

# Consultancy Policy for Dublin City University

This Policy was approved by the Executive of the University on 18 December 2012

## 1. INTRODUCTION

Dublin City University recognises the potential of consultancy activities to advance our contribution to the knowledge society, enhance the social and economic impact of university activities and support the enterprising and innovative spirit of the campus population. <sup>1</sup>Staff of the University are encouraged to engage in consultancy for external bodies as a legitimate and valued university activity provided such consultancy is consistent with the objectives of DCU and the contractual responsibilities of each individual concerned. Approved University Consulting activity will also be taken into consideration in promotion applications.

In recognising the value of consultancy activities, the University provides professional indemnity and other insurances for employees when undertaking consultancy work on behalf of the University and will provide additional professional support through Research and Innovation Support.

This Consultancy Policy has been adopted by DCU to:

- encourage and develop the University's links with industry, commerce and the wider community through high quality consultancy activities which in turn enhance the expertise of staff, facilitate new research opportunities and benefit our teaching programmes
- provide a clear consultancy framework for all stakeholders
- manage our external links effectively to ensure appropriate returns to both employee and University for use of resources and intellectual endeavour
- provide incentives for DCU staff to undertake consultancy work

## 2. POLICY RATIONALE AND SCOPE

In adopting this Policy, DCU seeks to increase its consultancy activity and to ensure that all DCU staff members engaging in consultancy understand their rights and obligations and give due consideration to the following:

- protecting the name and reputation of DCU
- insurance cover
- legal obligations
- taxation issues
- costing and pricing of consultancy activities

The Policy applies to all DCU members of staff undertaking consultancy work. <sup>2</sup>Academic and research staff should liaise with their Head of School and Faculty Dean; non-academic staff should liaise with their Head of Department and the Chief Operations Officer.

## 3. DEFINING THE CONSULTANCY FRAMEWORK

### 3.1 Research

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<sup>1</sup> All references to staff or employees shall be understood to include emeritus staff

<sup>2</sup> Academic staff refers to all staff working in a faculty or school and includes research staff and administrators etc.

'Research' is to be understood as the process of investigation undertaken in order to gain new knowledge and understanding. It includes work of direct relevance to the needs of commerce, industry, and to the public and voluntary sectors; scholarship<sup>3</sup>; the invention and generation of ideas, images, performances, artefacts including design, where these lead to new or substantially improved insights; and the use of existing knowledge in experimental development to produce new or substantially improved materials, devices, products and processes, including design and construction.

'Research' excludes routine testing and routine analysis of materials, components and processes such as for the maintenance of national standards, as distinct from the development of new analytical techniques. It also excludes the development of teaching materials that do not embody original research. [Reference: UK REF 2014 'Guidance on Submissions']

### **3.2 Consultancy**

'Consultancy' is the transfer or application of knowledge to address a client's articulated need.

'Consultancy' differs from Research in that it involves the application of existing knowledge and/or techniques and there is usually no academic output such as publications in academic journals and any such publication would generally require the outside party's prior consent.

The service provided produces a set of deliverables for which the client pays an agreed consulting fee (plus VAT). In general, the deliverables produced are the property of the client.

New intellectual property is not normally developed during a consultancy project.

In general, consultancy projects are short in nature. However, it is possible to undertake consultancy projects over a longer time period where the actual time to be spent (days) is agreed per month.

The following categories of work are not included within the definition of Consultancy:

- academic book publications
- contract research
- external examining
- guest lectures
- conference attendance/presentations
- ad hoc broadcasting or other interactions with media
- teaching quality assessments
- private or public sector board appointments
- external committee memberships
- normal inter-institutional academic activities

#### **3.2.1 University Consultancy**

University Consultancy is defined as a contractual arrangement for the provision by DCU, or an employee or group of employees of DCU, of defined professional services other than research based on the client's articulated need, to a client (external party) using DCU space, equipment, services, facilities or staff time, in return for a fee or some other form of remuneration. Such engagement with outside parties is regarded as part of normal academic duties.

It is DCU's preference that its staff operate through University Consultancy Contracts.

In University Consultancy Contracts, it is DCU which contracts with the outside body, which bears the cost of the necessary insurances, and which accepts the liability should anything go wrong for which the outside body can obtain legal redress.

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<sup>3</sup> Scholarship is defined as the creation, development and maintenance of the intellectual infrastructure of subjects and disciplines, in forms such as dictionaries, scholarly editions, catalogues and contributions to major research databases.

### **3.2.1.1 Community Service Consultancy**

Community Service Consultancy is a specific category of University Consulting that covers any agreement for the provision by DCU of advice or service to its local community. Staff engaging in Community Service Consultancy will be covered under the standard "University Consultancy Approval Process" (see Section 4) as well as the "Contractual Terms and Conditions" (Section 4.1).

### **3.2.2 Private Consultancy**

Private Consultancy is defined as an arrangement for the provision of professional services, where the consultant operates in a strictly private capacity, outside of his/her contractual duties to DCU and without using DCU space, equipment, services, or facilities. The University is NOT a party to this Consultancy and the Consultancy must NOT use DCU's name, space, equipment, services, facilities or staff time.

With Private Consultancy:

- the individual is the contracting party
- the individual is not engaged on University business while carrying it out and is not therefore covered by any of the University's insurance policies
- the University does not accept any liability for the work carried out
- the University has no obligation under the Health and Safety at Work Act for work conducted outside its premises
- the individual may not use any of the University's facilities without permission, nor in any way trade using the University's name or premises.
- the individual must ensure that there is no conflict with the interests or confidentiality obligations of the University in undertaking the Private Consultancy

## **4. UNIVERSITY CONSULTANCY APPROVAL PROCESS**

All consultancy activities potentially pose concerns in respect of liability and other such risks for both the Consultant and the University. It is imperative that staff members involved in consultancy ('the Consultant'), whether working in a University capacity or Private capacity, comply with the notification and approval procedures outlined in this Policy so that the University can:

- protect its integrity and reputation, ensuring public accountability and quality of work
- ensure that work to be undertaken is consistent with the terms and conditions of DCU's Intellectual Property Policy and Conflict of Interest Policy
- determine the Consultant's eligibility for cover under DCU's public liability and professional indemnity insurance policies

Consultancy work undertaken in the name of the University requires the prior approval of the relevant Head of School and the relevant Executive Dean (or Head of Department and Chief Operations Officer for non-academic staff) before any commitments and/or tender submissions are made (see Appendix I – Internal Approval form).

### **4.1 Contractual Terms and Conditions**

- Consultancy work must be within the staff member's field of expertise, be relevant to his/her teaching or research duties and must not interfere with the staff member's normal discharge of duties

- Approval for individual members of academic staff to engage in University Consultancy must be given by the individual's Head of School (or Head of Group in the DCU Business School) and by the appropriate Executive Dean; where the individual is an Executive Dean, approval should be obtained from the Vice-President for research and Innovation); approval for members of non-academic staff must be given by the individual's Head of Department and by the Chief Operations Officer
- The amount of time permitted for members of staff to undertake University Consultancy shall be determined by the relevant Head of School (or Head of Group in the DCU Business School) and confirmed by the appropriate Executive Dean, having due regard for the protection of teaching and research commitments and taking account of the University's principles of workload management; for members of non-academic staff the amount of time permitted for members of staff to undertake University Consultancy shall be determined by the individual's Head of Department and confirmed by the Chief Operations Officer
- University Consultancy activities are managed and administered by Research and Innovation Support, and all communications relating to University Consultancy activities shall be done in conjunction with Research and Innovation Support and communications copied to Research and Innovation Support
- With the exception of Community Service Consultancy, all fees for Consultancy work must be priced according to the guidelines set out in 4.2 and confirmed by Research and Innovation Support. Where the University engages in Community Service Consultancy, there will be a reduced fee for staff time with all other activities associated with the project charged at full cost to the client. Research and Innovation Support will agree costs with the community body in advance of the work to be undertaken
- A staff member undertaking University Consultancy is covered under the University's professional indemnity and public liability insurance
- A staff member undertaking University Consultancy has access to the range of University services, including financial and legal advice and on-going support
- If a member of academic staff believes that he/she has been unfairly prevented from undertaking Consultancy work, he/she may appeal the decision to the relevant Executive Dean in the first instance (where the individual is Head of School or Head of Group in the Business School, the individual may appeal the decision to the Vice-President for Research and innovation) and to the Vice President for Research and Innovation for a final and binding decision. If a member of non-academic staff believes that he/she has been unfairly prevented from undertaking Consultancy work, he/she may appeal the decision to the Chief Operations Officer in the first instance and to the Vice President for Research and Innovation for a final and binding decision.

## **4.2 Pricing of University Consultancies**

Research and Innovation Support will advise the member of staff on all aspects of pricing (including current daily rates) and will negotiate with the third party on behalf of the University and the Consultant.

Due to the broad nature of Consulting and the wide variation of factors (economic, geographic and otherwise) impacting on the work, each piece of Consultancy needs to be priced on an individual basis. Factors to consider when pricing University Consultancy work include:

- work must reflect full commercial rates, with Value Added Tax added at the prevailing rate
- the daily rate chargeable by the Consultant
- full economic costing of access to equipment and facilities, and of research personnel expenses, e.g. travel, materials, subsistence, incurred in carrying out the work
- insurance cover and costs for any work done on university premises involving non-DCU personnel.

#### **4.2.1 For Consultancy Contracts valued $\leq$ €10,000 per assignment**

It is important that University Consultancy Agreements can be established quickly and efficiently to minimise delays to the outside party while still protecting the University and the Consultant. Therefore, for consultancies priced at €10,000 or less, the DCU pro-forma Consultancy Agreement (Appendix II) can be used in conjunction with the Internal Consultancy Approval form. If this is acceptable to the outside party, the pro-forma contract can be signed in the case of academic staff by the appropriate Executive Dean and in the case of non-academic staff by the Chief Operations Officer. The Faculty Office or the Office of the Chief Operations Officer must send a copy of the completed contract to Research and Innovation Support for recording and quality assurance purposes.

If the pro-forma Consultancy Agreement is not acceptable to the outside party in any detail, then Research and Innovation Support must be involved in the negotiation and drafting of the final Consultancy contract with the third party.

When considering an application for Consultancy Approval, the Head of School/Group/Department must in all cases give priority to core University business. In signing the DCU Consultancy pro-forma contract, the Head of School/Group/Department is stating that:

- a. there is no conflict between the Consultancy work proposed and the staff member's responsibilities.
- b. the staff member is believed to have the necessary expertise to perform the work.
- c. the use of University resources and facilities has been fully declared and approved.
- d. members of staff wishing to undertake consultancy activities can satisfactorily perform their teaching, research and other responsibilities.
- e. that the proposed work has been costed and priced appropriately.

A copy of the signed Internal Consultancy Approval Form (see Appendix I) and DCU pro-forma contract (see Appendix II) shall be entered into the Research and Innovation Support Institutional Proposals Approval System (IPAS) system before any arrangement is finalised.

#### **4.2.2 For Consultancy Contracts valued $>$ €10,000**

Research and Innovation Support shall be responsible for reviewing large-scale consulting projects (valued  $>$ €10,000) or projects involving a complex schedule of work, or a draft contract proposed by the outside party, or where issues of Intellectual Property have arisen; in determining rates of charge for individuals; determining overhead recovery rate; drafting and negotiating consultancy agreements. The DCU Consulting Internal Approval form (Appendix I) still needs to be completed for large-scale or non-standard consultancy projects.

This is necessary:

- to avoid liabilities associated with the University providing indemnities, warranties and guarantees to clients (or to negotiate their limitation)
- to ensure that all contractual work falls within the terms of the University's insurance policies
- to ensure the University's intellectual property is assessed and, where appropriate, protected before any publication
- to be sure that in the event of litigation the University will have all relevant contractual documentation on file so that the University's ability to answer such litigation is not weakened by inadequate terms and conditions of contract, or a lack of documentation
- to achieve an appropriate fee.

The Vice-President for Research and Innovation or his nominee shall be the institutional authorised signatories on all non-standard University Consultancy agreements and/or contracts valued >€10,000.

### **4.3 Financial Procedures**

Each approved University Consultancy shall be managed through a separate project account which will only be established by the Finance Office on request from Research and Innovation Support.

It is the responsibility of the Consultant to ensure that all relevant costs are charged to this account in a timely manner. The Finance Office shall generate invoices on the University's/Consultant's behalf, once requested by the Consultant. Payment shall be requested in line with the standard payment terms of DCU with deductions for tax (where applicable).

On completion of the project the Consultant and the Head of School/Department shall be required to sign off and notify Research and Innovation Support that all expenses for the project have been accounted for. Only after this sign off has been received can any distribution of income take place.

Research and Innovation Support will notify the Finance Office to close the project account once all expenses associated with the Consultancy have been accounted for and income distributed in accordance with Section 4.4 below.

### **4.4 Distribution of Consultancy Income**

DCU wishes to incentivise all DCU consultancy stakeholders and accordingly has adopted the following income distribution procedures for consultancies ≤€10,000 to take account of the University's costs:

- 70% of day rate income to an account designated and controlled by the relevant Head of School, Dean or Head of Department, and available to the Consultant
- 15% day rate income to the Faculty
- 15% day rate income to DCU

Funds distributed to such accounts are only to be used to support the teaching and research mission of the University.

For larger or more complex consultancies, the income distribution will be agreed on a case-by-case basis after discussions involving the Consultant, Vice-President for Research and Innovation and the Director of Finance (or their nominees).

## **5. PRIVATE CONSULTANCY**

The following guidelines apply to Private Consultancy:

- Private Consultancy is undertaken by a member of staff in a personal and private capacity and in their own time.
- Private Consultancy cannot be processed through DCU.
- The member of staff should ensure that there is no conflict or potential conflict with the interests of the University in undertaking the Private Consultancy.
- The University has the right to ensure that Private Consultancies are undertaken without detriment to the member of staff's capacity to discharge their core duties.
- In undertaking a Private Consultancy, the member of staff must make clear to the client that they are not acting on behalf of the University; this should be done in

writing using a letter similar to the example in Appendix III and a completed copy must be lodged with the staff member's Head of School or Department.

- A member of staff undertaking a Private Consultancy may not use the University name, logo, intellectual property, services, facilities, equipment, stationery, telecoms, email, employment title and/or grade, nor in any way can he or she represent or permit to be represented that the University has any association with or involvement in the Private Consultancy.
- A member of staff undertaking a Private Consultancy is not covered by the University's Professional Indemnity policy or other work-related insurance policies. The consultant should make provision for professional indemnity insurance to cover his or her Private Consultancy activity.
- The University has no legal contractual responsibility for any Private Consultancy. The University has no interest in the conditions under which the consultancy is conducted and has no claim on any income earned.
- It is the consultant's responsibility to account for any income tax, PRSI, VAT or any other taxes due to the appropriate tax authorities on amounts earned from Private Consultancy work.

### **5.1 Private Consultancy Declaration**

- a. DCU has the right to ensure that the Private Consultancy work undertaken does not in any way impinge negatively on DCU values and/or the core duties of the staff member as a DCU employee.
- b. A staff member undertaking Private Consultancy needs to declare in advance Private Consultancy activities through the submission of a signed Private Consultancy Declaration form to their Head of School, Group or Department and copied to Research and Innovation Support stating the nature of the Consultancy and that he/she is undertaking the Consultancy in a personal capacity and in his/her own time [see Appendix IV].
- c. A staff member must ensure that there is no conflict of interest with University interests when undertaking Private Consultancy.
- d. A staff member must make the client aware that he/she is NOT acting on behalf of the University.
- e. A staff member must NOT make use of DCU name or logo, space, facilities, equipment, stationery, email, telephone, or Intellectual Property.
- f. A staff member accepts in writing that he/she is NOT covered by the University's Public Liability or Professional Indemnity cover while undertaking Private Consultancy and should personally make adequate insurance provision to cover his/her work.
- g. A staff member accepts that it is his/her personal responsibility to account for any income tax and/or Value Added Tax, that may be due to the Revenue Commissioners arising from income earned through Private Consultancy work.
- h. DCU makes no claims nor has any financial interests in Private Consultancy beyond ensuring that its reputation is protected and that it incurs no liability.

## **6. COMPLIANCE**

Research and Innovation Support shall have responsibility for disseminating details of DCU's Consultancy Policy to staff via the Executive Deans and Heads of Schools and Departments. The Deans and Heads of Schools and Departments will have responsibility at local level for ensuring compliance with the Policy and will work with Research and Innovation Support to promote appropriate consulting activity in their respective disciplines.

The individual staff member is responsible for complying with the terms of this Policy. Failure to disclose, or obtain formal approval for, consultancy shall be regarded as a disciplinary matter and be subject to the University's standard disciplinary procedures. Furthermore, the University's indemnity and public liability insurance cover shall not extend to those individuals found to be undertaking Private Consultancy.

## **7. POLICY REVIEW**

The University undertakes to review this policy from time to time to ensure that its terms are relevant and appropriate to the prevailing economic conditions.

Attachments:

- Appendix I Internal DCU Consultancy Approval Form
- Appendix II Pro-forma Consultancy Agreement for contracts up to €10,000
- Appendix III Example of letter to client in respect of a Private Consultancy
- Appendix IV Private Consulting Declaration Form

**APPENDIX I**

**DCU CONSULTING INTERNAL APPROVAL FORM**

Name:

Academic Title:

School/Centre/Unit:

Head of School:

Name of Client plus contact details of client:

Proposed duration of Consultancy:

Percentage time to be allocated to Consultancy:

Approximate consultancy contract value (excl. VAT): €

Brief description of Consultancy work to be undertaken:

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I confirm that the Consultancy work I am about to undertake with this client has been fully declared including requirements for access to University facilities, space, or equipment.

I acknowledge and have read and understood the University policy on **Conflict of Interest**, and confirm that I have no other activities, responsibilities or ownership entitlements that might lead to a conflict of interest situation.

**Signature:**

Date:

**Counter-signed by Head of School (for academic staff) or Head of Department (for non-academic staff):**

Date:

**Counter-signed by Executive Dean (for academic staff) or Chief Operations Officer (for non-academic staff):**

Date:

*COPY OF SIGNED FORM TO BE KEPT BY FACULTY OR DEPARTMENT OFFICE AND RESEARCH AND INNOVATION SUPPORT*

**Pro-forma Consultancy Contract for contracts up to and including €10,000**

This Consultancy Agreement effective \_\_\_\_\_, ("Effective Date") is between Dublin City University (the "**University**") and the party set out in the Schedule (the "**Company**").

WHEREAS: the University has agreed to make available the Consultant (as identified in the Schedule) to provide consultancy services for the Company.

IT IS HEREBY AGREED as follows:

1. The University will make available the Consultant to provide consultancy services ("**Services**") for the Company during the period, and for the maximum number of days, specified in the Schedule.
2. All confidential information disclosed to the University by the Company shall be kept confidential and governed by a separate confidentiality agreement to be entered into by the university and the company which sets out the scope of the confidentiality obligations and circumstances when compulsory or statutory disclosure may occur.
3. The Company will pay for the Services at the daily rate set out in Schedule (plus VAT at the prevailing rate) and will reimburse the University promptly on demand for all travel, accommodation, subsistence, and other reasonable expenses incurred in providing the Services. The University shall invoice for the Services according to the schedule specified in the Schedule. Such invoices shall be payable within thirty days from the date of the invoice.
4. The University gives no warranty in relation to the Services (including any warranty as to whether the use of the results of the Services will infringe any third party rights), or the uses to which the results of the Services may be put by the Company or their fitness or suitability for any particular purpose or under any special conditions notwithstanding that any such purpose or special conditions may be known to the University. The Company acknowledges that it has satisfied itself on the foregoing matters and use of the services and the results thereof is entirely at its own risk. All conditions and warranties, express or implied, arising under statute or common law, are hereby excluded.
5. The University shall not be liable to the Company for any indirect, consequential or special losses or any loss of profits (direct or indirect) arising directly or indirectly from the University's breach of this Agreement or from any liability arising out of the subject matter of this Agreement even if the Company has advised the University of the possibility of those losses arising, or if such losses were within the contemplation of the parties. Notwithstanding the foregoing, nothing in this Agreement limits or excludes the University's liability for death or personal injury caused by its negligence, or for fraud or for any sort of liability that, by law, cannot be limited or excluded.
6. The University may by written notice terminate with immediate effect this Agreement if the Consultant ceases to be employed by the University or otherwise becomes unable to deliver the Services.
7. This Agreement shall be governed by the laws of Ireland and the courts in Ireland shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

Signed by the parties' authorised signatories on the date set out above.

By and on behalf of the University:

By and on behalf of the Company

Signed: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

This is the Schedule referred to in the attached Consultancy Agreement

### SCHEDULE

#### COMPANY DETAILS

Company Name:	
Name and contact details of primary contact:	
Company Number and place of incorporation (if relevant):	
Address:	

**Consultant:** [insert name of the Consultant]

**Description:** insert brief description of the services to be provided

**Period:** [insert period services are to be provided for, including start and end date]

**Maximum No. of Days:** [insert maximum number of days services are to be provided during the period]

**Price:** [insert total price of the Consultancy]

**Schedule of Invoicing:** [insert invoice pattern, e.g. monthly, 50% of signature with 50% on completion]

### **Appendix III Example of a letter to an outside party clarifying the nature of a Private Consultancy**

The member of staff undertaking a Private Consultancy must make it clear in writing to the client that the consultancy is being performed in a private capacity. A copy of this letter countersigned by the Company's authorised signatory must be lodged with the Head of School or Department and Research and Innovation Support.

A suitable letter for this purpose (which must not be on University stationery) would be:

"Date [insert]

Dear name [insert]

Title of Consultancy [insert]

With reference to our previous discussions and correspondence, I must point out that whilst my employer, Dublin City University, permits its academic staff to undertake private consultancy assignments, nevertheless, once its approval has been given it exercises no control or supervision over the actual performance of the work. Consequently, the University cannot accept responsibility for the work I do or the advice which I give in connection with it.

Please acknowledge receipt of the letter.

Yours faithfully"

\_\_\_\_\_  
[DCU employee name]

\_\_\_\_\_  
[Company signatory name]

**APPENDIX IV PRIVATE CONSULTING DECLARATION FORM**

Name:

Academic Title:

School/Centre/Unit:

Head of School/Department:

Name of Client:

Proposed duration of Consultancy:

Brief description of Consultancy work to be undertaken:

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I declare that the Consultancy work I am about to undertake with this client will be conducted entirely on my own time and without recourse to any facilities, space, equipment, research data or results of the University.

I further declare that there is no conflict of interest with DCU and that my client is aware that I am acting in an entirely private capacity and that I cannot make any representations concerning DCU intellectual property

I understand that I am not covered under the DCU public liability and professional indemnity insurance policy.

Signature:

Date:

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I am satisfied that [Name] is undertaking this work in an entirely private capacity and that there is no conflict with his/her contractual obligations to DCU.

Name:

Signature of Head of School/Department:

Date:

*COPY OF SIGNED FORM TO BE KEPT BY FACULTY OR DEPARTMENT OFFICE AND  
RESEARCH AND INNOVATION SUPPORT*