

Policy No. & Title: P213: WORKING RELATIONSHIP**Policy Sponsor:** Director, Labour and Employee Relations**Effective:** 2020-09-17**Next Review:** 2026-09-17**Approvals:** 1991-12-06/SA-91-06; 1993-09-01/SA-92-07; 1999-04-07/SA-98-08;
2005-05-04/AC-04-08; 2013-08-27/SLC-12-17; 2015-05-27

1. PURPOSE

There is wide variation among the benefits, obligations and tax implications associated with the various categories of employee and with the category of independent contractor. An apparent small change to a work assignment can unintentionally alter a working relationship in a radical way. If the College fails to categorize a working relationship properly, the College or the worker or both may be at risk or disadvantage, with substantial cost and other consequences. Therefore, it is important to the College and to workers that the College properly categorize each working relationship before committing to the relationship or altering an existing relationship.

The purpose of this policy is to provide for accurate and consistent categorization of the working relationship between the College and each worker paid to perform work for the College.

2. POLICY

Prior to the start of a new or revised work arrangement, the hiring manager, with assistance from Human Resources, using the addenda to this policy, determines the correct categorization of the working relationship and proceeds accordingly.

3. REFERENCES

College Policy

[A201: Research and Innovation](#)

[C106: Purchasing](#)

[P207: Employee Code of Conduct](#)

4. ADDENDA

Procedure A: DETERMINATION OF WORKING RELATIONSHIP

Form 1: WORKING RELATIONSHIP QUESTIONNAIRE

Form 2: FORM OF AGREEMENT FOR CONTRACT FOR SERVICES

-0-0-0-

Policy No. & Title: P213: WORKING RELATIONSHIP

Addendum: **Procedure A: DETERMINATION OF WORKING RELATIONSHIP**

Issued by: Director, Labour and Employee Relations

Effective: 2020-09-17

1. PURPOSE

The purpose of this document is to guide hiring managers and Human resources through the process of determining the appropriate working relationship for each hiring situation.

2. DEFINITIONS

Educational services: May include any of the following: teaching, marking exams, leading tutorials, demonstrating and instructing in labs, developing curriculum, or lecturing.

Employment relationship: Any form of employment relationship including, but not limited to, full-time, part-time, project or non-recurring kind, partial load, sessional, and temporary.

Credit course: A course delivered by the College for credit in a program of instruction leading to a certificate, diploma or degree issued by the College.

Independent contractor: A person in business for him or herself. When assessing whether a person is an independent contractor, the central issue is whether the person engaged to perform the services is performing them as a person who is in business for him or herself. In making the determination, the following should be considered:

- How integral are the services being performed to the core function of the College's business?
- What is degree of control exercised by the College over the performance of the services?
- Who provides the tools/equipment utilized in the provision of services?
- What is the chance of profit or risk of loss taken by the person providing the services?

3. DETERMINING THE WORKING RELATIONSHIP

This following outlines the steps for determining the appropriate working relationship between a candidate and the College. If the working relationship is determined not to be 'independent contractor,' then the appropriate relationship is employee.

When assessing whether a candidate is an independent contractor, the central issue is whether the person engaged to perform the services is performing them as a person who is in business for him or herself. In making that determination, the four bulleted points in the above definition are considered.

- 3.1. When a Budget Manager proposes to enter into a contractual relationship with an independent contractor candidate for the provision of services to the College, a Working Relationship Questionnaire (Form 1) is completed by the Budget Manager or, in the case of a contract extension or an additional contract, the Budget Manager's supervisor.

- 3.2. If the response to either of the first two questions in the Questionnaire is 'Yes,' then the Budget Manager consults with the Executive Director, Human Resources or designate before the working relationship determination is made and before hiring.
- 3.3. If more than one of the responses to questions 3 to 11 in the Questionnaire is 'Yes', then the Budget Manager is strongly advised to seek assistance from the Director, Labour and Employee Relations or the Manager, Purchasing and Accounts Payable in determining the appropriateness of the contractual relationship before the working relationship determination is made.
- 3.4. The completed questionnaire is sent to Purchasing and Accounts Payable to set up the vendor record before the requisition is approved or the invoice sent to Accounts Payable. If it is determined that the proposed contractual relationship is appropriate, steps 3.5 to 3.8 below are completed.
- 3.5. Where the total contracted amount during the budget year will be less than \$10,000 exclusive of HST, the independent contractor invoices the College for services rendered.
- 3.6. Where the total contracted amount during the budget year will be \$10,000 or more exclusive of HST, the Budget Manager and the candidate complete the Contract for Services (Form 2) in addition to Form 1, and forward Form 2 to Purchasing and Accounts Payable before payment is made.

Every Contract for Services, and each extension thereof, must be for a definite term (specific start and end date) not exceeding one year.

The Manager completes Schedule A and B of Form 2. Purchasing is available to assist the Manager in defining both the contract specifications and deliverables, and assisting with the determination of any approved expenses.
- 3.7. The Budget Manager follows normal purchasing procedures as outlined in policy C106: Purchasing, and the independent contractor invoices the College for services rendered. Payment terms are clearly described including the impact of HST, if any.
- 3.8. The Budget Manager forwards to Purchasing and Accounts Payable the candidate's proof of business registration and tax status as described in policy C106. This documentation only needs to be provided once for a given independent contractor.

-0-0-0-

COLLEGE POLICY MANUAL

Policy No. & Title: P213: WORKING RELATIONSHIP

Addendum: Form 1: WORKING RELATIONSHIP QUESTIONNAIRE

Issued by: Director, Labour and Employee Relations

Effective: 2020-09-17

To be completed by the Budget Manager or Supervisor

Candidate Name

Date

HST Number (Provided by Candidate)

Vendor Number (Assigned by Purchasing)

Employee Relationship versus Independent Contractor

This questionnaire is designed to assist Budget Managers to determine whether a working relationship is either that of an employee or of an Independent Contractor, by selecting 'Yes' or 'No' in response to the following questions. It is imperative that this questionnaire be completed before the offer of hire is made to the individual or company.

Question	Yes	No
1. Is the candidate currently in an employment relationship with the College?		
2. Will the candidate be providing Educational Services related to the delivery of a Credit Course(s) offered by the College at any of its campuses leading to a certificate, diploma or degree issued by the College?		
<p>If the response to questions 1 and 2 is 'No' for both, please proceed to question 3.</p> <p>If the response to either question 1 or 2 is 'Yes,' please confer with the Executive Director, Human Resources or designate <u>before</u> proceeding further.</p> <p>Definitions to assist in answering these two questions:</p> <p><i>Employment relationship:</i> Any form of employment relationship including, but not limited to, full-time, part-time, project or non-recurring kind, partial load, sessional, and temporary.</p> <p><i>Educational services:</i> May include any of the following: teaching, marking exams, leading tutorials, demonstrating and instructing in labs, developing curriculum, or lecturing.</p> <p><i>Credit course:</i> A course delivered by the College for credit in a program of instruction leading to a certificate, diploma or degree issued by the College.</p>		

COLLEGE POLICY MANUAL

Question	Yes	No
3. Will you as the manager determine how the work will be done?		
4. Will the work be closely supervised by the College?		
5. Will the College determine the total hours of work?		
6. Will the College provide training to the candidate (other than health and safety)?		
7. Will the College independently determine the amount of compensation for services rendered?		
8. Will the College provide the equipment necessary for the candidate to provide the services?		
9. Will the College absorb all risk of a financial loss or reward of profit associated with this engagement?		
10. Must the candidate personally provide the services?		
11. Will the candidate work for the College exclusively?		

GUIDELINE:

If more than one of the responses to question 3 to question 11 is 'Yes,' the Budget Manager or Supervisor is strongly advised to seek assistance in determining the appropriateness of the contractual relationship from the Director, Labour and Employee Relations or the Manager, Purchasing and Accounts Payable before the working relationship determination is made. The relationship must be confirmed as an independent contractor relationship before the purchase order is processed or the invoice is accepted for payment.

If all the responses are 'No,' please forward a signed copy of this questionnaire to Purchasing and Accounts Payable.

Budget Manager or Supervisor Signature

Date

Human Resource Signature (if required)

Date

-0-0-0-

Policy No. & Title: P213: WORKING RELATIONSHIP

Addendum: **Form 2: FORM OF AGREEMENT FOR CONTRACT FOR SERVICES**

Issued by: Director, Labour and Employee Relations

Effective: 2020-09-17

CONTRACT FOR SERVICES
BETWEEN:
FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY
("the College")
- and -

("the Contractor")

WHEREAS the College wishes to contract for the services described in the attached Schedule A: Scope of Services
<Enter general description/title of services to be provided, if applicable>;

AND WHEREAS the Contractor wishes to provide the Services;

NOW THEREFORE, in consideration of the mutual promises and agreements contained in this Agreement and of other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, the parties agree as follows:

Term

1. The Contractor shall provide the Services as set forth in Schedule A of this Agreement, pursuant to the terms and conditions as set out in this Agreement commencing on <Enter Start Date> and ending on <Enter End Date>. This term may be subject to renewal as mutually agreed upon by the parties.

Fees for Services

2. The Contractor shall invoice the College for services rendered, plus HST if applicable. The fees for services rendered are set out in Schedule B of this Agreement.
3. The Contractor accepts the responsibility for paying all applicable payments under any federal or provincial legislation with respect to the Services and agrees to indemnify and save harmless the College if it fails to do so.

Expenses

4. Reasonable expenses incurred during the performance of the contractor's service will only be reimbursed if specifically set out in Schedule B of this Agreement and shall be approved in writing by the College in advance. The College shall reimburse the Contractor for approved expenses within thirty (30) days after receipt of an invoice.

Independent Contractor

5. The parties hereby acknowledge that neither the Contractor nor any person the Contractor contracts with to provide services pursuant to this Agreement is an employee of the College.

Representations and Warranties

6. All representations, warranties, covenants and limitations of liability in this contract shall continue in force after the termination of this Agreement.
7. The Contractor warrants that the Contractor and any persons the Contractor engages to perform the Services have the necessary qualifications to carry out all contractual obligations pursuant to this Agreement and shall provide proof of same satisfactory to the College upon request by the College.
8. The Contractor further warrants that it shall carry out all contractual obligations pursuant to this Agreement in a diligent and competent fashion and indemnifies and saves harmless the College from any damages, costs, fees or claims or actions of any description arising from negligence or other conduct on the part of the Contractor or of any persons the Contractor engages to perform the services described in Schedule A.

Compliance with Policies

9. The Contractor agrees to abide by all applicable policies of the College, including College-policy [P208 Prevention of Discrimination and Harassment](#) and the College occupational health and safety program, policies and procedures as set out in Schedule C: Health & Safety attached to this Agreement. The College may suspend or terminate the Agreement for non-compliance.
10. The Contractor further declares that no employee of the College has or will have any interest, directly or indirectly, as a contracting party, employee or otherwise in the performing any work, providing any services, products, materials, supplies or equipment or other business to which the Contractor's Services relates to or in any of the monetary compensation to be derived from this same work, services, products, materials, supplies or equipment.

Equipment and Supplies

11. Unless otherwise specified in Schedule A, the Contractor agrees to supply at its own expense all vehicles and other equipment, labour, materials, supplies, tools and licenses and other regulatory approvals necessary to supply the service.

Liability Insurance

12. The Contractor hereby confirms that it has two (2) million dollars in liability insurance coverage and shall provide the College of such proof of coverage as the College considers appropriate. If no insurance is required by Fanshawe College, it is so documented in this Agreement.

Workplace Safety and Insurance

13. The Contractor, if it is eligible, confirms that it is registered with the Workplace Safety and Insurance Board (the "WSIB") and shall provide proof of coverage with the WSIB as the College considers appropriate. The Contractor further agrees to indemnify and save harmless the College from any Workplace Safety and Insurance claims made by the Contractor's employees.

Accessibility

14. To ensure compliance with the Accessibility for Ontarians with Disabilities Act 2005 all Suppliers, Contractors, Consultants and advisors doing business with the College must be capable of the same compliance in serving those with disabilities. By signing this Agreement the Contractor certifies that they are in full compliance with the Accessibility for Ontarians with Disabilities Act, 2005. If requested the Contractor shall provide written proof of the same.

Confidential Information

15. This Agreement, the specifications, and any information including but without limiting the foregoing, any and all information relating to the College's customers, clients, contractors, students, employees or otherwise proprietary to the College, issued to, used by or disclosed to or developed by the Contractor in connection with the performance of the Agreement are confidential. The Contractor shall not, without the prior written consent of the College, disclose the College's confidential information to any person or entity except to the Contractor's own employees who require same in connection with performing the Contractor's obligations under this Agreement, and who agree to act in accordance with this Agreement. The Contractor shall comply with all instructions issued by the College for the protection of such information from disclosure and in any event the Contractor shall take such care to protect the confidentiality of such information as would be taken by a reasonable party to protect its own confidential information from disclosure. Furthermore, the Contractor shall indemnify and save harmless Fanshawe College from any such losses or damages directly or indirectly caused by the disclosure of confidential information by the Contractor or any of its agents, contractors, sub-contractors, employees or successors or assigns. On completion or termination of this Agreement, the Contractor shall forthwith return to the College all College related information either obtained or developed in the course of this Agreement. The Contractor's obligations with respect to confidential information shall survive the expiration or other termination of this Agreement.

Title to Materials

16. All title, right and interest whatsoever, including copyright, in all material and data (hereinafter "Materials") contained in any media or form whatsoever, produced, compiled, created or written pursuant to this Agreement shall vest in and endure to the benefit of Fanshawe College, it being understood that such vesting of title shall not constitute acceptance by Fanshawe College of the Services or the Materials in conformity with the specifications or requirements of this Agreement. Without restricting the generality of the foregoing, the right of publication of the Materials shall vest solely in the College and any person desiring to publish or distribute to a third party the Materials, in whole or in part, shall first obtain the written permission of the College which permission may be withheld on any grounds. Contractor agrees that upon the request of the College, and at the College's expense, it will sign any conveyances that may be required to better effect transfer of title to the College of any copyrights or other rights to the Materials as referred to herein.

Termination

17. Either party may terminate this Agreement upon providing to the other party thirty (30) days written notice which will either be hand delivered or sent by registered mail to the last business address on record of the other party. If there is a breach of any of the provisions of this Agreement by the Contractor, or if the College determines that the quality of the services provided by the Contractor is in the opinion of the

COLLEGE POLICY MANUAL

College unsatisfactory, the College may terminate this Agreement without notice and without further obligation or penalty.

Pro Rata Payment

18. In case of termination of this Agreement before the end of the term as herein provided, any payments for Services made hereunder made by the College shall be adjusted and prorated to the completed portion of the Services. Any payments made in advance will be returned to the College forthwith upon demand.

Independent Legal Advice

19. The Contractor acknowledges and agrees that it had the opportunity to seek independent legal advice with respect to this Agreement and hereby confirms that it fully appreciates and understands the terms of this Agreement.

No Assignment

20. Neither party may assign or transfer this Agreement without the written authorization of the other party.

Consent to Disclosure

21. The Contractor understands that the College may be required to disclose the Contractor's identity and the particulars of the Services being provided to its Union's and hereby consents to the disclosure of this information.

Entire Agreement

22. This Agreement, together with all attachments hereto, and any and all purchase orders issued by the College to the Contractor from time to time, constitute the entire Agreement between the College and the Contractor with respect to the subject matter hereof, and shall supersede all prior oral or written representations and agreements. To the extent reasonably possible, the printed terms and conditions appear on the College's purchase order form. In the event, however, of any conflict between the terms and conditions of the purchase order form and this Agreement, then the terms of this Agreement shall prevail.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed:

For Fanshawe College

For Contractor

Signature

Signature

Name in Print

Name in Print

Position Title

Position Title

DATED at (City/Province)

DATED at (City/Province)

Date

Date

Schedule A: SCOPE OF SERVICES and Schedule B: FEES FOR SERVICES and Schedule C: HEALTH AND SAFETY, attached, form part of this Agreement.

Schedule A: SCOPE OF SERVICES

Describe the scope of services to be provided under the agreement including deliverables.

Schedule B: FEES FOR SERVICES

Outline pricing including allowable expenses if applicable.

Schedule C: HEALTH AND SAFETY

Fanshawe College is committed to providing a safe and healthy work and learning environment for Community Members. The following outlines the health and safety expectations of all persons while conducting work at College locations.

All work is conducted in compliance with the Occupational Health and Safety Act, Worker's Safety Insurance Act and applicable regulations and standards as well as College Policy and the College Corporate Health & Safety Management System (CHSMS), including but not limited to:

1. COLLEGE POLICIES AND PROCEDURES

Be familiar with the following College policies (available in the online [College Policy Manual](#)):

- [C203: Parking and Traffic](#)
- [P101: Corporate Health and Safety](#)
- [P103: Safe College Campus](#)
- [P104: Sexual Violence and Sexual Assault](#)
- [P208: Prevention of Discrimination and Harassment](#)

2. INCIDENT MANAGEMENT

- Report all injury-related, property damage or near miss incidents that occur on premises within 24 hours to Health and Safety Services in accordance with College Policy.
- Emergency Services can be reached by dialing 519-452-4242. State your name, campus location and nature of your emergency.
- Follow all posted requirements for personal protective equipment before entering signed space.
- In the event of an emergency follow the signals and messages from the building alarm system and follow direction from College employees involved in the emergency response. Note that:
 - At Main Campus the alarm system has two stages: Stage One is a slow, periodic alarm signal followed by voice information and instructions; Stage Two is a continuous high-pitch triple alarm signal meaning "evacuate now."
 - At other College campuses have single stage alarms meaning "evacuate now."

3. HAZARDOUS MATERIALS MANAGEMENT

- Maintain compliance with the Workplace Hazardous Materials Information System (WHMIS).
- Report and seek approval from the College for any designated substances before being brought onto College property.
- Follow College procedures for handling, storage and disposal of any hazardous waste materials.
- Immediately notify the College of any hazardous material spill with all known information by calling 519-452-4242.

-0-0-0-