I. Independent Contractors
The University may engage an independent contractor to perform services of a professional, technical, or administrative manner that cannot be readily performed by employees. Before an independent contractor may be engaged, a determination must be made as to whether an employee-employer relationship would result. The criteria to be used in determining a worker's classification as an independent contractor or an employee is based on the factors published by the Internal Revenue Service (IRS).

The use of an independent contractor is expected to address the performance of a specific task or job that will be accomplished within a specified time frame. An independent contractor should not be used to direct a University program or retained on an indefinite basis to perform tasks that would normally be assigned to an employee.

COMPLETION AND REVIEW OF CHECKLIST

The determination of a worker's correct classification as an independent contractor or employee must be made before any services are performed by the individual. Departments proposing to engage a contractor must complete the Independent Contractor Checklist. The Checklist includes the factors published by the IRS for the classification of a worker as an independent contractor or employee.

The completed Checklist must be sent to the Assistant Vice-President of Human Resources (AVP of HR). The AVP of HR will determine whether the information provided on the Checklist supports the classification of the individual as an independent contractor. If the AVP of HR determines that the IRS factors DO NOT support classifying the individual as a contractor, the department must hire the individual as an employee or not at all.

CONSULTING SERVICES PROPOSED BY UNIVERSITY EMPLOYEES

Generally, the University will NOT enter into a contractual relationship with one of its employees to provide consulting services to the University. In those cases where an employee does perform additional services outside the scope of his or her primary job, the employee may be eligible to receive a stipend or other additional compensation through the payroll system.

Any exception to contract with a current employee requires written approval by the President and applicable Vice President. In addition, the employee must comply with the disclosure requirement set forth in the Conflict of Interest Policy.

CONFLICTS OF INTEREST

Selection of an independent contractor shall be made on the basis of the individual's qualifications, resources, experience and the needs of the University. University employees engaging an independent contractor shall CONSULTING SERVICES PROPOSED BY UNIVERSITY EMPLOYEES
Generally, the University will NOT enter into a contractual relationship with one of its employees to provide consulting services to the University. In those cases where an employee does perform additional services outside the scope of his or her primary job, the employee may be eligible to receive a stipend or other additional compensation through the payroll system.

Any exception to contract with a current employee requires written approval by the President and applicable Vice President. In addition, the employee must comply with the disclosure requirement set forth in the Conflict of Interest Policy.

CONFLICTS OF INTEREST

Selection of an independent contractor shall be made on the basis of the individual’s qualifications, resources, experience and the needs of the University. University employees engaging an independent contractor shall not do so if they have a financial conflict of interest or the proposed contract is with an immediate family member of the official, including a spouse, partner, parent, child, sibling, or in-law.

DOCUMENTATION

Departments are responsible for providing sufficient documentary evidence to support all payments made to a contractor. Documentation should be in the form of an original invoice and should include the date, contractor’s name and location, description of the services performed, the period of performance and total dollar amount. Contractor invoices should be submitted to Procurement Services for payment.

TAX WITHHOLDING AND REPORTING

The University is generally not required to withhold income, social security or Medicare taxes on amounts paid to an independent contractor. However, if an independent contractor does not furnish a taxpayer identification number on a Form W-9, or if the number provided is determined to be incorrect, the University must withhold income taxes at the backup withholding rate of 28%. If the contractor is a nonresident alien or a foreign individual, payments made to the individual are subject to withholding at a standard federal rate of 30%.

VIOLATIONS

Intentional violations of any portion of this policy may result in disciplinary action, up to and including termination of employment and/or legal action. In addition, an employee may be personally liable for any financial liability incurred by the University as a result of a contract approved by the employee that was not reviewed and approved as required under this Policy.

IRS CLASSIFICATION FACTORS

Since there are no explicit statutory standards for determining a worker’s status under the employment tax laws, in 1987 the IRS published twenty classification factors (IRS Twenty Factor...
Test, based on common law standards, for use in determining whether a worker should be classified as an employee or an independent contractor (REV. Rul. 87-41).

Under current IRS guidance, these factors have been grouped into the following categories:

- **Behavioral Control**: Does the business control or have the right to control what the worker does and how the worker does his or her job?
- **Financial Control**: Are aspects of the worker's job controlled by the payer (e.g., how the worker is paid, whether expenses are reimbursed, who provides tools and supplies, etc.)
- **Relationship of Parties**: Are there written contracts or employee type benefits (i.e., pension plan, insurance, vacation pay, etc.)? Will the relationship be ongoing and is the work performed a key aspect of the payer's business?

The University must weigh all of these factors when determining whether a worker is an employee or independent contractor. Some factors may indicate that the worker is an employee, while other factors indicate that the worker is an independent contractor. There is not set number of factors that makes the worker an employee or an independent contractor, and no one factor stands alone in making this determination. Adding further complexity, factors which are relevant in one situation may not be relevant in another. Each worker arrangement must be analyzed separately, taking into account the facts and circumstances applicable to the individual.

According to the IRS, the University must look at the entire relationship, consider the degree or extent of the right to direct and control the worker, and finally, document each of the factors used in making a determination.

The specific IRS Factors in each of the three categories are described as follows:

**Behavioral Control**

Behavioral control refers to the facts that show whether there is a right to direct or control how the worker does the work. A worker is an employee when the University has the right to direct and control the worker, even if the University does not actually direct or control the way the work is done. The behavior control factors include the following:

**Types of Instructions**

An employee is generally subject to the University's instructions about when, where and how to work. All of the following are examples of types of instructions about how to do work:

- When and where to do the work.
- What tools or equipment to use.
• What workers to hire or to assist with the work.

• Where to purchase supplies and services.

• What work must be performed by a specified individual.

• What order or sequence to follow when performing the work.

Opportunity for Profit or Loss

The opportunity to make a profit or loss is another important factor. If a worker has a significant investment in the tools and equipment used to provide the services, and the worker has unreimbursed expenses, the worker has a greater opportunity to lose money. The likelihood of incurring a loss indicates that the worker is an independent contractor.

Degree of Instruction

The degree of instruction means that the more detailed the instructions, the more control the University exercise over the worker. More detailed instructions indicate that the worker is an employee. Less detailed instructions reflect less control, indicating that the worker is more likely an independent contractor.

The amount of instruction needed varies among different jobs. Some tasks may require little or no instruction. Even if no instructions are given, sufficient behavioral control may exist if the University has the right to control how the work results are achieved. The key consideration is whether the University has retained the right to control the details of a worker’s performance or instead has given up that right.

Evaluation System

If an evaluation system measures the details of how the work is performed, then these factors would point to an employee. If the evaluation system measures just the end result, then this can point to either an independent contractor or an employee.

Training

If the University provides the worker with training on how to do the job, this indicates that the University wants the job done in a particular way. This is strong evidence that the worker is an employee. Periodic or on-going training about procedures and methods is even stronger evidence of an employer-employee relationship. Independent contractors ordinarily use their own methods.
Financial Control

Financial control refers to facts that show whether or not the University has the right to control the economic aspects of the worker’s job. The financial control factors include the following;

**Significant Investment**

An independent contractor often has a significant investment in the equipment he or she uses in working for someone else. There are no precise dollar limits that must be met in order to have a significant investment. Furthermore, a significant investment is not necessary for independent contractor status as some types of work simply do not require large expenditures.

**Unreimbursed Expenses**

Independent contractors are more likely to have unreimbursed expenses than are employees such as fixed ongoing costs that are incurred regardless of whether work is currently being performed.

**Opportunity for Profit or Loss**

The opportunity to make a profit or loss is another important factor. If a worker has a significant investment in the tools and equipment used to provide the services, and the worker has unreimbursed expenses, the worker has a greater opportunity to lose money. The likelihood of incurring a loss indicates that the worker is an independent contractor.

**Services Available to Market**

An independent contractor is generally free to seek out business opportunities. Independent contractors often advertise, maintain a visible business location and are available to work in the relevant market.

**Method of Payment**

An employee is generally guaranteed a regular wage amount for an hourly, weekly or other period of time. This usually indicates that a worker is an employee, even when the wage or salary is supplemented by a commission. An independent contractor is usually paid by a flat fee for the job. However, it is common in some professions, such as law, to pay independent contractors hourly.

**Relationship Of The Parties**

The relationship of the parties refers to facts that show how the worker and the University perceive their relationship to each other. The factors under this category include the following;
Written Contracts

Although a contract may state that the worker is an employee or an independent contractor, this is not sufficient to determine the worker’s status. The IRS is not required to follow a contract stating that the worker is an independent contractor, responsible for paying his or her own self-employment tax. How the parties work together determines whether the worker is an employee or an independent contractor.

Employee Benefits

Employee benefits include things like insurance, pension plans, paid vacation, sick days and disability insurance. Businesses generally do not grant these benefits to independent contractors. However, the lack of these types of benefits does not necessarily mean the worker is an independent contractor, according to the IRS.

Permanency of the Relationship

If a worker is hired with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence that the intent was to create an employer-employee relationship.

Regular Business Activity

If a worker provides services that are a regular or key aspect of the University’s business, it is more likely that the University will have the right to direct and control his or her activities. For example, if the University hires an instructor, it is likely that it will have the right to control or direct that work. This would indicate an employer-employee relationship.

Examples of Service Providers and Classification:

1. INSTRUCTORS/LECTURERS – The mission of the University is to instruct student, therefore, instructing students is part of the regular business activity of the University. Instructors are generally classified as Employees, whether teaching a credit or non-credit class.

2. OFFICIATING SERVICES/SPORTS ANNOUNCERS/EVENT JUDGES/ART CLASS MODELS – The University has behavioral control over these individuals. Individuals are told: i) where and when to be; and ii) how to perform. Officials, Sports Announcer, Event Judges and Art Class Models are generally classified as Employees, whether they are selected by the University or not. These are some examples of behavioral control.

3. OFF-DUTY POLICE OFFICERS – The University has behavioral and financial control over off-duty police officers. They are told i) when and where to be; ii) supervision is provided; iii) and they are paid an hourly wage. These individuals are generally classified as Employees.
4. PASS-THRU GRANTS (e.g. Department of Education) – The University has no behavioral or financial control over these individuals. The University is only responsible for payment. Therefore, these individuals are generally classified as Independent Contractors.

5. SPEAKERS/VISITING LECTURERS/FREELANCE WRITERS – These individuals are engaged by the University for a one-time event. There is no behavioral or financial control. They may or may not use University equipment. They are solely responsible for their own profit and loss. Expenses are not reimbursed, but rather are incorporated into the fee. Speakers, Visiting Lecturers, and Freelance Writers are generally classified as Independent Contractors.

6. GUEST ARTISTS/PERFORMERS – Guest artists/performers are engaged by the University for the purpose of performing at a one-time event. The University does not have control over what or how they will perform. Expenses are not reimbursed, but rather are incorporated into the performance fee. Guest artists/performers are generally classified as Independent Contractors.

7. STUDENT MUSICIANS – Student musicians are sometimes asked to perform at University events, such as commencement. The University has behavioral control over this. They are told what to perform, what to wear and where to be. They are supervised by a faculty member. Student musicians are generally classified as Employees.

8. INTRAMURAL COACHES – Intramural coaches have a relationship with the University, whether it is over a semester or over a school year. Their responsibilities include instruction of students. They oftentimes utilize University equipment and facilities. They are generally classified as Employees.

9. RESEARCHER – If the researcher will perform research for a University professor or employee under an arrangement whereby the University professor or employee serves in a supervisory capacity (i.e., the individual will be working under the direction of the University professor or employee), then the researcher is generally classified as an Employee. If the individual will serve in an advisory or consulting capacity with a University professor or employee, (i.e., the individual “will be working” with the University professor or employee in “collaboration between equals”, then the researcher is generally classified as an Independent Contractor.

10. TRAINING CONSULTANTS/HUMAN RELATIONS CONSULTANTS – These consultants are engaged by the University for the purpose of training or consulting on a specific issue. There is no behavioral or financial control. They may or may not use University equipment. They are solely responsible for their own profit and loss. Expenses are not reimbursed, but rather are incorporated into the fee. Training Consultants and Human Relations Consultants are generally classified as Independent Contractors.
**This is not a complete list but is meant to be used as examples of classification issues. Behavioral Control, Financial Control and the Relationship of the Parties should always be taken into consideration when determining the classification of an individual. Factors which are relevant in one situation may not be relevant in another.**
INDEPENDENT CONTRACTOR/EMPLOYEE
CLASSIFICATION CHECKLIST

Procurement Services – Modular II
Office of the Controller

FLORIDA GULF COAST UNIVERSITY
Phone: (239) 590-1130
Fax: (239) 590-1140
10501 FGCU Boulevard South
Fort Myers, FL 33965

INSTRUCTIONS FOR COMPLETION

Submission of this form is required for all independent contractor engagements. The department must submit a form to Human Resources for every engagement and should retain the form for the current fiscal year to be submitted with each new engagement of the independent contractor within that fiscal year. If additional space is needed for any answer, please attach a separate page.

Section 1: NAME OF INDIVIDUAL

Last Name
First Name
M.I.

Section 2: GENERAL INFORMATION

2.1 Is the individual a current or former employee? Yes ☐ No ☐

2.2 Is it currently expected that the FGCU will hire this individual as an employee immediately following the completion of this project? Yes ☐ No ☐

2.3 Did the individual perform services for your department in any capacity before providing the services required for this engagement? Yes ☐ No ☐

If "Yes" – what were the dates?

If "Yes" – explain the differences, if any, between the current and prior service.

Provide a description of the services to be provided.

Provide the dates the services will be provided. From ________ to ________

Form: 4.VI
Form Date: 2/3/2014
Section 3: BEHAVIORAL CONTROL

3.1 What specific training and/or instruction will the individual be given by FGCU?

3.2 How does the individual receive work assignments?

3.3 Who determines the methods by which the assignments are performed?

3.4 Who is the individual required to contact if problems or complaints arise and who is responsible for their resolution?

3.5 What types of reports are required from the individual if any?

3.6 Does FGCU set the number of hours and/or days of the week that the individual is required to work □ or is the individual allowed to set their own work schedule □ ?

3.7 At what location(s) does the individual perform services (e.g., on campus, office, home etc.).

3.8 Describe any meetings the individual is required to attend (e.g., project meetings, staff meetings, etc.).

3.9 Does the individual employ others to provide services? Yes □ No □

3.10 If substitutes or helpers are needed, who hires them?

3.11 If the individual hires substitutes or helpers, is FGCU departmental approval required?

Yes □ No □
Section 4 – FINANCIAL CONTROL

4.1 Type of pay received by individual:

- Monthly [ ]
- Hourly Wage [ ]
- Lump Sum/Flat Fee [ ]
- Milestone based [ ]
- Other (specify) [ ]

4.2 Specify which, if any, expenses are to be reimbursed by FGCU:

4.3 Specify which, if any, expenses are incurred by the individual in the performance of services for FGCU.

Section 5 – RELATIONSHIP OF THE INDIVIDUAL AND FGCU

5.1 Can the relationship be terminated by either party without incurring liability or penalty?
   - Yes [ ]
   - No [ ]

5.2 Will the individual perform similar services for other clients during the same time period or is the individual providing services exclusively to FGCU?
   - Yes [ ]
   - No [ ]

5.3 Will the individual offer these same services to the general public on a regular and consistent basis?
   - Yes [ ]
   - No [ ]

5.4 What type of advertising, if any, does the individual do (e.g., business directory listing, business cards, website, etc.)?

5.5 If the individual fabricates a product at home, who supervises the fabrication and provides the materials?

5.6 How does FGCU represent the individual to its stakeholders (e.g., employee, partner, representative or contractor)?

Form: 4.VI
Form Date: 2/3/2014
Section 6 – CERTIFICATION OF SERVICE PROVIDER/INDEPENDENT CONTRACTOR

Under penalties of perjury, I certify that the above information is complete and accurate. If FGCU engages me as an independent contractor, I am responsible for taxes, insurance coverage and business expenses and am not eligible for any employer-provided benefits.

Name of Service Provider (printed)  Signature of Service Provider  Date

Section 7 – CERTIFICATION OF FGCU DEPARTMENT

I certify that I have firsthand knowledge of the potential service relationship in order to review the above checklist with complete and thoughtful accuracy.

Name of Department Representative (printed)  Signature of Department Representative  Date

Section 8 – SUBMISSION OF ASSESSMENT

Submit completed checklist to Human Resources

*To Be Completed by Human Resources Only*

Assessment:
IRS TWENTY FACTOR TEST

FACTOR 1 – No Instructions

Independent Contractors are not required to follow, nor are they furnished with instructions to accomplish a job.

FACTOR 2 – No Training

Independent Contractors typically do not receive training. They use their own methods to accomplish the work.

FACTOR 3 – Work not essential to the hiring firm

A company’s success or continuation should not depend on the service of an Independent Contractor. An example of this is Instructors at a University or Lawyers at a law firm.

FACTOR 4 – Services don’t have to be rendered personally

Independent Contractors are hired to provide a result and usually have the right to hire others to do the actual work.

FACTOR 5 – Set own work hours

Independent Contractors set their own work hours and don’t have to abide by the working hours of the hiring firm.

FACTOR 6 – Not a Continuing Relationship

Independent Contractors usually do not have a continuing relationship with a hiring firm. The relationship can be frequent, but it must be at irregular intervals, on call or whenever work is available. Warning: Part-time, seasonal or short-duration relationships have nothing to do with Independent Contractor status.

FACTOR 7 – Control their own Assistants

Independent Contractors shouldn’t hire, supervise or pay assistants at the direction of the hiring firm. If assistants are hired, it should be at the Independent Contractor’s sole discretion.

FACTOR 8 – Time to pursue other work

Independent Contractors should have enough time available to pursue other gainful work.
FACTOR 9 – Decide on job location

Independent Contractors control where they work. If they work on the premises of the hiring firm, it is not under that company’s direction or supervision.

FACTOR 10 – Order of work act

Independent Contractors determine the order and sequence they will perform the work.

FACTOR 11 – No Interim Reports

Independent Contractors are hired for the final result and therefore should not be asked for progress or interim reports.

FACTOR 12 – Paid by job

Independent Contractors should be paid a flat fee after completion of the job or project. They should not be paid an hourly wage. Personal expenses should be included in the flat fee.

FACTOR 13 – Work for multiple firms

Independent Contractors often work for more than one firm at a time.

FACTOR 14 – Pay business expenses

Independent Contractors generally are responsible for their own incidental expenses, including travel.

FACTOR 15 – Have own tools

Independent Contractors usually furnish their own tools and equipment.

FACTOR 16 – Significant investment in their business

Independent Contractors should be able to perform their services without the hiring firm’s facilities (equipment, office furniture, machinery etc.). The Independent Contractor’s investment in his/her trade should be real, essential and adequate.

FACTOR 17 – Offer services to general public

Independent Contractors make their services available to the general public by one or more of the following:

- Having an office
- Having assistants
- Having business signs
- Listing their service in a business directory
- Advertising their service
FACTOR 18 – Can make entrepreneurial profit or loss

The following five circumstances show that profit or loss is possible for an Independent Contractor:

- The Independent Contractor hires, directs and pays assistants;
- The Independent Contractor has his/her own office, equipment, materials and/or facilities;
- The Independent Contractor has continuing and reoccurring liabilities;
- The Independent Contractor has agreed to perform specific jobs for fees agreed upon in advance;
- The Independent Contractor’s services affect his/her own business reputation.

FACTOR 19 – Can’t be fired at will

Independent Contractors cannot be fired as long as they produce a result which meets the contracted specifications.

FACTOR 20 – Independent Contractors are responsible for the satisfactory completions of a job or they may be legally obligated to compensate the hiring firm for failure to complete.