

SECURING AND PAYING FOR CONSULTANTS AND INDEPENDENT CONTRACTORS

PURPOSE

The primary purpose of this policy and procedure statement is to guide the Seminary in three areas: (1) To properly classify employees, consultants and independent contractors; (2) To properly establish, maintain and execute consulting arrangements with non-Seminary individuals/organizations; (3) To properly establish and execute intra-institutional consulting arrangements.

All Seminary policies and procedure guides inconsistent with the policy and procedures contained herein are hereby rescinded.

DEFINITIONS

An individual is considered an employee when the department or unit for which services are performed has the authority to control and direct the individual who performs the services. This includes the results to be accomplished as well as the details and means by which they are to be accomplished. The employer does not have to actually direct the manner in which the services are provided; having the right to do so is sufficient (Treasury Reg. Section 31.3401(c)-1 (b)). Employee status is also characterized by the furnishing of equipment or supplies, providing a place to work, and having authority to discharge (Treasury Reg. Section 31.3121(d)-1(c)). Regularity, continuity and exclusivity also help to determine whether the relationship is that of an independent contractor or employee.

The IRS defines an independent contractor or consultant as someone who gives professional advice or services. Generally, they are individuals who are in business for themselves, offer their services to the public, and have an investment in facilities. An independent contractor may be subject to the control or direction of another individual with respect to work objectives, but not with respect to the means and methods for accomplishing these objectives (Treasury Reg. Section 31.3121(d)-1(c)).

Internal Revenue Code Section 3121(c) states that if 50% or more of the services performed by an individual during any pay period are services performed as an employee, then all funds for services must be treated as employee compensation, regardless of the type of services performed. It is also the position of the IRS that if two individuals have the same job description and one is considered an employee, then both are classified as employees. Typically, the IRS leans heavily toward the classification of an individual as an employee rather than as an independent contractor.

DISTINGUISHING BETWEEN EMPLOYEES AND INDEPENDENT CONTRACTORS

It is the Seminary's policy that an individual may not act both as an employee and an independent contractor for the institution.

Revenue Ruling 87-41 has identified twenty common-law factors to aid in determining whether or not an employer/employee relationship exists for a particular individual. These factors are identified below. The importance of each factor varies depending on the occupation and the context in which the services are performed.

A worker will generally be deemed an employee if he/she:

1. Must comply with an employer's instructions about the work.
2. Received training from or at the direction of the employer.
3. Provides services that are integrated into the business.
4. Provides services that must be rendered personally.
5. Hires, supervises and pays assistants who are employees of the employer. (An independent contractor 6.6 determines whether to hire his/her own assistants and if so, whom to hire.)
6. Has a continuing relationship with the employer.
7. Must follow set hours of work.
8. Works full-time for an employer.
9. Does the work on the employer's premises.
10. Must work in a sequence set by the employer.
11. Must submit regular reports to the employer. (Reports usually indicate employee status.)
12. Receives payments of regular amounts at set intervals. (For an independent contractor, the payment is usually by the job.)
13. Receives payments for business or traveling expenses.
14. Relies on the employer to furnish tools and materials.
15. Lacks a major investment in facilities used to perform the service.
16. Cannot make a profit or suffer a loss from the services.
17. Works for one employer at a time.
18. Does not offer services to the general public.
19. Can be fired by the employer. (Generally, independent contractors cannot be fired as long as they live up to their contractual obligations.)

20. May quit work at any time without incurring liability. (According to the IRS, independent contractors are contractually bound to complete the specific job.)

To simplify the decision making process, the Seminary has developed a Classification Checklist to aid departments/units in making the proper determination. This checklist must be completed prior to the individual performing any services for the Seminary and included with the Independent Consultant / Contractor Agreement.

In the event that the Department of Procurement determines the individual to be an employee, a copy of the checklist will be forwarded back to the department for initiation of the appropriate employment paperwork

PROCEDURE FOR SECURING INDEPENDENT CONTRACTOR / CONSULTANT SERVICES

1. Fill out the Classification Checklist and Independent Contractor / Consultant Agreement and forward to the Procurement Department for pre-approval.
2. Procurement Department will notify user department when services/agreement is approved
For payment – Contractor / Consultant should invoice the Seminary for payment.
3. Procurement Department stamp and forward the invoice to the initiating department to sign
4. Initiating Department with sign invoice (if approving to pay) and send the signed invoice along with a check request to process payment

SPECIAL SERVICES EXEMPT FROM THIS PROCESS

Refer to Section B for procedures on distinguishing between employees and independent contractors prior to following the instructions outlined in this section.

There are certain types of services that do not require the use of a formal consulting agreement. For non-Seminary employees, these services may be procured using the Seminary's Check Request and/or Business Expense Report process. The following Exempt Services may be transacted in this manner:

- Speakers
- No-Fee Based, Non-Seminary Personnel Travel (Ex: Trustees Travel)
- Outside Catering Fees
- Employee Applicants (reimbursement for actual travel expenses only)
- Public Accounting, Real Estate and other services as approved

The Southern Baptist Theological Seminary

CLASSIFICATION CHECKLIST

The purpose of this form is (1) To properly classify employees, consultants and independent contractors; (2) To properly establish, maintain and execute consulting arrangements with non-Seminary individuals/organizations; (3) To properly establish and execute intra-institutional consulting arrangements.

INDEPENDENT CONTRACTOR / CONSULTANT

THE SOUTHERN BAPTIST THEOLOGICAL SEMINARY

Independent Contractor / Consultant Name

Project Manager Signature

Date

EI# or SS#

SVP/Dean/Director Signature

Date

Title of Project

Date

Director of Procurement Signature

Date

Relationship with The Southern Baptist Theological Seminary

The following questions should be answered to help the Seminary determine if the individual should be treated as an employee or independent contractor. Please answer the following questions, to the best of your knowledge.

- | | YES | NO |
|--|--------------------------|--------------------------|
| 1 Is this person an employee of the Seminary? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2 If an employee, does the work being requested fall within this employees job responsibilities at the Seminary? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3 Does the individual provide the same or similar services to other entities or the general public as a part of a business? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4 During the twelve months prior to the date of these requested services, was the individual a full- or part-time employee providing the same or similar services? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5 Is the task more than of short duration and indicative of an ongoing relationship with the Seminary? | <input type="checkbox"/> | <input type="checkbox"/> |
| 6 Is it expected that the Seminary will hire this individual as an employee immediately following the completion of these services? | <input type="checkbox"/> | <input type="checkbox"/> |
| 7 Will the person provide his/her own equipment/resources to complete the work requested? | <input type="checkbox"/> | <input type="checkbox"/> |

FOR INTERNAL USE ONLY

APPROVAL & DATE

CLASSIFICATION STATUS

Independent Contractor
Employee

PAYMENT METHOD

Check Request
Process through Payroll

The Southern Baptist Theological Seminary

Independent Contractor / Consultant Agreement

THIS AGREEMENT is made this _____ day of _____, 2_____, by and between **The Southern Baptist Theological Seminary**, located at 2825 Lexington Road, Louisville, KY 40280, hereinafter referred to as "the Seminary" and _____, located at _____, hereinafter referred to as "the Independent Contractor / Consultant".

WHEREAS, the Seminary desires to have the Independent Contractor / Consultant perform certain services described herein; and WHEREAS, the Independent Contractor / Consultant represents that he/she is ready, willing and able to perform such services; THEREFORE, the parties mutually agree as follows:

SCOPE OF WORK

A. General Objectives (desired end result):

B. Specific Objectives or Deliverables (list or describe, in chronological order if possible, and attach additional pages as needed):

AGREEMENT TERM

This agreement shall commence on _____, 2_____, and terminate on _____, 2_____. The Seminary reserves the right to alter the starting and ending dates of this agreement according to the needs of the Seminary.

COMPENSATION

As compensation for the services described above to be performed by the Independent Contractor / Consultant, the Seminary shall pay, during the term of this agreement, an amount not to exceed \$_____, including related travel and other expenses.

- A. Payment of such compensation shall be made by the Seminary following submission by the Independent Contractor / Consultant of a detailed invoice for services rendered to date, along with documentation of related travel and other expenses incurred by the Independent Contractor / Consultant.
- B. Only those travel expenses incurred by the Independent Contractor / Consultant that received the prior authorization of the Seminary's Project Manager designated below are eligible for reimbursement.
- C. The Seminary's payment terms are Net 30 Days on all invoices submitted by the Independent Contractor / Consultant.
- D. No payments shall be made by the Seminary for services rendered by the Independent Contractor / Consultant prior to receipt by the Seminary of the taxpayer identification number (social security number or employer identification number) and/or Form W-9 from the Independent Contractor / Consultant.

REPORTING

Periodic written reports shall be submitted by the Independent Contractor / Consultant describing the services performed pursuant to this agreement as follow:

A. Such reports shall be submitted on a _____ (weekly, semi-monthly, monthly, quarterly, etc.) basis to _____, the Seminary employee who will serve as the Project Manager for the services to be performed pursuant to this agreement.

B. Such reports will consist of: _____

_____.

INSURANCE

The Independent Contractor / Consultant shall maintain insurance coverages during the term of this agreement as follows:

- A. Workers Compensation. As required by law in the State of Kentucky, covering all persons employed by the Independent Contractor / Consultant in rendering the services contemplated by this agreement.
- B. Liability. Comprehensive or commercial general bodily injury and property damage liability insurance in an amount not less than \$1,000,000 for each occurrence.
- C. Each of the above insurance policies shall contain covenants by the issuing company (1) stating that the policy shall not be cancelled without thirty (30) days' prior written notice of cancellation to the Seminary, and (2) naming the Seminary as an additional insured.

CLASSIFIED/RESTRICTED PROPRIETARY DATA

The Seminary agrees to inform the Independent Contractor / Consultant of any information or material made available hereunder to the Independent Contractor / Consultant that are classified, restricted, or proprietary data, either in United States Government classifications or according to Seminary classifications. The Independent Contractor / Consultant agrees that any such information or material furnished to him/her by the Seminary will be returned to the Seminary upon request, or upon termination of this Agreement.

COPYRIGHTS

The Independent Contractor / Consultant agrees that all papers, documents and writings produced by the Independent Contractor / Consultant under this Agreement shall be considered a work made for hire and shall be the sole property of the Seminary. Papers, documents, and writings as used in this agreement include computer software, related source code and any associated documentation. The Seminary shall own all copyright rights and any other proprietary rights in and to such writings and/or media in any country or countries. Possession of such documents and writings shall be transferred to the Seminary at the termination of performance of services under this Agreement or at the Seminary's earlier request. Any reports, information, data, etc., given to, or prepared by, the Independent Contractor / Consultant under this Agreement, shall not be made available to any individual or organization by the Independent Contractor / Consultant without the prior written approval of the Seminary.

EXAMINATION OF RECORDS AND INDEPENDENT CONTRACTOR / CONSULTANT PROGRESS

The Seminary shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Independent Contractor / Consultant involving transactions related to this Agreement until the expiration of three years after final payment hereunder. In the performance of the services, the Independent Contractor / Consultant has the authority to control and direct the performance of the details of the work with the Seminary being interested only in the results obtained. However, the work contemplated herein must meet the Seminary's standards and approval and shall be subject to the Seminary's general right of inspection and supervision to secure the satisfactory completion thereof. Independent Contractor / Consultant agrees to comply with all federal, state and local laws, rules and regulations that are now or hereafter applicable to the Independent Contractor / Consultant or the Contractor's/Consultant's business.

INTEREST OF INDEPENDENT CONTRACTOR / CONSULTANT

The Independent Contractor / Consultant covenants that it presently has no interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Independent Contractor / Consultant further covenants that in the performance of this Agreement, the Independent Contractor / Consultant shall not employ any person having such conflicting interests.

PUBLICITY

It is also agreed that no advertising or publicity materials having or containing any reference to The Southern Baptist Theological Seminary, or in which the name is mentioned, shall be used by the Independent Contractor / Consultant or anyone on the Contractor's/Consultant's behalf unless and until the same shall have first been submitted to and received the written approval of an authorized representative of the Seminary.

TERMINATION

By giving five days written notice to the Independent Contractor / Consultant, the Seminary may terminate this contract in whole or in part at any time for cause, including, but not limited to, the failure of the Independent Contractor / Consultant to fulfill his/her contract obligations. Such notice shall be delivered by certified mail to the Independent Contractor / Consultant at the address shown on the last page of this Agreement. Upon receipt of such notice, the Independent Contractor / Consultant shall, as notice directs: 1) discontinue all services affected; and 2) deliver to the Seminary all data, reports, summaries and such other information and materials as may have been prepared for and/or accumulated by the Independent Contractor / Consultant in performing this Agreement, whether completed or in progress. Independent Contractor / Consultant will be compensated for services provided pursuant to this Agreement to the effective date of termination.

CHANGES

The Seminary may require changes in the scope of the services of the Independent Contractor / Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Independent Contractor's/Consultant's compensation which are mutually agreed upon by the parties, shall be incorporated by written amendment to this Agreement.

INDEPENDENT CONTRACTOR'S/CONSULTANT'S LIABILITY

In addition to the liability imposed by law on the Independent Contractor / Consultant for damage or injury (including death) to persons or property by reason of negligence and/or intentional conduct of the Independent Contractor / Consultant or any of his/her agents or anyone directly or indirectly employed by them, the Independent Contractor / Consultant hereby agrees to the following condition:

The Independent Contractor / Consultant agrees to hold the Seminary harmless and indemnify the Seminary for every expense, liability or payment suffered or claimed to have been suffered through any act or omission of the Independent Contractor / Consultant or any of his/her agents or anyone directly or indirectly employed by them, or from the conditions of the Seminary's premises or any part of the Seminary premises while in the control of the Independent Contractor / Consultant or any of his/her agents or anyone directly or indirectly employed by them, or arising in any way from the work called for by this agreement..

WAIVER OF DEFAULT

Any failure by the Seminary at any time or from time to time to enforce or require the strict keeping and performance by Independent Contractor / Consultant of any of the terms or conditions of this agreement shall not constitute a waiver by the Seminary of a breach of any such terms or conditions in any way or the right of the Seminary at any time to avail itself of such remedies as it may have for any such breach or breaches of such terms or conditions.

INDEPENDENT CONTRACTOR / CONSULTANT

The Seminary and Independent Contractor / Consultant intend that the relationship established between them pursuant to this agreement shall be that of client and independent contractor. No agent, employee or servant of the Independent Contractor / Consultant shall be or shall be deemed to be an employee, agent or servant of the Seminary unless prior approval from the Senior Vice President of Institutional Administration is given. The Seminary is interested only in the results obtained under this Agreement consistent with the above outline. Consequently, Independent Contractor / Consultant is responsible for all applicable federal and state regulations relating to income tax, social security, worker's compensation and unemployment insurance. Independent Contractor / Consultant further agrees that there are no claims to any rights to benefits or tenure rights for the Independent Contractor / Consultant or his agents under this agreement. The Seminary waives any right to direct, instruct, and control Independent Contractor / Consultant as to the manner in which the Independent Contractor / Consultant achieves the general and specific objectives, except that Independent Contractor / Consultant agrees to perform its work in a manner, which is consistent with general, Seminary protocol.

INDEPENDENT CONTRACTOR / CONSULTANT

THE SOUTHERN BAPTIST THEOLOGICAL SEMINARY

Independent Contractor / Consultant Name

Project Manager Signature Date

EI# or SS#

SVP/Dean/Director Signature Date

Independent Contractor / Consultant Signature Date

Director of Procurement Signature Date