

# Procedure: 5.1.2p. (IV.D.1)

## Business Affiliation Agreements

**Revised:** September 10, 2014.

**Last Reviewed:** September 30, 2022; October 23, 2020; September 6, 2019; and October 20, 2017.

**Adopted:** September 10, 2014.



### I. PURPOSE:

The Technical College System of Georgia (TCSG) is committed to developing a well-educated, globally competitive workforce for Georgia. To this end, certain occupational areas have been identified as requiring specific skills or competency mastery that can best be obtained or demonstrated in an educational/applied learning experience with businesses or organizations associated with those occupational areas. These learning experiences may include but are not limited to student internships, externships, practicums, and/or clinical rotations. Any program curriculum incorporating educational/applied learning experiences shall be consistent with standards approved by the State Board of the Technical College System of Georgia. Affiliation agreements with external businesses or other organizations for students' educational/applied learning experiences should be memorialized in writing consistent with the provisions of this procedure.

### II. RELATED AUTHORITY:

O.C.G.A. § 20-4-11 – Powers of Board.

O.C.G.A. § 20-4-14 – TCSG Established; Powers and Duties.

TCSG State Board Policy 5.1.2. – General Program and Program Specific Standards

TCSG Procedure: 4.1.9p. – Background Investigations.

TCSG Procedure: 4.8.1p1. – Drug and Alcohol Testing.

Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. (FCRA).

Family Educational Rights and Privacy Act of 1974, as amended.

20 U.S.C. § 1232g et seq. (FERPA).

### III. APPLICABILITY:

All work units and Technical Colleges are associated with the Technical College System of Georgia.

### IV. DEFINITIONS:

**Affiliate:** a private, public, or non-profit business or organization that agrees with a college to provide students with educational/applied learning experiences.

**Educational/applied learning experience:** an approved program/curriculum requirement that enables students to gain knowledge of and practical experience in an occupational area related to their program of study.

**Pre-requisite screening requirements:** an affiliate's written terms and conditions govern the placement of a TCSG student and/or supervising staff/faculty member in an educational/applied learning experience. Screenings may include but are not limited to a criminal history background check, motor vehicle records check, drug screening, fingerprinting, physical examination, or proof of certain vaccinations(s). NOTE: Some screenings may be required by law for service in a given occupational area.

**Section 504 Coordinator:** an individual designated by the President of the College to ensure compliance with Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 as Amended, and any other state and federal regulations governing disabilities; the responsibilities of the 504 Coordinator will include but may not be limited to evaluating students requesting accommodations for a disability and ensuring equal access to facilities, services, and programs.

**Title IX Coordinator:** an individual designated by the President of the College to ensure compliance with Title IX of the Educational Amendments of 1972, 20 U.S.C. §§ 1681 et seq., and related federal regulations. The Title IX Coordinator may also be responsible for compliance with other state and federal civil rights laws prohibiting discrimination in programs or activities that receive federal financial assistance from the Department of Education.

## **V. ATTACHMENTS:**

Attachment: 5.1.2p.a1. Healthcare Affiliation Sample Agreement

Attachment: 5.1.2p.a2. Childcare Affiliation Sample Agreement

Attachment: 5.1.2p.a3. Internship Sample Agreement

Attachment: 5.1.2p.a4. Legal Services Letter to Affiliates

Attachment: 5.1.2p.a5. Sample Student Acknowledgement for placement in Childcare facility

## **VI. PROCEDURE:**

### **A. Affiliation Agreements**

1. The sample Affiliation Agreements attached to this procedure should be utilized when engaging an affiliate for students' educational/applied learning experiences.
2. Should an affiliate insist on using its agreement, the college president or designee shall review the proposed agreement and ensure that all provisions in conflict with the terms outlined in the "Legal Services Letter to Affiliates" are changed as explained therein to comply with Georgia law. In addition, the Letter may be transmitted to the affiliate's representative to explain which provision(s) are inconsistent with state law.
3. If, after negotiating the terms of the affiliation agreement, the parties cannot reach a consensus, the College should consult with the TCSG Office of Legal Services for additional assistance.
4. The agreement templates include optional provisions that may be added to an agreement to address specific business functions of the College or the affiliate.

If applicable, these provisions may be proposed for inclusion in an agreement prepared by the affiliate.

5. All affiliation agreements must be reviewed and executed by the college president or his/her authorized designee.
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- B. While the educational/applied learning experiences are offered in conjunction with an affiliate, the College shall maintain control over the associated curriculum and final responsibility for the evaluation of student academic success. In addition, student conduct while participating in an educational/applied learning experience will be governed by the College's Code of Conduct and addressed in accordance with the College's disciplinary procedure.
  - C. The affiliate will retain responsibility for its business operations. In addition, it will maintain administrative and professional supervision of students insofar as their presence or participation affects the operation of the business, customer service, or the care of patients or children.
  - D. Through assigned staff or faculty, colleges will provide the appropriate on-site supervision to students participating in an educational/applied learning experience.
  - E. Educational/applied learning experiences will be assigned and provided to students regardless of race, national origin, religion, creed, gender, genetic information, age, disability, or veteran status.
    1. Colleges must make reasonable accommodations for qualified individuals with disabilities to ensure their effective participation in the affiliate program. Any requests for accommodation must be referred to the College's Section 504 Coordinator.
    2. As a condition of affiliation, hosting businesses/organizations must agree not to engage in any unlawful discrimination or harassment of participating students, staff, or faculty.
    3. Colleges are responsible for investigating complaints arising from students' participation in an educational/applied learning experience. As provided for in applicable TCSG/college procedures, complaints must be referred to and investigated by appropriate officials such as the Title IX Coordinator.
    4. Colleges are required to take timely preventive and/or corrective actions to ensure unlawful discrimination or harassment does not occur and to protect students from any further instances of unlawful discrimination or harassment, or unlawful retaliation. Required actions may include but are not limited to training, reassignment of students or faculty to an alternate site, providing additional monitoring of students at a site, or ending an affiliation agreement.
  - F. Unless otherwise prohibited by state or federal law, college students and faculty are required to follow the administrative policies, standards, and practices of the affiliate when participating in educational/applied learning experiences.
  - G. Pre-requisite Screening Requirements for Student Participation:
    1. Should an affiliate have pre-requisite screening requirement(s) that students must meet to participate in an educational/applied learning experience at its location, the accompanying Business Affiliation Agreement must identify which screening(s) are required; the accompanying review standards/criteria;

and the determination as to whether the affiliate or College will review the results.

2. Screening requirements must be communicated in writing to and acknowledged by students as soon as possible after program enrollment. It is recommended that all such screening requirements are also referenced in handbooks, orientation materials, and course syllabi.
3. Students should be informed in writing that their inability to participate or complete a required educational/applied learning experience may result in their inability to complete program requirements.
4. As noted in paragraph VI.G.a, no student may be subject to a pre-requisite screening unless the requirement is incorporated in the Business Affiliation Agreement with the affiliate to which the student is to be assigned.
5. By design, an affiliate should be responsible, either using their staff or a third-party vendor, to obtain (when necessary) written student consent; to review and screen the results of any pre-requisite screenings; and to communicate, in writing, the acceptance or rejection of a particular student.
6. If an affiliate refuses to assume the responsibilities outlined in VI.G.e, the College must perform these functions and also:
  - a. Ensure that those responsible for the academic evaluation of students in the applicable program avoid any participation in the review of the screening results; and
  - b. Incorporate any statutory limitations about the occupational area of assignment. (Example: certain criminal convictions would, by state or federal law, prohibit a student's participation in an applied learning experience hosted in a childcare setting.)
  - c. Must not share any corresponding records obtained through screening with the affiliate (e.g., actual criminal history records). The only exception to this general prohibition is when a student provides his/her written authorization to release certain records to the affiliate.
7. Suppose the initial host affiliate denies a student participation. In that case, the College should attempt to place the student in an alternative educational/applied learning experience if another appropriate affiliate site is available. Colleges who have identified another placement site but believe the alternate placement would result in a safety or security threat must consult the Office of Legal Services.
8. Pre-requisite screening results must be maintained confidentially by college personnel and shared only with those who have a legitimate need to know. Should a pre-requisite screening result in an adverse decision regarding placement of the student with a particular affiliate for a required educational experience, the College shall provide the student with rights of review as required under state or federal law or by TCSG policy or procedure.

#### H. Pre-requisite Screening Requirements for Staff/Faculty Participation

1. Should an affiliate have pre-requisite screening requirement(s) that college staff/faculty must meet to observe and/or supervise, students involved in an educational/applied learning experience at its location, the type(s) of screening and, as applicable, the accompanying review standards/criteria must be identified in the Business Affiliation Agreement. NOTE: colleges may not execute a Business Affiliation Agreement without first consulting with the TCSG Office of Legal Services if any identified screenings are inconsistent with applicable State Board policies and TCSG procedures.

2. Current employees and other applicants applying for a position subject to affiliate-mandated screening(s) shall be notified of the specific requirements through a notice placed in the corresponding vacancy announcement and, as applicable, during the selection process. The recommended candidate has a written conditional offer of employment and must state that the successful completion of the identified screening(s) is considered a condition of employment.
  3. Current faculty members may become subject to one or more affiliate-mandated screenings, provided participation in the observation or supervision of students at an affiliate site is considered a condition of employment.
  4. Current faculty members whose position involves participation in the observation or supervision of students in an affiliate site may become subject to one or more affiliate-mandated screening(s) due, for example, to a change in assigned clinical sites. In these situations, the employee shall be notified of the screening requirement(s) prior to any such placement.
  5. Any identified pre-requisite screening(s) required by an affiliate must be consistent with State Board policies and TCSG procedures governing employment-related screenings.
  6. The College shall undertake any screening(s) required of a faculty member, and the College may only communicate to the affiliate that the employee met the established review standards/criteria. The College may not share with the affiliate any records generated because of a screening (e.g., faculty member's criminal history records).
  7. A faculty member who is denied participation by an affiliate site due to the results of additional screening requirements and cannot continue to perform the essential functions of his/her job may be subject to disciplinary action up to and including dismissal from employment as provided in the State Board policy on Positive Discipline (III.T.) and the TCSG procedure governing Adverse Employment Actions (III.I.)
- I. Colleges must maintain the confidentiality of student educational records according to FERPA and TCSG policies and procedures.
  - J. Colleges shall observe and comply with federal, state, and local laws, rules, and regulations, as well as TCSG and College procedures, when committing to and executing their obligations under a Business Affiliation Agreement.
  - K. Affiliated organizations will be responsible for compliance with applicable labor and employment laws about student internships in determining whether students are considered their employees.

## VII. RECORD RETENTION:

Business Affiliation Agreements will be retained for seven (7) years after the expiration of the agreement.

**Attachment: 5.1.2p.a1. Healthcare Affiliation Sample**

Last Reviewed: October 23, 2020; September 6, 2019

Last Revised: June 16, 2020

**Memorandum of Agreement  
between  
[INSERT NAME] Technical  
College and  
[HEALTH CARE CLINICAL SITE]**

**I. Purpose:**

The purpose of this Memorandum of Agreement (“Agreement”) is to provide instruction and practice for [INSERT NAME] Technical College Students (“Students”) at the [INSERT NAME OF CLINICAL SITE]. The instruction and practice are intended to benefit the College’s Students in accomplishing their educational goals and create a highly trained workforce.

**II. Parties:**

[INSERT NAME] Technical College (hereinafter the “College”) and [CLINICAL SITE] (hereinafter the “Facility”).

**III. Affiliating Agreement**

This is a mutual Agreement between the Facility and the College that allows the Facility to accept Students in the [INSERT PROGRAM DESCRIPTION] programs for college faculty coordinated clinical experience in the Students’ field of study. In addition, this agreement provides:

- A. The College and the Facility will provide educational experiences without regard to race, color, national origin, sex, religion, disability, genetic information, or the age of the persons involved. Provided, however, that with respect to disability, the disability must not be such as would, even with reasonable accommodation, in and of itself preclude Participant’s participation in the program.
- B. While the educational experiences contemplated by this agreement shall be offered jointly, the College shall maintain control over the curriculum offered to the College's Students. Likewise, the Facility shall maintain control and responsibility for its patients/clients.
- C. Educational experiences will be of such content and cover such periods as may be mutually agreed upon by the College and the Facility from time to time. The starting and ending date for each educational experience shall be agreed upon before the experience commences.

- D. The number of Students participating in each educational experience shall be determined by mutual agreement of the parties and at any time may be modified by mutual agreement.
- E. The Facility will serve as a clinical laboratory and furnish facilities for the students in such manner and at such time as the parties herein mutually agree.
- F. The Facility will not be required to provide free treatment for Students or College faculty. Students or College faculty may request treatment from the Facility at their expense. The College does not accept any liability or responsibility for treatment individually requested by a College Student or faculty member.
- G. Clinical rotation(s) will be planned by the College faculty of the College program(s), in conjunction with the Facility's representative, to meet requirements mandated by the College or licensing/certification Board.

**IV. The Facility Agrees To The Following:**

- A. Provide a program of clinical experience for the students to engage in to benefit their knowledge of the student's program of study at the College. The number of hours and experience may vary each year but will be mutually agreed upon with the College.
- B. The Facility will retain responsibility for caring for the patients, clients, and/or customers. Accordingly, it will maintain administrative and professional supervision of Students insofar as their presence affects the operation of the Facility and/or patient, client, or customer care.
- C. Observe the following personnel policies:
  - 1. College faculty and Students will be permitted to observe the College's calendar for holidays and events.
  - 2. Students will be allowed to make up time lost due to unavoidable absences.
  - 3. Students shall wear the accepted College uniform or conform to Facility policies regarding acceptable dress during the clinical experience.
  - 4. Faculty employed by the Technical College System of Georgia ("TCSG") or the College will be under the complete jurisdiction of the College's administration.
- D. The Facility shall maintain insurance as it deems advisable to protect itself as appropriate given the College's limitations on liability for damages as described below in Paragraph V, subsections (I), (J), and (K).

- E. Make provisions for orientation of college faculty members to the facilities, philosophies, and policies of the respective Facility. Such orientation shall include instruction on the Facility's privacy policies and procedures, particularly concerning patient health or other confidential information.
- F. Assist in the orientation of the Students to the Facility and clear channels of administration for the use of equipment and records as necessary for teaching purposes and in accordance with Facility policies. Such orientation shall include instruction on the Facility's privacy policies and procedures, particularly concerning patient health or other confidential information.
- G. In a case of improper exposure to bodily fluids, airborne tuberculosis, pathogens, antibody, and or antigen by a student or College faculty member, the Facility will use its best efforts to test the source patient appropriately and to obtain the patient's consent for disclosure of test results to the College's infection control personnel.
- H. Facility staff shall, upon request, assist the College and College faculty in evaluating the learning and performance of participating Students. The Facility agrees to keep confidential any Student records or information it may obtain unless it has obtained the student's prior written consent.
- I. Provide on-the-job training that complies with the Fair Labor Standards Act regarding trainees by meeting all six of the following criteria:
  - 1. The training, even though it includes the actual operation of the Facility, is like that which would be given at the College.
  - 2. The training is for the benefit of the students.
  - 3. The students do not displace regular employees of the Facility but work under constant supervision of Facility employees.
  - 4. The Facility that provides the internship derives no immediate advantage, economic or otherwise, from the activities of the students, and, on occasion, the operations of the Facility may even be impeded.
  - 5. The students are not necessarily entitled to a job at the Facility after the training period; and
  - 6. The Facility and the Students understand that the students are not entitled to wages for the time spent in training.
- J. Provide a safe work environment for college faculty and Students.
- K. Assist and cooperate with the College in investigations related to complaints related to the educational experience at the Facility.

**V. The College Agrees to The Following:**

- A. Ensure that the College's Student Code of Conduct is enforced for the Students at the Facility. Any Student whose behavior, conduct, attitude, or attire conflicts with the College's Student Code of Conduct will be subject to appropriate disciplinary actions.
- B. Provide College faculty in accordance with the required student-faculty ratio as mandated by the state licensing/certification agency or by the local Facility regulation(s).
- C. Provide College faculty with experience in a specialty area where they will supervise Students.
- D. Assure that Students with unsatisfactory performance in the classroom and/or clinical practicum will not be placed on clinical assignments.
- E. Provide specific written clinical behavioral objectives for the Facility staff prior to Student rotation. In addition, conferences will be scheduled with Facility staff during rotation to discuss Student learning, Student performance, and patient services.
- F. Submit a schedule with the names of attending Students at least two weeks before the beginning of the student's first day at the Facility.
- G. Provide for all administrative functions required by the Facility necessary for the smooth operation of the program (i.e., joint review of the use of clinical facilities).
- H. Require the observance of Facility policies and procedures by the students and faculty.
- I. Assure that each Student and College faculty member has professional liability insurance with minimum coverage of one million dollars to cover his or her acts or omissions.
- J. The College is self-insured under the State of Georgia, Department of Administrative Services, Risk Management Division, against tort claims, including comprehensive automobile liability, in the amount of one million (\$1,000,000) per person and three million (\$3,000,000) per occurrence; the College also maintains workers' compensation insurance through the State of Georgia.
- K. The Constitution of Georgia prohibits the College from contracting to indemnify or hold any individual or entity harmless. Article VII, Sec. 4, Paragraph 8; Article III, Sec. 6, Para. 6, Constitution of the State of Georgia. The College will be liable only for personal injury or property damage caused by acts or omissions of its employees in the performance of this contract to the extent provided by the Georgia Tort Claim Act (O.C.G.A. § 50-21-20 et seq.)
- L. The College shall, to the extent required by law or policy, offer to Students and

College faculty at substantial risk of directly contacting body fluids or airborne tuberculosis, pathogens, antibody and or antigen testing and vaccination in accordance with requirements of the Occupational Health and Safety Administration and the Centers for Disease Control and Prevention. In addition, the College shall follow the current Technical College System of Georgia Policy following exposure of a college faculty or student.

- M. Maintain the following information on each Student and College faculty member who will be participating in clinicals:

[INSERT AS APPROPRIATE. (Examples, name, address, insurance information, etc.)]

#### **VI. Withdrawal of Student from Facility**

- A. The Facility may request the College withdraw any Student from the educational experience at the Facility whose work or conduct may have a detrimental effect on patients or personnel; and/or reserves the right not to accept any Student who has previously been discharged by the Clinical Institute for non-discriminatory reasons, including but not limited to criminal or fraudulent activity, perceived lack of competency or failure to comply with the policies, procedures, and rules of the College or Facility.
- B. The College may request the withdrawal from the Facility of any Student whose progress, achievement, or adjustment does not justify continuance in the educational experience at the Facility.

#### **VII. Representatives**

Any communication regarding this contract should be directed to the following representatives:

For the College: [INSERT]

For the Facility: [INSERT]

#### **VIII. Prohibition of Gratuities**

All of the parties hereby certify that the provisions of O.C.G.A. § 45-10-20 through § 45 10-28, which prohibit and regulate certain transactions between State Officials, employees, and the State of Georgia, and O.C.G.A. § 45-1-6, which prohibits gratuities, have not been violated and will not be violated in any respect throughout the term of this Contract.

#### **IX. Additional Mutual Agreements**

- A. [INSERT AS APPROPRIATE. If there are no additional terms, insert "Intentionally left blank."]
- B. [...]

#### **X. Miscellaneous**

- A. Term

1. The parties shall periodically review the terms and conditions of this agreement.

2. This agreement will remain in effect until [INSERT SPECIFIC EXPIRATION DATE, RECOMMENDED NOT MORE THAN THREE ACADEMIC YEARS.]

3. Either party may terminate this agreement upon 90 days' notice in writing to the other party. However, suppose either party wishes to terminate this agreement. In that case, it is understood that Students then enrolled in the educational experience at the facility shall be allowed to complete the educational experience.

B. Entire Agreement

This Agreement, together with any documents incorporated herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or contracts. No written or oral agreements, representations, statements, negotiations, understandings, or discussions that are not set out, referenced, or expressly incorporated into this Agreement shall be binding or of effect between the parties.

C. Assignment

Neither party shall assign this Agreement, in whole or in part, without the prior written consent of the other party, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect.

D. Applicable law

This Agreement shall be governed in all respects by the laws of the State of Georgia.

E. Amendments in Writing

No amendment of this Agreement, or any of the terms or provisions hereof, shall be binding upon either party except by a writing executed by both parties.

[INSERT NAME] Technical College

\_\_\_\_\_

\_\_\_\_\_  
President

\_\_\_\_\_  
Signing Party, Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

[INSERT NAME] Technical College does not discriminate based on race, color, religion, national origin, sex, disability, or age in its programs, admissions, employment, or other activities. The following person has been designated to handle inquiries regarding the nondiscrimination policies that include Title VI, Title IX, and 4505. Inquiries concerning the application of this policy may be referred to [CONTACT INFORMATION FOR TITLE IX AND SECTION 504 COORDINATORS]

#### **ADDITIONAL PROVISIONS TO BE INCLUDED AS REQUESTED:**

##### **Background Check and Drug Screen (Two options:)**

1. Ideal (Clinic handles everything):

Before the student begins his or her educational experience at the Facility, each student will be required by the Facility to submit to [drug testing, background check, etc.]. All testing and results are to be controlled by the Facility. Students who refuse or fail to meet the Facility's standards on these tests may withdraw from participating in the facility's clinical experience at the facility's request. No information regarding the specific deficiencies of the student's test results shall be shared with the College.

2. Acceptable (College has limited involvement)

Before the student begins his or her educational experience at the Facility, the College shall advise each student that he/she will be required to submit to a background check by utilizing [Advantage Students or Precheck or other services]. The background check shall be considered complete if it contains: [list of items, should not include anything that might be discriminatory based on race, disability, religion, etc.]. Said background check shall be at Student Participant's sole expense. Results of the background check shall be provided to the Facility. The Facility shall have the right to withdraw any Student if he or she fails to meet the standards established by the Facility for an acceptable background check.

**NOTE: AVOID, IF AT ALL POSSIBLE, REVIEW OF RESULTS OF BACKGROUND/DRUG TESTS BY THE COLLEGE. IF REQUIRED BY THE FACILITY, THE PERSON(S) AT THE COLLEGE HANDLING RESULTS SHOULD NOT BE UNDER ANY CIRCUMSTANCES HAVE ANY ABILITY TO ASSIGN GRADES OR OTHERWISE IMPACT THE STUDENT'S SUCCESS IN THE PROGRAM. IF POSSIBLE, THE PERSON(S) AT THE COLLEGE WITH ACCESS TO THE RESULTS SHOULD BE COMPLETELY ADMINISTRATIVELY REMOVED FROM THE EDUCATIONAL PROGRAM (e.g., President's office, accounting, etc.) Also, ensure there are specific guidelines for "Failure" of a background check. There should be little discretion; should be "yes" or "no" as possible answers to the extent possible. Example: "Does the student have a felony? Yes/No".**

##### **Confidentiality**

Ideal:

Students and College Faculty shall not disclose to any third party, except as permitted or

required by law or approved by the Facility in writing, any medical record or other patient information. Students and College faculty shall comply with all federal and state laws and regulations and all bylaws, rules, regulations, and policies of the Facility regarding the confidentiality of patient information.

College acknowledges that the Facility must comply with the applicable provisions of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320 et seq. ("HIPAA") and its related regulations. College, Students, and College faculty shall not request, use or further disclose any Protected Health Information ("PHI") other than for the treatment and training purposes specified in this Agreement. The College will promptly report to the Facility any uses or disclosures of which the College becomes aware of PHI in violation of this Agreement.

**Acceptable additions:**

To the extent permitted by the Georgia Open Records Act (O.C.G.A. § 50-18-70 et seq.), College agrees that the College will not disclose confidential information of the Facility obtained during the clinical experience to others. Information the Facility wishes considered confidential shall be marked and identified as "confidential." No copies of confidential information shall be provided to College, College faculty, or Students; all written copies are to remain at the Facility. Confidential information shall not include the terms and conditions of this Agreement or any other document the College would be required to produce under the Georgia Open Records Act.

**Licensing**

The College will not knowingly assign any College faculty to the Facility who is not appropriately licensed or certified and will make evidence of the licensure or certification of its assigned faculty available to the Facility upon request.

**Exposures to Bloodborne or Other Pathogens**

Acceptable addition to college responsibilities (Section V):

In the event of an exposure, the College will be responsible for offering appropriate testing to the affected Student or College faculty, providing appropriate medical care, counseling, and recordkeeping in accordance with the College exposure control plan. However, in no instance shall the College's responsibility as defined in the paragraph exceed one year after the Student or College faculty leaves the program in accordance with State Policy.

Last Reviewed: October 23, 2020; September 6, 2019

**Attachment: 5.1.2p.a2.**

**Memorandum of Agreement  
between  
[INSERT NAME] Technical College  
and  
[CHILD CARE SITE]**

**I. Purpose**

The purpose of this Memorandum of Agreement (“Agreement”) is to provide instruction and practice for [INSERT NAME] Technical College Students (“Students”) at the [INSERT NAME OF CLINICAL SITE]. The instruction and practice is intended to benefit the College’s Students in accomplishing their educational goals and create a highly trained work force.

**II. Parties**

[INSERT NAME] Technical College (hereinafter the “College”) and [CLINICAL SITE] (hereinafter the “Facility”).

**III. Affiliating Agreement**

This is a mutual Agreement between the Facility and the College that provides for the Facility to accept early childcare Students for a practicum or internship assignment and to provide a structured and supervised classroom environment and varied educational experiences to facilitate desired learning outcomes and practical, on the job training. In addition, this agreement provides:

- A. Educational experiences will be provided by the College and the Facility without regard to race, color, national origin, sex, religion, disability, genetic information or age of the persons involved; provided however, that with respect to disability, the disability must not be such as would, even with reasonable accommodation, in and of itself preclude Participant’s participation in the program.
- B. While the educational experiences contemplated by this agreement shall be offered jointly, the College shall maintain control over the curriculum offered the College’s Students and the Facility shall maintain control and responsibility for the children enrolled in the Facility.
- C. Educational experiences will be of such content and cover such periods of time as may from time to time be mutually agreed upon by the College and the Facility. The starting and ending date for each individual educational experience shall be agreed upon before the experience commences.
- D. The number of Students participating each semester shall be determined by mutual agreement of the parties and at any time may be modified by mutual agreement.
- E. The Facility will furnish facilities for the Students in such a manner and at such time as the parties herein mutually agree.
- F. Clinical rotation(s) will be planned by the College faculty of the College program(s), in conjunction with

the Facility's representative, to meet requirements mandated by the College or licensing/ certification Board.

- G. No College faculty or Student will receive monetary or other type of reimbursement from the Facility for work done during the clinical rotation. Nor shall any College faculty or Student hold him or herself out as an employee or agency of the Facility during the clinical rotation.

**IV. The Facility Agrees to the following:**

- A. Provide appropriate classroom environments and educational and learning experiences for Students to enhance their knowledge of early childhood education. The number of hours and experience may vary each year but will be mutually agreed upon with the College.
- B. Ensure that the Facility has on file all documentation required for each Student to participate in a practicum or internship at the Facility in compliance with Georgia law and the Regulations of the Georgia Department of Early Child Care and Learning.
- C. The Facility will retain responsibility for the care of the children enrolled at the Facility and will maintain administrative and professional supervision of Students, insofar as their presence affects the operation of the Facility and children under the Facility's care.
- D. Observe the following personnel policies:
  - 1. College faculty and Students will be permitted to observe the College's calendar for holidays and events.
  - 2. Students will be allowed to make up for time lost due to unavoidable absences.
  - 3. Students shall conform to Facility policies regarding acceptable dress during the clinical experience.
  - 4. Faculty employed by the Technical College System of Georgia ("TCSG") or the College will be under the full jurisdiction of the College's administration.
- E. The Facility shall maintain insurance as it deems advisable to protect itself as appropriate given the College's limitations on liability for damages as described below in paragraph V subsections (H) and (I).
- F. Make provisions for orientation of Students and College faculty members to the facilities, philosophies, and policies of the respective Facility. Such orientation shall include instruction on the Facility's privacy policies and procedures particularly as related to confidential information.
- G. Facility staff shall, upon request, assist the College in the evaluation of the learning and performance of participating Students. The Facility agrees to keep confidential any Student records or information it may obtain unless it has otherwise obtained prior written consent of the Student.
- H. Provide on the job training related to early childhood education which complies with the Fair Labor Standards Act regarding trainees by meeting all six of the following criteria:
  - 1) The training, even though it includes the actual operation of the Facility, is like that which

would be given at the College.

2) The training is for the benefit of the students.

3) The students do not displace regular employees of the Facility, but work under constant supervision of Facility employees;

4) The Facility that provides the internship derives no immediate advantage, economic or otherwise, from the activities of the students and, on occasion, the operations of the Facility may even be impeded;

5) The students are not entitled to a job at the Facility at the conclusion of the training period; and

6) The Facility and the Students understand that the students are not entitled to wages for the time spent in training.

I. Provide a safe work environment for college faculty and Students.

J. Assist and cooperate with the College in investigations related to complaints related to the educational experience at the Facility.

**V. The College Agrees to the following:**

A. Ensure that the College's Student Code of Conduct is enforced for the Student at the Facility. Any Student whose behavior, conduct, attitude, or attire is in conflict with the College's Student Code of Conduct will be subject to appropriate disciplinary action.

B. Provide credentialed College faculty to visit, observe and evaluate each Student's success in meeting established learning objectives.

C. Assure that only Students in good academic standing are recommended to the Facility for a practicum or internship.

D. Conduct periodic conferences with Facility staff to discuss Student learning and Student performance.

E. Submit a schedule with names of assigned Students at least two weeks prior to the beginning of the practicum or internship.

F. Work collaboratively with the Facility regarding the schedule and selection of classroom assignments to maximize the learning experiences for participating Students.

G. Require the observance of Facility policies and procedures by the Students and College faculty.

The College is self-insured under the State of Georgia, Department of Administrative Services, Risk Management Division, against tort claims, including comprehensive automobile liability, in the amount of one million (\$1,000,000) per person and three million (\$3,000,000) per occurrence; the College also maintains workers' compensation insurance through the State of Georgia.

The College is prohibited by the Constitution of Georgia from contracting to indemnify or hold harmless any individual or entity. [Article VII, Sec. 4, Paragraph 8; Article III, Sec. 6, Para. 6, Constitution of the State of Georgia]. The College will be liable only for personal injury or property damage caused by acts or omissions of its employees in the performance of this contract to the extent provided by the Georgia Tort Claim Act (O.C.G.A. 50-21-20 et seq.)

Maintain the following information on each Student and College faculty member who will be participating in clinicals:

[INSERT AS APPROPRIATE. (Examples, "clearance letter" from DECAL, name, address, insurance information, etc.)]

#### **VI. Withdrawal/Non-Acceptance of Student from Practicum/Internship**

The Facility may request the College withdraw any Student from a practicum or internship in its Facility whose work or conduct may have a detrimental effect on the Facility's enrolled children or personnel; and/or reserves the right not to accept any Student who has previously been discharged by the Facility for non-discriminatory reasons, including but not limited to criminal or fraudulent activity, perceived lack of competency or failure to comply with the policies, procedures and rules of the College or Facility.

The College may request the withdrawal from the Facility of any Student whose progress, achievement, or adjustment does not justify continuance in the educational experience at the Facility.

#### **VII. Representatives**

Any communication regarding this contract should be directed to the following representatives:

For the College:

[INSERT]

For the Facility:

[INSERT]

#### **VIII. Prohibition of Gratuities**

All of the parties hereby certify that the provisions of O.C.G.A. § 45-10-20 through § 45-10-28, which prohibit and regulate certain transactions between State Officials, employees and the State of Georgia, and O.C.G.A. § 45-1-6, which prohibits gratuities, have not been violated and will not be violated in any respect throughout the term of this Contract.

#### **IX. Additional Mutual Agreements**

[INSERT AS APPROPRIATE. If no additional terms insert "Intentionally left blank."]

#### **X. Miscellaneous**

**Term** -The terms and conditions of this agreement shall be periodically reviewed by the parties.

This agreement will remain in effect until [INSERT SPECIFIC EXPIRATION DATE, RECOMMENDED NOT

MORE THAN THREE ACADEMIC YEARS].

Either party may terminate this agreement upon a 90-day notice in writing to the other party. However, if either party elects to terminate this agreement it is understood that Students enrolled in the program shall be given the opportunity to complete the full program.

**Entire Agreement** - This Agreement, together with any documents incorporated herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or contracts. No written or oral agreements, representations, statements, negotiations, understandings, or discussions which are not set out, referenced, or specifically incorporated into this Agreement shall in any way be binding or of effect between the parties.

**Assignment** - Neither party shall assign this Agreement, in whole or in part, without the prior written consent of the other party, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect.

**Applicable law** - This Agreement shall be governed in all respects by the laws of the State of Georgia.

**Amendments in Writing** - No amendment of this Agreement, or any of the terms or provisions hereof, shall be binding upon either party except by a writing executed by both parties.

[INSERT NAME] Technical College \_\_\_\_\_

\_\_\_\_\_

President Signing Party, Title

\_\_\_\_\_

Date Date

[INSERT NAME] Technical College does not discriminate on the basis of race, color, religion, national origin, sex, disability, or age in its programs, admissions, employment, or any other activities. The following person has been designated to handle inquiries regarding the nondiscrimination policies that include Title VI, Title IX, 4505. Inquiries concerning application of this policy may be referred to [CONTACT INFORMATION FOR TITLE IX AND SECTION 504 COORDINATORS]

**ADDITIONAL PROVISIONS TO BE INCLUDED AS REQUESTED:**

**Background Check, Drug Screen, Fingerprints** (Two options:)

Ideal (Clinic handles everything):

Before the Student begins his or her educational experience at the Facility, each Student will be required by the Facility to submit to [drug testing, fingerprint records check, criminal history name check, etc.]. The Facility shall request and maintain copies of any requested/required testing/activities. The Facility shall inform the College as to whether or not the student successfully completed all

required tests/activities. However, the Facility shall not share any specific deficiencies with the College. A Student who refuses or fail to meet the Facility's established standards on these tests/activities or, as applicable, DECAL Regulations may not be accepted by the Facility or be withdrawn from participation in the practicum or internship at the Facility's request.

Acceptable (College has limited involvement)

Before the Student begins his or her educational experience at the Facility, the College shall advise each Student that he/she will be required to [fingerprint record check, submit to a drug test, submit to a background check, etc.] as required by the Facility, statute, or DECAL regulations by utilizing [Advantage Students or Precheck or other service]. The results shall be considered acceptable if: [list of items, should not include anything that might be discriminatory on the basis of race, disability, religion, etc.]. All such tests/activities shall be at the student's sole expense. Results of the [fingerprint record check, submit to a drug test, submit to a background check, etc.] shall be provided to the Facility. The Facility shall have the right to require the withdrawal of any Student if he or she fails to meet the standards established by the Facility for an acceptable background check.

## **Confidentiality**

Ideal:

Students and College Faculty shall not disclose to any third party, except as permitted or required by law or approved by the Facility in writing, any Student educational records or other information. Students and College faculty shall comply with all federal and state laws and regulations, and all bylaws, rules, regulations and policies of the Facility regarding the confidentiality of the children's information.

Acceptable additions:

To the extent permitted by the Georgia Open Records Act (O.C.G.A. § 50-18-70 et seq.), College agrees that the College will not disclose to others confidential information of the Facility obtained during the course of the clinical experience. Information which the Facility wishes considered confidential shall be clearly marked and identified as "confidential." No copies of confidential information shall be provided to College, College faculty or Students; all written copies are to remain at the Facility. Confidential information shall not include the terms and conditions of this Agreement or any other document the College would be required to produce under the Georgia Open Records Act.

## **Licensing**

The College will not knowingly assign any College faculty to the Facility who is not appropriately licensed or certified and will make evidence of the licensure or certification of its assigned College faculty available to the Facility upon request.

Last Reviewed: October 23, 2020; September 6, 2019

**Attachment: 5.1.2p.a3.**

**Memorandum of Agreement between  
[INSERT NAME] Technical College and  
[CLINICAL SITE]**

**I. Purpose**

The purpose of this Memorandum of Agreement (“Agreement”) is to provide instruction and practice for [INSERT NAME] Technical College Students (“Students”) at the [INSERT NAME OF CLINICAL SITE]. The instruction and practice are intended to benefit the College’s Students in accomplishing their educational goals and create a highly trained workforce.

**II. Parties**

[INSERT NAME] Technical College (hereinafter the “College”) and [CLINICAL SITE] (hereinafter the “Facility”).

**III. Affiliating Agreement**

This is a mutual Agreement between the Facility and the College that allows the Facility to accept early Students for an internship assignment and to provide a structured and supervised classroom environment and varied educational experiences to facilitate desired learning outcomes and practical, on-the-job training. In addition, this agreement provides:

- A. The College will provide educational experiences and the Facility without regard to race, color, national origin, sex, religion, disability, genetic information, or the age of the persons involved; provided, however, that with respect to disability, the disability must not be such as would, even with reasonable accommodation, in and of itself preclude Participant’s participation in the program.
- B. While the educational experiences contemplated by this agreement shall be offered jointly, the College shall maintain control over the curriculum offered to the College’s Students. The Facility shall maintain control and responsibility for the business operations and the patients or children enrolled in the Facility if any.
- C. Educational experiences will be of such content and cover periods that should be mutually agreed upon by the College and the Facility.

**IV. The Facility Agrees to the following:**

- A. Provide appropriate learning environments and educational and learning experiences for Students to enhance their knowledge of their area of study. The number of hours and experience may vary but will be mutually agreed upon with the College.
- B. Ensure that the Facility has on file all documentation required for each student to

participate in an internship at the Facility in compliance with Georgia law and, if applicable, the Regulations of the Georgia Department of Early Child Care and Learning.

- C. The Facility will retain responsibility for the care of the business operations and patients, or children enrolled at the Facility (if any) and will maintain administrative and professional supervision of Students insofar as their presence affects the operation of the Facility and any persons under the Facility's care.
- D. Observe the following personnel policies:
  - 1. Students will be allowed to make up time lost due to approved absences.
  - 2. Faculty employed by the Technical College System of Georgia ("TCSG") or the College will be under the complete jurisdiction of the College's administration.
- E. The Facility shall maintain insurance as it deems to protect itself as appropriate, given the College's limitations on liability for damages as described herein.
- F. Make provisions for orientation of Students and College faculty members to the facilities, philosophies, and policies of the respective Facility. Such orientation shall include instruction on the Facility's privacy policies and procedures, mainly as related to confidential information.
- G. Facility staff shall, upon request, assist the College in evaluating the learning and performance of participating Students. The Facility agrees to keep confidential any Student records or the information it may obtain unless it has otherwise obtained the prior written consent of the student.
- H. Provide a safe work environment for College faculty and Students.
- I. Assist and cooperate with the College in investigations related to complaints related to the educational experience at the Facility.

**V. The College Agrees to the following:**

- A. Provide credentialed College faculty to visit, observe and evaluate each student's success in meeting established learning objectives.
- B. Conduct periodic conferences with Facility staff to discuss Student learning and Student performance.
- C. The College is self-insured under the State of Georgia, Department of Administrative Services, Risk Management Division, against tort claims, including comprehensive automobile liability, in the amount of one million (\$1,000,000) per person and three million (\$3,000,000) per occurrence; the College also maintains

workers' compensation insurance through the State of Georgia.

- D. The Constitution of Georgia prohibits the College from contracting to indemnify or hold any individual or entity harmless. Article VII, Sec. 4, Paragraph 8; Article III, Sec. 6, Para. 6, Constitution of the State of Georgia. The College will be liable only for personal injury or property damage caused by acts or omissions of its employees in the performance of this contract to the extent provided by the Georgia Tort Claim Act (O.C.G.A. § 50-21-20 et seq.)
- E. Maintain the following information on each Student and College faculty member who will be participating in clinicals:
  - 1. [INSERT AS APPROPRIATE. (Examples, "clearance letter" from DECAL, name, address, insurance information, etc.)]
  - 2. [ ]

## VII. Representatives

Any communication regarding this contract should be directed to the following representatives:

For the College:

[INSERT]

For the Facility:

[INSERT]

## VIII. Prohibition of Gratuities

All of the parties hereby certify that the provisions of O.C.G.A. § 45-10-20 through § 45-10-28, which prohibit and regulate certain transactions between State Officials, employees, and the State of Georgia, and O.C.G.A. § 45-1-6, which prohibits gratuities, have not been violated and will not be violated in any respect throughout the term of this Contract.

## IX. Additional Mutual Agreements

- A. [INSERT AS APPROPRIATE. If there are no additional terms, insert "Intentionally left blank."]
- B. [...]
  - 1. The parties shall periodically review the terms and conditions of this agreement viewed by the parties.
  - 2. This agreement will remain effective until [INSERT SPECIFIC EXPIRATION DATE, RECOMMENDED NOT MORE THAN THREE ACADEMIC YEARS].
  - 3. Either party may terminate this agreement upon a 90-day notice in writing to the other party. However, if either party elects to terminate this agreement, it is understood that Students enrolled in the program shall be allowed to complete the whole program.

**C. Entire Agreement**

This Agreement, together with any documents incorporated herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or contracts. No written or oral agreements, representations, statements, negotiations, understandings, or discussions that are not set out, referenced, or expressly incorporated into this Agreement shall be binding or of effect between the parties.

**D. Assignment**

Neither party shall not assign this Agreement, in whole or in part, without the prior written consent of the other party, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect.

**E. Applicable law**

This Agreement shall be governed in all respects by the laws of the State of Georgia.

**F. Amendments in Writing**

No amendment of this Agreement, or any of the terms or provisions hereof, shall be binding upon either party except by a writing executed by both parties.

[INSERT NAME] Technical College

\_\_\_\_\_

\_\_\_\_\_  
President

\_\_\_\_\_  
Signing Party, Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

[INSERT NAME] Technical College does not discriminate based on race, color, religion, national origin, sex, disability, or age in its programs, admissions, employment, or other activities. The following person has been designated to handle inquiries regarding the nondiscrimination policies that include Title VI, Title IX, and 4505. Inquiries concerning the application of this policy may be referred to [contact information for title ix and section 504 coordinators]

## **ADDITIONAL PROVISIONS TO BE INCLUDED AS REQUESTED:**

### **Confidentiality**

Ideal:

Students and College Faculty shall not disclose to any third party, except as permitted or required by law or approved by the Facility in writing, any Student educational records or other information. Students and College faculty shall comply with all federal and state laws and regulations, and all bylaws, rules, regulations, and policies of the Facility regarding the confidentiality of the children's information.

Acceptable additions:

To the extent permitted by the Georgia Open Records Act (O.C.G.A. § 50-18-70 et seq.), College agrees that the College will not disclose confidential information of the Facility obtained during the clinical experience to others. The facility wishes confidential information shall be clearly marked and identified as "confidential." No copies of confidential information shall be provided to College, College faculty, or Students; all written copies are to remain at the Facility. Confidential information shall not include the terms and conditions of this Agreement or any other document the College would be required to produce under the Georgia Open Records Act.

### **Licensing**

The College will not knowingly assign any College faculty to the Facility who is not appropriately licensed or certified and will make evidence of the licensure or certification of its assigned College faculty available to the Facility upon request.



Brian P. Kemp  
Governor

Matt Arthur  
Commissioner

May 6, 2019

To Whom It May Concern:

The Technical College is one of 22 the public colleges comprising the Technical College System of Georgia, a state agency within the executive branch of Georgia's government. As a public institution funded by state-appropriated dollars, there are statutory and constitutional regulations governing our ability to enter into contracts. These regulations are not typically applicable to the private businesses you may regularly contract with and may require some deviation in the standardized contracts you normally utilize with your customers.

In order to assist you in understanding these regulations and, hopefully, minimize any delays in establishing business relationships with our Colleges, I have listed some of the most common contract provisions to which our Colleges cannot agree.

### **1. Indemnification/Hold Harmless Clauses**

Three different legal principles prohibit the College from agreeing to defend a vendor or other third party and/or to hold them harmless from any liability, personal injury, and property damage arising out of the performance of contractual duties.

First, indemnification provisions are void as unauthorized attempts to waive the State's sovereign immunity contractually. An opinion of the Attorney General of Georgia (the "Attorney General") counsels that an unauthorized attempt to waive sovereign immunity through an indemnification agreement would be ultra vires and void. 1980 Op. Att'y Gen. 80-67. The Supreme Court of Georgia confirmed this position, holding that an indemnification clause by a state governmental entity is invalid where the entity lacks the express statutory power to waive its sovereign immunity. *CSX Trans., Inc. v. City of Garden City*, 588 S.E.2d 688, 690 (Ga. 2003).

Second, indemnification provisions violate the gratuities prohibition of the Georgia Constitution. The Georgia Constitution prohibits granting any donation or gratuity or forgiving any debt or obligation owed to the public. Ga. Const. art. III, § VI, ¶ VI(a). It also prohibits the granting or authorization of extra compensation to any public officer, agent, or contractor after the service has been rendered or the contract entered into. *Id.* An opinion of the Attorney General also opines that indemnification provisions are gratuitous undertakings in violation of the gratuities prohibition. 1980 Op. Att'y Gen. 80-67.

Third, indemnification provisions violate the debt restriction on Georgia agencies and authorities. The Georgia Constitution prohibits the state's credit from being pledged or loaned to any individual, company, corporation, or association. Ga. Const. Art. VII, § IV, ¶ VIII. Again, the Attorney General has interpreted the constitutional debt restriction as a prohibition upon a state agency from contractually agreeing to any indemnification and "hold harmless" provisions. 1980 Op. Att'y Gen. 80-67. An indemnification provision is open-ended in nature and thus violates this debt restriction.

## **2. Multi-Year Contract Terms**

Under the Georgia Constitution, the General Assembly has complete and absolute control over revenue appropriations and other sources of state funds from year to year. The College's financial obligations depend on these appropriations made to it in its capacity as a unit of the Technical College System of Georgia. Therefore, colleges may not execute a contract to purchase goods or services that obligates future fiscal years' appropriations. As a result, the term of a contract with the College may not extend beyond the current fiscal year unless the College has on hand, at the time of the execution, the appropriated and dedicated funds sufficient to meet its entire obligation under the contract. The College may enter into a contract that can be renewed at its discretion each fiscal year for multiple years; however, contracts must use specific renewal clauses and funding language, which will provide for the termination of the contract if funds are not appropriated in the following fiscal years. Colleges can also enter into multi-year contracts that do not require any funding. All property leases and other contracts concerning the real property are subject to approval by the State Properties Commission.

## **3. Governing Law/Venue in any State Other than Georgia/Waiver of Jury Trial**

Two statutes prohibit the College from agreeing to jurisdiction or governing law outside Georgia. Georgia law requires that actions be brought only in the Superior Court of Fulton County, Georgia, when involving a state agency's alleged breach of a written contract. O.C.G.A. § 50-21-1(b). Georgia law also requires that all tort actions against Georgia under the Georgia Tort Claims Act be brought only in the state court or superior court of the county where the alleged loss occurred. O.C.G.A. § 50-21-28. Tort actions based on alleged losses sustained outside of Georgia must be brought to the Georgia County of residence of the employee or official upon whose actions the claim is based. *Id.* As such, the College can only agree to jurisdiction in and governing law of Georgia.

In addition, the College cannot agree to any arbitration or waiver of jury trial contract provisions. The Attorney General has exclusive jurisdiction in all legal matters related to the executive branch of the Georgia government. O.C.G.A. § 45-15-34. The Attorney General is the "legal advisor of the executive branch" and is required to "represent the state in all civil actions tried in any court." O.C.G.A. § 45-15-3(4) & (6). Whether a matter involving the

College is litigated before a jury or resolved through arbitration is a decision within the exclusive purview of the Attorney General and cannot be contractually limited or altered by the College.

#### **4. Confidentially/Non-Disclosure Trade Secrets**

The College is subject to the Georgia Open Records Act (O.C.G.A. § 50-18-70 et seq.) which allows any individual to view its records and to make copies for a fee unless the records are specifically exempt from disclosure by state or federal law. While many of our student records are exempt, the documents, contracts, electronic data, e-mails, and other writings generated or received by the College during normal business operations are subject to public disclosure. By its very nature, the contract with the College is a public record. As such, the College cannot agree to contract provisions that restrict it from releasing information related to the contract or information that would otherwise be subject to public disclosure under Georgia Open Records Act. There are provisions for maintaining the confidentiality of valid trade secrets that are required to be submitted to the College by law, regulation, bid, or request for proposal; the provisions are outlined in O.C.G.A. § 50-18-71(a) (34), and vendors who wish to protect Trade Secrets are encouraged to review them carefully before submitting such information to the College.

#### **5. Insurance**

As part of the Technical College System of Georgia, the College is self-insured under the State of Georgia, Department of Administrative Services, Risk Management Division, against employer liability and tort claims, including comprehensive automobile liability, in the amount of one million (\$1,000,000) per person and three million (\$3,000,000) per occurrence; the College also maintains workers' compensation insurance for its employees through the State of Georgia.

Provisions mandating that the College purchase insurance, increase policy limits, or name the vendor or other third party as an additional insured party cannot be included in contracts with the College. The College may be liable only for personal injury or property damage caused by acts or omissions of its employees in the performance of the contract to the extent provided by the Georgia Tort Claim Act (O.C.G.A. § 50-21-20, *et seq.*).

#### **6. Credit Agreements/Interest/Fees for Late Payments**

The College has no legal authority to borrow money, as that right is exclusive to the State by issuing bonds through the Georgia State Finance and Investment Commission. As a result, Colleges may not complete credit applications in conjunction with contracts or agree to interest payment on late payments. In addition, the Attorney General has advised that payment of interest and late fees are also prohibited by the gratuities clause of the Georgia Constitution.

## 7. Unknown Damages, Costs, or Expenses

The legal principles that prohibit the College from agreeing to indemnification clauses also prevent it from entering into any contract that requires it to pay attorney's fees, cost of add-on-goods or services not priced in the contract, unknown cost increases during the life of the contract or any other expense that cannot be calculated. In addition, the College is prohibited from agreeing to pay undisclosed damages to a third party or paying a contract termination fee.

## 8. Granting a Security Interest/Filing a UCC-1

O.C.G.A. § 20-4-14 establishes the powers and duties of the Technical College System of Georgia and its recognized Colleges. While the statute provides for the ability to contract and to receive and hold title to the equipment, it does not confer, either expressly or by implication, the ability to grant a security interest in purchased equipment. Courts have consistently held that State of Georgia governmental entities "ha[ve] only such powers as the legislature has expressly, or by necessary implication conferred upon it." *Bentley v. Board of Medical Examiners*, 152 Ga. 836, 838 (1922); *Floyd County Board of Commissioners v. Floyd County Merit System Board*, 246 Ga. 44 (1980); *Bryant v. Employees Retirement System of Georgia*, 216 Ga. App. 737 (1995). As such, the College may not agree to contractual provisions that grant a vendor a security interest in any real or personal property; and cannot agree to the filing of a UCC-1.

Our colleges have had successful, long-standing business relationships with various vendors who understand the contractual limitations of public institutions. Companies that do business with our colleges recognize them as stable, responsible customers committed to meeting their financial obligations. We hope you can recognize our value as a customer and will accommodate the contractual restrictions in your negotiations with the College.

Suppose you have any questions or concerns regarding the College's ability to contract your goods or services. In that case, you may contact the College's Vice President of Administrative Services or the Technical College System of Georgia's Office of Legal Services.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda Osborne-Smith". The signature is written in black ink on a light-colored background.

Linda Osborne-Smith  
General Counsel / Deputy Commissioner  
Technical College System of Georgia



(COLLEGE NAME)

**Acknowledgment of Criminal History Records Check Requirements  
Early Childhood Care and Education Program**

As a prospective or currently enrolled student in the Early Childhood Care and Education (ECCE) Degree or Diploma program, I, \_\_\_\_\_ (Print Name), have been advised and understand that the established curriculum requires participation in a practicum/lab and an internship. I also understand that the Technical College System of Georgia (TCSG) and its associated Technical Colleges operating a child enrichment center or group day care home follow all Rules and Regulations established by the Georgia Department of Early Care and Learning regarding the operation of these facilities.

Additionally, these Rules and Regulations and the authorizing legislation require all individuals (including ECCE students) performing duties/tasks in a paid or unpaid capacity that involve personal contact with any child being cared for by a public or private child care learning center, group day care home, or family day care home to undergo a fingerprint-based criminal records check as well as a review and evaluation of their criminal history records. Concerning my participation in a practicum/lab or internship, I also understand that there may be additional standards established by individual site operators that I must meet and that my placement at a particular site for a practicum/lab or internship is contingent upon acceptance by the individual operator.

I acknowledge and understand that before I can be placed in a practicum/lab or internship on or after January 1, 2014, I must be fingerprinted and receive a satisfactory fingerprint record check determination from the Georgia Department of Early Care and Learning. Suppose I receive an unsatisfactory fingerprint record check due to my criminal history. In that case, I understand that I cannot participate in the required practicum/lab and/or internship unless the unsatisfactory determination is reversed. I also acknowledge that I have been provided with the definition of a "crime" for which a past conviction; entering a plea of nolo contendere; or the existence of a pending charge will likely prevent me from working/serving in a childcare learning center, group day-care home, or family day-care home in a position which involves personal contact with children.

I understand that if I receive an unsatisfactory fingerprint record check determination from the Georgia Department of Early Care and Learning, I will be provided an opportunity to show that the record is in error and/or to appeal the determination by requesting a hearing before an Administrative Law Judge at the Office of Administrative Hearings.

I also acknowledge and understand that if an unsatisfactory determination from the Georgia Department of Early Care and Learning is not reversed; if I am unable to meet another practicum/lab or internship requirements established by an individual site operator; if I am removed from and cannot return to complete a practicum/lab or internship placement in response to an arrest, conviction, or other change(s) in my criminal history status involving a covered crime; or, if I fail to meet other established academic requirements associated with the ECCE program, I will be unable to graduate from \_\_\_\_\_ Technical College with an Early Childhood Care and Education Degree or Diploma.

I understand that I am responsible for all costs associated with the above referenced fingerprint records check. I also understand that the Georgia Department of Early Care and Learning reserves the right to require me to undergo an additional fingerprint record check if the agency has reason to believe that I possess a criminal record that renders me ineligible to have contact with children in my internship or practicum/lab site. I understand that I will also be responsible for all costs associated with any additional fingerprint record check(s) that may be required.

I acknowledge that I have reviewed the attached Early Childhood Care and Education Program Disclosure of Arrest/Conviction Form. I understand that if I am arrested, convicted of any crime, or subject to any other criminal history status change for a covered crime while performing an internship or practicum/lab in a child enrichment center or group day care home operated by a Technical College associated with the Technical College System of Georgia, I must verbally notify and provide \_\_\_\_\_ (Name of Child Enrichment Center/Group Day Care Home Director) a completed Disclosure of Arrest/Conviction Form no later than three (3) calendar days following the arrest, conviction, or change regarding my criminal history status.

\_\_\_\_\_  
Student Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
College Representative Signature

\_\_\_\_\_  
Date

Attachments:      Covered Crimes and Offenses  
                         Disclosure of Arrest(s)/Conviction(s) Form

NOTE: A copy of the completed Acknowledgment Form will be provided to the student, and a copy will be retained by the ECCE Program Director or other designated college official.

# Covered Crimes and Offenses

While not exhaustive, the following is a list of covered crimes and offenses for which an arrest, charge, or conviction could prevent an individual from placement/working in a child care center or other settings which involve direct contact/care of a child:

- any felony;
- a violation of O.C.G.A. § 16-5-23, relating to a simple battery where the victim is a minor;
- a violation of O.C.G.A. § 16-5-23.1 relating to the battery when the victim is a minor;
- a violation of O.C.G.A. § 16-21.1 relating to contributing to the delinquency of a minor;
- a violation of O.C.G.A. § 16-6-1 et. seq., relating to sexual offenses;
- a violation of O.C.G.A. § 16-4-1, relating to criminal attempt when the crime attempted is any of the crimes specified by this paragraph; or,
- any other offenses committed in another jurisdiction which, if committed in this state, would be one of the enumerated crimes listed above.