1. **Purpose**
   This policy outlines the University’s policy on employing independent contractors.

2. **Scope**
   This policy applies to all University departments, units and divisions, regardless of documentation to generate the activity.

3. **Definitions and Roles and Responsibilities**
   3.1 **Definitions**

   **An Independent Contractor**
   Individuals who follow an independent trade, business, or profession, are generally not employees. This category includes lawyers, contractors, subcontractors, accountants, auctioneers, and others who offer their services to the general public. The general rule of thumb is that an individual is an independent contractor if the employer has the right to control or direct only the result of the work and not the means and method used to accomplish the result.

   **Common Law Employee**
   Under the old common law rules, every individual who performs services that are subject to the will and control of an employer, as to what must be done and how it must be done, is an employee. The University’s faculty and staff are in this category.

   If there is an employee relationship it makes no difference how it is described. Consequently, it does not matter if the employee is called an employee, agent, or independent contractor. It does not matter how the payments are measured, how they are made, or what they are called. Also, it does not matter if the employee is full-time, part-time or is hired only for a short period.

   Two of the usual characteristics of an employer-employee relationship are that the employer has the right to discharge the employee and the employer supplies the tools and a place for him/her to work. In an employee relationship it does not matter whether the individual is employed full-time or part-time and there is no distinction between classes of employees, i.e., managers, supervisors, or other types of personnel.
Statutory Employee

A statutory employee is an individual who works for an employer but is not an employee within the meaning of a common law employee as described above.

Examples include someone paid on commission, full-time life insurance sales agents and full-time traveling or salespersons. This employment relationship is generally not applicable for the University. If additional information is needed concerning this type of employment relationship, the Controller’s Office should be contacted.

Statutory Nonemployee

This category includes direct sellers, licensed real estate agents, and certain companion sitters. This employment relationship is generally not applicable for the University. If additional information is needed concerning this type of employment relationship, the Controller’s Office should be contacted.

4. Policy

All persons rendering services to the University must be paid through the Payroll System except those contracted as an independent contractor. Procurement Policy 14 Contracted Personal Services provides information on the procurement of Contracted Personal Services. The maximum amount for an individual to be paid through Accounts Payable via a BANCPS transaction is $500. Contracted personal services for an individual amount greater than $500 must be generated through the SpartanMart Requisition and Purchase Order system.

Types of Employment Relationships

There are four common types of employment relationships recognized by the Internal Revenue Service. These relationships are:

• an independent contractor.
• a common law employee.
• a statutory employee; or
• a statutory nonemployee.

Criteria to Distinguish Employee or Independent Contractor Relationship

Internal Revenue Service – Publication 15-A – Employer’s Supplemental Tax Guide, pages 6 thru 8

Other Stipulations for the Use of Independent Contractors

• Contracted service fees from federal funds may not be paid to a full-time employee of the federal government.
• Services to be provided are essential and cannot be provided by persons receiving salary support in the area of responsibility.
• A selection process has been employed to secure the most qualified individual available, considering the nature and extent of services to be required.
The charge is appropriate considering the qualifications of the consultant, his/her normal charges, and the nature of the services to be provided.

Transportation and subsistence will be the responsibility of the consultant. (In those situations where it would not be practical for the contractor/honorarium recipient to include expenses in the contract, the contract will lay out the terms for expense reimbursement to comply with state policies.)

Full-time University and other state employees are not authorized to be paid consultant fees by the University. This restriction also applies to corporations and partnerships in which an employee of the University or faculty member serves as either a principal or employee. Issues involving conflict of interest are subject to state criminal statutes.

Intra-university consultation payments to faculty members are not permitted. Payments can be made only to the faculty member’s home department or school. Such funds are to be used for furtherance of department or school programs or activities and not for supplementary salary or equivalent payments to the faculty member. In effect, intra-university consultation represents a donation of services by the faculty member.

### Tax Reporting and Withholding Requirements

**Independent Contractors.** The University does not have to withhold or pay income or social security taxes on payments made to independent contractors. Individual independent contractors are responsible for these taxes as well as the self-employment tax. Independent contractors will be sent a Form 1099-Misc at the end of the year if the payment made during the year aggregates to more than $600. Backup withholding may be required if the independent contractor does not furnish the University with a Taxpayer Identification Number.

**Nonresident Independent Contractors:** The University withholds 4% income tax from nonresident contractors who are paid more than $1,500 during a calendar year for a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program. Nonresident entities are defined as a foreign (out-of-state) limited liability company or a foreign limited partnership.

No tax is required to be withheld from partnerships that have a permanent place of business in North Carolina. The partnership must furnish the University their taxpayer identification number and address to be eligible for this exception.

No tax is required to be withheld from a foreign limited liability company or foreign corporation that has obtained a certificate of authority from the N.C. Secretary of the State. The identification number furnished to the University to qualify for the exception. This is not the same as a federal identification number.

**Common-law Employees.** The University’s faculty and staff are in this category. Federal income taxes, state income taxes, FICA taxes, and Medicare taxes are withheld on payments made to common-law employees. In addition, the University is responsible for the employer’s matching portion of FICA and Medicare taxes and must make contributions to the Employment Security Commission or to the Trust Fund set up to cover payments to eligible unemployment compensation recipients.
employees will receive a Form W-2 at the end of the calendar year for all compensation received during the year.

Statutory Employees. The Controller’s Office should be contacted if it appears this category of employee relationship exists.

Statutory Nonemployees. The Controller’s Office should be contacted if it appears this category of employee relationship exists.

5. Compliance and Enforcement

The University Controller is responsible for ensuring compliance with this policy.

6. Additional Information

6.1 Supporting Documents

Procurement Policy 14 Contracted Personal Services
Internal Revenue Service – Publication 15-A – Employer’s Supplemental Tax Guide, pages 6 thru 8

6.2 Approval Authority

This policy should be approved by the Interim Associate Vice Chancellor for Finance.

6.3 Contacts for Additional Information and Reporting

- Responsible Executive: Melissa Hoff, University Controller, (336)334-5795, mshoff@uncg.edu
- Responsible Administrator: Robin Jones, Accounts Payable Manager, (336)-334-5740, r_jones5@uncg.edu
- Michael Logan, Director of Procurement Services, (336)334-4104, mflogan@uncg.edu