

Attachment A

PROCEDURES FOR COMPLETING THE UNIVERSITY OF UTAH PROFESSIONAL SERVICES/CONSULTANT FORMS

I. Standard Processes:

Contracting for consulting and/or professional services with the University of Utah requires the completion of three forms: (1) Professional Services/Consulting Agreement with Standard Provisions, (2) Employee vs. Independent Contractor Checklist, and (3) an IRS Form W-9 if the Consultant/Independent Contractor is providing their taxpayer ID on the agreement.

- A. The individual or unit requesting the services of the service provider should complete sections I through III of the Consulting Agreement, completing the information in as much detail as possible. Much of the information will need to be provided by the proposed service provider.
- B. The individual or unit should then complete the Independent Contractor Checklist which will lead to a determination of whether the service provider will be classified as a consultant or a University employee. If the individual or unit is in doubt after completing the form, they should contact Tax Services for clarification.

Note: If the Independent Contractor Checklist leads you to the conclusion that this service provider should be classified as an employee, the service provider should be retained by following the University's policies and procedures on hiring temporary or permanent employees as appropriate.

- C. Once both the Independent Contractor Checklist and sections I through III of the Consulting Agreement are completed, two copies of the Consulting Agreement and Standard Provisions should be sent to the Consultant for his/her signature.
- D. Depending upon whether or not an externally sponsored project is involved, one of two procedures should be followed:
 - 1. When the Consultant's duties involve an externally sponsored project, a copy of the Consulting Agreement and Standard Procedures along with the Independent Contractor Checklist should be sent to the appropriate administrator in the Office of Sponsored Projects at the same time that it is sent to the Consultant.

Note: If the Consultant returns the signed agreement with no changes, the Director of Sponsored Projects will sign the agreement, forward it to Research Accounting, return an original to the Consultant, and send a copy of the completed agreement to the PI.

- 2. When no externally sponsored project is involved, the signed agreement should be forwarded to the Dean or Director for approval and signature. The Consulting Agreement, Standard Provisions, and Independent Contractor Checklist are then sent to Accounts Payable for processing and standard procedures should be followed for payment to the Consultant.

II. Completion of Amended Agreements

- A. When a federal grant or contract is supporting the Service Provider, the Office of Sponsored Projects will negotiate terms and conditions.
- B. If the Consultant wishes to negotiate or delete any of the Standard Provisions, the following offices must be contacted prior to the Dean's approval and signature for the University. Once an approved change has been made, these offices will signal approval by initialing the change.
 - 1. No change can be made to Sections 2, 10, and 13 when applicable.
 - 2. Proposed changes to Sections 6, 7, 11, and 12 should be forwarded to the Office of Risk Management.
 - 3. Proposed changes to Sections 4 and 5 should be referred to the Office of Technology Transfer.
 - 4. Proposed changes to other sections should be referred to the Office of General Counsel.
- C. Once the Agreement has been approved, it should then follow normal channels (i.e., sent through the Dean's Office for signature and forwarded to Accounts Payable).

PROFESSIONAL SERVICES/CONSULTING AGREEMENT

THIS AGREEMENT is entered into by and between the University of Utah (hereinafter University) and _____ hereinafter Consultant.

WHEREAS, the University desires that Consultant perform certain services on the terms and conditions herein set forth, and

WHEREAS, the Consultant is available, willing and qualified to perform the services for the University.

NOW, THEREFORE, it is stated and mutually agreed as follows:

I. NATURE AND EXTENT OF SERVICE

The services to be provided are to be performed under a grant or a contract? YES No

If yes, state grant or contract number _____

The services to be performed by Consultant and required deliverables are incorporated by reference of Appendix A, Statement of Work.

- a. This agreement shall be effective from the _____ day of _____, 20____ to the day of _____, 20____, unless amended by written agreement of the parties indicated in Section IV below. Signatures of original parties are required for amendments to this agreement.
- b. Schedule for performance or delivery shall be as follows:

II. COMPENSATION AND REIMBURSEMENT OF EXPENSES

- a. Describe in detail the compensation arrangements with the Consultant for services performed hereunder. State the amount or rate to be paid. Also describe any expenses that the University will reimburse.

Compensation rate: _____ Total Compensations: _____

- b. Description of documentation required for payment (check request, consultant invoice, certificate of completion, etc.)

III. SUPPORTING INFORMATION

- a. The services to be provided under this agreement are essential and cannot be provided by employees of the University for the following reasons: (Be specific)

- b. Consultant's qualifications to perform this agreement are summarized as follows:
 1. Experience

 2. Resources (Number of employees, facilities, equipment, materials, etc.)

- c. The services to be performed under this agreement will be of benefit to the project identified above and meet the needs of the University because: (Be specific)

- d. Justify the rate of compensation to the Consultant. Include other bids if obtained. If Consultant is considered to be a single source provider, explain reasoning. Attach additional sheets if necessary.

IV. APPROVAL SIGNATURES

By execution of this agreement, Consultant specifically consents to and agrees to comply with the Standard Provisions accompanying this agreement and incorporated by reference, so far as applicable hereto, as well as the provisions set out above unless specifically waived. In addition the Employee vs. Independent Consultant or Contractor Classification Checklist has been completed and included as an addendum to this agreement. This constitutes the entire agreement and supersedes all prior written and oral agreements and may be amended only in writing and duly signed by an authorizing official.

This agreement has been duly executed by the undersigned on the dates specified as follows:

CONSULTANT	UNIVERSITY OF UTAH
SIGNATURE OF CONSULTANT OR AUTHORIZED AGENT	SIGNATURE OF PROJECT DIRECTOR
DATE	DATE
PLEASE PRINT OR TYPE THE FOLLOWING	
FULL NAME OF CONSULTANT	NAME AND TITLE OF PROJECT DIRECTOR
CONSULTANT'S STREET ADDRESS	CHARTFIELD TO BE CHARGED
CONSULTANT'S CITY, STATE, AND ZIP CODE	APPROVED **/*** OFFICE OF SPONSORED PROJECTS
CONSULTANTS TELEPHONE NUMBER	DEPARTMENT CHAIR, DEAN'S, OR DIRECTOR'S SIGNATURE
CONSULTANT'S TAXPAYER ID (NOTE: USE ONLY THE SOCIAL SECURITY NUMBER OR EMPLOYER ID NUMBER FROM AN IRS FORM W-9 COMPLETED BY THE CONSULTANT OR THEIR AGENT. BLANK FORMS ARE AVAILABLE FROM TAX SERVICES OR FROM THE ACCOUNTS PAYABLE WEB PAGE. ATTACH THE COMPLETED W-9 TO THIS AGREEMENT.)	PRINT OR TYPE CERTIFYING AUTHORITY'S NAME AND TITLE

* IF CONSULTANT IS A NONRESIDENT ALIEN, A STATEMENT OF CITIZENSHIP AND RESIDENCE STATUS MUST BE COMPLETED AND ATTACHED.

** THE DEPARTMENT IS RESPONSIBLE FOR DETERMINING I-9 AND VISA CERTIFICATION.

*** IF CONSULTANT IS A UNIVERSITY EMPLOYEE, THE SIGNATURE OF THE DEPARTMENT CHAIR/DEAN/DIRECTOR REPRESENTS CERTIFICATION THAT THE SERVICES TO BE PROVIDED UNDER THIS CONTRACT ARE ACROSS DEPARTMENTAL LINES AND ARE NOT PART OF THE EMPLOYEE'S REGULAR DUTIES.

STANDARD PROVISIONS

1. PAYMENT PROCEDURE

Payment will be made in accordance with the University's standard fiscal procedures upon submission of an invoice by the Independent Consultant setting forth charges in accordance with the provisions of Paragraph II above. Unless otherwise specified in paragraph II above, travel expenses, when reimbursable, will be subject to rate limitations specified in approved University travel policy. Invoices must show the Consultant's taxpayer identification number (Social Security Number or Employer Identification Number).

2. TAXES

The Consultant shall be responsible for, and the compensation stated herein includes, all applicable taxes. After payment of any invoice, the amount will not be changed as the result of the Consultant's failure to include any applicable tax, or as the result of any change in the Consultant's tax liabilities.

3. ASSIGNMENT OR SUBCONTRACTING

The Consultant may not assign or transfer this agreement or any interest or claim arising under this agreement, nor subcontract any portion of the work to be performed hereunder, without the prior written approval of the University.

4. PATENTS

Whenever any invention or discovery is made or conceived by the Consultant in the course of or in connection with services performed under this agreement, the Consultant shall furnish the University with complete information with respect thereto and the University shall have the sole power to determine whether and where a patent application shall be filed and to determine the disposition of title to and all rights under any application or patent, consistent with University's patent policy (University Policy and Procedure 6-4). The Consultant will, upon request by the University and at its expense, execute all documents and do all things necessary or proper with respect to such patent application.

5. COPYRIGHT

The University shall have the sole power to determine whether or not to copyright any published report or other document which results from the services performed under this agreement. The Consultant will, upon University's request and at its expense, execute all documents and do all things necessary or proper with respect to the copyright.

6. CONSULTANT'S LIABILITY

The University shall not be liable or responsible for injuries or damages caused by any act or omission of the Consultant in the course and scope of performance of services under this agreement, and the Consultant agrees to indemnify and hold the University harmless from and against the same.

7. INSURANCE AND INDEMNIFICATION

The University and the Consultant hereby agree and acknowledge that the Consultant is paid as an independent consultant or independent contractor, and will not present or allege or claim to third persons in any manner whatsoever that it is affiliated with, controlled by, or an agent or employee of the University of Utah. The Contractor agrees to defend, indemnify and hold the University harmless for any liability arising out of this agreement or out of Consultant's acts or omissions. Consultant also agrees to defend, indemnify, and hold the University harmless for any liability arising from claims by Consultant's employees for injury, salary, compensation expenses, unemployment compensation and/or worker's compensation.

NOTE: The following statement is the University's standard clause relating to insurance for consultants and other personal service providers and will be required in agreements that could cause the University undue risk.

Prior to performing any functions under this agreement, Consultant will provide a certificate of Commercial General Liability insurance with limits of at least \$1,000,000. Such insurance will list the University as an additional insured, include a 30 day notice of cancellation and be written by an insurance company acceptable to the University. Certification is also required for Professional Liability Errors and Omissions, Worker's Compensation/Employer's Liability and Automobile Liability insurance, if applicable to the performance of the contract.

8. EXAMINATION OF RECORDS

The University, and the other contracting party or grantor if the applicable contract or grant so provides, shall have access to and the right to examine and make copies of any pertinent books, documents, papers and records of the Consultant involving transactions and services related to this agreement until the expiration of three years after final payment hereunder. If legal proceedings are brought by the University to enforce this right of examination, the Consultant agrees to pay the reasonable cost of suit incurred by the University, including attorney fees.

9. CONFLICT OF INTEREST

The Consultant will not hire any officer or employee of the University to perform services covered in whole or in part by this agreement. If the agreed services are to be performed in connection with a federal contract or grant, the Consultant will not hire any employee of the United States Government to perform any service covered in whole or in part by this agreement.

The Consultant affirms that the performance of services under this agreement will involve no actual or potential conflict of interest with the Consultant's family, business or financial interest. In the event of any material change in the Consultant's private interest, the Consultant agrees to advise the University of any question regarding possible conflicts of interest which may arise as a result of such changes.

10. NONDISCRIMINATION AND AFFIRMATIVE ACTION

The Consultant agrees to comply with all requirements of the State of Utah or federal law relating to nondiscrimination and affirmative action, and hereby undertakes specifically: to maintain employment policies and practices that affirmatively promote nondiscrimination and equality of opportunity without regard for race, color, ethnic origin, religion, sex, age, handicapped status, lack of United States citizenship or status as a disabled veteran or veteran of the Vietnam era; to communicate such policies and practices to all persons employed by the Consultant, to outside recruiting services, and to all applicants for employment; to provide the University on request a labor force analysis statistically arrayed by protected group and job category; and to discuss with the University all policies and practices relating to the Consultant's equal employment opportunity and affirmative action program.

11. APPLICABLE LAW

This agreement shall be governed by the laws of the State of Utah.

12. RESOLUTION OF DISPUTES

Any dispute concerning a question of fact under this agreement shall be presented to the University for resolution. Disputes that cannot be resolved by the University shall be determined by a court of competent jurisdiction in the State of Utah.

13. TERMINATION

This agreement may be terminated by either party for no cause or in the event of substantial failure by the other party to fulfill its obligations under this agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given a) not less than ten (10) calendar days written notice (by certified mail, return receipt requested) of intent to terminate; and b) an opportunity for consultation with the terminating party prior to termination. Upon receipt of a termination action the Consultant shall promptly discontinue all affected work. In the event of such termination, the Consultant shall be entitled to receive just and equitable compensation for any specific services completed in a satisfactory manner as of the date of termination, as determined by the Consultant and University. Such compensation shall not exceed the maximum amount payable under this Agreement.

14. F A R Clause (as applicable)

252.203-7003 Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former Department of Defense (DoD) Employees.

10 U.S.C. 2397b and 2397c prohibit a major defense contractor from offering or providing any compensation valued in excess of two hundred fifty dollars (\$250) to a former Department of Defense (DoD) employee, to perform procurement related functions in connection with that same defense contractor. This prohibition runs for the two-year period beginning on the date of such person's separation from service in DoD.

Consultant certifies to the above and that he/she is not debarred or suspended from receiving federal funds.

THE UNIVERSITY OF UTAH

EMPLOYEE/INDEPENDENT CONTRACTOR CLASSIFICATION CHECKLIST

The information provided below will assist you in determining whether the service provider will be classified for federal, state and FICA tax purposes as an employee of the University or as an independent contractor. An employer must generally withhold income taxes, withhold and pay social security and Medicare taxes, and pay unemployment taxes on wages paid to an employee. An employer does not generally have to withhold or pay any taxes on payments to independent contractors. Check only the "Yes" responses that apply. If a response box is left blank or unchecked, it will infer a "No" response.

I. General Information

Is the service provider a "guest lecturer" (e.g. an individual who lectures at only a few class sessions)? **Yes** If "Yes" and the account is not a contract or grant then ignore this form and complete a "GUEST LECTURER/PERFORMER AGREEMENT."

Service Provider's Name

Social Security Number

Account Number

Department

Preparer's Name

Preparer's Phone Number

II. Relationship with the University

- A. Does this service provider currently work for the University as an employee? **Yes**
- B. Is it currently expected that the University will hire this service provider as an employee following the termination of his or her consulting service? **Yes**
- C. During the past 12-months, did the service provider have an official University appointment (including temporary) and provide the same or similar services? **Yes**

If the answer is "Yes" to any of the above three questions, the preparer should proceed to Section VI. and classify the service provider as an employee. Otherwise, continue to Section III.

III. Behavior Control

1 A. Instructions

1. Will a current University employee, have the right to instruct the service provider about **how to do** the work? **Yes**
2. Will the University supply necessary tools, materials, and equipment? **Yes**
3. Will the University provide assistants? **Yes**
4. Is the effort and expertise of this specific service provider required? **Yes**
5. Is the order or sequence to follow specified in the pro forma contract? **Yes**
6. Will the service provider prepare regular verbal or written progress reports? **Yes**

1 B. Training

Will the University provide periodic or on-going training for the service provider about procedures to be followed and methods to be used? **Yes**

IV. Financial Control

- 2 A. Will the University reimburse the service provider for out-of-pocket expenses that are not included in the agreement? **Yes**
- 5 B. Will the service provider use their own facility in which to perform their services? **Yes**
- 5 C. Does the service provider provide the same or similar services to other entities as part of a trade or business? **Yes**
- 5 D. If the answer to "C." is "Yes" then do they have a business license? **Yes**
- 5 E. Does the service provider make his or her services available to the general public? **Yes**
- 2 F. Is the service provider compensated for the work on an hourly, daily, weekly, or similar basis? **Yes**
- 5 G. Is the service provider free to make business decisions which affect the **service provider's** profit or loss? **Yes**

V. Relationship of the Parties

- 36 A. Can the University withhold payment for unsatisfactory work? **Yes**
- 4 B. Will the service provider receive or be entitled to benefits such as paid vacation days, paid sick days, health insurance, life or

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- disability insurance, or a pension. **Yes**
- ④ C. Can the worker terminate the services at any time without incurring a liability? **Yes**
- ⑥ D. Is the service provider teaching a course for which students will **NOT** receive credit toward a University degree. **Yes**

VI. Classification

*Either classification (independent contractor or employee) is a valid and appropriate business choice. **Consequences of treating an employee as an independent contractor:** If you classify an employee as an independent contractor and you had no reasonable basis for doing so, you can be held liable for employment taxes for that service provider.*

Key considerations:

The service provider should be classified as an employee if any of the following conditions are met. If you do not agree with this conclusion, follow the instructions under “Key Notes” below.

- ① • You answered “Yes” to any question in **both** Sections III A. & B. These responses show that the University has the right to direct and control how the service provider does the task for which the service provider was hired.
- ② • You answered “Yes” to Sections IV. A. & F. These responses show that the University has the right to control the business aspects of the service provider’s job.
- ③ • The answer to Section V. A. is not “Yes.” If the University cannot withhold payment to the service provider, the service provider should be classified as an employee.
- ④ • The answers to Sections V. B. and C. are both “Yes.”

The service provider should be classified as an independent contractor if:

- The above considerations for classifying the service provider as an employee are inconclusive, and
- ⑤ • The answers to Sections IV. B., C., D., E., and G. are all “Yes,” or
- ⑥ • The answers to Sections V. A. and D. are both “Yes.”

Key Notes: *If the service provider is classified as an employee, based upon the above considerations, submit this form along with the completed Personnel Action Notification form to Human Resources. If you do not agree with this classification, and have corroborating reasons why the service provider should be classified as an independent contractor, please explain in the space provided below.*

VII. Certification

After comparing my responses in Sections II through IV with the “Key considerations” above, in my judgement we should classify this service provider as an independent contractor.

Signature of Preparer

Date

I have reviewed this document and the responses herewith and agree with the above conclusion.

Signature of Principal Investigator/Account Executive

Date

Special instructions: If the service provider is classified as an Independent Contractor, complete a Professional Service Agreement and submit the required documentation to the Office of Sponsored Projects, Accounts Payable, or Hospital Accounts Payable as appropriate.