chancellor may approve, initiation of a new procurement process, including a contractor's limitation of liability, at any stage of the procurement process and may authorize negotiation of a limitation on a contractor's liability in circumstances in which the applicable procurement process has failed to provide a qualified proposer or a responsive bid.

Approval Process. The request under this section H. must be submitted in writing to the Chancellor and must be signed by the President or Director. The request must contain justification that addresses the following:

1. the text of the limitation of liability sought to be used;
2. the risks of liability to the state created by the information technology services and/or products to be purchased under the contract, and the impact on the state of allowing the limitation;
3. the conditions of the market which justify a limitation of liability;
4. the anticipated impact on the state's procurement if limitation of liability is not approved; and
5. the identification of one or more persons at the procuring TBR institution familiar with the information set forth in the request.

The Chancellor may deny or approve the request or may authorize limitation of liability under other language than that proposed in the request.

Notwithstanding the above, the Chancellor may authorize, with respect to contracts for telecommunications and information technology goods and services, a limitation of liability of not less than two (2) times the value of the contract provided that the limitation of liability permitted under this paragraph shall not apply to intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death. Any limitation beyond that permitted in this paragraph must be approved by the Chancellor and the Board of Standards.

TCA § 12-3-315 and General Services Rule 0690-3-2

XVI. COORDINATION OF PROCUREMENT FUNCTIONS AMONG SYSTEM INSTITUTIONS AND TECHNOLOGY CENTERS AND WITH THE UNIVERSITY OF TENNESSEE SYSTEM

In all contracts and other bid processes consideration should be given to such wording that would allow member institutions and technology centers to purchase under the terms and conditions of the bid of the individual institution or technology center. In all appropriate circumstances, consideration should also be given to wording that would allow UT institutions to purchase under the terms and conditions of the bid of a TBR institution. TBR institutions shall also be permitted to purchase under the terms and conditions of a bid of the UT System if the bid authorizes TBR institutions to do so.

XVII. LIFE-CYCLE COSTS

An institution or technology center shall, in a case where the State Board of Standards has adopted a rule requiring life-cycle costs to be used by the Commissioner of the Department of General Services in contracting for major energy-consuming products, and may, in a case where a life-cycle cost and/or energy efficiency standard has been developed for a product by the federal government, apply such life-cycle cost and/or energy efficiency standard in the determination of the lowest qualified and responsible bidder under this policy.

XVIII. DISPOSAL OF SURPLUS PERSONAL PROPERTY

Surplus property is personal property which has been determined obsolete, outmoded, unusable or no longer usable by the institution or technology center, or property for which future needs do not justify the cost of maintenance and/or storage. Disposal of such property must be in accordance with TBR Policy No. 4:02:20:00, Disposal of Surplus Personal Property.

XIX. PROHIBITED TRANSACTIONS

No personal items shall be purchased through the institution or technology center or from funds of the institution or technology center for any employee of the institution or technology center or any relative of any employee. No employee of an institution or technology center responsible for initiating or approving requisitions shall accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded, by rebate, gift or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future awards or compensation. Whenever any contract is awarded contrary to the provisions of these policies and procedures, the contract shall be void and of no effect, and if the violation was intentional, the employee responsible for the purchase shall be liable for any state funds paid contrary to these policies and procedures.

XX. PROCUREMENT MANUAL

Each institution and technology center shall maintain a written procurement 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.

XXI. REPORTS

Reports shall be submitted to the TBR Central Office as follows:

- A. Small/Minority/Women-Owned Business Report. This report consists of transactions with minority-owned, women-owned, and small businesses required by TCA 12-3-808 shall be reported to the TBR Director of Purchasing and Contracts on a quarterly basis (January-March, April-June, July-September, and October-December).
- B. Group Purchasing Report. This report consists of transactions procured with comparison pricing from group purchasing organizations required by TCA 49-7-124 and shall be reported to the TBR Director of Purchasing and Contracts on an annual basis.
- C. RFP Diversity Report. This report consists of contracts issued from request for proposals for goods and/or services pursuant to TCA 12-3-807(b) and shall be reported to the TBR Director of Purchasing and Contracts.

XXII. EXCEPTIONS

Any exceptions to the policies and procedures established herein shall be subject to the approval of the Chancellor or designee. An institution may devise and document procedures for an Alternate Competitive Procurement Method and use

the methodology in a specific contractor selection process, provided that prior, written approval of the Chancellor or designee is obtained for the proposed method to be used in the specified instance .

XXIII. COUNCIL OF BUYERS

The Chancellor has established a Council of Buyers. The Council shall be comprised of at least one (1) procurement representative from each institution, and representatives from the TBR Central Office appointed by the Chancellor. The Council should meet quarterly, or at minimum semi-annually, or upon request of the Chancellor or designee, and shall have the responsibilities including but not limited to the following:

- A. Development of uniform procedures, forms, and general conditions governing procurement which may be feasible and practicable for use by all institutions and technology centers in the System, including affirmative action and equal opportunity provisions, for review and approval by the Chancellor. Uniform procedures, forms, and general conditions governing procurement developed by the Council of Buyers shall be posted at the TBR web site.
- B. Formulation of standard specifications for purchase of specific materials, supplies, equipment, and/or services which may be feasible and practicable for use by the institutions and technology centers, for review and approval by the Chancellor or designee. Standard specifications for purchase of specific materials, supplies, equipment, and/or services developed by the Council of Buyers shall be posted at the TBR web site.
- C. Consideration of the feasibility and advantages of possible term contracts for the System, of designation of certain institutions or technology centers as responsible procurement agents for specific materials, supplies, equipment, and/or services for the System, and of the possibility of coordinating procurement functions among institutions and technology centers within geographic areas, with recommendations to be submitted to the Chancellor.
- D. Formulation of a uniform code of ethics for governing the professional conduct of employees responsible for procurement. (Attachment B)
- E. Any other matters referred to the Council by the Chancellor or designee.

APPENDIX I

Protest Bond

The Surety Company issuing bond shall be licensed to transact business in the State of Tennessee by the Tennessee Department of Commerce and Insurance. The bond shall have certified and current Power-of Attorney for the Surety's Attorney-in-Fact attached.

KNOW ALL BY THESE PRESENTS:

That we,

(Name of Protestor)

(Address of Protestor)

as the Party filing a protest of the State of Tennessee's determination(s) regarding a Request for Proposals (RFP) process, hereinafter called the Protestor, and

(Name of Surety)

(Address of Surety)

as Surety, hereinafter call the Surety, do hereby acknowledge ourselves indebted and securely bound and held unto the State of Tennessee as Obligee, hereinafter called the Obligee, and in the penal sum of

(Dollar Amount of Bond)

good and lawful money of the United States of America, for the use and benefit of those entitled thereto, for the payment of which, well and truly to be made, we bind ourselves, our heirs, our administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS:

WHEREAS, the Obligee has issued a Request for Proposals bearing the RFP Number:

(RFP Number)

AND, the Protestor, as an actual proposer to the RFP, claims to be aggrieved in connection with said RFP process;

AND, the signature of an attorney or the Protestor on a request for consideration, protest, motion, or other document constitutes a certificate by the signer that the signer has read such document,

that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation;

AND, neither a protest nor a stay of award shall proceed under the laws of the State of Tennessee unless the Protestor posts a protest bond, the Protestor does file this protest bond payable to the Obligee with a notice of protest regarding the subject RFP process;

AND, the Obligee shall hold the protest bond for at least eleven (11) calendar days after the date of the final determination on the protest by the head of the affected agency;

AND, if the Protestor appeals the affected agency head's determination on the protest to the Chancellor, in accordance with subsection Tennessee Code Annotated, § 12-4-109(a)(1)(E)(vii), the head of the agency shall hold said protest bond until instructed by the Chancellor as to its disposition.

NOW, THEREFORE, this obligation or bond shall remain in full force and effect conditioned upon a decision by the Review Committee that:

A request for consideration, protest, pleading, motion, or other document is signed by an attorney or the Protestor, before or after appeal to the Chancellor, in violation of Tennessee Code Annotated, § 12-4-109(a)(1)(E)(ii);

the Protestor has brought or pursued the protest in bad faith; or

the Protestor's notice of protest does not state on its face a valid basis for protest.

In which case, this obligation or bond shall be immediately payable to the Obligee. Otherwise, this obligation or bond shall be null and void.

IN WITNESS WHEREOF, the Protestor has hereunto affixed its signature and Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers,

On this _____ day of _____ in the year _____

WITNESS:

(Name of Protestor)

(Authorized Signature of Protestor)

(Name and Title of Signatory)

(Name of Surety)

(Signature of Attorney-in-Fact)

(Name of Attorney-in-Fact)

(Tennessee License Number of Surety)

Source: TBR Meetings, March 5, 1976; June 30, 1978; December 12, 1980; September 18, 1981; June 25, 1982; September 30, 1983; September 20, 1985 ; December 4, 1987; June 24, 1988; June 30, 1989; September 22, 1989; September 21, 1990; June 28, 1991; June 25, 1993; September 23, 1994; September 20, 1996, March 7, 1997, December 5, 1997; March 27, 1998, December 4, 1998; June 28, 2002; June 27, 2003, April 2, 2004; September 30, 2005; December 8, 2006; March 30, 2007; June 29, 2007; September 28, 2007; March 28, 2008.

ATTACHMENT A

TENNESSEE BOARD OF REGENTS

COUNCIL OF BUYERS

Minimum General Bid Conditions

Pursuant to Section II of TBR Policy 4:02:10:00, Purchasing Policy and Procedures, the following Minimum General Bid Conditions have been developed by the TBR Council of Buyers and approved by the Chancellor.

1. ACCEPTANCE AND REJECTION. The Institution reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the bidder, to accept any item in the bid. Bids may be awarded based on low by item, low by group of items or low by total items accepted, as best suits the needs of the Institution.
2. PREPARATION AND SUBMISSION OF BID.
 - a. Failure to examine any drawings, specifications, or instructions will be at the bidder's risk.
 - b. Each bid should give the full name and business address of the bidder. Unsigned bids will be rejected. The person signing the bid must show his title, and if requested by the Institution, must furnish satisfactory proof of his or her authority to bind his or her company in contract. Bids must be typewritten or in ink; otherwise they may not be considered. Purchase order will be issued to the firm name appearing on the bid.
 - c. No erasures are permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent to error and must be initialed in ink by person signing bid.
 - d. Discounts, other than "Time" or "Cash", offered should be deducted from the unit price.
 - e. Specifications: Reference to available specifications shall be sufficient to make the terms of the specifications binding on the bidder. The use of the name of a manufacturer, or any special brand or make in describing an item does not restrict the bidder to that manufacturer or specific article, unless specifically stated. The articles on which the bids/proposals are submitted must be equal or superior to that specified. Informative and Descriptive Literature: Bidders must furnish all information requested in the space provided in the bid form unless otherwise specified by the Institution. When applicable, bidders must submit for bid evaluation, cuts, sketches, descriptive literature and technical specifications covering the product(s) offered. References to literature

submitted with a previous bid or on file with the Institution will not be sufficient.

- f. Samples: Samples of items when called for, must be furnished free of expense, and if not destroyed will, upon request, be returned at the bidder's expense. Requests for the return of samples must be made within ten (10) days of bid opening. Each sample must be labeled with the bidder's name, manufacturer's brand name and number, bid number and item reference.
 - g. Time of Acceptance. If a bidder fails to state a time within which a bid must be accepted, it is understood and agreed that the Institution shall have sixty (60) days to accept.
 - h. Time of Performance: The number of calendar days in which delivery is to be made after receipt of order shall be stated in the bid and may be a factor in making an award, price notwithstanding. If no delivery time is stated in the bid, bidder agrees that delivery is to be made within two weeks (10 business days) of order.
 - i. Transportation and delivery charges should be included in the price and be fully prepaid by the vendor to make delivery F.O.B. Institution, or another destination which may be specified in the bid.
 - j. All items bid must be new unless otherwise specifically stated in the bid.
 - k. Alternate/multiple bids will not be considered unless specifically called for in the bid.
 - l. Bond Requirements: Bond Requirements, if any, will be stated on the face of the Request for Quotation/Proposal (RFQ/RFP). The Institution reserves the right to require that the selected vendor post a performance and/or payment bond in such amount as deemed reasonable by the Institution. The cost of the bond shall be separately identified in the bid. The Institution reserves the right to waive the bond requirement and delete the cost of the bond from the successful bid.
 - m. Brand and Trade Names. The bidder must show brand or trade names of the articles bid, when applicable.
 - n. Bids for purchases of \$25,000 or more must be signed and sealed with the bid number or other identifying information listed on the outside of the envelope.
 - o. Late bids will NOT be opened or considered. Bidders are cautioned to verify their bids before submission, as amendments received after the bid deadline will not be considered.
 - p. Bids are to be submitted on bid forms furnished by the Institution, otherwise they may not be considered. The Institution reserves the right to consider telephone, e-mail or faxed bids for purchase under \$25,000 if received by the deadline and confirmed in writing within five (5) days on Institution forms.
3. FAILURE TO BID/ERROR IN BID. Failure to bid without advising the Institution that future invitations for bids are desirable may result in removal from Institution's bidders' list covering this category of items. In case of errors in the extension of prices in the bid, the unit price will govern. No bid shall be altered or amended after the specified time for opening bids. After bid opening, a vendor will be permitted to withdraw a bid only where there is obvious clerical error in the bid

such as a misplaced decimal point, or where enforcement of the bid would impose unconscionable hardship due to an error in the bid resulting in a quotation substantially below the other bids received. Bid withdrawals will be considered only upon written request from the vendor.

4. INSPECTION OF BIDS. All bids will be opened publicly and are subject to public inspection after completion of the bid evaluation. Bidders may be present at opening.
5. DISCOUNT PERIOD. Time in connection with discount offered will be computed from date of satisfactory delivery at destination and performance, or from the date correct invoices are received, whichever is later. Discount periods of less than 20 days will not be considered in determination of low bid. Discounts other than time discounts will be shown on the face of the bid opposite the item to which it applies.
6. DEFAULT OF SELECTED VENDOR. In case of default of the vendor, the Institution may procure the articles or services from other sources and hold the vendor responsible for any excess cost occasioned thereby.
7. TAXES. The Institution is tax exempt; do not include taxes in quotation. Appropriate exemption certificates will be furnished to the successful bidder upon request. Vendors making improvements to, additions to, or repair work on real property on behalf of the Institution are liable for any applicable sales or use tax on purchases of tangible personal property used in connection with the contract or furnished to vendors by the Institution for use under the contract.
8. INSPECTION OF PURCHASES. Articles received which are not equivalent will not be accepted and will be picked up by the vendor or returned to vendor, shipping charges collect. The Institution shall have a reasonable period in which to inspect and accept or reject materials without liability. If necessity requires the Institution to use nonconforming materials, an appropriate reduction in payment may be made.
9. NON-DISCRIMINATION. The parties agree to comply with Title 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, and the American 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.

10. PROHIBITIONS / CONFLICT OF INTEREST. Acceptance of gifts from vendors is prohibited. TCA 12-3-106. Bidding by state employees is prohibited. TCA 12-4-103. The bidder warrants that no part of the total contract amount shall be paid directly or indirectly to any officer or employee of the State of Tennessee.
11. NO VENDOR CONTRACT FORM – TERMS / TENNESSEE LAW. The contract documents for purchase under the RFQ/RFP request shall consist of the RFQ OR RFP, the successful bidder's quotation/proposal, the contract awarded and/or the Institution's purchase order. The terms and conditions of an order and duly authorized change orders shall be the sole terms and conditions that apply to a purchase. Any subsequent terms and conditions set forth by the vendor on invoices, or in any other manner, shall not apply unless expressly agreed to in writing by the institution. The contract shall be governed by Tennessee law.
12. AUDIT. The Contractor shall maintain documentation for all charges against the Institution and payment made by the Institution under this Contract. The books, records and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of final payment. These documents shall be subject to audit at any time and upon reasonable notice, by Institution or the Comptroller of the Treasury or their duly appointed representatives. The Contractor's financial statements shall be prepared in accordance with generally accepted accounting principles.
13. Prohibition on Hiring Illegal Immigrants. Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Contractor 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.

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.

14. PURCHASING POLICIES / BID PROTESTS. This bid request and any award made hereunder are subject to the policies and guidelines of the Tennessee Board of Regents.

TENNESSEE BOARD OF REGENTS
CODE OF ETHICS IN PROCUREMENT AND CONTRACTING

The code of ethics was developed by the TBR Council of Buyers, approved by the Chancellor, and shall be applicable to all employees in the Tennessee Board of Regents System who are primarily responsible for the purchase of goods or services for any institution or technology center in the System.

1. Statement of Policy

Employees must discharge their duties and responsibilities fairly and impartially. They also should maintain a standard of conduct that will inspire public confidence in the integrity of the institutions and technology centers.

2. General Standards of Ethical Conduct

- (a) Any attempt to realize personal gain through public employment, inconsistent with the responsible discharge of that public employment, is a breach of public trust.
- (b) Employees shall base all purchases on the principle of competitive bidding consistent with policies of the Board and the institution or technology center.
- (c) Employees shall grant all competitive bidders equal consideration, regard each transaction on its own merits, and foster and promote fair, ethical and legal trade practices.
- (d) Employees shall avoid misrepresentation and sharp practices, and demand honesty in sales representations whether offered through the medium of a verbal or written statement, an advertisement, or a sample of a product.
- (e) Employees shall be receptive to competent counsel from colleagues, and be willing to submit any major controversy through the appropriate appeals processes.
- (f) Employees shall accord prompt and courteous reception insofar as conditions permit to all who call on legitimate business missions.
- (g) Employees shall not use without consent the original designs developed by a vendor for competitive purposes.

3. Conflict of Interest

It shall be a breach of ethical standards for any employee, in the performance of his or her official duties, to participate directly or indirectly in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal thereof, in which to his or her knowledge:

- (a) he or she or any member of his or her immediate family has a substantial financial interest; or
- (b) a business or organization in which he or she or any member of his or her immediate family has a substantial financial interest as an officer, director, trustee, partner or employee, is a party; or
- (c) any other person, business, or organization with whom he or she or a member of his or her immediate family is negotiating or has an agreement concerning prospective employment is a party.

The determination of whether a substantial financial interest exists shall be based upon the criteria identified in TBR Policy No. 1:02:03:10, Conflict of Interest.

Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing or in any other advisory capacity.

4. Gratuities

It shall be a breach of ethical standards for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal thereof.

5. Contemporaneous Employment Prohibited

It shall be a breach of ethical standards for any employee who is involved in procurement to become or be, while such an employee, the employee of any party contracting with the particular governmental body by which the employee is employed.

ATTACHMENT C

PURCHASES FROM SMALL, MINORITY, AND WOMEN OWNED BUSINESSES

Objective:

The Tennessee Board of Regents (TBR Institutions), consistent with state and federal law, seek to optimize opportunities for entering into contractual or purchasing opportunities with minority-owned businesses, woman-owned, and small businesses. TBR Institutions will seek to do business with firms and organizations that demonstrate and foster commerce with diversity businesses within their programs and policies. Through these efforts TBR Institutions will actively pursue its goals of building a more reflective marketplace for the community within the State of Tennessee.

TBR Institutions will fully cooperate and seek guidance from the Governor's Office of Diversity Business Enterprise (GO-DBE) to meet this objective.

Supporting Legislation:

TCA §§12-3-101, 12-3-103 and 12-3-801 through 12-3-808.

Tennessee Minority Owned, Woman Owned and Small Business Procurement and Contracting Act

Executive Order Number 14 issued December 8, 2003.

Definitions:

Minority-owned business – A continuing, independent, for profit business which performs a commercially useful function and is at least 51% owned and controlled by one or more minority individuals who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background in accordance with the provisions of T.C.A § 12-3-802.

Woman-owned business – A women owned business that is a continuing, independent, for profit business which performs a commercially useful function, and is at least 51% owned and controlled by one or more women; or, in the case of any publicly owned business, at least 51% of the stock of which is owned and controlled by one or more women and whose management and daily business operations are under the control of one or more women in accordance with the provisions of T.C.A § 12-3-802.

Small business – A business which is independently owned and operated, in accordance with the provisions of T.C.A § 12-3-802, and is not dominant in its field of operation.

Procedures:

1. TBR Institutions shall incorporate diversity language into the vendor application/registration process.
2. TBR Institutions shall ensure that minority owned, woman owned and small businesses are included when soliciting bids for awarding of contracts or purchasing goods or services, through the purchasing department, whenever practicable. These businesses are subject to and governed under the same policies and procedures applicable to all businesses in relationship to terms, price, conditions, and quality for participation in procurement activities with the State of Tennessee.
3. TBR Institutions will request diversity information for all bids and requests for proposals processed through Purchasing Departments.
4. The Governor's Office of Diversity Business Enterprise has compiled a comprehensive directory of minority owned, woman owned and small businesses. This directory and TBR Institutional lists of qualified bidders will be used in locating potential sources for various products and services. The directory maintained by the State of Tennessee is located on the world-wide-web at: www.tennessee.gov/diversity or intranet site at www.intranet@state.tn.us. The State of Tennessee's database provides a listing of diversity businesses including industry capabilities for which these vendors are registered.
5. Vendor/bidder complaints that may lead to the cancellation or termination of contracts or purchase orders awarded to diversity businesses registered with the Governor's Office of Diversity Business Enterprise, and will be shared with the Director of the Governor's Office of Diversity Business Enterprise.
6. The Tennessee Board of Regents shall provide a report to the Governor's Office of Diversity Business Enterprise, as requested.

Related Policies and Guidelines:

Policy No. 4:02:10:00
Guideline No. G-030

GUIDELINE B-010

SUBJECT: Collection of Accounts Receivable

1. GENERAL

This guideline applies to the collection of all accounts and notes receivable by institutions and technology centers in the Tennessee Board of Regents System. Institutions and technology centers shall, to the maximum extent practicable, require payment in advance for all services and goods to avoid the creation of receivables.

- A. TBR Policy on the Payment of Fees. Policy No. 4:01:03:00 requires (with limited exceptions) that all assessed fees be paid in advance by a student before he or she is considered enrolled for any academic term.
- B. Types of Receivables. Accounts and notes receivable may be generated from programs and activities including but not limited to: student loan programs, traffic and parking fines, library fines, bad checks, contracts, property rental, and damage, loss, or liability to the institution/technology center by others.
- C. Security Deposits. Institutions and technology centers are authorized to require any person to post a deposit or security bond, or provide appropriate insurance to offset potential obligations to the institution or technology center arising from programs or activities.
- D. Statute of Limitations. Pursuant to T.C.A. Section 28-1-113, there is no time limit on the institutions' or technology centers' authority to collect receivables unless otherwise expressly provided by statute.

2. GENERAL COLLECTIONS PROCEDURES

- A. Institution and Technology Center Procedure. Each institution and technology center shall establish a systematic process and procedure for collecting receivables from all persons including students and employees. The provisions included in this guideline may be modified by an institution based on sound and responsible management practices. Any modifications should result in more cost-effective procedures or provide better or more convenient service to debtors of the institution without compromise to collection.
- B. Billing. Collection efforts should begin no later than thirty days after the obligation has been incurred or other fixed due date. An institution may negotiate alternative payment arrangements with debtors when such arrangements offer the best prospect of collecting the debt.

- C. **Delinquent Accounts.** A minimum of three billings or letters of contact shall be sent by the institution at thirty-day intervals once an account becomes delinquent. For debts greater than \$100, the third letter should indicate that the account will be referred to a collection agency if payment is not made within a specified date. Sending letters by certified mail is optional.

An account becomes delinquent based on the payment criteria established by the institution for the type of debt involved. For example, debts from students may not be classified as delinquent until a student fails to enroll in a subsequent fall or spring semester where the provisions of the "Enrollment and Record Holds" in 2.e. below would apply. On the other hand, rent for an apartment may become delinquent when rent is not paid by the tenth day after the due date.

- D. **Defaulted Accounts.** Accounts are classified as defaulted when the institution's established collection efforts for the type of debt have failed to produce payment. Receivables of \$100 or more shall be referred to a collection agency if the institution's/technology center's collection efforts are unsuccessful. The accounts should be submitted to the agency within a reasonable time after the final collection letter is sent if the debtor has not responded. Referral of accounts under \$100 to a collection agency is not required. No additional collection efforts are required for receivables under \$100 except as provided for under Enrollment and Record Holds (Section 2e) and Employee Receivables (Section 3). See Section 10 for write/off procedures.
- E. **Enrollment and Record Holds.** A student must pay any past due debts and obligations incurred in prior academic terms before being permitted to register. Additionally, all known debts and obligations incurred during the current term must be paid prior to a student being allowed to pre-register for any future terms. An amount owed under the institution's installment payment plan for enrollment fees which is not yet due shall not cause a hold to be applied. A notice stating the specific amount due should be sent to each such student prior to completion of registration. In addition, pursuant to T.C.A. Section 49-9-108, no grade reports, certificates of credit, diplomas or transcripts will be issued to any student with any unpaid or delinquent debt or obligation owed to the institution or technology center unless such debt or obligation is evidenced by notes or other written contracts providing for future payment, such as, but not limited to, loans authorized under federal or state education or student assistance acts. Additionally, once a petition in bankruptcy has been filed, all holds should be lifted. See Section 9. However, the institution/ technology center has no obligation to provide student grade reports, etc., unless specifically requested to do so. **TCA 49-9-108 further provides that the withholding of grade reports, certificates of credit, and diplomas does not apply to debts that are both less than \$25 and more than 10 years old.**

- F. Aging. All receivables should be aged at least annually.
- G. Documentation. Accurate records of correspondence, telephone calls, and personal contacts with borrowers shall be maintained. Institutions/technology centers shall comply with record maintenance, safekeeping, and retention regulations for federally funded loans.

3. **EMPLOYEE RECEIVABLES**

- A. **Procedure for Withholding.** Employee receivables (including student employees) may result from, among other things, traffic and parking fines, library fines, institution/technology center services or bad checks. In order to recoup the amount owed from the employee's paycheck, notice of intent to withhold must be sent to the employee by registered or certified mail, or personally delivered. The notice should inform the employee of the amount alleged to be owed and should specify that he may elect to pay the debt in full, authorize deductions from his paycheck or, if the employee is terminating, the check for accrued but unused annual leave, or contest the intent to withhold through an institutional or TUAPA hearing. Subsequent to receiving a predeprivation notice of the debt owing, the employee, within 15 calendar days of receipt of such notice, must:

1. Pay the debt in full;
2. Authorize the institution/technology center to withhold a designated amount from each subsequent paycheck or, if the employee is terminating, from the accrued but unused annual leave until the debt is paid in full;
3. Elect to contest the intent to withhold through an institutional hearing; or,
4. Elect to contest the intent to withhold through a contested case hearing held pursuant to TCA Section 4-5-301, et. seq.

If the employee elects an institutional hearing, the employee shall appear on behalf of himself but is entitled to be advised by counsel. The Chief Business Officer of a campus or unit or his/her representative, or a representative of the department involved in the debt, shall be present to represent the Institution/Technology Center. The case will be heard before one hearing officer designated to hear all cases on that date. The hearing officer must be an individual who is not so closely connected with the collection of the debt that he/she cannot render an unbiased and objective decision on the validity of the debt. Such hearing should be held within one week of the decision to elect the hearing. The hearing officer shall render his/her

decision on the validity of the debt. If the debt is ruled valid, the debt shall be deducted from the employee's payroll check beginning at the end of the next appropriate pay period in accordance with deduction schedules. If the employee elects a TUAPA hearing, the Office of General Counsel should be notified immediately. If the employee refuses to pay, authorize deduction, or specify or waive a hearing process, a TUAPA hearing must be initiated. The employee's failure to appear at either an institutional or TUAPA hearing will constitute default, and, if a prima facie case is presented that the debt is owed, it will be deemed valid; the appropriate deductions may then be made. Additionally, if a TUAPA hearing, a Default Order must be issued. If the employee does not appeal the Default Order, funds may be deducted as specified.

- B. **Limitations on Amounts to be Withheld.** The deduction from any check shall not exceed the maximum deductible under state garnishment laws. The maximum amount of disposable earnings of an individual for any work week which is subjected to garnishment may not exceed: (1) Twenty-five percent (25%) of his disposable earnings for that week; (2) or thirty (30) times the federal minimum hourly wage at the time the earnings for any pay period become due and payable, whichever is less. In the case of earnings from any pay period other than a week, an equivalent amount shall be in effect. ("Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of any amounts required by law to be withheld.) These limits are applicable to retirement funds, but are not applicable to checks for accumulated annual leave. Additionally, the above limits do not apply to employee overpayments.
- C. **Retirement Funds.** If a former employee is found to owe a debt to the state, retirement funds may be utilized to pay off the amount owing to the extent permitted by Tennessee law. The same procedural steps outlined in 3.a. for notice and the opportunity for a hearing must be followed. Accumulated retirement contributions of a former employee terminated for any reason and for which he has made application, or monthly benefits of a retired employee are subject to withholding to the extent permitted by Tennessee law. A copy of the final order resulting from an institutional or TUAPA hearing, or a signed waiver of hearing and written agreement of the former employee authorizing deductions should be sent to the director of the retirement system along with a written request to withhold, specifying the reason for the claim and the total amount involved.
- D. **Recovery of Overpayments to Employees.** Unlike cases in which the employee owes the institution money, in instances of overpayments to employees there is no obligation to provide a hearing. The institution is obligated, however, to attempt to recoup the funds. The institution should advise the employee in writing of the overpayment and the institution's

proposed actions to correct the overpayment. The method of repayment will depend upon the amount of the overpayment, the time which has elapsed between the overpayment and its discovery, the hardship which immediate repayment might cause the employee because of amount of current salary and personal expenses, the culpability of the employees in not reporting the overpayment, and the longevity as well as the expectation that the employee will remain in state government until the repayment is completed.

If a current employee receives overpayment, the refund may be made in one of the following ways:

1. Repayment by the employee by cash or check; or,
2. Adjustment of deductions to be made automatically from the employee's paycheck, either with a single deduction or a series of deductions made from each paycheck until the full amount is recovered. The amount of partial payments recovered by the latter method should be reasonable and systematic so that full recovery will be completed within the shortest period possible.

If overpayment is discovered after the employee terminates employment with the state, an account receivable should be established. The former employee should be notified of the overpayment, the circumstances of the overpayment and a request that the employee contact the appropriate campus official. If the employee has not received his final paycheck, the appropriate deduction from that check can be made. If the final paycheck has been received, negotiations for reimbursement should be initiated. If repayment cannot be negotiated or collected, the account should be turned over to the collection agency. In the event collection is not possible, proper write/off procedures should be followed.

In instances in which the employee has agreed to systematic deduction(s) from his paycheck(s), written authorization from the employee is encouraged. Each campus shall draft forms to document overpayments, the steps taken to recoup same, any negotiated repayment plan, the amounts received, and any write/off of the overpayment.

4. RETURNED CHECKS

- A. **Enrollment Fees.** Pursuant to the Board Policy on the Payment of Fees and Enrollment of Students (4:01:03:00), if any student tenders payment of fees by a check that is subsequently dishonored by the bank, and the check is not redeemed within the time period specified below, the institution has the option to not consider that student enrolled at the institution or technology center. At the discretion of the institution, the student may be considered enrolled and will be assessed the applicable returned check fee, the late

registration fee, and will be denied grade reports, transcripts and future registration privileges until such dishonored check is redeemed. Institutions and centers may deny future check writing privileges to students that have paid registration fees with checks that are subsequently dishonored.

A student paying enrollment fees with a check that is dishonored must redeem the check within 10 calendar days from receipt of the notice. Notice should be sent by the institution/technology center to the student no more than three (3) working days from receipt of notice of a bad check from the bank. Notice by certified mail is optional. The institution/technology center will have 5 working days after the expiration of the 10 calendar days to pursue any additional collection efforts deemed necessary. Immediately after the 5 working days, the student will be deleted if the check has not been redeemed in full if that option is selected by the institution. Enrollment fees including returned check fees for students de-enrolled for bad checks should be reversed.

- B. **Non-Student or Non-Employee.** Any person other than a student or employee who tenders a check for payment for goods or services which is subsequently dishonored shall be given the opportunity to redeem the check and pay the amount due in cash. The person shall be given notice of the dishonored check, sent certified mail, demanding payment within ten (10) days.
- C. **Collection of Dishonored Checks.** A check presented for payment of any goods or services which is subsequently dishonored shall be treated as an account receivable under Section 2. Any transactions that have been processed should be reversed when possible and appropriate.
- D. **Future Check-Writing.** Receipt of one or more bad checks from any person may result in that person becoming ineligible to make payments by check thereafter, or to have any check cashed by the institution/technology center. A record of individuals who have written bad checks should be maintained.

5. **RENT COLLECTIONS**

The terms of the lease should be consulted in the event of failure by the tenant to timely pay rent. In counties with populations more than 200,000 according to the 1970 federal census, the Tennessee Residential Landlord and Tenant Act (the ACT) applies and provides, at T.C.A. Section 66-28-505, that upon noncompliance with the rental agreement, the landlord shall deliver a written notice to the tenant specifying the noncompliance and stating that the rental agreement will terminate upon a date not less than thirty (30) days after receipt of the notice. If the noncompliance is not remedied in fourteen (14) days, the rental agreement shall terminate as provided in the notice. If the tenant remits the rental but subsequently

again fails to pay rent within a 6 month period, the rental agreement may be terminated upon at least fourteen (14) days written notice specifying the noncompliance and the date of termination of the rental agreement. In counties where the Act applies, written notice is required when rent is unpaid unless otherwise specifically waived in a written rental agreement. In counties where the Act does not apply, it will provide guidance concerning landlord/tenant issues. Generally, the length of the notice period equals the rental period, for example, 30 days notice is required where rent is due monthly. In the event the rent remains unpaid at the end of the month, the institution/technology center should proceed with an action to evict the tenant. The Office of General Counsel may be notified to provide any required assistance in the proceedings. Accrued rents which are unpaid shall be treated as accounts receivable of the institution/technology center; refer to Section 2.

6. **FEDERAL LOANS**

- A. **Federal Regulations.** Collection officers should be certain that they are consulting the most recent legal authorities concerning Federal loans. These authorities include interpretative materials, issues letters, manuals, Congressional Enactments and Federal Department of Education Regulations.
- B. **Pre-Loan Counseling.** Federal regulations require a school to conduct entrance counseling to stress the importance of repayment, describe the consequences of default and emphasize the terms of repayment. An individual with Federal Regulations expertise should be available during and after the session to answer questions.
- C. **Exit Interview.** An individual or group exit interview must be conducted to discuss the borrower's financial responsibilities and to obtain updated information. Exit interview materials may be sent by certified mail to borrowers who do not attend the exit interview.

The borrower should be provided with a copy of the note and two copies of the repayment schedule. These schedules can be provided either in person or by certified mail. The borrower should promptly sign and return one of the schedules to the institution/~~school~~ technology center. A minimum payment of \$30 per month should be required for Perkins Loans made prior to October 1, 1992, \$40 per month for Perkins Loans made after October 1, 1992, and \$15 per month for Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) programs.

- D. **Grace Period Notices.** Contact with the borrower should be made during the initial and post-deferment grace periods. For a nine-month grace period, notices are required 90 days, 180 days and 240 days after the grace period begins. For a six-month grace period, notices are required at 90 days and 150 days. The ~~last~~ **last** contact should coincide with the first billing notice.

- E. **Billings.** A written notice and statement of account should be sent at least 30 days before the first payment is due. If a coupon system is used, coupons should be sent instead of statements. Future statements should be sent at least 15 days before each payment is due.
- F. **Late Payments or Delinquent.** Three past due notices should be sent beginning when the debt is fifteen days past due. The second notice is sent 30 days from the first notice. A final demand letter should be sent within 15 days of the second past due notice. If all past-due follow-up procedures have failed to elicit a response, a telephone call is required within 30 days of the final demand letter.
- G. **Cancellations or Deferments.** An institution/technology center may postpone loan repayments for a 12 month period if the borrower will be providing services eligible for loan cancellation or deferment. Interest does not accrue and the loan is not considered delinquent when in a deferred status. The borrower must request deferment and cancellation status on an annual basis. If, at the end of the postponement period, the borrower does not qualify for cancellation or deferment, the postponed payments are due.
- H. **Acceleration.** The borrower must be given written notice of intent to accelerate at least 30 days in advance. This can be included in the final demand letter.
- I. **Federal Loans Not Written Off.** Annual collection efforts should be pursued for Federal loans that are not able to be written off or turned over to the U.S. Department of Education.
- J. **Perkins Loans.** The IRS/ED skip-tracing service should be used for Perkins Loans.

7. COLLECTION AGENCIES

- A. **General.** The Tennessee Board of Regents shall provide, on a system-wide basis, collection services through one or more companies. The service should provide for the referral of all types of delinquent accounts and notes from the institutions and technology centers to the designated company only after campus collection efforts have been exhausted. The terms of the contract and RFP govern all collection actions. Unless otherwise prohibited by law or regulation, any note, contract or lease which may result in accounts receivable to the institution or technology center should contain a provision pursuant to which the person will be responsible for the costs of collection and reasonable attorneys' fees in the event of default, and should further provide for the assignment of the account or note to the proper agency.

- B. **Billing Services.** Institution/technology center may use an outside billing service to collect payments on accounts receivable. The service should be familiar with all provisions of loan programs and provide prompt, clear and accurate bills.
- C. **Credit Bureaus.** Institution/technology center may report all loans when made to a credit bureau. The institution/technology center must obtain the borrower's consent to report loans not in default by including a statement in the promissory note or some other document that is signed by the borrower at the time the loan is made.
- D. **Collection Agency.** Accounts that are still delinquent 30 days after the final collection letter should be turned over to a collection agency. Receivables less than \$100 are not required to be turned over to a collection agency.
- E. **Reporting Requirements.** The collection agency should be required to report the status of delinquent loans periodically to each institution/technology center and to the Tennessee Board of Regents.
- F. **Revised Repayment Plan.** A revised repayment plan agreement should be signed by the borrower if the borrower returns to repayment status.
- G. **Recalling Accounts From Collection Agency.** No account should be recalled from a collection agency other than debts eligible for deferment, postponement, cancellation, bankruptcy, death, disability or some other mitigating circumstance (institutional error, etc.). No account should be recalled in order for a borrower to re-enroll or obtain a transcript. The borrower should pay the accelerated amount plus collection costs to the collection agency.

8. LITIGATION

- A. **General.** After all other attempts at collection have failed, the institution/technology center must authorize litigation of accounts of \$2,000 or more providing litigation costs do not exceed the amount which can be recovered. Generally the collection services contract will provide for litigation when appropriate.
- B. **Federal Loans.** If a Federal loan cannot be litigated for any of the following reasons, it should be assigned to the U.S. Department of Education: (1) Borrower has no assets, (2) Address unknown, (3) Debtor is incarcerated, (4) Debtor is on Public Assistance, (5) Unable to serve borrower with court papers, (6) Litigation is in process and debtor skips, (7) Expected cost of litigation exceeds amount to be recovered from borrower.

9. BANKRUPTCY

- A. **General Information** - Each institution/technology center shall designate a bankruptcy contact person to serve as a liaison between the institution and the Attorney General's office. Once notice of, or a petition for, bankruptcy is received, all collection efforts against the debtor must cease immediately. If the account is at a collection agency, the file must be returned to the institution/technology center immediately. The institution/technology center should immediately forward the file to the Attorney General's office with a Referral Form and the documentation specified on the Referral Form. The institution/technology center should also provide a copy of this information to the TBR General Counsel's office. The Attorney General's office will advise the institution/technology center when and if collection efforts may resume, depending on the debt's dischargeability.-

NOTE: Effective for actions filed on or after 5/28/91, the period during which an educational loan may not generally be discharged will increase from five (5) years to seven (7) years. This period is calculated from the date the loan first came due to the date the bankruptcy action was filed, exclusive of periods during which repayment obligations are suspended. Additionally, obligations to repay an "overpayment" of, or any other obligation to repay an "educational benefit" provided by a governmental unit or under a program funded by a government unit or non-profit institution will be excepted from discharge during the same seven year period under either Chapter 7 or 13 unless the borrower establishes that repayment constitutes undue hardship.

- B. **Chapter 7 / (Liquidation)** Upon receiving any notice of the filing of a petition, all collection efforts against the debtor must be suspended immediately until the bankruptcy has been discharged. Collection efforts may continue against an endorser. The institution/technology center shall immediately forward the file to the Attorney General's office with a Referral Form and the documentation specified on the Referral Form. A copy of this information should also be provided to the TBR General Counsel's office.

Educational loans: If the date of bankruptcy filing is after the expiration of the exception period, the loan should be written off once the notice of discharge is received unless there is some other basis upon which to challenge dischargeability. The Attorney General's office will contact the institution/technology center to advise whether the debt is dischargeable. However, if there is an endorser, collection efforts may proceed against him. If the date of bankruptcy filing is before the expiration of the exception period, collection activity may be reinstated once the notice of discharge is received due to the self/executing nature of the exception unless the debtor has been able to establish dischargeability of the debt through an adversary proceeding. If the institution/technology center is served with a summons and complaint, the institution/technology center shall immediately fax to the Attorney General's bankruptcy unit a copy of the Summons and Complaint, the debt payoff amount, the date the note went into repayment, and any

deferment and/or forbearance history. A copy of this information should also be provided to the TBR General Counsel's office.

Other debts: The institution/technology center shall immediately forward the file to the Attorney General's office with a Referral Form and the documentation specified on the Referral Form. A copy of this information should also be provided to the TBR General Counsel's office. When the notice states "No assets," unless the institution/technology center is a secured creditor (in which case a proof of claim would have been filed), the debt must be written off once the Attorney General's office provides the institution/technology center with notice of discharge.

C. **Chapter 13 (Reorganization)**

NOTE: For petitions filed on or after 11/5/90, an educational loan is non-dischargeable if the loan first became due within five years calculated from the date the loan first came due to the date the bankruptcy action was filed, exclusive of periods during which repayment obligations are suspended. Effective for bankruptcies filed on or after 5/28/91, that same five (5) year period was increased to seven (7) years. See NOTE above for further details.

Regardless of the date of filing or the nature of the debt owing, upon receiving any notice of the filing of a petition, all collection efforts against the debtor and endorser must cease immediately. The institution/technology center shall immediately forward the file to the Attorney General's office with a Referral Form and the documentation specified on the Referral Form. A copy of this information should also be provided to the TBR General Counsel's office. The Attorney General's office will advise the institution/technology center whether the debt is dischargeable and the extent to which collection activities may be reinstated.

If the seven (7) year exception period applies and the debtor serves the institution/technology center with a summons and complaint the institution/technology center shall immediately fax to the Attorney General's bankruptcy unit a copy of the Summons and Complaint, the debt payoff amount, the date the note went into repayment, and any deferment and/or forbearance history. A copy of this information should also be provided to the TBR General Counsel's office.

Other debts: The institution/technology center shall immediately forward the file to the Attorney General's office with a Referral Form and the documentation specified on the Referral Form. A copy of this information should also be provided to the TBR General Counsel's office. The Attorney General's office will advise the institution/technology center as to the dischargeability of the debt.-

10. **WRITE/OFFS**

- A. **Authority.** The Tennessee Board of Regents and its institutions/technology centers are authorized to write off uncollectible receivables pursuant to policies outlined in Chapter 0620-1-9 of the rules of the Department of Finance and Administration. This includes the write/off of any account of five thousand dollars (\$5,000) or greater and/or accounts aggregating twenty-five thousand dollars (\$25,000) or more. Receivables submitted for write/off must have been subjected to appropriate collection efforts in accordance with this guideline and institution/technology center procedures. (See Attachment C)
- B. **Reserve.** A reserve for doubtful accounts should be established for activities for which accounts receivable represent a material amount to the activity income. The reserve should be reported in the financial records of the institution/technology center. Receivables which prove to be uncollectible after prescribed collection efforts have been exhausted should be written off by a charge to the reserve for doubtful accounts after appropriate approvals are obtained.
- C. **Approval.** The proposed write/offs must be approved by institution/technology center officials not directly involved in recording and collection of accounts receivable. The institution/technology center president and chief business officer should certify compliance with the prescribed statute and collection guidelines. The accounts submitted for write/off should be single accounts of \$5,000 or more and/or accounts aggregating \$25,000 or more. The write/off request summary and certification, along with a detailed list of the accounts, should be submitted to the Vice Chancellor for Business and Finance's office for approval.

The write/off request must be approved by the Chancellor or designee and General Counsel and forwarded by TBR for approval by the Commissioner of Finance and Administration and the Comptroller of the Treasury. TBR will send approved write/offs to the institution/technology center for the appropriate accounting.

Requests for the write-off of single accounts of less than \$5,000 and/or accounts aggregating less than \$25,000 shall be approved at the institution level by the appropriate officials. These requests do not require additional approval by the Tennessee Board of Regents office or State Departments.

- D. **State/TBR Employees.** Any debtors identified by the TBR or State as employees with debts \$50 and above will not be approved for write/off. Information on the employing institution/technology center or agency will be returned to the institution/technology center for additional collection efforts.

If the debtor is a state employee, the Chief Business Officer of the department employing the debtor should be notified. The department employing the individual will be responsible for taking the appropriate action to collect the debt. If the department is unsuccessful in collecting the debt, written notification will be sent to the institution/technology center. The written notification shall be submitted with the next write/off request for approval.

If the debtor works for another TBR institution/technology center, the Chief Business Officer of the employing institution/technology center should be notified and will be responsible for collecting the debts utilizing the steps in Section 3, Employee Receivables, of this policy. Written notification should be sent to the requesting institution/technology center if collection efforts are unsuccessful. The written notification shall be submitted with the next write/off request for approval. The institution/technology center may agree to payment through payroll deductions if the employee signs a payroll deduction authorization.

- E. **Former TBR Employees.** If a debt or obligation was incurred while a TBR employee, the debt constitutes an account receivable; refer to Section 2.
- F. **Holds on Written Off Receivables.** A hold on transcripts and future registration will continue until the debt is cleared for former students whose receivables were written off if the debt was twenty-five (25) dollars or more.

11. GRAMM-LEACH-BLILEY ACT CONTRACT CLAUSE

Include the standard language printed below in all future contracts with third party service providers that have access to the institution's customers' non-public financial information.

"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."

Source: November 16, 1977, TBR presidents meeting. Revised July 1, 1984. Revised May 17, 1988. Revised May 12, 1992. Revised August 9, 1994, TBR presidents meeting. Revised November 9, 1994, TBR presidents meeting. Revised May 14, 1996, presidents meeting. Revised August 25, 1998, presidents meeting. Revised May 11, 1999, presidents meeting. Revised May 21, 2001 presidents meeting. Revised May 16, 2006 presidents meeting. Revised November 8, 2006 presidents meeting. Revised August 19, 2008 presidents meeting.

OTHER EDUCATIONAL ASSISTANCE PROGRAMS

B-062 Support for Educational Assistance

The Tennessee Board of Regents is committed to the need for the continued professional growth and development of employees. Support for educational assistance of personnel and their dependents is an important vehicle for addressing that need. The programs for TBR employees and dependents are available subject to funds being budgeted and available within the institution/technology center/Central Office. The Office of Human Resources is responsible for the administration of the various programs with the exception of the program for dependents of veterans (B-062) and two programs offered to general state employees and the dependents of licensed teachers and State employees (B-061). Exceptions to the provisions of the programs for TBR employees can be made upon recommendation of the president/director and approval by the Chancellor.

Types of Support for Educational Assistance

The guidelines for Educational Assistance (P-130, P-131, B-061, B-062) contain a total of eleven (11) programs. The Programs in P-130 provide benefits to personnel at TBR institutions, Tennessee Technology Centers and the Central Office to further their formal education. The Program in P-131 provides benefits for dependents of TBR employees. The programs in B-061 provide assistance to state employees and dependents of public school teachers. The programs in B-062 provide assistance to dependents of veterans and to state employees 65 years of age and older. The programs are:

P-130 – Educational Assistance for TBR Employees

- I. Faculty or Administrative/Professional Staff Grant-in-Aid Program
- II. Faculty or Administrative/Professional Staff Tuition or Maintenance Fee Reimbursement Program
- III. Employee Audit/Non-credit Program
- IV. Clerical and Support Staff Maintenance Fee Payment Program

V. Fee Waiver for TBR/UT System Employees Program (PC 191)

P-131 – Educational Assistance for Spouse and Dependents of TBR Employees

I. Fee Discount for Spouse and/or Dependent Children Program

B-061 – Educational Assistance for State Employees and Dependents of State Employees or Public School Teachers

I. Public Higher Education Fee Waiver for State Employees Program

II. Fee Discount for Dependent Children of Licensed Public School Teachers or State Employees Program

B-062 – Other Educational Assistance Programs

I. Veterans' Dependents' Post-Secondary Education Program

II. Age 65 or Above Program

Complete eligibility information is contained within each Guideline.

Taxation of Educational Assistance Programs

Undergraduate and graduate course tuition, paid by the Tennessee Board of Regents institutions and the University of Tennessee System for their employees is eligible for exclusion from the employees' gross annual income, in accordance with Internal Revenue code (IRC) Section 127.

I. Veterans' Dependents' Post-Secondary Education Program

Effective July 1, ~~2000~~ **2008**, TCA §49-7-102 was amended to provide that: "every dependent child in this state under the age of ~~twenty-one (21)~~ **twenty-three (23)** years, whose parent (father or mother) was killed, died as a direct result of injuries received, or has been officially reported as being either a prisoner of war or missing in action while serving honorably as a member of the United State armed forces during a qualifying period of armed conflict, or was formerly a prisoner of war or missing in action under such circumstances, or the spouse of such veteran, is entitled to a waiver of

tuition, ~~and/or~~ maintenance fees, ~~and/or~~ student activity fees, ~~and/or~~ required registration or matriculation fees, and shall be admitted without cost to any institutions of higher education owned, operated and maintained by the state.” Therefore, this program is available to both TBR employees and persons outside of the Tennessee Board of Regents system. TBR employees qualifying as a spouse or dependent for benefits under this program shall use this program first and shall not be simultaneously eligible for benefits under other programs in this guideline. Exceptions: Grant-in-Aid and Desegregation Program recipients.

A. Eligibility

The office responsible for veteran’s affairs issues shall be responsible for determining eligibility and providing application forms to those wishing to obtain benefits under this program.

1. To be eligible for educational assistance benefits under this program, a dependent child or spouse shall:
 - a. Present official certification from the United States Department of Veterans Affairs that the parent or spouse veteran was killed or died as a direct result of injuries as stated above *or*
 - b. Present official certification from the U.S. Department of Defense that the parent or spouse service member has been officially reported as being a prisoner of war or missing in action while serving honorably during a qualifying period of armed conflict; *or*
 - c. Present Certificate of Release of Discharge from Active Duty, Department of Defense Form 214, for the veteran or service member from whom the eligibility for the benefits derives.
2. The deceased veteran, prisoner of war or missing in action service member shall have been a citizen of Tennessee at the time of the qualifying event.
3. The dependent child or spouse, prior to receiving benefits under this program, shall have or possess the necessary qualifications

required for admission. To maintain eligibility, the recipient shall be in active pursuit of a specific and declared degree or certificate program.

4. No dependent child or spouse shall be entitled to receive benefits after the conclusion of any term during which the parent (father or mother) of the dependent child or spouse is officially removed from the status of being a prisoner of war or being a service member missing in action.
5. Eligibility of a veteran's spouse for benefits shall terminate ten (10) years after the death of the veteran; however, eligibility shall terminate immediately upon the spouse's remarriage within this period. The spouse's eligibility shall extend to the end of the term in which the ten (10) year period expires. A spouse who has previously earned an undergraduate degree or certificate shall not be eligible for benefits. Otherwise, the spouse shall be eligible for benefits until one of the following occurs:
 - a. Prior to the expiration of benefits, the spouse earns an undergraduate degree or certificate; *or*
 - b. The spouse has accumulated one hundred thirty-five (135) semester hours excluding required remedial or developmental hours, or the equivalent; *or*
 - c. The spouse ~~has maintained a full-time enrollment of at least fifteen (15) semester hours, or the equivalent, for ten (10) semesters, or the equivalent~~ **has attempted one hundred fifty (150) semester hours, or the equivalent, inclusive of required remedial or developmental hours.**
6. A dependent child shall be matriculated as a full-time student at a state institution of higher education prior to attainment of age ~~twenty-one (21)~~ **twenty-three (23)**. However, the age limitation of dependent children shall not be strictly applied. Once declared eligible, a dependent child shall remain eligible until one of the following has occurred:

- a. Prior to attaining age ~~24~~ **23**, the dependent earns an undergraduate degree or certificate; *or*
 - b. The dependent has accumulated one hundred thirty-five (135) semester hours excluding required remedial or developmental hours, or the equivalent; *or*
 - c. The dependent ~~has maintained a full-time enrollment of at least fifteen (15) semester hours, or the equivalent, for ten (10) semesters, or the equivalent~~ **has attempted one hundred fifty (150) semester hours, or the equivalent, inclusive of required remedial or developmental hours.**
7. For purposes of this program, the following definitions are provided:
- a. “Dependent Child” means a natural or adopted child of a veteran or service member who is claimed as a dependent for income tax purposes.
 - b. “Parent (father or mother)” means the parent of a natural or adopted child whom such parent claims as a dependent for federal income tax purposes.
 - c. “Qualifying period of armed conflict” means any hostile military operation for which U.S. military campaign medals as listed in TCA 49-7-102 are authorized:
 - d. “Service member” means a Tennessee resident who is engaged in active U.S. military service.
 - e. “Served honorably” means the character of service condition as reported on Certificate of Release or Discharge from Active Duty (Department of Defense Form 214);
 - f. “State institution(s) of higher education” means any post secondary institution operated by the Board of Trustees of The University of Tennessee system or the Tennessee Board of Regents of the state university, community college and technology center system that offers courses of instruction leading to a certificate or degree; and

- g. “Veteran” means a Tennessee resident who has entered and served honorably in the U.S. armed forces.

B. Fees Paid/Type Courses Paid/Number of Hours

1. The participant is entitled to a waiver of tuition and/or maintenance fees, and/or student activity fees, and/or required registration or matriculation fees, and shall be admitted without cost to any TBR institution and/or technology center.
2. A full-time student load (15 semester hours or equivalent) is required.

C. Payback Provisions

None

D. When the Participant May Attend

Students may apply for benefits during the next registration or enrollment period for the next complete term after July 1, 2000.

E. Accounting/Budgeting

1. Any fees waived by statute that are calculated and credited to revenue for administration purposes should be written off against a contra revenue account.
2. No expenditures should be charged to scholarships and fellowships.

F. Where the Participant May Attend

Any public institution of higher education in Tennessee

II. Employees 65 Years and Above Program

In accordance with TCA §49-7-113 and TBR Guideline B-060, regular and temporary employees who are or will be age 65 during a

quarter or semester and who also reside in Tennessee are eligible to enroll in courses at a reduced rate (See Section IX.B.)

A. Eligibility

Active and retired state employees who are or will be age 65 during the academic term in which they begin classes and who reside in Tennessee are eligible.

B. Fees Paid/Type Courses Paid/Number of Hours

1. A fee of \$75 per semester or \$50 per quarter may be assessed for credit courses. (This fee includes maintenance fees, student activity fees, technology access fess, and registration fees; it does not preclude an application fee, late fee, change-of-course fee, parking fee, etc.)
2. Employees shall enroll in credit courses on a space-available basis.
3. There is no limit on the number of courses that may be taken during a semester.
4. The institution where the employee/retiree is attending classes will provide forms for processing fees waived or assessed.

C. Payback Provisions

None

D. When the Participant May Attend

1. Employees, in counsel with their immediate supervisors, should limit the number of courses so as to maintain an optimum level of job performance.
2. Except for retirees, courses should be scheduled at times other than during regularly scheduled work hours unless

annual leave or flextime, based on the institution's needs, have been approved.

E. Accounting/Budgeting

1. Any fees waived by statute that are calculated and credited to revenue for administration purposes should be written off against a contra revenue account.
2. No expenditures should be charged to scholarships and fellowships.

F. Where the Participant May Attend

Employees may enroll at any public Tennessee institution.

Source: Presidents Meeting February 7, 2006; Presidents Meeting November 8, 2006; Presidents meeting August 21, 2007; Presidents Meeting November 6, 2007.

PRESIDENTS/DIRECTORS QUARTERLY MEETINGS

DATE: November 5, 2008

AGENDA ITEM: **Proposed TBR Policy 5:01:01:20 Telecommuting**

ACTION: Requires Vote

PRESENTER: Vice Chancellor Bob Adams

BACKGROUND INFORMATION:

The Sub-Council will review and consider for approval the proposed TBR Policy 5:01:01:20 - Telecommuting. Points of clarification are:

- The Regents Online Campus Collaborative is not covered within the proposed policy, but is included in ROCC program provisions.
- This policy is not to be used for employees on short term leave, such as medical leave.
- Random use of a home computer for work related assignments is not included within the policy.

I. INTRODUCTION

PURPOSE

The purpose of this policy is to set the standards for a consistent process and treatment of employees regarding telework/telecommuting across the TBR system.

DEFINITIONS

1. Telework/telecommuting: A work arrangement in which supervisors direct or permit employees to perform their usual job duties away from their central workplace in accordance with work agreements.
2. Alternate Work Location: Approved work site other than the employee's central workplace where official state business is performed. Such locations may include, but are not necessarily limited to employees' homes.
3. Central Workplace: The employer's place of work where employees normally are located.
4. Employee: A person employed by the institution pursuant to the Board of Regents policies.
5. Work Agreement: The written agreement between the institution and the employee that details the terms and conditions of an employee's work away from the central workplace. Work agreements are required for telecommuting.
6. Work Schedule: The employee's hours of work in the central workplace and/or in the alternate work location. (See TBR Guideline P-020 Procedures for Implementing the 37.5 Hour Work Week) As a rule, the work hours will be approximately 7.5 hours per day between 7 a.m. and 5:30 p.m.

II. PRELIMINARY REQUIREMENTS

1. Each institution must establish internal policies and procedures related to telecommuting. These policies should:
 - identify positions that are appropriate (and inappropriate) for telecommuting;
 - establish a process and criteria for evaluating whether a particular employee is suitable for telecommuting;
 - require a work agreement between the institution and the employee;
 - require compliance with applicable laws, policies, and guidelines.
2. Telecommuting is not a universal employee benefit or employee right. No employee is entitled to or guaranteed the opportunity to telecommute. Management is responsible for the affairs and operation of each institution and unit and thus management has the sole discretion to designate positions for telecommuting and approve employees to telecommute.
3. Telecommuting assignments do not change the conditions of employment or required compliance with laws and policies.

III. IDENTIFICATION OF POSITIONS ELIGIBLE FOR TELECOMMUTING

In making decisions about which positions are appropriate to designate or approve for telecommuting, institutions should thoroughly analyze the duties of the positions and how the work is performed. Generally, the following types of positions are appropriate for telecommuting:

- require independent work
- require little face to face interaction
- require concentration
- result in specific, measurable work products
- can be monitored by output, not time spent doing the job
- requires little campus contact or physical presence to perform effectively
- requires security and confidentiality of data, including sensitive information can be adequately assured

IV. DETERMINATION OF EMPLOYEE ELIGIBILITY FOR TELECOMMUTING

In making decisions about which employees are designated or approved for telecommuting, institutions should review the work qualities of particular employees in addition to ensuring that their positions are appropriate for telecommuting.

Generally to be eligible, an employee must:

- be out of probationary status, and have a history of reliable and responsible performance of duties;
- overall performance evaluation ratings are satisfactory or higher;
- have no pending personnel related disciplinary action;
- have a work site suitable for telecommuting;
- be able to work productively on their own, does not require close supervision or constant face to face interaction with co-workers to complete their assignments;
- be self-motivated and flexible
- be knowledgeable about the job;
- have a low need for social interaction;
- be dependable and trustworthy;
- be organized;
- have good communications skills;
- have good time management skills, and
- have satisfied satellite work station requirements including availability of necessary equipment; security of sensitive data and confidentially.

Manager's Requirements:

The manager must be an effective communicator and must be able to clearly define tasks and expectations. The manager must be able to integrate office operations with on-site staff and telecommuting staff.

The manager should be supportive of the concept and willing to work through minor problems or obstacles that may occur as a result of the telework arrangement.

The manager must ensure that high level of public service is maintained and that misuses of this policy do not occur.

V. REQUIREMENT OF WORK AGREEMENT

Institutions and employees must agree to the terms of telecommunicating before an employee may work at an alternate work location.

Institution agreements must be reviewed and approved by the Office of the General Counsel prior to use.

Institutions may want to include the conditions listed below in work agreements (also, see Attachment A for a sample agreement):

- the duration of the agreement;
- the work schedule and how it can be changed; days and hours the employee is expected to work;
- how leave is to be requested and approved by the supervisors;
- status of employees during emergency or weather-related closings affecting the central or alternate workplace;
- how routine communication between the employee, supervisor, co-employees, and others will be handled;
- employee's performance plan/expectations; the focus in telecommuting arrangements must be on results. The supervisor should communicate in advance what assignments or tasks are appropriate to be performed at the telecommuting site, and what assessment techniques will be used to measure success in meeting performance standards;
- the equipment and/or supplies that will be used, and who is responsible for providing and maintaining them;
- any applicable data security procedures;
- safety requirements (see Attachment B for sample checklist);
- a requirement that employees permit supervisor access to the alternate work location during normal work hours as defined by the telecommuting agreement;
- comply with all state and institution rules, policies, practices and instructions;
- use state-provided equipment/supplies only for business purposes, and to notify the institution immediately when equipment malfunctions;
- notify their supervisors immediately of any situation that interferes with their ability to perform their jobs;

- maintain safe work conditions and practice appropriate safety habits;
- certify that the work location is free from hazards;
- notify their supervisors immediately of any injury incurring while working;
- agree to allow supervisors to visit the alternate work location immediately after any accident or injury that occurred while working;
- absolve the institution from liability for damages to real or personal property resulting from participation in the telecommuting program;
- be responsible for the security of information, documents, and records in their possession or used during telecommuting, and not take restricted-access material home without the written consent of their supervisors; and
- ensure dependent care arrangements (children, parents) are maintained and do not interfere with the home office.

VI. GENERAL PROVISIONS

1. Management is responsible for managing the affairs and operations of state government; thus, institutions have sole discretion to:
 - a. designate positions for telecommuting, and
 - b. approve employees to telecommute.

Telecommuting assignments do not change the conditions of employment or required compliance with policies.

2. Compensation and Benefits: An employee's compensation and benefits will not change as a result of telecommuting.
3. Hours of work: The total number of hours that employees are expected to work will not change, regardless of work location. Employees agree to apply themselves to their work during work hours.

Institutions must ensure that procedures are in place to document the work hours of employees who telecommute, in particular ensuring compliance with the Fair Labor Standards Act.

Telecommuting is not intended to serve as a substitute for child or adult care. If children or adults in need of primary care are in the

alternate work location during employees' work hours, some other individual must be present to provide the care.

There are no limits on telework days vs. in-office days; however, it is normally recommended that no more than 3 telework days per week are allowed. Employees need to spend some time in the office, and minimize communication problems. This practice will ensure employees are available for occasional face to face meetings and access to facilities.

4. Attendance at Meetings: Supervisors may require employees to report to a central workplace as needed for work-related meetings or other events or may meet with employees in the alternative work location as needed to discuss work progress or other work related issues.
5. Use of Leave: Telecommuting is not intended to be used in place of sick leave (Policy 5:01:01:07), Family and Medical Leave (Policy 5:01:01:14), Workers Compensation Leave, or other types of leave.

However, institutions may determine whether or not it is appropriate to offer telecommuting as an opportunity for partial or full return to work based on institution policy and the criteria normally applied to decisions regarding the approval of telecommuting.

6. Workers' Compensation Liability: Institutions may be liable for job-related injuries or illnesses that occur during employees' established work hours in their alternative work locations.
7. Equipment and Materials: Normally the state will provide equipment and materials needed by employees to effectively perform their duties. However, where agreements specify, employees may be authorized to use their own equipment.
8. State-Owned Equipment: Authorized Use/Users: State-owned equipment may be used only for legitimate state purposes by authorized employees.

Employees are responsible for protecting state-owned equipment from theft, damage and unauthorized use.

9. Maintenance: State-owned equipment used in the normal course of employment will be maintained, serviced and repaired by the state.

10. Transporting/Installing: Institutions should stipulate who is responsible for transporting and installing equipment and for returning it to the central workplace for repairs or service.
11. Employee-Owned Equipment: When employees are authorized to use their own equipment, institutions will not assume responsibility for its cost of equipment, repair, or service.
12. Costs Associated with Telecommuting: Agencies are not obligated to assume responsibility for operating costs, home maintenance, or additional insurance, or other costs incurred by employees in the use of their homes as telecommuting alternate work locations, except as described below.

Institutions may use appropriated funds to:

- pay for leased telephone lines in employee's alternate work location;
- install and provide basic telephone service in employees' alternate work locations or,
- provide cell phones to employees for business use.

If cell phones are not provided, institutions may reimburse employees for business-related long distance calls made from their personal telephones.

13. State Information: Employees must safeguard institution information used or accessed while telecommuting.

Institution supervisors must grant permission according to TBR and institution procedures for employees to work on restricted-access information or materials at alternate work locations. Employees must agree to follow institution-approved security procedures in order to ensure confidentiality and security of data.

SAMPLE TELECOMMUTING WORK AGREEMENT

The following constitutes an agreement on the terms and conditions of telecommuting between:

Institution _____ Date _____

Employee _____ Date _____

1. Employee agrees to participate in telecommuting and to adhere to applicable guidelines. _____ Yes _____ No

2. Employee agrees to participate in telecommuting for an initial period not to extend one year, beginning _____ and ending _____. _____ Yes _____ No

This agreement may be extended beyond the initial one year period, if agreeable to the institution and to the employee. If extended, the terms of this agreement should be reviewed and updated as necessary.

3. Institution concurs with employee participation and agrees to adhere to applicable guidelines and policies _____ Yes _____ No

4. A copy of the Institution/State Telecommuting Policy has been given to the employee. _____ Yes _____ No

WORK LOCATION / SCHEDULE

1. Employee's central workplace is: _____.

2. Employee's alternate work location is: _____.

3. At the central workplace, employee's work hours will normally be from _____ to _____ on the following days: _____.

4. At the alternate work location, employee's work hours will normally be from _____ to _____ on the following days: _____.

5. Employee's time and attendance will be recorded the same as performing official duties at the central workplace. Telecommute days are scheduled and will not be substituted without advance approval of the supervisor.

6. Supervisors will maintain a copy of employee's work schedule and employee's time and attendance will be recorded the same as if performing official duties at the central workplace.

Employee's Initials _____

Employee's Initials _____

WORK STANDARDS/PERFORMANCE

1. Employee will meet with the supervisor to receive assignments and to review completed work as necessary or appropriate. A Work performance expectations agreement will be initiated.
2. Employee will complete all assigned work according to work procedures mutually agree upon by the employee and the supervisor, and according to guidelines and expectations stated in the employee's performance plan.
3. Supervisor will evaluate employee's job performance according to the employee's performance plan (on Employee Work Profile or equivalent agency form.)
4. Employee agrees to limit performance of his/her officially-assigned duties to the central workplace or institution-approved alternate work location. Failure to comply with this provision may result in loss of pay, termination of the telecommuting agreement, and/or appropriate disciplinary action.

COMPENSATION/BENEFITS

1. All salary rates, leave accrual rates, and travel entitlements will remain as if the employee performed all work at the central workplace.
2. Employee will be compensated in accordance with applicable law and state policy for overtime work that has been requested by his/her supervisor and approved in advance.
3. Employee understands that overtime work must be approved in advance by the supervisor. By signing this form, employee agrees that failing to obtain proper approval for overtime work may result in his/her removal from telecommuting and/or appropriate action.
4. Employee must obtain supervisory approval before taking leave in accordance with established office procedures. By signing this form, employee agrees to follow established procedures for requesting and obtaining approval of leave.

EQUIPMENT/EXPENSES

1. Employee who uses institution equipment agrees to protect such equipment in accordance with institution guidelines, and will not allow others to use for purposes other than campus business. If equipment is damaged by non-employee, employee will be held liable for the repair and/or replacement. State-owned equipment will be serviced and maintained by the institution.
2. If employee provides equipment, he/she is responsible for servicing and maintaining it.
3. Neither the institution nor the state will be liable for damages to an employee's personal or real property during the course of performance of official duties or while using state equipment in the employee's residence.
4. Neither the institution nor the state will be responsible for operating costs, home maintenance, or any other incidental costs (e.g. utilities) associated with the use of the employee's residence as an alternate work location.
5. The employee understands that his/her personal vehicle will not be used for campus business unless specifically authorized by supervisor.

Tax/Expense – Any and all tax implications of utilizing a home office deduction are the responsibility of the employee. The campus will not be responsible for operating costs, home maintenance, or any other incidental costs (e.g. utilities) associated with the use of the employee's residence. The employee will be reimbursed for authorized expenses incurred while conducting official duties including business calls, paper and other supplies.

Employee's Initials _____

SAFETY

1. Employee is covered by the appropriate provisions of Tennessee's Workers' Compensation Program and other state and TBR policies, as appropriate if injured while performing official duties at the central workplace or alternate work location. Employee agrees to hold harmless for injury to others at the telecommuting site.
2. Employee agrees to certify that the work location is safe and free from hazards.
3. Employee agrees to bring to the immediate attention of his/her supervisor any accident or injury occurring at the alternate work location while working.
4. Supervisor will investigate all accident and injury reports immediately following notification.

EMERGENCY PREPAREDNESS:

1. Emergency phone numbers are posted at the alternate work site.
2. A first aid kit is easily accessible and replenished as needed.
3. Portable fire extinguishers are easily accessible and serviced as needed.

CONFIDENTIALITY/SECURITY

Employee will apply approved safeguards to protect institution or state records from unauthorized disclosure or damage, and will comply with the privacy requirements set forth in the state law, the Tennessee Board of Regents' Policies and guidelines, or institution policy or procedure.

INITIATION AND TERMINATION OF AGREEMENT

1. Employee agrees to adhere to applicable guidelines and policies.
2. Institution concurs with employee participation and agrees to adhere to applicable policies and procedures.
3. Employee may terminate participation in telecommuting at any time unless it was a condition of employment. Two (2) weeks notice to the institution is recommended.
4. Institution may terminate employee's participation in telecommuting at any time. (Employees may be withdrawn for reason to include, but not limited to, declining performance and organizational benefit). Two (2) weeks notice to the employee is recommended when feasible, but is not required.

Employee's Initials _____

ATTACHMENT A

State-owned or leased equipment has been issued to the employee and has been documented by the institution.

	<u>Issued</u>	<u>Date</u>	<u>Documented</u>	<u>Date</u>
Computer	_____	_____	_____	_____
Modem	_____	_____	_____	_____
Fax machine	_____	_____	_____	_____
Telephone	_____	_____	_____	_____
Desk	_____	_____	_____	_____
Chair	_____	_____	_____	_____
File cabinet	_____	_____	_____	_____
Printer	_____	_____	_____	_____
Scanner	_____	_____	_____	_____
Other (list)	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____

_____ Supervisor	_____ Date
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_____ Employee	_____ Date
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_____ Institution President (or designee)	_____ Date
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ATTACHMENT B

Safety Checklist (SAMPLE CHECKLIST AND EMPLOYEE CERTIFICATION FORM)

EMPLOYEE NAME: _____
INSTITUTION: _____
SUPERVISOR NAME _____
LOCATION: _____
PHONE: _____

The following checklist is designed to assess the overall safety of the alternate work location. Each participant should read and complete the self-certification safety checklist. Upon completion, the checklist should be signed and dated by the participating employee and immediate supervisor.

The alternate work location is located (check one):

___ in home
___ not in home

Describe the designated work area:

To the best of one's knowledge:

1. Is the space free of asbestos-containing materials? ___Yes ___No
2. If asbestos-containing material is present, is it undamaged and in good condition? ___Yes ___No
3. Is the space free of indoor air quality problems? ___Yes ___No
4. Is there adequate ventilation for the desired occupancy? ___Yes ___No
5. Is the space free of noise hazards (noises in excess of 85 decibels)? ___Yes___ No
6. Is there a potable (drinkable) water supply? ___Yes___ No
7. Are lavatories available with hot and cold running water? ___Yes___ No
8. Are all stairs with four or more steps equipped with handrails? ___Yes___ No
9. Are all circuit breakers and/or fuses in the electrical panel labeled as to intended service? ___Yes___ No

10. Do circuit breakers clearly indicate if they are in the open or closed position? ☐ Yes ☐ No
11. Is all electrical equipment free of recognized hazards that would cause physical harm (frayed wires, bare conductors, loose wires, flexible wires running through walls, exposed wires fixed to the ceiling)? ☐ Yes ☐ No
12. Will the building's electrical system permit the grounding of electrical equipment? ☐ Yes ☐ No
13. Are aisles, doorways, and corners free of obstructions to permit visibility and movement? ☐ Yes ☐ No
14. Are file cabinets and storage closets arranged so drawers and doors do not open into walkways? ☐ Yes ☐ No
15. Do chairs have any loose casters (wheels)? Are the rungs and legs of chairs sturdy? ☐ Yes ☐ No
16. Is the work area overly furnished? ☐ Yes ☐ No
17. Are the phone lines, electrical cords, and extension wires secured under a desk or alongside a baseboard? ☐ Yes ☐ No
18. Is the office space neat, clean and free of excessive amounts of combustibles? ☐ Yes ☐ No
19. Are floor surfaces clean, dry, level and free of worn or frayed seams? ☐ Yes ☐ No
20. Are carpets well-secured to the floor and free of frayed or worn seams? ☐ Yes ☐ No

Ergonomics

Desk, chair, computer and other equipment are of appropriate design and arranged to eliminate strain on all parts of the body.

I verify that the above information is accurate and correct to the best of my knowledge.

Employee Signature

Date

I have reviewed the above information provided by the Employee and rely on its accuracy to determine that the alternate work location meets telecommuting requirements.

Supervisor or Institution Representative

Date

AGREEMENT FOR WORK PERFORMANCE EXPECTATIONS

The following is a list of work performance expectations as part of the identified employee's telecommuting agreement.

(Name) _____ agrees to perform the following work expectations in a satisfactory manner for the period of this telecommuting agreement from the effective date of _____ to the ending date of _____. These work performance expectations shall be attached to and/or incorporated into the employee's job description and shall be used in assessing the employee's job performance for the appropriate review period.

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

Employee Name

Signature

Date

Supervisor's Name

Signature

Date

PRESIDENTS/DIRECTORS QUARTERLY MEETINGS

DATE: November 5, 2008

AGENDA ITEM: Update of 403 (b) Plan and Proposed Revisions to TBR Guideline
P-045 - Deferred Compensation Plans

ACTION: Requires Vote

PRESENTER: Vice Chancellor Bob Adams

BACKGROUND INFORMATION:

The Sub-Council will receive an update on the status of the changes to the Tennessee Board of Regents 403(b) Retirement Plan and will consider for approval the proposed revisions to TBR Guideline P-045 - Deferred Compensation Plans.

Guideline P-045

Subject: Deferred Compensation Plans

The purpose of this guideline is to provide guidance to those institutions which enter into agreements to establish deferred compensation plans or programs for the benefit of their employees. Such plans or programs are permitted by Internal Revenue Code sections 403(b), 401(k), and 457.▼

Deleted: Form documents are provided as attachments.¶

I. Tax Deferred Annuity, Section 403(b)

A. Institutions governed by the Tennessee Board of Regents and employees of such institutions may enter into agreements to participate in tax-deferred annuity plans or programs consistent with Section 403(b) of the Internal Revenue Code and related provisions of the Internal Revenue Code, regulations, rulings, etc., and subject to the provisions of this guideline and the Tennessee Board of Regents 403(b) Retirement Plan Document.

Deleted: An institution

Deleted: agreement has been fully executed

B. Vendors

1. The Tennessee Board of Regents may enter into an agreement with an approved company, financial institution, or other party (vendor) which offers a program qualifying as a Section 403(b) program. Such agreement shall be as prescribed by the Chancellor. This provision shall not cause any individual agreement in force on the date of the adoption of this guideline to be terminated, but no new contributions or individual participation agreements shall be executed with an unapproved vendor after December 31, 2008.▼

Deleted: An Agreement is provided as Attachment A. An Addendum to Agreement is provided as Attachment B. The Addendum, Attachment B, must be completed with the company when a document or contract with the company is on file at the institution. Attachment A must be completed if a document or contract with the company is not on file at the institution.¶

C. Plan Period

Where a "plan year" or other official period is needed, the plan year for the institution shall be the calendar year.

Deleted: 2. An institution may accept and enter into individual salary reduction agreements with employees and a vendor after execution of the agreement specified in B.1 above when such vendor has five (5) or more employees who have valid participation agreements in existence or for execution by the institution. Exception: ORP vendors will be exempted from the Rule of Five (5).¶

D. Internal Revenue Service Requirements

1. It is intended that all provisions of this guideline be consistent with provisions of the Internal Revenue Code, regulations, and other authoritative issuances of the Internal Revenue Service with respect to plans permitted by Internal Revenue Code Section 403(b) as amended from time to time. Any provision of this guideline is invalid to the extent such provision is not consistent with Internal Revenue Service provisions.

3. An institution may permit a new employee to transfer the existing agreement from his/her former employer without regard to the Rule of Five, subject to execution of the agreement between company and institution. Such transfer must be made within one (1) year from the date of employment. That company, however, must submit firm applications to bring its total to five before additional applications will be accepted.¶

2. Unless otherwise provided in this guideline, it is intended that Internal Revenue Service provisions be controlling on such matters as limitations on contributions, withdrawal of contributions, payment of benefits, rollovers, and similar matters.

3. Notwithstanding D.1 and D.2 above, the Chancellor shall be empowered to establish reasonable requirements for the administration of the guideline, so long as such requirements do not conflict with any Internal Revenue Service provisions.

4. As part of the vendor agreement per B.1 above a vendor may be required to provide information about its program(s) in a uniform format to facilitate comparison among vendors. Failure to provide such information or to update such information may disqualify a vendor from further participation agreements.¶

5. Sample information for agents is provided as Attachment C.¶

4. It is the intention of the Tennessee Board of Regents that an "excess contribution" as defined by Internal Revenue Service provision be returned to the participant as soon as administratively possible. Returned excess contributions would be reported as taxable income.

Deleted: such excess contribution is identified.

E. 403(b) Eligibility

All employees of an institution/technology center/Central Office, except students scheduled to work less than twenty (20) hours per week, shall be eligible to participate in Section 403(b) programs.

F. Limitations and Contributions

1. The maximum contributions to a Section 403(b) program should be consistent with Internal Revenue Service provisions.

Deleted: be determined by the institution

2. The minimum contribution should be at a rate of two hundred dollars (\$200.00) per year.

3. An institution may decline to enter into any agreement that could, in the institution's opinion, cause the employee to exceed permissible contribution levels.

G. Employer

For the purposes of a Section 403(b) program, the employer shall be the Tennessee Board of Regents.

Deleted: State University and Community College System of Tennessee and/or any of its institutions.¶

H. Selection of Vendor, Contract Ownership

1. All contributions under a participation agreement shall be paid to an approved vendor or vendors as selected by the employee. The institution will not recommend or endorse a vendor or vendor's program and will make no guarantee or assurances regarding the vendor. All responsibility for vendor selection and subsequent investment performance shall be between the employee and the approved vendor.

Deleted: , provided the vendor meets the requirements of this guideline

2. All contracts purchased under participation agreements shall be the sole property of the participant.

I. Participation Agreements

Each employee desiring to participate in a deferred compensation plan shall execute a written participation agreement on a form and in a manner designated by the Chancellor or his/her designee.

Deleted: A copy of a sample agreement form is shown as Attachment D.

J. Approval of Participation Agreements

The Participation Agreement must be approved by the President or his/her designee.

K. Changes in Deferral Agreements

Changes in the amount of deferral may be made by submitting a new Participation Agreement form to the Human Resources Office within the timeframe established by the institution/technology center/Central Office.

Deleted: up to four times per year

Deleted: (Attachment D)

Deleted: (The initial enrollment form does not constitute a change.)¶

L. Termination

An employee wishing to terminate his/her participation in a 403(b) plan must sign a notice of termination.

Deleted: n (Attachment E).

M. Miscellaneous Provisions

1. Incidental Life Insurance. No agreements will be entered into which provide for any part of the contribution to purchase "incidental life insurance," notwithstanding that such purchase may be permissible under the Internal Revenue Code or regulations. Any employee participation agreements in effect when this Plan was adopted which includes incidental life insurance may be continued and/or revised for such employee.

2. Institutional Endorsement. The administration of an institution will not endorse or recommend in a positive or negative manner any vendor or vendor program. An institution may make available information which could be useful in a selection decision by an employee. This provision does not prohibit recommendation or evaluation by groups of employees or representatives of groups of employees.

3. For purposes of this guideline, "normal retirement" will be the age used by the Tennessee Consolidated Retirement System. Once an employee reaches or passes the normal retirement age, for purposes of calculating limitations on contributions for purposes of this Plan, such computation should be made assuming retirement at the end of the year for which the calculation is being made.

4. Withdrawals & Loans.

Early In-service withdrawals and Loans shall not be permitted consistent with the Tennessee Board of Regents 403(b) Retirement Plan Document and Internal Revenue Service provisions.

Deleted: . The Chancellor or his/her designee shall establish appropriate procedures.

II. Tax Deferred Annuity, Sections 401 (k) and 457

Effective July 1, 1995, employees within the Tennessee Board of Regents system became eligible to participate in the State's 401 (k) and 457 deferred compensation program.

A. The Chancellor of the Tennessee Board of Regents is empowered to set appropriate administrative guidelines and procedures necessary to coordinate administration with the State of Tennessee.

B. Third Party Administrators and Vendors

Great West, hereinafter referred to as the "Company" is the third party administrator. The vendors are the companies selected by the State.

Deleted: Securities First Group

C. Plan Period

Where a "plan year" or other official period is needed, the plan year for the institution shall be the calendar year.

D. Internal Revenue Service Requirements

1. It is intended that all provisions of this guideline be consistent with provisions of the Internal Revenue Code, regulations, and other authoritative issuances of the Internal Revenue Service, the Tax Reform Act of 1986, and the Employee Retirement Income Security Act of 1974 (ERISA) with respect to plans permitted by Internal Revenue Code Section 401(k) as amended from time to time. Any provision of this Plan is invalid to the extent such provision is not consistent with Internal Revenue Service provisions.

2. Unless otherwise provided in this guideline, it is intended that Internal Revenue Service provisions be controlling on such matters as limitations on contributions, withdrawal of contributions, payment of benefits, rollovers, and similar matters.

3. Notwithstanding D.1 and D.2, the Chancellor shall be empowered to establish reasonable requirements for the administration of the guideline, so long as such requirements do not conflict with any Internal Revenue Service provisions.

4. It is the intention of the Tennessee Board of Regents that an "excess contribution" as defined by the Internal Revenue Service provisions be returned to the participant as soon as such administratively possible. Returned excess contributions would be reported as taxable income.

Deleted: excess contribution is identified

E. 401(k) and 457 Eligibility

All employees of an institution/technology center/Central Office, except students scheduled to work less than twenty (20) hours per week, are eligible to participate in the 401 (k) and 457 plans. Contingent upon appropriate funding each fiscal year, the employer may match an amount in addition to the employee's 401(k) contributions. However, only regular full-time and regular part-time employees are eligible to receive matching funds.

F. Participation Agreements

Each employee desiring to participate in a 401 (k) and/or 457 plan shall complete the appropriate Participation Agreement form.

Deleted: Copies of the agreement forms are shown as Attachments F and G.

A Participation Agreement form must be received by the Human Resources Office by the last working day of a month prior to the effective date of the first deferral and before the end of the first working day of a month for any subsequent payroll change, e.g., increase, decrease or cancellation.

Deleted: at least six weeks

Deleted: prior

Deleted: /or

Deleted: An approved form will be sent to the Company at least 30 days prior to the effective date of the first deferral. Forms will be returned to the institution/technology center/Central Office within forty-eight hours of receipt by the Company.¶

Initial enrollment forms must be completed entirely; however, forms to restart deferrals do not require completion of the investment option section.

All forms containing changes (e.g., address, beneficiary, etc.) should be transmitted to the Company via the Human Resources Office.

Deleted: investment options,

G. Approval of Participation Agreements

The Participation Agreement must be approved (i.e., certified that the deferral amount has not exceeded the maximum allowed) by the President/Director/Chancellor or his/her designee.

The President/Director/Chancellor or his/her designee may decline to enter into an agreement that could, in his/her opinion, cause the employee to exceed permissible contribution levels.

H. Minimum and Maximum Deferral Calculations

401(k), 457, and 403 (b) contributions must be coordinated so that excess contributions are not made.

Contributions (deferrals) for employees who also participate in the Optional Retirement Plan (ORP) are subject to additional limitations/restrictions. See the Deferred Compensation Manual for additional information.

Deferrals for 403 (b), 401 (k) and 457 plans may be deducted from regular or longevity pay. (See Section I for information regarding longevity deferrals.) "Advance" deferrals are not permitted (e.g., deferrals cannot be made before the money is earned).

1. Minimum deferral amounts per month

a. 457 Plan - \$20.00

b. 401 (k) Plan - \$20.00

2. Maximum deferrals for 457 and 401(k) Plans subject to applicable Internal Revenue Service (IRS) Limits.

J. Longevity Deferrals

Effective January 1 1998, a participant may elect to defer regular pay *and/or* any portion of their longevity bonus paycheck. A deferral from the longevity paycheck may be directed to the 403 (b), 457 or 401 (k) plan; however, it may not be divided among the plans. Due to the required deduction of the applicable Social Security taxes, the full amount may not be deferred.

A participant who elects to defer any portion or all of the longevity paycheck will be required to complete a Participation Agreement form specifically for longevity each year.

J. Changing Deferrals

Changes in the amount of regular paycheck deferrals may be made by submitting a new Participation Agreement form to the Human Resources Office within the timeframe established by the institution/technology center/Central Office.

K. Changing the Investment of Future Deferrals

Deleted: For employees who contribute to both 457 and 401 (k) plans deferrals are limited to 25% of salary or \$8,000 *whichever is less*. Any pre-tax deductions from salary for both plans, TCRS, or a 403 (b) plan must be subtracted from the gross salary before the 25% limit is calculated.

Deleted: a 403 (b) plan

Deleted: Calculation of m

Deleted: a. 457 plan¶
(1) 25% of salary or 8,000 whichever is less¶

(2) Pre-tax deduction must be subtracted from gross salary before 25% maximum is calculated.¶

b. 401(k) plan¶

(1) 20% of salary limitation¶

(2) Pre-tax deductions from salary for other plans must be subtracted from gross salary before the 20% is calculated.¶

(3) 20% limit applies to total employee deferrals and employer contributions¶

(4) Effective January 1, 1998, \$10,000 per year limit only to employee deferrals; amount may increase in future years.¶

Deleted: (See Attachment H.)¶

Deleted: This form must be completed and returned to the Human Resources Officer at least six weeks prior to the longevity payday. (For example, if an employee wishes to defer his October 15th longevity paycheck, he/she must submit a completed Participation Agreement form to the Human Resources Officer by September 1.) In addition, participants who elect to defer longevity pay should follow the instructions in Attachment H.¶

Deleted: up to four times per year

Deleted: (Neither the initial enrollment form nor a longevity form constitute a change.)¶
Employees shall receive an account confirmation statement from the Company each time a change of any type is made.

1. Employees may change the way future deferrals are invested by completing an Investment Option Allocation form or by submitting a new Participation Agreement. Investment option changes do not require dollar amounts, only percentages.

2. Money on deposit is not affected by initiating a future change.

3. Employees will need to complete a separate form for the 457, 401(k), and 403(b) if they participate in more than one plan.

Deleted: each plan

L. Transferring Money on Deposit

1. Employees will need to complete a separate form for the 457, 401(k) and 403(b) if they participate in more than one plan.

Deleted: 1. Employees must follow instructions in Section K, #1.¶
2

Deleted: each

Deleted: plan

Deleted: once each month between

2. Transfers are processed by the investment companies.

Deleted: Requests received by the Company at least 5 days prior to the last working day of the month will occur within 5 working days of that month's payday.¶

3. The investment of future deferrals is not affected by transferring money already on deposit.

M. Effect of a Leave of Absence on Deferrals

1. The deferred compensation program requires payroll deductions (reductions); therefore, participants may not pay contributions directly in order to receive matching funds that may be available.

Deleted: 4. Employees will receive written confirmation of the transfer from the Company.¶
5

2. When a participant returns from an unpaid leave of absence, deferrals can restart with the paycheck following his/her return to work.

Deleted: 6. Employees may move money around within the seven Fidelity Investment Accounts or within the five accounts in the closed Aetna contract by calling the InTouch line (1-800-455-4536). Except on holidays, requests called in by 2:00 p.m. Central Time will generally be processed by that evening.¶

3. The deferred compensation program does not contain a catch-up provision for employees who have been returned to a paid status retroactively. Therefore, double deductions are not permitted. Example: An employee on unpaid leave returns to work, but notification is not provided to Human Resources and/or Payroll for the affected pay period. When the next paycheck is processed, it will reflect a deferral and match (if funded) for only the current pay period.

Deleted: (Attachments F and G).

N. Termination/Cancellation of Deferrals

1. An employee wishing to terminate his/her participation in a 401(k) or 457 plan must complete a Participation Agreement form in accordance with the provisions of Section II, F and indicate that a cancellation is being authorized.

Deleted: O. Reporting of Deferrals for Income Tax Purposes¶
1. Deferrals will be included in the participant's salary only for the purpose of figuring TCRS and Social Security (FICA) taxes and benefits.¶
2. The amount of the deferral is listed in box 17 of the participant's W-2 statement; therefore, adjustments should not be made on the participant's tax return.¶
a. Deferrals for the 457 plan will be labeled code G.¶
b. Deferrals for the 401 (k) plan will be labeled code D.¶
P. Effect of Deferrals on Social Security and TCRS¶
1. Deferrals do not affect Social Security or TCRS. In addition participants receiving Social Security benefits, deferrals do not reduce wages for Social Security earnings test purposes.¶
2. Withdrawals are *not* subject to Social Security taxes nor earnings test limits at the time of distribution.¶
Q

Following cancellation of participation in the plan, administrative fees will continue to be charged for each month in which the principle is sufficient to cover the fee. Insufficient principle will result in final termination of participation in the plan.

2. Previous deferrals may not be withdrawn unless the employee meets one of the conditions for withdrawal. (See Section II, P.)

O. Withdrawals

1. Withdrawals shall be permitted by this Plan for the following reasons:

- a. Retirement
- b. Termination of employment
- c. Death
- d. Disability
- e. Financial hardship (as defined by the plan)

f. Age 59 ½ - not available for 457 deferrals.

Deleted: 401 (k) plan only

2. To make a withdrawal, the participants should contact the Company to obtain instructions and a withdrawal form. If the withdrawal is approved and it is for reasons other than retirement, termination of employment, death, or attainment of age 59 1/2, the Company will notify the institution/technology center/ Central Office to stop deferrals.

3. A request for withdrawal will be reviewed by a committee consisting of State employees (usually five members). Consideration for a hardship withdrawal will be based on the following definitions:

a. 457 Plan Hardship Definition

A severe financial hardship resulting from:

(1) Sudden and unexpected illness or accident of the participant or a dependent,

Deleted: sudden

(2) Loss of the participant's property due to uninsured casualty, or

Deleted: loss

(3) Other similar or extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

Deleted: other

Examples of non-qualifying circumstances: purchase of a home or car, educational expenses, payment of child support or alimony, bankruptcy or wage garnishment, past due credit card bills, or payment of taxes or tax penalties.

b. 401 (k) Plan Hardship Definition

An immediate and heavy financial need caused by one or more of the following:

(1) Unreimbursed medical expenses incurred by the participant or a dependent of the participant,

Deleted: unreimbursed

(2) purchase of the participant's primary residence,

(3) Payment of college tuition for the next year for the participant or a dependent of the participant,

Deleted: payment

(4) ~~Funeral~~ expenses for an immediate family member of the participant which exceed life insurance coverage, or

Deleted: funeral

(5) ~~Official~~ notification of implementation of eviction or foreclosure proceedings regarding the participant's primary residence.

Deleted: official

Withdrawals may not include employer contributions ~~or earnings accrued on your account after December 31, 1988~~. Federal regulations require that all deferrals be canceled for the remainder of the current year and for one calendar year thereafter. An employee who qualifies for a loan in the 401(k) plan may be required to apply for such loan before applying for a hardship withdrawal from the plan.

Deleted: nor

Hardship withdrawals are subject to regular income tax and may be subject to the 10% early distribution tax penalty. Such distributions are not eligible for forward income averaging tax treatment or rollover.

3. Withdrawals Following Termination of Employment

Accounts smaller than \$3,500 - A lump sum withdrawal or rollover to another tax deferred plan (if employee qualifies) ~~is~~ permitted for such smaller amounts.

Accounts larger than \$3,500 - Employee may leave account in the State's plan.

4. Withdrawals Required Due to Age

Per IRS regulations, employees must begin drawing benefits no later than April 1 of the year following the age of 70 ½ or retirement. If the employee does not meet the required distribution provisions, a penalty tax is imposed equal to 50% of the amount that the employee should have withdrawn that year.

5. Charges on Withdrawals

Participants should contact the Company to determine if there are any surrender charges on their current investment options.

Deleted: R

~~P~~ 401 (k) Loans

Active employees who have accumulated \$4,000 or more in the plan may borrow up to half of the account balance. The minimum loan is \$2,000; the maximum, \$50,000. Employees are required to sign documents stipulating repayment via payroll deductions, normally in 5 or less years. Both the principal and interest go back into the employee's 401(k) account. Employees should contact the Company for information on loan limitations and fees or for a copy of the loan brochure.

Deleted: S

~~Q~~ Applying for Benefits

Benefits may be distributed in one of three ways: (1) lump sum, (2) periodic payments, or (3) in an annuity. Employees may not change the method of payment selected. Withdrawal application forms may be obtained

from the Company. Annuity payment estimates and materials describing payment options are available on request.

Employees should obtain current information before selecting a payment schedule due to the fact that the provisions of this guideline may be revised by Congress.

Deleted: T

R. Payment Options

1. Lump Sum Payment

- a. Used to withdraw entire account balance.
- b. May be only option available to participants with less than \$3,500 in plan.
- c. May be most beneficial option for participants who have more than 5 years in the plan and qualify for forward income averaging.

2. Periodic Payments

- a. May be withdrawn in equal annual or monthly payments for a specified number of years.
- b. Withdrawal period limited to life expectancy.
- c. May be directly deposited into checking or savings accounts.

3. Annuity Payments

- a. Investments risks for future years assumed by insurance company.
- b. Payments made to participant or beneficiary regardless of investment returns.
- c. Currently available through Aetna or Great West.

Types of annuity options:

- 1. Designated Period Annuity - Certain amount paid for specified period (e.g. 5, 10, 15 years).
- 2. Life Annuity - A certain amount paid to the participant for his/her lifetime. No payments made to beneficiary.
- 3. Life Annuity with Period Certain Feature - A certain amount paid to the participant's as long as he/she lives and also payments paid to a beneficiary for the "period certain" should participant's death occur prior to the end of the period.
- 4. Life Annuity with Joint & Survivor Feature - A certain amount paid to the participant for as long as he/she lives and continued payments to beneficiary after participant's death at 100% or 50% of original payment, depending on option elected.

S. Taxes on Withdrawals

Deleted: U

1. Basic information

- a. Must be reported when payments or withdrawals are received as income in the year(s) received.
- b. Income from plan reported to both participant and IRS on appropriate tax form for each year payments are received.

2. Withholding taxes

- a. Normally applied as payments are received. Amount of withdrawal and amount of taxes reported on W-2 statement for 457 plan; 1099-R form, 401 (k) plan.

b. Rate of taxation

(1) 457 plan - flat 28% rate

(2) 401 (k) plan - 20% on lump sum distributions and any other type of distribution received from plan which would be eligible for rollover.

(3) Withdrawals not subject to flat withholding tax - calculated as if recipient were married with 3 dependents unless a withholding certificate has been filed for a different amount. W-4 form used for 457 payments; W-4P, for 401 (k) payments.

c. Early distribution tax penalty

A 10% tax penalty is assessed on 401 (k) withdrawals made before 59 ½ except when distributions meet IRS exceptions.

Deleted: are

It is the participant's responsibility to make the determination and payment of the early distribution tax penalty.

Deleted: (1) made after participant's death, .
(2) made after participant's disability, .
(3) part of a series of substantially equal periodic payments for the employee's life, .
(4) made due to the participant's separation from service after age 55,¶
(5) used to pay medical expenses which would qualify for a tax deduction, or .
(6) rolled over to another qualified 401(k) plan or IRA.¶

I. Five Year or Ten Year Forward Averaging

1. Eligibility is contingent upon a participant receiving a qualifying lump sum distribution from a 401(k) plan after age 59 ½ and having 5 or more years in the plan. Participants born on or before 12/31/35 may be eligible for ten year averaging. Questions should be addressed to the Company.

2. Tax calculated as if money was received over 5 years and is calculated separately from tax on any other income.

U. Rollovers *from* Other Plans

Employees who previously participated in another government's Section 457 plan may apply to have the assets of the prior plan transferred to the State's 457 plan.

Employees who participated in another 401 (k) plan may apply to have their distribution from that plan transferred to the 401 (k) plan; however, the employee must be enrolled in the State of Tennessee Plan prior to applying for the transfer.

V. Plan to Plan Transfers and Rollovers to Other Plans

Upon separation from employment, a participant may move deferred compensation into another plan under the following provisions:

1. 457 Plan

The other plan accepts such transfers.

2. 401 (k) Plan

a. If a participant is eligible to withdraw accumulations, these may be moved to an IRA or a qualified retirement plan.

b. A distribution is eligible for transfer unless it is:

(1) part of a series of substantially equal periodic payments made for the participant's life or life expectancy or for the life expectancy of a the participant and his/her beneficiary,

(2) ~~Part~~ of a series of substantially equal periodic payments made for a specified period of 10 or more years,

Deleted: part

(3) ~~A withdrawal a participant is required to take due to age.~~

Deleted: a

c. Money may be transferred directly to the new plan or the participant may receive a check from the 401 (k) plan and make a rollover to the new plan.

d. Participants must arrange direct transfers when an application is submitted for withdrawal from the plan.

e. The plan must apply 20% withholding to any distribution which would have been eligible for direct transfer.

f. Prior service in TCRS may be purchased with a rollover from the 401 (k) plan when the participant becomes eligible to make a withdrawal from the 401 (k) plan. Excess amounts may be rolled into an IRA or reported as taxable income. TCRS should be contacted for additional information.

g. Participants who move their 401 (k) accounts into IRAs may want to set up special "conduit accounts" in the event they later become eligible to roll funds back into a qualified retirement account. (Withdrawals from IRAs are not eligible for income averaging.) Additional information on rollover and transfer rules may be obtained from the IRS.

W. Non-Assignability of Benefits

1. 457 Plan

a. Deferrals are assets of the State of Tennessee until paid to the participant or beneficiary.

b. Amounts cannot be assigned or attached to satisfy debts or obligations of an individual.

2. 401 (k) Plan

a. Accumulations are part of a qualified pension plan.

b. Assets are exempt from execution, attachment, garnishment, or other process, other than levies issued by the IRS.

c. Benefits cannot be given to an ex-spouse as marital property or as alimony.

III. Miscellaneous

A. For the purpose of a Section 401(k) program, the employer shall be the Tennessee Board of Regents and/or any of its institutions, the State of Tennessee, and the University of Tennessee System.

B. All responsibility for investment performance shall be between the employee and the vendor.

Source: TBR Presidents Meeting: November 13, 1990; November 9, 1993; November 8, 1995; August 13, 1996; November 12, 1996; February 5, 1997; May 6, 1997; February 17, 1998, August 10, 1999.

Deleted: Attachment A¶
AGREEMENT BETWEEN¶
NAME OF INSTITUTION¶
AND¶
COMPANY¶
Whereas, (Name of Institution)
(hereinafter referred to as the
INSTITUTION) wishes to make
available to its employees tax
deferred annuities, as provided for in
United States Internal Revenue Code
Section 403(b), and whereas the
funds used by the Institution to
purchase the annuities will result from
a salary reduction agreement
between the Institution and its
employees and not from the general
tax revenue, and whereas (Name of
Company) (hereinafter referred to as
COMPANY) has offered to make ... [1]

Deleted: Attachment B¶
ADDENDUM TO AGREEMENT
BETWEEN
NAME OF INSTITUTION
AND
COMPANY¶
This Addendum shall be attached and
incorporated in the contract
documents or Agreement identified as
follows:
Contract/Agreement Number: _____
issued by _____
dated _____
riders/amendments
_____.¶
This Addendum shall modify the ... [2]

Deleted: Attachment C¶
TENNESSEE BOARD OF REGENTS¶
Procedures and Guidelines on
403(b) Tax-Deferred Annuities¶
Information for Agents¶
1. The institution shall designate
those officials authorized to approve
applications and salary reduction
agreements for the institution within
the limitation of TBR Guideline G-030.
All forms and contracts should be
submitted to the designated official.¶
2. The institution has no limitation on
the number of companies which may
sell annuity contracts to its
employees. A company is required to ... [3]

Deleted: Attachment D¶
TENNESSEE BOARD OF REGENTS¶
Participation Agreement for
Section 403(b) Tax-Deferred
Annuity ¶
Employee: _____ S
ocial Security No: _____¶
By this agreement made between the
Tennessee Board of Regents (employer)
and the employee named above, the
parties hereto agree as follows: Employee
does hereby request and employer does
hereby agree to reduce the salary of
employee by the amount(s) indicated
below and to pay such amount(s) to the
company(s) as indicated below for ... [4]

Deleted: Attachment E
TENNESSEE BOARD OF REGENTS
REQUEST TO TERMINATE 403 (b)
ANNUITY

TO: (Institution)

SUBJECT: Termination of Agreement
for Purchase of Tax-Deferred Annuity

I hereby request termination of the
current agreement under which the
institution is purchasing for me an
annuity under Section 403(b) of the
Internal Revenue Code. I understand that
no subsequent agreement for the purchase
of an annuity can be made this taxable
year.

This termination should be effective
, 19.

Signature

Social Security No.

Date

Accepted and approved for

Institution

Signature

Title

Date

LONGEVITY DEFERRAL
INSTRUCTIONS

A longevity deferral must be the only
deferral transaction on a Participation
Agreement form. A new form must be
filed each year that a participant elects to
defer longevity pay.

A participant should enter the date
(MMDDYY) he/she will receive
longevity pay. The agreement to defer
longevity must be received in the Human
Resources Office at least six (6) weeks
prior to the paydate.

The investment option section should be
completed to ensure that the longevity
deferral is invested correctly.

All or a portion of longevity pay may be
deferred. If only a portion is deferred, the
participant should write "partial" under
the amount entered on the agreement
form. In the event the total amount of
longevity is deferred, the participant
should use the chart below to find the
correct deferral amount. Example: A
participant who is being paid for 5 years
of service would enter \$445.00 in the
"Amount per Period" section.

LONGEVITY AMOUNT TO BE

DEFERRED

<u>YEARS</u>	<u>MONTHS</u>	<u>AMOUNT</u>
<u>FICA</u>	<u>DEFERRAL</u>	
3	36	300
	33.00	267.00
4	48	4

... [5]

AGREEMENT BETWEEN

NAME OF INSTITUTION

AND

COMPANY

Whereas, (Name of Institution) (hereinafter referred to as the INSTITUTION) wishes to make available to its employees tax deferred annuities, as provided for in United States Internal Revenue Code Section 403(b), and whereas the funds used by the Institution to purchase the annuities will result from a salary reduction agreement between the Institution and its employees and not from the general revenue, and whereas (Name of Company) (hereinafter referred to as COMPANY) has offered to make such annuities available. The term "Plan" as used in this agreement means any arrangement permitted by Section 403(b) of the Internal Revenue Code, whether an annuity contract or custodial account.

IT IS AGREED AS FOLLOWS:

1. COMPANY acknowledges that this contract is non-exclusive and covenants that no representation will be made by COMPANY or its representatives that the INSTITUTION endorses the plan offered hereunder or recommends it in preference to that of any other company.
2. COMPANY covenants that solicitation for participation in the Plan under this contract shall be directly between the COMPANY or its agents and INSTITUTION employees and shall not occur on the INSTITUTION campus during INSTITUTION working hours pursuant to TBR Policy 3:02:02:00. COMPANY further covenants that all contacts with Institution employees, and all information and advertising distributed shall not be misleading or deceptive.
3. COMPANY covenants that the Plan offered hereunder satisfies all terms and conditions of the Internal Revenue Code, Regulations and other authoritative issuances of the IRS so as to qualify participants for tax sheltered status under Section 403(b) for the amount of monies paid to the extent that the monies so paid do not exceed the salary exclusion allowance applicable with respect to each participant.
4. COMPANY covenants that the Plan does not include life insurance.
5. COMPANY covenants that the COMPANY and the Plan will comply with all applicable federal and state law. COMPANY warrants that no participant in its deferred compensation plan will be discriminated against by receiving benefits different in amount from others who have made the same contributions based solely on the participants sex.

6. COMPANY shall hold harmless and indemnify the INSTITUTION, its governing board, and its employees from every claim or demand which may be made by reason of the purchase of annuities from COMPANY, provided such claim or demand is not based on erroneous information provided by the INSTITUTION or the failure of the INSTITUTION to withhold and forward the proper amounts of monies. Any claim or suit brought against the INSTITUTION is subject to the terms and limits of T.C.A. Section 9-8-301, et seq.

7. COMPANY shall be responsible for any costs, expenses or damages including those of the costs of defense, resulting from any legal claim, suit, process or demand of whatever type of nature brought against the Institution, its governing board or employees with respect to those matters from which it has agreed to hold them harmless, and shall satisfy any judgment that may be rendered against them pursuant to this agreement.

8. COMPANY shall give written notice to the INSTITUTION and the Employee or Employee's beneficiary at least 90 days before any amendment, change in terms, or modification of contract guarantees shall become effective.

9. In any case where the provisions of the Plan agreement conflict with any provisions of this Agreement, the provisions of this Agreement shall apply to the exclusion of the contrary provision.

10. The Employee shall have the sole right to appoint a successor institution in the event of the resignation or removal of the INSTITUTION.

11. This Agreement shall be construed, administered, and enforced according to the laws of the State of Tennessee.

12. The COMPANY agrees to designate one individual who will be the primary contact with the INSTITUTION. This individual will be responsible for coordinating communication and other matters between the INSTITUTION and the COMPANY and all other COMPANY agents. When such a designated individual ceases to serve as the primary contact, the Company shall within thirty (30) days designate another person.

13. All remittances from the INSTITUTION to the COMPANY shall be made as follows:

Payable to:

Mailed to:

The COMPANY may by written notice to change the above designation.

14. The COMPANY agrees to amend its Plan, under Internal Revenue Service guidelines, so that it meets the provisions of the Small Business Job Protection Act of 1996 regarding maximum elective deferrals. The COMPANY further agrees to cooperate with the INSTITUTION and the employee participants in correcting contributions which exceed any applicable Internal Revenue Service contribution limitations.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the dates of the signatures which appear below.

Institution Company

Name

Name

Title

Title

Date

Date

Attachment Deleted

ADDENDUM TO AGREEMENT BETWEEN

NAME OF INSTITUTION

AND

COMPANY

This Addendum shall be attached and incorporated in the contract documents or Agreement identified as follows:

Contract/Agreement Number: _____ issued by _____ dated _____
riders/amendments _____.

This Addendum shall modify the terms and conditions of the above-referenced document(s) as follows:

Whereas, through the above-referenced Agreement, (Name of Institution) (hereinafter referred to as the INSTITUTION) wished to make available to its employees tax-deferred annuities, as provided for in United States Internal Revenue Code Section 403(b), and whereas the funds used by the Institution to purchase the annuities resulted from a salary reduction agreement between the institution and its employees and not from the general tax revenue, and whereas (Name of Company) (hereinafter referred to as COMPANY) has offered to make such annuities available.

IT IS AGREED AS FOLLOWS:

1. COMPANY shall hold harmless and indemnify the INSTITUTION, its governing board, and its employees from every claim or demand which may be made by reason of the purchase of annuities from COMPANY, provided such claim or demand is not based on erroneous information provided by the INSTITUTION or the failure of the INSTITUTION to withhold and forward the proper amounts of monies. Any claim or suit brought against the INSTITUTION is subject to the terms and limits of T.C.A. Sections 9-8-301, et. seq.

2. COMPANY shall, at its own cost, expense, and risk, defend any legal proceeding that may be brought against the INSTITUTION, its governing board, or its employees, on any claim or demand with respect to those matters from which it has agreed to hold them harmless, and shall satisfy any judgment that may be rendered against them pursuant to this agreement.

3. This Agreement shall be construed, administered, and enforced according to the laws of the State of Tennessee.

SUBJECT TO THE CHANGES SET FORTH IN THIS ADDENDUM, the aforementioned Agreement between the parties is hereby ratified and confirmed as to all provisions not herein superseded.

IN WITNESS WHEREOF, the parties have executed this Addendum by their duly authorized representatives as of the dates of the signatures which appear below.

Institution Company

Name/Title

Name/Title

Date

Date

Attachment Deleted

TENNESSEE BOARD OF REGENTS

Procedures and Guidelines on 403(b) Tax-Deferred Annuities

Information for Agents

1. The institution shall designate those officials authorized to approve applications and salary reduction agreements for the institution within the limitation of TBR Guideline G-030. All forms and contracts should be submitted to the designated official.

2. The institution has no limitation on the number of companies which may sell annuity contracts to its employees. A company is required to submit five (5) firm contracts before deductions will be made. Exception: ORP vendors will be exempted from the Rule of Five (5). The only exception is that a new employee will be permitted to transfer an existing contract from his former employer within a year from the date of his employment without regard to the rule of five. That company, however, must submit firm applications to bring its total to five before additional applications will be accepted.

3. The institution does not assist in the solicitation of business; directories or listings of employees will be provided according to institutional procedures. Upon inquiry from an employee, a listing of companies with five or more employees enrolled, but with no recommendations, will be provided. The institution has a general policy prohibiting solicitation within the institution which extends to agents, salesmen, and representatives in accordance with TBR policy. No company or agent is authorized to state or imply that his/her company or plan is "approved" or endorsed by the institution, the Tennessee Board of Regents, the Internal Revenue Service, or any other body which would imply some "official" status of the company or plan especially for institution employees. The institution reserves the right to refuse applications from companies or agents who use deceptive or misleading methods of solicitation.

4. The institution maintains and submits applications for TIAA-CREF as a convenience for employees interested in that program. The institution does not solicit for TIAA-CREF nor make any recommendations relative to it or any other plan.

5. Applications and salary reduction agreements must be submitted as defined in institutional policies and procedures. Example: Applications and salary reduction agreements must be submitted no later than the first calendar day of the month in order to be effective that month. The institution generally distributes checks to monthly personnel on the last work day of the month; when we state that a reduction will begin in January, the reduction will be made on January 31 and remitted to the company early in February. Forms for personnel paid bi-weekly are subject to the same rules; reductions will not begin until the following month, and we will generally deduct the monthly amount in two equal amounts and remit once a month to the company.

6. The only form required of the employee by the institution is a "Participation Agreement for Section 403(b) Tax-Deferred Annuity" (copy attached) in exactly the format specified by the institution. Forms are available from the designated official. Company applications will be signed as required by the company.

7. A minimum of \$200.00 per year and no more than the maximum exclusion allowance may be authorized. The institution will calculate for itself the maximum allowance. When an applicant is considering an amount near the maximum, the employee or agent may, if he desires, so advise the institution which will calculate the maximum before official applications are submitted. The reduction amount must be a equal amount for each month for the remainder of the year, or at each institution's discretion.

8. An employee may make up to four changes in an agreement during a calendar year. (The initial enrollment form does not constitute a change.) An employee may discontinue all annuity reductions in any month. A change in company with no change in amount may be made at any time.

9. Applications must be left with the designated official for clearance and approval. Generally, agents' forms and copies will be returned by mail. If the agent desires a copy of the "Participation Agreement for Section 403(b) Tax-Deferred Annuity," he should submit duplicates.

10. The institution will not approve plans which include incidental life insurance.

11. The institution uses a standard form which employees sign when they wish to terminate a plan (copy attached).

12. If an employee has plans with more than one company, the name and amount for all companies must appear on the same "Participation Agreement for Section 403(b) Tax-Deferred Annuity."

13. The institution maintains various information on companies which is available for review by any employee.

14. The institution reserves the right to amend these procedures and guidelines without advance notice.

TENNESSEE BOARD OF REGENTS

Participation Agreement for Section 403(b) Tax-Deferred Annuity

Employee: _____ Social Security No: _____

By this agreement made between the Tennessee Board of Regents (employer) and the employee named above, the parties hereto agree as follows: Employee does hereby request and employer does hereby agree to reduce the salary of employee by the amount(s) indicated below and to pay such amount(s) to the company(s) as indicated below for the purpose of purchasing for the employee an annuity qualifying under the terms of Section 403(b) of the Internal Revenue Code.

COMPANY FREQ.PER ANNUAL

COMPANY NAME CODE PAY PERIOD AMOUNT

Effective Date: _____ Payroll: ____ Monthly TOT ____ Biweekly ____ Semimonthly

This agreement shall be legally binding and irrevocable as to each of the parties hereto while employment continues; provided, however, that either party may terminate this agreement as of the end of any pay period, so that it will not apply to salary subsequently earned, by giving written notice prior to the beginning of such pay period of the date of termination.

Both parties hereby acknowledge that this agreement is intended to qualify amounts involved for salary deferral. It is the parties' intent that the annuities purchased, the determination of limitations or exclusion allowance, and other matters directly related to the administration of the employer's deferred compensation plan be consistent with Sections 403(b) and 415 of the Internal Revenue Code and all related regulations, rulings, or other authoritative provisions, in addition to the employer's administrative rules and procedures. Employer shall have the right to unilaterally terminate this agreement if employer has reason to believe continued salary reductions would cause excess contributions, per Internal Revenue Service provisions, to result from contribution. Employer shall have the right with or without seeking employee's advice to direct any company named above to refund to employee any "excess" contributions as such are defined by Internal Revenue Service.

Execution of this agreement does hereby cancel any agreements for salary reductions previously executed by employee for the employer's 403(b) tax-deferred annuity plan. This agreement supersedes and replaces all such prior agreements.

In consideration of execution by employer of this agreement, employee hereby agrees to indemnify and hold harmless and release employer and its trustees, officers, and employees, from all claims and liability of any type directly or indirectly arising out of this agreement. Employee acknowledges awareness that participation in certain deferred compensation arrangements with another employer could result in disallowance of deferral of some or all of above amounts. Employee certifies that any and all prior years' participation in a Section 457 plan has been disclosed in writing to employer, as well as any previous "election" under Section 415(c)(4).

Employee's Approval: Employer's Approval:

Signature/Date

Signature/Date

Memorandum Notations:

1. Section 415(c)(4) Election

___ None

___ "A" Year of Separation

___ "B" Catch-up 25% + \$4,000

___ "C" Apply Section 415 Only

2. Other:

23	276	2300	253.00	2047.00
24	288	2400	264.00	2136.00
25	300	2500	275.00	2225.00

Attachment Deleted

PRESIDENTS/DIRECTORS QUARTERLY MEETINGS

DATE: November 5, 2008

AGENDA ITEM: Update on Roth 401 (k) – Effective January 2009

ACTION: Information Item

PRESENTER: Vice Chancellor Bob Adams

BACKGROUND INFORMATION:

The Sub-Council will receive an update on the Roth 401(k) option to the 401(k) plan effective January 1, 2009. The University of Tennessee implemented in February of 2007, and the State of Tennessee implemented October 2008.

PRESIDENTS QUARTERLY MEETING

DATE: November 5, 2008

AGENDA ITEM: Banner

ACTION: Discussion

PRESENTER: Tom Danford

BACKGROUND INFORMATION:

The attached information will be discussed:

- Modification Recommendations – See Attached
- Contract Negotiations – See Attached

IT Sub-Council Recommendations to President's Council on Modifications to the Banner System

The costs of modifying the Banner system go well beyond the one time costs for their initial design, development, and implementation. With each upgrade to the Banner system, each modification must be revisited to ensure it works with the upgrade which leads to additional programming costs and lost opportunity costs as time elapses in rewriting the modifications to work with the newer version of Banner. The preliminary costs to upgrade to new versions of Banner and the annual costs of maintaining the current modifications for inclusion in those upgrades have been estimated at \$1m. However, the TBR system cannot afford to delay upgrades because SunGard's stated policy is to provide support for the previous 2 versions, and the cost of not migrating to newer versions may force us into running software without the vendor's support, and we would not have the necessary security patches required to maintain a safe and stable working environment.

Accordingly, it is the recommendation of the IT Sub-council that modifications to Banner should only be considered as a viable solution when it can be demonstrated that the benefits of the modification outweigh the short and long term costs or there is a statutory or other requirement for such a modification.

As the institutions of the TBR have decided to delay Banner version upgrades, we further recommend that the system as a whole should take advantage of this time to review all current and proposed modifications and to develop a set of criteria for approving future modifications as well as determining if existing modifications can be phased out. The criteria should include:

1. Executive Sponsorship – Each modification shall have an executive sponsor who due to the crucial analysis needs of each modification shall be a person with executive, political, and natural authority who can overcome resistance for or against the proposed modification. The executive sponsor will have the responsibility for:
 - Championing or killing the modification based upon analysis of the modification
 - Oversee the creation and sign-off on documents such as the business case, cost studies, and statement of work.
 - Shepherd the modification through development to control cost overruns in the form of scope creep and change requests.
 - Oversee the implementation of a new business process in lieu of proposed modifications.
2. Analysis – Each modification will be required to go through a thorough analysis to vet out whether or not the benefits of the modification outweigh the costs or there is another compelling reason for developing the modification. At a minimum this analysis should include:
 - A business case, statutory/policy analysis as to why the modification should be developed. This analysis would clearly determine if the need is based upon statute, policy, business need or past practice.

- A total cost of ownership (TCO) analysis that should include both direct and indirect costs, support costs for a 5 year period, and an estimate of lost opportunity costs in the delay in being able to move more quickly to a future release of Banner and take advantage of the increased functionality the release may have.
 - A return on investment (ROI) analysis (as appropriate) that would demonstrate that such a modification could pay for itself in cost avoidance or by generating revenue.
 - Modification workaround analysis to determine if there is a way the function could be performed by adjusting a business process or some other means.
3. Third party analysis – Self-assessment is not an ideal solution since the assessor can be too close to the problem to be objective. Review of the analyses of each modification by a disinterested third party brings objectivity, experience and new ideas to problems and issues we have been struggling with for some time. The IT Sub-Council is recommending a third party provider be selected through an RFP to assess the current modifications, the methodology to implement those modifications, and the possible solutions to eliminate them. The cost associated with this service should be divided among the 19 colleges and institutions and would represent a onetime fee.

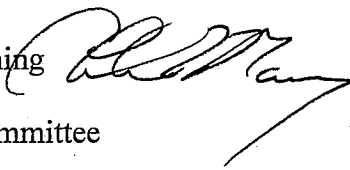


Tennessee Board of Regents

1415 Murfreesboro Road - Suite 350 - Nashville, Tennessee 37217-2833
(615) 366-4400 FAX (615) 366-4464

MEMORANDUM

TO: TBR Presidents

FROM: Charles W. Manning 

SUBJECT: ERP Steering Committee

DATE: October 30, 2008

Attached is our follow up to the ERP Steering Committee meeting on October 29, 2008. It contains the following:

1. Summary of our future costs through the time of the current SCT contract,
2. The pros and cons of continuing a contract with SunGard HE for the contract and SMO,
3. The proposal received from SunGard HE; and
4. Some counter proposals we might want to consider.

I believe this packet includes what we agreed to provide. If you desire some additional information please let Tom Danford know and we will attempt to get it to all presidents prior to our meeting on November 5.

CWM/pa
Attachments

Austin Peay State University • East Tennessee State University • Middle Tennessee State University • Tennessee State University
Tennessee Tech University • University of Memphis • Chattanooga State Technical Community College
Cleveland State Community College • Columbia State Community College • Dyersburg State Community College
Jackson State Community College • Motlow State Community College • Mississippi State Technical Community College
Roane State Community College • Southwest Tennessee Community College • Volunteer State Community College
Walters State Community College • Nashville State Technical Community College • Northeast State Technical Community College
The Tennessee Technology Centers

2004 Master Agreement Summary
(TBR - SunGard HE Contract)

K §	DESCRIPTION	Who Pays		Fixed Costs		
		TBR	SGHE	CY2005	CY2008	CY2009
1	Definitions	N/A				
2	Right to Grant License and Ownership	N/A				
3	License	N/A				
4	Information Services (Primarily Implementation & Mods)	N/A				
5	Delivery	N/A				
6	Payments (Attachments A & D)					
6(c)	License Fees - Component Systems Table 1 Attach A	XX		10,140,803		
	Maintenance - Oracle	XX		704,000	732,160	823,580
	Maintenance - Windstar	XX		69,420	78,088	81,212
	SMO Services	XX		2,749,268	3,092,552	3,216,254
	T&M Customization Services (Mods)	XX				
	T&M Implementation Services (Banner Installation)	XX				
	Fixed Fee Engagement & DBA Svcs			647,428	662,409	0
7	Limited Warranties, Disclaimers, etc.	N/A				
8	Confidential Information	N/A				
9	Intellectual Property Indemnity	N/A				
10	Term and Termination	N/A				
11	Notices	N/A				
12	Force Majeure	N/A				
13	Assignment	N/A				
14	No Waiver	N/A				
15	Choice of Law; Severability	N/A				
16	Limitations of Liability	N/A				
17(d)	Insurance					
	(i) Worker's compensation		XX			
	(ii) EE Liability (\$1M)		XX			
	(iii) Comp Commercial General Liability (\$1M/2M)		XX			
	(iv) Comprehensive Business Auto Liability (\$1M)		XX			
	(v) Travel Agent's Errors and Omissions (\$1M)		XX			
17(e)	Performance bond	XX		20,750	11,514	9,261
18	Miscellaneous Services					
18(a)	Demos & Presentations (2/yr x 3 locations)		XX			
18(b)	Mutual Marketing (TN-Summit 10K * Symposium 5K)		\$15K	-15,000	-15,000	-15,000
18(c)	Summit Support (84 attendees registration only)		XX			
18(d)	SunGard Pillar Seat (Travel Expenses 2 Trips/yr)		XX			
19	Entire Agreement	N/A				

TOTALS: \$4,561,723 \$4,115,307

Difference: \$446,416

NOTES:

Fixed costs in §6 have escalated 17% over the life of the contract

Overall fixed costs will decrease by 10% in CY 2009 due to end of SunGard provided DBA services

TBR – SunGard HE Contract & SMO

Pros/Cons (caveats), Other Considerations/Questions/Risks for Soliciting 3rd Party Service Providers

Potential Pros:

#1 – Competition for the business – With multiple organizations bidding, they are forced to take a close look at their true cost of labor, eliminate top heavy management and other waste and to streamline processes to gain as many efficiencies as possible.

#2 – New Philosophy – New blood can bring a fresh perspective, a new commitment, a different approach, attitude, etc. that can stimulate the operation. We could use an organization that is intent on achieving targeted outcomes that benefit the client and is less tolerant of clumsy or unnecessary work processes. We could use an organization that practices “Kaizen” the relentless quest for a better way, for higher quality craftsmanship.

Others

Potential Cons and Caveats:

#1 – Insider “Partner” Status – SMO staff (and TBR through the SMO) has immediate access to SunGard developers, yet to be released (beta) software & source code, helpdesk, maintenance bulletins, knowledge bases, etc. Could this lead to even longer implementation times for newer releases?

#2 – Learning Curve – The existing SMO staff have considerable experience with TBR business practices, modifications, etc. prior to Banner and now have 4 years of this experience with Banner. How long will it take for a third party to become proficient enough to equal the productivity of the existing SMO?

#3 – SunGard Software Maintenance – Institutions in “SMO” type arrangements pay 12% on software maintenance whereas institutions that don’t have a “SMO” type contract pay up to 18%. (~\$700K for shared baseline, will vary by campus for other items SOURCE: 2004 Master Agreement)

#4 – Other Vendor Software – We have special terms, pricing, and maintenance on many 3rd party software offerings that are serviced through the SMO (e.g. application use/campus wide Oracle, Windstar, INAS, EDI.Smart, fsaATLAS, TouchNet, and PeopleAdmin). (E.g. Oracle 2009 costs: \$824K for limited use campus license; could go to over \$2.5M for full use campus licenses SOURCE: 2004 Master Agreement and SunGard/Oracle full campus license proposal)

Others ...

Other Considerations/Questions/Risks:

#1 – Actual Savings – Third Parties and SGHE all draw from the same labor pool (people with Banner experience) so one would have to assume they all for the most part have the same cost of labor. They can all only streamline and eliminate so much management and other waste to gain efficiencies. Profit

margin is the only other area where they can cut and companies don't go into business to "not make a profit." Most have target profit margins. How might a 3rd party be able to drive out "significant" costs?

#2 – Loss Leader & Other Bidder Economic Concerns – This is of course the vetting process of any RFP, but it might be exacerbated by the current economic climate.

#3 – TBR the "Vanilla" Client – By shedding the SMO, TBR becomes a vanilla client. We'll own our modifications moving forward along with our new 3rd Party and we'll have no special treatment or priority ... we could potentially end up having to hire SGHE as the learning curve (see Con #2) kicks in and beyond and be even more a less of a priority. By going through such an adversarial process as an RFP to replace the SMO ... how might that impact the relationship going forward with the TBR and SunGard?

#4 – What are our actual issues that are driving us to want to bid services? A lot of complaints have been received from the campuses related to the quality of SGHE work in the areas of: training, consulting, project management, DBA services and most importantly modifications work. These are all variable costs related to the implementation and we are now at the end of the implementation so we won't be purchasing these types of services in large amounts going forward.



Higher Education • www.sungardhe.com • 610-647-5930 • 800-223-7036 toll free • 610-578-5102 fax

By E-mail
Confirmation Copy by Overnight Courier

October 27, 2008

Chancellor Charles W. Manning
Tennessee Board of Regents
1415 Murfreesboro Road
Suite 350
Nashville, TN 37217-2833

Dear Chancellor Manning:

Thanks for your letter of October 20th. We at SunGard Higher Education welcome the opportunity to extend our partnership with the TBR. To that end, we have worked diligently and creatively to find a way to address the specific focus you referenced concerning the TBR's ongoing investment in and costs related to the SMO and software maintenance. Our solution is fairly simple – we intend to provide the TBR with even greater student-centric functionality and service at equal or reduced costs. I am pleased to provide this proposal for the consideration of you and the presidential committee.

We propose that the TBR replace the one year term remaining on our current 2004 engagement by a five year extension. During that new five year term, in exchange for the payment of an additional \$1.2 million in upfront license fees, the TBR institutions will have the right to select from SunGard Higher Education's proprietary DegreeWorks, Operational Data Store, Enterprise Data Warehouse and Banner Enrollment Management Recruiting and Admissions Relationships, TreQ and Banner document Management Suite Integration product offerings ("Additional Products"), based on the desire of the particular institution. Each license would be valued based on the selecting institution's placement in SunGard Higher Education's enrollment "tier" structure, and would be provided at a discount of 60% off of SunGard Higher Education's then-current list price license fee for the selected product. The \$1.2 million Additional Products virtual inventory would be depleted based on the resulting license fee for the selected product.

As an example, let's assume that, based on the institution's reported enrollment, Motlow State is a "Tier 3" entity in SunGard Higher Education's price guide. Let's also assume that Motlow State has elected to obtain a license for the DegreeWorks product from the \$1.2 Additional Products inventory. The current list price license fee of DegreeWorks for a Tier 3 institution is \$45,000. Based on the discount, the DegreeWorks license for Motlow State would be valued at \$18,000. The \$1.2 million Additional Products inventory balance would be reduced by \$18,000, leaving an Additional Products inventory balance of \$1,182,000. This balance would similarly be drawn down, as other institutions selected from the Additional Products list.

Regarding the SMO arrangement, under our current engagement, SunGard Higher Education staffs the SMO with five full-time SunGard employees. We also provide ongoing maintenance for all of the software products listed in Table 3(a) of our 2004 contract. During the new five year term, SunGard Higher Education will staff the SMO with five SGHE employees, will provide maintenance for all of the products listed in accompanying spreadsheets, *and* will provide maintenance for all of the Additional Products. Maintenance for the third party products separately detailed in the 2004 contract would still be provided during the periods and for the fees specified in the 2004 contract. We can explore extending those engagements at your request.

Another important component of our offer is a significant reduction in the hourly consulting fee that TBR pays for SunGard Higher Education services. Under the current arrangement, the 2009 hourly "expenses included" rate is \$258 per hour, and the "expenses additional" rate is 214. Under the new engagement, these rates for 2009 would be reduced to \$225 and \$180, respectively.

During the new five year term, SunGard Higher Education would continue to provide the TBR with the financial support outlined in the 2004 contract for the TBR-sponsored annual Tennessee Summit and Fall Creek Falls conferences. We would continue to extend our invitation for the TBR CIO to serve on our Pillar advisory committee as well.

The full breadth of our proposal is outlined in the accompanying spreadsheets. We have structured the spreadsheets to provide you and the institution presidents with a side-by-side comparison of the current engagement and the proposed engagement. I think that you will agree that the proposed engagement provides the TBR and the institutions with significant additional value, but without a material difference in cost. Of course, you and the presidents may have questions as you review the materials. I would be pleased to make my team available to address any comments or questions that arise.

I recognize the financial challenges that the TBR faces. We also find this time and place to be difficult. This proposal puts absolute focus on providing the TBR and its institutions with systems and results that can enable efficiencies, enhance student enrollment and provide the tools to keep students in college and on-plan for graduation.

I will call you Tuesday morning to ensure that your immediate thoughts about this proposal are answered. Of course, if you have any questions in the interim, Chancellor, please call me at your convenience.

Best Regards,



Michael Muratore
Interim Chief Executive Officer

Attachments (2)

cc: Tom Danford, TBR CIO (w/attach.)

Proposal Attachment **TBR High Level Summary for 5 Year Renewal (2009 - 2013)**

Amounts (\$000)

	Existing	5 Year Renewal				
	2009	2009	2010	2011	2012	2013
SMO Fees and Maintenance Fees	3,216					
TBR Cancellations (Kiosk)	(6)					
Continuation of added WO for 5th FTE	299					
Total SMO Fees and Maintenance Fees	3,509	3,458	3,641	3,803	3,973	4,150
Hourly Information Services						
Hourly Without Travel	\$214	\$180	\$189	\$198	\$208	\$219
Hourly With Travel	\$258	\$225	\$236	\$248	\$260	\$273
Performance Bond	9	9	not required----->			
Marketing Support						
Tennessee Summit	10	10	10	10	10	10
Fall Creek Falls Conference	5	5	5	5	5	5
Summit Support						
84 passes over 5 year term (Jan 2005 - Dec 2009)						
15 "Standard" passes per year (2010-2013)		included----->				

5 Year Renewal Assumptions:

- This Proposal includes only those elements covered in the December 2004 agreement, plus Work Order for 5th FTE
- Items contracted for separately, before and after the December 2004 agreement, continue per their contracted terms
- Includes 5 SMO FTEs
- Does not include outside SMO Training Days
- \$1.2M License Fee due on contract Execution

Supported Products for 2009-2013 Proposal

Banner Advancement
Banner Advancement Self-Service
Banner Financial Aid
CSS Profile
INAS for Financial Aid
Banner Finance
Banner Finance Self-Service
Banner Human Resources
Banner Employee Self-Service
Banner Student
Banner Student Self-Service
Banner Faculty Self Service
Banner Workflow
EDISmart
fsaAtlas
Banner Operational Data Store (ODS)
Banner Enterprise Data Warehouse (EDW)
Banner Integration for eLearning
Banner Integration Technologies
Banner ePrint
Luminis Basic
TouchNet Full Use TouchServe
TouchNet Payment Gateway Web
TouchNet Payment Gateway
TouchNet TouchServe Intelligent Gateway
TouchNet e-Bill Solution
TouchNet Payment Plan Manager
TouchNet eDisbursements
Campus Loan Manager (CLM)

Note - Products no longer supported under SMO:

- Banner Executive Self-Service
- Banner SEM
- Focus Report Writer
- Express
- Plus Voice Response TouchNet

SUNGARD PROPOSAL 10/27

NPV Analysis

	1X Costs	2009	2010	2011	2012	2013	NPV
Current K ¹		3,509	3,649	3,795	3,947	4,105	\$16,394
Current K w/software ²	1,200	4,853	3,799	3,951	4,109	4,273	\$18,210
Proposal w/software ³	1,200	4,658	3,614	3,803	3,973	4,150	\$17,520
Proposal w/o software ⁴		3,458	3,614	3,803	3,973	4,150	\$16,377
Interest Rate:	5.00%						(\$1,816) Current K vs. Current K w/software
Escalation Rate:	4.00%						(\$1,125) Current K vs. Proposal w/software
Maintenance Rate:	12.00%						\$18 Current K vs. Proposal w/o software

Notes:

1. Current K - If the existing contract were to remain in place without any additional licensing and using existing escalation rate.
2. Current K w/software - If the existing contract were to remain in place with an additional \$1.M in licensing and at the existing maintenance and escalation rates.
3. Proposal w/software - Purchase the up front licensing and new maintenance rates.
4. Proposal w/o software - Possible counter proposal to SunGard to drop the requirement of purchasing \$1.2M of software up front.

TBR COUNTER PROPOSAL 10/28 NPV Analysis

	1X Costs	2009	2010	2011	2012	2013	NPV
Current K ¹		3,509	3,649	3,795	3,947	4,105	\$16,394
Counter Proposal #1	0	3,093	3,217	3,345	3,479	3,618	\$14,451
Savings:		416	433	450	468	487	
Counter Proposal #2	0	3,216	3,345	3,478	3,618	3,762	\$15,025
Savings:		293	305	317	330	343	
Counter Proposal #3	0	3,243	3,373	3,508	3,648	3,794	\$15,151
Savings:		266	277	288	299	311	
Counter Proposal #4	0	3,392	3,528	3,669	3,816	3,968	\$15,848
Savings:		117	122	127	132	137	

Interest Rate: 5.00%
Escalation Rate: 4.00%
Maintenance Rate: 12.00%

Current K vs. Counter #1
\$1,369
Current K vs. Counter #2
\$1,243
Current K vs. Counter #3
\$547
Current K vs. Counter #4

Approx. NPV:

Notes:

- Current K - If the existing contract were to remain in place without any additional licensing and using existing escalation rate.

Terms:

Same as in SunGard Proposal with the following exceptions
Counter #1 - No escalation in 2009, roll 5th staffer into SMO; or
Counter #2 - Escalation only, roll 5th staffer into SMO; or
Counter #3 - No escalation, add 150K (approx actual) cost of 5th staffer and roll the staffer into SMO
Counter #4 - No escalation, add existing cost of 5th staffer and roll the staffer into SMO
Escalation on SMO AND Services is 4% at month 18 and then annually thereafter
Services are rolled back as proposed with any re-work of poor quality at no charge
No "up front" \$1.2M software purchase. Campuses may purchase as they require at 60% discount