

Stellenbosch University

Contractors Questionnaire and Guide

October 2017



Contents

	Page
Introduction	3
Classification process for determining the status of Contractors	4
Flow diagram aiding completion of Contractor Classification Questionnaire	5
Contractor Classification Questionnaires for individuals, corporate entities, trusts and labour brokers	6 - 21

INTRODUCTION

In determining the status of a person who has been contracted to perform certain duties, it is very important to understand the requirements to be regarded as an independent contractor, as such a person may, by definition, be an employee for employees' tax purposes.

Legislation and the common law principles of South Africa do not permit a simple "checklist" approach in determining this status. It follows that there are no hard and fast rules to be followed in determining whether or not a person is an independent contractor. Each case must be decided individually based upon its own merits in order to assess the overall or "dominant impression" of the relationship.

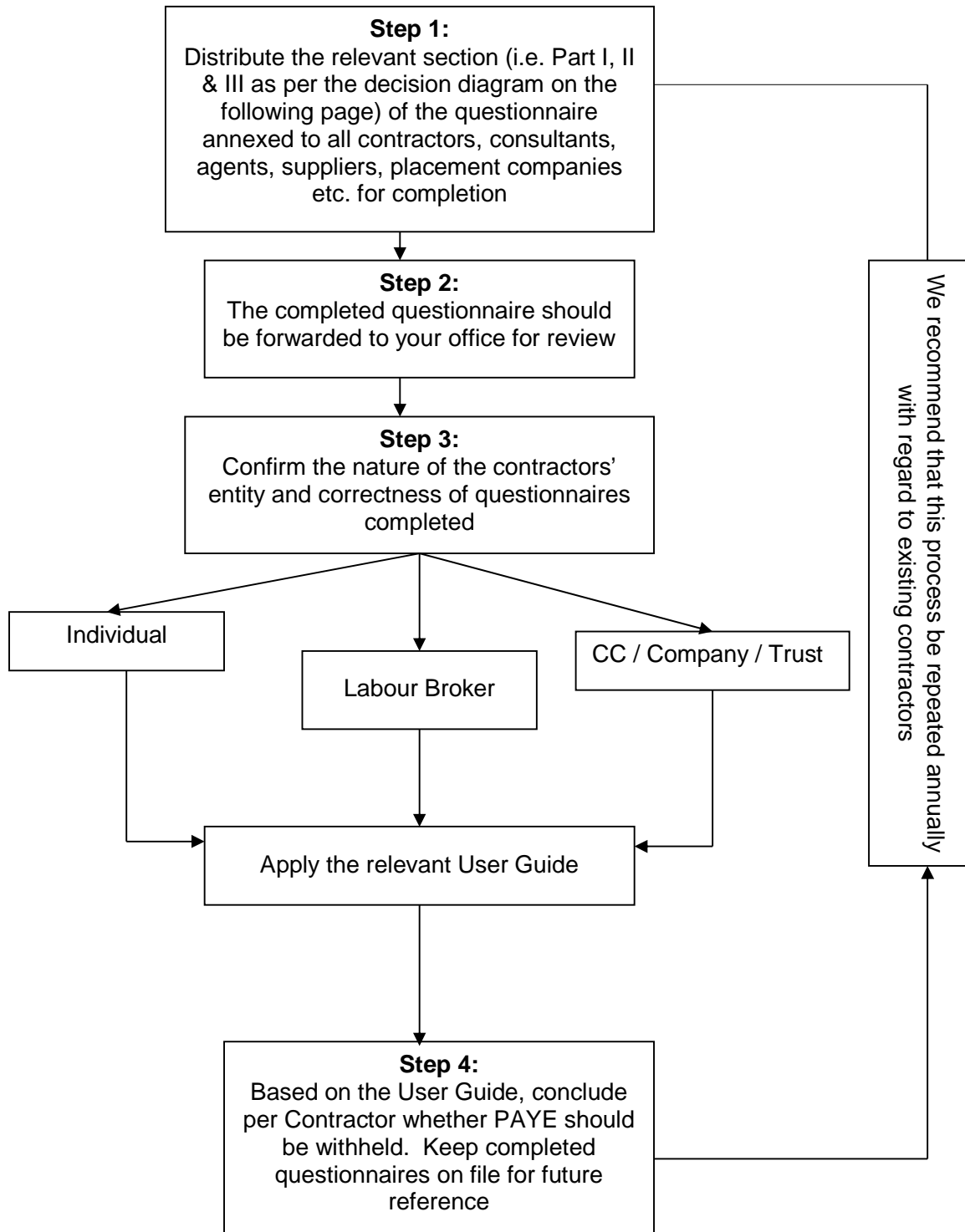
This manual has been designed as a guide to assist you in determining the correct tax status of contractors, within the ambit of existing tax legislation. (Please note that there are ongoing court decisions that from time to time affect the principles set out in this document.)

The tests relating to non-resident corporate personal service providers are not dealt with in this manual. Please contact us directly if you have queries regarding such entities.

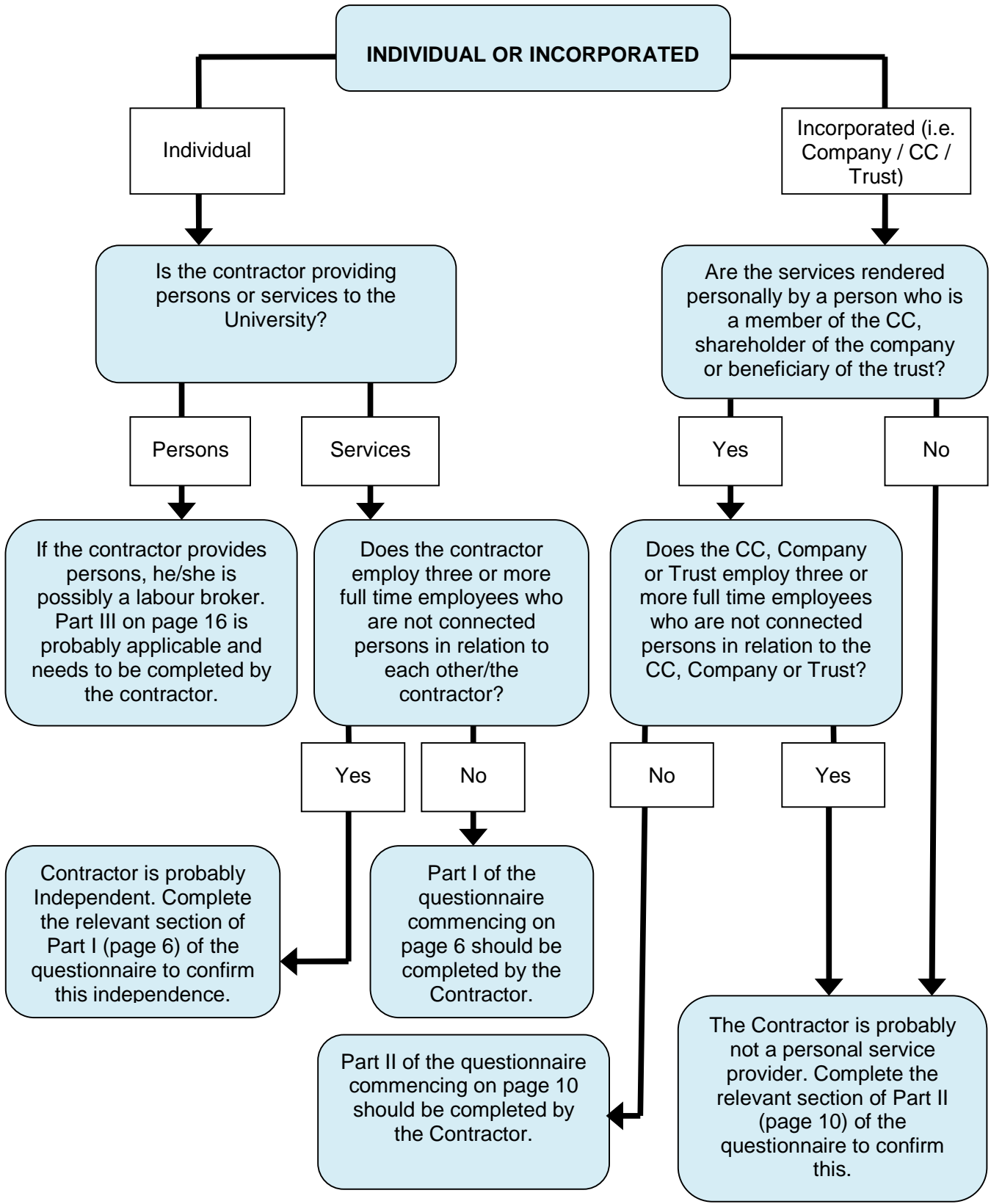
This manual takes into account all legislative changes up to and including the Taxation Laws Amendment Act 25 of 2015.

CLASSIFICATION PROCESS FOR DETERMINING THE TAX STATUS OF CONTRACTORS

The classification process is represented in the following schematic diagram:



Which part of the questionnaire should be completed by the Contractor



CONTRACTOR CLASSIFICATION QUESTIONNAIRE

The purpose of this questionnaire is to assist us in determining your tax status with reference to the Income Tax provisions applicable to: individuals / sole proprietors, labour brokers and personal service providers.

Kindly complete the applicable section as determined on page 4 only:

Contents	Page
Individual / Sole Proprietor Questionnaire	7 – 12
Private Company / Close Corporation / Trust Questionnaire and Affidavit	13 - 18
Labour Broker Questionnaire	19 - 21

(Name in block letters)

Individual/Sole Proprietor
PART I

Your name: _____	
1. Do you provide the following to the University: (i) a <i>service</i> ; or (ii) <i>supply of persons/labour</i> ? If the answer is “PERSONS”, please complete PART III. If the answer is “SERVICE”, are you in possession of a signed service agreement? If “ YES ”, please attach a copy and read on.	Yes / No
2. Please describe the services you will be rendering to the University: (i) Have you provided similar services to other customers/clients/companies/institutions in the past 12 months? (ii) Will you or do you intend to actively and regularly continue to provide similar services to other customers/clients/companies/institutions?	Yes / No
3. Are you a South African tax resident (i.e. do you regard South Africa your home/the place you return to from all your wanderings)? If your answer to this question is “NO”, please only answer question 3.1 below and not the rest of the questionnaire. If your answer is “YES” please continue with the questionnaire. 3.1. Are the services you render to the University <u>always</u> rendered while you are physically outside South Africa? NB: If you answer “YES” to this question it is not necessary to answer any further questions.	Yes / No

<p>4. How many employees who are <u>unconnected</u> to you are employed by you on a full time basis throughout the year of assessment and are engaged in providing services to clients?</p> <p>(NB. A connected person means any relative of yours who you are related to within the 3rd degree of consanguinity. Please exclude connected persons from your answer below as well as support staff such as secretaries, cleaners, etc).</p> <hr/> <p>NB: If 3 or more, you are not required to answer any further questions. If less than 3 employees please proceed with the questionnaire.</p>	
<p>5. Supervision and control:</p> <ul style="list-style-type: none"> Are you contractually required to perform your work and carry out the activities for which you receive payment from the University mainly (i.e. more than 50% of the time) at the University's premises? <p>The "premises" of the University would include its offices or any premises where the University has control over the day to day running of the activities on the premises.</p> <ul style="list-style-type: none"> If you answered "Yes" to the previous question, are your activities that are performed on the University's premises, <u>supervised and/or controlled (see below)</u> by the University? <p>Control: the University has the right to give you detailed instructions, require you to undergo training, require you to obtain approval for certain actions, institute disciplinary steps in the event of poor performance, etc.</p> <p>Supervision: the University has the right to determine what work is to be done, where it is to be done, when it is to be done and the sequence of work.</p>	<p>Yes / No</p> <p>Yes/No/NA</p>
<p>6. Payment regime:</p> <ul style="list-style-type: none"> How do you determine how much to invoice the University and what detail do you include on the invoice to substantiate the amount/fee? <hr/> <ul style="list-style-type: none"> How often do you invoice the University (is it a regular monthly invoice, or is it only on completion of a task or production of a complete piece of work)? <hr/>	

7. Regarding the services that you have agreed to render to the University, are you personally obliged to render the services or are you entitled to instruct your own supervised employees/assistants to do the work?	
8. Are you obligated to work for/ remain available to the University during set hours or a certain number of hours per day or are you only required when there is work to be done?	
9. Client base. (i) Are you allowed to build up a multiple concurrent client base while rendering services to the University? (ii) Are you actively involved in marketing your services/ seeking other opportunities? (iii) Do you in fact have other clients that you are currently rendering services to?	Yes / No
10. If the University finds your work to be sub-standard or you fail to meet certain deadlines or quality requirements, are you at risk of the University withholding payment or a portion of the payment from you or can they require you to repeat the work before payment?	Yes / No
11. Does the University provide you with any tools, training stationery, office, equipment? If yes, please specify: _____	Yes / No
12. If you are taking leave, do you need to first obtain approval from the University?	Yes / No
13. Is your relationship with the University a fixed term contract with an end date, open-ended or for the completion of a specific piece of work?	
14. Are you in possession of a current tax directive? If “YES” , please attach a copy. <small>A tax directive (IRP3) is issued by SARS to instruct the employer/fund how to deduct Employees' Tax from certain payments where the prescribed tax tables do not cater for certain remuneration or other payments.</small>	Yes / No

AFFIDAVIT

I, the undersigned deponent,

(insert full names) declare, under oath, as follows:

1.

I am an adult person (Identity number: _____)

residing at _____

and director **or** member **or** trustee (select appropriate capacity)

of _____
(Insert name of business)

2.

I declare that I am duly authorised to depose to this affidavit and that the facts herein deposed are within my own personal knowledge.

I declare that the information furnished in this questionnaire is true and correct and undertake to advise the University within 7 days should any of the answers provided by me above change. I furthermore acknowledge that the information provided above will be used by the University to determine whether payments to me will be subject to the withholding of employees' tax and, if so, at what rate.

3.

I also acknowledge that I have to complete the questionnaire on an annual basis in order to allow the University to re-assess my independent contractor status.

SIGNED AND SWORN TO AT _____ on this _____ day
of _____ by the deponent who has stated that:

He/she knows and understands the contents hereof and that it is true and correct;
and

He/she has no objection to taking the prescribed oath; and

That he/she regards the prescribed oath as binding on his/her conscience.

COMMISSIONER OF OATHS

Signed before me,

FULL NAMES: _____

CAPACITY: _____

AREA: _____

BUSINESS ADDRESS:

Stellenbosch University

I declare that the information provided by the contractor is, to the best of my knowledge, true and a correct reflection of the relationship between the contractor and Stellenbosch University.

Name in block letters

Signature

Position

Date

Private Company / Close Corporation / Trust
PART II

Name of your entity? _____	
1. Type of entity (i.e. whether a Company / CC / Trust)? _____	
2. How many employees who are unconnected to the entity are employed by the entity on a full time basis throughout the year of assessment and are engaged in providing services to clients? <i>(NB. The above excludes the shareholders/members or beneficiaries of the entity, or their relatives as well as any support staff (e.g. secretaries, cleaners, etc)).</i> _____ NB: If 3 or more, then it is not necessary to answer any further questions.	
3. Are services rendered on behalf of the entity, rendered personally by a connected person to such company/entity (e.g. the member of the CC, shareholder of the company or beneficiary of the trust)? NB: If the answer to this question is “NO”, then it is not necessary to answer any further questions.	Yes / No
4. Nature of your income: <ul style="list-style-type: none"> Is 80% or more of the income of the entity for the current year of assessment derived directly or indirectly from any one client or likely to be derived directly or indirectly from any one client or an associated institution in relation to any one client? NB: If the answer to this question is “NO”, then please complete the attached Affidavit and have it signed before a Commissioner of Oaths and attach it to this response.	Yes / No
5. Supervision or control: <ul style="list-style-type: none"> Are you obliged to perform your work and carry out the activities for which you receive payment from the University, mainly (i.e. 	

<p>more than 50% of the time) at the University's <u>premises</u>?</p> <p><i>The "premises" of the University would include its offices as well as any premises where it has control over the day to day running of the activities on the premises.</i></p> <ul style="list-style-type: none"> If yes, are your activities that are performed on the University's premises, <u>supervised and/or controlled (see below)</u> by the University? <p><i>Control: the University has the right to give you detailed instructions, require you to undergo training, require you to obtain approval for certain actions, institute disciplinary steps in the event of poor performance, etc.</i></p> <p><i>Supervision: the University has the right to determine what work is to be done, where it is to be done, when it is to be done and the sequence of work.</i></p> <p>Briefly explain below.</p> <hr/>	Yes / No Yes / No
<p>6. If you were rendering your services to the University directly and not through a company/CC/Trust, do you believe that you would have been regarded as an employee of the University?</p> <p>Briefly explain.</p> <hr/>	Yes / No
<p>7. Payment regime:</p> <p>(i) How do you determine how much to invoice the University and what detail do you include on the invoice to substantiate the amount/fee?</p> <hr/> <p>(i) How often do you invoice the University (i.e. is it a regular monthly invoice, or is it only on completion of a task or production of a complete piece of work)?</p> <hr/>	

8. Regarding the services that you have agreed to render to the University, are you personally obliged to render the services or are you entitled to instruct your own supervised employees/assistants to do the work?	
9. Are you obligated to work for/ remain available to the University during set hours or a certain number of hours per day or are your services only required when there is work to be done?	
10. Client base. (i) Are you allowed to build up a multiple concurrent client base while rendering services to the University? (ii) Are you actively involved in marketing your services/ seeking other opportunities? (iii) Do you in fact have other clients that you are currently rendering services to?	Yes / No
11. If the University finds your work to be sub-standard or you fail to meet certain deadline or quality requirements, are you at risk of the University withholding payment or a portion of the payment from you or can they require you to repeat the work before payment?	Yes / No
12. Does the University provide you with any tools, training, stationery, office, equipment? If yes, please specify: _____	Yes / No
13. If you are taking leave, do you need to obtain prior approval from the University?	Yes / No
14. Is your relationship with the University a fixed term contract with an end date, open-ended or for the completion of a specific piece of work?	

I declare that the information furnished in this questionnaire is true and correct and undertake to advise the University within 7 days should any of the answers provided by me above change. I furthermore acknowledge that the information

AFFIDAVIT

I, the undersigned deponent,

(insert full names)

declare, under oath, as follows:

1.

I am an adult person (Identity number: _____)

residing at _____

(Insert physical address)

and director **or** member **or** trustee (select appropriate capacity)

of _____ (Insert name of
legal entity either private company, close corporation or trust)

with registration number: _____ .

2.

I declare that I am duly authorised to depose to this affidavit and that the facts
herein deposed are within my own personal knowledge.

3.

I declare that the information furnished in this questionnaire is true and correct and undertake to advise the University within 7 days should any of the answers provided by me above change. I furthermore acknowledge that the information provided above will be used by the University to determine whether payments to the entity will be subject to the withholding of employees' tax. I also acknowledge that I have to complete the questionnaire on an annual basis in order to allow the University to re-assess my independent contractor status.

4.

I declare that the legal entity described in 1 above does not receive 80% (eighty percent) or more of the total income of the legal entity for the current year of assessment directly or indirectly from any one client nor is it likely to directly or indirectly receive 80% or more of its income from any one client or an associated institution in relation to such client.

SIGNED AND SWORN TO AT _____ on this _____ day of _____ by the deponent who has stated that:

He/she knows and understands the contents hereof and that it is true and correct; and

He/she has no objection to taking the prescribed oath; and

That he/she regards the prescribed oath as binding on his/her conscience.

COMMISSIONER OF OATHS

Signed before me,

FULL NAMES: _____

CAPACITY: _____

AREA: _____

BUSINESS ADDRESS:

Stellenbosch University

I declare that the information provided by the contractor is, to the best of my knowledge, true and a correct reflection of the relationship between the contractor and Stellenbosch University.

Name in block letters

Signature

Position

Date

Labour Broker
PART III**The provision of persons to a client**

Name of your entity? _____	
1 Is your entity a Company / CC / Trust? If “YES”, it is not necessary to answer any further questions.	Yes / No
2 Do you trade as a sole proprietor / individual? If the answer is “YES” please complete the questions below.	Yes / No
3 Do you provide the following to the University: (i) a service with a determinable result; or (ii) persons? If the answer is “SERVICE”, please complete PART I. If the answer is “PERSONS”, are you in possession of a signed service agreement? If “YES”, please attach a copy and read on.	Yes / No
4 Are you in possession of a current Exemption Certificate (IRP30) from SARS? If “YES”, please attach a certified copy.	Yes / No
5 Are you in possession of a current Tax Directive from SARS? If “YES”, please attach a copy.	Yes / No

AFFIDAVIT

I, the undersigned deponent,

(insert full names)

declare, under oath, as follows:

1.

I am an adult person (Identity number: _____)

residing at _____

(Insert physical address)

and director **or** member **or** trustee (select appropriate capacity)

of _____ (Insert name of
legal entity either private company, close corporation or trust)

with registration number: _____ .

2.

I declare that I am duly authorised to depose to this affidavit and that the facts
herein deposed are within my own personal knowledge.

3.

I declare that the information furnished in this questionnaire is true and correct and undertake to advise the University within 7 days should any of the answers provided by me above change. I furthermore acknowledge that the information provided above will be used by the University to determine whether payments to the entity will be subject to the withholding of employees' tax. I also acknowledge that I have to complete the questionnaire on an annual basis in order to allow the University to re-assess my independent contractor status.

4.

I further acknowledge that any IRP30 certificate furnished to the University is only valid for a year and that I am therefore obliged to obtain and provide the University with an updated IRP30 certificate for each new tax year, failing which payments made to me will be subject to employees' tax.

SIGNED AND SWORN TO AT _____ on this _____ day of _____ by the deponent who has stated that:

He/she knows and understands the contents hereof and that it is true and correct; and

He/she has no objection to taking the prescribed oath; and

That he/she regards the prescribed oath as binding on his/her conscience.

COMMISSIONER OF OATHS

Signed before me,

FULL NAMES: _____

CAPACITY: _____

AREA: _____

BUSINESS ADDRESS:

