



LOYOLA UNIVERSITY MARYLAND

— 1852 —

## INDEPENDENT CONTRACTOR/CONSULTANT POLICY

**DIVISION WITH PRIMARY RESPONSIBILITY:** Business and Finance

**OFFICE FOR ENSURING COMPLIANCE:** Financial Services/Human Resources

**CONTACT OFFICE:** Human Resources

**EFFECTIVE DATE:** April 4, 2017

**REVISION HISTORY:** N/A

**SCHEDULED FOR REVIEW:** Annually

### POLICY SUMMARY

This Independent Contractor/Consultant Policy (Policy) establishes policy and procedures for anyone wishing to engage the services of individuals who are not employees of Loyola University Maryland (Loyola or University) for a fee. 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.

### REASON FOR POLICY

The purpose of this Policy is to provide departments, supervisors, and other employees with specific guidelines covering the University's requirements for hiring independent contractors/consultants. When hiring individuals as independent contractors/consultants, it is critical that the University comply with Federal/State laws governing reportable/taxable income and the proper classification of employees and independent contractors/consultants. It is important to correctly classify independent contractors and employees to ensure appropriate compensation method and tax obligation.

### STATEMENT OF POLICY

It is expected that University activities will be carried out to the maximum extent possible by using the services of regular employees. However, independent contractors/consultants may be used when necessary resources or services cannot be provided adequately by regular employees within the scope of their University employment or in emergency temporary circumstances.

### Determining Status of the Service Provider

In circumstances where University departments use the services of independent contractors/consultants, specific criteria are used to determine the worker's relationship with the University and thus the appropriate method of payment for services provided. There are 20 factors used by the Internal Revenue Service (IRS) to assist in determining whether a worker is an employee or independent contractor ([IRS 20 point Checklist for Independent Contractor](#)). These factors, or characteristics of employment, include matters of the employer's direction and control

of an employee's work methods, and they also illustrate whether the independent contractor's work is not subject to this control. Before services are performed, departments desiring to contract for services must assess the relationship with the provider and the University to ensure that the individual is properly classified.

The characteristics are as follows:

<b>In this activity</b>	<b>An employee...</b>	<b>An independent contractor...</b>
Following direction	complies with University instructions about when, where, and how to do the work	determines own direction on when, where and how to do the work
Training	receives training from or at the direction of the University	acquires own training independently of the University
Operational integration	if separated from operation, affects its performance	is separable from the operation without affecting performance
Personal involvement	is required to render the services in person	may render services personally or through others
Hiring and supervision	hires and supervises University employees	does not hire or supervise University employees
Continuity	continues in employ of the University	may work sporadically for the University
Schedule	follows the University's work schedule	follows own work schedule
Full-time	works full-time for the University	may work for other employers while at the University only part-time
Facilities	uses University facilities for work	has own facilities for the work
Work sequence	performs the work in the sequence specified by the University	works according to own sequencing of the work
Reports	reports progress regularly	reports when work is complete
Payment	is paid on a regular periodic basis at set amounts	is paid as work is completed, possible progress payments
Travel reimbursement	is reimbursed for travel expenses	pays own travel expenses or may include them in contract
Tools and materials	uses University's tools and materials	supplies own tools and materials
Investment	has not invested in facilities to perform the services	has invested in own facilities to do the work
Business risk	cannot make a profit or suffer a loss from the services	makes a profit or suffers a loss based on services rendered
Exclusivity	works only for the University	may work for other employers while working for the University
Publicity	does not offer services to the general public	offers services to the general public as through advertising

Dismissal	can be dismissed from employment	cannot be dismissed as long as the work satisfies the contract
Performance liability	can quit with no liability for completion of the work	is liable for failure to complete the work

By completing the “IRS Classification Factors” section of the **Loyola University Maryland Independent Contractor/Consultant Requisition Form**, the assessment of the work characteristics may conclude with the following results:

1. **Employee** – If the University expects to assert 12 or more of the employer’s controls illustrated in the 20 characteristics, the individual is to be engaged as a University employee and paid according to the requirements that follow for employees.
2. **Independent contractor/Consultant** – If the services/work will be free from 12 or more of the employer controls illustrated in the 20 characteristics, the individual may be engaged as a contractor/consultant and paid according to the requirements that follow for engaging independent contractors/consultants.
3. **Assessment is unclear** – If the results of the assessment is unclear, consultation with the AVP of Human Resources will be necessary to determine final assessment to assure tax compliance for the University.

#### Requirements to Engage

1. **Engaging an individual as an employee:** Requirements and procedures for engaging an individual can be found in the [Loyola University Maryland Policy Manual](#).
2. **Engaging an individual as an independent contractor:** Persons other than regular employees of the University may be used as independent contractors, and University funds may be charged for their activities (including Unrestricted Operating, Designated and Restricted) only if all of the following conditions are met:
  - a. **Employee with required expertise unavailable** – The services are needed and cannot be met by using a regular University employee within the scope of his or her employment within the University.
  - b. **Selection process** – A selection process has been used to secure the most qualified person available, considering the nature and extent of services required.
  - c. **Appropriate fee** – The fee is appropriate considering the qualification of the person to be used, his or her normal charge, and the nature of the services to be rendered. When the fee is charged to a sponsored project, it must conform to any limitation established by the award and funding agency.
  - d. **Specified single period of engagement** – The arrangement will last for a specified period and it is understood that no employment arrangement or repeated or extended arrangement will result.

When/if all conditions above are met, the following procedures must be followed:

1. Complete an **Independent Contractor/Consultant Requisition** form. This form should be completed by the department and be approved by the Vice President of the respective department/division. Completed forms should be sent to Human Resources for final verification and approval of the

determination of employee vs. independent contractor. An independent contractor/consultant should not be authorized to begin work or submit an invoice for payment until proper approval has taken place.

2. Send the standard [Loyola University Maryland Confidentiality Agreement](#) form to the independent contractor/consultant and request their signature. This certification statement must be signed by the service provider and attached to the **Independent Contractor/Consultant Requisition** form when submitted to Human Resources.
3. Complete and send the **Loyola University Maryland Consultant Agreement** to the independent contractor/consultant for their signature. The department/division representative endorses the completed Consultant Agreement and routes the original documents to **Human Resources**, who will then provide a copy of the agreement to the Director of Campus Services.
  - a. Completing the Consultant Agreement involves filling in the blanks with information relative to the independent contractor/consultant and the specific engagement and attaching the statement of work. Consultant Agreements are not required for Standard Services. Please refer to the University's **Bid Requirement/Sole Source** for procuring good/services.
4. If appropriate, attach appropriate documentation on competitive bids received or documentation for sole source procurement according to the "Competitive Bid Requirements" set forth in the University's **Bid Requirement/Sole Source** policy.
5. Route documentation through the required signature authorities for your department/division. Authority to enter into agreements for the purchase of goods and services required by the University is delegated by the Signature Authorization Policy:  
<http://www.loyola.edu/department/financialservices/accountspayable/policies/signatureauthorization>.
6. Upon approval of the Loyola University Maryland Consultant Agreement, all independent contractors/consultants requiring access (building and/or University systems) the [Non-Employee Account Access](#) form should be completed.
  - a. For independent contractors/consultants needing an ID card only, the form should be submitted to Student Administrative Services.
  - b. For independent contractors/consultants needing an ID card and system access (i.e. computer login, email, portal access) the form should be sent to Human Resources. To obtain an ID card and system access, the [Loyola University Maryland Confidentiality Agreement](#) must accompany the request for Non-Employee Account Access form.
7. First-time vendors to the University must complete the [Vendor Information Form/W9](#), which should be submitted to the Accounts Payable office along with the Payment for Services Request Form. Work may commence upon internal approval, receipt of the signed Consultant Agreement and receipt of the Vendor Information Form. Invoices from the independent

contractor/consultant are processed using Financial Services [“Payment for Services”](#) procedures.

## **SPECIAL SITUATIONS/EXCEPTIONS**

Exceptions to this Policy require written approval by a Vice President or his/her designee. In these instances, final classification of Independent Contractor/Consultant or Employee will be determined by the Vice President for Finance and Administration/Treasurer.

## **DEFINITIONS**

### **Employee**

For purposes of this policy, an employee is a worker who is hired through Human Resources and paid under a W-2 (and not a 1099). An employee depends on an employer for income on a continuing basis and is subject in the assigned work to the supervision and control of the employer.

A **regular** employee is hired by the University for continued employment, and a **temporary** employee is hired for employment on an as-needed basis. Temporary employees may not exceed 950 hours of work over a 12-month period, and are eligible for statutory benefits only, such as unemployment compensation, Workers’ Compensation, FICA-FICM and benefits under the Affordable Care Act (ACA) if eligible. Full-time or part-time faculty and staff members who are eligible for University employee benefits are generally considered regular employees.

### **Independent Contractor/Consultant**

For purposes of this policy, an independent contractor/consultant is an individual who provides services to Loyola University Maryland and is not an employee: namely a worker who should be paid under a 1099 (and not a W-2). As noted above, there are 20 factors used by the Internal Revenue Service (IRS) to assist in determining whether a worker is an employee or independent contractor ([IRS 20 point Checklist for Independent Contractor](#)). These factors, or characteristics of employment, include matters of the employer’s direction and control of an employee’s work methods, and they also illustrate whether the independent contractor’s work is not subject to this control. They have total control over the work being performed, set their own hours, pay for their own business expenses, and provide their own equipment, liability insurance, and office space. Payment for services is based on completion of specific work, rather than time worked.

### **Consulting Services**

Consulting Services are typically 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 specific customizing. Some examples of this type of service are: repair services, small equipment rental, and laboratory testing services. **A Loyola University Maryland Consultant 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 a contract.

**CROSS-REFERENCED POLICIES AND PROCEDURES:**

Bid Requirement/Sole Source  
Loyola University Maryland Policy Manual  
Payment for Services Procedures  
Signature Authorization Policy

**Forms - (Links to be added when digital library is established)**

Conflict of Interest Disclosure Form  
Independent Contractor/Consultant Requisition Form  
IRS 20 Point Checklist for Independent Contractors  
Loyola University Maryland Consultant Agreement  
Vendor Information Form  
Checklist for Hiring Independent Contractors/Consultants