ARE YOU INDEPENDENT?

Independent Contractors
RF Policies and Procedures
What Are Our Goals?

• Defining Independent Contractors (IC)

• Identifying and completing all required documentation for processing IC forms

• Directions for the completion of IC Forms by Project Directors

• Submission of IC Forms to The Office of Grants Management (OGM) for review and approval for payment to IC

• Steps taken by OGM to process IC

• Q&A Session
What are Independent Contractors?

- Independent contractors (ICs) are people who are in business for themselves.

- Independent contractors earn their livelihoods from their own independent businesses instead of depending upon an employer to earn a living.

- Independent contractors are sometimes called consultants, freelancers, self-employed, and even entrepreneurs and business owners.

- IRS 20 Factors are used to Classify Independent Contractors.
Possible Exceptions For Completing The 20 Factors...

• If the payee is a NYS, RF or Stony Brook University Employee, please DO NOT proceed with the 20 factors. He or She must be paid through payroll/extra service or dual employment.

• Lecturer or Honorarium Payment

• A person cannot have both an employment relationship and an independent contractor relationship with the same organization. For this reason, a SUNY-paid employee who gives a SUNY-sponsored lecture would be compensated through SUNY's extra-service payroll process.

• Likewise, a Research Foundation employee who gives a RF sponsored lecture would be compensated through the Research Foundation's payroll process.
Honorarium Payments

• An honorarium is usually paid to a lecturer or speaker when the speaking engagement is not extensive. Under these circumstances the project director may offer to pay expenses plus an honorarium or just an honorarium.
Is He/She an Employee or IC?

• In general an *employee* is subject to the control of the employer as to *what* work must be done and *how* the work must be done.

• It is not necessary that the employer actually direct or control the manner in which the services are performed; it is enough that the employer has the *right* to do so.

• Under the common law rules cited in IRS rulings, an employee–employer relationship exists when the organization for which services are performed has the *right* to control and direct the individual who performs the services, not only as to the result accomplished by the work, but also as to the details and means by which the result is accomplished.
IRS Categories of Evidence

• The IRS has categorized the facts that provide evidence of the degree of control and independence in the relationship between the worker and the business into the following three categories:

• Behavioral Control
• Financial Control
• Type of Relationship

• These "categories of evidence" can be used when examining a work relationship to make an independent contractor – employee determination. All evidence of control and independence must be examined.
Behavioral Control

- Facts in this category are those that illustrate whether there is right to direct or control how the worker performs the specific task for which he or she is hired.

These include the type and degree of:

- instructions the business gives the worker.
- training the business gives the worker.
Financial Control

- Facts in this category are those that illustrate whether there is right to direct or control how the business aspects of the worker's activities are conducted.

These include:

- the extent to which the worker has unreimbursed business expenses
- the extent of the worker’s investment
- the extent to which the worker makes services available to the relevant market
- how the business pays the worker
- the extent to which the worker can realize a profit or incur a loss
Type of Relationship

• This category includes facts that illustrate how the parties perceive their relationship. These include

• written contracts describing the relationship the parties intended to create.

• whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay.

• the permanency of the relationship.

• the extent to which services performed by the worker are a key aspect of the regular business of the company.

• the right to discharge a worker and the right to terminate work without incurring a penalty.

The Correct Classification of Independent Contractors is a High Priority…

• The Research Foundation (RF) is responsible to ensure that workers are properly classified when reviewing application budgets and when hiring an employee or engaging an independent contractor.

• The Research Foundation (RF) is legally obligated to properly classify individuals even if a sponsor provides funds for independent contractors in an award.
RF Is Responsible to Properly Classify Individuals as IC’s

- Classifying a worker as an independent contractor rather than as an employee may appear to result in financial savings and less paperwork.

- However, if the employee is misclassified as an independent contractor, these perceived advantages are offset by the potential penalties that could be assessed by the Internal Revenue Service (IRS) or New York State Department of Labor, by potential Workers' Compensation or unemployment claims, and by liability or malpractice suits.
The IRS 20 Factors and Required Documentation

- The Common Law Test is used to help Identify and Classify an Individual as an Independent Contractor

- These 20 Factors should be answered by the Project Director as an aid for proper classification

- The responses to these 20 Questions should be submitted to The Office of Grants Management accompanying the following documentation

1. Completed Independent Contractor/Lecturers Service Form

2. CV or Resume of Payee

3. Formal Independent Contractor Agreement for Amounts if $10,000 or above within a 12 month period (See Exhibit A)
Stony Brook University
Human Resource Services

IRS 20 FACTORS OF THE COMMON LAW TEST

Name of Worker (Payee): ________________________________
Department: ________________________________________
Contact Person: ________________________ Telephone #: _______

If the payee is a NYS or Stony Brook University employee, please do not proceed. He/she must be paid through payroll (extra service/dual employment).

1. Does the worker control means and methods of how the work is done? YES NO
2. Is worker supervised or trained by the department/University? YES NO
3. Is the service part of the regular activities of the department/University? YES NO
4. Must the worker provide the services personally? YES NO
5. Does the worker have the option to delegate work (to non-employees)? YES NO
6. Is there a continuous relationship between department & worker? YES NO
7. Does the worker establish routine or schedule of work to be performed? YES NO
8. Is the service/project of relative short duration? YES NO
9. Will the work be performed at University premises? YES NO
10. Does the worker set the order/sequence of work to be performed? YES NO
11. Does the worker submit regular status reports? YES NO
12. Will the worker be paid at completion of job? YES NO
13. Will the worker be reimbursed for business or travel expenses? YES NO
14. Does the worker provide own instruments or tools? YES NO
15. Does the worker have an investment in facilities used to perform services? YES NO
16. Can the worker incur a financial loss if services are not provided? YES NO
17. Does the worker have multiple sources of income from services provided? YES NO
18. Does worker provide services to the public? YES NO
19. Can the University fire the worker if services are being performed? YES NO
20. Can the worker quit at any time without incurring a liability? YES NO

CERTIFICATION: I certify that I have answered the questions above accurately, to the best of my knowledge. I understand that the University may hold my department financially responsible for any additional taxes, fees and penalties that the IRS may assess due to misclassification of service.

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<tr>
<th>Department Authorization (Signature)</th>
<th>Name (Print)</th>
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Common–Law Factors Indicating Employee Status

“IRS 20 FACTORS OF THE “COMMON LAW TEST”

The following factors will assist in determining whether a worker is an employee or an Independent Contractor. Please include additional information not covered by the “Common Law Test” that clarifies or supports the worker’s classification. Please respond to each of the following questions and Attach an RF Independent Contractor Form, CV and Other Required Documentation.

1. **Compliance with instructions** – employees must comply with another person’s instructions on when, where, and how the work is performed. In a true Independent Contractor relationship, the only control to which the contractor is subject is the result.

   Does the worker (not the employer) control the means and method of how the work is done?  
   
   Yes ☐ No ☐

   Does the worker perform the task without supervision from the firm (Contracting Department)?
   
   Yes ☐ No ☐

   A worker who must comply with other persons’ instructions about when, where and how he or she is to work is ordinarily an employee. This factor is present when the person for whom the services are performed has the right to require compliance.
2. **Training required** – Independent Contractors are not normally trained and are hired for their expertise in a field.

   Is the worker engaged in an activity requiring extensive skill, education, or expertise?
   Yes □ □ □
   ▪ Requiring an experienced employee to work with the worker, corresponding with the worker, requiring the worker to attend meetings or using other training methods indicates the person for whom the services are performed wants them done in a particular method or manner.

3. **Interaction of services into business operations** – employee's services are usually a vital part of the daily operation of an employer’s operation.

   Are the services performed by the worker required for the daily operation of the business (hiring department)?
   Yes □ □ □
   ▪ Integrating the worker’s services into the business operations generally shows that he or she is subject to direction and control. When the success or continuation of a business depends to an appreciable degree on the performance of certain services, the workers who do them must necessarily be subject to a certain amount of control by the business owner.

4. **Services rendered personally** – employees personally render the services, while contractors may delegate such work to others.

   Does the worker have the option of delegating work (to non-employees)?
   Yes □ □ □
   ▪ If the worker must render the services personally, presumably the person for whom they are performed is interested in the methods used to accomplish the work as well as in the results.
Common–Law Factors – Continued

5. **Hiring, supervising, and paying assistants** – usually individuals who perform all these functions are treated as Independent Contractors.

Does the worker hire, supervise, and pay assistants?

- Yes
- No

*Hiring, supervising and paying assistants.*

- If the person for whom the services are performed hires, supervises and pays assistants, that generally shows control over the workers on the job. However, if one worker hires, supervises and pays the other assistants under a contract in which the worker agrees to provide materials and labor and is responsible only for attaining a result, this indicates independent contractor status.

6. **Continuing relationship** – employees are usually hired for an ongoing period, while a contractor’s work ends when the job does.

Is the job of relatively short duration?

- Yes
- No

- A continuing relationship between the worker and the person for whom the services are performed indicates an employer–employee relationship exists. This may occur when work is performed at frequently recurring although irregular intervals.

7. **Set hours of work** – employees should adhere to a work schedule established by the employer.

Is routine or schedule established only by the worker?

- Yes
- No

- If the person for whom the services are performed establishes set work hours, this indicates control.
Common–Law Factors – Continued

8. **Full time required** – generally, employees work full–time for an employer, while Independent Contractors work when and for whom they choose.

Does the worker offer their services out to the general public?

- [ ] Yes
- [x] No

- If the worker must devote himself or herself substantially full–time to the business of the person for whom the services are performed, the latter has control over the amount of time the worker spends working and implicitly restricts the worker from doing other gainful work. An independent contractor, on the other hand, is free to work when and for whom he or she chooses.

9. **Performing work on employer’s premise** – those working at the employer’s site may be viewed as employees.

Where will work be performed?

-----------------------------------------------

- If the individual performs the work on the premises of the person for whom the services are performed, this suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises, such as at the worker’s office, indicates some freedom from control. However, this fact by itself does not mean the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the premises. Control over the place of work is indicated when the person for whom the services are performed has the right to compel the worker to travel a designated route, to canvass a territory within a certain time frame or work at specific places.
10. *Services performed in order or sequence* — persons told to perform work in a certain sequence generally are considered employees.

Does the worker determine how to accomplish the job?

- [ ] Yes
- [x] No

- If a worker must perform services in the order or sequence set by the person for whom the services are performed, that factor shows the worker is not free to follow his or her own pattern of work but must follow the established routines and schedules of the employer. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set it infrequently. Retaining the right to do so is sufficient to show control.

11. *Oral or written reports* — employees are more likely to be required to submit regular reports to the employer.

Are regular status reports from the worker required?

- [ ] Yes
- [x] No

- A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a certain degree of control.
Common–Law Factors – Continued

12. **Payments by hour, week, month** – typically, employees are paid on a regular basis, while independent contractors are compensated based on pre-established “flat” fee and paid in a lump sum at the completion of the job.

Will the worker be paid (Please check one):
- hourly ____
- bi-weekly ____, or
- lump sum ____ at completion of job.

• Payment by one of these three methods generally points to an employer–employee relationship, provided this method is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on a straight commission basis generally indicates the worker is an independent contractor.

13. **Payment of business and/or travel expenses** – employer payments of a person’s work-related travel expenses generally indicates employee status.

Did the worker submit separate travel expenses?
- Yes
- No

• If the person for whom the services are performed generally pays the worker’s business and travel expenses, he or she is ordinarily an employee. To control expenses, an employer usually retains the right to regulate and direct the worker’s business activities.

14. **Furnishing of tools and materials** – employees, not individual contractors, are generally provided with supplies.

Does the worker provide their own instruments or tools?
- Yes
- No

• The fact the person for whom the services are performed furnishes significant tools, materials and other equipment tends to show the existence of an employer-employee relationship.
15. **Significant investment** – individuals who have a significant personal investment in the facilities they use for work are normally independent contractors.

Does the worker have a significant monetary or capital investment in the project?
Yes [ ] No [ ]

- If the worker invests in facilities not typically maintained by employees (such as an office rented at fair value from an unrelated party) and uses them to perform services, that tends to indicate the worker is an independent contractor. On the other hand, lack of investment in facilities indicates dependence on the person for whom the services are performed for such facilities. Accordingly, an employer employee relationship exists.

16. **Realization of profit or loss** – unlike employees, Independent Contractors realize a profit or loss based on their success in performing a service.

Does the worker have a risk of financial loss if services are not delivered?
Yes [ ] No [ ]

- A worker who can realize a profit or suffer a loss as a result of his or her services (in addition to the profit or loss ordinarily realized by employees) is generally an independent contractor. The worker who cannot is an employee. For example, if a worker is subject to a real risk of economic loss due to a significant investment or a bona fide liability for expenses, such as salary payments to unrelated employees, that indicates the worker is an independent contractor. The risk a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and thus is not sufficient to support independent contractor treatment.
Common-Law Factors - Continued

17. **Working for more than one firm at a time** – individuals who perform services available to the general public are usually treated as independent contractors.

Does the worker have multiple sources of income from the services being performed?

- Yes □
- No □

• If a worker performs more than minimal services for multiple unrelated persons or companies at the same time, that factor generally indicates the worker is an independent contractor. However, a worker who performs services for more than one person may be an employee of each, especially where the two are connected.

18. **Making services available to the general public** individuals who regularly make their services available to the general public are usually treated as Independent Contractors.

Does the worker advertise their services?

- Yes □
- No □

• The fact a worker makes his or her services available to the general public on a regular and consistent basis indicates an independent contractor relationship.
19. **Right to discharge** – Employees can be fired, while Independent Contractors cannot be discharged if they fulfill contract specifications.

Does either party have the right to terminate the relationship at will?

- Yes  
- No

- The right to fire a worker is a factor indicating the worker is an employee and the person with the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer’s instructions. An independent contractor, on the other hand, cannot be fired so long as he or she produces a result that meets the agreed contract specifications.

20. **Right to terminate relationship without incurring liability** – An employee can terminate his employment relationship with his employer at any time, whereas an independent contractor may be liable for breach of contract for leaving work unfinished.

Does either party have the right to terminate the relationship without incurring a liability?

- Yes  
- No

- If the worker has the right to end his or her relationship with the person for whom the services are performed at any time without incurring liability, this indicates an employer–employee relationship.
Obtaining the Independent Contractor/Lecturer Services Form

Special Notes:

This form is now available electronically at the RF Business Form website referenced below.

http://naples.cc.sunysb.edu/Admin/HRSForms.nsf/rfforms?OpenPage&ExpandOutline=1.1

The form is located in the Procurement Department Category listed as Independent Contractor/Lecturer Services Form

http://naples.cc.sunysb.edu/Admin/HRSForms.nsf/33dcf6dd74b5d6285256ad20067b72d/129955e233cc332685256ad3005aa336?OpenDocument

Please contact the Office of Grants Management with any questions concerning the completion and processing of Independent Contractor/Lecturer Services Form at 631–632–9038
Research Foundation of State University of New York
Independent Contractor/Lecturer Services Form

Contact Information
Department: 1
Department Phone: 2

Contractor (full name): 3
Mailing Address: 4

Date: 6
Project: 7
Task: 8
Award: 9
Expense Type: 10
Tax Code: 11

Citizen Status: ☐ U.S. Citizen ☐ Resident Alien
☐ Non-Resident Alien (I-94 Status)

Name of country where service is to be performed: 13

Dates of service: From: ____________________________ To: ____________________________

(Complete A, or B and/or C)
A: $ ________ 15 Contract Fee
B: $ ________ 16 Rate @ $ ________  hourly or ☐ daily, x ________
C: $ ________ 17 Applicable travel expenses (original receipts required)

If multiple payments, amount of this payment: $ ________ Total Payment $ ________

Description of Service to be performed: ____________________________________________

Contractor's Qualifications: _______________________________________________________

Contractor's Employer (current Business Affiliation): _______________________________

CERTIFICATION OF THE PROJECT DIRECTOR
I certify that the work performed is essential to the project, cannot be provided by available staff, the selection was consistent with sponsor guidelines and the rate is appropriate based on the qualifications of the contractor and the nature of the work to be done.

__________________________ (Signature of the Project Director) __________________________

(Date) __________________________

23 Accounts Payable Approval - Date 24 Purchasing Department Approval - Date

(Payee Signature Block and Grants Management Approval on PAGE 2 - Which must be attached.)

Rev. 12/29/00

Page 1 of 2 Pages
INDEPENDENT CONTRACTOR / LECTURER SERVICES FORM

1. DEPARTMENT
2. DEPARTMENT PHONE: necessary for contact purposes
3. CONTRACTOR (FULL NAME): clearly indicated for payment purposes
4. MAILING ADDRESS: this is where the check will be sent to.
5. TAX ID / SOCIAL SECURITY NUMBER: required for tax purposes
6. DATE: indicates when the form was completed
7. PROJECT: Research Foundation account information
8. TASK: Research Foundation account information
9. AWARD: Research Foundation account information
10. EXPENDITURE TYPE: OGM Specialist indicates appropriate category for charging purposes to the grant
11. TAX CODE: The A/P office enters the tax code depending on the type of service performed.
12. CITIZEN STATUS: US Citizen, Resident Alien or Non-Resident Alien * Resident Aliens must supply a copy of their Permanent Residence Card. * HR must review all requests for payments to Non-Resident Aliens
13. NAME OF COUNTRY WHERE SERVICE IS TO BE PERFORMED: if outside the US the tax implications are different than if the work is to be performed within the US.
14. DATES OF SERVICE: from and to…required to insure that services were within the project’s active dates.
15. CONTRACT FEE: $10,000.00 and over requires the IC Agreement form to be completed and signed by IC. The OGM signs on behalf of the RF.
16. RATE: hourly or daily
17. TRAVEL EXPENSES: original receipts are required for nontaxable payment
18. PAYMENT: indicate whether multiple payments and the amount of this payment, also indicate total payment to be made to IC.
19. DESCRIPTION OF SERVICE: detailed explanation of work being performed by the IC. If this explanation is too detailed to fit within the allotted space please attach any necessary information.
20. CONTRACTOR’S QUALIFICATIONS: this information will indicate how this person is more qualified to perform the service. A CV serves to fulfill this requirement.
21. CONTRACTOR’S EMPLOYER: current business affiliation is necessary to establish whether this person is and should be appropriately being paid as an IC.
22. CERTIFICATION OF THE PROJECT DIRECTOR: signature of PD and dated certifies that the work performed is essential to the project and cannot be provided by available staff.
23. ACCOUNTS PAYABLE APPROVAL – DATE
24. PURCHASING DEPT. APPROVAL – DATE
25. PAYEE SIGNATURE: IC signs and dates this form agreeing to the terms and conditions provided by this document, and to perform services as described herein.
26. GRANTS MGT. APPROVAL: after review and confirmation that this person should be classified as an IC the GMS signs and dates this form.
Research Foundation of State University of New York
Independent Contractor/Lecturer Services Form

INDEPENDENT CONTRACTOR

As an independent contractor, I am aware that signing this document means I have read and understand the following conditions describing my relationship with The Research Foundation of the State University of New York.

As an independent contractor I am:

- not eligible to file for, or collect unemployment benefits,
- not eligible for Worker's Compensation coverage,
- solely responsible for complying with all federal, state, and local requirements regarding reporting and paying taxes,
- required to assign all right, title, and interest in the data or material produced as a result of project activities to The Research Foundation of the State of New York, and prohibited from publishing, permitting to be published, or distributing any information concerning the results or conclusions of the data or material produced during or towards project activities. These are considered "works for hire" and as such are the property of The Research Foundation of the State of New York.
- able to retain ownership of intellectual property included in the deliverables to the extent that I will have independently developed the intellectual property without Research Foundation financial support. With respect to such property, I agree to grant The Research Foundation of the State of New York a royalty free, nonexclusive license to use such intellectual property for purposes consistent with the research foundation's obligations under the grant or contract that funds this project.

My engagement as an independent contractor with the Research Foundation may be canceled by the Foundation upon 30-days written notice.

If I have any questions, or disagree with the information listed on the document, or need any additional information concerning my status as an independent contractor, I am free to contact the Office of Grants Management at (631) 632-9038.

I agree to the terms and conditions provided by this document, and to perform services as described herein.

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<td>26</td>
<td>Grants Management Approval</td>
<td>Date</td>
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Office of Grants Management, Stony Brook NY 11794-3365 telephone (631) 632-9038 / fax (631) 632-9147

(Project Director's Signature Block/ A.P. and Purchasing Approval on PAGE 1 - Which must be attached )

Rev. 12/29/00 Page 2 of 2 Pages
Classification of Independent Contractors – Project Director Responsibility

- PI’s are responsible to submit documentation that the worker is properly classified as an Independent Contractor (IRS Twenty Factors)
- Work must be essential to the project
- Service cannot be provided by any other individual receiving salary under the support of the award
- Fee and expenses are appropriate to the project
- IC: Non Resident Alien must be submitted to Human Resources for approval
- IC: Resident Alien: Copy of Permanent Resident Card Required

Note: The Independent Contractor is subject to the control and direction of the organization for which the services are performed ONLY as the result of the work and NOT as to the means.
NSF Consultant Limitation

The Appropriation Act applicable to NSF for Fiscal Year (FY) 2006 does not contain a limitation on payments to consultants under NSF awards and therefore, this constraint has been eliminated for FY 2006 appropriated funds. Payments, however, should be comparable to the normal or customary fees charged and received by the consultant for comparable services, especially on non-government contracts and grants. Archived rates are available on the Policy Office website.

Archived Consultant Rate of Pay

- 2005 - $537
- 2004 - $521 (increased to $524 March 2004 due to Federal pay increase; the current $524 is retroactive to January 1, 2004)
- 2003 - $513
- 2002 - $498
- 2001 - $482
- 2000 - $453
Independent Contractor

Non Resident Alien

All NRA’s To be Reviewed and Approved by Human Resource Services

• "Classification of Aliens as Residents or Nonresidents for Tax Purposes" provides definitions and describes the tests used to make the determination. In addition, a nonresident alien must have the appropriate visa type or NAFTA status in order to be paid as an independent contractor.

• "Visa and NAFTA Status") provides information about the employability of different visa holders. Nonresident aliens who hold an F or J visa status have special conditions (e.g., may require written authorization from the designated school official). Refer to the Nonresident Alien section of the Personnel Operations Manual for specific conditions.

• If it is determined that a person is a nonresident alien and will be either (a) providing incidental services in the United States or (b) only receiving reimbursement for expenses (not compensation), refer to the ”Exceptions” block.

RF Accounts Payable Link:
http://ws.cc.stonybrook.edu/procurement/employees/accountspayable/research_accounts_payable.shtml

RF Human Resources Hyperlink http://ws.cc.stonybrook.edu/hr/resources
Modification/Amendments to Formal Independent Contractor Agreements

- An existing Independent Contractor Agreement may be amended for one or more of the following:
  - Increase in Total Compensation
  - Contract Extension to a maximum period of one calendar year (not to exceed the term date of the Project)

Note: (See Exhibit B: Modification Agreement)

A justification by the PI should accompany the request for any amendment detailing how the requested change is beneficial to the project

All documentation is subject to internal review in accordance with RF Policies and Procedures by the Office of Grants Management
Processing IC’s Flow–Thru

- PI completes IC form (all fields must be complete)
- IRS 20 Factors must be completed by PI
- C.V. or Resume required
- Independent Contractor Agreement (Required for payments of $10,000 or greater within a 12 month period)
- Non Resident Alien status must be reviewed by Human Resources
- Resident Alien status requires a copy of His/Her Permanent Resident Card
Grants Management Review

All fields should be completed with all pertinent information

• Review the responses to the IRS 20 Common Law Factors

• Review CV or Resume for relationship to SUNY SB and experience in the field

• Review formal Agreement $10k or above (if applicable)

• Note: Formal Agreements are necessary if payment/s to individual total $10k or above within a 12 month period

• When did the service take place? (Service must take place within the active dates of the grant)

• How does the service benefit the project?

• Is the individual classified correctly?
Grants Management Review Continued

- Review and attach A/P Inquiry screen detailing previous payments from PIAI to determine if IC Agreement is required
- Are IC services budgeted
- Meets NSF guidelines and appropriate rate cap (if applicable)
- Expenditure Types for Independent Contractor Form
  1. GNS Consultant Services
  2. GNS Other Prof Services
  3. GNS General
  4. GNS Lecturer
  5. GNS IT Consultant Design Development Services
- Upon satisfactory review both GMS and Manager of Sponsored Program Expenditures will approve payment
- Approved RF IC/Lecturer Services form along with accompanying documentation submitted to RF Accounts Payable for single payment or RF Purchasing for multiple payments for Encumbering
- IC Non Resident Alien Forms should be submitted to HR for review
- For Resident Alien – Copy of Permanent Resident Card Required
- If you do not have all the necessary information, ask the Project Director or Administrator
Nontaxable or Taxable Income

- Payments to reimburse an independent contractor for travel do not have to be reported to the Internal Revenue Service (IRS) if the contractor provides adequate documentation of the expenses to the RF.

- If travel expenses are not supported by adequate original documentation, the total amount of the payment is considered non-employee compensation and must be reported to the IRS and to the contractor on IRS Form 1099-MISC, "Statement for Recipients of Miscellaneous Income."

- This policy pertains to United States citizens and resident aliens. http://ws.cc.stonybrook.edu/procurement/faq/travel.shtml#3

- For Non Resident Alien’s please contact RF Human Resources For more information. http://ws.cc.stonybrook.edu/hr/misc/tax/nonresident_alien_faq.shtml

- "Overview of Miscellaneous Income Payments to Nonresident Aliens
"Classification of Aliens as Residents or Nonresidents for Tax Purposes"

- "Requirements for Payments to Nonresident Alien Independent Contractors and Royalty/Rent Recipients

- All non–overnight meal payments are taxable, whether included in the contractor's fee or billed separately from the fee.
Rates for Reimbursement

• When using per diem allowances, rates from the U.S. General Services Administration must be used for meals and lodging. GSA rates are provided online by the GSA. http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=17703&noc=T

• Current IRS rates must be used for mileage currently at 58.5 cents a mile for all business miles driven, up from 50.5 cents a mile in effect the first six months of 2008. http://www.irs.gov/newsroom/article/0,,id=184163,00.html

• These rates are the same as the RF rates. Independent contractors may be reimbursed for reasonable and actual travel expenses that exceed RF rates, if the expenses are adequately documented and are permitted by sponsor policy and contract provisions.
Documentation Requirements

- **Receipts**

  Original receipts are required. If a contractor provides copies of receipts instead of original receipts, the contractor must provide justification for the use of copies before the expense is reimbursed.

- Reimbursement with copies of receipts are taxable income.
Is there a waiting period from the time a person is an employee to being engaged as an Independent Contract?

- The Research Foundation has No waiting period, however IC work should be significantly different from previous employment, otherwise may be considered an employee.

- IRS will review an individual who receives a W2 (Employee) and Form1099 (IC) within the same calendar year.
Questions or Feedback
References

- https://portal.rfsuny.org/portal/page/portal/RF_administrators
- http://naples.cc.sunysb.edu/Admin/HRSForms.nsf/33dcf6dd74b5d6c285256ad20067b72d/848147ab3fd90f8f85256cfb006199117OpenDocument
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- http://naples.cc.sunysb.edu/Admin/HRS.nsf/pages/IndependentContractor
- http://naples.cc.sunysb.edu/Admin/HRS.nsf/pages/IndependentContractor_ClassificationGuidelines
- http://naples.cc.sunysb.edu/Admin/HRS.nsf/pages/IndependentContractor_ClassificationGuidelines_Responsibilities
- http://naples.cc.sunysb.edu/Admin/HRS.nsf/pages/IndependentContractor_ClassificationGuidelines_Classifying
- http://naples.cc.sunysb.edu/Admin/HRSForms.nsf/33dcf6dd74b5d6c285256ad20067b72d/129955e233cc332685256ad3005aa3367OpenDocument
- http://www.topeshelon.com/recruiters/contracting/20point.htm
Contact

• Kristen Ford  
  Office of Grants Management  
  • 631–632–9173  
  • kristen.ford@stonybrook.edu

• Joseph F. Scarola  
  Office of Grants Management  
  • 631–632–4185  
  • joseph.scarola@stonybrook.edu
Exhibits Attached

• IRS 20 Factors of the Common Law Test (Exhibit A)

• Research Foundation of State University of New York
  Independent Contractor/Lecturer Services Form
  (Page 1 and Page 2) (Exhibit B)

• Engaging Independent Contractor Flow Chart
  (Exhibit C)

• Independent Contractor Agreement (Exhibit D)

• Independent Contractor Amendment to Agreement
  (Exhibit E)
Name of Independent Contractor:

Department:

Contact: ___________________________ Telephone #: ___________________________

(please print)

"IRS 20 FACTORS OF THE "COMMON LAW TEST"

The following factors will assist you in determining whether a worker is an employee or an Independent Contractor. Please include additional information not covered by the "Common Law Test" that clarifies or supports the worker's classification. Submit this test with either an invoice or on official stationery or a Letter of Agreement with each standard voucher presented for payment. Please respond to each of the following:

1. *Compliance with instructions* – employees must comply with another person’s instructions on when, where, and how the work is performed. In a true Independent Contractor relationship, the only control to which the contractor is subject is the result.

   Does the worker (not the employer) control the means and method of how the work is done?

   Yes ☐ No ☐

   Does the worker perform the task without supervision from the firm (Contracting Department)?

   Yes ☐ No ☐

2. *Training required* – Independent Contractors are not normally trained and are hired for their expertise in a field.

   Is the worker engaged in an activity requiring extensive skill, education, or expertise?

   Yes ☐ No ☐

3. *Interaction of services into business operations* – employee’s services are usually a vital part of the daily operation of an employer’s operation.

   Are the services performed by the worker required for the daily operation of the business (hiring department)?

   Yes ☐ No ☐

* Factors considered by the IRS to carry more “weight” in determination of worker status.

Exhibit A
"IRS 20 FACTORS OF THE "COMMON LAW TEST"

4. Services rendered personally – employees personally render the services, while contractors may delegate such work to others.

Does the worker have the option of delegating work (to non-employees)?
   Yes □      No □

5. Hiring, supervising, and paying assistants – usually individuals who perform all these functions are treated as Independent Contractors.

Does the worker hire, supervise, and pay assistants?
   Yes □      No □

6. Continuing relationship – employees are usually hired for an ongoing period, while a contractor’s work ends when the job does.

Is the job of relatively short duration?
   Yes □      No □

7. Set hours of work – employees should adhere to a work schedule established by the employer.

Is routine or schedule established only by the worker?
   Yes □      No □

8. Full time required – generally, employees work full-time for an employer, while Independent Contractors work when and for whom they choose.

Does the worker offer their services out to the general public?
   Yes □      No □

9.* Performing work on employer’s premise – those working at the employer’s site may be viewed as employees.

Where will work be performed? ________________________________

10. Services performed in order or sequence – persons told to perform work in a certain sequence generally are considered employees.

Does the worker determine how to accomplish the job?
   Yes □      No □

* Factors considered by the IRS to carry more "weight" in determination of worker status
“IRS 20 FACTORS OF THE “COMMON LAW TEST”

11. **Oral or written reports** – employees are more likely to be required to submit regular reports to the employer.

Are regular status reports from the worker required?

Yes ☐ No ☐

12. **Payments by hour, week, month** – typically, employees are paid on a regular basis, while independent contractors are compensated based on pre-established “flat” fee and paid in a lump sum at the completion of the job.

Will the worker be paid (Please check one): hourly _____, bi-weekly _____, or lump sum _____ at completion of job.

13. **Payment of business and or travel expenses** – employer payments of a person’s work-related travel expenses generally indicates employee status.

Did the worker submit separate travel expenses?

Yes ☐ No ☐

14.* **Furnishing of tools and materials** – employees, not individual contractors, are generally provided with supplies.

Does the worker provide their own instruments or tools?

Yes ☐ No ☐

15. **Significant investment** – individuals who have a significant personal investment in the facilities they use for work are normally independent contractors.

Does the worker have a significant monetary or capital investment in the project?

Yes ☐ No ☐

16.* **Realization of profit or loss** – unlike employees, Independent Contractors realize a profit or loss based on their success in performing a service.

Does the worker have a risk of financial loss if services are not delivered?

Yes ☐ No ☐

17.* **Working for more than one firm at a time** – individuals who perform services available to the general public are usually treated as independent contractors.

Does the worker have multiple sources of income from the services being performed?

Yes ☐ No ☐

* Factors considered by the IRS to carry more “weight” in determination of worker status
**“IRS 20 FACTORS OF THE “COMMON LAW TEST”**

18. *Making services available to the general public* – individuals who regularly make their services available to the general public are usually treated as Independent Contractors.

Does the worker advertise their services?
   Yes ☐   No ☐

19.* Right to discharge – Employees can be fired, while Independent Contractors cannot be discharged if they fulfill contract specifications.

Does either party have the right to terminate the relationship at will?
   Yes ☐   No ☐

20. Right to terminate relationship without incurring liability – An employee can terminate his employment relationship with his employer at any time, whereas an independent contractor may be liable for breach of contract for leaving work unfinished.

Does either party have the right to terminate the relationship without incurring a liability?
   Yes ☐   No ☐

---

Authorizer’s Name (Print)       Title

Signature                        Date

* Factors considered by the IRS to carry more “weight” in determination of worker status

Based on 1987 Guide – Revenue Ruling 87-41
Research Foundation of State University of New York
Independent Contractor/Lecturer Services Form

Date: 6

Project 7
Task 8
Award 9
Expense Type 10
Tax Code 11

Citizen Status: [ ] U.S. Citizen [ ] Resident Alien
[ ] Non-Resident Alien (I-94 Status)
Citizen of (country) ________________________________________

Name of country where service is to be performed: 13

Dates of service: From: ___________ To: ___________

(Complete A, or B and/or C)
A: $ ___________ 15
B: $ ___________ 16
C: $ ___________ 17

Contract Fee
Rate @ $ ___________ 16
hourly or daily, x ___________

Applicable travel expenses (original receipts required)

If multiple payments, amount of this payment: $ ___________ 18
Total Payment $ ___________

Description of Service to be performed: 19

Contractor’s Qualifications: 20

Contractor’s Employer (current Business Affiliation): 21

CERTIFICATION OF THE PROJECT DIRECTOR

I certify that the work performed is essential to the project, cannot be provided by available staff, the selection was consistent with sponsor guidelines and the rate is appropriate based on the qualifications of the contractor and the nature of the work to be done.

_________________________ ____________________________
(Signature of the Project Director) (Date)

Accounts Payable Approval - Date __________________ Purchasing Department Approval - Date __________________

(Payee Signature Block and Grants Management Approval on PAGE 2 - Which must be attached __)

Rev. 12/29/00

Page 1 of 2 Pages

Exhibit B
Research Foundation of State University of New York
Independent Contractor/Lecturer Services Form

INDEPENDENT CONTRACTOR

As an independent contractor, I am aware that signing this document means I have read and understand the following conditions describing my relationship with The Research Foundation of the State University of New York.

As an independent contractor I am:

- not eligible to file for, or collect unemployment benefits,
- not eligible for Worker's Compensation coverage,
- solely responsible for complying with all federal, state, and local requirements regarding reporting and paying taxes,
- required to assign all right, title, and interest in the data or material produced as a result of project activities to The Research Foundation of the State of New York, and prohibited from publishing, permitting to be published, or distributing any information concerning the results or conclusions of the data or material produced during or towards project activities. These are considered "works for hire" and as such are the property of The Research Foundation of the State of New York.
- able to retain ownership of intellectual property included in the deliverables to the extent that I will have independently developed the intellectual property without Research Foundation financial support. With respect to such property, I agree to grant The Research Foundation of the State of New York a royalty fee, nonexclusive license to use such intellectual property for purposes consistent with the research foundation's obligations under the grant or contract that funds this project.

My engagement as an independent contractor with the Research Foundation may be canceled by the Foundation upon 30-days written notice.

If I have any questions, or disagree with the information listed on the document, or need any additional information concerning my status as an independent contractor, I am free to contact the Office of Grants Management at (631) 632-9038.

I agree to the terms and conditions provided by this document, and to perform services as described herein.

Payee Signature __________________________ Date __________

Grants Management Approval __________________________ Date __________

Office of Grants Management, Stony Brook NY 11794-3366 telephone (631) 632-9038 / fax (631) 632-9147

(Project Director's Signature Block/ A.P. and Purchasing Approval on PAGE 1 -Which must be attached )

Rev. 12/29/00 Page 2 of 2 Pages
Engaging Independent Contractor Flow Chart

A-2

Notify the person or sole proprietor of status as an independent contractor. If fees plus expenses are:

- $599.99 or less (Notification is not required)
- $600.00 to $2,500.00 (The Working Relationship Form or equivalent must be sent to contractor)
- $2,500.00 to $9,999.99 (The Working Relationship Form or equivalent must be sent, signed by contractor, and returned)
- $10,000 or more (Formal contract is signed and returned)

Engage the contractor using appropriate procurement instrument and provide contractor with copy of procurement instrument.

Contractor provides services and services are approved by project director.

Review and approve payment by following the appropriate RF payment procedures.

Pay the contractor.

B-2

Request for Services is approved.

Exhibit C
Engaging Independent Contractor Flowchart

A project requires essential services that cannot be provided by any other person receiving salary support under the award. Submit a request for services.

Determine if the service provider is:

Person or Sole Proprietor

Is the person performing incidental services and/or receiving reimbursement for expenses?

No

Employee

Follow employee appointment process. Go to Personnel or Payroll Manual for information on appointments to RF payroll.

END

Independent Contractor

Submit Form 884 or equivalent to the appropriate business office to demonstrate that the:
1. work is properly classified as an independent contractor.
2. work is essential to the project.
3. services cannot be provided by any other person receiving salary support under the award.
4. fees and expenses are appropriate.

Review and sign the Form 884 or equivalent to certify that the classification is correct and the engagement is consistent with sponsor, SUNY, and RF compliance requirements.

To B-2

Partnership, Corporation, or Other Organization

Location can engage without formally classifying the worker.

Review request to ensure that the engagement is consistent with sponsor and RF compliance requirements.

To A-2

Exhibit C
AGREEMENT BETWEEN
THE RESEARCH FOUNDATION OF STATE UNIVERSITY OF NEW YORK
AND
INDEPENDENT CONTRACTOR

R.F. Account __________, Award __________, Task __________

MADE by and between THE RESEARCH FOUNDATION OF STATE UNIVERSITY OF NEW YORK, a nonprofit, educational corporation organized and existing under the laws of the State of New York, with its principal offices located at State University Plaza, Broadway, Albany, New York, 12246 (Mailing address: Post Office Box 9, Albany, New York 12201-0009), hereinafter referred to as the "FOUNDATION," and __________, having a place of business at __________, an individual hereinafter referred to as "INDEPENDENT CONTRACTOR."

WITNESSETH:

WHEREAS, the FOUNDATION is acting for the benefit of the State University of New York at Stony Brook; sometimes referred to as the "UNIVERSITY"; and

WHEREAS, the FOUNDATION has been awarded a certain Grant Number __________ from the __________ (Project __________; Award __________, Task __________) to carry out a project entitled "__________"; (hereinafter the "PROJECT"); and

WHEREAS, the FOUNDATION desires the INDEPENDENT CONTRACTOR to perform certain services for the FOUNDATION in connection with the PROJECT; and

WHEREAS, INDEPENDENT CONTRACTOR has represented to the FOUNDATION that INDEPENDENT CONTRACTOR is competent, willing and able to perform such services for the FOUNDATION.

NOW, THEREFORE in consideration of the premises and the mutual covenants and agreements contained herein it is mutually agreed by and between the respective parties as follows:

1. **Scope of Work**

   Consultant agrees to perform, as an independent Contractor, and not as an agent or employee of the FOUNDATION, all of the services set forth in Exhibit "A" appended hereto and made a part hereof to the satisfaction of the FOUNDATION's Principal Investigator __________.

2. **Compensation**

   In full and complete consideration of INDEPENDENT CONTRACTOR's performance hereunder, the FOUNDATION agrees to compensate CONSULTANT __________.

3. **Term and Termination**

   Unless sooner terminated as provided herein, this Agreement shall continue in full force and effect from __________ through __________. It is understood and agreed that the FOUNDATION may terminate this Agreement upon written notice by registered mail addressed to INDEPENDENT CONTRACTOR at the address indicated herein, or such other address as INDEPENDENT CONTRACTOR may designate in writing, whenever the FOUNDATION determines, in its discretion, that such termination would be in the best interests of the FOUNDATION.
It is understood and agreed, however, in the event that FOUNDATION has evidence that INDEPENDENT CONTRACTOR is in default upon any of its obligations hereunder, FOUNDATION shall be entitled to either suspend the contract until an acceptable remedy is established, or to terminate the agreement. Such termination shall be effective immediately upon receipt of official written notification from FOUNDATION. FOUNDATION shall also be entitled to pursue any rights or remedies which FOUNDATION may have against INDEPENDENT CONTRACTOR by reason of such default, and FOUNDATION may withhold any payments to INDEPENDENT CONTRACTOR for the purpose of set-off until such time as the exact amount of damages may be determined.

4. Rights in Work Product

INDEPENDENT CONTRACTOR agrees that material produced by INDEPENDENT CONTRACTOR hereunder shall be considered "work for hire" which shall be owned by FOUNDATION. INDEPENDENT CONTRACTOR agrees that INDEPENDENT CONTRACTOR shall not claim or assert any proprietary interest in any of the data or materials required to be produced or delivered by INDEPENDENT CONTRACTOR in the performance of INDEPENDENT CONTRACTOR's obligation hereunder, and hereby assigns all rights, title and interest in said data and materials to FOUNDATION. INDEPENDENT CONTRACTOR warrants any material produced by INDEPENDENT CONTRACTOR hereunder shall be original except for such portion from copyrighted works as may be included with the permission of the copyright owners thereof, that it shall contain no libelous or unlawful statements or materials, and will not infringe upon any copyright, trademark, patent, statutory or other proprietary rights of others, and that INDEPENDENT CONTRACTOR will hold harmless the FOUNDATION from any costs, expenses and damages resulting from any breach of this warranty. INDEPENDENT CONTRACTOR further agrees not to publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to this Agreement without the prior written consent of the FOUNDATION. Notwithstanding the foregoing, INDEPENDENT CONTRACTOR will retain ownership of intellectual property included in deliverables to the extent that said intellectual property has been independently developed by INDEPENDENT CONTRACTOR without Research Foundation financial support. With respect to such INDEPENDENT CONTRACTOR owned intellectual property, INDEPENDENT CONTRACTOR hereby grants to Research Foundation a royalty-free, nonexclusive license to use such intellectual property for purposes consistent with the Research Foundation's obligations under the grant or contract which funds this project.

5. Assignment

It is understood and agreed that the services to be rendered by INDEPENDENT CONTRACTOR are unique and that INDEPENDENT CONTRACTOR shall not assign, transfer, contract or otherwise dispose of INDEPENDENT CONTRACTOR's rights or duties hereunder, in whole or in part, to any other person, firm or corporation.

6. Status of Parties

The nature of the relationship which the INDEPENDENT CONTRACTOR shall have to the FOUNDATION pursuant to this Agreement shall be that of an independent contractor. In connection with its status as an independent contractor, INDEPENDENT CONTRACTOR hereby warrants that it is in compliance with all tax filing and similar requirements imposed on independent contractors, and acknowledges that it is solely responsible for paying income taxes, FICA taxes, and other taxes and assessments which arise from receipt of consulting payments under this Agreement. This Agreement shall not be construed to contain any authority either express or implied, enabling the INDEPENDENT CONTRACTOR to incur any expense or perform any act on behalf of the FOUNDATION.
7. **Entire Agreement**

This Agreement represents the entire Agreement and understanding of the parties hereto and no prior writings, conversations or representations of any nature shall be deemed to vary the provisions hereof. This Agreement may not be amended in any way except by a writing duly executed by both parties hereto.

8. **Compliance with Laws and Regulations: General Obligations**

a) In the performance of the work authorized pursuant to this agreement, INDEPENDENT CONTRACTOR agrees to comply with all applicable laws and regulations, as well as policies of the sponsor applicable to INDEPENDENT CONTRACTOR’s performance hereunder, and the express terms of FOUNDATION’s agreement with the sponsor, which shall be deemed to be inserted herein, and this agreement shall be read and enforced between the parties as though all such provisions were included verbatim herein.

The following is optional language to be used when independent contractor is subject to federal debarment provisions (when issued under a federal grant, cooperative agreement, scholarship, or fellowship).

b) CONTRACTOR acknowledges compliance with Executive Order 12549, as amended by Executive Order 12689, “Debarment and Suspension”, and 48 CFR 9.406-409; and must provide certification in accordance with Exhibit B which is attached to and made a part of this agreement. By executing this agreement, CONTRACTOR makes the required certification.

The following is optional language to be used when independent contractor is subject to the requirements of OMB Circular A-133 (nonprofit subrecipients expending $300,000 or more during a fiscal year).

c) INDEPENDENT CONTRACTOR acknowledges it is subject to OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations) if it expends $300,000 or more in federal funds during its fiscal year, and certifies it is in compliance with the audit requirements of the Circular.

INDEPENDENT CONTRACTOR agrees to have a single audit made in accordance with Circular A-133 if it expends $300,000 or more in federal funds during its fiscal year, except if it elects to have a program-specific audit conducted. INDEPENDENT CONTRACTOR may elect to have a program specific audit conducted if it expends federal funds only under one federal program and the program’s laws, regulations, or grant agreements do not require a financial statement audit.

INDEPENDENT CONTRACTOR agrees to submit written notification to the FOUNDATION promptly following completion of the audit. The written notification must confirm that Circular A-133 audits were conducted and filed timely, and whether there were any material issues or non-compliance, reportable internal control conditions, pass-through entity awards, related findings, or prior unresolved findings. Subrecipients expending $300,000 or more in federal funds must submit the Data Collection Form for Reporting in addition to the written notification. INDEPENDENT CONTRACTOR understands it has the option of providing its own letter of written notification, or it may request and use the FOUNDATION’s letter as a guide.

INDEPENDENT CONTRACTOR agrees it will submit one copy of the reporting package described in Circular A-133 to the FOUNDATION when the “schedule of audit findings and questioned costs” discloses findings, or the “summary schedule of prior audit findings” reports findings related to the FOUNDATION. INDEPENDENT CONTRACTOR will inform the FOUNDATION of the corrective action that has been or will be taken for audit findings related to the FOUNDATION. In addition, INDEPENDENT CONTRACTOR will immediately inform the FOUNDATION of material operational weaknesses disclosed in audits performed after execution of this agreement.
INDEPENDENT CONTRACTOR understands that if, in the opinion of the FOUNDATION and/or sponsor, it fails to comply with the audit requirements, appropriate sanctions may be imposed including, but not limited to, those in Circular A-133, Section 2.25. INDEPENDENT CONTRACTOR certifies that any penalties or expenditure disallowances imposed on the FOUNDATION resulting from instances of noncompliance with federal laws and regulations will be reimbursed by INDEPENDENT CONTRACTOR.

INDEPENDENT CONTRACTOR agrees to submit written notification, and the Data Collection Form for Reporting and the reporting package (if appropriate) to: The Research Foundation of State University of New York, Director, Office of Sponsored Program Services, Post Office Box 9, Albany, New York 12201 0009, Attention: Circular A133 Audits.

INDEPENDENT CONTRACTOR acknowledges if it expends less than $300,000 a year in federal awards, it is exempt from the audit requirements of Circular A-133 for that year. However, records must be available for review or audit as requested by the appropriate official of the federal agency, pass-through entity, and General Accounting Office (GAO). In addition, INDEPENDENT CONTRACTOR acknowledges that Circular A-133 neither limits nor constrains the authority of federal agencies, Inspectors General, or GAO to conduct or arrange for additional audits.

The following is optional language to be used when subcontractor is subject to the NIH policy requiring education on the protection of human research participants for principal investigators receiving NIH contract awards for research.

d) CONTRACTOR acknowledges and understands the NIH policy requiring education on the protection of human research participants for principal investigators, and all persons identified as key personnel receiving NIH contract awards for research involving human research participants.

CONTRACTOR must submit a description of the education as documentation that the requirement has been completed by the principal investigator, all persons identified as key personnel, including subcontractors or consultants, who are responsible for the design and conduct of the research under the contract. The description of education must include the persons' names, the title of the education program completed by each named person, and a one-sentence description of the program. The documentation is to be furnished in the first progress report, or with the first deliverable submitted to NIH, after October 1, 2000, whichever occurs earlier.

CONTRACTOR can meet the NIH education requirement by using readily available curricula, including the FOUNDATION's short-term program for education on the protection of human research participants available at: http://www.rfsuny.org/

CONTRACTOR agrees to describe the education completed and submit documentation for replacement/substitution of the principal investigator, and all persons identified as key personnel, including subcontractors or consultants, who are responsible for the design and conduct of the research under the contract.

The following is optional language to be used when subcontractor is subject to the HIPAA regulations regarding the protection of Individually Identifiable Health Information.

e) Provisions Applicable to Receipt and Use of Individually Identifiable Health Information by Contractor, Subcontractor or Independent Contractor

It is expected that CONTRACTOR will receive information from Research Foundation (RF) project staff members to enable CONTRACTOR to perform work and services for RF under this Agreement. Some of the information provided may be Individually Identifiable Health Information (IIHI) as defined in the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and the regulations issued thereunder. CONTRACTOR is hereby granted permission to receive and use IIHI provided by RF project staff members for purposes of performing work and services under this Agreement, in consideration of which CONTRACTOR agrees to the following privacy provisions.
CONTRACTOR will use appropriate safeguards to prevent use or disclosure of IIHI other than as provided by this Agreement.

CONTRACTOR will not use or further disclose IIHI other than as required to perform contract work hereunder or as required by law.

CONTRACTOR will report any unauthorized use or disclosure of IIHI that comes to CONTRACTOR’s attention to the RF.

If CONTRACTOR shares IIHI with third parties, CONTRACTOR will assure that said third parties are subject to the same privacy obligations that are set forth in these provisions.

CONTRACTOR will provide access to IIHI in accordance with 45 CFR 524.

CONTRACTOR will make IIHI available for amendment, and incorporate amendments in accordance with 45 CFR 526.

CONTRACTOR will make information available to account for disclosures in accordance with 45 CFR 164.528.

CONTRACTOR will make its records regarding procedures and practices covering use and disclosure of IIHI available for purposes of determining CONTRACTOR’s compliance with these privacy provisions.

As termination of this Agreement, CONTRACTOR will, if feasible, return or destroy IIHI received from the RF project staff members and retain no copies thereof.

It is understood and agreed that RF may terminate this Agreement if the RF determines that CONTRACTOR is in material breach of the privacy provisions set forth above.

9. **Liability to Third Parties**

If either INDEPENDENT CONTRACTOR or FOUNDATION is negligent in carrying out its obligations hereunder, the negligent party agrees to take responsibility for, and indemnify the innocent party against the consequences of said negligence, including claims of third parties for damages and expenses which arise from or are related to the negligent party’s performance or failure to perform pursuant to this agreement.

10. **Modifications**

This agreement may be changed, amended, modified or extended only by a writing duly executed by the respective parties hereto.

11. **Governing Law**

Regardless of the place of physical execution or performance this agreement shall be construed according to the laws of the State of New York and shall be deemed to have been executed in the State of New York.

12. **Order of Precedence**

In the event of any inconsistency between clauses 1-12 of this Agreement, and the attached Exhibit A, the inconsistency should be resolved by giving precedence to clauses 1-12.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

The Research Foundation of
State University of New York

By____________________

Date__________________

Independent Contractor

By____________________

Date__________________
CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS
- LOWER TIER TRANSACTION

PURPOSE

Federal regulations prohibit participants in federal non-procurement transactions from purchasing goods and services from organizations excluded from participation in federal programs due to debarment or suspension. These regulations are set forth in the May 26, 1988 Federal Register. The Certification below must be returned to the Research Foundation office from which it originated. The form requires you to certify that neither your firm nor principals of the firm are debarred or suspended from participating in federal non-procurement transactions. In addition, although the certification refers to “proposals,” the form must be signed without modification even when an order, subcontract, or consulting agreement is not preceded by submission of a proposal. See reverse for certification instructions.

CERTIFICATION

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

__________________________________________  _________________
Authorized Signature                      Date

Exhibit D
Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out on the reverse.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled, “Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
MODIFICATION TO INDEPENDENT CONTRACTOR AGREEMENT BETWEEN
THE RESEARCH FOUNDATION OF STATE UNIVERSITY OF NEW YORK AND

R.F. Account # __________________
P.O. # __________________________

The Agreement heretofore entered into between THE RESEARCH FOUNDATION OF
STATE UNIVERSITY OF NEW YORK (FOUNDATION) and (INDEPENDENT
CONTRACTOR) made effective as of the ___ day of ______, 2000 is hereby amended as
follows:

1. "TERM AND TERMINATION": TERM, is amended to extend the term of the
Agreement through __________, 2000. The new term is __________.

2. "COMPENSATION": BUDGET, is amended to increase/decrease the amount of this
agreement by $_____________ to a new total of $_____________.

3. Except as amended as hereinabove set forth, the said agreement between the parties is
hereby ratified and confirmed and shall continue in full force and effect according to its
terms.

THE RESEARCH FOUNDATION OF
STATE UNIVERSITY OF NEW YORK

INDEPENDENT CONTRACTOR

By__________________________ By__________________________

DATED:____________________ DATED:_____________________