

Contracted Services

Instructions for Hiring an Independent Contractor

Contracted services are services rendered to the specifications of USNH and performed by an individual (e.g., service provider, consultant, entertainer, speaker, etc.) acting as an independent contractor. Contracted services supported by grant or contract funds must be reviewed by the Hiring Administrator to ensure they do not exceed the federal daily rate of pay. Contact the appropriate campus grants office for information regarding subcontracts.

Direct Pay (Vendor Code Required) – Limited Services

Services, generally **one or two days** in duration, are allowable as a direct pay transaction **regardless of the dollar amount**. These would typically include **workshop presenters, speakers, performers (musicians, singers, actors, etc.) and other similar service providers**. Independent contractors providing short-term services are generally paid via the next check run; however special requests for payment at time of service may be accommodated. For this reason, the direct pay method is more efficient than issuing a purchase order. These types of services require a detailed description of the service with authorized signatures. A campus performance agreement or invoice is sufficient supporting documentation.

Requisition – Independent Contractor Agreement Form Required

All other services will be processed as a requisition. In addition, the Independent Contractor Agreement detailing the description of services will be required. [Download Form: www.unh.edu/purchasing/forms.html]

- The following services require additional prior approval:

Service	Approving official
Legal Services [attorneys]	USNH General Counsel
Insurance	USNH Manager of Risk & Investments
Accounting/auditing services	USNH Controller
Services [supported by grant funds]	Hiring Administrator

Amendment to Independent Contractor Agreement/Change Order

If the original agreement between the independent contractor and USNH has a change in scope, increase in fees, or extension of time, an amendment must be completed and the purchase order adjusted if necessary. Any modifications to the standard terms and conditions of the agreement must have prior approval by the campus purchasing office.

Employee vs. Independent Contractor Determination

Business units are responsible for making every attempt to ensure that an individual being hired is truly an independent contractor and will not be in a work situation that the IRS could determine is actually that of an employer/employee relationship. A checklist is included with the Independent Contractor Agreement to assist in making this determination and **must be attested to on the form**. For questions regarding this issue, contact the campus purchasing office prior to entering into an agreement.

Process/Routing

1. The Hiring Administrator or Business Unit initiates the form and sends to the vendor/individual providing the service[s].
2. The individual/vendor reviews, signs, and forwards the completed form to the Hiring Administrator.
3. Hiring Administrator signs and forwards to the Business Unit.
4. The Business Unit enters a Banner requisition with the following minimum information:
 - a. Enter "Independent Contractor" in the comments field
 - b. Detailed description of the services to be rendered – enter in the commodity/description field; use item text if necessary to fully describe the services
 - c. Date(s) of service – enter as document text
 - d. Estimated fees including expenses; not to exceed amount – use document text to enter breakdown of the fees, unless the total cost is a flat fee and for the full amount of the agreement
 - e. Administrator/PI – enter name in the "Attention to" field
5. The agreement is then forwarded to the next appropriate office as detailed on the agreement. Return all sections of the form, including Section VI.
6. Purchasing will review the agreement and convert the requisition into a purchase order.

Employee vs. Independent Contractor Determination Checklist

Business units are responsible for making every attempt to ensure that an individual being hired is truly an independent contractor and will not be in a work situation that the IRS could determine is actually that of an employer/employee relationship. The IRS has established a 20-point checklist that can be used as a guideline in determining whether or not a contractor can legally be paid on a 1099. This checklist helps determine who has the "right of control." Does the employer have control or the "right of control" over the individual's performance of the job and how the individual accomplishes the job? The greater the control exercised over the terms and conditions of employment, the greater the chance that the controlling entity will be held to be the employer. The right to control (not the act itself) determines the status as an independent contractor or employee.

The 20-point checklist is only a guideline; it does not guarantee that a person is correctly classified. There is no one single homogenous definition of the term "employee." Most agencies and courts typically look to the totality of the circumstances and balance the factors to determine whether a worker is an employee or an outside contractor.

Note: The Hiring Administrator must complete and review the checklist to insure that the individual is truly considered an outside contractor, not an employee. If the independent contractor is an individual the checklist must be completed, reviewed and sent by the Hiring Administrator, as part of this agreement.

		Yes	No
1.	Must the individual take instructions from your management staff regarding when, where and how work is to be done?	<input type="checkbox"/>	<input type="checkbox"/>
2.	Does the individual receive training from your company?	<input type="checkbox"/>	<input type="checkbox"/>
3.	Is the success or continuation of your business somewhat dependent on the type of service provided by the individual?	<input type="checkbox"/>	<input type="checkbox"/>
4.	Must the individual personally perform the contracted services?	<input type="checkbox"/>	<input type="checkbox"/>
5.	Have you hired, supervised, or paid individuals to assist the worker in completing the project stated in the contract?	<input type="checkbox"/>	<input type="checkbox"/>
6.	Is there a continuing relationship between your company and the individual?	<input type="checkbox"/>	<input type="checkbox"/>
7.	Must the individual work set hours?	<input type="checkbox"/>	<input type="checkbox"/>
8.	Is the individual required to work full time at your company?	<input type="checkbox"/>	<input type="checkbox"/>
9.	Is the work performed on company premises?	<input type="checkbox"/>	<input type="checkbox"/>
10.	Is the individual required to follow a set sequence or routine in the performance of his work?	<input type="checkbox"/>	<input type="checkbox"/>
11.	Must the individual give you reports regarding his/her work?	<input type="checkbox"/>	<input type="checkbox"/>
12.	Is the individual paid by the hour, week, or month?	<input type="checkbox"/>	<input type="checkbox"/>
13.	Do you reimburse the individual for business/travel expenses?	<input type="checkbox"/>	<input type="checkbox"/>
14.	Do you supply the individual with needed tools or materials?	<input type="checkbox"/>	<input type="checkbox"/>
15.	Have you made a significant investment in facilities used by the individual to perform services?	<input type="checkbox"/>	<input type="checkbox"/>
16.	Is the individual free from suffering a loss or realizing a profit based on his/her work?	<input type="checkbox"/>	<input type="checkbox"/>
17.	Does the individual have other clients he/she services as an independent contractor?	<input type="checkbox"/>	<input type="checkbox"/>
18.	Does the individual make his/her services available to the general public?	<input type="checkbox"/>	<input type="checkbox"/>
19.	Do you have the right to discharge the individual?	<input type="checkbox"/>	<input type="checkbox"/>
20.	May the individual terminate his services at any time?	<input type="checkbox"/>	<input type="checkbox"/>

SECTION VI: USNH INTERNAL USE ONLY:
(Must be completed by the Hiring Administrator and forwarded to the campus Purchasing Office with signed agreement.)

Justification for having work performed by an independent contractor rather than a USNH employee:

Other options considered in reaching the conclusion to hire an independent contractor:

The objective selection process included the following steps:

The fee is justified because it is calculated at the rate:

- that is consistent with the fees paid similar independent contractors;
- paid the independent contractor in his/her home institution;
- customarily paid this independent contractor by federal and/or non-federal consultant agencies;
- other (explain)

Must identify the funding source (FOAPAL) to be used for payment:

Grant Funded: Yes No

SECTION VII: DEFINITIONS

A. Work Product

Refers to all of the works of authorship, products, or services created by Contractor and its employees, on behalf of USNH during the term of this agreement.

B. Works Made For Hire

Refers to all of the Work Product created by Contractor or its employees while providing services to USNH and are USNH's property.

C. Intellectual Property Rights

Means any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secret rights, (d) patents, designs, algorithms and other industrial property rights, (e) all other intellectual and industrial property rights of every kind and nature throughout the universe and however designated (including logos, "rental" rights, or rights to remuneration), whether arising by operation of law, contract, license, or otherwise, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues of the foregoing now or hereafter in force.

D. Data

Data shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

SECTION VIII: TERMS & CONDITIONS

A. Payment

The payment by USNH of the contract price, as stated in Section V, shall be the only, and the complete, reimbursement to the Contractor for all expenses of whatever nature, incurred by the Contractor in performance hereof, and shall be the only and the complete compensation to the Contractor for the services. USNH shall have no liability to the Contractor other than the contract price. A statement that all required work has been completed and a report on the results of the contract must be provided before final payment is made. No work is to be performed or payments made until all parts of this agreement are complete and fully executed.

B. Certification of Independent Contractor Status

In signing this agreement, Contractor certifies that he or she is not an employee of the University System or State or Federal Governments or an employee of any other projects sponsored by the University System or a State or Federal Agency, and is therefore not receiving dual compensation for the services provided herein. The Contractor, agents and employees of the Contractor, in the performance of this agreement, shall act in an independent capacity and are not entitled to any of the fringe benefits of employment, including but not limited to medical and dental benefits, life insurance, worker's compensation, disability insurance, liability insurance or unemployment compensation.

Contractor will not represent that it has any authority to bind USNH, to assume or create any obligation, expressed or implied, to enter into agreements regarding USNH services, products or to make any warranties or representations on behalf of USNH or in USNH's name.

C. Contractor's Personnel

Employees of the Contractor shall carry out the performance of the services. The Contractor shall at its own expense, provide all personnel necessary to perform the services. The Contractor warrants that all personnel engaged in the services shall be qualified to perform the services and shall be properly licensed and otherwise authorized to do so under all applicable laws. The Contractor shall not hire, or permit a subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the services, to hire any person who has a contractual relationship with USNH, or who is a USNH employee.

Each party assumes full responsibility for the actions of its respective personnel, including employees, principals and contractors, while performing services under this agreement, and each party shall be fully responsible for the supervision, payment of salary, (including withholding taxes) and any other compensation or benefits to be paid to, or on behalf of their respective personnel. Required IRS withholding tax of 30% will be withheld from any income paid to any nonresident aliens.

Contractor is responsible for its own materials, tools, and equipment, and all other expenses incurred in the performance of services pursuant to the agreement and USNH has no liability to Contractor for such expenses except to the extent that the expenses are incurred at the request of USNH and that USNH has agreed in writing to pay such expenses.

Contractor's employees and/or sub-contractors will not be considered employees of USNH for federal or state payroll tax purposes. In addition, Contractor shall be responsible for payment of any federal and state payroll and self-employment taxes attributable to payments received from USNH for services that are subject to this agreement and that were performed on USNH's behalf.

D. Contractor's Responsibilities

Other than matter supplied by USNH or USNH's clients and/or customers, the Work Product provided and/or produced by Contractor will be the original work of Contractor. Neither the Work Product nor any portion of the Work Product (other than matter supplied by USNH or USNH's clients and/or customers) will be subject to any license, pledge, assignment, or encumbrance. Neither the Work Product nor any component of the Work Product has been previously produced / published in whole or in part in any medium or form. Work Product provided by Contractor to USNH and its clients will not infringe on any person's patent, copyright, trademark, trade name, or trade secret.

Contractor will conduct business in a manner that reflects favorably on USNH and its products, comply with applicable laws, make no false or misleading representations with regard to Client or its services / products and make no representations, warranties or guarantees with respect to USNH's services/products that are inconsistent with the literature distributed by USNH.

E. Third Parties

The parties hereto do not intend to benefit any third parties and this agreement shall not be construed to confer any such benefit.

F. Assignment, Delegation and Subcontracts

The Contractor shall not assign, or otherwise transfer, any interest in this agreement without the prior written consent of the USNH Treasurer or designee. None of the services shall be delegated or subcontracted by the Contractor without the prior written consent of USNH.

Neither party may assign this agreement without the prior written approval of the other party, however Contractor may assign this agreement to a subsidiary or entity controlling, controlled by or under common control with Contractor or to any entity that acquires all or substantially all of the assets or product rights of Contractor. Any attempted assignment in violation of this provision shall be void and the provisions hereto will be binding upon and inure to the benefit of the parties, their successors and the permitted assigns.

G. Amendment

No alteration or variation of the terms of this agreement shall be valid unless made in writing and signed by the parties, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties. This agreement may be amended, waived, or discharged only by an instrument in writing signed by the parties.

H. Notice

Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties as listed in Sections II and III.

Notices under this agreement will be sufficient only if hand delivered or if mailed by certified or registered mail, return receipt requested or if sent overnight by express courier, or if sent by facsimile transmission confirmed by one of the other methods specified in this paragraph, to the parties at their respective addresses first set forth on the signature page of this agreement or as amended by notice pursuant to this subsection. Notice by mail will be deemed received five (5) days after deposit. Notice by express courier will be deemed received one (1) day after sending within North America, or three (3) days after sending between continents.

I. Confidentiality and Ownership

The Contractor shall not utilize information, which is not a matter of public record received by reason of this agreement for pecuniary gain not contemplated by the terms of this agreement, regardless of whether the Contractor is or is not under contract at the time such gain is realized. The report, survey or other project developed pursuant to this agreement is the property of USNH and shall not be used in any matter by the Contractor unless authorized by USNH. Breach of this provision will allow USNH to void the agreement at its option. The Contractor shall be liable for any damages incurred by USNH as the result of the breach.

"Confidential Information" shall mean all confidential and proprietary technical and business information disclosed by the parties to each other, whether orally or in writing, including but not limited to product designs, specifications, program code, and information regarding future strategies. "Confidential Information" shall not include information which (a) was already rightfully known to the receiving party without an obligation of confidentiality prior to the time it is disclosed hereunder; (b) is in or has entered the public domain through no breach of this agreement or other wrongful act of the receiving party; (c) has been rightfully received from a third party not under obligation of confidentiality to the disclosing party and without breach of this agreement; or (d) has been approved for release by written authorization of the disclosing party.

USNH and Contractor each agree to hold the other's Confidential Information in strict confidence and not to disclose such Confidential Information to any third party (other than its own employees who have a need to know and who have been instructed concerning the restrictions on use and disclosure of the information) or to use it for any purpose other than to fulfill its obligations in connection with this agreement.

Each party shall be deemed the owner of all Confidential Information disclosed by it hereunder, including all copyright, trademark, trade secret and other proprietary rights and interests therein.

Upon termination of this agreement, or upon the written request of the disclosing party at any time, the receiving party shall immediately return to the disclosing party all copies of any plans, drawings, specifications, documents or other tangible items representing the disclosing party's Confidential Information. The confidentiality provisions of this agreement shall survive the termination of this agreement for a period of three (3) years. Contractor and its sub-contractors or employees agree that the intellectual property learned at USNH will not be applied implicitly or explicitly outside USNH whether in the U.S. or elsewhere.

USNH shall own and have the exclusive right to use, for any purpose, all information, materials and reports which are provided by Contractor and are developed or written by Contractor during the course of or as a result of the services which Contractor provides under this agreement, and the Contractor agrees to assign to USNH all right, title and interest in and to all inventions which are conceived or first reduced to practice by Contractor during the course of or as a result of the services which you will provide under this agreement. In this regard, Contractor further agrees to cooperate with USNH in the preparation, filing and prosecution of any patent application, or in the maintenance of any patent, claiming any such inventions, and to execute any document required to vest title to such invention and such writings in USNH.

In consideration of the compensation described in this agreement, Contractor on its behalf and on behalf of its employees agrees to grant, license, release and assign to USNH all right, title and interest in all copyrights/patents/intellectual property rights arising out of the services provided for under this agreement. All Work Product created by Contractor or its employees while providing the services to USNH shall be "works made for hire" and property of USNH. Upon request, Contractor shall provide USNH with whatever documents, information or materials that are in Contractor's possession or reasonably available to Contractor to enable USNH to protect its copyrights.

J. Data Security and Compliance

The Contractor shall employ appropriate security practices to protect USNH data under the "Contractor's Control", here defined as data on the Contractor's networks and on the servers and other devices connected to Contractor's network, while on Contractor's personal computers and backups, in Contractor's e-mail, while being transmitted or transported by the contractor, and while stored in Contractor's office or other facilities. The Contractor understands that "Restricted Information", as defined by USNH, requires protection mandated by legal requirements and that as a service provider to or representative of USNH, the Contractor has the same duty to protect that information as does USNH. The Contractor agrees to fill out the UNH Technology Vendor Questionnaire and to include the answers as an exhibit in the signed contract. USNH reserves the final determination whether the answers provided by the contractor are applicable and sufficient. The Contractor affirms that the Contractor is aware of and understands all laws and regulations that are applicable to the services provided under this contract. These laws and regulations may include, but are not limited to FERPA, HIPAA, GLB, FTC Red Flags Rule and NH RSA 359-C:20.

The Contractor shall be responsible for compliance with all notification, reporting, and other legal requirements relating to any unauthorized release of data under the Contractor's Control, or other breach of security including but not limited to NH RSA 359-C:20, entitled "Notification of Security Breach Required." Contractor shall also be responsible for compliance with all notification, reporting, and other legal requirements relating to any unauthorized release of data or other breach of security that arises out of any act or failure to act on the part of Contractor, regardless of whether such act or failure to act was negligent, grossly negligent, or intentional. Under any circumstance covered by this section, USNH, at its sole discretion, may also comply with any notification, reporting, or other legal requirement, provided, however, that USNH's compliance shall not relieve Contractor of any of its responsibilities set forth in this section or otherwise existing under applicable law.

USNH has developed an Identity Theft Prevention Program pursuant to the Federal Trade Commission's (FTC) Red Flags Rule, which implements Section 114 of the Fair and Accurate Credit Transactions Act of 2003. The Contractor is or shall become familiar with the Red Flags Rule. That can be done through the following link to the FTC web site video: <http://www.ftc.gov/bcp/edu/microsites/redflagsrule/video.shtm>. The Contractor shall train self and employees to look for Red Flags. Whether or not the Contractor's services are directly subject to the Red Flags Rule, if the Contractor encounters a potential Red Flag such as but not limited to a person presenting identifying information or materials that do not belong to them, or repeatedly presenting incorrect authentication credentials such as incorrect passwords, the Contractor shall take steps to stop inappropriate access to services and/or information, and shall notify USNH immediately by contacting USNH Contact Name."

K. Bid Process

The Contractor and the agents and employees of the Contractor acknowledge that they may be excluded in any resulting competitive (or noncompetitive) bid and award process for the supply of goods or services specified as a result of this agreement.

L. Termination Unrelated to Default

USNH reserves the right to terminate this agreement upon 10 (ten) days written notice to the Contractor. All satisfactory work performed up to the time of such termination shall be paid in full by USNH upon submission of an invoice. In the event of an early termination of this agreement the Contractor shall deliver to the hiring administrator, not later than fifteen (15) days after the date of termination, a report describing in detail all services performed and the contract price earned, to and including the date of termination.

M. Force Majeure

If, because of riots, war, public emergency or calamity, fire, earthquake, flood or other such natural disasters, government restriction, labor disturbance or strike, business operations at USNH shall be interrupted or stopped, performance of this contract, with the exception of moneys already due and owing shall be suspended and excused to the extent commensurate with such interfering occurrence, and the expiration date of the contract may be extended for a period of time equal to the time that such default in performance is excused.

Neither party will be responsible for any failure to perform due to causes beyond its reasonable control, including, but not limited to, natural disasters, war, riot, embargoes, acts of civil or military authorities, denial of or delays in processing of export licensing applications, fire, floods, earthquakes, accidents, strikes or fuel crises.

N. Event of Default

Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder:

- 1) failure to perform the services satisfactorily or on schedule; or
- 2) failure to submit any report required hereunder; or
- 3) failure to perform any other covenant or condition of this agreement.

Upon the occurrence of any event of default, USNH may:

- 1) give the Contractor a written notice specifying the event of default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Contractor fails to remedy the event of default, give the Contractor a notice of termination.
- 2) in the event USNH gives a notice of termination for un-remedied defaults under subparagraph 1, then USNH may suspend all payments to be made under this agreement upon giving the Contractor notice of such termination.
- 3) set off against any other obligations USNH may owe to the Contractor any damages USNH suffers by reason of any event of default.
- 4) treat the agreement as breached and pursue any of its remedies at law or in equity, or both.

O. Waiver of Breach

No failure by USNH to enforce any provisions hereof after any event of default shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of default shall be deemed a waiver of any provisions hereof upon any further or other default on the part of the Contractor.

P. Indemnification

The Contractor shall indemnify and hold harmless USNH, its officers and employees, from and against any and all losses suffered by USNH, its officers and employees, and any and all claims, liabilities or penalties asserted against USNH, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of USNH, which immunity is hereby reserved to USNH by the State. This covenant shall survive the termination of this agreement.

Q. Insurance

The Contractor, subcontractor or assignee, shall have commercial general liability insurance with policy limits of not less than \$1 million per occurrence, \$2 million aggregate and \$2 million products and completed operations, or professional liability insurance of not less than \$2 million, if providing consulting or similar services. Insurance requirements may be waived only by written agreement of the USNH Treasurer or designee. If insurance requirements are not waived, the Contractor shall attach to agreement proof of all applicable insurances required by USNH. All proof of insurance must name USNH as an additional insured. Certificates of insurance for all required insurance should be sent to the appropriate campus purchasing office.

The policies described shall be standard form employed in the State of New Hampshire, issued by underwriters acceptable to USNH, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modifications of the policy earlier than 30 days after written notice thereof has been received by USNH.

R. Laws, Rules and Regulations

This agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. In connection with the performance of the services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including but not limited to civil rights and equal opportunity laws. During the term of this agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, sexual orientation, handicap or national origin and will take affirmative action to prevent such discrimination. If this agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive order No. 11246 (“Equal Employment Opportunity”) as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60) and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit USNH, the state, the United States, or any designated representatives of the aforementioned, to have access to any of the Contractor’s books, records and accounts for the purpose of ascertaining compliance with the aforesaid rules, regulations and orders, and the covenants and conditions of this agreement.

In the event any of the provisions of this agreement are held by a court or other tribunal of competent jurisdiction to be unenforceable, the other provisions of this agreement will remain in full force and effect.

S. Entire Agreement

This agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between parties, and supersedes all prior agreements and understanding relating hereto.

SECTION IX: AUTHORIZED SIGNATURES

Note: By signing below, the Hiring Administrator certifies that the amount being paid to the independent contractor does not exceed a maximum rate set forth by federal regulation for fees paid using grant funds.

Insurance requirements waived (Initialed by the Treasurer or designee)
 *Requirements cannot be waived by department or contractor

Hiring Administrator	Typed or Printed Name	Date
Independent Contractor	Typed or Printed Name	Date
Purchasing	Typed or Printed Name	Date

Additional Signature when required:

- VP Finance and Administration by campus when fees **exceed \$75,000**
- USNH Vice Chancellor signature required when fees **exceed \$500,000**

VP Finance and Administration	Typed or Printed Name	Date
Vice Chancellor	Typed or Printed Name	Date