

2.1 Personal Services Contract Policy

Policy Statement

Where a department wishes to engage the services of a person by contract, a personal services contract must be prepared in accordance with the policy requirements established herein to have legal force and effect.

Where a government agency wishes to engage the services of a person with annualized compensation of \$75,000 or above, documentation must be prepared in accordance with the policy requirements established herein to have legal force and effect.

Definitions

COMPENSATION

The annualized base salary and any other monetary payments, contributions or benefits required or potentially required to be made, paid or provided by the employer to or on behalf of the employee pursuant to a personal services contract.

COMPENSATION FRAMEWORK

Any policies, practices or plans, including descriptions of classifications, salary scales, pay for performance, bonuses, annual increments or cost of living adjustments, which describe the compensation to be made, paid or provided by an employer to or on behalf of its employees.

DEPARTMENT

Department, office, and public service entities of the Government of Nova Scotia as defined in the *Public Service Act*.

DEPUTY HEAD

The deputy minister or designate of a department or the senior administrative officer of a government agency not reporting through a deputy minister.

GOVERNMENT AGENCY

A government business enterprise or government unit or any body or class of bodies as defined by Section 10 of the *Public Service Act*.

PERSONAL SERVICES CONTRACT

An agreement that establishes an employment relationship between an individual and a department, office or government agency, whether or not the terms are in writing, and includes any amendment of or extension to such an agreement.

Policy Objectives

- To establish a process by which departments and government agencies may obtain approval to enter into personal services contracts.
- To determine when it is appropriate to use a personal services contract and to ensure consistent use of contracts.
- To promote consistency of human resource practices.
- To clarify roles and responsibilities in the review and approval process for both departments and government agencies.
- To promote fiscal accountability by reviewing compensation ranges for consistency with government compensation.

Application

This policy applies to all departments and government agencies, in accordance with the *Public Service Act* and *Personal Services Contract Regulations*.

Exemptions

This policy does not apply to the following employment relationships as exempted by Section 6 of the *Personal Services Contract Regulations*:

- a personal services contract which has received the approval of the Minister of Education in accordance with s. 64(3A) of the *Education Act*;
- an employment relationship with an individual appointed to the Civil Service who is not part of a bargaining unit;
- employment relationships governed by a collective agreement;
- a personal services contract under which the compensation payable to the individual is governed by a compensation framework approved by the Executive Council;
- a personal services contract to employ an individual in a particular occupation if the terms of the contract do not deviate from the contract template approved by the Executive Council for employment in the particular occupation;

- an employment relationship with an individual employed by a department or office on a casual basis for less than 12 continuous months where the terms and conditions of employment do not exceed those available under the Labour Standards Code.

Policy Directives - Departments

Departments must ensure the following requirements are met when entering into, extending or amending a personal services contract.

USAGE

Personal services contracts may be considered for use in departments under the following circumstances:

- the nature of the work or employment circumstances prevent the creation of a civil service position
- the work is considered project work requiring unique skills, knowledge or qualifications
- the work is considered short term
- there must be a FTE and funding

Personal services contracts may be used for positions including Deputy Ministers, Chief Executive Officers, Executive Assistants to Members of the Executive Council and personnel in the Office of the Premier.

The Personal Services Contract Regulations set out the contract template (Appendix 2-1A, Standard Employment Contract of Service) to be used when departments are engaging the services of a person by contract.

APPROVAL PROCESS

- Departments are required to consult with the Public Service Commission prior to commencing negotiations to enter into a personal services contract to employ an individual in a department.
- Personal services contracts containing annualized compensation of \$75,000 or less must be approved by the deputy head of the department in order for the contract to have force and effect.
 - The proposed contract along with documentation outlining the rationale for using a contract, the length of the contract and the proposed compensation are to be sent to the deputy head to obtain the required approval prior to concluding negotiations with the employee.

- The deputy head is responsible for reviewing the submission to ensure consistency with this policy.
- If approved, the personal services contract signed by the deputy head will be returned for signature by the employee.
- Personal services contracts containing annualized compensation of more than \$75,000 but less than \$120,000 must be approved by the deputy head of the department, the Public Service Commissioner and the Deputy Minister of Finance and Treasury Board in order for the contract to have force and effect.
 - The requesting department must submit the proposed contract along with documentation outlining the rationale for using a contract, the length of the contract and the proposed compensation to the Public Service Commission to obtain the required approvals prior to concluding negotiations with the individual.
 - If approved, the personal services contract signed by the Public Service Commissioner and the Deputy Minister of Finance and Treasury Board will be returned to the requesting department to obtain the signature of the deputy head and the employee.
- Personal services contracts containing annualized compensation of \$120,000 or more must be approved by Executive Council and/or its committees in order for the contract to have force and effect.
 - The requesting department must submit the proposed contract and Memorandum to Executive Council outlining the rationale for using a contract, the length of the contract and the proposed compensation to the Executive Council Office to obtain the required approval prior to concluding negotiations with the individual.
 - The Executive Council Office or the Department of Finance and Treasury Board will consult with the Public Service Commission on all aspects of personal services contract submissions proposing annualized compensation over \$120,000.
 - A minute letter will be issued communicating the decision of Executive Council and/or its committees.
 - If approved, the personal services contract will be signed by the Public Service Commissioner and the Deputy Minister of Finance and Treasury Board and will be returned to the requesting department to obtain the signatures of the deputy head and the employee.

- A personal services contract containing annualized compensation under \$120,000 that does not follow the contract template (Appendix 2-1A, Standard Employment Contract of Service) must be approved by the deputy head of the department, the Public Service Commissioner and the Deputy Minister of Finance and Treasury Board in order for the contract to have force and effect.
 - The requesting department must submit the proposed contract along with supporting documentation outlining the rationale for using a contract, the length of the contract and the proposed compensation, explaining why a deviation from the template is necessary, to the Public Service Commission to obtain the required approvals prior to concluding negotiations with the individual.
 - If approved, the personal services contract will be signed by the Public Service Commissioner and the Deputy Minister of Finance and Treasury Board and will be returned to the requesting department to obtain the signatures of the deputy head and the employee.
- The requesting department must file a fully signed copy of all personal services contracts with the Public Service Commission.

Policy Directives - Government Agencies

PERSONAL SERVICES CONTRACTS - APPROVAL PROCESS AND FILING

- A personal services contract to employ an individual in a government agency containing annualized compensation of \$75,000 or more, must be approved in accordance with this policy in order for the contract to have force and effect.
- A government agency shall not commence recruitment of an individual to enter into a personal services contract with annualized compensation of more than \$75,000 but less than \$120,000 until the proposed terms of the personal services contract, including compensation, have been approved by Public Service Commissioner and the Deputy Minister of Finance and Treasury Board.
 - The requesting government agency must submit documentation outlining the rationale for the proposed terms of the personal services contract, including compensation, to the Public Service Commission to obtain the required approvals prior to concluding negotiations with the individual.
 - If granted, approval of the Public Service Commissioner and the Deputy Minister of Finance and Treasury Board will be issued in writing.

- A government agency must not commence recruitment of an individual to enter into a personal services contract with annualized compensation of \$120,000 or more until the proposed terms of the personal services contract, including compensation, have been approved by the Executive Council and/or its committees.
 - The requesting government agency must submit a Memorandum to Executive Council outlining the rationale for the proposed terms of the personal services contract, including compensation, to the Executive Council Office to obtain the required approval.
 - A minute letter will be issued communicating the decision of Executive Council and/or its committees.
- A personal services contract may be entered into on the same terms that were approved by the Public Service Commissioner/Deputy Minister of Finance and Treasury Board or Executive Council and/or its committees without further approval.
- Before a government agency agrees to a term in a personal services contract which deviates from the terms approved by the Public Service Commissioner/Deputy Minister of Finance and Treasury Board or Executive Council and/or its committees, the government agency must re-submit documentation to obtain approval of the terms of the contract by the appropriate authority prior to concluding negotiations with the individual.
- If granted, approval will be issued in writing by the appropriate authority.
- The final terms of a personal services contract between an individual and a government agency must be in writing and filed with the Public Service Commission and the Executive Council Office.

COMPENSATION FRAMEWORKS - APPROVAL PROCESS AND FILING

Note: This section only applies to compensation frameworks that govern personal service contracts for which an exemption from the application of the Personal Services Contract Regulations is sought.

- In order for a personal services contract to be exempt under clause 6(d) of the Personal Services Contract Regulations, a government agency must first obtain the approval of Executive Council or its committees for a compensation framework that governs the personal services contract.
 - In order to obtain approval for a compensation framework, a government agency must submit a Memorandum to Executive Council attaching a copy of the framework and outlining a rationale for it.

- A minute letter will be issued communicating the decision of Executive Council.
- Compensation frameworks must comply with the requirements set out in Appendix 2-1B and other directives or policies issued by Treasury and Policy Board from time to time.
- In developing compensation frameworks, it is recommended agencies consult with:
 - The department that supports the Minister responsible for the agency
 - Department of Finance and Treasury Board
 - Executive Council Office
 - Public Service Commission
- A government agency must submit previously approved compensation frameworks to Executive Council for review and approval at least once every five years and at other times upon the request of Executive Council.
- No later than April 30th of each year, a government agency must file approved compensation frameworks that are in effect as of April 1st of that year with the Executive Council Office.

Routine Access

The terms contained in personal services contracts other than personal information shall be released under the Routine Access Policy of a department, or government agency.

Accountability

EXECUTIVE COUNCIL AND/OR ITS COMMITTEES

The Executive Council and/or its committees have responsibility for approval of personal services contracts entered into by departments and government agencies with annualized compensation in excess of \$120,000.

DEPUTY MINISTER, FINANCE AND TREASURY BOARD

The Deputy Minister of Finance and Treasury Board is responsible for:

- administration of the approval process for personal services contracts in accordance with this policy
- approving the use of personal services contracts as required by this policy.

PUBLIC SERVICE COMMISSION

The Public Service Commission is responsible to act in an advisory capacity to departments, government agencies and Treasury and Policy Board on issues relating to personal services contracts.

PUBLIC SERVICE COMMISSIONER

The Public Service Commissioner is responsible for:

- monitoring personal services contracts for appropriate usage and consistency with government compensation
- approving the use of personal services contracts as required by this policy.

DEPUTY HEADS

Deputy heads are responsible for ensuring compliance with the requirements established by this policy for use of personal services contracts.

Monitoring

- The Department of Finance and Treasury Board, with the support of the Public Service Commission and applicable line departments, shall coordinate periodic reviews to ensure compliance with this policy by departments and government agencies.
- Departments and government agencies shall provide all documentation deemed necessary to conduct any reviews of this policy.

References

Public Service Act

Personal Services Contract Regulations

Government of Nova Scotia Fair Hiring Policy

Values, Ethics, and Conduct: A Code for Nova Scotia's Public Servants

Government of Nova Scotia Conflict of Interest Policy

Enquiries

Policy and Planning, Public Service Commission, (902) 424-7660

Manager, Executive Council Operations, Executive Council Office, (902) 424-6614

Appendices

Appendix 2-IA Standard Employment Contract of Service Template

Appendix 2-IB Requirements respecting the Form and Content of Compensation Frameworks submitted for Approval

Approval date: **August 15, 2012**

Effective date: **November 1, 2016**

Approved by: **Treasury Board**

Administrative update: **October 10, 2019**

Appendix 2-1A

Standard Employment Contract of Service

This agreement is made this _____ (date)

Between

His Majesty the King in right of the
Province of Nova Scotia, as represented by
(name), Deputy Minister, (department)
(the “Employer”)

- and -

(employee name)
(the “Employee”)

The parties agree as follows:

I. The Employee agrees:

- a) to provide services as _____ under the direction of (*insert reporting title*);
- b) to work at least the minimum number of hours per week required of full-time civil servants; and
- c) to be bound by the principles and purposes of all of the following:
 - i) *Values, Ethics & Conduct: A Code for Nova Scotia’s Public Servants*, as prepared by the Public Service Commission, as amended from time to time,
 - ii) the Government of Nova Scotia’s Conflict of Interest Policy, as amended from time to time,
 - iii) the *Conflict of Interest Act*,
 - iv) the *Freedom of Information and Protection of Privacy Act*,
 - v) the Government of Nova Scotia’s Privacy Policy, as amended from time to time.

2.1 In this section, “**confidential information**” means non-public information that meets any of the following criteria:

- a) it is marked “confidential” or with a similar legend;
- b) it is disclosed in any other manner and identified as confidential at the time of disclosure;
- c) it is “personal information” as defined in the *Freedom of Information and Protection of Privacy Act*;
- d) it would be recognized as confidential or proprietary by a reasonable person considering the nature of the information and the circumstances of disclosure;

provided however, that the term “confidential information” shall not include any information that the Employee can establish by competent evidence:

- e) was publicly known and made generally available in the public domain before it was disclosed to the Employee;
- f) becomes publicly known and made generally available after disclosure by the Employer to the Employee through no action or inaction of the Employee;
- g) was in the possession of the Employee, without confidentiality restrictions, at the time of disclosure by the Employer as shown by the Employee’s files and records in existence before the disclosure; or
- h) is independently developed by the Employee without use of a reference to the Employer’s confidential information.

2.2 The Employee shall:

- a) review and follow all established policies, procedures and standards of the Employer for ensuring the security of confidential information and shall take reasonable precautions to protect all confidential information disclosed to the Employee from any unauthorized or inadvertent disclosure;
- b) keep all confidential information strictly confidential, and shall not, without the prior written consent of the Employer, release, publish, disseminate or disclose any confidential information to any party, unless the Employee is required to do so by applicable law or in response to an order of a court of competent jurisdiction;
- c) only use confidential information to carry out tasks assigned by the Employer in relation to the Employee’s employment under this agreement; and
- d) report any breach of the terms of this section to the Employer immediately upon becoming aware of such breach.

2.3 The Employee acknowledges that the Employer may be harmed if any provision of this section is not complied with or performed by the Employee, and that the harm could not be compensated reasonably or adequately in damages. The Employee further acknowledges and agrees that the Employer is entitled to injunctive and other equitable relief or other remedies to prevent or restrain a breach of any of the provisions of this Section by the Employee, or to enforce the terms of this section.

2.4 Subsections 2.1 to 2.3 remain binding on the Employee after termination of this agreement.

2.5 A violation by the Employee of subsection 2.2 may be considered just cause for termination pursuant to subsection 6.1.

3.1 The Employer agrees to

- a) pay a salary to the Employee of approximately \$_____ per year before any deductions required by law or this agreement;
- b) grant the Employee vacation days earned at a rate of 1.25 days for each month of employment, to be taken in the year the vacation entitlement is earned;
- c) reimburse the Employee for all expenses incurred that would be reimbursed if the expense was incurred by a civil servant;
- d) grant the Employee the same holiday benefits granted to civil servants;
- e) allow the Employee:
 - i) to enroll in the Province of Nova Scotia Group Life Insurance Policy,
 - ii) to receive insured health benefits under the Province of Nova Scotia Consolidated Health Plan;
- f) grant the Employee sick leave benefits at the rate of 1.5 days per month for each month of service with the Employer to a maximum of 18 days per fiscal year beginning April 1 and ending March 31; and
- g) indemnify the Employee and to extend to the Employee the same protection against liability from suits or claims brought against the Employee in respect of work performed on behalf of the Province as the Employer would provide to a civil servant.

3.2 The Employee agrees that the Employer reserves the right to publish or release the terms and conditions of this agreement in whole or in part in accordance with clause 20(4)(f) of the *Freedom of Information and Protection of Privacy Act* and the applicable departmental Routine Access Policy, and same may be made public by the Employer as the Employer considers fit in its sole discretion.

4. The Employee is not entitled to enroll in the Province of Nova Scotia Public Service Long Term Disability Plan and is not, by this agreement or otherwise, a civil servant.
5. The term of this agreement is from (*start date*) to (*end date*) unless terminated earlier under this agreement or extended by mutual agreement of the parties in writing.
- 6.1 Despite any other provision of this agreement, this agreement may be terminated, without notice or compensation in lieu of notice, for just cause, which the parties agree includes failure by the Employee to carry out the terms of this agreement.
- 6.2 This agreement may be terminated at any time and for any reason by either of the parties giving the other party 30 days' written notice to that effect.
- 6.3 If this agreement is terminated under subsection 6.1 or 6.2, the Employee must be paid the sum or sums that have accrued under clause 3.1(a) up to the date of termination, and such sum or sums must be received by the Employee in full satisfaction and discharge of all claims and demands against the Employer in respect of this agreement.
7. The parties agree that any recourse or remedy arising with this agreement arises from contract, and that neither party has a claim or remedy, in damages or otherwise, in tort arising from performance or non-performance of this agreement, except as provided for in subsection 2.3.
8. All materials and information produced by the Employee in the performance of this agreement, and all rights therein, belong to the Employer.
9. The Employer reserves the right to publish or release in whole or in part, to publish an amended version of or not to publish or release at all, or to use or not to use as the Employer considers fit, any research, reports, material, audio-visual materials or information produced by the Employee in the performance of this agreement.
10. This agreement is not assignable.
11. Any discretionary authority or right under this agreement is not subject to the expectations, reasonable or otherwise, of the parties and any action taken under a discretionary provision is deemed to be an exercise in good faith.

12. No term or provision of this agreement is deemed waived and no breach excused, unless the waiver or consent to the breach is in writing and signed by the party making the waiver or giving the consent. Any waiver of a term or provision or consent to a breach, whether express or implied, does not constitute a waiver of a different term or provision or consent to a different or subsequent breach or continuation of the same breach unless expressly stated.
13. If any term or provision of this agreement is found to be unenforceable or illegal, the rest of the agreement remains in full force and effect except that the offending term or provision is deemed to be removed from the agreement.
14. Any notice required to be given under this agreement shall be valid if given in writing by pre-paid registered letter to the following applicable address:

To the Employer:

Commissioner, Public Service Commission
1800 Argyle Street, 5th Floor
PO Box 943
Halifax, Nova Scotia
B3J 2V9

To the Employee:

(employee name)
(employee address)

or to another address that is communicated in writing to the parties, and notice is deemed to have been given 2 business days after the day the letter is posted. Nothing in this agreement precludes the delivery of notices by means other than mailing.

15. Time is of the essence in this agreement.
16. The parties acknowledge that this agreement is of no force and effect unless approved as required by the *Public Service Act* and regulations.
17. The Employee hereby certifies that they have reviewed and fully understand the terms of this agreement.
18. This agreement is the entire agreement between the parties but for the policies and plans referred to above. Any other agreement between the parties is void upon the signing of this agreement and no changes may be made to this agreement except in accordance with section 19.
19. This agreement can only be amended, supplemented or otherwise modified by written agreement signed by both parties.

20. This agreement must be construed in accordance with the laws of the Province of Nova Scotia.

The parties have executed this agreement on the date set out at the beginning of this agreement.

Signed in the presence of:)	
)	
_____)	_____
Witness)	Employee
)	
)	
)	His Majesty the King in the
)	Right of the Province of Nova Scotia
)	
)	Per:
_____)	_____
Witness)	Deputy Minister, Finance and Treasury Board
)	
)	
_____)	_____
Witness)	Commissioner, Public Service Commission
)	
)	Per:
_____)	_____
Witness)	(name of deputy)
)	Deputy Minister, Originating Department

Appendix 2-1B

Requirements respecting the Form and Content of Compensation Frameworks submitted for Approval

- I) Compensation frameworks must include at least the following elements:
 - a) A table setting out the job categories/levels governed by the framework, including information with respect to:
 - i) the salary ranges associated with each category/level (annualized maximum and minimum salaries),
 - ii) subcategories/steps (if any) within each category/level, and
 - iii) the current number of positions within each category/level.*
 - b) A description of the manner in which categories/levels and salary ranges were developed.
 - c) If applicable, a description of how salary ranges are to be adjusted over time. *For example, in accordance with economic adjustments approved by Executive Council for non-bargaining unit civil servants.*
 - d) A description of how individual employees are placed into and move through salary ranges. *For example, based on performance, years of service, or changes in scope of responsibility.*
 - e) A description of the method used to determine the category/level of positions. *For example, by conducting a Hay analysis.*
 - f) Where employees are eligible to receive variable pay (such as incentives, “at risk” pay or pay-for-performance) a description of when and how such payments will be determined. Specifically,
 - i) the process for approving variable pay (who assesses performance and who approves the payment?);
 - ii) the evaluation criteria/measures used to assess performance;
 - iii) expected payments (either as a percentage or dollar amount) at each of the following levels:
 - (I) minimum (describe the lowest possible payment other than zero and explain the rationale for it);

- (2) target (describe the payment if all required results are achieved); and
 - (3) maximum (describe the payment if performance exceeds objectives).
- g) A description of all benefits and perquisites provided to employees together with their approximate values, including information as to which are wholly funded by the agency. *For example, pension benefits, health and dental benefits, pay-for-performance, fitness memberships, parking, professional dues, termination benefits, and any unusual leave provisions. Where benefits and perquisites provided to agency employees vary significantly from those provided to employees of the Nova Scotia government, a rationale for the differences should be provided.*
- 2) In general, compensation frameworks must not permit the payment of:
- a) bonuses
 - b) car allowances
 - c) termination benefits that exceed those to which employees would be entitled at common law

In exceptional circumstances, Executive Council may approve such payments where they are recommended by the Minister responsible for the agency.

- * In general, agencies need not seek approval to change the number of positions within a category/level. However, any such changes should be reflected when updated versions of the compensation framework are filed or when amended versions are submitted for approval.