

# SJSU Research Foundation Independent Contractor Policy

## Human Resources

Policy No.: HR. 01-04-001 Rev. A

Effective  
Date: 09/01/2016

Supersedes: HR.nn-04

Publication  
Date: 08/08/2016

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### 1.0 Purpose

The *Independent Contractor Policy* establishes standards and guidelines for the San José State University Research Foundation's ("Research Foundation") engagement, oversight, and payment of independent contractors ("ICs").

### 2.0 Responsibility

All Research Foundation project directors/administrators and staff who retain the services of independent contractors are required to adhere to this policy. The senior director of Human Resources or his or her designee, in close collaboration and partnership with the sponsored programs analysts and Research Foundation Purchasing, is responsible for reviewing all independent contractor forms and documentation, to ensure compliance with this and all other applicable policies, and to ensure compliance with applicable state and federal guidelines.

### 3.0 Scope

This policy applies to all proposed and actual independent contractor arrangements and services for Research Foundation projects and departments.

### 4.0 Definitions

This table provides definitions for special terms, acronyms, and abbreviations used in this policy.

Term, Acronym, or Abbreviation	Description
Independent Contractor	<p>An independent contractor is an individual, sole proprietor, or one person LLC (using his or her own social security number and not his or her LLC's tax identification number) who is contracted to perform or deliver specific tasks or services for the Research Foundation over a specified period of time, not to exceed twelve months.</p> <p>These specific tasks or services are those not normally engaged in by the Research Foundation in its usual business. Independent contractors are not employees of the Research Foundation.</p>

	<p>Generally, independent contractor status <b>cannot</b> be conferred to the following:</p> <ul style="list-style-type: none"> <li>▪ Corporation, including a Limited Liability Company (LLC) or a DBA, using their LLC or DBA tax identification number;</li> <li>▪ Third party agency;</li> <li>▪ Partnership;</li> <li>▪ Current or active member of the San José State University (SJSU) faculty or staff;</li> <li>▪ Current or active member of any other CSU faculty or staff;</li> <li>▪ California State University, SJSU, or Research Foundation ex-employee whose separation date from their respective organization is one calendar year or less from a proposed IC assignment with the Research Foundation;</li> <li>▪ Holder of an H1B visa.</li> </ul>
Independent Contractor Agreement	An agreement between the Research Foundation and an independent contractor that defines, specifies, and documents the terms and conditions for the performance of their services and for receipt of payment.
Principal Investigator (“PI”) or Project Director or designee	Authorized account signer (s) responsible for overall project management and direction of a grant, contract or self-support program.
De Minimis	Payments to the individual of less than \$600 in one calendar year, and services to the organization categorized as “low risk.” Examples include repair, notary, or maintenance services.

## 5.0 Policy

The Research Foundation may engage the services of an independent contractor on a short-term, intermittent, or an as-needed basis to perform specific services in certain situations, including periods of time when the required specialized skills and expertise are not available internally.

### 5.1 Approval of an Independent Contractor Agreement

The Research Foundation Independent Contractor Agreement is not considered complete, final, and ready to be implemented and started until such time as requisite approvals, in writing, are obtained from the principal investigator, the senior director of HR (or his or her designee), the sponsored programs analyst, and Research Foundation Purchasing. No work under the agreement is approved to begin until such time as the agreement has been signed off by all parties noted.

## 5.2 Independent Contractor Determination

The Research Foundation uses a number of legal standards and factors, including [IRS guidelines](#) (the URL is also listed below), to determine whether an individual can be classified as an independent contractor.

<http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Independent-Contractor-Self-Employed-or-Employee>.

Before an independent contractor is approved, the requesting principal investigator/project director must complete and submit the **Independent Contractor Agreement** and **Determination of Independent Contractor Status Checklist** to Research Foundation Purchasing for routing, review, and approval. The proposed independent contractor's updated resume, listing his or her specialized skills, training or competencies, must also be attached to the Independent Contractor Agreement form. The proposed independent contractor must also submit a completed IRS Form W-9 (for domestic ICs) or IRS Form W-8 (for international or foreign ICs).

The Research Foundation Independent Contractor Agreement includes legal protections, official guidelines, and specifications for all parties involved. The Research Foundation may determine that an agreement is not needed due to the amount and type of service provided that may be considered "de minimis."

All proposed out-of-state independent contractors must comply with their home resident state's regulations regarding establishment of an independent contractor agreement with the Research Foundation, a California corporation. The out-of-state IC will be asked to affirm that he or she has done so as a prerequisite for the granting of IC status with the Research Foundation. Out-of-state independent contractors must note that State of California withholdings may apply.

## 5.3 Duration of the Independent Contractor Agreement

Agreements for independent contractor services are generally established for a period **not to exceed** twelve months or the grant end date, irrespective of project periods. Contracts must specify the expected number of service days or months. In the event that the need for services extends beyond the specified service period, a new independent contractor agreement may be established. Agreements that extend past the grant end date will need the approval of the senior director of Sponsored Programs or his or her designee.

## 5.4 Independent Contractor Relationship

### 5.4.1 Time and Place, Manner of Performance

Independent contractors determine suitable arrangements for time, place, and manner of the agreed-upon performance or services. All proposed amendments to the originally agreed-upon Research Foundation Independent Contractor Agreement must be submitted independently for approval before beginning work under the amended terms and conditions.

### 5.4.2 Status Reporting

Independent contractors may be required to provide intermittent reports or other data documenting the services rendered, in accordance with the terms of the Independent Contractor Agreement. Suitable reporting methods and specific reporting requirements are determined by the project director and independent contractor in advance of the beginning of services or performance.

### 5.4.3 Payment and Invoicing

Independent contractors are paid the approved “agreed upon” compensation for their performance and all services rendered, **inclusive**. Costs normally figured into the integrated agreement include certain costs such as costs for travel and supplies. Payments may be based on an hourly, daily, or a flat rate fee. Except as otherwise specifically agreed to and as properly documented by the IC, consideration paid to the contractor as provided in the Independent Contractor Agreement shall reflect payment for **all** IC expenses incurred in the performance of his or her services pursuant to the contract.

Payments will be made in accordance with the terms and conditions outlined in the Independent Contractor Agreement. Sponsoring agency requirements may require that IC invoices be specifically itemized according to type of expenditure. In those cases, the itemization requirement will be honored.

Upon completion of the contracted services, an invoice will be submitted by the IC to the Research Foundation address shown on the purchase order. The IC should note the invoice as “**Billed to SJSURF**” or “**SJSU Research Foundation.**” Independent contractor payments will be reported to the IRS at the end of the calendar year on IRS Form 1099-Misc.

### 5.4.4 Taxes

The Research Foundation will issue an IRS Form 1099-Misc for cumulative payments in accordance with prevailing IRS guidelines, currently set at \$600 or more, made to the independent contractor who is a legal U.S. resident during the calendar year. Independent contractors are solely and exclusively responsible for payment of all appropriate local, state, and federal taxes on their earned income as required by law.

With the exception of nonresident aliens (NRAs), who are specifically not eligible to be independent contractors based on their Visa type and their status as nonresidents of the United States performing services outside of the United States, all other NRA taxes shall be withheld from payment pursuant to Internal Revenue Service and State of California regulations. The NRA must complete online tax compliance information (Glacier) in order to determine tax withholding.

State of California withholding may apply to out-of-state independent contractors. Withholdings are reflected in the IRS Form 1099-Misc.

### 5.4.5 Insurance Coverage

Independent contractors are not employees of the Research Foundation and are thus not covered by the Research Foundation’s Workers’ Compensation insurance program. Similarly, any employee(s), assistant(s), or agent(s) engaged by the IC to assist in the IC’s work with the Research Foundation are similarly not extended coverage via the Research Foundation’s Workers’ Compensation program. Due to the Research Foundation’s status as a 501(c)(3) organization and its audit requirements, certain ICs may be asked to present proof of a minimum coverage of liability insurance in order to be eligible to establish an independent contractor agreement with the Research Foundation.

#### **5.4.6 Indemnification**

The independent contractor shall release and hold harmless, defend and indemnify the Research Foundation, the State of California, the California State University, the Trustees of the California State University, San José State University, and its current and former officers, officials, employees, volunteers and agents from and against any and all liability, loss, damage, expense, costs, including without limitation costs and fees of litigation, of every nature arising out of or in connection with contractor's performance of work or his or her failure to comply with any of its obligations contained in the agreement, caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any or anyone of them whose acts may incur liability.

#### **5.4.7 Travel**

Independent contractors are paid an approved "agreed upon" compensation for all performance and services rendered, including certain costs such as travel costs. This includes all expenses associated with travel for the performance of their tasks in accordance with the terms and conditions of the contract. With respect to foreign travel, especially foreign travel to countries or locations designated as "high risk" by the Department of Homeland Security, the IC is responsible for providing his or her own travel insurance, as appropriate. In such cases, as part of establishing eligibility to enter into the Research Foundation Independent Contractor Agreement, the PI/project director may request verification of insurance from the IC.

#### **5.4.8 Intellectual Property**

Independent contractors are required to follow the guidelines described in the *Independent Contractor Proprietary Rights Assignment Policy*, as well as the *Financial Conflict of Interest Policy*.

### **5.5 Non-Assignability**

The independent contractor's duties or services as described in the official agreement cannot be assigned or delegated by the independent contractor without the specific prior and written consent of the PI/ project director and the Research Foundation.

### **5.6 Conduct**

The Research Foundation expects each independent contractor to conduct himself or herself in a courteous, safe, and professional manner at all times while they are on the Research Foundation's premises and when performing work for the Research Foundation, irrespective of location.

Any behavior or conduct by an independent contractor which violates federal, state, or local laws, rules, or norms, or behavior in violation of Research Foundation policies, rules, and procedures may result in immediate termination of the independent contractor relationship with the Research Foundation. This includes but is not limited to conduct that does or may result in harm to the Research Foundation, its reputation, or which potentially harms a Research Foundation employee; conduct that interferes with the rights of Research Foundation employees, customers, or vendors; or conduct considered to be an act of harassment in any form.

## 5.7 Confidentiality

In the course of his or her engagement with the Research Foundation, the IC may have access to and become acquainted with information of a confidential, proprietary or need-to-know basis, which is, or may be, applicable to or related to present or future business of the Research Foundation, its research and development, or the business of its customers. Such “trade secret” information includes, but is not limited to, devices, inventions, processes, compilations of information, records, specifications and information concerning existing or prospective customers, clients and/or vendors.

As outlined in the IC agreement, the independent contractor will agree that he or she will not disclose any of the above mentioned trade secrets, directly or indirectly, or use them in any way, either during the term of their engagement, or at any time thereafter, except for the benefit of the Research Foundation, and as required in the course of their Research Foundation engagement. The IC will also agree that he or she will not remove or otherwise transmit confidential, proprietary or secret information without the express prior written consent of both the PI and Human Resources.

## 5.8 Background Checks

The Research Foundation has established a policy in alignment with [CSU's Background Check Policy \(HR2015-08, effective August 3, 2015\)](#). Pursuant to this policy, independent contractors who will work for the Research Foundation are responsible for ensuring that they have successfully undergone a background check if they will provide services that fall within any of the “sensitive position” categories. The Background Check process must be successfully completed before any actual independent contractor-related work begins.

Sensitive positions are those designated as requiring heightened scrutiny of individuals holding the position based on potential for harm to children, concerns for the safety and security of people, animals, or property, or heightened risk of financial loss to the CSU or to individuals in the university community, including the Research Foundation. For more specific guidance regarding this issue, please refer to the Research Foundation's *Background Checks Policy*.

## 6.0 Termination of Services

The terms and conditions of an independent contractor agreement generally dictate the automatic end of the contract. No further notification by either party is deemed necessary.

The IC agreement may also be terminated earlier than the noted end date upon the occurrence of any of the following events:

- a. Loss of funding by the Research Foundation for the program or project;
- b. State or status of the business of either party;
- c. Bankruptcy or insolvency of the independent contractor;
- d. Default by the independent contractor in the performance of this agreement;
- e. Conduct by the IC in violation of the Research Foundation's rules and protocols as listed in Section 5.6 of this policy;

- f. Material breach by the independent contractor of the IC agreement. “Material breach” of this agreement shall include, but not be limited to, the following:
  - not providing contracting services as agreed; inability or unwillingness to properly communicate with the affected parties;
  - any reason (s) falling under Section 5.6 of this policy.
- g. Death of the independent contractor.

In any of the instances noted above, the Research Foundation may, at its own option and in its own judgment, terminate the Independent Contractor Agreement by giving written notification to the IC, as noted below.

Termination by either party will be effective as of the date stated in that notification, but will in no event be earlier than three (3) calendar days, nor later than five (5) calendar days from the date the notification was mailed or sent.

## 6.1 Nonresident Alien Independent Contractor Engagements

### 6.1.1 Nonresident Alien ICs Performing Contract Work Within the United States

Nonresident alien (NRA) independent contractors must present proper documentation as part of their initial submission for IC status. The IC must present valid proof of their eligibility for employment within the United States by way of a valid Visa. Taxes for NRA ICs shall be held per Internal Revenue Service regulations and mandates. The NRA IC must complete online compliance information (“Glacier” system).

### 6.1.2 Nonresident Alien ICs Performing Work Outside of the United States, in Their Country of Origin

In addition to the documentation required as part of the initial submission for IC status, NRAs performing services outside of the United States must submit an IRS W-8 BEN form. NRAs performing services for the SJSU Research Foundation outside of the United States are not subject to tax withholding unless they enter the United States for the purpose of performing services related to their IC agreement.

## 7.0 Related Policies and Required Forms

This table contains a list of forms and special tools referenced in this document.

Policy or Form	Description of Use
Independent Contractor Agreement	The document that formalizes the written agreement between the Research Foundation and an individual hired to perform specific services or tasks on a temporary, non-employee basis. The form must be completed and forwarded to the Human Resources department by Purchasing, along with the proposed Independent Contractor’s updated resume, listing his or her specialized skills, training or competencies.

Determination of Independent Contractor Status Checklist	Required form to be completed by the principal investigator or authorized account signer, and used to determine independent contractor status. The individual's status affects how he or she files tax returns and his or her responsibility for filing all appropriate taxes, including federal and state income tax, Social Security and Medicare tax.
<i>Purchasing Policy</i>	The <i>Purchasing Policy</i> sets standards and guidelines, and describes the requirements for acquiring goods and services for the SJSU Research Foundation.
Independent Contractor Proprietary Rights Assignment	Please refer to the <a href="#">contract term and conditions page</a> on the Research Foundation website.
<i>Financial Conflict of Interest Policy</i>	Please refer to the <a href="#">financial conflict of interest page</a> on the Research Foundation website.
Independent Contractor Invoice	The invoice submitted by an independent contractor to request agreed-upon payments in accordance with the terms and conditions stated in the Research Foundation Independent Contractor Agreement.
IRS Form 1099 Misc.	The form that is used to report to the IRS the total amount of payments to an individual or entity for services rendered during the year.
IRS Form W-9	Form W-9 is used by "withholding agents" such as the Research Foundation to request the taxpayer identification number (TIN) of a U.S. person (including a resident alien) and to request certain certifications and claims for exemption. The Research Foundation also requires signed Forms W-9 from U.S. exempt recipients to overcome a presumption of foreign status.
Glacier Online Tax Compliance System	GLACIER is an online tax compliance system designed to allow institutions such as the Research Foundation to collect information, make tax residency and income tax treaty determinations, maintain data, and file reporting statements with the IRS. As an NRA completes the questions, GLACIER calculates the substantial presence test, completes all applicable forms, and generates simple to follow instructions for the NRA to submit his or her tax forms to the Research Foundation.

## 8.0 References and Related Information

Not Applicable.

## 9.0 Record Retention

All documents and records are maintained in accordance with SJSU Research Foundation Record Retention requirements.

Record	Retention
<i>Independent Contractor Policy</i>	This document is effective until further revised or updated. Outdated or revised documents will be maintained in accordance with Research Foundation Record Retention requirements. The Research Foundation will maintain the signed original and electronic copies of the approved policy and all updates and replacements.