



Cookies, Caffeine, and Contracts

A discussion of contracts with your legal team

Office of the General Counsel

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Agenda

- Grab some coffee or tea
- Pick out a cookie
- Contracting in General
- Changes to the Independent Contractor Process
- Changes to California law on Independent Contractors **Again!**
- Q&A



Contracting in General



Contracting in General

What is a contract?

- “An agreement, upon sufficient consideration, to do or not do a particular thing.”
 - An exchange between parties – both parties have to give something
 - Party A: 1,000 t-shirts / Party B: \$4,000
 - Party A: 5 hours of chartered bus service / Party B: \$1,500
 - Party A: “free” use of online service / Party B: promise not to sue Party A if online service crashed Party B’s computer system
 - Party A: \$100,000 / Party B: allows Party A to use his copyrighted work for commercial purposes
 - Party A: subscription to use online platform / Party B: \$500 per month and acceptance of Party A’s Terms and Conditions

Does money have to be a part of the contract? **Nope!**



Contracting in General

What types of contracts do we typically see on campus?

- Rental agreements
 - Lodging
 - Retreat centers
 - Equipment
 - Inflatables/event equipment
 - Facility use agreements
- License agreements
 - Intellectual property
 - Software
 - Software as a service
 - Publishers
- Service agreements
 - Photography
 - Buses and transportation
 - Consulting
 - Speakers/presenters
 - Performers
 - Catering
 - Independent contractors
 - Special maintenance
 - Event set-up
 - Printing
 - Many, many more
- Lease agreements
 - Off-campus property
 - University-owned property
- Misc. agreements
 - Construction
 - Advertising
 - NDAs
 - Experiential learning agreements
 - Purchase agreements



Contracting in General

How does the process generally work?

- Step 1 – you receive a contract from a company
- Step 2 – you review the contract to make sure it works for you
- Step 3 – you send the contract to us for review
- Step 4 – we review and either give you the “okay” or send you back a revised draft
- Step 5 – you send the revised draft back to the company
- Step 6 – once the agreement is finalized, you have it signed by the SCU authorized representative and the company
- Step 7 – you send us back a fully executed copy



Contracting in General

FAQs (with no wine recommendations – we aren't Bob Owen)

- Why doesn't the OGC just work directly with the company?
 - Relationship
 - Time
 - details
- Why does it take up to 10 business days?
 - As of December 2– we've reviewed 693 inbound contracts and generated 701 independent contractor/service agreements
- What are we looking for when we review?
 - It depends on the type of contract, but generally:
 - Insurance
 - Indemnity
 - Intellectual property
 - Term
 - Payment terms
 - Warranties
 - Safety
 - Deliverable dates and terms
 - FERPA/confidentiality
 - Privacy/security
 - Limitations of liability
 - Formational terms



Contracting in General

Tips for making the process more efficient

- Make sure whoever is responsible for the contract has read it thoroughly
- Send an editable Word document instead of a .pdf or a locked document
- If the agreement references other documents or terms (like separate Terms and Conditions), please send us those as a separate document
- Provide as much information as possible regarding the purpose of the agreement
- If you have contracted with the company before, let us know
- If minors will be involved in any way, let us know



Recent Contract Questions - *Answered*

We have received questions about contracting with “freelancer” platforms, Uber and Lyft

- Can I hire a freelancer to do some work through mTurk, Fiverr, or TaskRabbit?
- I heard a rumor that I can't use Uber or Lyft. True?
- Someone told me that Accounts Payable won't pay an invoice or issue a reimbursement if I don't have a contract or if my contract wasn't approved by the General Counsel's Office first.



The Contract Process



What's so new, this time?

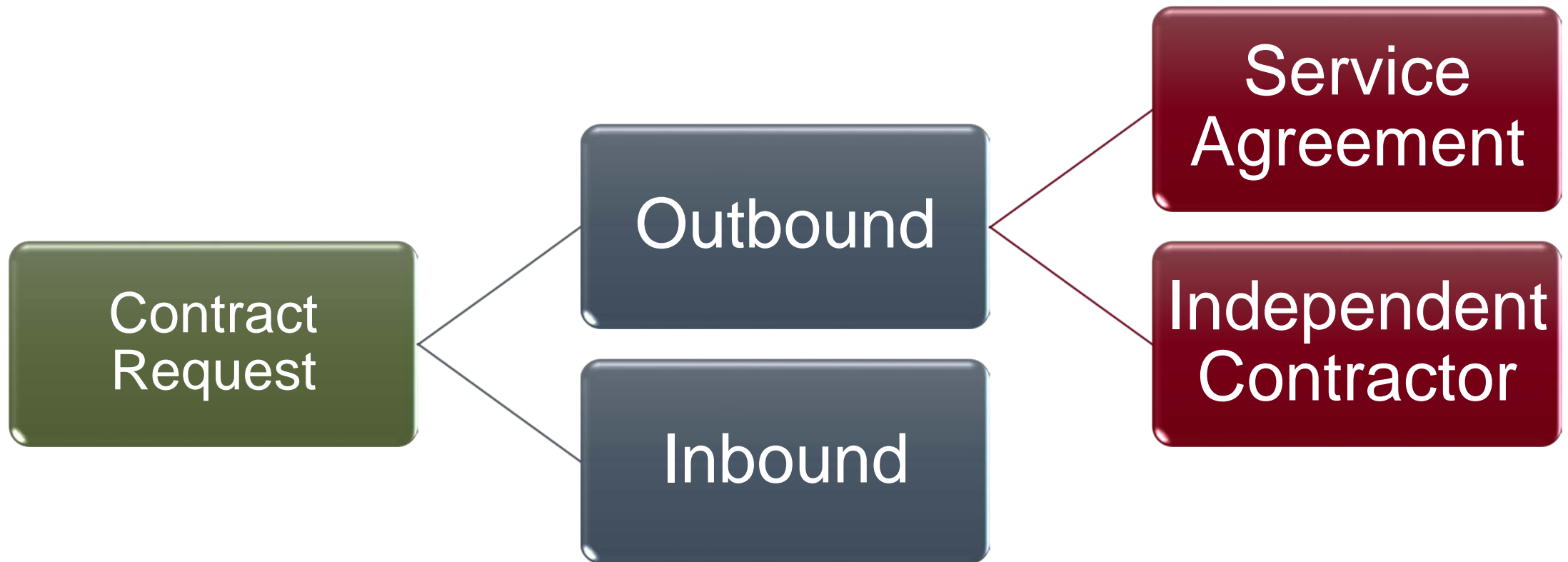
- More templates in Adobe Sign **From 6 to 17**
- A brand new SuperForm
 - This SuperForm is your one stop shop for all contract review and drafting requests
- An updated and easier to use website with instructions



The SuperForm



How does the SuperForm work?





Where do I start?

Same place as before, on our website

ATTORNEYS | SERVICES | CONTRACTS | RESOURCES | FAQs


General Counsel

Home > General Counsel

Independent Contractor Question?

Read about our new process and submit a request

Reporting to the President, the Office of the General Counsel provides legal counsel, guidance and policy analysis to the University, its President and Board of Trustees, senior administrative and academic officers, and other constituent units. John Ottoboni serves as the University's General Counsel and Chief Operating Officer. In addition to providing legal advice and counsel on a broad range of issues, the Office of the General Counsel is responsible for engaging the services of outside law firms for specialized legal needs.

 **How to find us on campus**

General Counsel

- Attorneys
- Services
- Contracts
- Resources
- FAQs

Office of the General Counsel
Santa Clara University
500 El Camino Real
Santa Clara, CA 95053



...Or, enter:

scu.edu/contract

or

scu.edu/contracts



Where do I access the SuperForm?

Did you miss our Cookies, Caffeine, and Contracts presentation?

Check out the slides from the in-person session:

[Cookies, Caffeine, and Contracts Presentation](#)

[Contract Request Form](#) »

Welcome to the Office of the General Counsel's Contract Request process and guidelines. We're here to help you get the services you need to achieve your business goals.

What you need to know to get started

Before the University can procure any services, the Office of the General Counsel needs to determine if it is legally permissible to enter into the proposed relationship, and if so, review or draft a contract to govern the provision of those services. We have streamlined the contracting process to provide you the best service possible.

Contract requests can be broken down into two categories, review of another party's agreement, or drafting of an agreement (such as an Independent Contractor Agreement). You can use our Contract Request Form below (what we affectionately call our **SuperForm**) for either request.

We put the button at the top so you don't have to scroll anymore



How do I use the SuperForm?

All questions are required unless they say otherwise.

Let's get started.

Tell us who you are

Requester Name

Email

Phone Number

Department

Who is SCU's contact person for this agreement?

Me

Someone Else

Do you need us to generate a contract for you, or do you have one for us to review?

I need a contract created

I have a contract that I need reviewed

This is where the magic starts





...Magic?

All questions are required unless they say otherwise.

Let's get started.

Tell us who you are

Requester Name

Email

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Who is SCU's contact person for this agreement?

Me

Someone Else

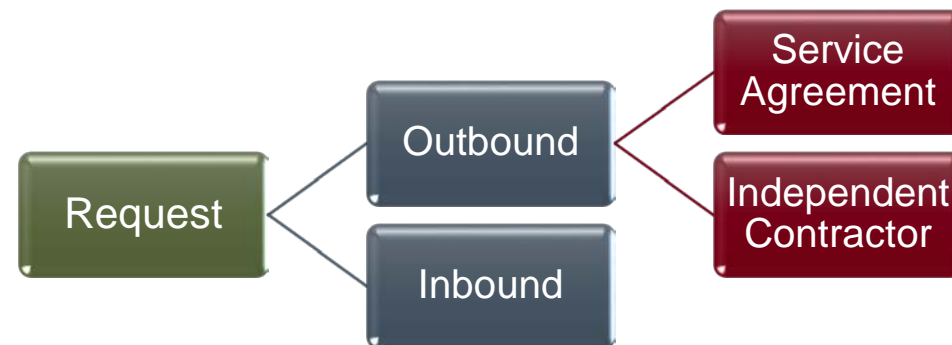
Do you need us to generate a contract for you, or do you have one for us to review?

I need a contract created

I have a contract that I need reviewed

This option will take you to our outbound section

This option will take you to our inbound section





Inbound Requests



Review requests are short

Tell us a little bit about this company, and what they will be doing for us.

Upload a copy of the contract below.

Drop files or click here to upload

To your knowledge, have we worked with this company before?

Yes

No

I'm not sure

Anything else we should know?

You can always email us at contracts@scu.edu



Outbound Requests



Contracting with a business

In order to be a business (for our purposes) the business needs to have an Employer Identification Number (EIN). An EIN is a numeric value that looks like XX-XXXXXXX

Does this person or entity have a business?

We define having a business as having an EIN (also called a TIN). If the proposed person or entity is using an individual's Social Security Number, please answer no.

Yes

No

I'm not sure

→

A business license itself does not create a business entity



Contracting with a business

These questions only appear if you are contracting with a business

Tell us a little bit about this business

Name of business

Email address for business

Mailing address for business

What is the business's EIN (XX-XXXXXXX)? Please do not enter social security numbers in this form.



What questions come next?

What is this business going to do for us? **This is the most important question in this form**, so please be as detailed and specific as possible.

Proposed start date (mm/dd/yyyy)

Proposed end date (mm/dd/yyyy)

Did this business entity submit a proposal for this project? If so, attach it here (optional)

Drop files or click here to upload

← All of this will go into the contract

←

←

←



New payment questions

How are you paying this business?

Hourly wage

One lump sum after all services have been rendered

Two or more installments

Another arrangement

What's the hourly rate, in dollars?

When paying by an hourly wage, we enter a not to exceed (NTE) amount in the contract, so there aren't any surprises. Don't worry about being exact, we can change this amount later via an Amendment if we need to.

What is the not to exceed value of this agreement (in dollars)?

You will get different questions depending on the payment structure you select



The last of the business questions

Will someone from this business be physically coming to campus?

Yes, as a requirement for this project

It's possible, but we aren't sure

No, there is little to no chance this business will need to send someone to campus

Anything else you think we should know?

That's it. Seriously.



Independent Contractors



So you need an Independent Contractor

Does this person or entity have a business?

We define having a business as having an EIN (also called a TIN). If the proposed person or entity is using an individual's Social Security Number, please answer no.

Yes

No

I'm not sure

Since this person does not have a separate business entity, we need to go through our independent contractor evaluation process to determine if it is legally permissible to retain this person's services.

This proposed contractor is a

Actor

Band

Club Sports Official

DJ

Musician

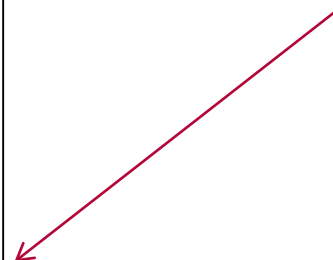
Photographer or Videographer

Speaker/Presenter

SCU Magazine Contributor (Illustrator, Writer)

None of the Above

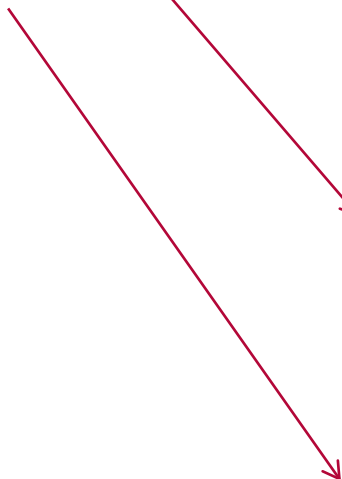
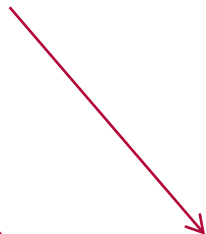
The contractor type you choose will route you to different parts of the form





For instance, musicians:

These only appear if musician is selected



What instrument does this musician play?

When will the performance(s) be taking place? Please include both date(s) and times.

When will the rehearsal(s) be taking place? Please include both dates and times.



So you need an Independent Contractor

Does this person or entity have a business?

We define having a business as having an EIN (also called a TIN). If the proposed person or entity is using an individual's Social Security Number, please answer no.

Yes

No

I'm not sure

Since this person does not have a separate business entity, we need to go through our independent contractor evaluation process to determine if it is legally permissible to retain this person's services.

This proposed contractor is a

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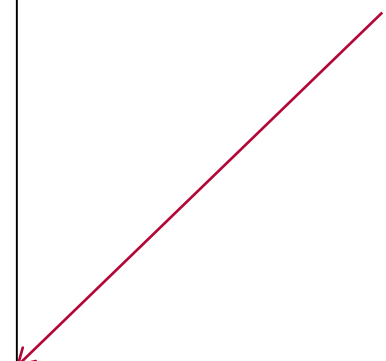
Photographer or Videographer

Speaker/Presenter

SCU Magazine Contributor (Illustrator, Writer)

None of the Above

None of the above routes you to our general set of questions





What's the catch?

- In order to route your request appropriately, we had to disable the back button across most pages
- Since you cannot go back and change your responses, we also had to disable the autosave feature
 - If you get stuck, refresh the page, or open in a new browser or incognito window. If that doesn't work, clear your cache.
 - Extra stuck? Call us for help



How to use the SuperForm like a Pro

Tell us a little bit about what this contributor is creating. What edition of the Magazine will they be featured in?

A large, empty rectangular text input field with a thin gray border. In the bottom right corner of the field, there is a small square handle containing a diagonal line, used for resizing the field.

If the field is too small, click and drag the corner to make it larger





How to use the SuperForm like a Pro

The SuperForm is optimized for mobile

A smartphone displaying the SuperForm interface. The screen shows a progress bar at the top with "0%" on the left and "100%" on the right. Below the progress bar is the Santa Clara University logo. The main content area contains the text "Tell us a little bit about who the proposed contractor is" followed by three input fields labeled "Name", "Email", and "Mailing Address". Below these fields is a question: "Is this individual over 18 years of age at the start of the proposed engagement?" with two radio button options, "Yes" and "No". At the bottom of the form is another question: "Is this individual a current or former employee of the University?". The smartphone has a home button at the bottom.



What happens next?

- It's contract time!
 - We will create a contract for you, based on your responses to the SuperForm
 - The authorized representative from your unit will receive an e-mail with the contract
 - The authorized representative will electronically sign the contract using Adobe Sign
 - The contract will automatically e-mail itself to your contractor
 - This is why it is so important we have your contractor's e-mail address
 - Your contractor will electronically sign the agreement using Adobe Sign
 - The contract will automatically e-mail itself to the Office of the General Counsel
 - One of SCU's attorneys will electronically sign the contract using Adobe Sign
 - The fully executed contract will automatically e-mail itself back to everyone who signed it or who was copied on it
 - Accounts Payable will receive a copy of all fully executed contracts
- You won't have to print or scan anything!**
-



It's that simple!



The New Law in California: Assembly Bill No. 5 (AB 5)



Context: Prior to the New Law

- *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989)
 - Set forth a multi-factor test to determine whether an individual was an employee or an independent contractor:
 - Whether the hiring entity has control over the means and manner of performing the work
 - Other factors, including skill required, who supplies the tools to perform work, whether or not the work is part of the regular business, etc.
- *Dynamex Operations West, Inc. v. The Superior Court of Los Angeles County* (2018)
 - Established the simpler "ABC test" for classifying workers
 - Result: more workers classified as employees
 - Applied to claims under California Wage Orders



Assembly Bill No. 5 (2019)

- Signed into Law by Governor Gavin Newsom in September 2019
- Applies January 1, 2020 (retroactive provisions)
- *Expands* the reach of the “ABC Test” determining whether a worker is classified as an independent contractor or an employee
- Creates new *Exemptions* to the test
- *Empowers* more entities to enforce the law



What is the ABC Test, under AB 5?

- Established in *Dynamex*
- ABC Test (all of the answers have to be “yes” to pass)
 - A. Is the worker **free from control and direction** of the hiring entity in the performance of the work, both under the contract for the performance of the work and in fact?
 - B. Does the worker perform **work that is outside the usual course of** the hiring entity’s **business**?
 - C. Is the worker customarily engaged in **an independently established trade, occupation, or business** of the same nature as the work performed for the hiring entity?



What is the result of AB 5?

- More claims
 - The ABC test will be used to determine whether a worker providing services in California is an “employee” for purposes of the [California Wage Orders](#), the [Labor Code](#), and the [Unemployment Insurance Code](#)
- More enforcement of AB 5
 - [Attorney General](#), [city attorneys](#), and [others](#) are empowered to pursue actions against employers who have misclassified workers
- Exceptions* to AB 5 are enumerated
 - [Certain occupations are carved out](#) of the “ABC Test”
 - *However, the *Borello* test applies to determine whether individuals in these occupations are employees or independent contractors



What are the AB 5 Exceptions*?

- Insurance brokers
- Doctors (physicians, surgeons, dentists, podiatrists, veterinarians, psychologists)
- Professionals (lawyers, architects, engineers, private investigators, accountants)
- Financial services (securities broker-dealers, investment advisors)
- Direct sales
- Commercial Fishermen (sunsets January 2023)
- Professional services (marketing, human resources administrator, travel agents, graphic designers, grant writers, fine artists, payment processing agent, still photographer, freelance writer/editor/cartoonist, licensed esthetician, electrologist, manicurist [manicurist sunsets 2022])
- Real estate or repossession agents
- Business to Business (must actually contract with other businesses, must provide services to the hiring entity and not the hiring entity's customers)
- Builders and construction industry contractors (special provisions about trucking industry)
- Service providers of certain referral agencies (*Note that these exceptions only apply to the relationship between the agency and the service provider: animal services, graphic design, photography, tutoring, event planning, minor home repair, moving, home cleaning, errands, furniture assembly, dog walking, dog grooming, web design, picture hanging, pool cleaning, or yard cleanup*)
- Motor club affiliated tow truck drivers

* *Borello test applies*



“How will AB 5 affect my contract request?”

- Good news: OGC already reviews contract requests to determine whether workers may properly be classified as independent contractors
- But...
- Consider the elements of the ABC Test when you are contemplating engaging with an independent contractor:
 - Is the worker free from control and direction of the hiring entity?
 - Is the work outside the scope of the usual course of SCU's business?
 - Is the worker customarily engaged in an independently established trade, occupation, or business?
 - *OR* does the worker fit into one of the AB5 exceptions
- Call the OGC's office with any questions.



Who has a question?



Gift Wrap Fundraiser!

COME SUPPORT OUR
*Gift Wrap
Fundraiser*

*Bring your unwrapped gifts and let us wrap them for
you!*

*What: Schott Building fundraiser for SCU Food
Insecurity Program*

**WHEN: DECEMBER 2ND-6TH | 11:00 A.M. TO
2:00PM**

*Where: Patricia A. and Stephen C. Schott
Admission & Enrollment Services Building*

*Why: All Donations support SCU Food Insecurity
Program (accepting funds, gift cards, or non
perishable food)*

Starts today at 11:00