



Independent Contractor (Consultant) Agreement **Revised 4/30/2010**

I. DEFINITION

An independent contractor, sometimes also known as a consultant, is an individual outside the Foundation who follows an independent trade, business, or profession in which they offer their professional or technical services to the Foundation in an independent contractor relationship.

An independent contractor relationship exists when the Foundation has the right to control only the result of the service, not the manner of performance.

An employer-employee relationship exists when the Foundation has the right (whether or not it exercises the right) to supervise and control the manner of performance, as well as the result of the service.

II. POLICY

A. Arrangements to secure the services of an independent contractor may be entered into when a determination has been made that the services are so urgent, special, temporary, or highly technical that they cannot be performed economically or satisfactorily by existing Foundation Staff during the course of their normal responsibilities or duties. As a rule, individuals should be classified as independent contractors on an exception basis only.

B. The use of an independent contractor is expected to be infrequent and is primarily used to solve clearly delineated problems. Services of independent contractors paid for by Federal funds are normally limited to not in excess of 30 days in a 12-month period, or that period of time which is set by the cognizant contract or grant.

In addition to the time element described above, Federal Auditors use the following standards in support of the use of contractors on federally funded projects.

1. There must be evidence that the services are essential and cannot be provided by persons receiving salary support under the federally funded project.
2. There must be evidence that the person selected is qualified. A resume, curriculum vitae or similar documentation must be submitted with this agreement.
3. There must be evidence that the rate is appropriate considering the qualifications of the contractor, his/her normal rates, and the nature of the services rendered.

C. An individual who is a VA employee or VMRF employee cannot be retained as an independent contractor. VMRF policy provides that an employee's VA and private interests must be separated and that VMRF must be safeguarded against charges of favoritism in the purchase of

goods and services.

- D. An independent contractor shall not be used to carry out a major portion of a program.
- E. The services of an independent contractor shall not entitle the person to credit other than as a "contractor" in any published report or other document.
- F. The agreement between the Foundation and the contractor shall be executed on an Independent Contractor Agreement Form.
- G. A contractor agreement may be terminated without cause, with 15 days written notice from party. With cause, the contract is subject to immediate termination.

III. NATURE AND PLACE OF SERVICE

This agreement to furnish certain contractor services is made by and between the Veterans Medical Research Foundation of San Diego (hereinafter called "VMRF") and the designated individual (hereinafter called "CONTRACTOR"). The terms and conditions are as follows:

- A. Contractor shall furnish to VMRF the following described services:

- B. Place of performance will be:

- C. The period of performance for this agreement shall be:
_____ through _____
- D. VMRF will compensate Contractor for all fees for service performed. Payments will be made upon receipt of an invoice submitted by Contractor to VMRF with the following information:
 - 1. Purchase order number;
 - 2. Social security number;
 - 3. Remit to address;
 - 4. Payment terms;
 - 5. Description of service; and
 - 6. Period of performance.

7. The following statement must be included: I am aware that Federal Law (18USC, section 209) prohibits any individual from accepting compensation from any source for effort that is already being paid for by the Department of Veterans Affairs or any other federal source. Acceptance of this independent contractor agreement with VMRF does not involve dual compensation for effort that is already being paid for by the Department of Veterans Affairs or any other federal source.

8. Each invoice must be signed by the Independent Contractor.

9. Each invoice must be approved by the Principal Investigator or his designee.

E. Either VMRF or Contractor may terminate this agreement at any time by giving the other party written notice of such action.

IV. TAXES

The compensation stated in Paragraph D above includes all applicable taxes and will not be changed hereafter as the result of Contractor's failure to include any applicable tax, or as the result of any change in the Contractor's tax liabilities.

V. ASSIGNMENT OR SUBCONTRACTING

The Contractor may not assign or transfer this agreement or any interest therein or claim thereunder, nor subcontract any portion of the work thereunder, without the prior written approval of VMRF.

VI. PATENTS

Whenever any invention or discovery is made or conceived by Contractor in the course of, or in connection with this agreement, Contractor shall furnish VMRF with complete information with respect thereto. VMRF shall have the sole power to determine whether and where a patent application shall be filed and to determine the disposition of title to and all rights under any application or patent that may result.

VII. COPYRIGHT

VMRF shall have the sole power to determine whether or not a copyright application shall be filed for any published report or other document, which results from the work performed under this agreement.

VIII. CONTRACTOR'S LIABILITY AND INSURANCE REQUIREMENTS

A. Contractor agrees to defend, indemnify, and hold harmless VMRF, its officers and agents, and employees from and against all losses and expenses (including costs and attorney's fees) resulting from any injury (including death) to any person or damages to property of others arising out of the acts or omissions of the Contractor, its employees, or agents in performance of

the work under this agreement.

- B.** If Contractor is an individual using a personal automobile to carry out consulting duties, Contractor shall furnish a Certificate of Insurance showing minimum coverage of Comprehensive Automobile Liability of \$15,000 per person or \$30,000 per occurrence for bodily injury and \$5,000 for property damage.
- C.** All certificates of insurance shall specify that the coverage will not be canceled or reduced without thirty (30) days written notice to VMRF; premiums on all insurance policies shall be paid directly by the Contractor.

IX. RECORDS ABOUT INDIVIDUALS

The State of California Information Practices Act of 1977 sets forth certain requirements and safeguards regarding records pertaining to individuals, including the rights of access by the subject individual and by third parties. If a contractor creates records about an individual of a confidential or personal type, including notes or tape recordings, the information shall be collected to the greatest extent practicable directly from the individual who is the subject of the information. When collecting the information, the Contractor shall inform the individual that the record is being made and the purpose of the record.

X. OWNERSHIP AND ACCESS TO RECORDS

While ownership of confidential or personal information about individuals shall be subject to negotiated agreement between VMRF and Contractor, records will normally become the property of VMRF subject to its policies governing privacy and access to files, unless legally prohibited or otherwise negotiated with the contractor.

XI. EXAMINATION OF RECORDS

VMRF, and if the applicable contract or grant so provides, the other contracting party or grantor (and if that be the United States, or an agency or instrumentality thereof, then the Controller General of the United States) shall have access to and the right to examine any pertinent books, documents, papers, and records of Contractor involving transactions and work related to this agreement until the expiration of three years after final payment hereunder.

XII. CONFLICT OF INTEREST

- A.** Contractor will not hire any officer or employee of VMRF to perform any service covered by this agreement. If the work is to be performed in connection with a Federal contract or grant, Contractor will not hire any employee of the United States government to perform any service covered by this agreement.
- B.** Contractor affirms that to the best of his/her knowledge there exists no actual or potential conflict between Contractor's family, business, or financial interests and the services provided under this agreement, and in the event of change in either private interests or service under this

agreement, any question regarding possible conflict of interest which may arise as a result of such change will be raised with VMRF.

XIII. AFFIRMATIVE ACTION

Contractor shall not maintain or provide racially segregated facilities for employees at any establishment under Contractor's control. Contractor agrees to adhere to the principles of Affirmative Action (as set forth in Executive Orders 11246 and 11375) and to undertake specifically: to maintain employment policies and practices that affirmatively promote equality or opportunity for minority group persons and women; to take affirmative steps to hire and promote women and minority group persons at all job levels and in all aspects of employment; to communicate this policy in both English and Spanish to all persons concerned who are in his/her employ, with outside recruiting services, and the minority community at large; to provide VMRF on request a breakdown of the labor force by ethnic group, sex, and job category; and to discuss with VMRF the policies and practices relating to this affirmative action program.

XIV. PRIVACY ACT

Pursuant to Federal Privacy Act of 1974, you are hereby notified that disclosure of your social security number is mandatory. Disclosure of the social security number is required pursuant to Sections 6011 and 6051 of Subtitle F of the Internal Revenue Code and Regulation 4, Section 404.1256, code of Federal Regulations, under Section 218, Title II of the Social Security Act, as amended. The social security number is to verify your identity. The principal uses of the number shall be to report payments to Federal and State Governments.

The undersigned Contractor hereby certifies that he/she has read the above contract and that the fee(s) shown in Paragraph III.D. above, is/are no more than his/her normal charges for the nature of the services to be provided to any other public institution or private client.

CONTRACTOR

Name: _____
SS#: _____
Address: _____
-or-
Phone#: _____
Fax #: _____

VMRF

Kerstin Lynam
Chief Executive Officer
Veterans Medical Research Foundation

Signature _____ Date _____

Signature _____ Date _____

