

Exercise 1 (Contract Scenarios)

Please review the following scenarios. With small groups, please determine whether a contract exists. Please identify what has created or prevented the creation of a contract. Please feel free to use the lined space provided for notes.

Scenario 1

- A UO Department meets with the owner of a large plot of land.
- They agree that UO Department can place research instruments on the land and in exchange UO will build a fence.
- UO Department and the land owner shake hands

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Scenario 2

- UO Department sends a letter to Bethel School District containing the terms of a proposed arrangement.
- UO Department signs the letter and requests that the School District also sign the letter if the terms are acceptable.
- Bethel School District signs the letter and returns it to the Department

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Scenario 3

- UO Dept creates a PO with the standard terms and conditions for ten hand radios:
  - UO Dept calls in the order and file the PO in their file cabinet.

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- After talking with vendor about the intended purchase UO Dept sends PO to the vendor.

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UNIVERSITY OF OREGON

UNIVERSITY OF OREGON
PERSONAL SERVICES CONTRACT
Contract No. Supplemental Materials #2

Main contract form containing sections for Contractor Information, Additional Terms & Attachments, Statement of Work, Department Name, Department Address, Prepared by, Preparer's Phone Number, Contract Term, Contract Fee/Honorarium, and Expenses.

By my signature below I am accepting the terms and conditions of this Contract and I certify that I am not a University of Oregon employee, I am an independent contractor, and I understand the tax and legal implications of this Contract and that payments under this Contract will be reported on Form 1099.
Signature of Contractor \_\_\_\_\_ Date Signed: \_\_\_\_\_
Printed Name and Title of Contractor \_\_\_\_\_

University:
By: \_\_\_\_\_ Printed Name: \_\_\_\_\_
Date: \_\_\_\_\_ Title: \_\_\_\_\_

**ATTACHMENT A**  
**PERSONAL SERVICES CONTRACT**  
**STANDARD CONTRACT PROVISIONS**

1. **INSURANCE.** Contractor will secure insurance at Contractor's expense and keep that insurance in effect during the term of this Contract as indicated on **Attachment D**, if attached.
2. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Contractor is not to be considered an agent or employee of University for any purpose, and neither Contractor nor any of Contractor's agents or employees are entitled to any of the benefits that University provides for its employees. Nothing in this Contract will be construed to create a partnership, joint venture, franchise, agency, or employment relationship between the Parties.
3. **EQUAL EMPLOYMENT OPPORTUNITY NOTICES.** This contractor and subcontractor shall abide by the requirements of 41 CFR §§60-1.4(a), 60-300.5(a) and 60-741.5(a), which are incorporated by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.
4. **TERMINATION.** (a) This Contract may be terminated at any time by mutual written consent of both Parties. (b) University may at its sole discretion terminate this Contract in whole or in part upon 30-days' written notice to Contractor. (c) University may terminate this Contract effective upon delivery of written notice to Contractor, or at such later date as may be established by University: (i) federal or state laws, rules, regulations, or guidelines are modified or interpreted in such a way that any Deliverables or services to be provided by Contractor under this Contract are no longer allowable or appropriate for purchase by University or are no longer eligible for the funding proposed for payment authorized by this Contract; (ii) any license or certificate required by law or regulation to be held by Contractor to provide Deliverables under this Contract is denied, revoked, or not renewed for any reason; (iii) if Contractor becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (iv) if a petition under any foreign, state, or United States bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended, is filed by Contractor; or (v) if such a petition is filed by any third party, or an application for a receiver is made by anyone and such petition or application is not resolved favorably to Contractor within ninety (90) calendar days. (d) University may terminate by written notice of default (including breach of contract) to Contractor the whole or any part of this Agreement if: (i) Contractor fails to provide services called for by this Agreement; or (ii) Contractor fails to perform any of the other provisions of this Agreement, or fails to pursue the Work so as to endanger performance of this Agreement in accordance with its term and, after receipt of written notice from University.
5. **TERMINATION DUE TO NONAPPROPRIATION OF FUNDS.** University may terminate this Contract upon written notice to Contractor if University has not: (a) Received from the Oregon Legislative Assembly appropriations, limitations or other expenditure authority, or (b) Received allotments pursuant ORS Chapter 291 sufficient to allow University, in the exercise of its reasonable administrative discretion, to pay the amounts of this Contract.

6. **SUBCONTRACTS AND ASSIGNMENTS.** Contractor will not subcontract, assign, or transfer any of its interest in this Contract without obtaining prior written approval from University, which consent may be withheld by University in its sole discretion. As a condition to requesting prior written approval, Contractor must provide a written copy of any such proposed assignment or subcontract to University. University's consent to any assignment or subcontract will not relieve Contractor of any of its duties or obligations under this Contract. Any assignment or subcontract in contravention of this Section will be null and void.

7. **LIMITATION OF LIABILITIES.** NEITHER PARTY WILL NOT BE LIABLE FOR (i) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES UNDER THIS CONTRACT, OR (ii) ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS CONTRACT IN ACCORDANCE WITH ITS TERMS.

8. **NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the Parties or notices to be given under this Contract will be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or University at the address or number set forth on the first page of this Contract, or to such other addresses or numbers as the Parties may from time to time direct in writing. Any communication or notice so addressed and mailed will be deemed to be given five days after mailing. Any communication or notice delivered by facsimile will be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against University, such facsimile transmission must be confirmed by telephone notice to University's supervising representative. Any communication or notice by personal delivery will be deemed to be given when actually delivered.

9. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way affect the meaning or interpretation of this Contract.

10. **RECYCLED PRODUCTS.** Unless expressly otherwise provided for in this Contract, all paper products will be sourced from mills using elemental chlorine-free processes and contain a minimum of 30% post-consumer waste.

11. **SURVIVAL.** All provisions of this Contract that would reasonably be expected to survive the termination of this Contract will do so.

12. **SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected. The Parties agree to attempt to substitute for any illegal or unenforceable provision a valid or enforceable one that achieves the economic, legal and commercial objectives of the illegal and unenforceable provision to the greatest extent possible.

13. **SUCCESSORS IN INTEREST.** This Contract will be binding upon and will inure to the benefit of the Parties, and their respective successors and assigns.

14. **EXCLUSIVITY.** University is not bound by exclusivity provisions.

15. **NO THIRD PARTY BENEFICIARIES.** University and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or will be construed to give any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name and expressly described in this Contract as intended beneficiaries.

16. **OVERDUE ACCOUNT CHARGES.** Payment of overdue account charges by University will be subject to OAR 580-061-0050.
17. **FORCE MAJEURE.** Neither University nor Contractor will be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond, respectively, University or Contractor's reasonable control. Contractor will, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and will, upon the cessation of the cause, diligently pursue performance of its obligation under this Contract.
18. **ATTACHMENTS.** All attachments, addenda, schedules and exhibits which are referred to in this Contract are incorporated in this Contract.
19. **MERGER.** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED IN THIS CONTRACT REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT WILL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER WILL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE TO THIS CONTRACT OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.
20. **COMMUNICATIONS STANDARDS AND ACCESSIBILITY REQUIREMENTS.** Contractor will conform to all applicable Web standards and Web accessibility requirements found at: <http://webcom.uoregon.edu/webstandards> as well as all University Communications Standards as set forth in the UO Style Guide available at: <http://des.uoregon.edu/uo-style-guide>.
21. **SMOKE AND TOBACCO FREE CAMPUS.** Contractor acknowledges and agrees University's grounds and premises are smoke and tobacco free. Contractor and Contractor's employees, agents and subcontractors, if any, agree not to smoke or use tobacco products while on University property.
22. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in counterparts, and via facsimile or electronically transmitted signature (i.e. emailed scanned true and correct copy of the signed Contract), each of which will be considered an original and all of which together will constitute one and the same Contract. At the request of a Party, the other Party will confirm facsimile or electronically transmitted signature by delivering the Contract with an original signature to the requesting Party.



**UNIVERSITY OF OREGON  
PERSONAL SERVICES CONTRACT  
ATTACHMENT B**

STATEMENT OF WORK:

Contractor is renowned for its cutting edge software development. Contractor has successfully automated processes for several businesses.

The goal of this project is to allow for automated paperwork processing that is expected to result in substantial cost savings to University.

Contractor is expected to create program to automate the paperwork processing of Institute of Interstellar Teleportation. This automation will allow paperwork to be processed without the need for manual intervention at key points in the process.

The automation will be based on a dynamic overall architecture with administrative controls capable of responding to a high volume of requests for information and expandable to meet future needs. The project will encompass rule-based outputs comprised of both static and dynamic content, a backend application and a dynamic serve platform combined with an adequate database for driving the process.

Further, the Contractor will assist University in the implementation of the automated paperwork processes and other automated business practices.

Contractor will begin work as of the effective date of the Contract and will complete work by May 31, 2016.

**UNIVERSITY OF OREGON  
PERSONAL SERVICES CONTRACT  
ATTACHMENT C - COMPENSATION**

**Check all that apply:**

- Variable Fee. Compensation will be determined by the following rate structure: \$500/hour.
- Reimbursement (Leaving this box unchecked indicates that no reimbursements will be made under this Contract). Contractor will be reimbursed for the following itemized expenses:
1. Travel expenses related to this project.
  2. Administrative expenses related to this project.
- To receive these reimbursements (check one):
- Contractor will provide receipts or documentation of all expenses to University and will be reimbursed subject to the applicable limits found at the following web address: <http://ba.uoregon.edu/content/travel-reimbursement>. Any reimbursement under this option will be reported as income on Form 1099 unless Contractor is an individual.
- Contractor will fully describe any expenses listed within Contractor's Invoice. Contractor will maintain original receipts. All such payments under this section will be reported by University on Form 1099.
- Direct Payment of Contractor Expenses (Leaving this box unchecked indicates that no direct payment by University of Contractor's expenses will be made under this Contract). University will directly pay the following itemized expenses, subject to the applicable limits found at the following web address: <http://ba.uoregon.edu/content/travel-reimbursement>. Contractor will not be reimbursed for these expenses and these expenses will be included as part of the "Maximum Compensation" amount indicated on the first page of this Contract:
1. [DESCRIPTION OF EXPENSE]
  2. [DESCRIPTION OF EXPENSE]
- Interim Payments (Leaving this box unchecked indicates that no interim payments will occur.) Interim payments will be allowed. Interim payments will be made according to the following schedule:
- Contractor will bill University monthly for hours worked.
  - Final Payment of 10% will be paid to Contractor upon completion and University's acceptance of all work under this Contract.

## UO Department Purchasing Profile

(For Internal Department Use)

**Department Information:**

 3<sup>rd</sup> Level Organization #: \_\_\_\_\_

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

 5<sup>th</sup> Level Organization #: \_\_\_\_\_

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

Function	Title/Authorized Positions (no names)	Approval Dollar Limit (If applicable)
<b>Designated to Commit Department Funds</b> <ul style="list-style-type: none"> <li>• Provides internal approval to proceed with department purchase</li> <li>• Cannot enter into contracts</li> </ul>		
<b>Contract for Goods or Trade Services ≤ \$5,000 (L1CA)</b> <ul style="list-style-type: none"> <li>• Sign UO Purchase Order</li> <li>• Electronic approval of FIS P.O. or Verbal approval</li> </ul>	Either PCS or Level 1 Authorized Contracting Authority	
<b>Contract for Goods or Services &gt; \$5,000 - ≤ \$25,000 (L2CA)</b> <ul style="list-style-type: none"> <li>• Sign UO Purchase Order</li> <li>• Electronic approval of FIS P.O</li> <li>• Sign UO PSC or FUA at any amount</li> </ul>	Either PCS or Level 2 Authorized Contracting Authority	
<b>Receive Good/Service</b> <ul style="list-style-type: none"> <li>• Sign-off on receiving documents</li> <li>• Match packing receipt to order</li> </ul>		
<b>Process Invoice Payment</b> Verify for each purchase: <ul style="list-style-type: none"> <li>• Purchase document</li> <li>• Receiving document</li> <li>• Vendor Invoice</li> </ul>		
<b>Approve Invoices</b> <ul style="list-style-type: none"> <li>• Sign-off on vendor Invoice</li> </ul>		
<b>Review and Sign-Off on Monthly Financial Statements for Department</b>		



## CONTRACTING AUTHORITY CHEAT SHEET

### Level 1 Contract Authority (less than or equal to \$5,000)

#### **INCLUDED in Level 1 Contracting Authority:**

- Purchase Goods & Trade Services with value of less than or equal to \$5,000
  - Using a UO Purchase Order less than or equal to \$5,000.
  - Using invoices less than or equal to \$5,000
  - Banquet Event Orders under existing PCS approved contract
- Honorarium Contracts

#### **NOT INCLUDED in Level 1 Contracting Authority:**

- Any purchase over \$5,000
  - Purchase Orders over \$5,000
  - Any Personal Service Contracts at any value (not including Honorarium Contracts)
  - Any vendor contracts, invoices, estimates, order forms, or quotes at any \$ amount
  - Any changes to the UO Purchase Order Template
  - Any purchase subject to legal review
  - Any contract with a current or former UO employee, including student employees
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### Level 2 Contracting Authority (less than or equal to \$25,000)

#### **INCLUDED in Level 2 Contracting Authority:**

- Honorarium Contracts
- Purchase goods, trade services and personal services less than or equal to \$25,000
  - Using specific UO templates:
    - Purchase Order using UO Terms & Conditions
    - Personal Service Contracts using UO Terms & Conditions
    - Facility Use Agreements
    - Incoming Property Loan Agreements
    - Banquet Event Orders under existing PCS approved contract

#### **NOT INCLUDED in Level 2 Contracting Authority:**

- Specific UO templates over \$25,000
  - Purchase Order
  - Personal Service Contracts
  - Facility Use Agreement
  - Incoming Property Loans
- Any vendor contracts, invoices, estimates, order forms, or quotes at any \$ amount
- Any changes to the UO templates
- Any contract (including UO templates) subject to legal review
- Any UO custom contracts
- Any contract with a current or former UO employee, including student employees
- Any contract where services will be provided by an individual in a foreign country

## Approval/Notification Responsibilities

Approval requests need to include a copy of the contract and a summary of the purchase (information currently captured on the PCS Intake Sheet).

### 1. **Sponsored Projects Services (SPS) (formerly known as ORSA).**

- a. Any Purchase Order for equipment over \$5,000 if using grant funds.
- b. Any other type of contract including Purchase Orders and Personal Services Contract (PSC) of any dollar value if using ARRA grant funds
- c. Any other type of contract including Purchase Orders for other than equipment and Personal Services Contracts (PSC) if over \$25,000 if using grant funds other than ARRA grant funds.
- d. In order to determine if grant funds are being used for a contract:
  - i. Any index starting with a “2” or a “3” (e.g. 223001) signifying the use of grant funds.
  - ii. Any index starting with any other number (usually a 4) – may require approval if using grant funds.
- e. Must obtain SPS approval prior to signing the Purchase Order or PSC.
- f. Send approval request to SPS – [sponsoredprojects@uoregon.edu](mailto:sponsoredprojects@uoregon.edu)

### 2. **Chief Information Officer (CIO).**

- a. Any enterprise-wide technology purchase regardless of dollar value.
- b. Any agreement which will involve any access to UO networks/ systems (e.g. web development) regardless of dollar value.
- c. Any agreement which will involve Web hosting by a third party where the Website to be hosted will have a uoregon.edu address.
- d. Any other purchase of software over \$5,000.
- e. Must directly obtain CIO approval prior to signing the agreement.
- f. Send approval request to CIO - [itreview@uoregon.edu](mailto:itreview@uoregon.edu)

### 3. **Property Control & Surplus Property.**

- a. Any agreement for which we transfer property (permanently or temporarily), through purchase, sale, lease or loan.
- b. If wish to sell or trade UO property, must contact BAO Surplus Property prior to offering property for sale or trade – contact Molly Lockhart, [mlockhar@uoregon.edu](mailto:mlockhar@uoregon.edu)
- c. If wish to purchase, lease or accept a loan of property, must directly submit to Property Control after completing and signing the contract.
  - i. If property is being purchased or loaned at no cost send completed contract to Justin Samudio – [jsamudio@uoregon.edu](mailto:jsamudio@uoregon.edu) and Molly Lockhart – [mlockhar@uoregon.edu](mailto:mlockhar@uoregon.edu)
  - ii. if property is being acquired under a paid lease or loan send completed contract to Jill Ritz – [jritz@uoregon.edu](mailto:jritz@uoregon.edu)
- d. If wish to loan out UO property, must contact PCS prior to offering property for loan, [contract@uoregon.edu](mailto:contract@uoregon.edu)

**4. Accounts Payable (AP) – Vendor Set-Up.**

If the agreement is with a contractor that has **not** been set-up in Banner, the contractor must be set up in Banner before payment is made to the contractor.

- a. Contact AP for details on the vendor set-up process which process includes obtaining a UO Substitute W-9 from the contractor.
- b. [apbao@uoregon.edu](mailto:apbao@uoregon.edu)

**5. Accounts Payable (AP) – Foreign Vendors.**

If the agreement is with a foreign person or entity.

- a. Must directly submit the agreement to AP prior to signing the agreement.
- b. Submit approval request to Dan Patten - [dpatten@uoregon.edu](mailto:dpatten@uoregon.edu) with cc. to Carmela Kortum – [ckortum@uoregon.edu](mailto:ckortum@uoregon.edu), Sherrie Canfield – [sherriec@uoregon.edu](mailto:sherriec@uoregon.edu), and Joy Germack – [jgermack@uoregon.edu](mailto:jgermack@uoregon.edu).

**6. University Communications**

- a. Any agreement involving UO trademarks or allowing people to use our image(s)/name.
- b. Any sponsorship agreement.
- c. Any agreement with a third party requesting the third party create materials for mass distribution to the general public at large (e.g. websites, posters).
- d. Any agreement involving Writers, Graphic Designers, Web Services, Photographers, Videographers, and Advertising.
- e. Submit approval request to [advbgt@uoregon.edu](mailto:advbgt@uoregon.edu).

**7. Public Safety (Concerts/etc.):**

- a. Any agreement which Public Safety may want to know about, e.g. large concerts or particularly controversial speakers.
- b. Must directly submit to Public Safety prior to signing the agreement.
- c. Submit notification to Herb Horner – [hhorner@uoregon.edu](mailto:hhorner@uoregon.edu) and James Stegall [jstegall@uoregon.edu](mailto:jstegall@uoregon.edu).

**8. Public Safety (Security).**

- a. Any agreement involving hiring of security personnel.
- b. Any agreement wherein the Vendor will be providing its own security detail.
- c. Must directly submit to Public Safety prior to signing the agreement.
- d. Submit notification to Herb Horner – [hhorner@uoregon.edu](mailto:hhorner@uoregon.edu) and James Stegall [jstegall@uoregon.edu](mailto:jstegall@uoregon.edu).

**9. International Affairs:**

- a. Any agreement involving the international movement of students, where the students **will** receive credits from attending the program.
  - i. Must directly submit to International Affairs prior to signing the agreement
  - ii. Must have Foreign Study Program Committee approval
  - iii. Submit approval request to Sandy Booker– [sbooker@uoregon.edu](mailto:sbooker@uoregon.edu)
- b. Any agreement involving the international movement of students, where the students **will not** receive credits from attending the program.

- i. Must directly submit notice of agreement to International Affairs
- ii. Submit notice to Sandy Booker– [sbooker@uoregon.edu](mailto:sbooker@uoregon.edu)

**10. Advancement (Gifts).**

- a. Any agreement involving a gift of funds or property to UO.
- b. Gift agreements are processed by Advancement.
- c. Submit to Leslie Wolgamott ([lwolg@uoregon.edu](mailto:lwolg@uoregon.edu)) and Paul Elstone ([pelstone@uoregon.edu](mailto:pelstone@uoregon.edu)) for review by Advancement.

**11. Utilization of Foundation Funds.**

- a. Any agreement that will use funds originating from a Foundation account
- b. If the proposed use is allowed under state law and UO policy, transfer the funds from the Foundation to a UO index prior to proceeding with the agreement
- c. If the proposed use is not allowed under state law and UO policy, do not transfer the funds from the Foundation, contact PCS and PCS will work with the department and Foundation to complete the agreement and confirm payment procedures.
- d. Submit notice to: Hilary Hefferlin - [hheffer@uoregon.edu](mailto:hheffer@uoregon.edu)

**12. Contract with a Current or Former UO Employees.**

- a. Any agreement with a current or former UO employee.
- b. Please contact PCS prior to proceeding.

**13. Printing and Mailing Services.**

- a. All printing services must be performed by Printing & Mailing Services unless a waiver is obtained from Printing and Mailing Services. Must directly submit printing request to Printing and Mailing Services to determine if Printing and Mailing Services is able to provide the service prior to negotiating or signing the agreement.
- b. Any agreement for mailing services must be approved by Printing & Mailing Services. Must directly submit a request to Printing and Mailing Services to determine if Printing and Mailing Services is able to provide the service prior to negotiating or signing the agreement.
- c. Any agreement for lease or purchase of a copy/scanner/fax/multifunction machine must be approved by Printing & Mailing Services. Must directly submit Production Copier/Printer Acquisition Form to Printing & Mailing Services for approval prior to signing the agreement.
- d. Any agreement for purchase of interior or exterior signage for any UO owned or controlled space.
- e. Submit request to Mark Dixon, Director Printing & Mailing Services - [mdixon@uoregon.edu](mailto:mdixon@uoregon.edu).

**14. Catering Services.**

- a. All catering services on property owned or controlled by UO must be performed by University Catering unless a waiver is obtained from University Catering.
- b. Must directly contact University Catering to determine if University Catering is able to provide service or if a waiver will be granted prior to negotiating or signing agreement.
- c. Submit University Catering Waiver Form to [catering@uoregon.edu](mailto:catering@uoregon.edu).

**15. Temporary Employees from Employment Agencies.**

- a. Must work with Human Resources for these types of appointments
- b. Prior to engaging a temporary employee through an employment agency (such as Personnel Source), you must first confirm if a Qualified Rehabilitation Facility (QRF) is able to provide the staffing you need.
- c. For more information, please go to: <http://hr.uoregon.edu/recruitment-employment/temporary-employment/temporary-agency-requests-effective-2013>

**16. Furniture Purchases.**

- a. Prior to purchasing furniture, please consult the Furniture Purchase Matrix to determine the next step in initiating the purchase of furniture:  
[http://pcs.uoregon.edu/sites/pcs.uoregon.edu/files/Furniture%20Purchase%20Matrix\\_PCS\\_082312.pdf](http://pcs.uoregon.edu/sites/pcs.uoregon.edu/files/Furniture%20Purchase%20Matrix_PCS_082312.pdf)
- b. Any furniture purchases that require delivery or installation may be subject to Bureau of Labor and Industry (BOLI) rates.
- c. Must contact Capital Construction to determine if BOLI rates apply to a proposed systems furniture purchase.
- d. Submit proposed furniture purchase according to Matrix referenced in 17(a) above.

**17. Vehicle Purchases.**

- a. Any purchase of a motorized vehicle or golf cart.
- b. Contact Mobile Shop to ensure the vehicle passes safety inspection prior to purchase.
- c. Submit proposed purchase of vehicle to Michael Hamill, Campus Operations,  
[hamill@uoregon.edu](mailto:hamill@uoregon.edu) and [Bill Kasper - Kasper@uoregon.edu](mailto:Kasper@uoregon.edu)

**18. Faculty Exchange Agreements.**

- a. Please contact PCS before negotiating any agreement with another institution of higher education/governmental entity where all of the following applies:
  - i. UO faculty works at the other institution of higher education/governmental entity;
  - ii. UO still pays UO faculty member while at other institution of higher education/governmental entity; and
  - iii. The other institution of higher education/governmental entity reimburses UO the amount of a UO pays the UO faculty member while the UO faculty member is working for the other institution of higher education/governmental entity.
- b. Please contact PCS before negotiating any agreement with another institution of higher education where UO and the other institution of higher education agree to undertake faculty exchanges (where UO faculty may work at the other institution and other institution faculty may work at UO).
- c. Any agreement hiring an individual to provide instruction for UO credit must have Unclassified Personnel Services (UPS) approval. PCS will obtain if UPS approval if PCS is processing the agreement. If exercising Level 2 Signature Authority, submit requests for approval directly to Sonia Potter in UPS at [soniap@uoregon.edu](mailto:soniap@uoregon.edu)



**19. Office of Risk Management (ORM).**

- a. Any questions regarding insurance or waivers of rights.
- b. Approval may be obtained, but is not required prior to signing the agreement.
- c. Send questions to ORM - [riskmanagement@uoregon.edu](mailto:riskmanagement@uoregon.edu)

**20. HIPAA Compliance Officer.**

- a. Any HIPAA covered department at UO with matters that may require a Business Associate Agreement (BAA) contact:
- b. If the contract is for University Health Center send to Debra McLaughlin [dmclaugh@uoregon.edu](mailto:dmclaugh@uoregon.edu) 6-4452 prior to proceeding to sign the agreement.
- c. If the contract is for any other department send to PCS for processing with UO General Counsel (Missy Matella and Bryan Dearing) prior to proceeding to sign the agreement.

**21. BAO/Travel.**

- a. If creating a multi-month or multi-year Hotel Price Agreement, contact Laurie Jacoby, Travel Manager [lajacoby@uoregon.edu](mailto:lajacoby@uoregon.edu); 6-3158, prior to proceeding with the negotiation of the price agreement.
- b. Please Note: this requirement is not applicable to the processing of hotel agreements for one-time events or hotel stays. These standard hotel agreements should continue to be processed by Purchasing and Contracting Services.

**22. Private Business Use.**

- a. If entering into a contract for the use of or lease of space of any portion of a University building or outdoor space and the third party will use the space for its business use (i.e. not personal use)
- b. Must obtain BAO Treasury Operations approval prior to signing the Facilities Use Agreement or Lease.
- c. Send approval request to BAO Treasury Operations – [treasops@uoregon.edu](mailto:treasops@uoregon.edu)

## EMPLOYEE OR INDEPENDENT CONTRACTOR?

In recent years, the Internal Revenue Service (IRS) has sought out and imposed severe penalties on companies that treat employees as independent contractors, and which fail to withhold taxes. To avoid the paperwork burden and expense of payroll taxes, some employers inappropriately designate workers "independent contractors." If the IRS determines that the worker is actually an "employee," the person responsible for the collection and payment of withholding taxes may be held personally liable for an amount equal to the taxes that should have been withheld.

The IRS considers 20 questions in determining a worker's status. Meeting just one of the conditions may qualify the worker as an employee. If a company is unable to determine the appropriate designation from the IRS guidelines, the IRS will help. Simply file a Form SS-8 and the IRS will respond with a determination. A summary of the IRS position and the 20 questions are provided below:

### IRS Factors and the 20 Questions

#### 3 IRS Factors:

- Behavior Control
- Financial Control
- Relationships of the Parties

An employer must generally withhold income taxes; withhold and pay social security and Medicare taxes; and pay unemployment taxes on wages paid to an employee. An employer does not generally have to withhold or pay any taxes on payments to independent contractors.

To help determine whether an individual is an employee under the common-law rules, the IRS has identified 20 questions that are used as guidelines to determine whether sufficient control is present to establish an employer-employee relationship.

These questions should be considered guidelines. Not every factor is applicable in every situation, and the degree of importance of each factor varies depending on the type of work and individual circumstances. However, all relevant questions are considered in making a determination, and no one factor is decisive. It does not matter that a written agreement may take a position with regard to any questions or state that certain questions do not apply if the facts indicate otherwise.

The 20 questions are categorized under the three IRS factors as follows:

#### A. Behavioral Control Factors

1. **Instructions.** An employee must comply with instructions about when, where, and how to work. Even if no instructions are given, the control factor is present if the employer has the right to control how the work results are achieved.
2. **Training.** An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods and receive no training from the purchasers of their services.
3. **Integration.** An employee's services are usually integrated into the business operations because the services are important to the success or continuation of the business. This shows that the employee is subject to direction and control.
4. **Services rendered personally.** An employee renders services personally. This shows that the employer is interested in the methods as well as the results.
5. **Hiring assistants.** An employee works for an employer who hires, supervises, and pays workers. An independent contractor can hire, supervise, and pay assistants under a contract that requires him or her to provide materials and labor and to be responsible only for the result.
6. **Continuing relationship.** An employee generally has a continuing

relationship with an employer. A continuing relationship may exist even if work is performed at recurring although irregular intervals.

7. **Set hours of work.** An employee usually has set hours of work established by an employer. An independent contractor generally can set his or her own work hours.

8. **Full-time required.** An employee may be required to work or be available full-time. This indicates control by the employer. An independent contractor can work when and for whom he or she chooses.

9. **Work done on premises.** An employee usually works on the premises of an employer, or works on a route or at a location designated by an employer.

10. **Order or sequence set.** An employee may be required to perform services in the order or sequence set by an employer. This shows that the employee is subject to direction and control.

11. **Reports.** An employee may be required to submit reports to an employer. This shows that the employer maintains a degree of control.

**B. Financial Control Factors**

12. **Payments.** An employee is generally paid by the hour, week, or month. An independent contractor is usually paid by the job or on straight commission.

13. **Expenses.** An employee's business and travel expenses are generally paid by an employer. This shows that the employee is subject to regulation and control.

14. **Tools and materials.** An employee is normally furnished significant tools, materials, and other equipment by an employer.

15. **Investment.** An independent contractor has a significant investment in the facilities he or she uses in performing services for someone else.

16. **Profit or loss.** An independent contractor can make a profit or suffer a loss.

**C. Relationship of the Parties Factors**

17. **Works for more than one person or firm.** An independent contractor is generally free to provide his or her services to two or more unrelated persons or firms at the same time.

18. **Offers services to general public.** An independent contractor makes his or her services available to the general public.

19. **Right to fire.** An employee can be fired by an employer. An independent contractor cannot be fire so long as he or she produces a result that meets the specifications of the contract.

20. **Right to quit.** An employee can quit his or her job at any time without incurring liability. An independent contractor usually agrees to complete a specific job and is responsible for its satisfactory completion, or is legally obligated to make good for failure to complete it.



INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT

A. CONTRACTOR IS INDEPENDENT. (Contractors who are not incorporated complete part A)

I, under penalties of perjury, certify that I am an independent contractor as defined in ORS 670.600 and that the following statements contained in Part A of this attachment are true and correct.

1. If providing services requiring licensure or certification, I certify that I have current and valid licenses or certificates required to provide the services, and I am licensed under ORS Chapter 671 or 701, if necessary.
2. I am customarily engaged in an independently established business as indicated by the occurrence of three (3) or more of the following requirements (Contractor, please check the criteria below that apply):
  - A. I maintain a business location that is separate from the University of Oregon. If that location is in a portion of my residence, it is used primarily for my business.
  - B. I routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
  - C. I bear the risk of loss related to my business by doing at least one of the following (check all that apply):
    - I enter into fixed price contracts.
    - I am required to correct defective work I perform.
    - I negotiate indemnification agreements, purchase liability insurance, performance bonds, or "errors and omissions" insurance.
    - I warrant the services I provide.
  - D. I provide contracted services for two or more different persons/entities within a period of one year, or routinely engage in business advertising and other marketing efforts reasonably calculated to obtain new business to provide similar services.
  - E. I have the authority to hire and fire others to provide or to assist in providing the services.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_

B. DEPARTMENT APPROVAL. (Section B to be completed by Department Head/Director)

ORS 670.600 sets forth the standards for classifying a vendor as an independent contractor. By my signature below I represent that under this contract:

1. The Contractor is free from direction and control over the means and manner of providing the services, subject only to the University's right to specify the desired results of the services.
2. The Contractor is responsible for obtaining all business registrations, certifications, and licenses necessary to perform the services.
3. The Contractor is performing services and/or providing goods for remuneration.

Department Signature \_\_\_\_\_ Date \_\_\_\_\_

Bureau of Labor and Industries

### **“Economic Reality” Test**

The protections of the wage and hour laws enforced by BOLI apply to “employment relationships.” Because an “independent contractor” is excluded from the definition of an “employee” (at ORS 652.310(2)(a)), a worker is either an independent contractor or an employee, but never both.

BOLI’s Wage and Hour Division applies the “economic reality” test to determine whether there is an employment relationship.

The “economic reality” test consists of the following five factors which gauge the degree of a worker's economic dependency on the business to which he or she is providing services. Generally speaking, the more dependent a worker is on a particular business, the more likely they are to be an employee.

In weighing these factors, it is important to remember that no single factor is determinative for an investigator, administrative law judge or a trial court judge to find that a worker is an independent contractor or an employee. The elements are:

- (1) The degree of control exercised by the alleged employer**
- (2) The extent of the relative investments of the worker and alleged employer**
- (3) The degree to which the worker's opportunity for profit and loss is determined by the alleged employer**
- (4) The skill and initiative required in performing the job**
- (5) The permanency of the relationship**

Although not part of the official test, the following questions may help to illustrate whether a worker is performing work as an employee or an independent contractor:

- (1) The degree of control exercised by the alleged employer
  - Who sets the hours of work?
  - Who is responsible for quality control?
  - Does the worker have other customers?
  - Who determined the rate of pay? Was it negotiated?
  - Who determines how the work gets performed?
- (2) The extent of the relative investments of the worker and alleged employer
  - Does the worker supply his or her own tools?
  - Does the worker purchase materials necessary to do the job?



- Has the worker invested in bonds / insurance / advertising?
- (3) The degree to which the worker's opportunity for profit and loss is determined by the alleged employer
- Is the worker free to bring on additional workers to speed up the job? At whose expense?
  - Does working or managing the project more efficiently increase profit for the worker?
  - Does the worker risk a loss if the job goes awry?
- (4) The skill and initiative required in performing the job
- Does the level of skill and initiative required for the job rise to the level demonstrated by an independent business competing in an open market?
  - Is a license required to perform the work?
- (5) The permanency of the relationship
- How long has the job lasted? Is an ending date contemplated (upon completion of the work)?
  - Is the contract (if any) subject to periodic review or automatic renewal?

#### THE LEGAL PRECEDENT....

The current test applied by BOLI was adopted in *In the Matter of Geoffrey Enterprises, Inc.*, 15 BOLI 148 (1996). In that case, the Commissioner adopted the “economic reality” test articulated in *Circle C Investments, Inc.* 998 F.2d 324 (5<sup>th</sup> Cir 1993), a similar case brought by US DOL involving the question of whether certain dancers were employees under the FLSA. In adopting the test, the Commissioner noted that the relevant definitions of “employer” and “employ” in state law were taken from the FLSA and that federal courts have adopted an expansive interpretation of the definition of “employer” under the FLSA in order to effectuate “its broad remedial purposes.” As noted by the *Circle* court in its analysis, the focal point of the test is “whether the alleged employee, as a matter of economic reality, is economically dependent upon the business to which she renders her services.”

Bureau of Labor and Industries

### **“Right-To-Control” Test**

BOLI’s Civil Rights Division utilizes the “right-to-control” test to determine whether a given worker is an employee for purposes of civil rights law. \*\*Please note that some civil rights statutes protect not only workers, but also job applicants and customers. In those situations, it would not matter whether an individual is an independent contractor or employee.

Under the “right-to-control test,” four factors are weighed to determine whether an employer has the “right to control” the work of an individual. Where an employer clearly has the “right to control” the work of an individual under this test, that individual is deemed an employee rather than an independent contractor.

The factors of the “right-to-control” test are:

- (1) Direct evidence of the right to, or the exercise of, control**
- (2) The method of payment**
- (3) The furnishing of equipment**
- (4) The right to fire**

It is not necessary that all factors coincide to determine whether a given worker is an employee. In such cases, the weight or strength of the factors which are in evidence will be considered.

Although not part of the official test, the following questions may help to illustrate whether a worker is performing work as an employee or an independent contractor:

- (1) Direct evidence of the right to, or the exercise of, control
  - Who sets the hours of work?
  - Who is responsible for quality control?
  - Does the worker have other customers?
  - Who determined the rate of pay? Was it negotiated?
  - Who determines how the work gets performed?
- (2) The method of payment
  - Do clients pay the individual worker directly or business employing that worker?
  - Does the worker set the rate of payment or the business employing that worker?
- (3) The furnishing of equipment
  - Does the worker supply his or her own tools?
  - Does the worker purchase materials necessary to do the job?

- Has the worker invested in bonds / insurance / advertising?

(4) The right to fire

- How long has the job lasted? Is an ending date contemplated (upon completion of the work)?
- Is the contract (if any) subject to periodic review or automatic renewal?
- Does the contract (if any) provide consequences for termination of the relationship?

**THE LEGAL PRECEDENT....**

In *Cantua v. Creager*, 169 Or.App. 82, 7 P.3d 693 (2000), the Oregon Court of Appeals examined the definitions of an employee and an employer at ORS 659A.001(3) & (4) (formerly ORS 659.010(5) & (6)) and determined that the right-to-control test incorporated in former ORS 659.010 is the common law test for employee status. The court quantified this test by identifying “[f]our factors that are material in determining whether an employer has the right to control an individual: (1) direct evidence of the right to, or the exercise of, control; (2) the method of payment; (3) the furnishing of equipment; and (4) the right to fire.”

**BOLI and the U.S. Equal Employment Opportunity Commission (EEOC)**

In its joint enforcement efforts with EEOC, BOLI’s Civil Rights Division will determine whether a worker is an employee under EEOC’s guidelines, outlined in its Directives Transmittal Number 915.003:

In most circumstances, an individual is only protected if s/he was an "employee" at the time of the alleged discrimination, rather than an independent contractor, partner, or other non-employee. An "employee" is "an individual employed by an employer." An individual may also have more than one employer. The question of whether an employer-employee relationship exists is fact-specific and depends on whether the employer controls the means and manner of the worker's work performance. This determination requires consideration of all aspects of the worker's relationship with the employer. Factors indicating that a worker is in an employment relationship with an employer include the following:

- The employer has the right to control when, where, and how the worker performs the job.
- The work does not require a high level of skill or expertise.
- The employer furnishes the tools, materials, and equipment.
- The work is performed on the employer's premises.
- There is a continuing relationship between the worker and the employer.

- The employer has the right to assign additional projects to the worker.
- The employer sets the hours of work and the duration of the job.
- The worker is paid by the hour, week, or month rather than the agreed cost of performing a particular job.
- The worker does not hire and pay assistants.
- The work performed by the worker is part of the regular business of the employer.
- The employer is in business.
- The worker is not engaged in his/her own distinct occupation or business.
- The employer provides the worker with benefits such as insurance, leave, or workers' compensation.
- The worker is considered an employee of the employer for tax purposes (i.e., the employer withholds federal, state, and Social Security taxes).
- The employer can discharge the worker.
- The worker and the employer believe that they are creating an employer-employee relationship.

*This list is not exhaustive.* Other aspects of the relationship between the parties may affect the determination of whether an employer-employee relationship exists. Furthermore, not all or even a majority of the listed criteria need be met. Rather, the determination must be based on all of the circumstances in the relationship between the parties, regardless of whether the parties refer to it as an employee or as an independent contractor relationship.

**Example 1** – A complainant (“CP”) provides computer consulting services to businesses. The Respondent contracts with CP to produce a computer database for a flat rate. CP produces the database at his own place of business, on his own equipment, and delivers the finished product to the Respondent. In these circumstances, CP is an independent contractor.

**Example 2** - A staffing firm hires CP and sends her to perform a long- term accounting project for a client. Her contract with the staffing firm states that she is an independent contractor. CP retains the right to work for others, but spends substantially all of her work time performing services for the client, on the client s premises. The client supervises CP, sets her work schedule, provides the necessary equipment and supplies, and specifies how the work is to be accomplished. CP reports the number of hours she has worked to the staffing firm, which pays her and bills the client. In these circumstances, despite the statement in the contract that CP is an independent contractor, she is an employee of both the staffing firm and the client.

## Writing an Effective Statement of Work

An effective Statement of Work (SOW) is important to assure agreement, which is one of the basic purposes of a contract. It helps the contractor understand the service expectations and perform the actual work to the satisfaction of the department. Any room left for interpretation increases the potential for misunderstanding and dissatisfaction among all parties. There are several components that should be included in an effective Statement of Work. Depending on the type of services being purchased the components can vary.

The basic components of any statement of work should include:

- Work elements or tasks
- Clearly defined deliverables
- Milestones (tasks that support the deliverables, and when they are due)
- Timeline/timeframe for performance of services
- Detailed description of services (requirements, assumptions, purpose, benefits)
- Clearly defined UO responsibilities and contractor roles
- Fees for services and expense reimbursements
- Payment schedule (fixed, time and material, per unit rate, rate schedule)

Additional things to consider when writing an SOW:

- Acceptance Criteria
- Any post production needs (testing, training, etc.)
- Quality level or performance standards
- Location services will be performed
- Resources, supplies, or equipment needed
- Who will be providing the resources, supplies or equipment

Things that should **not** be included in an SOW:

- Legal terms and conditions
- Undefined capitalized terms
- Acronyms
- Slangs/industry jargon
- Ambiguous or vague statements
- Conflicting terms to the underlying agreement
- Contractor qualifications

Other reminders:

- Use active voice – the person responsible for performance must be identified
  - Use consistent and defined terms representing parties involved in work elements
  - Say it once, don't repeat information using different terms different ways
  - Don't use should, expect, assist, anticipate, or contributes
- \* See the attached worksheet to help develop and organize your statement of work



**PSC Statement of Work Worksheet**

**Statement of Work**

Contractor Full Legal Name:	
Contract Start Date:	
Contract End Date:	
Any Optional Renewal Terms:	
Type of Service:	
Maximum Not to Exceed \$	
Specific Deliverables -	Use Chart Below

No.	Description of Deliverables/Tasks/Milestones	Responsible Party	Due Date or Estimated Duration	Fee/Rate
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				

**Additional Expenses:**


**Payment Schedule:** When and how much the Contractor will be paid. Payments may be made based on time, tasks, deliverables, and/or expenses.


*This is Not a Contract*

## Contracts 101

## SOW Scenario

## Statement of Work Example – Team Building Consultant

## Assumptions:

1. The name of the UO department receiving the training is "XYZ Department."
2. There workshops will start on October 6, 2010. The follow-up date is unknown.
3. The follow-up workshop will be for 4 hours.
4. The training provided is being custom created for XYZ Department.
5. The trainer will need drinking water to be available during the classes.
6. Total fees payable are \$900 (includes payment for the follow-up meeting).
7. UO will reimburse Contractor for up to \$52 per day for per diem, \$111 per day for hotel and \$200 per flight to Eugene.
8. University will provide all of Contractor's ground transportation between Airport and Hotel and between Hotel and University.

Contractor will provide a series of team building workshops for University's XYZ Department. Contractor will discuss and provide XYZ Departmental personnel with tools to improve motivation, trust, stress management, communication and departmental unity. The consultation will include entertaining activities requiring participation of departmental personnel which will illustrate and illuminate the topics covered during the consultation.

The workshops will be from 1:00 pm – 5:00 pm on October 6-8, 2010. A follow-up workshop of 4 hours will be scheduled in April of 2011. The actual date and time for the follow-up workshop will be determined before March 2011. The follow-up workshop will be designed to evaluate how the tools provided during the previous trainings helped improve team building and to discuss how to achieve further improvements.

At least 6 weeks prior to the first workshop and at least 3 weeks prior to the follow-up workshop, Contractor will prepare and send XYZ Department surveys designed to provide information necessary for Contractor to design the workshops. Each XYZ Department personnel will fill out the surveys. University will return the surveys to Contractor at least 2 weeks prior to the scheduled workshops.

Contractor will develop training materials, including Power Point presentation, pamphlets and study guides. Contractor will share all training materials with XYZ Department's Director at least 1 week prior to the first scheduled workshop and will make modifications as requested.

University will pay Contractor \$900 for all consultation fees. Consultation fees include all costs for workshop materials preparation and distribution. University will reimburse Consultant for up to \$52/day for per diem for a total of \$208 (\$52\*4), \$111/night for hotel expenses for a total of \$333 (\$111\*3) and \$200/flight to Eugene for a total of \$400 (\$200\*2).



UNIVERSITY OF OREGON

### PERSONAL SERVICES CONTRACT CHECKLIST

- Amount of activity including renewals, amendments, travel and reimbursements does not exceed \$25,000.
- Contract is not being inappropriately split in order to avoid competitive limits or signature authority thresholds.
- Confirmed contractor is not a UO employee in Banner.
- This agreement does not give rise to issues involving the UO Ethics Policy or conflicts of interest.
- Verified contractor's full legal name and entity status with applicable Secretary of State Business Registry (not applicable for contracts with individuals).
- All required form-fill fields are completed.
- All required contract exhibits are attached.
- The statement of work identifies the scope of the project, including any tasks, milestones, deliverables and timelines with enough clarity for an independent third party to ascertain all parties' obligations without the need to go outside of the contract for clarification.
- If SPS approval is required it was obtained.
- For grant funded Contracts, the following was confirmed:
  - Contractor is not on the Excluded Parties or Debarred Contractors listing.
  - Grant dates cover Contract services period as verified in Banner.
  - Grant funds are available as verified in Banner.
  - Department verified expenditure is allowable, allocable and reasonable.
  - If grant required special terms, those terms are included in the Contract.
- All other required approvals were obtained. See Approvals List: <https://pcs.uoregon.edu/content/forms>
- Neither contractor nor department has made any changes to contract or terms and conditions.
- If Insurance is required, a Certificate of Insurance and Endorsement was obtained as required.
- The employee approving and signing the contract has currently approved Level 2 Contracting Authority.
- Contract file for this matter contains all required documentation including, but not limited to the signed contract, this checklist, notes and related communications.

**Please contact PCS if you have any questions regarding the PSC process.**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: