

PROHIBITED PROVISIONS

The following provisions must be deleted or modified in *all* contracts (both delegated and non-delegated):

- 1. Contracting Party:** Contracting party is a campus or other unit of the university.
Acceptable Modification: The University of Tennessee.
- 2. Governing Law (or Choice of Law):** Contract is governed by the laws of another state. *Acceptable Modification: State of Tennessee. [Note: The first proposal for modification of a governing law should always be deletion of the provision in its entirety. The other party is more likely to agree to deletion than a substitution of Tennessee law. Only if the other party insists on including a governing law provision must it be changed to Tennessee law.]*
- 3. Jurisdiction or Venue:** Jurisdiction or venue in any state or federal court.
- 4. Arbitration:** Mandatory arbitration of contract dispute (binding or nonbinding).
- 5. Indemnity, Hold (Save) Harmless, Defense:** University's obligation to indemnify or hold (save) harmless another party or to defend any legal action against another party. *Acceptable Modification: Delete provision in its entirety and substitute the following language:*
*Any liability of the university to **[insert name of other party]** and third parties for any claims, damages, losses, or costs arising out of or related to acts performed by the University under this agreement shall be governed by the Tennessee Claims Commission Act, Tenn. Code Ann. §§ 9-8-301 et seq.*
- 6. Responsibility or Liability:** University's responsibility or liability for acts, damages, losses, or costs. This is a variation of an indemnity/hold harmless clause. Typical language is: "The university shall be responsible (or liable) for all claims for damages arising out of the performance of this contract." *Acceptable Modification: Same as above for Indemnity, Hold (Save) Harmless, Defense.*
- 7. Responsibility for Acts of Others:** University's responsibility for acts of anyone other than university employees—for example, subcontractors, students, invitees, guests, agents.
- 8. Attorney's Fees, Collection Costs, Court Costs:** University's obligation to pay other party's attorneys' fees, costs of collection, or court costs.
- 9. Punitive, Exemplary, or Treble Damages:** University's obligation to pay punitive, exemplary, or treble damages for breach of the contract.
- 10. Injunction:** Other party's right to obtain an injunction against the university for breach of the contract.

11. **Interest:** Other party's right to receive interest on overdue payments in excess of that required by the Tennessee Prompt Pay Act—currently 1.5% per month.
12. **Third Party Beneficiary:** Right of a third party (someone not a party to the contract) to bring a legal action against the university to enforce the contract.
13. **Liability Insurance or Performance Bonds:** University's obligation to purchase liability insurance or a performance bond. *Acceptable Modification: *Delete provision in its entirety and substitute the following:*

The University of Tennessee is self-insured under the Tennessee Claims Commission Act, Tenn. Code Ann. §§ 9-8-301 et seq., which covers certain tort liability for actual damages of up to \$300,000 per claimant and \$1,000,000 per occurrence.

***This modification is appropriate only for a liability insurance requirement and not for a performance bond requirement.**

14. **Multi-year Commitment of Funds:** Commitment of university funds beyond the current year if payment is to be made from operating funds or other unencumbered funds. *Acceptable Modification: Insert an "out clause" allowing the university to terminate the contract either for convenience or for insufficiency of funds.*
15. **Taxes:** University's obligation to pay taxes incident to the contract. *Acceptable Modification: The university will pay taxes imposed directly on it.*
16. **Confidentiality or Other Non-Disclosure:** University's obligation to keep information confidential. *Acceptable modification: Provide that the obligation shall not apply if disclosure is required by the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-503.*
17. **Exclusivity:**
 - a. Other party will be the exclusive provider of goods or services to the university. [NOTE: This prohibited provision does not relate to contracting with an entity that is the sole source of goods or services in the county. Instead, it relates to ageing by contract to purchase goods or services exclusively from a single vendor when other vendors are available.]
 - b. Other party will have the exclusive right to negotiate for future contract (for example, a right of first refusal.)
 - c. University will provide goods or services exclusively to the other party.
18. **University Employee as Party to a Separate Contract:** Except in the case of contracts with the federal government or a federal contractor, a university employee's obligation to sign a separate contract with the other party concerning any matter related to the contract. For example,

requirement that an employee sign a separate confidentiality agreement or a waiver of liability.

19. **Principal Investigators:** Requirement that the principal investigator signs the contract or otherwise be authored to bind the university.