



Employee/Independent Contractor Classification Checklist

The information provided below will assist UTB/TSC in determining, for FICA tax purposes, whether the individual performing the services will be classified as an independent contractor (consultant) or as an employee of the university.

I. Relationship with the University

A. Does this individual currently work for the university as an employee? Yes No

B. Is it currently expected that the university will hire this individual as an employee immediately following the termination of these services? Yes No

C. During the 12 months prior, did the individual work as an employee of the university? Yes No

If the answer is "No" to all questions, proceed to the questions in Section II.
If the answer is "Yes" to any of the questions, the individual should be classified as an employee.

II. Classification Guidelines (Complete only one of A, B, and C, depending on the services performed by the individual).

A. Teacher/Lecturer/Instructor

1. Is the individual a "guest" lecturer (e.g. an individual who lectures at only a few class sessions)? Yes No

2. Has the individual been at the institution in this capacity fewer than 3 times in the last 12 months? Yes No

If the answers to questions 1 and 2 are "Yes", treat the individual as an independent contractor
If the answer to either question is "No" proceed to question 3.

3. Is the individual teaching a course for which students will receive credit toward a university degree? Yes No

If the answer to question 3 is "Yes", treat the individual as an employee
If the answer to question 3 is "No", proceed to question 4.

4. Has the individual provided the same or similar services to other unrelated entities in the last 12 months? Yes No

5. Does the university have any control over course materials that are used by the individual? Yes No

If the answer to question 4 is "Yes", AND the answer to question 5 is "No", treat the individual as an independent contractor. Otherwise, treat the individual as an employee.

B. Research/Consultant

1. Will the individual perform research under the supervision of a university professor or employee? Yes No

2. Will the individual serve in an advisory or consulting capacity with a university professor or employee? Yes No

If the answer to question 1 is "Yes", treat the individual as an employee
If the answer to question 2 is "Yes", treat the individual as an independent contractor

C. Individuals not covered under Section A or B.

1. Does the individual provide the same or similar services to other entities or to the general public as part of a trade or business? Yes No

2. Will the department provide the individual with specific instructions regarding performance of required work rather than rely on individual's expertise? Yes No

3. Can the university set the number of hours and/or days of the week the individual is required to work, as opposed to allowing the individual to set his/her own work schedule? Yes No

If the answer to question 1 is "Yes", AND the answer to question 3 is "No", treat the individual as an independent contractor.
If the answer to question 2 or 3 is "Yes", treat the individual as an employee.
If the individual is classified as an independent contractor, the following terms and conditions apply. The contractor must indicate acceptance by signing below.

TERMS AND CONDITIONS

- For the Principal Investigator: The services provided by this consultant are (1) essential and cannot be provided by available UTB/TSC personnel; (2) a selection process based on expertise and ability has been employed and this consultant is the most qualified individual available; (3) the fee is reasonable considering the nature and extent of the services required; and (4) proper documentation is on file to support these standards.
- For this agreement the term "University" shall mean The University of Texas at Brownsville and Texas Southmost College and "Contractor" shall be defined as the provider of services to the university.
- This document constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreement.
- This agreement may not be amended or otherwise altered except upon the written agreement of both parties.
- This agreement is not assignable without the express written agreement of both parties.
- The contractor agrees to perform the services with the standard of professional care, skill, and diligence normally provided in the performance of similar services.
- Payment for services rendered will be made only upon satisfactory completion of service as certified by the responsible university representative or principal investigator as applicable.
- The parties shall be independent contractors in the performance of this agreement and nothing herein is intended to make or may be construed to make either party, or the officers, employees, or agents of either party, an employee, agent, or representative of the other party.
- Either the contractor or the university may terminate this agreement at any time by notifying the other party in writing at least ten (10) days prior to the termination of service. In the event of early termination, the university shall only be liable for payment services performed prior to the termination.
- The contractor agrees to indemnify and hold harmless the university from any claim, damage, liability, injury, expense, or loss arising out of the contractor's performance under this agreement.
- The contractor agrees that all inventions and discoveries, whether patentable or not, made by the contractor solely or jointly, resulting from services performed for the university during the term of this agreement shall belong to and be the property of the university. The contractor will promptly disclose to the university all such inventions and discoveries and will assign the same to the university. The contractor will, upon request of the university, execute and deliver to the university disclosures and other information useful or necessary for the preparation of applications for patent(s) of the United States and any and/or all other countries covering such inventions and discoveries, and assign the same to the university or its assignee. The contractor will render all reasonable assistance to the university or its assignee and its attorney in preparing said patent applications and will, upon request of the university, execute all instruments and documents and do all things reasonably necessary to protect the rights of the university.
- By signing this agreement, the contractor certifies that he/she is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. If the contractor is unable to certify to this statement, an explanation must be attached.
- This agreement shall be governed by the laws of the State of Texas.
- Contractors who are non-resident aliens are subject to a mandatory 30% withholding tax.

Account Manager _____ Date _____

Contractor _____ Date _____

Approval/Appropriate Vice President _____ Date _____