

# SJSU Research Foundation Independent Contractor Policy

## Human Resources

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### 1.0 Purpose

The Independent Contractors Policy sets guidelines for the San José State University Research Foundation's ("Research Foundation") engagement, oversight, and payment of Independent Contractors ("IC's").

### 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 and all applicable laws defining who is an Independent Contractor. The Director of Human Resources or his or her designee, in close collaboration and partnership with the Sponsored Programs Managers, is responsible for reviewing all Independent Contractor contracts, forms and documentation to ensure compliance with this policy and all other applicable policies, and with applicable state and federal guidelines.

No Independent Contracting services can begin work on a project prior to approval by Human Resources and by the Sponsored Programs Manager.

### 3.0 Scope

This policy applies to all proposed and actual Independent Contractor arrangements and services for the Research Foundation. This one policy will cover Independent Contractors within the State of California; and out of state Independent Contractors as well.

### 4.0 Definitions

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

Term, Acronym, or Abbreviation	Description
Independent Contractor	An Independent Contractor ("IC") is a worker contracted to deliver or complete specific projects, tasks or services for the Research Foundation. Independent Contractors should only work for the Research Foundation until the project is completed. Independent Contractors should not work on multiple projects for the Research Foundation at the same time or a series of projects over time.

	<p><u>In 2020, an IC in California is a worker who:</u></p> <p>A. both under the contract for the performance of the work and in fact is free from the control and direction of the Research Foundation in connection with the performance of the work, both under the person's contract for the performance of the work and in fact when performing the work; and</p> <p>B. Performs work that is outside the usual course of the Research Foundation's business; and</p> <p>C. Is customarily engaged in an independently established trade, occupation, or business of the same nature as the work the IC will perform for the Research Foundation.</p> <p><u>Please note:</u> The "ABC" test noted above does not apply to IC's who work outside of California. Independent Contractors who work outside of California must satisfy applicable IC tests for that state. The Research Foundation will continue the use of the current "multi-factor" checklist form for Independent Contractors who work outside the state of California.</p> <p>Generally, Independent Contractor status cannot be conferred to:</p> <ol style="list-style-type: none"> <li>1) a Corporation, including a Limited Liability Company (LLC) of more than one person, or a DBA;</li> <li>2) a third party agency;</li> <li>3) a partnership;</li> <li>4) a current or active member of the San José State University (SJSU) faculty or staff; a current or active member of any other CSU faculty or staff;</li> <li>5) any 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>6) a Student Assistant;</li> <li>7) a holder of an H1B visa.</li> </ol>
<p>Independent Contractor Agreement</p>	<p>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.</p>

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.
Independent Contractor Approval	An Independent Contractor Agreement is not completed, finalized, and ready to be implemented and started until such time as requisite approvals, in writing, are obtained from the PI; the HR Director, or his or her designee; and the Sponsored Programs Manager. No work under the Agreement is approved to begin until such time as the Agreement has been signed off by all three parties noted.

## 5.0 Policy

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

### 5.1 Approval of an Independent Contractor Agreement

An Independent Contractor Agreement is not approved and implemented until such time as requisite approvals, in writing, are obtained from the PI; the HR Director, or his or her designee; and the Sponsored Programs Manager. Unless approvals and signatures have been obtained from all parties, the contract is not valid and no work is authorized to begin.

### 5.2 Independent Contractor Determination

As to all California workers, the Research Foundation will apply the test as codified in in Labor Code section 2750.3(a) to determine whether or not a worker meets the definition of being an IC.

Pursuant to the California test, known as the "ABC test," a California worker is **presumed** to be an employee. The Research Foundation must be able to prove that the worker is an IC by establishing that the person:

(A) Is free from the control and direction of the Research Foundation in connection with performing the work, both under the contract for the performance of the work and in fact;  
**and**

(B) Performs work that is outside the usual course of the Research Foundation's business;  
**and**

(C) Is customarily engaged in an independently established trade, occupation, or business of the same nature as the work the IC will perform for the Research Foundation.

**As to all proposed IC's who work outside of California**, the checklist currently in use, called the "multi factor" checklist, will continue to apply and be used in determining IC status, unless local state law requires the use of a different test. Outside of California, the following test and checklist should be used:

<https://www.sjsu.edu/researchfoundation/docs/SJSURF-Independent-Contractor-Checklist-and-Agreement-9-2017.pdf>

**As to all Independent Contractors:** before an Independent Contractor is approved, the requesting PI / Project Director must fill out and submit an [Independent Contractor Agreement Form](#) FP 12 and the applicable [Determination of Independent Contractor Status form](#) to the Sponsored Programs Manager and Human Resources department for 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 shall also submit a completed Form W 9.

The IC agreement includes 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 considered to be "de minimis."

**Out of State Contractors:** 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 pre-requisite for granting of IC status with the Research Foundation.

### **5.3 Duration of the Independent Contractor Agreement**

Agreements for Independent Contractor services are generally established by the project to be completed. Independent Contractors do not work for a specified number of service days or months. In the event that the need for services extends beyond the specified project, a new Independent Contractor Agreement may be entered into if the person satisfied the applicable IC test.

## **5.4 Independent Contractor Relationship**

### **All proposed Independent Contractors**

#### **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 Independent Contractor Agreement must be submitted independently for approval before the beginning of 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 tendered and the results, 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 approved "agreed upon" compensation for all their performance and services rendered, inclusive. Costs normally figured into the integrated agreement include, for example, travel costs. Payments may be based on an hourly, daily, or a flat rate fee based on the nature of the project. 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 PI/Project Director. The IC should note the Invoice as “Billed to SJSURF.” The PI/Project Director approves the Invoice, and forwards same to the Central Office for processing of payment. Independent contractor payments will be reported to the IRS at the end of the calendar year on IRS Form 1099.

#### **5.4.4 All Independent Contractors Responsible for own Taxes**

The Research Foundation will issue an IRS 1099 Miscellaneous Income Form for cumulative payments in accordance with prevailing IRS guidelines, currently set at \$600 or more, made to the Independent Contractor who is a legal US Resident during the calendar year.

All Independent Contractors are solely and exclusively responsible for payment of all of their own appropriate local, state and federal taxes on their earned income as required by law. With the exception of Nonresidents Aliens (NRA’s) who are specifically not eligible to be Independent Contractors based on visa type, and Nonresidents of the United States performing services outside of the United States, all other NRA’s taxes shall be withheld from payment if required, 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 if required by IRS and/or State of California requirements.

#### **5.4.5 No Insurance Coverage**

Independent Contractors are not employees of the Research Foundation and are thus not covered by the Research Foundation Workers’ Compensation insurance program. Similarly, any employee(s), assistant(s), or agent(s) engaged by the IC during the course of their work with the Research Foundation are similarly not extended coverage via the Research Foundation Workers’ Compensation program. Independent Contractors are expected to have their own insurance.

Due to the Research Foundation’s status as a 501(c)(3) organization and its audit requirements, certain IC’s 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 Travel**

Independent Contractors are paid approved “agreed upon” compensation for all performance and services tendered, including, e.g. 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 for his or her own travel insurance, as appropriate. In such cases, the PI may request, as part of entering into this Agreement, for verification of insurance from the IC.

#### **5.4.7 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](#). Both documents are available on the Research Foundation Policies web page.

### **5.5 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 hereunder or its 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.

Generally, an Independent Contractor is responsible for providing his or her own workers' compensation and liability insurance. However, due to the Research Foundation's status as a 501(c)(3) organization and its audit requirements, certain IC's 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. Please refer to the following link for more detailed information.

### **5.6 Non-Assignability**

The Independent Contractor Agreement's duties or services to be provided 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.

### **5.7 Conduct**

The Research Foundation expects each Independent Contractor to conduct him/herself in a courteous, safe, and professional manner at all times while they are on the Research Foundation's premises and/or 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 any behavior in violation of Research Foundation policies, rules, and procedures may result in immediate termination of the Independent Contractor relationship by 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.

### **5.8 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 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.

The IC Agreement will specifically call out that a condition of the IC Agreement is that the IC agrees to treat all trade secret information as confidential both during and after their engagement. The IC 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.

## 5.9 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 into 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 Independent Contractor agreement. No further notification by either party is deemed necessary.

The Independent Contractor 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 the IC Agreement shall include, but not be limited to, the following:
    - not providing contracting services as agreed; inability or unwillingness to properly communicate with affected parties);
    - any reason (s) falling under Section 5.7 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, in accordance with the terms of the IC agreement. Generally, the IC agreement will provide for the following written notification.

Termination by either party will be effective as of 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 date notification was mailed or sent.

## 6.1 International Independent Contractor Engagements

### 6.1.1 Non-Resident Alien (NRA) IC's performing contract work within the United States

Non-Resident Alien (NRA's) IC's 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. IF required by the IRS and/or the State of California, the NRA IC must complete on-line compliance information ("Glacier" system).

### 6.1.2 Non-Resident Alien (NRA) IC's performing work outside the US in their country of origin

In addition to the documentation required as part of the initial submission for IC status, NRA's performing services outside of the US must submit an IRS W8 BEN form.

## 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
<a href="#">Determination-of-Independent-Contractor-Status-Checklist and Agreement (California only)</a>	<p>Used to determine independent contractor status of California workers, and establishes the formal agreement between the Research Foundation and the individual hired to perform specific services or tasks. 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.</p> <p>The form must be completed by the principal investigator or authorized account signer and forwarded to the Human Resources department, along with the proposed independent contractor's updated resume, listing his or her specialized skills, training or competencies.</p>
<a href="#">Determination-of-Independent-Contractor-Status-Checklist and Agreement (All states except California)</a>	<p>Used to determine independent contractor status, and establishes the formal agreement between the Research Foundation and the individual hired to perform specific services or tasks. 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.</p> <p>The form must be completed by the principal investigator or authorized account signer and forwarded to the Human Resources department, along with the proposed independent contractor's updated resume, listing his or her specialized skills, training or competencies.</p>



<a href="#">General Provisions – Non-Disclosure Agreement</a>	Details the terms and provisions for services of the independent contractor.
<a href="#">Independent Contractor Proprietary Rights Assignment</a>	Document that sets guidelines and stipulations for the handling of intellectual property and other proprietary information by all parties involved.
<a href="#">Procurement Policy</a>	The <i>Procurement Policy</i> sets guidelines and describes the requirements for acquiring goods and services for the San José State University Research Foundation.
<a href="#">Financial Conflict of Interest Policy</a>	The <i>Financial Conflict of Interest Policy</i> sets forth the San José State University Research Foundation’s guidelines regarding avoidance, disclosure, management, and resolution of financial conflicts of interest in San José State University research and sponsored programs.
<b>Independent Contractor Invoice</b>	The Invoice submitted by an Independent Contractor to request agreed-upon payments in accordance with the terms and conditions stated in the Independent Contractor Agreement. The Invoice is submitted to the PI/Project Director, who approves it, and then forwards same to Central Office for processing of payment.
<b>IRS Form 1099</b>	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. 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 requires signed Forms W-9 from U.S. exempt recipients to overcome a presumption of foreign status.
<b>Glacier Online Tax Compliance System</b>	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

Noted above.

## 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 <i>Record Retention</i> requirements. The Research Foundation will maintain the signed original and electronic copies of the approved policy and all updates and replacements.