 **Human Resources Division**

 **Application to ENGAGE an Independent Contractor Procedure**

This must be completed PRIOR to the prospective contractor performing any services.

One application is required for each contractor (not per contract) unless there are significant changes with the contractor.

PART 1

This section is to be completed by the Contracting Manager (person responsible for the engagement) or the Administrator.

PART 2

To be completed by the Contracting Manager in consultation with the prospective contractor, the content for this section needs to be confirmed with the prospective contractor.

PART 3

To be signed by the Contracting Manager as well as the Delegated Approver with authorised delegated authority, (if not the same person). If the contract spans more than one budget period, this will require Chief Operating Officer’s (COO) approval.

The completed application form should be forwarded to Division HR Manager for the compliance check to be undertaken before proceeding with Contract. Allow five working days for this process to be completed.

* Check you have delegated approval authority prior to completing the application form.
* If the contractor is not a New Zealand resident, please discuss with your Divisional HR Manager.
* If the nature of the work being undertaken under this contract comes under the IRD Schedular Deduction regime – please see [Payment Flowchart](http://www.otago.ac.nz/humanresources/otago617376.pdf).

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| **PART 1** **Sections A – D: To be completed by Contracting Manager or Administrator.** |
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| **Section A: Contracting Manager Details** |
| **Date:** |  |
| **Name:** |  |
| **Position:**  |  |
| **Division/ Department/ Faculty:** |  |
| **Telephone:** |  |
| **Cost Centre:** |  |
| **Contact Person:**(where not the Contracting Manager) |  |
| **Contact Person Phone:** |  |
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| **Section B: Services Required** |
| The contractor will be engaged for the following services/tasks/outcomes: |
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| **Section C: Reason for Engagement of Services** |
| Please state reasons why services cannot be delivered under a University Employment Agreement (casual or fixed term) with this service provider i.e. why should they be engaged as an independent contractor rather than an employee. |
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| **Section D: Contract Details** |
| **Start date:** |  |
| **End date:** If end date unknown, specify reason why and estimated length of engagement |  |
| **Total period:** (days/months) |  | **Estimated hours over period:** |  |
| **Total fee to be charged:** |  |
| **Is total fee:** (please select) | GST inclusive GST exclusive  |
| **$ Rate per hour:** | NZ $  |
| **Method of Payment:** |  [ ]  Invoice on Completion [ ]  Invoice Monthly |

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| **PART 2** **Sections E – H: To be completed by Contracting Manager in consultation with the prospective contractor.** |
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| **Section E: Contractor Details** |
| **Contractor Surname:** |  |
| **First Name(s):** |  |
| **Trading Name:** |  |
| **IRD Number:** |  |
| **GST Registered:** | [ ]  Yes [ ]  No |
| **Public Liability Insurance**  | [ ]  Yes [ ]  No If “Yes” **Amount:** NZ $  |
| **Professional Indemnity Insurance**  | [ ]  Yes [ ]  No If “Yes” **Amount:** NZ $ |
| **Telephone:** |  |
| **Email:** |  |
| **Address:** |  |
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| **SECTION F. Initial Independent Contractor Determination Check** |
| These questions will enable the University to make an accurate determination of the contractor/employment status. |
| Please select the appropriate answer that applies to the prospective contractor for each question. |
| 1. Is the prospective contractor currently an employee/have you been an employee of the University in the last 2 years?
 | [ ]  Yes [ ]  No |
| 1. Is the University of Otago the only organisation that the prospective contractor will routinely provide the same or similar service to in this year, as part of your continuing business?
 | [ ]  Yes [ ]  No |
| 1. By estimation will the prospective contractor’s income from this contract be greater than 50% of their/ or their organisation’s income for this year?
 | [ ]  Yes [ ]  No |
| If you answered **YES** to ANY of the questions above, please go to **SECTION G.**If you answered **NO** to ALL of the questions above, please go directly to **SECTION H**. |
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| **SECTION G. Detailed Independent Contractor Determination** (obtain details from the prospective contractor) |
| Please obtain evidence of wider business trading relationships that the prospective contractor is involved in, or has provided, the same or similar services outside of the University in the table below. Alternatively, attach a brochure of the prospective contractor’s services, which demonstrates the extent of their trading relationships.Confirm there is no potential conflict of interest e.g. intellectual property etc |
| **Clients** | **Industry type** (e.g. Retail, Education, Finance) **OR Client Name** | **Basic Services Delivered** | **Year** | **Length of engagement** |
| *e.g.* | *ABC University* | *Designed and presented a course in XYZ* | *2007* | *3 months* |
| 1. |  |  |  |  |
| 2. |  |  |  |  |
| 3. |  |  |  |  |

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| **Section G *- continued*****Appendix 1: Independent Contract Determination definitions** These questions are taken from IRD published guidelines. Please see detailed definitions each of the tests below  |

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| **Tests**  |
| **Please circle/mark clearly the answer that applies to the prospective contractor in column A or B** |
| **Control Test**The **control test** has been the most common test utilised to distinguish between independent contractors and employees. The test analyses the nature and degree of detailed control exercised by the employer over the worker e.g. over hours of work, methods, level of supervision. The greater the degree of control by the employer, the more likely it is that the worker is an employee.  |
| 1. Will the prospective contractor have control over how, where and when the services are provided*?* (within practicality /this is apart from being required to deliver to agreed outcomes or to a pre-determined schedule/programme)
 |   [ ]  Yes [ ]  No |
| 1. Will the prospective contractor be responsible for the quality and pricing of the service to be provided?
 |   [ ]  Yes [ ]  No |
| 1. Will the prospective contractor supervise the provision of services/work and can the prospective contractor hire other people to perform some or all of the services?
 |   [ ]  Yes [ ]  No |
| **Integration Test**The **integration test** (also known as the organisation test) is based on the notion of an employee being "part and parcel" of the organisation in which he/she is employed. By way of contrast, an independent contractor, although doing work for a business is not integrated into the business, and is only an “accessory”. |
| 1. Are the services provide by the prospective contractor different from work usually performed by other university employees?
 |  [ ]  Yes [ ]  No  |
| 1. Apart from the venue will the prospective contractor pay for expenditure incurred in doing the work? (e.g. provision of own materials, equipment, supplies, consumables)
 |  [ ]  Yes [ ]  No |
| 1. Will the prospective contractor be prevented from access to the University facilities and services normally provided to employees only?
 |  [ ]  Yes [ ]  No |
| 1. Will the prospective contractor invoice the University for services provided?
 |  [ ]  Yes [ ]  No |
| 1. Will the prospective contractor be paid as services are performed, or on completion, as opposed to a regular set payment (i.e. like a salary)?
 |  [ ]  Yes [ ]  No |
| **Independence Test**The **independence test** focuses on the manner in which the worker ordinarily performs his/her business or work, including their economic involvement (for example, an independent contractor can make an economic loss from a contract).  |
| 1. Will the prospective provide supply or be charged for the necessary tools, vehicles, office, phone, computer etc to perform the services?
 |  [ ]  Yes [ ]  No |
| 1. Will the prospective contractor have their own client base and are they free to work for other clients/organisations?
 |  [ ]  Yes [ ]  No |
| 1. Does the prospective contractor advertise or actively canvass for work with other clients?
 |  [ ]  Yes [ ]  No |
| 1. Does the prospective contractor provide or pay for their own training?
 |  [ ]  Yes [ ]  No |
| 1. Would the University be required to pay GST in addition to any payment for the services performed by the prospective contractor?
 |  No[ ]  [ ]  Yes [ ]  No  |
| **Intention Test**The **intention test** examines the intention of the parties in the relationship. Usually intention is demonstrable from the express terms of the contract between the two parties. However, the contract must be consistent with the actual circumstances and conduct of the parties to the relationship - the description given to the relationship is not a conclusive indication of the type of relationship that exists. |
| 1. Could the University sue the prospective contractor for loss resulting from the provision of the services?
 |  [ ]  Yes [ ]  No |
| 1. If the services were not performed to the standard specified in the proposed contract with the prospective contractor, could the University withhold payment?
 |  [ ]  Yes [ ]  No |
| 1. Will the prospective contractor be liable for GST, insurance and ACC levies?
 |  [ ]  Yes [ ]  No |
| 1. Will the prospective contractor be performing services which had been performed by independent contractors previously?
 |  [ ]  Yes [ ]  No |
| 1. Has the prospective contractor specifically stated that they want to provide services to the University as an independent contractor?
 | [ ]  [ ]  Yes [ ]  No  |
| **Economic Reality Test**The **economic reality test** (also known as the fundamental test) involves examining the total situation of the work relationship to determine its economic reality i.e. is the worker engaged to perform the services providing the services as a person on business on his/her own account? This includes having regard to circumstances prior to entering into the contract and the conduct of the parties since then. |
| 1. Will the prospective contractor be exposed to normal business risks in the provision of services to the University?
 |  [ ]  Yes [ ]  No |
| 1. Will the prospective contractor be liable for correcting sub-standard work?
 |  [ ]  Yes [ ]  No |

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| **Section H. General Information for Finance** |
| 1. Is the prospective contractor a sole trader?

 (Sole traders may be subject to Scheduler deductions – see notes below) |   [ ]  Yes [ ]  No |
| 1. Does the prospective contractor hold a withholding tax exemption certificate from

 IRD? (refer [IRD Form IR330C](http://www.ird.govt.nz/forms-guides/number/forms-300-399/ir330c-tax-rate-notification-contractors.html)) |   [ ]  Yes [ ]  No |
| 1. Is the prospective contractor’s company/the company they work for a registered

 limited liability company? |  [ ]  Yes [ ]  No |
| 1. Is the prospective contractor a resident of New Zealand?
 |  [ ]  Yes [ ]  No |
| **Note:** |
| 1. As a sole trader, schedular payments will be deducted as per the service categories specified on the IRD IR330C Form unless an exemption certificate from the IRD is provided with this application.
2. If prospective contractor is a registered New Zealand company, no tax will be deducted as this is the prospective contractor’s responsibility/ the responsibility of the contracting company.
3. If prospective contractor is a non-resident of New Zealand, schedular payments may be deducted.
4. The prospective contractor must have public liability insurance for the duration of the contract.
5. As a contractor the prospective contractor has no entitlement to terms and conditions applicable to employees of the University.
6. If the prospective contractor is a sole trader they will be required to complete, sign and attach an IRD IR330C Form if applicable to their service category.
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| **PART 3****Sections I: To be completed and signed by the Delegated Approver with authorised delegated authority.** **Forward the signed form to the Divisional HR Manager for the compliance check to be undertaken.**PRINT THE FORM BEFORE COMPLETING THIS SECTION |
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| **Section J: Authorisation of Application**Contracting Manager, Delegated Approver and Chief Operating Officer (if required; refer to Financial Delegations Policy) and Divisional HR Manager |
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|  | ­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | (Sign) |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
|   | Contracting Manager responsible for engagement  |  (Sign) |  | Name |  | Date |  |
|  | Delegated Approverauthorised delegated authority |  |  | Name |  | Date |  |
|  |  |  |  |  |  |  |  |
|  |  |  (sign) |  |  |  |  |  |
|  | Chief Operating Officer (Operations Division) |  |  | Name |  | Date |  |
|  |  |  |  |  |  |  |  |
|  |  |  (Sign) |  |  |  |  |  |
|  | Chief Operating Officer (refer to the Financial Policy) |  |  | Name |  | Date |  |
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|  |  (Sign) |  |  |  |  |
| Divisional HR Manager Compliance Check |  |  | Name |  | Date |

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