Independent Contractor Policy

1.0 Purpose

This policy provides guidance for determining when an Independent Contractor can provide services to the University.

2.0 Policy

2.1 From time-to-time, services are provided to the University under arrangements other than by way of employee appointments.

2.2 Unless the provision of such services is restricted by the University's collective agreements, the University may contract for these services with an independent contractor carrying on business as an individual or as a company.

2.3 An independent contractor may take the form of a sole proprietorship, a partnership, or a limited company, and have established a name that it uses to carry on business.

2.4 An Independent Contractor Agreement (ICA) or an Agreement for Services (AFS) will be required.

2.5 Payment to the contractor through the accounts payable system will be made following approval of invoices submitted under the terms of the ICA.

2.6 If the independent contractor is not a resident of Canada a T4ANR will be issued and non-residents tax will be withheld unless a waiver is obtained.

3.0 Payments to employees

3.1 An ICA cannot be used if an employer/employee relationship exists, that is, if the individual performing the services is subject to the University's direct control regarding the work to be done and how it is to be performed. If the extent of the University's control is unclear, other tests may be applied (see Appendix 1).

3.2 When an employer/employee relationship exists, standard University appointment procedures must be followed. The individual must be paid through the payroll system, with payments subject to source deductions such as income tax, CPP and EI, and will be reported on a T4 slip.

3.3 An employee of SFU who performs additional work for the University for additional pay cannot do so using an ICA.

Interpretation

Questions of interpretation or application of this policy or its procedures shall be referred to the Vice President, Finance and Administration, whose decision shall be final.
Appendix 1

Determination of Employment Relationship

Various indices have evolved from court cases over the years as to whether an individual is an employee or self-employed. These indices are often grouped into "tests". For example, one general test is the control test. Others may be described as the integration test, the economic reality test and the specified result test.

1. **Control**

   In an employer/employee relationship, the employer has the right to control the employee's method of doing the work. This might be compared to the situation (i.e. self-employment) in which the work to be done is controlled but not the manner of doing it. In the former, the employer determines what is to be done and how it is to be done; in the latter, the employer determines what is to be done but not how it is to be done. The degree of control exerted (frequently referred to as the "control test") may be examined in light of the following:

   - the employer’s power to select the employee;
   - the extent to which the employee is subject to the supervision of his/her employer;
   - the method and nature of compensation;
   - the employer's right to determine the hours of work;
   - the power to delegate; and
   - the employer’s right to dismiss or suspend the employee.

   While the control test is still applicable, the courts have found it difficult to rely on this aspect alone. For example, how much control exists over the captain of a ship, or, perhaps more relevant, a professional. The control test by itself is often found to be too inflexible. Other criteria used include the ownership of facilities and tools (for example, does the worker supply his/her own facilities and tools?), and the chance of profit and risk of loss (for example, does the worker earn a fixed amount and incur few costs or does the worker incur various costs without certain knowledge of recovery and profit?).

2. **Integration**

   The integration test examines the role of the individual in the University and if the work done is an integral part of the University's business, the individual is an employee. If the work done can be severed from the University that may be an indication that the individual is self-employed.

3. **Economic Reality**

   The economic reality test examines the opportunity for profit (or loss) and investment in facilities. The absence of chance of profit and risk of loss may indicate an employee relationship (for example, where a fixed salary is paid and there are few expenses not reimbursed by the employer).

4. **Specified Result**

   The specified result test examines the nature of the control. Is the individual paid to perform a specific task or to obtain a specific result or paid to put his/her personal service at the disposal of his/her employer for a period of time?

   If the contract provides for a specific result to occur but does not contemplate the services of any particular individual to accomplish that result, then the relationship may be one of self-employment. If, on the other hand, the contract requires the services of one person to be put at the disposal of another for a fixed or indeterminate time, the relationship may be that of an employee.

   The above tests have only been briefly discussed because such factors are illustrative rather than definitive. The significant point is that, while a number of tests have been used by the courts in determining whether or not an individual is an employee, no one test is conclusive. The question can only be settled by examining the whole of the various elements which constitute the relationship between the parties.
Appendix 2

Independent Contractor Agreement

Independent Contractor Agreement in Microsoft Word format. This form can be filled in online, printed, signed and sent to Procurement Services.

Agreement for Services in Microsoft Word format. This form can be filled in online, printed, signed and sent to Procurement Services.

Non-resident withholding taxes

Departments are reminded that non-resident withholding taxes, usually 15%, must be deducted on payments made to vendors (guest speakers, contractors, etc.) who are not residents of Canada, for services provided in Canada unless the vendor obtains a waiver in advance from Revenue Canada.