

Employee vs Independent Contractor Determination & Certification

The purpose of this form is to provide a guideline for determining whether an individual contracted for services is classified as an "employee" or "independent contractor." The Internal Revenue Service (IRS) presumes that an individual who provides a service is an employee unless there is evidence to support the classification of the individual as an independent contractor.

Determination: The questionnaire presented in this document is designed to assist in determining the appropriate classification of an individual. The resolution of whether an individual providing services to the University is an employee or an independent contractor is based on the facts and circumstances of each case. The degree of importance of each factor varies depending on the occupation and the factual context in which services are performed.

Definitions:

- **Employee** – If the University has the legal right to control both the method and the result as to where, when, who and how the service is to be performed, the individual should be classified as an employee.
- **Independent Contractor** – If the University has the legal right to control or direct only the results of the work but not the means and method used in accomplishing the result, the individual should be classified as an independent contractor. Independent contractors generally hold themselves out in their own names as self-employed and make their services available to the public. Also, independent contractors generally carry their own worker's compensation insurance.
- **International Visitor** – If the individual is not a U.S. citizen and performing services in the United States or its territories, prior to any payment(s) being disbursed, the individual must provide a U.S. social security number and proof of visa status (I-94 form) documenting authorization to receive payment for work performed. To assure compliance with all regulations, contact the Payroll Manager at 331-2255 for guidance *prior to contracting with* an international visitor.

Instructions: Complete the questionnaire and, based on your preliminary assessment, submit the appropriate forms.

Forms	Human Resources	Procurement Services
Direct Deposit Request – Employee/Student	Optional	Optional
Direct Deposit Request – Vendor	Optional	Optional
Appointment Letter	Required	
Adjunct Information Sheet	Required if new employee	
I-9 Employment Eligibility Verification	Required if new employee	
W-4 Employee's Withholding Allowance Certificate	Required if new employee	
Employee vs Independent Contractor Determination & Certification		Required
Independent Contractor Agreement (Page 4 and 5)		Required if < \$5,000
Request for Payment – Independent Contractor		
Banner Purchase Requisition		Required if > \$5,000
Independent Contractor Agreement (Page 4 and 5)		
W-9 Request for Taxpayer Identification Number		Required if new vendor

Payment(s) to employees will be disbursed from the Payroll office. In order to be paid on the 15th day of the month, all paperwork must be received in the Human Resources office three (3) business days prior to the 5th of the month. In order to be paid on the last day of the month, all paperwork must be received three (3) business days prior to the 20th of the month.

Payment(s) to independent contractors will be disbursed from the Accounts Payable office in accordance with specified contract payment terms.

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Purchase Requisition # _____ Vendor G # _____

Questionnaire: Contact Procurement Services at (616) 331-2280 should you need assistance in completing this questionnaire.

1. Is the individual currently or have they ever been a GVSU employee or student? Yes No
To assure compliance with regulations, the University requires that an employee providing services unrelated or in addition to their regular duties will be compensated as an employee. Generally, a student providing services to the University will be compensated as a student employee. **Note: If the individual is a current employee or student, it isn't necessary to complete the remainder of this form. Proceed to complete and submit the appropriate forms to the Human Resources or Student Employment office. Please don't hesitate to contact Procurement Services if you have any questions and wish to discuss the appropriate status of the individual.**
2. Is the individual an international visitor? Yes No
Compensation to an international visitor is solely dependent upon international regulations. The Payroll Manager will advise accordingly.
3. Will payment for services be made payable to a person or a business? Person Business
Does the individual have an employer identification number? Yes No
One indicator that the individual might be an independent contractor is if they possess an employer identification number rather than a social security number.
4. Do you set the hours of work? Yes No
Establishment of set work hours bars the individual from being master of their own time, which is the right of the independent contractor.
5. Do you set the order or sequence of work? Yes No
If an individual must perform certain tasks at certain times, they are not free to follow their own pattern of work, and should be classified as an employee. An independent contractor is generally held accountable only for outcomes, not the means with which they are achieved.
6. Do you furnish tools and materials? Yes No
The more an employer provides the tools and materials necessary to have the service performed, the greater the chances an employee relationship exists.
7. Is the service performed on employer's premises? Yes No
This factor implies control, especially when the service could be done elsewhere. Providing use of desk space, computer, telephone, clerical services, or an e-mail account places the individual within the employer's direction and supervision.
8. Will the individual be teaching a class or camp? Yes No
The University requires that anyone teaching credit or non-credit courses/camps will be classified as an employee.
9. Do you provide training? Yes No
An independent contractor ordinarily uses their own methods and receives no training.
10. Do you provide instructions? Yes No
An individual who is required to comply with instructions about when, where and how they work is ordinarily an employee.
11. Will the individual be hiring, supervising and paying assistants? Yes No
An individual who manages or supervises employees of the employer or has any authority to hire or fire staff members is an employee.
12. Do you have a continuing relationship? Yes No
A continuing relationship with the employer for whom services are performed indicates that an employer-employee relationship exists. If the arrangement contemplates continuing or frequently recurring work (even on irregular intervals), the relationship is considered permanent, even if the services are performed part-time, seasonal, or of short duration.

13. Will the individual be reimbursed for business and/or travel expenses? Yes No
An individual who is paid on a job basis and who is responsible for their incidental expenses, if free to work according to their own methods and means, is generally an independent contractor.
14. Is this individual required to provide the contracted services personally? Yes No
An independent contractor may use their own employees or subcontractors to complete the service.
15. Do you have the right to discharge the individual? Yes No
An independent contractor cannot be fired except under the terms of the contractual termination clause.
16. Does the individual perform similar services for others? Yes No
An independent contractor generally makes their services available to the general public.
17. Does the individual work for more than one employer at a time? Yes No
An individual who works for a number of employers at one time is generally an independent contractor.
18. Will the individual be paid for a specific project? Yes No
Payment made by the job generally indicates that the individual is an independent contractor (even if computed by the number of hours required to do the job at a fixed rate per hour). Payment of regular amounts at stated intervals strongly indicates an employee relationship.
19. Could the individual realize a profit or loss? Yes No
An individual who can realize a profit or suffer a loss as a result of their services is generally an independent contractor, but one who cannot is an employee.
20. Do you have the right to terminate the individual? Yes No
An employee has the right to end his or her relationship with the employer at any time without incurring liability. An independent contractor works pursuant to and is approved by the terms of the contract and may be legally obligated to make good for failure to provide the contacted-for services.

Certification: My responses to these questions are true and accurate to the best of my knowledge. Based on my responses, I am requesting that this individual be paid as an independent contractor. I understand that if this individual is paid as an independent contractor and the IRS subsequently determines that the individual should have been paid as an employee, I may be called upon to testify at an audit as to the accuracy of the information I have provided on this form.

Individual's Name _____ Contracting Dept _____

Signature _____ Date _____
Contracting Department Representative

Signature _____ Date _____
Dean/Appointing Officer

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Determination: Employee Independent Contractor
 International Visitor - Compensation Permitted, required forms enclosed Compensation Not Permitted

Comments _____

Signature _____ Date _____
Procurement Services Sourcing Specialist

Signature _____ Date _____
Payroll Manager

Independent Contractor Agreement

THIS AGREEMENT, made by and between Grand Valley State University hereinafter referred to as "University" and

_____ hereinafter referred to as "Contractor" is executed for the provisions of service pursuant to the terms and conditions set forth below.

SCOPE OF SERVICES

Contractor shall, within the framework of this Agreement, devote its full and undivided time and perform its professional services with the standard of professional care and skill customarily provided in the performance of such services. Contractor shall avoid conflicts of interest and appearances of impropriety relating to and as determined by GVSU. Services to be performed:

PROJECT TITLE _____

- 1.
- 2.
- 3.
- 4.

SCHEDULE

The service will begin _____ and be completed no later than _____ except as otherwise agreed to by the University. Time is of the essence in the Agreement. The University and Contractor both reserve the right to completely cancel the contract and the services to be rendered by the Contractor for any reason upon thirty (30) days written notice to the other party. In the event of termination prior to completion of all work described above, the services rendered by the Contractor shall be in full satisfaction of the portions of the total work actually completed up to the time of such termination, and the University shall render payment for all services actually completed prior to the termination.

As an independent contractor, Contractor shall determine its work schedule and shall perform services pursuant to this Agreement when appropriate.

COST FOR SERVICES

The fee to be paid the Contractor for basic services rendered under this Agreement shall be _____ dollars (\$) _____) per billed hour. Contractor shall provide a billing statement itemizing the hours billed. Payment will be made on a monthly basis on or near the third business day of the month. The entire contractual amount shall not exceed \$ _____.

INDEPENDENT CONTRACTOR

In the performance of their respective duties and obligations under this Agreement, each party is an independent contractor, and neither is the agent, employee or servant of the other, and each is responsible only for its own conduct.

Contractor shall not be deemed to be an employee of Grand Valley State University for purposes of wages, fringe benefits, worker's compensation, unemployment compensation, minimum wage laws, or for any other purpose. As an independent contractor, Contractor, its employees and agents, is solely responsible for worker's compensation, unemployment compensation, taxes, social security, and fringe benefits. Contractor agrees to indemnify Grand Valley State University, its officers, employees, agents and assignees, for all claims, costs, actions, causes of action, losses or expenses (including attorney fees) related thereto, or resulting from the actions, omissions or negligence of the Contractor, its officers, employees and agents pursuant to this Agreement.

It is understood that _____ will perform the services under this Agreement on behalf of Contractor. Contractor agrees that it will not subcontract any work under this Agreement nor assign any or all of this Agreement without the prior written approval of the University.



OTHER PROVISIONS

This Agreement constitutes the entire agreement between the parties, and all prior discussions, agreements, and understandings, whether verbal or in writing, are hereby merged into this Agreement. No amendment or modification to this paragraph shall be effective unless the same is in writing signed by the party to be charged.

The University shall be considered the sole and exclusive owner throughout the world forever of all rights existing as a result of the Contractor's performance of this Agreement, including all manuscripts, reports, sketches, drafts, notes, maps, memoranda, etc., relating to the work, and all revisions, editions, and versions thereof in all forms, and media now or hereafter known and developed.

If any provision of this Agreement shall be determined to be void, invalid, unenforceable or illegal for any reason, it shall be ineffective only to the extent of such prohibition and the validity and enforceability of all the remaining provisions shall not be affected thereby. This Agreement shall be governed by and construed under the laws of the State of Michigan.

The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights, nor shall the same be deemed to be a waiver of any subsequent breach, either of the same provision or otherwise.

TERMS AND CONDITIONS

This contract is limited to the terms and conditions contained on its face and those expressly incorporated by reference. Notwithstanding when provided to Grand Valley State University, any and all additional or different terms or conditions included in independent contractor's acknowledgment, invoice, quote, or any other contractor document ("Additional or Different Terms") will be deemed to be material alterations, or a proposal to add terms to, or change terms of, this contract, and notice of objection to them is hereby given. Any such Additional or Different Terms shall be void. Grand Valley State University hereby unequivocally rejects any and all Additional or Different Terms, unless it expressly accepts such Additional or Different Terms in a writing signed by an authorized representative of Grand Valley State University's procurement office and made a part of this contract.

TERMS AND CONDITIONS visit www.gvsu.edu/purchasing

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement on this _____ day of _____.

GRAND VALLEY STATE UNIVERSITY

Name _____

Title _____

Signature _____

Telephone _____

Name _____

Signature _____

Telephone _____

CONTRACTOR

Name _____

Title _____

Signature _____

Residence Address _____

Telephone (_____) _____

Non-resident Alien Visa Type _____
(Please provide copy with this contract)