

## EDITH B. FORD MEMORIAL LIBRARY

# SERVICE PROVIDER DETERMINATION POLICY/PROCEDURE

### SERVICE PROVIDER EVALUATION

A *service* is an activity in which labor is the major factor and not merely incidental to the production, acquisition, and/or delivery of a good. The procurement of a service has unique requirements. The first requirement is an evaluation of whether, based upon guidelines established by the Internal Revenue Service (IRS), the individual or entity providing the service should be classified as an employee or an independent contractor (vendor). Relative cost to the library and administrative ease cannot be deciding factors in the determination of employee vs. independent contractor. The second primary consideration in the provision of a service to the library is the evaluation of liability risk assumed by the library in the performance of the service. This is especially important for an independent contractor.

#### **Independent Contractor vs. Employee**

It is the responsibility of the library Treasurer or his or her designee to determine whether or not a service provider is an employee or independent contractor based on the criteria listed below.

The purpose of the service provider evaluation is to determine whether to appoint a service provider, as an independent contractor or as an employee paid through payroll. The IRS asserts that if the library exercises control of the work performed and how it is performed by the service provider, the individual should be appointed as an employee.

There are risks and costs associated with each classification of the service provider.

**For employees**, there are the employer's share of FICA tax, employee benefits, workers compensation, unemployment insurance and other insurance coverage, overtime premiums, etc. These costs need to be factored in to requests for external funding, such as grants, during the application process. **For independent contractors**, there are contract and potential liability costs as well as potential taxes, penalties and interest from the IRS and other regulatory agencies if the agency, during its review, reclassifies the independent contractor as an employee. If the services are funded by an external entity (e.g. grants or gifts), costs associated with remission of funds, penalties, and loss of reputation may also occur if the provider is misidentified.

To determine whether a service provider is an independent contractor or an employee under common law, one must examine the relationship between the worker and the library. All evidence of control and independence in this relationship should be considered. If the library exercises control over or supervises the work of the service provider, the individual should be appointed as an employee. According to the IRS, the factors that provide evidence of "control" fall into three categories – Behavioral Control, Financial Control, and the Nature of the Relationship itself.

- **Behavioral Control** generally reflects that the organization exercises control over the service provider's activities. If the library provides training and/or instructions about how to complete the task, the service provider should generally be classified as an employee. In contrast, independent contractors determine how they will accomplish the task without supervision.
- **Financial Control** generally reflects that the service provider is not at risk for financial loss on a contract because the organization provides the equipment, reimburses the business expenses and pays on a wage basis rather than a negotiated fee for specific deliverables.
- **Relationship Control** generally reflects that the service provider works primarily for the organization and anticipates a continuing relationship. An independent contractor has a broad customer base and is free to work when, for whom, and for as many firms as he/she chooses.

If the relationship is not clear based on the criteria listed above, the Service Provider Questionnaire should be completed by the service provider in question. Based on their response, the Library Personnel Committee or designee should

complete the Service Provider Evaluation Worksheet. If a determination is still unclear, an IRS form SS-8 should be filed with the Internal Revenue Service for a final determination (the IRS may take at least 6 months to respond).

(While a decision is pending, the service provider should be appointed as an employee. If the IRS determines that the service provider is an independent contractor, the Treasurer will calculate a credit for withheld taxes and other recoverable costs, and follow the steps outlined below under *independent contractor*.)

### **Procedure for Appointment of the Service Provider**

**If the Treasurer or designee concludes that the service provider should be classified as an *employee*, he or she will:**

1. Notify the Library Director or position supervisor who will request appointment of the individual as an employee through the Board of Trustees.
2. Take all other steps required by law and other library policy and procedures to establish the service provider as an employee.
3. If possible, ensure that costs associated with employee status (FICA, workers comp etc.) are included as overhead in funding sources such as grants.

**If the Treasurer or designee concludes that the service provider should be classified as an *independent contractor*, he or she will:**

1. Review for, and resolve (with documentation), any conflict of interest according to the library policy.
2. Evaluate the need for insurance. The service provider will be required to indemnify (hold harmless) the library through the independent contractor agreement, and/or, at the discretion of the Treasurer or designee, provide proof of general liability insurance in an amount no less than \$1,000,000, with the library as a named insured.
3. Approve the terms of the agreement with the service provider, such as the scope of work or deliverables, acceptance criteria, identification of who will provide the services, etc. These terms should be defined in the independent contractor agreement, negotiated by the service provider and the library Director or position supervisor.

### **Other Considerations with Independent Contractors (Billing and Tax):**

All business expenses that the library has agreed to pay must be submitted as a component of the vendor's invoice. There should be no direct reimbursement for individual expenses on the part of the independent contractor (for example, meals, supplies, travel expenses) as these should be included in the service fee established by the Independent Contractor Agreement. In accordance with IRS regulations, the library Treasurer or designee will report all payments to independent contractors totaling \$600 or more during a calendar year on IRS form 1099-MISC. The independent contractor is responsible for all estimated tax payments and other tax filing requirements; all tax records, including original business receipts; general liability and other insurance coverage for workers who work on his/her contract with the library; medical insurance, personal accident insurance, pension plan, or other benefits, whether personal or extended to his/her employees.

**Service Provider Questionnaire  
Ford Memorial Library**

Instructions:

The Ford Memorial Library is submitting this questionnaire to you as a potential vendor to provide service to the library. We are asking for this information to aid in our evaluation of "independent contractor status" based on IRS guidelines. If, after the evaluation, the library proceeds with the procurement of your services as an independent contractor, we will ask you to complete the IRS form W-9 to obtain your US Federal ID number and other information. **DO NOT PROVIDE YOUR SOCIAL SECURITY NUMBER OR FEDERAL ID NUMBER ON THIS FORM.**

RETURN THIS QUESTIONNAIRE by email or fax to: \_\_\_\_\_ (Name of library Contact)

Email:

Fax:

**Your Information:**

Name \_\_\_\_\_

DBA \_\_\_\_\_

Briefly describe the nature of the services you perform:

Have you worked for the library as an employee in the last 12 months?

Where do you advertise your services?

Word of mouth       Web       Publications       Business associations

List publication names and web URL, if applicable:

Did you receive an IRS Form 1099 for performing services in the last year?

Provide the name and contact number of your three (3) major customers, other than the library, during the last 12 months:

1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_

Please identify the types of costs you incur in your business:

My business office is in my home       My business office is outside my home (office rental)  
 Equipment (explain):

Payroll (# of employees):  
 Other (explain):

What tax returns do you file:

Payroll/Self-employment tax  
 Sales tax (in what state?)  
 Other (explain)

How do you bill your customers? (check all that apply)

Hourly  
 Fee for project  
 Other (explain)

How much of your professional time do you expect to devote to all library business in the next 12 months?

Less than 10%       10% TO 25%       26% to 49%       More than 50%

**Attestation and Certification:**

- I am a citizen of the U.S. or a permanent resident (green card).
- If the library hires me as an independent contractor, I understand that I am responsible for taxes, insurance coverage, and business expenses, and that I am not eligible for any employer-provided benefits.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name (please print): \_\_\_\_\_

Title: \_\_\_\_\_

Phone:

Email:

Service Provider Evaluation Worksheet  
 Ford Memorial Library

Instructions:

This worksheet should only be completed based on the response to the **Service Provider Questionnaire** completed and returned by the service provider. The analysis is based on the “IRS 20 Factor Test”, which is designed to assist in evaluating the relationship of the service provider to the library (employee vs. independent contractor) by examining the level of control (Behavioral, Financial, and Relationship – see IRS Guidelines for Classifying Service Providers below) exercised by the library over the service provider.

Name of service provider: \_\_\_\_\_

Completed by: \_\_\_\_\_ Date of completion: \_\_\_\_\_

	Yes	Indicates Employee	No	Indicates Independent Contractor
<b>Behavioral Control</b>				
Will the library provide instruction about when, where, and how the work is to be done?	<input type="checkbox"/>	Complies with the library supervisor’s instructions.	<input type="checkbox"/>	Determines own schedule, location, and tasks.
Will the library provide training to the individual?	<input type="checkbox"/>	Trained by the library.	<input type="checkbox"/>	Responsible for own training.
Will the library require the individual to perform the services personally?	<input type="checkbox"/>	Must be performed by the individual.	<input type="checkbox"/>	Can be performed by his/her employees or subcontractors.
Will the library determine the order and sequence of work performed?	<input type="checkbox"/>	Order and sequence of work determined by library supervisor.	<input type="checkbox"/>	Order and sequence of work are determined solely by the service provider.
Will the library establish the hours of work?	<input type="checkbox"/>	Library sets the hours.	<input type="checkbox"/>	Responsible for determining his/her hours.
Will the library require full commitment of time?	<input type="checkbox"/>	Works only for the library.	<input type="checkbox"/>	Works for others during period of contract.
Will work be performed on library or library affiliated property?	<input type="checkbox"/>	Performed on library or library affiliated or sponsored property.	<input type="checkbox"/>	Performed at location determined by provider.
Will library require progress reports?	<input type="checkbox"/>	Library may require on-demand reports.	<input type="checkbox"/>	Reports are not required unless stated in contract.
<b>Financial Control</b>	Yes	Indicates Employee	No	Indicates Independent Contractor
	<input type="checkbox"/>		<input type="checkbox"/>	

Will the provider be paid on an hourly, weekly, or monthly basis?	<input type="checkbox"/>	Library pays hourly, weekly, or monthly and determines the amount.	<input type="checkbox"/>	Library pays per project at completion deliverables, based on negotiated fees.
Will the library pay business or travel expenses?	<input type="checkbox"/>	Library pays or reimburses business or travel expenses.	<input type="checkbox"/>	Provider is responsible for all business or travel expenses.
Will the library furnish any of the following: work area, equipment, materials, tools, or supplies?	<input type="checkbox"/>	Library furnishes work area, equipment, materials, tools and/or supplies.	<input type="checkbox"/>	Service provider furnishes all tangible materials.
Will the library assume the risk of "profit and loss" of the work performed?	<input type="checkbox"/>	Provider is paid only for time and effort.	<input type="checkbox"/>	Provider can make a profit or suffer a loss based on their management of resources.
What is the service provider's principle place of business?	<input type="checkbox"/>	He/she works at home (it is not uncommon for employees to work at home with employer approval)	<input type="checkbox"/>	Rents space at fair market value, and/or has employees as a workforce for projects. Has significant investment and business risk in the venture.

<b>Relationship</b>	<b>Yes</b>	<b>Indicates Employee</b>	<b>No</b>	<b>Indicates Independent Contractor</b>
Does the service provider work for one firm at a time?	<input type="checkbox"/>	Works for only one firm at a time.	<input type="checkbox"/>	Performs similar services for multiple unrelated customers at the same time.
Does the provider make services known to the general public?	<input type="checkbox"/>	Makes his/her service known by word of mouth.	<input type="checkbox"/>	Advertises his/her business in publications, web, business associations, etc.
Does the library have the right to fire the provider?	<input type="checkbox"/>	Library may discharge at-will.	<input type="checkbox"/>	Cannot be fired if the contract specifications are met.
Does the provider have the right to end the relationship with the library at any time?	<input type="checkbox"/>	The provider can terminate the relationship at any time.	<input type="checkbox"/>	The provider incurs liability for non-delivery of contract specifications.
Does the library anticipate a continuing relationship?	<input type="checkbox"/>	Library anticipates a continuing relationship.	<input type="checkbox"/>	A continuing relationship is not anticipated or promised.
Will the provider be issued office space, email, equipment, or required to attend staff meetings?	<input type="checkbox"/>	Provider will be integrated into the operations of the library.	<input type="checkbox"/>	Provider is independent of the operations of the library.

**IRS Guidelines for Classifying Service Providers**

Service provider classification is based on facts and circumstances; no one fact determines service provider classification. The IRS currently emphasizes three broad categories: behavioral control, financial control, and the overall relationship.

These categories are directly related to the “20-Factor Test”, which is described in IRS Revenue Ruling 87-41. The factors contained in the IRS “20-Factor Test” are described below.

An independent contractor generally:

- sets the sequence of tasks needed to accomplish the work. The library has no right to set this sequence.
- is subject to the instructions outlined in the contract, but is not instructed by the library about when, where, and how to work.
- furnishes his/her own tools, materials, and the like.
- may hire and supervise others to assist in the completion of the work. The decision to hire assistants is within the control of the independent contractor and in no way affects his/her remuneration.
- bears all business expenses associated with the performance of the work, including insurance, travel, meals and lodging.
- is in a position to realize a profit or suffer a loss as a result of his/her services.

Note: A service provider paid by the hour is not in a position to realize a profit or loss; he/she is merely compensated for time and effort. If the service provider is subject to a real risk of economic loss due to significant investments or a bona fide liability for expenses, such as salary payments to unrelated employees, these factors indicate the service provider is an independent contractor.

- cannot be discharged if the contract specifications are being met.
- cannot terminate the service contract with the library without incurring a liability.
- makes his/her services available to the general public (outside the library community). This may include holding a business license, advertising a service, or providing a listing of his/her business telephone.
- is not providing services that become integrated into the day-to-day operations of the library.
- is free to work when, for whom, and for as many firms as he/she chooses and is not required to work full-time for any one employer. There should be no agreement of exclusivity with the hiring firm.
- chooses working hours at his/her discretion. When the work is performed on library premises, the independent contractor may be required to function within certain hours, but need not be present at any specific time.
- is paid a fixed fee.
- does not have a continuing relationship with the library. Services may be considered continuing although they are performed at irregular intervals, on a part-time basis, seasonally, or over a short-term.
- is not required to work on library premises or other affiliated sites.
- is not subject to training by the library and uses his/her own methods to accomplish the work.