1. **Policy**

   This policy provides guidance on where an employer/employee relationship does or does not exist, and the appropriate methods of payment for services to the University of Victoria.

2. **Definition**

   An employer/employee relationship exists where a person providing a service is deemed, for Revenue Canada purposes, to be an employee of the University and the University is required by law to provide statutory benefits and make specific source deductions from payments. Please refer to Appendix 1 for more details.

3. **INTRODUCTION**

   3.1 At times, services are provided to the University under arrangements where an employer/employee relationship does not exist. Unless the provision of such services is restricted by the University’s collective bargaining agreements, the University may contract for these services with self-employed individuals or with business firms.

   3.2 Where an employer/employee relationship exists in respect of the performance of services, the University is required by law to provide statutory benefits (CPP, EI and WCB) and to follow specific source deduction and reporting procedures. It is therefore important that those who negotiate contracts for services be aware that self-employment results in the University not making CPP, EI and WCB contributions on behalf of the individual and that they should follow the guidelines set out in this policy. As well, individual contractors are not eligible for University medical, extended health, dental or group life insurance coverage. With respect to their obligations, individual contractors must be aware of and follow statutory procedures regarding, in particular, CPP, EI, WCB, GST and the remitting of income tax installments.

   3.3 The specific criteria or tests used to determine the existence of an employer/employee relationship are briefly explained in Appendix 1.
When there is uncertainty or a difference of opinion about whether an employer/employee relationship exists, a ruling from Revenue Canada may be required before Accounting Services can process payments as self-employment or business income.

4. **EMPLOYER/EMPLOYEE RELATIONSHIP**

4.1 An employer/employee relationship exists if the individual performing the services is subject to the University's control regarding what shall be done and how it shall be done. If the extent of the University's control is unclear, other tests may be applied (see Appendix 1).

4.2 When an employer/employee relationship exists, standard University appointment procedures should be followed. The individual will be paid through the payroll system (CHRIS), the payments will be subject to source deductions for income tax, CPP and EI, and will be reported on a T4 slip.

5. **CONTRACTS WITH SELF-EMPLOYED INDIVIDUALS**

5.1 An employer/employee relationship may not exist if the individual performing the services is clearly not directly controlled by the University, and other tests indicate a non-employee or self-employed individual status. Examples are visiting concert artists, guest speakers, and consultants involved in specific projects.

5.2 If the contract for services is with a self-employed individual, a Business Firm Retainer Form must be completed and, with the exception of the purchase of academic services, a Purchase Order arranged. Payment to the self-employed individual will be made by cheque requisition following approval of invoices submitted under the terms of a Business Firm Retainer Form.

5.3 In the case of self-employed individuals, a T4A will be issued to Canadian residents, but no source deductions are required. A T4A-NR will be issued to non-residents and non-residents tax will be withheld unless a waiver is obtained.

6. **CONTRACTS WITH BUSINESS FIRMS**

6.1 The University may engage a business firm to provide services. A business firm may take the form of a sole proprietorship, a partnership, or a limited company, and will have established a name that it uses to carry on its business.

6.2 A purchase requisition should be forwarded to Purchasing Services (except in the purchase of academic services) so that a Purchase Order is received before the commencement of services. In addition, if the contract for services is with a business firm without a public profile such as being advertised in the Yellow Pages, a Business Firm Retainer Form should be completed. Payment to the business firm will be made by cheque requisition following approval of invoices submitted under the terms of a Business Firm Retainer Form.

If the Policy Statement and the tests in Appendix 1 and examples in Appendix 2 do not provide clarification for a specific situation, the Director of Financial Services (or delegate) shall consult with the unit concerned and, in the case of instructional services,
the Associate Vice President Academic, and shall make the decision on the method of payment.

**INTERPRETATION**

Questions of interpretation or application of this policy or its procedures shall be referred by the Director of Financial Services to the Vice-President Finance and Operations whose decision shall be final.
APPENDIX 1

SPECIFIC TESTS TO BE USED IN THE DETERMINATION OF EMPLOYMENT RELATIONSHIP

Directions have evolved from court cases over the years as to whether an individual is an employee or self-employed. That direction has often been grouped in the form of several "tests". For example, one general test is the control test. Others may be described as the integration test, the economic reality test and the specified result test.

1. Control

In an employer/employee relationship, the employer has the right to control the employee's method of doing the work. This might be contrasted with the situation (i.e. self-employment) in which the work to be done is controlled but not the manner of doing it. In the former, the employer determines what is to be done and how it is to be done; in the latter, the employer determines what is to be done but not how it is to be done. The degree of control exerted (frequently referred to as the "control test") may be examined in light of the following:

- the University's power to select the individual,
- the extent to which the individual is subject to the supervision of the University person responsible for the service or activity,
- the method and nature of compensation,
- the University's right to determine the hours of work and where the work will be performed,
- the extent to which the individual has the power to delegate; and,
- the University's right to dismiss or suspend the individual.

While the control test is still applicable, the courts have found it difficult to rely on this aspect alone. For example, how much control exists over the captain of a ship, or perhaps more relevant, a professional. The control test by itself is often found to be too inflexible. Other criteria used include the ownership of facilities and tools (for example, does the individual supply his/her own facilities and tools?), and the chance of profit and risk of loss (for example, does the individual earn a fixed amount and incur few costs or does the individual incur various costs without certain knowledge of recovery and profit?).

2. Integration

The integration test examines the role of the individual in the University and, if the work done is an integral part of the University's business, the individual is an employee. If the work done can be severed from the University, that may be an indication that the individual is self-employed.
3. Economic Reality
The economic reality test examines the opportunity for profit (or loss) and investment in facilities. The absence of chance of profit and risk of loss may indicate an employee relationship (for example, where a fixed salary is paid and there are few expenses not reimbursed by the employer). Alternatively, the potential that unforeseen expenses or hours of work will have to be absorbed in a fixed-price contract may indicate a self-employed status.

4. Specified Result

The specified result test examines the nature of the control. Is the individual paid to perform a specific task or to obtain a specific result or paid to put his/her personal service at the disposal of the employer for a period of time?

If the contract provides for a specific result to occur but does not contemplate the services of any particular individual to accomplish that result, then the relationship may be one of self-employment. If, on the other hand, the contract requires the services of one person to be put at the disposal of another for a fixed or indeterminate time, the relationship may be that of an employee.

The above tests have only been briefly discussed because such factors are illustrative rather than definitive. The significant point is that, while a number of tests have been used by the courts in determining whether or not an individual is an employee, no one test is conclusive. The question can only be settled by examining the whole of the various elements which constitute the relationship between the parties.
APPENDIX 2

SUMMARY CHART
DETERMINATION OF EMPLOYEE RELATIONSHIP

<table>
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<th>Type of Payment</th>
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A. ACADEMIC CREDIT COURSE APPOINTMENTS

1. Regular Academic Appointments
   
   (a) All individuals with regular academic appointments, whether full or part-time, are considered employees of the University, with the exception noted in (b) below.

   (b) In a case when an individual is seconded from another educational institution or government entity and where the contract is with the other institution; Invoice from the other Institution

2. Non-regular Academic Appointments
   
   (a) All individuals with a non-regular academic appointment, whether full or part-time, are considered employees of the University, with the exceptions noted in (b) and (c) below.

   (b) In a case where an individual is seconded from another institution or government entity and where the contract is with the other institution.

   (c) In a case where the contract to provide the credit course is with a Corporation or a Partnership, as


Notes to Section A

T4A earnings are not an available option for the provision of academic credit courses.

Sub-sections 1(b), 2(b) and 2(c) above are not applicable to University of Victoria employees. Under no circumstances can a University of Victoria employee invoice for the provision of credit courses.
B. NON-CREDIT SHORT COURSES, SPECIAL SEMINARS/WORKSHOPS, EXECUTIVE DEVELOPMENT PROGRAMS

1. All individuals delivering such courses, seminars/workshops and programs are considered employees of the University, with the exceptions noted in 2, 3 and 4 below.

2. In a case where an individual is seconded from another institution or government entity and where the contract is with the other institution.

3. In a case where the contract is with a Corporation, a Partnership as defined by the Partnership Act of British Columbia or another Institution.

Note: In the case of non-credit program delivery, University of Victoria employees are not excluded from this section if they are associated with the Partnership or Corporation or other Institution. The contract shall clearly specify the names and positions of University of Victoria employees who will participate in the delivery of the service.

4. In the case where the contract is with a sole proprietor who is not otherwise an employee of the University of Victoria, then:

   (a) where the course is recurring or intended to be recurring and the individual teaches 40 hours or more

   (b) where the course is not recurring (i.e. not more than once a year) or where the course is recurring or intended to be recurring and the individual teaches less than 40 instructional hours per four-month term, then a self-employment situation may exist where the four tests are met (see Appendix 1).
C. GUEST LECTURERS/SPEAKERS

1. A guest lecturer/speaker is an individual brought in from outside the University to lecture on a specific topic. This person should not deliver more than approximately five lectures. The guest lecturer must be engaged specifically for the person=s expertise on a particular topic rather than a substitute for a regular instructor.

   (a) Canadian resident; T4A
   (b) Non-resident; 15% withholding tax on gross income-tax waiver may be obtained in certain instances exempting withholding.

D. ARTISTIC PERFORMANCES

2. Individual performers who are not University of Victoria employees where the University does not determine the nature of the performance; T4A for an individual; invoice from a business

3. Individual performers where the University determines the nature of the performance; T4

4. Groups where the individuals are part of an arm=s length performing group and payment is made to that group rather than to the individuals. Invoice from the group

E. RESEARCH (GRANTS AND CONTRACTS)

For work under a research grant or contract, the provisions under Section F will normally apply. The Determination of Employment Relationship Policy (HR6325) outlines the arrangements for seeking clarification where there are special circumstances.

F. CONSULTING AND THE PROVISION OF OTHER SERVICES, INCLUDING SERVICES IN SUPPORT OF RESEARCH GRANTS AND CONTRACTS, NOT NOTED
ELSEWHERE

(note: this section does not include credit or non-credit teaching)

5. For a University of Victoria employee hired as a consultant or to provide other services:

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<td>(a) for additional services which are of the type of service provided in the normal course of duties under an existing employment contract; T4</td>
</tr>
<tr>
<td>(b) where the type of service is clearly beyond the terms of an existing employment contract, and which are not related in any significant way to the work normally done as an employee, but where the four tests are not met (see Appendix 1); T4</td>
</tr>
<tr>
<td>(c) a self-employment situation may exist where the type of service is clearly beyond the terms of an existing employment contract, and which is not related in any significant way to the work normally done as an employee, and where the four tests are clearly met (see Appendix 1); T4A</td>
</tr>
<tr>
<td>(i) if payee is a sole proprietor Invoice from the corporation or partnership</td>
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<td>(ii) if payee is a partnership or corporation</td>
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2. Individuals not otherwise employed by the University of Victoria

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<td>(a) where only the individual=s time is purchased and specific tasks are assigned (that is where the four tests are not met); T4</td>
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<tr>
<td>(b) where fee is predicated upon quantity produced, e.g. number of interviews completed, pages prepared, etc; T4A for a sole proprietor; invoice for a partnership or corporation</td>
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(c) If the work is done away from the University, the person is expected to pay own expenses, was free to use the services of others, and was simply required to produce a completed product; T4A for a sole proprietor; invoice for a partnership or corporation.

(d) Individuals operating as professional corporations, such as health care, accounting or legal professional, who invoice the University; Invoice from the partnership or corporation.