

McMASTER UNIVERSITY

Policy on Payments to Individuals (Independent Contractors)

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Position Responsible for Developing and Maintaining the Policy: Assistant Vice President (Administration)

Contact Department: Financial Services

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1. SCOPE

This Policy focuses on payments to Service Providers as independent contractors and the classification of their relationship with McMaster University; it covers payment for services provided by McMaster University employees, members of a McMaster University pension plan, other retirees, and other Service Providers not employed by the University.

Payments to individuals, sole proprietors, partnerships and other unincorporated businesses are covered under this Policy. In the case of an *incorporated, arms length* business, where the services are provided by, and payments for such services are made to, the company and *not a specific individual*, the payments are not within the scope of this Policy and are covered under Purchasing Policy: <http://www.mcmaster.ca/bms/policy/purchase/p020.htm>

An individual who provides services through a corporation is *not automatically exempt* from the application of this Policy. When an individual offers services to an organization through a corporation owned by the individual or a related party, the corporation may well be considered to be carrying on a “personal services business” as defined in the *Income Tax Act*. If this is the case, special rules apply when an individual providing services to an organization would, *if not for the existence of the corporation*, be considered an employee of the organization to whom the services are provided. If such a relationship exists the Service Provider must nevertheless pass the test for an independent contractor as set out in the Independent Contractor Questionnaire (See Appendix “E”).

Where the provision of Services is covered by the Scope of this Policy, *payment for those services will not be processed unless* and until the proper procedures have been followed and the required paperwork has been submitted. *Prior to making any commitment to* or agreement (oral or written) with, a Service Provider it is therefore imperative this Policy be consulted.

2. INTRODUCTION

Before entering into an agreement¹ with a Service Provider to perform specific work, primary consideration must be given to determining the type of contractual relationship that exists. This Policy provides guidance on whether an employer/employee relationship does or does not exist, and the appropriate methods of payment for services provided to McMaster University. The determination of whether or not a Service Provider is an employee or an independent contractor is a complex issue. While a number of tests have been used by the courts in determining whether or not a Service Provider is an employee, no single test is conclusive. The interaction of all the relevant facts must be examined. Given the negative consequences which may result from the incorrect characterization of a Service Provider as an independent contractor, *the bias of this Policy is to characterize a Service Provider as an employee as opposed to an independent contractor in “grey” situations*. It is important to keep in mind that all contracts for services are with the University as a whole and not with individual Departments, Faculties or Units of the University.

3. WHAT ARE THE CONSEQUENCES OF INCORRECTLY CHARACTERIZING A SERVICE PROVIDER AS A CONTRACTOR AND NOT AN EMPLOYEE?

Significant costs could accrue to the University; the University could be liable for unremitted taxation

¹ An agreement can be verbal or written. All business relationships (where Services cost \$5,000.00 or more) must be supported by a written contract: Appendix F-1 provides the template for contracts with individuals; Appendix F-2 provides the template for contracts with personal services corporations.

amounts; as well, if, as an employer, the University fails to deduct the required Canada Pension Plan contributions or *Employment Insurance Act* premiums, the University is legally liable for paying **both the employer's share and the employee's share** of any contributions and premiums, plus penalties and interest. The same result may also apply to unpaid *Workplace Safety and Insurance Act* ("WSIA") premiums.

If any such costs and penalties are imposed on the University because this Policy and the proper procedures were not followed, these costs will be charged back to the Department that was responsible for purchasing the Services.

Should there be a problem with the quality of the work performed by the Service Provider, the University may be liable for that Service Provider's errors or actions, as if that person were an employee. There is also the possibility that the Service Provider could later claim to be an employee and successfully claim severance or payments in lieu of notice should a 'contract' not be renewed. A more comprehensive list of concerns regarding mistaken characterization of the relationship can be found in **Appendix A**.

4. TESTS TO DETERMINE BUSINESS RELATIONSHIP (INDEPENDENT CONTRACTOR) OR EMPLOYER-EMPLOYEE RELATIONSHIP

The circumstances under which services are rendered determine a Service Provider's classification as either an independent contractor or an employee. It is the Account Signing Authority's and the Manager's responsibility to ensure that appropriate evidence has been gathered to support the position that the University has engaged an independent contractor. To be considered an independent contractor, every Service Provider is required to complete and submit an **Independent Contractor Questionnaire** ("ICQ") (See Appendix "E"), which will be reviewed and evaluated by the Account Signing Authority or the University's ICQ Administrator, as applicable under Section 6. Where an independent contracting relationship exists and where the value of the contract is \$5,000.00 or more, McMaster's template for a **Contract for Service** (Appendices "F-1" and "F-2") or McMaster's **Supplemental Contract for Research Services** (Appendix "G") must be signed in accordance with the Execution of Instruments. <http://www.mcmaster.ca/univsec/bylaws/BoardBy-laws.pdf>.

The following criteria, established by Canada Revenue Agency ("CRA"), must be considered and the interaction of the relevant facts must be examined:

- a. the level of control the University has over the Service Provider, including whether the Service Provider may subcontract the work or hire assistants;
- b. whether the Service Provider owns and supplies the required tools and equipment;
- c. the degree of financial risk taken by the Service Provider; whether or not the Service Provider has a chance for profit and similarly bears the risk of loss; and
- d. Integration.

NOTE: the existence of a GST registration number or business number is not, in itself, sufficient evidence of a business relationship.

a) **Control**

In an employer-employee relationship, the University controls, directly or indirectly, the way the work is done and the work methods used. The University assigns specific tasks that define the real framework within which the work is to be done. If the University does not directly control the Service Provider's activities, but has the right to do so, the notion of control still exists.

The degree of control and supervision by the University is not in itself a determining factor. For example, the general freedom of a professor to teach and examine their students is not exceptional. Therefore, a professor who has the discretion to establish the course content, who is under the jurisdiction of the Dean of the Faculty, but who does not attend Faculty meetings is nevertheless an employee of the University.

The University exercises control if there is the right to hire or fire, determine the wage or salary to be paid, and decide on the time, place and manner in which the work is to be done.

In a business relationship, however, the University does not usually exercise control over the Service Provider's activities. The Service Provider can decide how the work will be performed.

Consider the degree of control held by the University or the degree of autonomy held by the Service Provider.

The actual degree of control will vary with the type of work and the skills of the Service Provider. The determination of the degree of control can be difficult when examining the employment of professionals such as engineers, doctors, and IT consultants-because of their expertise and specialized training, they may require little or no specific direction in their daily activities. When examining the factor of control, it is necessary to focus on both the University's control over the Service Provider's daily activities, and the University's control over the Service Provider.

The University's right to exercise control is what's relevant, whether or not the University actually exercises this right. It is the control of the University over a Service Provider that is relevant, and NOT its control over the end result of a product or service that it has purchased.

Indicators that the Service Provider is an EMPLOYEE

- The relationship is one of subordination. The University has the right to direct, scrutinize, and effectively control many elements of how the work is performed.
- The University controls the Service Provider with respect to both the results of the work and the method used to do the work.
- The University determines and controls the method and amount of pay. Salary negotiations may still take place in an employer-employee relationship.
- The Service Provider requires permission to work for others while working for the University.
- The regularity of the work schedule; priority on the Service Provider's time is an indication of control over the Service Provider.
- The University determines what jobs the Service Provider will do.

- The Service Provider receives training or direction from the University on how to do the work. The overall work environment between the Service Provider and the University is one of subordination.
- The Service Provider cannot hire helpers or assistants.
- The Service Provider does not have the ability to hire and send replacements. The Service Provider must perform the services personally.

Indicators that the Service Provider is an INDEPENDENT CONTRACTOR

- A self-employed² Service Provider usually works independently within a defined framework.
- The Service Provider does not have anyone overseeing them.
- The Service Provider is usually free to work when and for whom he or she chooses and may provide his or her services to different others at the same time.
- The Service Provider can accept or refuse work from the University.
- The working relationship between the University and the Service Provider does **NOT** present a degree of continuity, loyalty, security, subordination, or integration, all of which are generally associated with an employer-employee relationship.
- The Service Provider does not have to perform the services personally. He or she can hire another party to either complete the work or help complete the work, and pays the costs for doing so.

b) Ownership of tools and/or equipment

What is relevant is the significance of the investment in the tools and equipment along with the cost of replacement, repair, and insurance. A Service Provider who has made a significant investment is likely to retain a right over the use of these assets, diminishing the University's control over how the work is performed. In addition, a significant investment in tools and equipment and the maintenance and replacement costs associated with these assets may place the Service Provider at the risk of a loss.

In an employer-employee relationship, the University generally owns or provides the equipment and supplies required; for example, a computer, a telephone listing in McMaster directory, a McMaster e-mail address, McMaster business cards or clerical support. In addition, the University covers the costs related to using, operating, repairing, transporting, renting and insuring the equipment required to do the job.

If the University is supplying the tools and equipment and there is no risk of loss for the Service Provider, an employer-employee relationship probably exists.

In a business relationship, Service Providers generally supply their own equipment and tools and cover costs related to their use. When Service Providers purchase or rent their own equipment or large tools that require a major investment and costly maintenance, it usually indicates that they are self-employed, because they may incur losses when replacing or repairing their equipment.

² "Independent contractor" and "Self-employed" have the same meaning for the purposes of this Policy.

However, this factor alone is not determinative. Employees can also be required to provide their own tools. The courts have acknowledged that a Service Provider being required to provide his or her tools of the trade does not, by itself, place that Service Provider in the status of being self-employed. For example, many skilled trades' people are required to supply their own tools, even if they are full-time employees.

Tools and equipment can vary widely in terms of value and can include everything from wrenches and hammers, to costumes, appliances, stethoscopes, musical instruments, computers, and vehicles.

Indicators that the Service Provider is an EMPLOYEE

- The University supplies most of the tools and equipment required by the Service Provider. In addition, the University is responsible for repair, maintenance, and insurance costs.
- The Service Provider supplies the tools and equipment, *but the University reimburses the Service Provider for their use.*
- The University retains the right of use over the tools and equipment provided to the Service Provider.

Indicators that the Service Provider is an INDEPENDENT CONTRACTOR

- The Service Provider provides the tools and equipment required for the work. In addition, the Service Provider is responsible for the costs of repairs, insurance, and maintenance to the tools and equipment.
- The Service Provider has significant investment in the tools and equipment and the Service Provider retains the right over the use of these assets.
- The Service Provider supplies his or her own workspace, is responsible for the costs to maintain it, and performs substantial work from that site.

c) Chance of profit/risk of loss

Consider the degree of financial risk taken by the Service Provider. Determine if there are any fixed ongoing costs incurred by the Service Provider or any expenses that are not reimbursed.

Usually, employees will not have any financial risk as their expenses will be reimbursed, and they will not have fixed ongoing costs. In an employer-employee relationship, the University assumes the risk of loss. The University also generally covers operating costs, which may include office expenses, employee wages and benefits, insurance premiums, and delivery and shipping costs. The employee does not assume any financial risk, and is entitled to his full salary or wages regardless of financial health of the University.

Self-employed Service Providers can have financial risk and incur losses because they usually pay fixed monthly costs whether or not work is currently being performed. There is no guarantee of a steady income or allowance for fringe benefits because the self-employed Service Provider's income depends on the result achieved by the end of the contract. The potential that unforeseen expenses or hours of work will have to be absorbed in a fixed-price contract may indicate a self-employed status.

Consider whether the Service Provider is required to make any investment in order to provide the

services. Significant investment is evidence that a business relationship may exist. You should also consider if the Service Provider is free to make business decisions that affect his or her profit or loss. Self-employed Service Providers normally have the chance of profit or risk of loss, because they have the ability to pursue and accept contracts as they see fit. They can negotiate the price (or unilaterally set their prices) for their services and have the right to offer those services to more than one payer. Self-employed Service Providers will normally incur expenses to carry out the terms and conditions of their contracts, and to manage those expenses to maximize net earnings.

This factor must be considered from the Service Provider's perspective, not the University's. For the most part, it's an assessment of the degree to which the Service Provider can control his or her proceeds and expenses.

Finally, the method of payment may help to determine if the Service Provider has the opportunity to make a profit or incur a loss. In an employer-employee relationship, the Service Provider is normally guaranteed a return for the work done and is usually paid on an hourly, daily, weekly, or similar basis. While some self-employed Service Providers may be paid on an hourly basis, if the Service Provider is paid a flat rate for the work performed, it generally indicates a business relationship, especially if the Service Provider incurs expenses in performing the services.

Note that employees and self-employed Service Providers may be reimbursed for business or travel expenses. Consider only the expenses that are **not** reimbursed by the University.

Indicators that the Service Provider is an EMPLOYEE

- The Service Provider is not usually responsible for any operating expenses.
- Generally, the working relationship between the Service Provider and the University is continuous.
- The Service Provider is not financially liable if he or she does not fulfil the obligations of the contract.
- The University determines and controls the method and amount of pay.
- The Service Provider has no capital investment in the business.
- The Service Provider does not have a business presence.

Indicators that the Service Provider is an INDEPENDENT CONTRACTOR

- The Service Provider hires helpers to assist in the work. The Service Provider pays and manages the hired helpers.
- The Service Provider performs a substantial amount of work from their own workspace and incurs expenses relating to the operation of that workspace.
- The Service Provider is hired for a specific job rather than an ongoing relationship.
- The Service Provider is financially liable if he or she does not fulfill the obligations of the contract.
- The Service Provider does not receive any protection or benefits from the University.

- The Service Provider advertises his or her services and actively markets him or herself.
- The Service Provider has capital investment.
- The Service Provider is compensated by a flat fee and incurs expenses in performing the services. The financial arrangements may not always be set up in this manner – but *IF* they are it is a good indicia of self-employment as opposed to employment by the University
- The Service Provider has established a business presence.

d) Integration

Integration should be considered from the point of view of the Service Provider and the University.

Where the Service Provider integrates the University’s activities into their own commercial activities, a business relationship probably exists. The Service Provider is acting on their own behalf, is not dependent on the University’s business and is sole proprietor of their own business. In most cases, the Service Provider has business with more than one client.

Where the Service Provider integrates their activities to the primary activities, including instruction and research broadly defined, of the University, an employer-employee relationship probably exists. The Service Provider is acting on behalf of the University, is connected with the University’s business and is dependent on it. If the work done is an integral part of the University’s business, the Service Provider is most likely an employee.

5. CONFLICT OF INTEREST

Employees must respect University policies regarding conflict of interest when establishing business relationships with independent contractors. Refer to Section 1(d) Duty and Responsibilities, of the *Code of Conduct for Faculty*³, or the *Conflict of Interest Policy for Non-Academic Staff and Academic Administrators*⁴ as appropriate. In all cases, potential conflicts of interest, as defined in these policies, must be declared to the appropriate signing authority as determined by the *Execution of Instruments*.⁵

6. PROCEDURE

(See Also Appendix “H”– Approval And Payment Process Flowchart)

Review the policy, the criteria listed above, and the chart in Appendices “B”, “C”, and “D” as applicable. *These Appendices provide guidance on how certain specific engagements have already been characterized for purposes of this Policy.*

If the relationship does not meet the criteria for an independent contractor, then an employee/employer relationship exists and you should hire this person as an employee using the appropriate Payroll and Human Resources policies and procedures and in accordance with the terms of collective agreements.

If the relationship seems to meet the independent contractor criteria, complete the ICQ form (Appendix “E”). This form must be completed by the “Account Signing Authority” (*i.e.*, the person seeking to purchase the services) and by the Service Provider.

³ <http://www.mcmaster.ca/senate/hrfaculty/codecond.htm>

⁴ <http://www.workingatmcmaster.ca/link.php?link=policy:hqs-pol-conflict-of-interest>

⁵ <http://www.mcmaster.ca/univsec/bylaws/BoardBy-laws.pdf>

The information will then be evaluated by the Account Signing Authority or by the ICQ Administrator, as appropriate according to the criteria below. The ICQ need only be completed once, even if the Service Provider is engaged multiple times *to provide the same kind of service*. **However, if the nature of the service to be provided by the same Service Provider changes**, then a new ICQ must be completed and submitted to the appropriate person for evaluation.

The person wishing to purchase the services must answer ALL questions on the ICQ form that are highlighted in orange BEFORE providing the ICQ to the Service Provider. The Service Provider must then answer the remainder of the questions.

The ICQ form is an EXCEL document with drop-down menus for each response. To complete the form: (i) fill out the orange sections, (ii) re-name and save the document, and then (iii) e-mail it to the Service Provider.

Once completed by the Service Provider, the ICQ is e-mailed back to the Account Signing Authority by the Service Provider. **All of the following steps are to be completed before any services are provided by the Service Provider.**

- (a) **If the total value of the contract is less than \$5,000.00 and the Service Provider IS NOT a current McMaster employee:** The Account Signing Authority evaluates the ICQ to determine whether the nature of the engagement meets the criteria for independent contracting or whether an employment relationship exists. If the information on the form supports that the relationship is properly that of independent contracting, he/she obtains appropriate signatures on the form, retains the original in his/her Department and sends a copy of the signed ICQ to Internal Audit.
- (b) **If the total value of the contract is \$5,000.00 or more:** The Account Signing Authority e-mails the completed ICQ to the ICQ Administrator at icqadmin@mcmaster.ca for review and evaluation. The review and evaluation will normally take 2 - 3 business days and the result will be communicated to the Account Signing Authority. If the ICQ Administrator determines that that the relationship is properly that of independent contracting, the ICQ will be given an HR Approval Number and will be returned to the Account Signing Authority with a note confirming this status in the "CONCLUSIONS/COMMENTS section of the form. The ICQ form will only be returned with an HR Approval Number *if* the ICQ Administrator confirms that the Service Provider is an independent contractor.
- (c) **If the Service Provider is a current McMaster employee OR a retiree within the last 6 months:** The Account Signing Authority e-mails the completed ICQ to the ICQ Administrator at icqadmin@mcmaster.ca for review and evaluation. The review and evaluation will normally take 2 - 3 business days and the result will be communicated to the Account Signing Authority. If the ICQ Administrator determines that that the relationship is properly that of independent contracting, the ICQ will be given an HR Approval Number and will be returned to the Account Signing Authority with a note confirming this status in the "CONCLUSIONS/COMMENTS section of the form. The ICQ form will only be returned with an HR Approval Number *if* the ICQ Administrator confirms that the Service Provider is an independent contractor.

The Service Provider, the Account Signing Authority and his/her Manager (the Senior Administrator of Unit responsible for approving the expenditure) must each sign the ICQ form.

If the relationship is properly one of employment, *it will then be up to the Department to follow proper*

payroll and Human Resources procedures to hire the Service Provider as an employee.

Is a Written Contract Required? If the contract with the Service Provider will result in payments of \$5,000.00 or more a written contract is required. The University has implemented a standard Contract for Services (templates are found in **Appendix “F-1”** for contracts with individuals and “F-2” for contracts with personal services corporations). This standard contract is strongly recommended for independent contractor engagements for less than \$5,000.00 **but is required for arrangements that will result in the Service Provider being paid \$5,000.00 or more over the life of the engagement/contract.** The Contract for Services is to be signed in accordance with the Execution of Instruments Policy.⁶

Apart from inserting the requested information, any change to the text of the contract is to be reviewed by Human Resource Legal at newton@mcmaster.ca

Questions with respect to interpretation of the language of the contract or the implications of its terms can be addressed to Human Resource Legal at newton@mcmaster.ca.

The intent of the parties *at the time they entered their relationship* is a significant factor taken into account when determining the legal nature of the relationship for income tax purposes; *however* the parties' intent is given weight only where the work is actually carried out as provided under the terms and conditions of a demonstrable binding agreement. No weight will be given to the parties' intention if it cannot be demonstrated that they are in fact in agreement with the terms of the arrangement. The best way to demonstrate such agreement is through a written contract. For these reasons, even if the value of the contract is less than \$5,000.00, best practice would dictate that a formal written contract be entered. Even where a formal written contract is not required, the nature of the services to be provided, the understanding of the parties with respect to their relationship, the length of the contract and the amount to be paid for the service **must nevertheless** be documented in writing.

What about GST?: Independent contractor/consulting services are subject to GST regardless of whether payments are being made to an individual or a business. Any enterprise engaged in commercial activities in Canada that has annual worldwide sales of taxable goods and/or services of more than \$30,000.00 must register for and collect the GST. GST must be paid to any contractor whose business earns \$30,000.00 or more annually from all sources. Keep in mind that the \$30,000.00 threshold is based on income from all sources, so just because McMaster will not pay the consultant/contractor more than \$30,000.00 in a year does not mean you can assume that the consultant's enterprise is GST exempt.

Payment for a Service Provider's invoice is normally requested by submitting Electronic Cheque Requisition (“ECR”) to Accounts Payable, which **MUST** be accompanied by a copy of the Service Provider's invoice. If the invoice is for \$5,000.00 or more, it must have an ICQ Approval Number from HR. ***If appropriate documentation is not submitted with the ECR, then the ECR will be returned to the Department and the Invoice will not be paid until such time as proper documentation is supplied.***

***If the Service Provider is an independent contractor for the purposes of the services in question, but is also a McMaster employee, then do not use the ECR; rather, submit the invoice using the MacVIP “Special Premium Payment Form”.** If the invoice is for \$5,000.00 or more, you must write the HR Approval Number on the invoice before submitting it for payment.

If the contract payments are to be made to a business, contracts under \$50,000 must be appropriately

⁶ <http://www.mcmaster.ca/univsec/bylaws/BoardBy-laws.pdf>

approved and will follow the Policy on Reimbursement of Goods and Services.⁷

Contracts over \$50,000 require approval and signature as per the Execution of Instruments Policy.⁸

The original, signed ICQ form and written contract will be retained by the Account Signing Authority. A new ICQ is not required each time a Service Provider is engaged to provide the same kind of service. However, if a new engagement will be for \$5,000.00 or more then a copy of the existing ICQ must be submitted to the ICQ Admin to obtain an HR Approval #, along with evidence that the Department Manager has approved the new expenditure.

If the Service Provider is engaged to provide a different kind of service, then a new ICQ must be submitted for review and evaluation.

⁷ http://www.mcmaster.ca/bms/policy/accounts_payable/ap030.htm

⁸ <http://www.mcmaster.ca/univsec/bylaws/BoardBy-laws.pdf>

APPENDIX A: Negative Consequences o Mistaken Characterization of Service Providers as Independent Contractors

- Violation of collective agreement(s), and/or *Ontario Labour Relations Act*, or MUFA agreement, because the Service Provider is not being treated as a bargaining unit member or as a MUFA member.
- Non-Compliance with federal *Income Tax Act* requirements because the University failed to treat the Service Provider as an employee (e.g. deducting tax from income). Directors may be held liable for undeducted and unremitted taxation amounts (i.e. where the money cannot be deducted from the organization and the director does not have a defence of due diligence).
- Failure to make required Canada Pension Plan deductions from pay. The University would be monetarily and legally liable for these contributions. Directors may be held liable for failure to deduct and remit Canada Pension Plan contributions.
- Failure to make required *Employment Insurance Act* contributions. The University would be monetarily and legally liable for these contributions. Directors may be held liable for failure to deduct and remit Employment Insurance contributions.
- Non-compliance with the *Workplace Safety and Insurance Act* (“WSIA”) because the University failed to treat the Service Provider as an employee (e.g. Workplace insurance coverage does not include the Service Provider e.g. failing to fulfill WSIA accommodation requirements). There is the possibility that the organization will be liable under the WSIA for the amounts paid to a Service Provider in case of injury.
- Non compliance with the *Employment Standards Act* as the Service Provider was not characterized as an “employee” (e.g. obligations re - hours of work, overtime pay, vacation pay, holiday pay, notice & severance etc.). Directors can also be found liable for breaches of the Employment Standards Act.
- Inadvertent assumption of obligations to third parties. (*i.e.* if the Service Provider is really an employee, the University could be sued for acts, omissions or negligence of the Service Provider).
- Inconsistency. The University must be as consistent as possible in the application of this Policy to Service Providers across the University.
- Potential liability for severance pay and notice of termination or pay in lieu where a Service Provider claims to be an employee after, *e.g.* a series of successive contracts and is advised that the contract will not be renewed.
- Increased risk that the Service Provider will be found to be an “employee” where the Service Provider carried out the same or similar duties for the organization as an employee prior to being characterized as an “independent contractor.”

APPENDIX B: Assessment of University-Specific Situations

Types of Service Provided	Employee	Independent Contractor *	Forms to Use	Department That Handles	Tax Form Issued
<p>The assessment has been determined for the following situations:</p> <p>TEACHING</p> <p>Individuals, including retired faculty members, providing teaching services for degree, diploma, and certificate programmes where:</p> <ul style="list-style-type: none"> the University directs and controls the curriculum, provides classroom facilities, administrative activities (e.g. course scheduling, registration, fee collection); the University bears the loss due to low registration; the programme constitutes part of the core teaching activities of the University teaching services provided are covered by appointment documents and/or collective agreements. <p>Guest Lecturer or an individual invited to McMaster to speak on their area of expertise and the lecturer sets the rate of remuneration</p> <ul style="list-style-type: none"> Non-Canadian Residents Canadian Residents 	<p>✓</p>	<p>✓</p> <p>✓</p> <p>✓</p>	<p>Appropriate Payroll Form</p> <p>Cheque Requisition (any dollar value)</p> <p>Cheque Requisition up to \$500</p> <p>Over \$500</p>	<p>Payroll</p> <p>Accounts Payable</p> <p>Accounts Payable</p> <p>Accts. Payable</p>	<p>T4</p> <p>T4ANR N/A</p> <p>T4A</p>

Payments to Individuals (Independent Contractors) Vs. Employees

<p><u>NON INSTRUCTIONAL SERVICES</u></p> <p>Current Employees performing work that is part of the normal course of duties under an existing employment contract.</p> <p>Current Employees performing work outside of the normal course of duties and beyond the terms of the existing employment contract AND ICQ is completed and results in independent contractor categorization.</p> <p>An individual's time is at the disposal of the University for a fixed or determinate time, has set hours, works at the University, and is provided supplies and equipment.</p> <p>Individuals paid a fee to provide specified products or services not generally performed by a bargaining unit of the University, The work is done away from the University, business or individual pay own expenses, the University does not control the content or method of the work, but, simply describes the desired outcome. (Full time Clinical Faculty providing clinical services to research projects are paid through RMA)</p> <p>Casual staff hired in a variety of support roles (e.g. grounds, library, recreation, vacation relief).</p>	<p align="center">✓</p> <p align="center">✓</p> <p align="center">✓</p> <p align="center">✓</p> <p align="center">✓</p>	<p align="center">✓</p> <p align="center">✓</p> <p align="center">✓</p> <p align="center">✓</p>	<p>Appropriate Payroll Form</p> <p>ICQ and SPP</p> <p>Appropriate Payroll Form</p> <p>ICQ and ECR</p> <p>Appropriate Payroll Form</p>	<p>Payroll</p> <p>Payroll</p> <p>Payroll</p> <p>Accts. Payable</p> <p>Payroll</p>	<p>T4</p> <p>T4A</p> <p>T4</p> <p>T4A</p> <p>T4</p>
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APPENDIX C: Various Payments Made by McMaster University to Physicians for Teaching

TYPE OF INSTRUCTION	UNIT OF WORK	LOCATION OF WORK	SCOPE OF WORK BY FUNDING SOURCE/PROGRAM					
			Regular Operating Budget	AHSC AFP (Hamilton teaching hospitals)	Family Medicine Post-Grad Expansion (CBRT)	Distributed Medical Campus	MacCare (Niagara, Brantford, etc)	ROMP
Traditional Classroom	Large Group lecture	Lecture Theatre						
	Tutor, MD Program, \$4,500 per session	Conference Room						
Apprenticeship Model	Clinical Skills Preceptor, \$3000 per session	Clinical Skill Lab - simulated patients						
	Clinical Skills Preceptor, \$3000 per session	Physician Office - real patients						
	Clerkship Supervisor, Core placement \$1000/month	Hospital Ward / Clinic Physician Private Office						
	Clerkship Supervisor, elective placement \$1000/month	Hospital Ward / Clinic Physician Private Office						
	Resident Supervisor	Hospital Ward / Clinic Physician Private Office						
				Payments Processed as T4 Income		Payments Processed as T4A Income – and Subject to GST		

APPENDIX D: Treatment of Income and Payments for McMaster Employees as a Result of Research

Treatment of Income and Payments for McMaster Employees as a Result of Research

Type of Income	Honorarium		Faculty Supervision		Release Time	Consulting
Definition of Income	Income associated with McMaster employees invited to speak externally on their area of expertise		Income associated with McMaster employees to oversee a project, supervise students and/or report on the outcomes or contribute to a research project or program.		Income associated with teaching release of a faculty member in order to provide the faculty member with dedicated research time	Income for work performed outside the course of normal duties of the McMaster employee, conducted off site without use of University facilities and resources, with associated expenses covered by the employee directly
Treatment when the payment is a result of agreement between the University & an Outside Party?*	Payment is transferred to the Faculty and treated as a recovery to the Faculty					A consulting agreement (See Appendix F) that forms a sub-agreement must exist between the University and the Individual or their Company signed by the Dean, Chair and Executive Director of RC&IP. Any Conflict of Interest must be declared before a payment can be issued.
Can the Individual access these funds?	As this income may generate operating savings for the Faculty, allocation of all or part of these funds to the McMaster employee as payment or research grant is subject to the approval by the Faculty ** based upon a request from the individual.				No	Yes, by virtue of the signed sub-agreement
Access options	<u>Direct Payment</u>	<u>Research Account</u>	<u>Direct Payment</u>	<u>Research Account</u>	N/A	<u>Direct Payment Only</u>
Process ***	Faculty issues payroll form for approved payment of agreed amount	Faculty requests, in compliance with the Internal Sponsored Research (ISR) policy, a research ledger account be opened in the McMaster employee's name and transfers in approved research funds	Faculty issues payroll form for approved payment.	Faculty requests, in compliance with the Internal Sponsored Research (ISR) policy, a research ledger account be opened in the McMaster employee's name and transfers in approved research funds		Department issues all such payments in accordance with the sub-agreement. For payments to a McMaster employee's company this is via a cheque requisition. For payment to the McMaster employee this is done through a payroll form.
Tax treatment	T4 issued	Not taxable	T4 issued	Not taxable	Not taxable	Direct Payment Only
		Donation receipt not applicable		Donation receipt not applicable		T4A issued

Research and research related activities are viewed as an integral part of a Faculty member's job (ie. normal duties).

* Funds specific to a non-McMaster agreement (ie only between the McMaster employee & an Outside Party for research unrelated McMaster duties and not utilizing University facilities and resources) are not administered by McMaster. Such income must be handled and reported on exclusively by the McMaster employee.

** Such internal research funding is provided to faculty members from faculty operating funds based upon a request to and approval by the appropriate Faculty Dean. Faculty members do not need to be in receipt of an honorarium or faculty supervision to apply for an internal research grant.

*** Processes may differ by Faculty

APPENDIX E: Independent Contractor Questionnaire

To Download the Independent Contractor Questionnaire in Microsoft Excel format (.XLT), Please [click here](#) or visit:

http://www.mcmaster.ca/bms/policy/finance/icq08/icq08_app_e_individual_cont_question.XLT

APPENDIX F-1: Sample Contract for Services with Individual

To Download the Sample Contract for Services with Individual in Microsoft Word Template format (.DOT), Please [click here](#) or visit: http://www.mcmaster.ca/bms/policy/finance/icq08/icq08_app_f-1_individual_cont.dot

APPENDIX F-2: Sample Contract for Services with Personal Services Corporation

To Download the Sample Contract for Services with Personal Services Corporation in Microsoft Word Template format (.DOT), Please [click here](#) or visit:
http://www.mcmaster.ca/bms/policy/finance/icq08/icq08_app_f-2_personal_services_cont.dot

APPENDIX G: Supplemental Contract for Research Services

To Download the Supplemental Contract for Research Services in Microsoft Word Template format (.DOT), Please [click here](#) or visit: http://www.mcmaster.ca/bms/policy/finance/icq08/icq08_app_g_supple_cont_research_serv.dot

Payments to Independent Contractor (“IC”) Versus Employees - Process

1. APPROVAL PROCESS

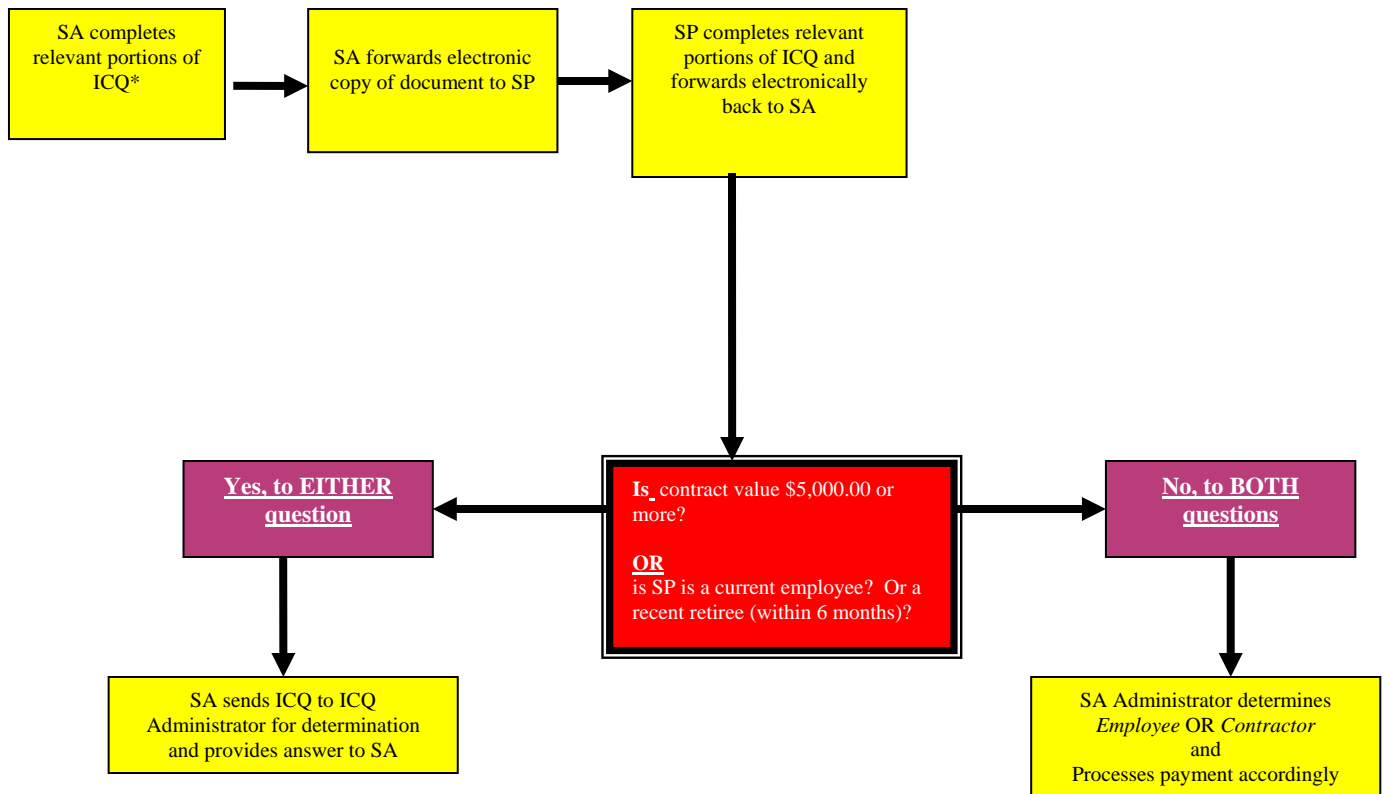
Terms

“SP” = Service Provider

“SA” = Signing Authority

“ICQ” = Independent Contractor Questionnaire

“Manager” = Senior Administrator of Unit (e.g. Faculty Manager, FHS Department Manager, Director)



2. DOCUMENTATION PROCESS

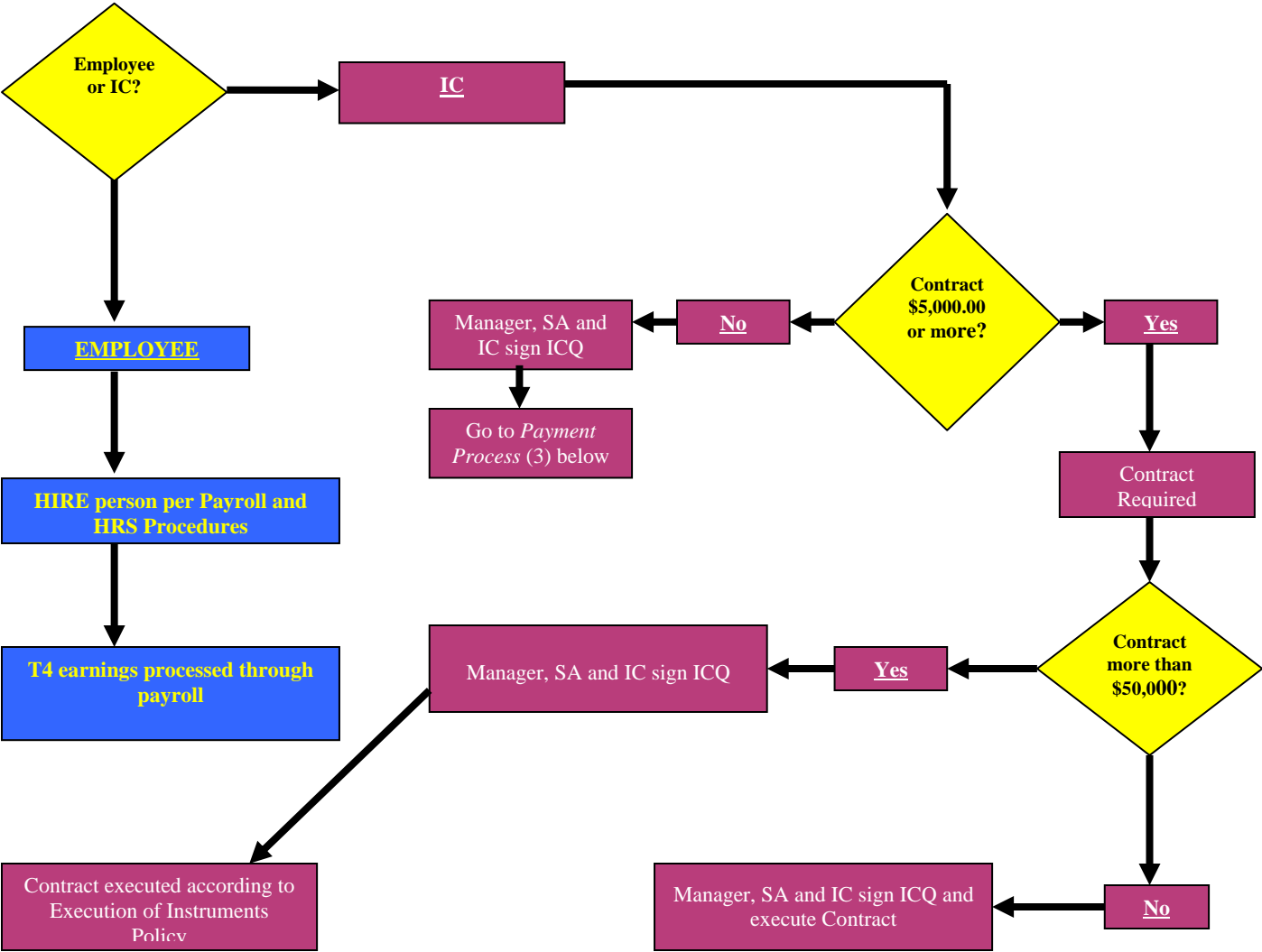
Terms

“IC” = Independent Contractor

“SA” = Signing Authority

“ICQ” = Independent Contractor Questionnaire

“Manager” = Senior Administrator of Unit (e.g. Faculty Manager, FHS Department Manager, Director)



3. PAYMENT PROCESS

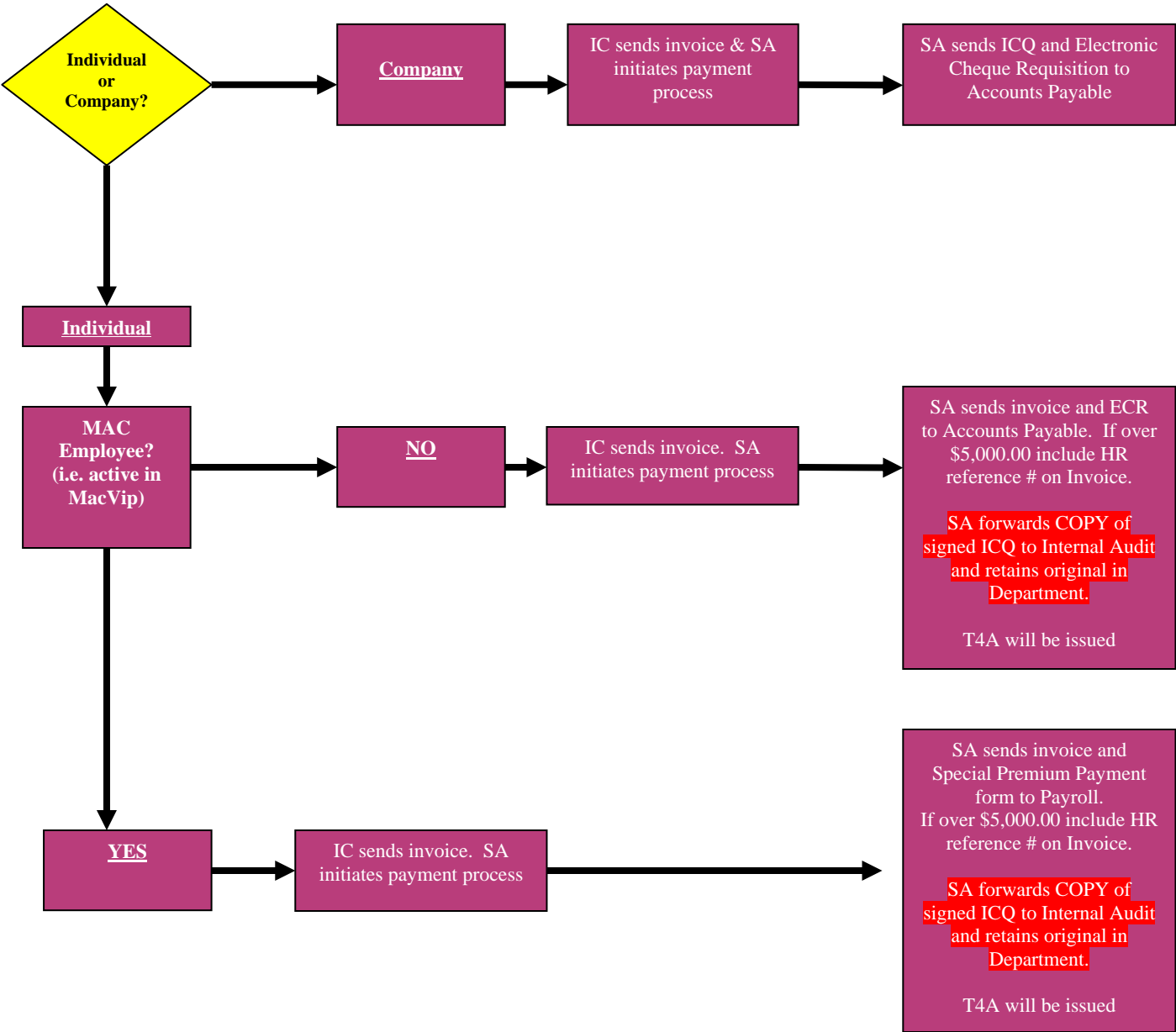
Terms

“IC” = Independent Contractor

“SA” = Signing Authority

“ICQ” = Independent Contractor Questionnaire

“Manager” = Senior Administrator of Unit (e.g. Faculty Manager, FHS Department Manager, Director)



APPENDIX I: Questions and Answers

FACULTY SUPERVISION

1. What is the procedure for paying faculty supervision under the new policy?

After payment has been received from the research sponsor, the faculty supervision is charged in the research ledger and credited to the departmental operating account as a salary recovery in sub-code 1022 (Faculty Supervision). Once the transfer has been made, the funds are under the control of the Chair/Dean, and can be used wholly or in part for:

- Savings to the departmental operating budget
- Payment of additional employment income (T4) to researchers. The department completes a one-time salary adjustment form on sub-code 1022, authorized by the Chair/Dean.
- Support of research through internal grants. The researcher completes an internal grant application form (check with your faculty business manager or director for faculty specific forms) outlining the research project and the amount requested. On approval by the Chair/Dean, an internally sponsored research account is opened and the funding transferred through sub-code 0996 (Transfer Funds).

2. If the faculty member's salary is being paid from different sources, how should the salary recovery from faculty supervision be recorded?

Faculty supervision will be transferred to the departmental operating account that pays the faculty member's base salary. Any resulting over-recovery is a savings to the department, and may be used as outlined in question #1.

INDEPENDENT CONTRACTORS QUESTIONNAIRE (ICQ)

1. What is an ICQ?

It stands for Independent Contractor Questionnaire; the form must be required filled out by the Contractor and by the University as a part of this Policy. The purpose of the ICQ is to determine whether a Service Provider who is providing services to the University is an employee or an independent contractor.

It's available at

http://www.mcmaster.ca/bms/policy/finance/icq08/icq08_app_e_individual_cont_question.XLT

2. What happens to the completed ICQ?

Once completed by the purchaser and provider of the services, the account signing authority determines if either (i) the total value of the contract is \$5,000.00 or more or (ii) the Service Provider is a current employee or retiree (retired within the last 6 months). If *neither* is the case, then the Account Signing Authority reviews the ICQ form and makes a determination of employee vs. independent contractor.

If *either* the total contract value is \$5,000.00 or more *or* the Service Provider is a current employee or retiree (retired within the last 6 months) the ICQ is sent to the ICQ Administrator for evaluation and review.

If it is determined that a consulting relationship exists, the original completed ICQ form is retained by the Account Signing Authority. A copy of the signed ICQ must be submitted to Internal Audit at the same

time that request for payment is made. The complete procedure is set out in Section 6 of the Policy.

3. What if the Service Provider is a current employee but the total contract value is less than \$5,000.00?

The completed ICQ form is sent to the ICQ Administrator.

4. What if the Service Provider is a retiree who has been retired less than 6 months but the total contract value is less than \$5,000.00?

The completed ICQ form is sent to the ICQ Administrator.

5. What if the Service Provider is has been retired for more than 6 months?

If the total contract value is for less than \$5,000.00, the Account Signing Authority makes the employee vs. independent contractor determination based on the information provided on the ICQ form.

If the total contract value is \$5,000.00 or more, then the ICQ form goes to the ICQ Administrator.

INDEPENDENT CONTRACTORS

1. Who is covered by the Policy on Payments to Individuals (Independent Contractors) Versus Employees?

This Policy focuses on payments to individuals as independent contractors or consultants and the classification of their relationship with McMaster University. This Policy covers payment for services provided by employees of McMaster University, members of a McMaster University pension plan and individuals not currently employed by the University.

Payments to individuals, sole proprietors, partnerships and other unincorporated businesses are covered under this Policy. Payments for services rendered by an arms length incorporated business, where payments are made to the company and not the individual, are not within the scope of this Policy and are covered under Purchasing Policy at <http://www.mcmaster.ca/bms/policy/purchase/p020.htm> .

2. If the individual has a GST number, is their work automatically considered to be consulting?

No. A GST number by itself is not sufficient to determine if a consulting relationship exists. The ICQ must be completed.

3. When engaging a Service Provider as an independent contractor, whose responsibility is it to ensure that they are paid properly – i.e. Who determines if he/she is an employee or an independent contractor?

It is the responsibility of the person who contracts with the individual and the individual to complete the ICQ which will determine how they should be paid. The Account Signing Authority, the Manager (the Senior Administrator of the Unit e.g. Faculty Business Manager, FHS Department Manager) will be required to affix their signatures to the ICQ. Advice is available from HR/Labour Relations.

HONORARIA

1. How should the receipt of honoraria payable to McMaster University be handled?

Honoraria are payments made to McMaster by outside institutions for faculty members acting on behalf

Payments to Individuals (Independent Contractors) Vs. Employees

of the University. Honoraria are normally minor amounts and any payments over \$5000 should go through the Faculty Business Manager or Director who will work in consultation with the Office of Research Contracts & Intellectual Property.

These payments for the faculty members' time are a recovery and should be deposited to the departmental operating account in sub-code 1009 (Honoraria-Academic). These savings are under the control of the Chair and may be used as outlined in question #1 above.

2. How is the determination made if the faculty member was representing McMaster?

Honoraria payable to McMaster University indicates that the faculty member was representing the University and as such these payments fall under this Policy.

OTHER TYPES OF PAYMENTS

1. A faculty member was doing work in another country for an institute that didn't want to enter into an agreement with McMaster, and paid the faculty member directly. Can the money be deposited into a research account?

No. Since McMaster is not a party to the agreement with the outside institute, the cheque was payable to the faculty member and the income must be taken personally.

2. How should payment be made to a retired faculty member engaged in activities related to teaching and/or research?

The determination of whether a retired faculty member is an employee or consultant can be made after completing the ICQ. If the work is similar to what the faculty member did before retirement, it is very likely that there will be an employment relationship created when the person is engaged by the University.

GUEST LECTURERS

1. How are Guest Lecturers to be paid?

Guest Lecturers are considered to be Independent Contractors, and should be paid through the Cheque Requisition System.

OTHER

1. Are a person's SIN and banking information required if payment must be made through payroll?

Yes.

2. What are the guidelines for providing gift certificates to employees?

Gift certificates should always be considered as cash in kind and giving a gift certificate is the same as making cash payment.

Gift certificates provided to employees are always taxable. Giving gift certificates to employees should be avoided due to the unexpected tax consequences to the employee and the administrative costs.

3. What are the guidelines for providing gift certificates to volunteers and guest lecturers?

Gift certificates should always be considered as cash in kind and giving a gift certificate is the same as making cash payment.

Volunteers can receive gift certificates up to \$500 in a year with no tax consequences.

Guest lecturers can receive gift certificates up to \$500 in year with no tax consequences.

4. If an individual not connected to the University is providing storage including storage space for the University and charging space rent, why does this have to be processed through payroll?

It doesn't. It should be processed through Accounts Payable and the cheque requisition system.

5. Is a 'consultant' the same thing as an 'independent contractor'?

Not necessarily, some employee's job titles include the word consultant, and some consultants may be independent contractors. Please use the ICQ (questionnaire) to guide the decision as to whether this person is an 'employee consultant' or an independent contractor.