A service is an activity in which labor is the major factor and not merely incidental to the production, acquisition, and/or delivery of a good. The procurement of services has unique requirements, and the first requirement is an evaluation of whether, based upon guidelines established by the Internal Revenue Services, the individual or entity providing the service should be classified as an employee or an independent contractor (vendor).

The next page contains a flowchart that will enable units to quickly determine whether they must contact another university office for guidance, appoint the service provider as an employee, or perform a service provider evaluation.

When a service provider evaluation is necessary, a questionnaire will be completed by the potential service provider. This Service Provider Questionnaire will enable the unit to evaluate whether a service provider should be classified as an employee or independent contractor. The evaluation and classification must be performed before engaging an individual or entity to perform services and before any services begin. It must be based upon IRS guidelines, not on administrative ease or relative costs.

*Note:* If the IRS reviews classifications and determines the service provider should have been classified as an employee, any costs associated with misclassification (taxes, interest, penalty) are the responsibility of the unit.
SERVICE PROVIDER EVALUATION DECISION FLOWCHART

Are you purchasing only goods with no service component?

NO

Are the services “specialized,” e.g., real estate, insurance, as described in Section 201?

YES

Stop! Consult Section 201 and contact the appropriate office for further assistance.

NO

Are the services listed in Section 203 as exempt from the Service Provider Evaluation?

YES

Stop! If one of the very limited exceptions defined in Section 203 applies, follow the payment and contract instructions found in Section 203.

NO

Has the service provider been approved by Procurement Services and signed a university contract? For a listing of preferred and contract suppliers, visit https://www.dfa.cornell.edu/procurement/supplierlistview.

YES

Stop! Use the procurement method listed on the Procurement Services website for the preferred and contract suppliers.

NO

Is the service provider an entity, i.e., corporation, partnership, limited liability partnership, or limited liability company?

YES

Stop! A service provider evaluation is not necessary. Select the appropriate contract and initiate a purchase order.

NO

Is the service being performed one for which Procurement Services has developed a unique contract? See list of Consulting Agreements and Contracts for Services on next page.

YES

Stop! A service provider evaluation is not necessary as the caterer, performer, and small services provider contracts contain a service provider attestation. Refer to the matrix on the website and select the appropriate contract.

NO

A Service Provider Evaluation must be performed. Read the general information section on the next page and then proceed to Section 701.

Note: It is understood that the FTC/BSC may not be aware of all facts related to service providers’ current or former affiliation with Cornell. Should additional facts become available when the service provider completes the vendor registration, Procurement Services will notify the FTC/BSC.
Service Providers – General Information

The following information does not apply to service providers appointed through Payroll.

Insurance
The service provider (vendor) is generally required to provide proof that they meet the university’s minimum insurance requirements if the performance of the service could result in liability to the University (i.e., services performed on university property). For information on the university’s minimum insurance requirements, see Section 405, Insurance Requirements topic within this manual. If you are unsure as to whether the intended service provider must provide proof of insurance, contact Risk Management and Insurance.

Note: Procurement Services maintains a list of vendors that have supplied proof of adequate insurance coverage, available at http://www.dfa.cornell.edu/procurement/buyers/insurance or you may check the Insurance tab on the vendor record in KFS.

Contracts
A contract must be executed between the service provider (vendor) and the university in order to establish mutually agreed upon terms and conditions of the transaction. The university’s purchase order is a legally binding contract that contains terms and conditions designed to protect the interests of the university.

When procuring services, it is often advisable to include terms beyond those in the Cornell purchase order’s standard terms and conditions, such as the scope of work or deliverables, acceptance criteria, identification of who will provide the services, etc. Contracts covering several specific types of services have been drafted by the Office of University Counsel and these documents will be used in conjunction with the purchase order. The contracts, listed below, can be found at http://www.dfa.cornell.edu/procurement/tools-forms/forms/contracts.

Consulting Agreements
- Independent Contractor/Consultant agreement – for use with individuals who have been evaluated and classified as independent contractors; covers such issues as tax and liability.
- Professional Services agreement – for use with business entities; covers such issues as tax and liability.
- IT Professional Services agreement – for use with business entities providing information technology and cloud computing services; covers such issues as tax and liability.

Contracts for Services (with Service Provider attestation)
- Caterer contract – for use with caterers appearing on the Office of Risk Management and Insurance’s List of Approved Caterers, found at www.risk.cornell.edu/events-management/caterer-list/.
- Performer without Equipment contract -- for use with individual service providers, such as entertainers, DJ’s, clowns, small bands. Caution: Contracts for major, public, entertainment
events held in places such as Bailey Hall and Statler Auditorium must be reviewed by the Office of University Counsel; do not use the standard Performer or Small Services Provider contract.

- **Performer with Equipment contract** -- for use with individual service providers, such as entertainers, DJ’s, clowns, small bands. Caution: Contracts for major, public, entertainment events held in places such as Bailey Hall and Statler Auditorium must be reviewed by the Office of University Counsel; do not use the standard Performer nor Small Services Provider contract.

- **Small Services Provider contract** -- for use with individual service providers, such as massage therapists, henna/face painting

- **Service Provider contract for Graphic Design, Web Design, Writing, Editing, Videography** -- for use with individual service providers

- **Service Provider contract for Photographer, Artist, Illustrator** -- for use with individual service providers

- **Professional Services Search Firm Agreement Template** -- All final search firm agreements must be approved by Human Resources. The authorizing party must retain a copy of this contract. In addition, please forward a copy of this agreement, **completed and signed by the contractor and university representatives**, along with all relevant attachments, to Allan Bishop, Recruitment and Employment Center, 337 Pine Tree Road, Ithaca, NY 14850 and Glenn Morey, Cornell Procurement Services, 395 Pine Tree Road, Ithaca, NY 14850.

Finally, units with unusual business needs require unique contracts. Such contracts must be reviewed by the Office of University Counsel; therefore it is advisable to contact Procurement Services prior to initiating the purchase order. Additional information on contracts can be found in section 502 of this manual.

**Note:** Procurement Services has negotiated university wide contracts with certain frequently used service providers. These vendors have already been evaluated and classified as independent contractors. For a list of these service providers, please see [http://www.dfa.cornell.edu/procurement/supplierlistview](http://www.dfa.cornell.edu/procurement/supplierlistview).

**Catering**

Catering occurs when a vendor prepares, sets up, serves or cleans up food on Cornell controlled property, including both facilities owned by Cornell and facilities that may be rented or leased and only under Cornell’s control for the period of the event (i.e., rental of a banquet hall). Catering should not be confused with simple delivery where no service is provided on site (i.e., pizza delivery).

Caterers fall into three categories and payment options vary:

1. If your caterer is in e-SHOP under America to Go, you may place the order directly in that system. Orders originating in e-SHOP result in the issuance of a purchase order.
2. Caterers appearing on the Office of Risk Management and Insurance’s list of caterers with insurance (found at [www.risk.cornell.edu/events-management/caterer-list/](http://www.risk.cornell.edu/events-management/caterer-list/)) are eligible
for payment (including a deposit) up to $10,000 on BSC pcard. A purchase order is required for any amount above $10,000. See Section 307, Special Considerations for FTC/BSC PCard Holders for requirements, prior to engaging the caterer.

3. When your intended caterer is not in e-SHOP nor on Risk Management’s list, please continue your review of this section. For those caterers that are not a business entity (corporation, partnership, LLP, LLC), the caterer contract with a service provider attestation must be used.

For your convenience, this information is in a chart on the Procurement Services website at http://www.dfa.cornell.edu/procurement/buyers/hiring-caterers.

Joint Venture
The university may enter into a joint venture with an outside entity for the performance of services. These ventures are often complicated. Units must involve Procurement Services prior to entering into such an agreement.

Sponsored Project Consulting Agreements and Subcontracts
When an individual is performing services that are directly related to the science or scope of a sponsored project, a Service Provider Evaluation must be completed to determine if the individual is an employee or an independent contractor. If after the evaluation, the service provider is deemed to be an Independent Contractor, a purchase order is required and an Independent Contractor/Consultant Agreement must be completed. Proceed to Section 701, the Service Provider Evaluation.

Note: If another organization is performing a substantive portion of the work effort based upon an award made to Cornell, it may be necessary to formalize this relationship through the execution of a subcontract. Such agreements are executed by the Office of Sponsored Programs. Please see www.osp.cornell.edu/ for further information on subcontracts.
Performing the Service Provider Evaluation

The purpose of the service provider evaluation is to determine whether to appoint a service provider, who otherwise “passed” all the steps in the Decision Flow Chart in section 700 (page 2), as an independent contractor or as an employee paid through payroll. The IRS asserts that if Cornell exercises control over the service provider, the individual should be appointed as an employee.

There are myriad risks and costs associated with each classification of the service provider. For employees, there are the employer's share of FICA tax, employee benefits, workers compensation and other insurance coverage, overtime premiums, etc. For independent contractors, there are contract costs as well as potential penalties and interest from the IRS and other regulatory agencies if the agency, during its review, reclassifies the independent contractor as an employee.

The unit engaging the service provider has primary responsibility for independent contractor review. The unit may be held financially responsible for any taxes, interest, penalties, judgments, or awards due to misclassification.

To determine whether a service provider is an independent contractor or an employee under common law, you must examine the relationship between the worker and the business. All evidence of control and independence in this relationship should be considered. If Cornell exercises control over the service provider, the individual should be appointed as an employee. The factors that provide evidence of “control” fall into three categories – Behavioral Control, Financial Control, and the Nature of the Relationship itself.

• Behavioral Control generally reflects that the organization exercises control over the service provider’s activities. If Cornell provides training and/or instructions about how to complete the task, the service provider should generally be classified as an employee. In contrast, independent contractors determine how they will accomplish the task.

• Financial Control generally reflects that the service provider is not at risk for financial loss on a contract because the organization provides the equipment, reimburses the business expenses and pays on an hourly basis rather than a negotiated fee for specific deliverables.

• Relationship Control generally reflects that the service provider works primarily for the organization and anticipates a continuing relationship. An independent contractor has a broad customer base and is free to work when, for whom, and for as many firms as he/she chooses.

A checklist is available to assist the unit in completing the evaluation of Behavioral Control, Financial Control and Nature of the Relationship. See the Service Provider Evaluation Worksheet.

Procedure for Performing the Service Provider Evaluation

• Note: The FTC/BSC may assume all or part of the tasks outlined below for the unit. Contact your FTC/BSC for their specific procedures.

1. The unit engaging the service provider will send the Service Provider Questionnaire to the service provider for completion (see the Forms section of the Procurement Services’ Website) and request its return directly to the unit.
2. After receiving the completed Service Provider Questionnaire, the unit will complete Cornell’s Service Provider Evaluation Worksheet to determine whether “control” over the service provider exists, as described on the previous page. Remember to attach both the Service Provider Questionnaire and the Service Provider Evaluation Worksheet to the requisition. (See the Forms section of the Procurement Services’ Website.)

● Caution: The unit must review the service provider’s classification prior to entering into an initial contract or renewing a contract. The unit should make its own determination and not rely on another unit’s determination.

3. If the unit concludes that the service provider should be classified as an employee, the unit will request appointment of the individual as an employee through the Office of Human Resources (see your FTC/BSC for further instructions).

If the unit concludes that the service provider should be classified as an independent contractor, the unit will:

1. Review for, and resolve (with documentation), any conflict of interest and/or conflict of commitment.
2. Evaluate the need for insurance. Requirements for insurance coverage are outlined in the Section 405, Insurance Requirements section of this manual; contact Risk Management and Insurance with questions on insurance requirements. ●Note: Procurement Service will contact the service provider and request proof of insurance; contact Procurement Services to request this assistance.
3. Determine the terms of the agreement with the service provider, such as the scope of work or deliverables, acceptance criteria, identification of who will provide the services, etc. These terms are most easily defined through completion of the Independent Contractor/Consultant Agreement form (see the Forms section of the Procurement Services’ Web site.) Contact Procurement Services with questions on these terms, which are in addition to the standard terms and conditions of Cornell’s purchase order.
4. Direct the independent contractor to Procurement Service’s Web site, at http://www.dfa.cornell.edu/procurement/suppliers/doing-business/supplier-information. From this site, the vendor will access an IRS Form W-9 (which will be completed and faxed to Procurement Services) and submit the Supplier Information form.
5. Request the issuance of a purchase order through the FTC/BSC. ●Caution: Engagement of a service provider requires a purchase order unless the service provider is in e-SHOP, or is one of the very limited exceptions allowed to be paid via disbursement voucher, as described in Section 203. (As is noted in section 203, services that may be paid through disbursement voucher generally require the completion of either the standard Independent Contractor/Consultant Agreement form or a Performer or Small Service Provider contract.)
6. Submit to the FTC/BSC the Service Provider Questionnaire, the Service Provider Evaluation Worksheet, and Independent Contractor Agreement form, as required. ●Note: The Service Provider Questionnaire requires the name, title and signature of the unit-level individual that performed the service provider evaluation.
Other Considerations with Independent Contractors:

Conflict of Interest/Conflict of Commitment Issues
The unit administrator is responsible, in consultation with Procurement Services, for reviewing issues related to conflict of commitment and conflict of interest (see the University Policy 4.14, Conflicts of Interest and Commitment for more information.)

Billing and Tax
All business expenses that the unit has agreed to pay must be submitted as a component of the vendor’s invoice. Do not process an expense/travel reimbursement for the independent contractor. Do not submit individual expense receipts with the invoice. In accordance with IRS regulations, the university will report all payments to independent contractors totaling $600 or more during a calendar year on IRS form 1099-MISC.

The independent contractor is responsible for all estimated tax payments and other tax filing requirements; all tax records, including original business receipts; general liability and other insurance coverage for workers who work on his/her contract with Cornell; medical insurance, personal accident insurance, pension plan, or other benefits, whether personal or extended to his/her employees.

Inquiries by Government Agencies
All inquiries made directly to the unit by a government agency about independent contractors must be directed to the Tax Manager in the Division of Financial Affairs. Do not respond to these inquiries at the unit level.
Responsibilities Related to the Payment of Services

Financial Transaction Center (FTC) or Business Service Center (BSC):
- Understand and communicate policies to faculty, staff, and service providers.
- Verify that the service provider evaluation has been performed (where one must be performed, based on the information provided in section 700) and documented by the unit, prior to requesting payment to the service provider.
- Verify that all conflict of interest and conflict of commitment issues have been resolved and documented by the unit.
- Ensure that independent contractors meet the university insurance requirements.
- Ensure that contracts are properly executed prior to the performance of services.
- Attach the following to the requisition: Service Provider Questionnaire, Service Provider Evaluation Worksheet, and contract (Independent Contractor/Consultant Agreement form or Performer or Small Services Provider contract) to Procurement Services when requesting the purchase order.
- Ensure that the procurement of services is undertaken in compliance with the policy and procedures outlined in this manual.

Procurement Services:
- Request, review, and maintain Certificates of Insurance for service providers.
- Maintain a searchable database of vendors with insurance.
- Receive W-9’s, Supplier Information forms and proof of insurance from vendors that are service providers, entering new vendors into the vendor database.
- Maintain the vendor database.

Tax Compliance Office in the Division of Financial Affairs:
- Provide guidance to units on IRS issues and interpretations.

Risk Management and Insurance:
- Negotiate any exceptions to the minimum necessary insurance coverage for independent contractors.
How to Engage a Service Provider Checklist

Please complete the steps below prior to service being performed to ensure compliance with IRS requirements and to ensure that a proper contract and insurance are in place to protect the University from potential risk.

Step 1: Evaluate the Service Provider

a) Review the Service Provider Evaluation Decision Flowchart in Section 700 of the Buying Manual to determine whether you must contact another university office for guidance, appoint the service provider as an employee, or perform a service provider evaluation, or if the service is eligible for payment via disbursement voucher.

b) If the flowchart directs you to a Service Provider Questionnaire, send the following form to the vendor to complete:
   • Service Provider Questionnaire
   Aids Cornell in evaluating of the vendor's “independent contractor status” based on IRS guidelines.

c) After the vendor returns the completed questionnaire, use it to complete the Service Provider Evaluation Worksheet which follows, and submit it to your financial transaction or business service center:
   • Service Provider Evaluation Worksheet
   Assists in completing the evaluation of behavioral control, financial control, and nature of the relationship.

d) Attach the service provider questionnaire and the evaluation worksheet to the requisition.

Step 2: Select an Engagement Process

a) If the service provider is classified as an independent contractor, complete the appropriate consulting agreement for the services to be performed and follow the purchase order process.

b) If the service provider is classified as an employee, consult your unit's human resources department and pay through Cornell Payroll.

Step 3: Complete the Contract/Consulting Agreements

a) Select the appropriate contract for service
b) Pay special attention to the items in the contract that must be completed, e.g., scope of work, deliverables, timeframe, compensation, etc.

c) Provide contract to service provider for review and signature and return to unit for completion
d) Review and date, initial or sign the contract as required on the particular agreement
e) Consult with Procurement Services if service provider has their own standard contract.

Email the service provider’s contract and summary of services to procurement@cornell.edu.

Step 4: Request Requisition

The unit will send a request to the FTC/BSC to create a requisition for services. The request may be submitted via email or an I Want doc, based upon each Center’s procedures. The unit must
include the following with the request:

a) Contract signed by service provider and initialed or signed by unit
b) Completed Service Provider Questionnaire, if required
c) Completed Service Provider Evaluation Worksheet, if required
d) Single/Sole Source Justification form, if applicable

The Center will create a requisition, which will be routed to Procurement Services.

**Step 5: Procurement Services: Vendor Registration and Proof of Insurance**

Upon receipt of the requisition, Procurements Services will:

a) Contact any service provider not already registered in KFS and request completion of Automated Vendor Form
b) Review insurance requirements, identify insurance required, and request Certificate of Insurance from service provider
c) Complete vendor registration process

**Step 6: Procurement Services: Issue Purchase Order**

a) Review and sign contract
b) Approve requisition
c) Issue purchase order to vendor and include signed contract

Vendor can now perform the services.

**Step 7: Pay the Service Provider**

After the work is completed and in accordance with the contract terms, the service provider will:

a) Submit an invoice, referencing the purchase order number, to Cornell University Accounts Payable, P.O. Box 4040, Ithaca, NY 14852-4040 or email to DFA-4040_Invoice@cornell.edu.

Payment to the service provider is generated based upon receipt of the invoice and approval by unit and service center.