

## INDEPENDENT CONTRACTOR – PROFESSIONAL SERVICES (FS-06) INSTRUCTIONS

THE INSTRUCTIONS BELOW WILL ASSIST IN COMPLETING THE FS-06. READ ALL THE INSTRUCTIONS. **THE PAYEE AND PERSON COMPLETING THE FORM MUST SIGN SECTION 6 OF THE FS-06.**

**Note:** Payment of an honorarium is defined as a gratuitous payment to a person as a token of appreciation for participation in an academic activity such as a lecturer, teaching, or performance for which no fee is legally required. Written or verbal communication that TXST will pay a predetermined amount is a fee for services and a FS-06 must be completed to determine worker classification.

The purpose of the FS-06 is to assist TXST departments in classifying individuals providing services to the university as either employees or independent contractors. This determination will be made by the the explanation of services, employment status with the university and responses in Sections 1 – 5 of the FS-06. **The department should complete the FS-06 in conjunction with the proposed contractor in order to provide accurate responses to all required questions prior to signing and dating the form. Department may be contacted to provide additional information.**

See appendix A for additional information on classifying individuals providing services to the university.

### I. DEFINITIONS FOR SECTION 1 OF FS-06.

#### a) CONTRACTOR CLASSIFICATION FOR TAX PURPOSES (see [Business Structure](#) information on IRS website)

- a. **GOVERNMENTAL ENTITY** – Any nation or government, any state, province or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any court, arbitrator (public or private) or other body or administrative, regulatory or quasi-judicial authority, agency, department, board, commission or instrumentality of any federal, state, local or foreign jurisdiction.
- b. **CORPORATION** – A legal structure for a corporation in which the owners, or shareholders, are taxed separately from the entity. C corporations, the most prevalent of corporations, are also subject to corporate income taxation. C Corporation reports business income on IRS Form 1120; S Corporation reports business income on IRS Form 1120-S.
- c. **PARTNERSHIP** – A formal arrangement by two or more parties to manage and operate a business and share its profits. Reports business income on IRS Form 1065.
- d. **LLC (ELECTING TO BE TAXED AS A CORPORATION)** - C Corporation reports business income on IRS Form 1120; S Corporation reports business income on IRS Form 1120-S.
- e. **LLC (ELECTING TO BE TAXED AS A PARTNERSHIP)** - Reports business income on IRS Form 1065.
- f. **INDIVIDUAL** – Reports business income on his or her individual IRS Form 1040 (may use Schedule C).
- g. **SOLE PROPRIETOR** – An unincorporated business that has just one owner who pays [personal income](#) tax on profits earned from the business. Unincorporated business; owner reports business income on his or her individual IRS Form 1040 (may use Schedule C).
- h. **LLC – SINGLE MEMBER DISREGARDED FOR TAX PURPOSES** – A single-member LLC that does not elect to be treated as a corporation. Reports business income on his or her individual IRS Form 1040 (may use Schedule C).

#### b) **PaymentWorks must be used by departments for the University to obtain W-9's and W-8's. Departments are NOT to receive W-9's or W-8's.**

#### c) **Additional information must be gathered for Non-Resident Alien Payees when TXST:**

- a. Has a regular or ongoing relationship with the individual (pays more than once in a year or engages over multiple years).
- b. Pays an individual who performs any services in the US.
- c. Uses university funds (including Research) to pay for the individual to travel to the US (to work, attend meetings/conferences/training, etc).
- d. Set up a new vendor in PaymentWorks.

- e. If 100 % of work or services will be rendered outside the US and no sponsored travel to US, attach the form: *Foreign Source Income Exclusion Statement*.
- f. If any % of work or services will be rendered in the US, travel to US and/or recurring payments, complete the form and send it to the [Tax Specialist](#). The Tax Specialist will set up the vendor in Sprintax for the tax determination and tax forms; and will instruct the department on how to process the PO or eNPO with the corresponding income tax withholding.

## II. EXAMPLES OF PERSONS THAT ARE EMPLOYEES OF TXST:

- a) A person **teaching a course for credit** (even if the course is only one day long). A sole proprietorship or single member LLC (disregarded entity) is considered an employee.
- b) A person **teaching a continuing education course not for credit or providing teaching, workshops, or training via any TXST department or unit** (even if the course is only one day long). A sole proprietorship or single member LLC (disregarded entity) is considered an employee.
- c) A person employed by TXST in any other capacity (including Student Appointments in Human Resources). Approval to pay dual compensation is not approval to pay an individual as an independent contractor.
- d) Persons performing **services that are a key aspect of regular business** performed by the hiring TXST department (except as described in Section III. b. and c. below). **Examples of this include:**
  - 1. Computer personnel for Information Technologies, an accountant for TXST's Accounting Department, an aerobics instructor for Campus Recreation. Principal Investigators (PI) and Co-Principal Investigators (Co-PI) must be paid as employees (or if Co-PI works at another institution – work should be sub-contracted to the other institution. A sole proprietorship or single member LLC (disregarded entity) is considered an employee.
  - 2. An individual who is a full-time employee elsewhere and performs services for TXST.
- e) Former employees that return on either a full or part time basis to perform duties similar to those performed previously for TXST (former employees may be Independent Contractors once they have been terminated for one year and one day).
- f) Individuals performing services for TXST that do not perform those services for other businesses.
- g) Students performing services as note takers or providing other assistance to disabled students are employees.

## III. EXAMPLES OF PERSONS THAT MAY BE INDEPENDENT CONTRACTORS:

- a) An independent contractor only receives instructions regarding the end result; he/she is not directly controlled or supervised by a TXST employee and does not receive evaluations or direction regarding how the work is to be performed. Independent contractors do not supervise or provide operational instruction to other TXST employees.
- b) A person who is not a TXST employee that is not the primary instructor of record, who is being paid as a guest speaker to present a brief lecture in a classroom or at a conference sponsored/conducted by TXST.
- c) A person (who is not a TXST employee) that is in the business of providing a service to the general public and provides the same service to TXST. Examples include:
  - 1) Piano mover
  - 2) string tennis racquets
  - 3) Consultant providing specific expertise such as evaluating TXST business practice
  - 4) Individual training provided to TXST employees or students not associated with a TXST course
  - 5) Accreditation evaluation services
  - 6) Athletic game officials, University Interscholastic League judges and assistants
  - 7) Financial and legal services provided by individuals who perform these services for the general public
  - 8) Guest speakers, artists, performers, and professional models
  - 9) Medical services provided by individuals who perform services for the general public
  - 10) Photography or graphic services
  - 11) Provides goods/products only
  - 12) Rental services – facilities and equipment
  - 13) Research participants
  - 14) Royalties
  - 15) Tuning/adjustment of university musical instruments

#### IV. IRS DETERMINATION (FEDERAL LAW):

TXST must correctly determine whether individuals providing services are employees or independent contractors - see information on [IRS website](#). The FS-06 documents the relationship between TXST and individuals providing services. TXST's decision to hire an employee or independent contractor will be based on the degree of control and independence between the parties, evidence of which will fall within three categories:

1. **Behavioral:** Does the company control or have the right to control what the worker does and how the worker does his or her job?
2. **Financial:** Are the business aspects of the worker's job controlled by the payer? (These include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
3. **Type of Relationship:** Are there written contracts or employee type benefits (e.g., pension plan, insurance, vacation pay, etc.)? Is there a regular or ongoing relationship? Is the work performed a key aspect of the business?

TXST must consider evidence in all three categories when determining whether a worker is an employee or independent contractor. Some factors may indicate that the worker is an employee, while other factors indicate that the worker is an independent contractor. There is no "magic" or set number of factors that "makes" the worker an employee or an independent contractor, and no one factor stands alone in making this determination. Also, factors which are relevant in one situation may not be relevant in another.

#### V. TEXAS STATUTE (STATE LAW):

##### Texas Unemployment Compensation Act (TUCA) D §201.041 States:

"Employment" means a service, including service in interstate commerce, performed by an individual for wages or under an express or implied contract of hire, unless it is shown to the satisfaction of the commission that the individual's performance of the service has been and will continue to be free from control or direction under the contract and in fact. Visit the [Texas Workforce Commission](#) for further information.

**KEEP THE INSTRUCTIONS ABOVE FOR YOUR RECORDS. DO NOT ATTACH TO THE REQUISITION OR SUBMIT WITH THE FS-06. QUESTIONS ABOUT THE FS-06 SHOULD BE DIRECTED TO [THE OFFICE OF PROCUREMENT AND STRATEGIC SOURCING](#).**

## APPENDIX A

### Employee vs Independent Contractor Classification - Instruction

Primary Instructor of Record	Guest Lecturer	Instructor (sole proprietor/ DBA or LLC disregarded entity)	Instructor (Partnership, C or S Corporation or LLC that is a Corporation or Partnership)	Instructor for Internal TXST Training (employees or students)
Individual providing instruction for any TXST course (for credit, non-credit, continuing education, fitness center, one day training workshop leader/facilitator) or grant activity. Responsible for evaluating/ grading students and services required to conduct course.	Performs supplemental instruction or lectures in support of TXST course or program. May provide informal feedback and/or different perspective. Guest lectures are optional enhancements to TXST courses.	Individual providing instruction for any TXST course (for credit, non-credit, continuing education, fitness center, one day training workshop leader). Responsible for evaluating/ grading students and services required to conduct course.	Employing entity providing instructor to TXST.	Individual or entity providing training to TXST employees or TXST students (may or may not be related to TXST student employment).
Always pay instructors/ teachers/workshop leaders/ facilitators as <b>employees</b> .	Pay as <b>independent contractor</b> .	Always pay instructors/ teachers/ facilitators as <b>employees</b> .	Pay <b>business entity</b> providing service directly.	<p>Pay as an <b>employee</b> if individual is performing services normally provided by TXST employee.</p> <p>Pay as <b>independent contractor</b> if work is not a key aspect of TXST department business and individual provides proof of business (provides same service to other customers).</p> <p>Pay <b>business entity</b> providing service directly.</p>

## Employee vs Independent Contractor Classification-Consultant - Education

Content Expert	Instructional Designer	Course Facilitator	Guest Lecturer	Test Proctor
Provides content area expertise to TXST for the creation or revision of courses.	Adds course content to TXST systems including content provided by content experts.	Facilitates a course (may be self-paced or non-self-paced).	Performs supplemental instruction or lectures in support of TXST programs and is not the primary instructor of record and does not grade students.	Test proctoring services provided to TXST or pursuant to grant agreements.
Developing course content is a key aspect of TXST business - pay individuals as <b>employees</b> or <b>business entity</b> providing service directly.	Developing course content is a key aspect of TXST business - pay individuals as <b>employees</b> or <b>business entity</b> providing service directly.	Always pay instructors/ teachers/ facilitators as <b>employees</b> .	Pay as <b>independent contractor</b> .	Pay as <b>employee</b> or <b>business entity</b> providing service directly.

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## Employee vs Independent Contractor Classification-Consultant - Research

Research Consultant	Subject Matter Expert/ Technical Assistance	Data Collector	Community Advisor	Principal Investigator (PI) or Co-Principal Investigator (Co-PI)
Typically, faculty from another institution who is an expert in the field. Provides high level consultation or advice. Is not collecting or analyzing data.	Similar to a Research Consultant but may not be faculty. Primarily a resource for TXST.	Follows well defined methods to collect data through interviews, observation, or other means.	Individual who provides input (possibly serving on a board) into the work of a project or program. Requires high degree of independence and payment is a token amount.	Provides services related to a research project.
<p>Pay as an <b>employee</b> if individual is performing services normally provided by TXST employee, creating a product, performing administrative clerical or data analysis.</p> <p>Pay as <b>independent contractor</b> if individual is paid for expertise and knowledge (includes reviewing and advising).</p>	<p>Pay as an <b>employee</b> if individual is performing services normally provided by TXST employee.</p> <p>Pay as <b>independent contractor</b> if work is not a key aspect of TXST department business and individual provides same service to other customers.</p> <p>Pay <b>business entity</b> providing service directly.</p>	When possible, subcontract through primary employer; otherwise pay as an employee	Pay as <b>independent contractor</b> because of high degree of independence.	When possible, <b>subcontract through primary employer</b> ; otherwise pay as an <b>employee</b> .

## Employee vs Independent Contractor Classification-Performers & Arts

Concerts, Performances	Masterclasses, Guest Lecturer, Accreditors, Critique Judges	Festivals	Commissioning	Performance at TXST Event
Individuals who come for a single performance (and rehearsals) of a ticketed event.	Individuals who come to enhance and enrich the educational experience by providing informal feedback and different perspectives of artistic expression which are not a part of the syllabus for the course.	Individuals who participate in a series of events in connection with one festival which include performances and masterclasses.	Individuals who commission or compose a piece and/or choreography for the students to perform. The individuals do not teach or instruct the students on how to perform the piece/choreography, they just create the piece for the College.	Individuals performing at a TXST event.
Pay as <b>independent contractor</b> .	Pay as <b>independent contractor</b> if: a TXST Faculty member oversees the course and coordinates with the individual providing the service.	Pay as <b>independent contractor</b> if a TXST faculty member oversees the festival and coordinates with the individual providing the service.	Pay as <b>independent contractor</b> as long as individual provides proof of business.	Pay as <b>independent contractor</b> .



**Employee vs Independent Contractor Classification-Other Services (cont'd on next page)**

Web/Graphic Designer	Freelance Writer, Social Media Consultant, Copy Editor	Dissertation Editor	Service - key function of hiring dept (see "Instruction" tab for teaching/ instruction services)
<p>Creating content, including writing features/stories/articles describing dept activities for placement on TXST webpage. Editing content, including any written materials gathered from other sources for placement on webpage.</p>	<p>Provides assistance with events and communications including writing previews, recaps, game notes, graphic templates, social media postings.</p>	<p>Provides dissertation edits for students of university program.</p>	<p>Service that is a key function of the hiring department - TXST employees may or may not perform same/similar work. Includes individuals directing/controlling TXST employee(s) and individuals directed/controlled by TXST employee(s). Includes services provided pursuant to grant agreements.</p>
<p>Pay as <b>employee</b> if key aspect of university department. If not, OK to pay as <b>independent contractor</b> or <b>business entity</b> providing service directly.</p>	<p>Pay as <b>employee</b> if key aspect of university department. If not, Ok to pay as <b>independent contractor</b> or <b>business entity</b> providing service directly.</p>	<p>Pay as <b>independent contractor</b> or <b>business entity</b> providing service directly.</p>	<p>Pay as <b>employee</b> or <b>business entity</b> providing service directly.</p>

## Employee vs Independent Contractor Classification-Other Services (cont'd)

Service - not a key function of hiring dept (see "Instruction" tab for teaching/ instruction services)	Translation Services	Sign Language Interpreters	Notetakers	Test Proctor
Service that is not usually provided by a TXST employee such as photographer at TXST event.	Translating reports from another language to English. No supervision or control by TXST and translator provides own equipment and supplies.	Interpreting services	Notetaking services for disabled students.	Test proctoring services provided to TXST or pursuant to grant agreements.
Pay as <b>independent contractor</b> or <b>business entity</b> providing service directly.	Pay as <b>independent contractor</b> or <b>business entity</b> providing service directly.	Pay as <b>independent contractor</b> or <b>business entity</b> providing service directly.	Pay as <b>employee</b> .	Pay as <b>employee</b> or <b>business entity</b> providing service directly.

## Nonresident Alien Payees

All Services Provided Outside the U.S. (no sponsored travel to U.S.)	Services Provided in the U.S.	Individual will Travel to U.S.	Payments for Service are Regular and/or Recurring	Foreign Entity Providing Services
	<a href="#">Tax Specialist</a>	<a href="#">Tax Specialist</a>	<a href="#">Tax Specialist</a>	
All services will be performed outside the U.S. and payment will not be regular/ recurring.	Individual will perform some or all services in the U.S.	Payment to individual includes travel to the U.S.	Individual is paid for service on a regular/ recurring schedule.	Payment for service is made to a foreign entity rather than an individual.
Pay as <b>independent contractor</b> .	Contact <b>the Tax Specialist</b> for approval - include IC Worksheet and all supporting documents.	Contact <b>the Tax Specialist</b> for approval - include IC Worksheet and all supporting documents.	Contact <b>the Tax Specialist</b> - may be required to use an employment intermediary to pay for services.	Pay <b>business entity</b> providing service directly.

## Services Outside the U.S.

Payments for Service are Regular and/or Recurring	Foreign Entity Providing Services
<a href="#">Tax Specialist</a>	
Individual is paid for service on a regular/ recurring schedule.	Payment for service is made to a foreign entity rather than an individual.
Contact <b>Tax Specialist</b> - may be required to use an employment intermediary to pay for services.	Pay <b>business entity</b> providing service directly.