Independent Contractor, Honorarium, and Guest Expense Reimbursement Policy & Procedure

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Policy Statement

- This Policy sets forth the following processes and procedures when:
  1. retaining Independent Contractors;
  2. awarding Honoraria; and
  3. reimbursing guests for out-of-pocket expenses for meals, travel, and lodging incurred in connection with their visit to the University.

(I)-(III) collectively are considered “Covered Arrangements.”

- This Policy applies to Covered Arrangements performed or taking place in the United States. For Covered Arrangements performed or taking place outside of New York, the District of Columbia, or California, please consult with Procurement and/or the Office of General Counsel for the appropriate process and procedures.

- Worker Classification rules are a focal point of audit for the IRS and NYS.
Key Definitions

**Honorarium**: is defined, for purposes of this Policy, as University funds that may be used for a payment or item presented as a gesture of good will or in appreciation of efforts and time given by individuals to the University, such as a guest lecturer or a speaker from outside the University.

- Must be reasonable
- Must NOT be charged to a Federally Sponsored Account

**Independent Contractor**: is defined, for purposes of this Policy, as an Individual that provides NYU with services for payment, in a capacity other than as an employee, and in such a manner that otherwise satisfies the criteria for classification under this Policy and applicable law.

- Payments are reported on Form 1099
- Not eligible for employee benefits or recognition programs

**Individual**: is defined, for purposes of this Policy, as any person or any organization composed of no more than one person, including a sole proprietor or single-member LLC.

**Member of the Same Family or Household**: is defined, for purposes of this Policy, as a spouse or domestic partner or person in a civil union or similar relationship, dependent children, and any other family members residing in the same household as a University employee.

- A University employee may not retain or oversee any Individual who will be providing services to the University under a Covered Arrangement where that Individual is a Member of the Same Family or Household as the employee.
Steps Retaining Independent Contractors

Pre-Step 1

*Sponsored Projects:* Where an Individual will be performing work on sponsored projects managed by NYU’s Office of Sponsored Programs (“OSP”), the School or Unit must first email OSP at osp.agency@nyu.edu. OSP will then review the proposed work and determine, in accordance with sponsored project guidelines, whether the Individual should be classified as a sub-recipient (in which case this Policy would not apply), or as a prospective Independent Contractor (in which case this Policy would apply).
Step 1A Independent Contractor Questionnaire

A representative authorized by the School or Unit must complete the “School or Unit” section from the Independent Contractor Questionnaire in i-Buy NYU.

**Preliminary Questions** - The preliminary questions include the following three inquiries:

i. Is the prospective Independent Contractor currently employed by NYU, or was the prospective Independent Contractor previously employed by NYU within the past calendar year?

ii. Is the prospective Independent Contractor unavailable to offer services to the public (i.e., to individuals or entities other than NYU and its affiliates)?

iii. Will the prospective Independent Contractor’s methods or activities be controlled or directly supervised by an NYU employee?

If the answer to **any** of the above questions is “Yes,” then the Individual must be paid for any such services through payroll, unless a waiver is granted by Employee Relations through the Waivers process discussed later in the presentation.
Supplemental Questions

In addition to answering the three preliminary questions above, a representative authorized by the School or Unit must answer five supplemental questions which are designed for the purpose of further determining whether an Individual may be properly classified as an Independent Contractor under applicable law and guidelines.

iv. Will NYU provide training to the prospective Independent Contractor on the manner in which the work should be performed?

v. Will the prospective Independent Contractor be retained for an indefinite period of time?

vi. Will the prospective Independent Contractor be providing services similar to those provided by an NYU employee?

vii. Will the prospective Independent Contractor be asked to attend NYU employee meetings other than to get background project information or to give project reports?

viii. Will the prospective Independent Contractor be managing NYU employees in their performance of regular work duties?

If the answer to **two (2) or more** of these five (5) supplemental questions is “Yes,” then the Individual must be paid for any such services through payroll, unless a waiver is granted by Employee Relations through the Waivers process discussed later in the presentation.
A representative authorized by the School or Unit must complete the “School or Unit” section of the Independent Contractor Conflicts Questionnaire in i-Buy NYU. This Questionnaire consists of the following questions:

i. Is the prospective Independent Contractor currently employed by NYU, or was the prospective Independent Contractor previously employed by NYU within the past calendar year?

ii. Does the prospective Independent Contractor have a Member of the Same Family or Household who is employed by the University?

If the answer to any of the above questions is “Yes,” then the Individual is ineligible to provide services to the University as an Independent Contractor, unless a waiver is granted by Compliance through the Waivers process discussed later in the presentation.
Step 1 Waivers

To seek a waiver from the requirements of the *Independent Contractor Classification and Independent Contractor Conflicts Questionnaires*, a representative authorized by the School or Unit must complete the applicable Waiver Request Form in i-Buy NYU. A request for waiver will be construed narrowly.

- Procurement will only proceed with the registration of the prospective Independent Contractor in i-Buy NYU when the applicable Waiver Request Form receives all necessary approvals.
- The applicable Waiver Request Form will be retained in i-Buy NYU.

*Independent Contractor Classification Questionnaire:*
A waiver from any of the requirements set forth in the *Independent Contractor Classification Questionnaire*, must be submitted on the *Waiver Request Form*, which will be directed through i-Buy NYU to the Assistant Vice-President, Office of Employee Relations (“AVP, Employee Relations”) for review. A request for waiver may only be granted where the AVP, Employee Relations determines that there is a sufficient basis to proceed with the Independent Contractor classification.
Step 1 Waivers Cont....

**Independent Contractor Conflicts Questionnaire**

A waiver from any of the requirements of the *Independent Contractor Conflicts Questionnaire*, must be submitted on the *Waiver Request Form*, which will be directed through i-Buy NYU to the Chief Global Compliance Officer for review. If the Chief Global Compliance Officer determines that a conflict of interest exists under applicable University policy, then a waiver may only be granted where the Chief Global Compliance Officer approves of a conflict management plan.

**Approval/Rejection of Request**

- If the waiver is **Approved**, the process will proceed to Step 2.
- If the waiver is **Not Approved**, the Individual may not be established as an Independent Contractor in i-Buy.
- Contact the applicable HR Officer or Business Partner to determine whether the Individual can provide the proposed services to the University as an employee.
Steps 2 Registration

**Step 2: Prospective Independent Contractor Must Register Successfully in i-Buy NYU**

- Once Step 1 has been successfully completed and Procurement has approved the request to add the prospective Independent Contractor:
  - Procurement will electronically invite the prospective Independent Contractor to register in i-Buy NYU.
  - The prospective Independent Contractor must, in turn, complete the applicable steps of the registration process.

- Registration requires that a prospective Independent Contractor provide:
  - an overview of company/business details; address, location, and other contact information;
  - certain insurance information;
  - payment and tax-related information, and other additional information.
  - The prospective Independent Contractor also must review and, if accurate, certify the answers that the School or Unit provided in response to the three preliminary questions in the Independent Contractor Classification Questionnaire and the two conflicts questions in the Independent Contractor Conflicts Questionnaire.

- To successfully complete the registration process, the prospective Independent Contractor must electronically sign and certify that the information provided is true and accurate.
Step 3: Approval Process & Entering into Agreement

• Procurement will review and approve the prospective Independent Contractor’s registration in i-Buy NYU.
  - Upon approval, the School or Unit must enter into a written agreement with the Independent Contractor before services can commence.
  - The parties shall use the University’s Master Independent Contractor Agreement unless Procurement or the Office of General Counsel expressly approves the use of another agreement.
  - The completed agreement must be provided to Procurement as support for the creation and approval of a purchase requisition in i-Buy NYU before related services commence.
  - The Independent Contractor shall be paid for any and all services rendered through Accounts Payable and reported to the IRS on a Form 1099, in accordance with the terms and conditions of the applicable agreement.

• Although Office of General Counsel can approve the terms of an agreement, agreements should generally be submitted to Procurement for appropriate review.
Step 4 Re-engagement

**Step 4: Re-Engagement (As Applicable)**

- Should a School or Unit seek to re-engage an Independent Contractor who has concluded providing services to the University or after the agreement between the Independent Contractor and the respective School or Unit has expired, both parties must update the information requested as part of the registration processes described above, if and as necessary.

- In addition, upon receiving any necessary re-approvals, to the extent the agreement between the parties does not automatically renew, the parties must enter into a written renewal of the agreement, or a new agreement using the University’s [Master Independent Contractor Agreement](#) unless Procurement or the Office of General Counsel expressly approves the use of another agreement.

- The completed agreement must be provided to Procurement as support for the creation and approval of a purchase requisition in i-Buy NYU before related services commence.
Awarding Honoraria

Before an Honorarium activity may commence, a representative authorized by the School or Unit must log into i-Buy NYU and make the request to add the prospective Honorarium recipient to the system. The representative must answer the following two preliminary questions in i-Buy NYU, and follow the instructions set forth below if the answer to either question is “Yes.”

i. **Is the prospective Honorarium recipient currently employed by NYU?**

If the answer to question (i) is “Yes,” (i.e., the prospective Honorarium recipient is currently employed by NYU), then any such payment will be deemed additional compensation and, therefore, must be made through Payroll and reported to the IRS on a Form W-2.

ii. **Will the prospective Honorarium recipient be receiving an Honorarium from the School or Unit in which a Member of the Same Family or Household is employed by the University?**

If the answer to question (ii) is “Yes,” then the request will be directed through i-Buy NYU to Compliance for review. Compliance shall review the request and inform Procurement through i-Buy NYU whether it has approved or denied the request. Procurement will in turn inform the respective School or Unit of the decision. The prospective Honorarium recipient is ineligible to engage in the Honorarium activity unless Compliance has provided approval. *A University employee may not retain or oversee any individual to receive an honorarium where that individual is a Member of the Same Family or Household as the employee.*

Once the above steps have been successfully completed and Procurement has approved the request to add the prospective Honorarium recipient to i-Buy NYU, before the Honorarium activity may commence, the Honorarium recipient and the respective School or Unit must complete and sign the University’s Honorarium Agreement or another agreement expressly approved by Procurement.
Reimbursing Guest Expenses

- A School or Unit may agree to reimburse guests for out-of-pocket expenses for meals, travel, and lodging incurred in connection with their visit to the University, consistent with the University’s Business Expense Policy. An authorized representative from the School or Unit must adhere to the steps set forth in the Supplier Request Form for Guest Reimbursement in i-Buy NYU (which includes providing the name of the guest, his or her address and contact information; and the requisite payment information).

**Note:** Employee reimbursements are processed via AP Workflow, and student reimbursements are processed via the Student Expense Reimbursement Form (EXP2000S) and/or the Student Awards & Prizes Form (EXP3000S).
i-Buy NYU Supplier Request Form - Entity or Individual

**Instructions**

**ENTITY.** Please select “Entity” if the prospective supplier is a Corporation, Partnership, or other Organization that will provide services to the University as an Independent Contractor, and is not an Individual (as that term is defined below).

**INDIVIDUAL.** Please select “Individual” if the prospective supplier will be providing services to the University as an Independent Contractor in his or her individual capacity (including as a sole proprietor or single-member LLC), and not through an Entity (as that term is defined above). This selection will require the NYU user submitting this request to answer a series of questions to determine if the prospective supplier meets the criteria outlined in the NYU Independent Contractor Policy. If approved, engagements with these suppliers are done using Non-Catalog requisitions in i-Buy NYU and issuing a PO to the supplier. The supplier must issue an invoice to NYU to be paid.

**HONORARIUM RECIPIENT, GUEST EXPENSE REIMBURSEMENT** - Please select this option for honoraria recipients, or for guest expense reimbursement. The supplier will be sent the Individual Form to register. No insurance related questions or questions on where to send PO’s will be asked. Payment to these suppliers is done using the Payment Request Forms in i-Buy NYU.

*Honoraria are University funds that may be used for a payment or item presented as a gesture of good will or in appreciation of efforts and time given by individuals to the University, such as a guest lecturer or speaker from outside the University. Honoraria must be reasonable and made under conditions or circumstances that do not create a significant likelihood for the gesture to be deemed a “disguised payment.” Honoraria must not be charged directly or indirectly to a federally sponsored account.*

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i-Buy NYU New Supplier Request form. Initial question, **Entity or Individual**
i-Buy NYU Supplier Request – Independent Contractor Initial Questions

Ind Contractor 1

Questions - INDIVIDUAL INDEPENDENT CONTRACTOR CLASSIFICATION QUESTIONNAIRE

Instructions
Please answer the following three preliminary questions:

If the answer to any of the below questions is "Yes," then the Individual is ineligible to provide services to the University as an Independent Contractor and must be paid for any such services through payroll, unless a waiver is granted by Employee Relations. To seek a waiver, the requestor of this supplier must complete and attach this Waiver Request Form (Independent Contractor Classification Questionnaire). Employee Relations will review the request and approve or reject based on the criteria set forth in the NYU Independent Contractor Policy. Failure to upload a completed waiver form will result in the request being returned and not approved. A request for waiver will be construed narrowly.

Three preliminary questions:

1. Is the prospective Independent Contractor currently employed by NYU, or was the prospective Independent Contractor employed by NYU within the past calendar year? *
   - Yes
   - No

2. Is the prospective Independent Contractor UNAVAILABLE to offer services to the public (e.g. to individuals or entities other than NYU and its affiliates)? *
   - Yes
   - No

3. Will the prospective Independent Contractor's methods or activities be controlled or directly supervised by an NYU employee? *
   - Yes
   - No

Please select One value from the dropdown related to the answers above *

- One or More Selected Yes (This is *)

You MUST upload the Independent Contractor Classification Waiver form from here *

- Click this link to download the form, then upload the completed form
  - No File Attached | Upload

NYU requestor will confirm answers here and provide a completed Waiver as needed.

Any ONE question answered Yes will require a Waiver.
Please answer the following five supplemental questions:

If the answer to two (2) or more of the following five (5) supplemental questions is “Yes,” then the individual is ineligible to provide services to the University as an Independent Contractor and must be paid for any such services through payroll, unless a waiver is granted by Employee Relations. To seek a waiver, the requestor of this supplier must complete and attach this Waiver Request Form (Independent Contractor Classification Questionnaire). Employee Relations will review the request and approve or reject based on the criteria set forth in NYU’s Independent Contractor Policy. Failure to upload a completed waiver form will result in the request being returned and not approved. Any request for waiver will be construed narrowly.

**Five supplemental questions:**

1. Will NYU provide training to the prospective Independent Contractor on the manner in which the work should be performed? *
   - Yes
   - No

2. Will the prospective Independent Contractor be retained for an indefinite period of time? *
   - Yes
   - No

3. Will the prospective Independent Contractor be providing services similar to those provided by an NYU employee? *
   - Yes
   - No

4. Will the prospective Independent Contractor be asked to attend NYU employee meetings other than to get background project information or to give project reports? *
   - Yes
   - No

5. Will the prospective Independent Contractor be managing NYU employees in their performance of regular work duties? *
   - Yes
   - No

Please select One value from the dropdown related to the answers above *

Two or More Selected Yes (This :)

You MUST upload the Independent Contractor Classification Waiver form from here *

Click this link to download the form, then upload the completed form

NYU requestor will confirm answers here and provide a completed Waiver as needed

Any **TWO** questions answered **Yes** will require a Waiver
Any ONE question answered **Yes** will require a Waiver

NYU requestor will confirm answers here and provide a completed Waiver as needed.
Approval workflow will depend on how questions are answered, but may include HR, Compliance, and Procurement.
Questions?