TEXAS A&M UNIVERSITY
CORPUS CHRISTI

TWENTY FACTOR FORM
DETERMINATION OF EMPLOYEE VS. INDEPENDENT CONTRACTOR

Under the common law test, a worker is an employee if the purchaser of that worker's service has the right to direct or control the worker, both as to the final results and as to the details of when, where and how the work is done. Control need not actually be exercised; rather, if the service recipient has the right to control, employment may be shown.

The weight given to a factor is not always constant from case to case, because the importance assigned each factor may vary depending on the occupation or on the facts of that particular case.

If an employment relationship exists, it is of no consequence that the employee happens to be called something else, such as partner, agent, co-adventurer, contract laborer, subcontractor, or independent contractor.

Name of Consultant/Independent Contractor: _____

PLEASE CHECK ON THE COLUMN THAT BEST APPLIES TO THE COLSULTANT/CONTRACTOR.

RULE	EMPLOYER RELATIONSHIP	APPLIES	INDEPENDENT CONTRACTOR RELATIONSHIP	APPLIES
Compliance with Instructions	An Employee receives instructions about when, where, and how the work is to be performed.	☐	An Independent Contractor does the job his or her own way with few, if any, instructions as to the details or methods of the work.	☐
Training	Employees are often trained by a more experienced employee or are required to attend meetings or take training courses.	☐	An Independent Contractor uses his or her own methods and thus need not receive training from the purchaser of those services.	☐
Integration	Services of an Employee are usually merged into the firm's overall operation; the firm's success depends on those Employee services.	☐	An Independent Contractor's services are usually separate from the client's business and are not integrated or merged into it.	☐
Services Rendered Personally	An Employee's services must be rendered personally; Employees do not hire their own substitutes or delegate work to them.	☐	A true Independent Contractor is able to assign another to do the job in his or her place and need not perform services personally.	☐
Hiring, Supervising & paying helper	An Employee may act as a foreman for the employer but, if so, helpers are paid with the employer's fund.	☐	Independent contractors select, hire, pay and supervise any helpers used and are responsible for the results of the helpers' labor.	☐
Continuing Relationship	An Employee often continues to work for the same employer month after month of year after year.	☐	An Independent Contractor is usually hired to do one job of limited or indefinite duration and has no expectation of continuing work.	☐
Set Hours of Work	An Employee may work "on call" or during hours and days as set by the employer.	☐	A true Independent Contractor is the master of his or her own time and works the days and hours he or she chooses.	☐
Number of employees	An Employee ordinarily devotes full-time to the employer, or the employer may have a priority on the Employee's time.	☐	A true Independent Contractor cannot be required to devote full time service to one firm exclusively.	☐
Location where services performed	Employment is indicated if the employer has the right to mandate where services are performed.	☐	Independent Contractors ordinarily work where they choose. The workplace may be away from the client's premises.	☐
Order or Sequence set	An Employee performs services in the order or sequence set by the employer. This shows control by the employer.	☐	A true Independent Contractor is concerned only with the finished product and sets his or her own order or sequence of work.	☐

TWENTY FACTOR FORM

Oral or written reports	An Employee may be required to submit regular oral or written reports about the work in progress.	☐	An Independent Contractor is usually not required to submit regular oral or written reports about the work in progress. Submits reports as specified by contract.	☐
Means of payment by the hour, week or month	An Employee is typically paid by the employer in regular amounts at stated intervals, such as by the hour or week or month.	☐	An Independent Contractor is normally paid by the job, either a negotiated flat rate or upon submission of a bid or proposal.	☐
Payment of Business & travel expense	An Employee's business and travel expenses are either paid directly or reimbursed by the employer.	☐	Independent Contractor normally pay all of their own business and travel expenses without reimbursement or specified by contract.	☐
Tools & equipment	Employees are furnished all necessary tools, materials, and equipment by their employer.	☐	An Independent Contractor ordinarily provides all of the tools and equipment necessary to complete the job.	☐
Investment of Facilities	An Employee generally has little or no investment in the business. Instead, an Employee is economically dependent on the employer.	☐	True Independent Contractors usually have a substantial financial investment in their independent business.	☐
Profit or loss	An Employee does not ordinarily realize a profit or loss in the business. Rather, Employees are paid for services rendered.	☐	An Independent Contractor can either realize a profit or suffer a loss depending on the management of expenses and revenues.	☐
One employer at a time	An Employee ordinarily works for one employer at a time and may be prohibited from joining a competitor.	☐	An Independent Contractor often works for more than one client or firm at the same time and is not subject to a non-competition rule.	☐
Making Service available to the Public	An Employee does not make his or her services available to the public except through the employer's company.	☐	An Independent Contractor may advertise, carry business cards, hang out a shingle, or hold a separate business license.	☐
Discharge Right	An Employee can be discharged at any time without liability on the employer's part.	☐	It the work meets the contract terms, an Independent Contractor cannot be fired without liability for breach of contract.	☐
Right to quit without liability	An Employee may quit work at any time without liability on the Employee's part.	☐	An Independent Contractor is legally responsible for job completion and, on quitting, becomes liable for breach of contract.	☐

I certify that to the best of my knowledge the consultant/independent contractor named at the top of this 20-factor test does not meet the criteria describing an employer/employee relationship.

_____ _____

Department Head Department

_____ _____ _____

Department Head Signature Date Phone No.

PURCHASING USE ONLY

Purchasing Recommends:

☐ Pay as a Consultant/Independent Contractor

☐ Contact Human Resources to pay as an Employee

Authorized by: _____ Date: _____

Director of Procurement & Disbursement Signature