Policy for Hiring Consultants/Independent Contractors

Introduction
When hiring individuals as consultants/independent contractors, the designation of independent contractor status is governed by the Internal Revenue Service (IRS) tax code and common law. Significant tax penalties exist for incorrect classification of an employee as an independent contractor. In addition, contracting with consultants and independent contractors may expose the University to significant risk. Therefore, it is imperative that common standards are applied in classification and contracting, and that each case is fully documented and auditable. Use the Determination of Status Form to assist in making the determination.

In addition, the contracts used to engage consultants and independent contractors are important legal documents that serve to clarify responsibility and expectations which are important protections to both parties in the contract.

Policy Statement
This policy applies to anyone wishing to contract for supplemental services to be paid by Brown University regardless of the source of funds. This policy supersedes all previous policies. A department intending to engage a service provider as a consultant, or independent contractor must follow University approval and contracting procedures prior to the start of any work or performance of services.

Individuals currently or formerly (within the calendar year) employed by the University may not provide services to University as an independent contractor. Please refer to the section on Current and Former University Employees.

A professional services agreement is a contract. Changing the terms and conditions of an existing contract requires the completion of an Amendment to Professional Services Agreement form. A contract cannot be amended after it has expired or once the contract amount has been spent. If the original contract period has passed, a new contract is required for the performance of additional services by the same supplier.

Definitions
Professional and Consulting Services: Professional and Consulting Services are usually customized services that utilize specialized intellectual or creative expertise based on personal skills or ideas of an individual(s) or company that are provided for a fee, which may be determined individually with each customer for each service contract.

Standard Services: Standard Services are services that are routinely provided to a large number of customers usually at published rates without significant customizing. Some examples of this type of service are: repair services, small equipment rental, and laboratory testing services. A professional services agreement is not required for Standard Services. For Standard Services, the bid or quote for services to be provided, in combination with a University issued purchase order, with standard University terms and conditions, will serve as the contract.

Responsibilities
For Brown University representative initiating a professional services agreement:

- Review each professional services agreement for content and compliance with policy
- Determine appropriate status (independent contractor vs. employee)
- Ensure that an approved contract is in place before service is provided. (PSA or contract specifically drafted by OGC)
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- Follow appropriate procedures for payment.
- Follow University signature authority policy for PSA’s

Office of Sponsored Projects - For professional services agreements charged to grants or sponsored contracts:

- Review all professional services agreements charged to grants and contracts to ensure that the service provided falls within provisions of the funding agency.

Office of the General Counsel:

- Review professional services agreements in excess of $50,000.
- Draft specialized professional services agreement for any service where the standard professional services agreement does not meet the needs of the department or, for services that require specialized contract language. (Such as: construction, fundraising, investment services, computer programming/software development, advertising/marketing, performance or visual arts, social media/web services).
- Review and approve professional services agreements/contracts that are not on a University standard form, regardless of the amount. (OSP and Purchasing also review contracts that their areas have been authorized by the corporation to approve).
- Review amendments that cause the total value of the PSA to exceed $50,000.

Independent Contractor Responsibilities:

- Provide detailed and accurate information for determination of status and contract formulation.
- Be in receipt of a signed professional services agreement or purchase order prior to providing services.
- Provide appropriate documentation (an invoice) for payment of services.
- Register with the State of Rhode Island when payment will exceed $5,000 and the length of service will be 30 continuous days or more. http://www.dlt.ri.gov/wc/icmain.htm

Independent Contractors can choose to register with the RI Department of Labor for consulting work provided at a lesser dollar amount. However, Brown requires that this registration be completed for consulting work performed for more than 30 days and in excess of $5,000. This practice supports the University’s efforts to make an appropriate determination of the proper status of the consultant (independent contractor vs. employee).

- Complete Brown University Supplier and Individual Payee Registration process: http://brown.edu/Administration/Purchasing/ This step is required for set up in the University’s procurement system and to provide the information needed for compliance with IRS requirements.
- Individuals who are not United States citizens will need to complete additional tax forms in order to receive payments. Contact the Brown University department you are working with for additional information.

Determination of Status Procedure

When hiring an individual, a determination must be made as to whether the service provider will be an employee of the University or an independent contractor. The Determination of Proper Status section of the PSA template for individuals provides questions that assist university personnel in making the correct relationship determination. Proper classification of a service provider ensures that the University
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is in compliance with the following: the Fair Labor Standards Act and Immigration and Naturalization Service’s regulations, as well as statutes regarding income tax withholding, unemployment insurance taxes, Social Security, and Medicare taxes. A misclassification may result in taxes, interests, and penalties being assessed by the IRS. If this happens, departments will be billed for their proportional taxes, interests, and penalties.

Procedures
OGC has developed templates for PSA’s

- Professional Service/Consultant Agreements up to $5,000 (abbreviated PSA)
- Professional Service/Consultant Agreements over $5,000 (choose the version for individual consultants or company)

In addition, for Guest Speakers who will be paid up to $5,000, OGC has provided the Guest Speaker Payment Authorization form (GSPA).

Fees paid to consultants/independent contractors who are US residents and earn more than $600 in a calendar year, will be reported to the IRS and the individual will receive an IRS Form 1099 Misc (Miscellaneous Income) for tax purposes. Fees paid to consultants/independent contractors who are foreign nationals will be reported to the IRS and the individual will receive an IRS Form 1042S for tax purposes.

OGC has also developed specialized contract templates for some departments (Student Activities, Music Department, Center for Public Policy, and the Brown Alumni Monthly) Departments with contracts prepared by the Office of the General Counsel may continue to use those contracts.

Professional Services Agreements are not required for Standard Services. Standard Services are services that are routinely provided to a large number of customers usually at published rates without significant customizing. Some examples of this type of service are: repair services, small equipment rental, and laboratory testing services. A professional services agreement is not required for this type of work. For these types of services, the bid or quote for services to be provided, in combination with a University issued purchase order, with standard University terms and conditions, will serve as the contract.

Processing of an Amendment to Professional Services Agreement will follow the same procedure as the original contract. However, if the fee for the service to be performed changes, and is greater than the original contract, the approval and payment process for the new category will govern.

Amendments to Professional Service Agreements are submitted to Purchasing if the total value of the contract will remain less than $50,000. If the Amendment causes the total value of the PSA to an amount greater than $50,000, the amendment must be reviewed by OGC.

- Amendments to a contract originally processed using a Supplier Invoice (less than $5,000) require the completion of the Payment Authorization section of the Amendment to Professional Services Agreement.

- Amendments to a contract originally processed using a Purchase Order (greater than $5,000) require the completion of the Purchase Order Change Authorization section for the Amendment to Professional Services Agreement. The documentation for the amendment should be forwarded to the Purchasing Department for processing.

EXCEPTIONS TO THE INDEPENDENT CONTRACTOR STATUS CLASSIFICATION

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Current and Former University Employees

If the service provider you wish to hire is a current University employee, a former employee (paid through University payroll during the current calendar year) or is providing a service the same as or similar to that of a current employee, he or she will be paid as an employee and not as an independent contractor. Contact the Director of University Disbursements at 3-7579 for assistance when a current or former employee is being considered for a contractual service.

Fees, Prizes, and Royalty Payments

The following types of payments are not for services performed. Submit a request for check form for payment unless the recipient is an employee. Employees are paid through the University payroll.

- **Royalty or Permission Fee** - payment that represents compensation for the sale or use of copyrighted or patented work of an author, composer or inventor.
- **Prize or Premium** - a reward or gift of money for a competition or other achievement. Prizes and premiums to individuals currently employed at Brown (not students) must be paid through the payroll system.

The following types of payments are for services performed by a service provider but do not require "determination procedures." Such one-time payments are typically of a fixed, minimal amount and are taxable to the recipients:

- **Participation Fee** - payment for participating in surveys, seminars or research projects.
- **Human Subject Fee** - payment to service providers who volunteer as human subjects in research projects.

PAYMENTS TO NON US RESIDENT/CITIZEN

Professional service providers who are not US residents may be paid and/or reimbursed for their services and expenses depending on their VISA type. Please review the Payments to Foreign Nationals policy and the related charts and forms for additional information.

Travel Reimbursement for Consultants/Guest Speakers:

Consultants/Independent Contractors may be reimbursed for travel expenses under the following circumstances:

- They are being paid less than $5,000, comply with Brown University’s travel policy, and can provide original receipts with a University travel report.
- They have included travel expenses in their contract fees and will include those expenses in their invoicing to the University. These fees will be included in their IRS Form 1099/Form 1042S earnings that are reported at year end. Consultants paid $5000 or more must include their expenses in their invoicing. They will not be reimbursed for travel expenses under Brown University’s travel policy.

Please refer to the University’s Travel policy for complete instructions.

Other key points regarding Consultant/guest speaker travel expenses:

- The reimbursement of travel expenses must follow federal tax and immigration guidelines.
Departments may use short-term visitor housing (Auxiliary Housing) for the lodging of a guest speaker or independent contractor if the total payment for service does not exceed $5,000. However, the service provider must maintain permanent residence elsewhere and the stay must not exceed the lesser of one year or the contract period. Payment for Auxiliary Housing will be processed using a Journal Entry.

Travel arrangements for a service provider without the financial means to expend personal funds in advance must be handled directly with the Controller's Office. Contact the Director of University Disbursements (extension 3-7579) for assistance in handling this special circumstance.

Brown University employees will not be reimbursed for travel expenses personally incurred for a guest speaker.

Signatures and Signature Authority for Professional Service Agreements

The University Corporation approved authority to execute contractual agreements for professional services (i.e. guest speakers, consultants, independent contractors). The Corporation approved authorization in the following manner, and in accordance with the administrative procedures and requirements stated below. This expanded authorization improves the processing of these agreements by creating a better assignment of authority with responsibility. The authorization is structured along organizational lines with some delegation allowed within the units identified below. This signature authority applies to agreements funded from any source of funds, including grant/contract funds.

The “Authorization to Execute Professional Service Agreements Form” must be completed and returned to the Controller’s Office in order for this signature authority to be granted. Contact the Administrative Coordinator in the Controller’s Office to obtain the proper form.

Agreements funded from non-grant/contract funds in excess of $50,000 must be reviewed by the Office of the General Counsel prior to execution including those utilizing the University’s template for Professional Service Agreements located on the Controller's website. Any agreement, regardless of the amount, which is not written on the Standard Agreement Form must be reviewed by the Office of the General Counsel prior to execution. (Exceptions are contracts managed through the Office of Sponsored Projects or contracts for goods or standard services that are managed through Purchasing).

All agreements funded from grant/contract funds require review by the Office of Sponsored Projects, for budgetary and sponsor allowability. OSP signature is not required on the professional services agreement.

Signature Authority for Professional Service Agreements has been established at the following levels:

Operating Units
Heads of academic and administrative departments, centers, institutes and similar units (“operating units”) are authorized to execute professional services agreements at amounts up to $25,000. Heads of operating units may delegate to their manager-level subordinates authority to execute agreements at amounts up to and including $10,000.

Divisional Units
Deans, directors, and administrative officials for those units which report directly to a senior officer (“divisional units”) are authorized to execute professional services agreements at amounts up to and including $100,000. Heads of divisional units may delegate to their manager-level subordinates authority to execute agreements at amounts up to and including $50,000.

Senior officer definition: For purposes of this policy, senior officers are defined as the President, those
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officers reporting to the president, and the deans and vice presidents who report directly to the Provost and the Executive Vice President for Finance & Administration.

**Senior Officers**
Senior officers, as defined above, are authorized to execute agreements at amounts up to and including $1 million, subject to the requirement that agreements in excess of $250,000 must be countersigned by either the Provost or the Executive Vice President for Finance & Administration.

Professional services agreements over $1 million must be countersigned by the President.

All delegations of authority permitted by this authorization shall be made annually in writing on an Authorization Form prescribed by the Controller’s Office. Such form will identify responsibility within the operating or divisional unit to be filed with the Controller’s Office and the Office of the General Counsel.

**Forms/Instructions**
- Determination of Status Form
- Designation as Independent Contractor - State of RI

**Standard PSA and Guest Speaker Agreements**
Related Policies
- Payments to Foreign Nationals
- University Travel Policies

Policy Owner
Approved by Director, Insurance & Purchasing Services, Director of University Disbursements, and Office of the General Counsel

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