

Trinity College Dublin The University of Dublin

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Consultancy & Outside Earnings Policy 2019

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1. Introduction

This policy brings together the **Trinity College Dublin (Trinity) Regulations on Outside Earnings Policy** (Procedure 15, Revision 5) with a new policy for academic consultancy. The policy was developed by **CONSULT Trinity**, the consultancy office in Trinity Research and Innovation (TR&I).

Trinity recognises the potential of consultancy activities to advance our practical contribution to knowledge and the open exchange of ideas, and to apply academic expertise in enabling real-world change for the public good. Consultancy enhances the social and economic impact of Trinity activities and supports the entrepreneurial and innovative spirit of the campus ecosystem. Academic staff are encouraged to engage in consultancy for external bodies as a legitimate and valued Trinity activity, provided that the consultancy is consistent with Trinity's objectives and the contractual responsibilities concerned.

The principle goals of this new policy are to:

- encourage and develop our links with society through working with the broadest possible range of partners, which in turn enhances the expertise of staff, facilitates new research opportunities and benefits our teaching programmes;
- provide a clear consultancy operational framework for all stakeholders;
- manage our external stakeholders effectively to ensure an appropriate economic return to Trinity for use of resources and intellectual endeavour;
- provide incentives for academic staff to undertake consultancy work.

All consultancy work is subject to the procedures contained in this policy.

2. What is Consultancy?

Consultancy is the transfer or application of knowledge to address an external client's specific 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. Any such publication would require the outside party's prior consent.

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

New intellectual property (IP) is not normally developed during a consultancy project. Clientspecific data or information may be generated and this would normally belong to the client. In general, consultancy projects are short or small-scale in nature and involve additional work for existing staff members rather than the employment of new staff. The projects may be arranged on a case-by-case basis, or on a retainer arrangement whereby the academic staff concerned make themselves available for a specified amount of time over an agreed period.



This policy employs a broad definition of what constitutes consultancy. Examples include:

- One-off and/or repeat advice to a client;
- Commercial and routine testing and analysis of materials, components, products, processes using Trinity facilities, provided it is "spare time" or "infrequent" use of the equipment rather than the main use of the equipment;
- Feasibility studies;
- Using client's existing data or information to form an opinion;
- Expert witness;
- Bespoke training for a client;

This policy **does not** apply where any of the above activities are used as part of a research project.

In addition, it does not apply to those activities, paid or unpaid, which are in furtherance of scholarship or general dissemination of knowledge, such as:

- Authorship of, or royalties from, the publication of books;
- Media interviews;
- Service on public sector or charitable committees;
- External examiner duties, lecture tours and conference presentations or attendance;
- Editorship of academic journals or the publication of academic articles;
- Professional arts performances.

The following activities **not permitted** for insurance purposes:

- Use of aerial devices, waterborne craft, vessel or mechanically propelled vehicles;
- Advice, design, specification, or report in relation to any aircraft or aerial devices or part thereof;
- Manufacture/supply of products other than prototypes.



2.1 Consultancy or Contract Research?

It is important to decide on the classification of the service before commencing the work: i.e. is the project consultancy or contract research? How the project is classed can have an impact on the agreement terms, internal reporting and how the income is managed. **CONSULT Trinity** (<u>Consult@tcd.ie</u>) should be contacted to advise, if required to ensure the project is classified appropriately. Table 1 summarises the main differences between consultancy and research.

Under this policy it is the academic who decides which category is most suitable for the project/proposal.

Consultancy	Research
Voluntary activity by academic consultant	Research required as part of academic duties
Specific problem-solving for client organisation, with defined outputs	Speculative research of mutual interest, outcomes unknown at the outset
Substantial individual work, some facilities used	Substantial use of facilities
Results confidential	Results published
Client organisation normally owns IP	Trinity normally owns IP
Quotation for clients charging market rates	Full Economic Costs
Short timescales (1-18 months)	Post docs (1+ years) and Studentships (3 years)

Table 1

Although the differences between sponsored research and consultancy are usually obvious, consultancy and contract research can share common features. Table 2 emphasises these common features and how they differ from research that is collaborative in nature.

	Collaborative Research	Contract Research*	Consultancy*
New knowledge created	Yes	Yes	No
Payments	Client pays direct costs + overheads	Client quoted full commercial fee	Client quoted full commercial fee
Publication permitted	Yes	not normally	not normally
IP ownership	Trinity	Client	Client
VATable activity	No	Yes	Yes
Staff carrying out the work	Normally requires staff other than PI	Normally requires staff other than PI	Unlikely to require staff other than PI

Table 2



*NOTE: The internal term "Research Services" involves a client paying full market rate for a defined piece of work that may or may not involve research. VAT is applied and the client will own any IP generated from the project. It therefore incorporates both consultancy and contract research activities.



3. Policy and Scope

This policy applies to all full-time, permanent and temporary academic staff. It applies *pro rata* to part-time academic staff. In adopting this policy, Trinity seeks to ensure that all academic staff engaging in consultancy understand their rights and obligations and give due consideration to the following:

- Protecting the name and reputation of Trinity;
- Insurance cover;
- Legal obligations;
- Taxation issues;
- Costing and pricing of consultancy activities.

4. Benefits for Academic Staff and Trinity

Consultancy can provide a range of benefits to the university, to academic staff, and to the clients to whom the work is delivered.

With regard to Trinity, the main benefits include:

- Enriching intellectual activity: cultivating external interactions that are helpful for teaching and are essential in many subjects (e.g. clinical, art and performance-based subjects, vocational and industry-focused subjects);
- Extending the research and knowledge base of Trinity, often leading to other forms of partnership including research projects;
- Marketing benefits: provides useful contacts, and opportunities to enhance the university's brand and the reputations of individual Schools;
- Financial benefits: provides revenue and diversifies sources of income;
- Incentive to attract and retain talented staff.

Staff benefits of consultancy include:

- Generation of funding streams;
- Allows for personal development;
- Creates new professional opportunities;
- Highlights the relevance of research in a changing society;
- Participate in a "smart economy" of shared learning and exchange of ideas;
- Possibility of obtaining real-life and real-time data;
- New learning outcomes for teaching.



5. How can Trinity Academic Staff engage in Consulting?

Academic staff wishing to undertake consultancy projects can do so by one of two means, namely *via* Trinity and **CONSULT Trinity** or privately (Outside Earnings). Both options are permissible through this policy. However, it is worth considering a number of factors in order to choose the most appropriate route.

All consultancy work, regardless of whether it is undertaken privately or through Trinity, **requires prior approval** from the relevant Head of School and Head of Discipline (if applicable) before any commitments and/or tender submissions are made. Normally, the Head of School should be consulted about the consultancy opportunity or tender at the earliest possible stage of the process. Heads of School who wish to carry out consultancy work should seek approval with the Dean of the Faculty and, similarly, Deans should seek approval directly with the Provost. The individual must ensure that there is no conflict with the interests or confidentiality obligations of Trinity in undertaking the consultancy.

Permission to engage in both/either forms of consultancy may be granted in cases where the following conditions are met:

- The work must be appropriate, that is to say, it should increase the staff member's skills and experience in such a way as to strengthen teaching and research. It should provide a link to the world of business, industry, the professions, charitable bodies, or government which is beneficial to Trinity and its students, and which is not otherwise achievable under standard research contract arrangements or in the context of public duty;
- The time spent on the undertaking must not interfere with the performance of normal duties of full-time staff and the additional time involvement is limited to a maximum of 20% of the normal working week;
- Any Trinity resources used need to be charged at full economic cost;
- The undertaking must not be in competition with the normal business of Trinity;
- Full adherence must be upheld to the Trinity's <u>Code of Governance</u> and <u>IP Policy</u>. Of particular importance is the Code of Conduct for Employees, which addresses issues including potential conflicts of interest.

5.1 Trinity Consultancy

This is the route that should be used if the relationship with the company is valuable to the School, and/or if the academic does not wish to manage all the procedural, legal and financial considerations associated with the project. If Trinity's IP is used during the consultancy, the consultancy should be undertaken via Trinity Consultancy, in accordance with Trinity's IP Policy, and the IP will be used under licence. Academics engaged in private consultancy cannot use Trinity's intellectual property or brand and although they may apply for professional indemnity insurance, the insurance may not be granted in all cases, and it will be limited.



With Trinity Consultancy, the university is the contracting party, not the individual consultant. Academic staff can benefit from explicit use of the Trinity brand and logo to promote their services. Trinity bears the cost of the necessary insurances and accepts the liability should any issues occur for which the outside body can obtain legal redress. Approved Trinity consultancy activity will also be taken into consideration in academic promotion applications under the "Service to discipline" category.

Support appropriate to the specific activity will be provided by **CONSULT Trinity**, the consultancy office in TR&I. **CONSULT Trinity** seeks to relieve the administrative burden associated with consultancy projects and maintain the freedom and control of the academic over their own work and time when engaging in such projects.

Supports to academics include:

- Assistance with costing, and pricing guidance;
- Providing consultancy template agreements;
- Scrutinising (and, if necessary, negotiating) any terms and conditions proposed by clients who are resistant to commit to Trinity's standard terms and conditions;
- Arrangements for licencing of Trinity IP;
- Liaising with Trinity's insurers;
- Maintaining records;
- Invoicing and payment collection.

5.1.1 Pricing of Trinity Consultancies

It is important that consultancy projects are costed and priced appropriately to protect Trinity's brand value. **CONSULT Trinity** will advise the member of staff on all aspects of pricing (including current daily rates and access charges for equipment and facilities) and will negotiate with the third party on behalf of Trinity and the consultant.

Due to the broad nature of consulting and the wide variety of factors (economic, geographic and otherwise) that may influence the work, each piece of consultancy needs to be priced on an individual basis. Factors to consider when pricing Trinity consultancy work include:

- Work must reflect full commercial rates, with VAT added at the prevailing rate;
- The daily rate chargeable by the consultant;
- Full economic costing of access to equipment and facilities, and of personnel;
- Expenses (e.g. travel, materials, and subsistence) incurred in carrying out the work.

5.1.2 Contractual Terms and Conditions for Trinity Consultancy

When considering approval for a consultancy application, the Head of School/Discipline must in all cases give priority to core Trinity business. In approving the consultant to carry out the work, the Head of School is stating that:

• There is no conflict between the consultancy work proposed and the staff member's responsibilities;



- The staff member is believed to have the necessary expertise to perform the work;
- The use of Trinity resources and facilities has been fully declared and approved and they will be made available to the consultant;
- Members of staff wishing to undertake consultancy activities can also satisfactorily perform their teaching, research and other responsibilities;
- The disbursement of the consultancy income has been agreed (see Section 5.1.3);
- That the proposed work has been costed and priced appropriately.

The Trinity Consultancy Approval Form (Appendix I) needs to be completed and returned to the **CONSULT Trinity** (<u>Consult@tcd.ie</u>) before any contract can be reviewed.

Note: For PIs in larger Schools, Heads of Discipline must be consulted prior to the Consultancy Approval Form being sent to the Head of School for approval.

It is important that Trinity consultancy agreements can be established quickly and efficiently to minimise delays to the outside party, while still protecting Trinity and the consultant. Therefore, the Trinity Consultancy Template Agreement (provided by **CONSULT Trinity**) should be used, where possible. **CONSULT Trinity** will then arrange a contract review and sign off on the contract. The final sign-off on all Trinity consultancy contracts can only be carried out by the legal authorised signatory of Trinity (either the Head of Research Contracts, or the Director or the Deputy Director of TR&I).

5.1.3 Financial Procedures and Distribution of Income

Trinity wishes to incentivise all consultancy stakeholders and accordingly has adopted the following income distribution procedures for consultancy projects, taking Trinity's costs into account. In order to reward those carrying out Trinity consultancy, **TR&I strongly encourage Heads of School to ensure consultancy income transferred to the School account is made available to the consultant.** Funds distributed to such accounts are only to be used to support the teaching and research mission of Trinity.

A 15% fee (or overhead) will be charged on all Trinity consultancy assignments to cover legal, financial and administrative support provided by TR&I. **CONSULT Trinity** shall generate invoices as requested by the consultant. The remaining consultancy income shall be disbursed to a self-financing account, designated and controlled by the relevant Head of School. The account will be controlled by the Faculty Dean where the Head of School is carrying out the consultancy, and similarly the account ownership will be controlled by the Provost when Faculty Deans are undertaking the work. **Note**: Board has approved an exemption for School self-financing accounts with consultancy income from the standard 10% overhead normally applied to all College self-financing accounts.¹

For consultancy projects involving a complex schedule of work, or where School resources and facilitates will be used (i.e. not desk-based consultancy), **the distribution of the income should be agreed between the consultant and their Head of School prior to commencement**

¹

 $^{15/312~(}c,\,iii)$ Minutes of Board Meeting, 11 June 2003



of the project. This conversation should take into account the cost to Trinity, the value of the consultancy to Trinity, and use of the Trinity brand <u>and</u> facilities (where relevant). The distribution of income is, therefore, very much dependent on the nature of the specific consultancy project but the disbursement of funds should fairly reflect the consultant's entrepreneurial efforts to encourage participation.

5.2 Private Consultancy (Outside Earnings)

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 Trinity and without using Trinity resources. With private consultancy, the individual is the contracting party. The individual must ensure that there is no conflict with the interests or confidentiality obligations of Trinity in undertaking the private consultancy.

Note: Specific contractual arrangements exist limiting the right of clinical consultant staff to engage in private medical practice.

A member of staff undertaking private consultancy may not use the Trinity brand 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 Trinity has any association with or involvement in the private consultancy. 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. Members of staff MUST tell their client in writing that they are acting in a private capacity and not in any way representing Trinity. It is advised that staff carrying out consultancy in their private capacity use the disclaimer set out in Appendix II.

5.2.1 Professional Indemnity Insurance

Trinity's professional indemnity insurance policy is extended in respect of individual members of the University's academic staff undertaking private work (excluding medical or surgical work on human beings) with the express permission of Trinity College Dublin, provided that the limit of indemnity shall not exceed €1,300,000 in the aggregate in any one period of insurance.

This policy is on a claims made basis, covering only claims made or incidents notified to insurers during the period of insurance. Immediate written notification shall be given in respect of:

- Any circumstances which may give rise to a claim;
- The receipt of notice from any person of an intention to hold the insured responsible for compensation following any negligent act, error or omission;
- Any claim made against the insured.

The above is particularly important given it is a claims made policy. Cover is subject to the terms, exclusions, limits and conditions of the policy. Trinity's Estates and Facilities Department should be consulted for further information, if required.



Principal exclusions include:

- Medical malpractice;
- Clinical Trials;
- Contractual Liability;
- Use of aerial devices, waterborne craft, vessel or mechanically propelled vehicles;
- Advice, design, specification, or report in relation to any aircraft or aerial devices or part thereof;
- Bodily injury;
- Manufacture/supply of products other than prototypes.

Members of academic staff availing of this cover are advised to ensure that the level of cover is sufficient and are further advised that Trinity accepts no liability for the actions of staff working in a private capacity. Staff should carry out a risk review to assess their exposure, and, where appropriate, arrange separate insurance cover if required. Staff should also ensure that any company/outside body they engage with has Public Liability insurance which will cover the staff member in the event of bodily injury whilst on the premises of the company/outside body.

In order to provide professional indemnity cover for members of academic staff, Trinity's insurers have requested that a comprehensive annual return be made by the College in respect of external work/consultancy undertaken. Private consultants who have approval to avail of Trinity's professional indemnity insurance should ensure that the level of indemnity is included in the contract negotiated with the client.

Procedure to apply for Professional Indemnity Insurance

On an annual basis, during Hillary Term, all academic staff members are issued with a form asking whether or not they are intending to engage in paid outside work. If they are, staff must request permission from their Head of School by completing the Outside Earnings Form and indicate, *inter alia*, the nature of the external work to be undertaken, the estimated income and associated entity, the amount of actual time involved and the duration of the work. A copy of the appropriate form is attached to this policy (see Appendix III). Academic staff who do not intend to engage in outside work need not make a request.

All approved proposals should be sent to the HR Service Centre, Human Resources, House 4 for processing and copies should also be sent to **CONSULT Trinity** (Consult@tcd.ie) and the Office of the Provost (for noting only). Within two weeks of the deadline for the return of approved forms from all academic staff, each staff member will be formally advised if permission has been granted and, if so, that a return has been received or, in the case where no permission has been requested, that no form has been received. Where no permission has been requested or where permission has been declined, no insurance cover will be provided to indemnify such staff in the event that consultancy work is undertaken.

Permissions sought for undertaking such consultancy work outside the above framework should be discussed in the first instance with the Head of School and subsequently referred to the Provost.



The College is prepared to consider new forms of contract for members of staff who may wish to make a lesser commitment to College and who wish to spend more time on external work.

An appropriate return will be made annually to the College's insurers. Subject to the provision of any required report detailing collated information on the number and value of consultancy contracts (without naming individual academics or entities), all information provided by academic staff in the annual return form will be maintained in confidence.

Note: Academic staff carrying out consultancy work for Campus Companies are excluded from the private earnings extension to College's Professional Indemnity Policy. Campus Companies, notified annually to insurers, are expected to have in force their own professional indemnity insurance with Trinity named as jointly insured or with an indemnity to Trinity against all third party claims.



5.3: Comparing the Two Options

Trinity Consulting	Private Consulting
yes	yes
TCD	individual consultant
yes	no
yes	limited
	Consulting yes TCD TCD TCD TCD TCD yes yes yes yes

Table 2: Summary of Trinity & Private Consulting

6. Conflicts of Interest

In accordance with section 3A.1.3 of the <u>TCD Code of Governance 2013</u>, a conflict is described as: "*a* situation in which there is or may be perceived to be a divergence between the private financial benefit or financial interest or personal benefit of a person, family member, or an outside party, and that person's obligations to the University, such that an impartial observer might reasonably question whether related actions to be taken or decisions made by the person would be influenced by consideration of the person's own interests."

CONSULT Trinity (<u>Consult@tcd.ie</u>) must be informed of any potential conflict of interest that may arise before or during undertaking consultancy. Declarations of interest of all participants or proposed participants in consultancy must be disclosed at the time of contract acceptance. In all cases where consultancy work is undertaken in a private capacity and the consultant *also* seeks a contract with the same third party for work to be conducted through Trinity, the nature and quantity of the work being carried out in a private capacity must be disclosed by the consultant to Trinity (acting though **CONSULT Trinity**). Trinity may advise that the consultancy work is taken in-house and administered by **CONSULT Trinity** or decline to enter into any contract with third parties if the scale of such work with Trinity is inappropriate relative to the private consultancy. Trinity may also decline to enter into any contract with third parties if the nature of the work may compromise the independence or integrity of the university.



7. Compliance

TR&I shall have responsibility for disseminating details of Trinity's consultancy policy to staff *via* the Faculty 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 this policy and will work with TR&I to promote appropriate consultancy activities 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 will be subject to Trinity's standard disciplinary procedures.

8. Policy Review

Trinity undertakes to review this policy from time to time to ensure that its terms are relevant and appropriate to prevailing conditions.



Appendix I: Trinity Consultancy Approval Form

Trinity Consultancy Approval Form Consultant to complete all relevant information then email signed form to: Trinity College Dublin					
Consult@tcd.ie Olscoil Atha Cliath The University of Dublin					
Project Summary					
Project Title					
Brief Description of Consultancy					
Work to be undertaken					
Name of Consultant		Academic Title			
Staff ID Number		Phone Number of consultant			
Consultant Email		School/Centre/Unit			
Client Name		Client Address			
Client Email		Estimated number of days on project			
Project Start Date		Project Completion Date			
School Cost Centre					
		School Activity Code			
Project Details					
Please confirm you read the Trinity Policy on Consultancy and Outside Earnings?		Is Ethical Approval required?			
Does your project involve Humans, their		Is Personal Data used as part of the			
Tissue or Biological Data?		Project?			
	If yes, complete Q15 of CAF and attach to this form		If yes, complete Q17 of CAF and attach to this form		
Estimate Total Contract Value (excl. VAT)		Estimate Consultancy Office Fee (15%)	€0.00		
Estimate Total Consultancy Funds transferred to School Account	€0.00	School Fee (optional)			
	20.00				
Estimate Funds available for Consultant's self- financing activities	€0.00				
The Total Contract Value will not include VAT or Expenses unless otherwise agreed. The Total Consultancy Funds transferred to School Account = Total Contract Value - Consultancy Office Fee The School Fee is an optional amount that should be discussed with your Head of School prior to signing this document. Funds available for Consultant's self-financing activities = Total funds transferred to School Account - School fee (if applicable) and is inclusive of the PI's time contribution to the project					
Declaration by Consultant					
I agree that this work will not interfere in any material way with my normal duties (teaching, academic, contribution to School/College & Scholarly activity) and I agree to the split of the Total Consultant's Income as specified above. I have discussed the material facts of this project with the Consultancy Manager in TR&I and Head of Discipline (if applicable). I have read, understood, and will comply with all Trinity policies and regulations when carrying out the project. I agree and will comply with all the terms and conditions of the contract for this project. I confirm that there is no conflict of interest with any other projects I have. Signature Date Print Name					
Declaration by Head of School					
I consider that the Consultant has the appropriate skills and expertise to do the work and that this work will not interfere in any material way with the normal duties or responsibilities of the Consultant, and will not impact negatively on the work of our School. I also approve the transfer of funds into the above-mentioned School Account. The funds will be made available to the Consultant as per the agreed disbursement ratio outlined above.					
Signature	D	late			
Print Name					
Additional Notes					



Appendix II: Private Consultancy Disclaimer

Please note that the services are provided by [•Name of consultant] acting in a private capacity. [•Name of consultant] is not, and shall not be deemed to be, acting as agent or employee or representing in any way Trinity College Dublin. Accordingly, you and your company, by accepting the services, (i) acknowledge that Trinity College Dublin has no responsibility or liability for the services and (ii) is deemed to have waived any right or entitlement to pursue or instigate any claim or action against Trinity College Dublin for any injury, loss or damage you or your company may sustain as a result of [•Name of consultant] undertaking the services for you or your company.



Appendix III: Outside Earnings Request Form for Academic Staff Only

То	Head of School	
From	Please print your name	Prof Dr Mr Ms
		Please tick as appropriate
Cons does Polic in w with	nission is sought to engage in the following ex sultancy & Outside Earnings Policy (Board Approve s not exceed the permitted levels as described in cy. I will not access or use any Trinity resources to u riting that I am undertaking this work in a private ca a all Trinity policies and regulations when carrying flict of interest with any other projects I have. Work	ed 11 September 2019). I confirm that this work the Trinity Consultancy and Outside Earnings ndertake this work. The client has been notified apacity. I have read, understood, and will comply
Entity		
year	f approximate weekly time involvement in Academ f undertaking	ic
Academic	Year work will be undertaken (eg 2019/2020)	20/20
Estimated year	annual income from outside earnings for academic	
·		I confirm that I am personally paid for the above work that I undertake (e.g. the payment is not paid into a TCD
Date		account) Signed
Email addr	ess	School
Discipline	ved the above application on the basis of the inform	
Signed	Head of School	Date
1. The HRS	ch approval should be sent to: Service Centre, Human Resources, House 4 /ost's Office for noting	

3. <u>Consult@tcd.ie</u> for noting