

Policy 4-14 Rev 3
Date April 15, 1991

**Subject: INDEPENDENT CONSULTANT AND INDEPENDENT CONTRACTOR
PROFESSIONAL SERVICE AGREEMENTS**

I. PURPOSE

To outline university policy governing the use of agreements for the services of independent consultants and certain independent contractors.

II. REFERENCES

- A. [Policy and Procedures No. 2-26](#), Remunerative Consultation and Other Employment Activities
- B. [Policy and Procedures No. 2-30](#), Conflict of Interest
- C. [Policy and Procedures No. 2-67](#), Additional Compensation and Overload Policy
- D. [Policy and Procedures No. 3-24](#), Honorarium Payments
- E. [Policy and Procedures No. 4-5](#) Solicitations of Bids, Proposals and the Award of Procurement Contracts

III. DEFINITIONS

A. Employer-Employee Relationship:

A relationship that exists when the university has the right (whether or not it exercises the right) to supervise and control the manner of performance as well as the result of the service.

B. Independent Contractor Relationship:

A relationship that exists when the university has the right to control only the result of the

service, not the manner of performance.

C. Responsible Administrative Officer:

A university officer holding a position as department head or director or higher rank who exercises immediate line responsibility over the project director or other person requesting authorization to enter into an agreement to engage the services of an independent consultant or independent contractor.

D. Independent Consultant:

An individual or organization under agreement to provide primarily professional services (including legal, accounting, actuarial, scientific, engineering, etc., or technical advice to the university) in an independent contractor relationship.

E. Independent Contractor:

An individual or organization under agreement to provide services at a stated price or rate. An independent professional contractor differs from an independent consultant in that the consultant's service is, for the most part, that of providing professional or technical advice, whereas the contractor's service is to perform specific tasks.

IV. SCOPE

A. The policies and procedures set forth herein apply to securing the services of independent consultants and independent professional persons with respect to all university activities, except as provided in paragraph IV. B.

B. The policies and procedures as set forth herein do not apply to:

1. Appointment of architects, engineers and design consultants engaged in accordance with the applicable provisions of [Policy and Procedures No. 4-5](#)

2. Contracted services provided by nonfederal funds as follows:

- a. Contracted services acquired through the Purchasing Department.

b. Appointment of a consultant by or with the approval of the Board of Trustees, the president or a vice president.

3. The procurement of services of contractors other than professional persons or independent consultants.

4. Contracted entertainment services where a formal entertainment agreement is prepared and submitted as documentation to support payment from nonfederal funds.

5. Payments made to donors and other laboratory subjects for incidental services provided, such as blood donations, experimental tests and/or samples, etc.

6. Payment from funds other than restricted accounts (account numbers 5-20000 - 5-39999) of fees or honoraria to occasional guest lecturers, or participants in academic programs, who are not employed by the university. (See [Policy and Procedures No. 3-24.](#))

V. POLICIES

A. An agreement for services, properly prepared in accordance with Section VI of this Policy and Procedure (see Attachment A), and an [Employee/Independent Contractor Classification Checklist](#) (see [Attachment B](#)) must be duly executed before payment for consulting or professional services can be made to an independent consultant or independent contractor. Such agreements are appropriate under the following conditions:

1. When specifically authorized in the provisions of a contract or grant and payment is from restricted funds.

2. When paid from general and development funds, and a determination has been made by a responsible administrative officer that the services are special, temporary or highly technical in nature and cannot be performed economically or satisfactorily by existing university personnel during the course of their normal university responsibilities or duties.

B. The use of consulting and professional service agreements under this Policy and Procedure is expected to be infrequent and primarily for the purpose of solving clearly delineated problems

of short-term duration or to provide specific expertise not otherwise available.

1. Selection of individuals to perform such services shall be made on the basis of qualifications, resources, experience, needs of the university and cost to the university.

2. An employee of the university may be engaged as a consultant or to provide professional services as an independent contractor only if the contract services to be performed (a) are not within the normal performance expectations of the university arising from the employee's university position, (b) are to be performed outside of the normal working time and work assignment of the employee and not under the direction, supervision, or control of the university, (c) do not involve a conflict of interest prohibited by the Utah Public Officers' and Employees' Ethics Act (see [Policy and Procedures No. 2-30](#)), and (d) are to be provided across departmental lines, i.e., are not to be performed for an officer or principal investigator who holds an appointment in the same academic department or other operating unit as the contractor.

3. The specialized and unique qualifications required of independent consultants and independent professional service contractors are incapable of being evaluated on a comparative basis in relation to objective criteria or specifications. Accordingly, the selection of such individuals shall be done on an informal basis and without competitive bids or proposals.

C. An independent consultant or contractor may not be used to direct or carry out any major portion of a program. If it is desired to engage the services of an individual to direct or to participate extensively in a continuing program, that person must be employed through established university employment procedures.

D. Independent consultants and independent contractors, as such, are not employees and shall not be entitled to employee benefits. They shall not be described or recognized other than as "consultants or independent contractors" in any published report or other document relating to the services covered by the agreement.

E. An independent consultant or professional service contractor may not hire any employee of the university to perform any service covered by the consultant or contractor agreement. In addition, if the work is to be performed in connection with a federal contract or grant, an independent consultant or professional service contractor shall not be a federal employee; and the independent consultant shall not hire any employee of the U.S. Government to perform any service covered by the agreement unless the express written approval of the responsible federal contracting agency is obtained first.

VI. PROCEDURES

A. Written Agreement for Services

1. Any agreement for the services of an independent consultant or independent professional contractor, which is not excluded from this policy by Section IV. B. above, shall be prepared in the approved standard form (see Attachment A).
2. The agreement is binding upon the university only if it is signed by the project director or other authorized officer and by the responsible administrative officer.
3. The following additional procedures must be followed for an agreement funded in whole or in part through restricted accounts (account numbers 5-20000 - 5-39999):
 - a. After approval and signature under paragraph 2, the agreement must be transmitted to the Office of Sponsored Projects for review to assure compliance with federal regulations and final approval and signature by the vice president for research or designee.
 - b. When the vice president for research or designee is satisfied that the agreement has been duly executed by the university and the consultant or contractor, a photocopy of the original fully-signed agreement, together with a copy of all supporting documents shall be transmitted to the Accounts Payable Office. The original agreement and supporting documents shall be kept on file in the Office of Sponsored Projects.
4. There shall be no extension of the termination date, expansion of the scope of the original agreement, or increase in amounts payable thereunder without prior written approval by the responsible administrative officer or authorized representative. Modifications and amendments to agreements funded in whole or in part through restricted accounts (account numbers 5-20000 - 5-39999) must also receive the approve of the vice president for research, or designee, after review as provided in 3 above.
5. A purchase order may not be used in lieu of an agreement required by this Policy and Procedure as a means of securing and paying compensation for the services of an independent consultant or an independent professional service contractor.

6. An honorarium payment may not be used in lieu of an agreement required by this Policy and Procedure as a means of paying compensation for services to the university. (See [Policy and Procedures No. 3-24.](#))

B. Required Documentation

1. Documentation required with each request for payment of services covered under this policy must include the following:

a. A completed check request signed by the appropriate administrative officers. The signature of the officers signifies and acknowledges that performance has been rendered in accordance with the contract. Except as provided in paragraph 2, consultant services will be charged to subcodes 3200-3209, and independent professional contractor services will be charged to subcodes 3250-3259.

b. If the consultant or independent professional contractor is an employee of the university, payment must be requested on an additional compensation form and submitted to payroll for processing. These payments must be charged to subcodes 2400-2499.

c. A copy of the executed agreement for services, as defined in Section VI. A., which provides for:

(1) Nature and extent of services.

(2) Compensation and reimbursement of expenses.

2. In addition to the requirements of paragraph 1, requests for payment of consultant or professional service contract charges from federal funds (account numbers 5-20000 - 5-39999) must be accompanied by:

a. A statement indicating in what respects any services charged to a federal contract or grant will benefit the project.

b. An invoice supplied by the contractor or consultant which specifies:

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 - b. When the vice president for research or designee is satisfied that the agreement has been duly executed by the university and the consultant or contractor, a photocopy of the original fully-signed agreement, together with a copy of all supporting documents shall be transmitted to the Accounts Payable Office. The original agreement and supporting documents shall be kept on file in the Office of Sponsored Projects.
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5. A purchase order may not be used in lieu of an agreement required by this Policy and Procedure as a means of securing and paying compensation for the services of an independent consultant or an independent professional service contractor.

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:

Name & Tile of Project Director

Full Name

Account Number to be charged:

Street Address

Approved: **/**

City, State, Zip Code

Office of Sponsored Projects

Telephone

Tax ID Number
(Social Security
Number or Employer
ID Number)

* If Consultant is a nonresident alien, a statement of citizenship and residence status must be completed and attached.

***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.

**The department is responsible For determining I-9 and Visa Certification.

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.

OUTDATED