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DIVISION OF SERVICES AND RESOURCES
HUMAN RESOURCES

THE UNIVERSITY OF ADELAIDE AUSTRALIA

OUTSIDE RESEARCH GRANTS, CONTRACTS AND CONSULTANCIES POLICY

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Related Documents:	Academic Staff Involved in Outside Organisations		
	Intellectual Property Policy		
	Practice of a Discipline Outside the University by Academic Staff; Rules relating to		
	Work Outside the University (Professional Staff) Policy		
	Conflict of Interest Policy and Guidelines		
Implementation & Review:	Human Resources		
Superseded Documents:	Consultancies for Outside Bodies by Members of the Academic Staff (Admin Handbook Sub-Section 4.8(3))		
	Consulting Work for Luminis and Other Contract Research (Admin Handbook Sub-Section 4.8(4))		
	Outside Research Grants (Admin Handbook Sub-Section 10.11)		

Any person who requires assistance in understanding any aspect of this document should contact Human Resources on ext. 35666.

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1 PREAMBLE

The University recognises the advantages to the University, individual departments and staff, and to the community, in academic staff seeking and obtaining grants for research from sources outside the University and encourages staff to seek such grants. It also recognises that similar advantages may result from staff members undertaking research and other work under contract or consultancies to outside bodies and encourages staff to obtain such contracts and consultancies.

The University believes that maximum benefit to both staff and the University will be gained by staff negotiating such contracts and consultancies through ARI (Adelaide Research & Innovation) Pty Ltd. In the case of consultancies, a particular advantage to staff is that such agreements will be covered by ARI professional indemnity insurance. Accordingly, the University requires all agreements for contract research and consultancies to be negotiated through ARI Pty Ltd, unless an exemption is granted under the provisions of paragraphs 6.2.2 or 7.2.3 below. Research grants are administered through the Research & Graduate Studies Branch.

2 DEFINITIONS

The University acknowledges that distinguishing between a consultancy and an agreement for contract research, or an agreement for contract research and a research grant, may be difficult in some situations as they may be seen as different steps on a research continuum. However, the essential features of each of these are described in later paragraphs for the guidance of University staff.

3 GENERAL PRINCIPLES

3.1 The general principle is that research and consulting work financed from sources outside the University should be appropriate to a University, broadly acceptable to the University community, unlikely to infringe the general freedom of enquiry of the University and of the staff concerned, should not interfere with the efficient discharge of the duties of staff members (as set out in Chapter IV of the Statutes) and should not distort the normal teaching and research functions of a department.

3.2 The University is also concerned that research grants, agreements for contract research and consultancies are entered into with a proper understanding of the costs to the University of the work involved, and with appropriate provisions for the recovery of costs, the ownership of intellectual property, carrying of liability, treatment of confidentiality and other matters that protect the University's interests in the work.

3.3 The signatories to an agreement, be it a grant, an agreement for contract research or a consultancy, bear the responsibility for ensuring that the terms of the agreement are carried out. It is appropriate to note here that only the Vice-Chancellor and President, or his or her delegate, can commit the University itself to being a party to such agreements.

4 COSTING AND PRICING

Negotiating with commissioning bodies, whether for grants, agreements for contract research or consultancies, must start from knowledge of the full costs to the University. This includes not only the costs of salaries, equipment and consumables, but also overheads and infrastructure, such as power, phones, accounting and administrative services, cleaning and garbage services, library and computing services, etc. Once these costs have been established, the process of establishing the price which can be charged can begin. This will vary according to the type of project; the guidelines are set out in later paragraphs.

5 RESEARCH GRANTS

5.1 Definition:

Research grants:

- are generally provided by research councils or foundations or charities;
- are generally for research of a more fundamental or strategic nature, but can be of an applied nature;
- are generally subject to the competitive process, involving independent peer review of project applications;
- do not generally specify required outcomes;
- involve University staff in setting objectives and criteria by which success will be measured;

- generally recognise that intellectual property will be owned by the University (but see paragraph 8.2 below);
- do not usually require indirect costs to be identified (because the granting body will not usually pay them);
- will have the University as a party to the grant agreement, not an individual researcher (see paragraph 3.3 for details of signatories who can commit the University).

5.2 Negotiation and Administration

Applications for and the administration of research grants are coordinated through the Research & Graduate Studies Branch of the University's central administration.

5.3 Costing and Pricing

The formula at Appendix A for simplifying the costing of research activities must be used to cost proposed research activities EARLY in negotiations with outside bodies.

Where the funds for research are provided by a research foundation or charitable body, and where the project is assessed by peer review in competition with others, the guidelines for costing the research will, in part, be determined by the granting body, in particular the large grant bodies such as the ARC and the NH&MRC. However, at all times it is essential to put in the grant application details of all direct costs of the proposed research.

6 AGREEMENTS FOR CONTRACT RESEARCH

6.1 Definition

Such agreements:

- are generally commissioned by a commercial or industrial or public sector organisation;
- are generally for projects of an applied nature or for continued development of a product or process;
- are generally subject to greater control by the commissioning body in setting the objectives and criteria by which success will be measured;
- are likely to contain provisions which are more stringent in relation to ownership of intellectual property etc (but see paragraph 8.2 below);
- require identification of full costs (including indirect costs) incurred by the University;
- will have ARI or, but only with the approval of the Deputy Vice-Chancellor and Vice-President (Research), the University as a party to the agreement, not an individual staff member;
- do not involve personal remuneration to the principal researcher/s.

(NOTE: A researcher may be employed on a consultancy pursuant to the agreement for contract research. See paragraph 7 below for more on consultancies.)

6.2 Negotiation and Administration

6.2.1 <u>Endorsement of Head of Department</u>.

Any proposal for an agreement for contract research must be endorsed by the relevant Head/s of Department/s or Dean of Faculty, as appropriate.

6.2.2 <u>Requirement to use ARI Pty Ltd</u>.

Subject to the exception in paragraph 6.2.3, staff and departments are required to use ARI's services when negotiating agreements for contract research with outside bodies. The advantages are:

- ARI's experience and expertise in negotiation of agreements;

- ARI's familiarity with commercial practice and contract administration and management;
- ARI's contacts with industry and government bodies who may require the services offered by the University.

ARI Pty Ltd will itself be party to the agreement with the outside body, and may engage University academic staff on a consultancy basis as appropriate.

ARI's *duties* as party to the project will include:

- costing the proposed project, in line with the formula in Appendix A;
- negotiating a price for the project which is fair to all parties, and which protects the University's interests;
- ensuring that the agreement provides for an appropriate fee for any use of University facilities, and the means by which it shall be paid and disbursed;
- negotiating other terms of the agreement, also paying attention to the protection of the University's and the researcher's interests, and to the matters described in paragraph 8 of this Policy;
- obtaining approval of the relevant head of department for use of University facilities, and where appropriate, for use of a researcher's time.

6.2.3 Exemptions.

Exemptions from the requirement to use ARI may be granted by the Deputy Vice-Chancellor and Vice-President (Research) at his/her absolute discretion. If an exemption is granted, the University will become a party to the agreement, and the agreement must be negotiated and administered by the Research and Graduate Studies Branch, on behalf of the University.

6.3 Costing, Pricing and Disbursement

6.3.1 Costing.

The University has approved a formula for simplifying the costing of projects (see Appendix A) and this formula must be used to cost proposed projects EARLY in negotiations with outside bodies.

6.3.2 Pricing.

The full cost of the project (that is, both direct and indirect costs as worked out under the formula in Appendix A) should be used as the basis for assessing the price to be charged. The University acknowledges that this will require departments undertaking such projects to be competitive with commercial agencies in price, quality, timing and reporting. Where the project is of a longer-term, fundamental nature, there will be more room for negotiation with the outside body on the contributions to be made by that body.

At a minimum, all direct costs to the University of any agreement for contract research with an outside body must be included in the price charged and reimbursed to the University. Desirably, the full cost should be recovered. Factors which might support a charge that is more or less than the full cost (but, in any event, not less than the direct cost) include:

- market forces;
- the strategic importance and commercial value of the research, both to the outside body and the University;
- any special relationship between the outside body and the University;

- the benefits of the research to the mission and goals of the University;
- what restrictive conditions governing ownership of intellectual property and publication of results are contained in the agreement;
- whether there is significant potential for commercial development;
- the time frame for completion of the project.

6.3.3 Disbursement of non-direct costs.

Where the price charged is greater than all the direct costs associated with the project, the component representing the amount by which it is so greater must be divided equally in three parts and disbursed as follows:

- where ARI Pty Ltd is a party to the agreement:- to the principal researcher's departmental consulting fund, ARI Pty Ltd, and the Centrally Administered Items budget line of the Services Budget.
- where the University is a party to the agreement:- to the principal researcher's departmental consulting fund, and the Research line and the Centrally Administered Items line of the Services Budget.

7. CONSULTANCIES

7.1 Definition

7.1.1 A consultancy exists whenever a staff member undertakes to provide professional skills or expertise in return for personal remuneration (even when this remuneration is paid into a University consulting fund).

7.1.2 Agreements for contract research (see paragraph 6 above) may include an element where personal remuneration is provided to a staff member. In such cases that element shall be a consultancy for the purposes of this policy.

7.1.3 Because it is difficult to determine in some circumstances whether consultancies are made in the course of the staff member's employment by the University, in particular where it may be arguable whether a consultancy relates to 'service to the discipline', this policy covers all consultancies to provide professional skills or expertise irrespective of such considerations.

7.2 Application of Rules for Practice of Discipline:

Consultancies must conform with the University's Rules Relating to Practice of a Discipline Outside the University by Members of the Academic Staff.

7.3 Negotiation and administration

7.3.1 Responsibilities, liabilities and professional indemnity insurance.

If staff members enter consultancy agreements directly with an outside body, they leave themselves and the University exposed to great risks should the agreement be breached and litigation result. Although the University's previous policy permitted such direct arrangements, experience confirms that it is not in the staff members' or the University's interests to allow this. Staff members who do not have professional indemnity insurance risk their own assets if their activities result in damage or injury to another party.

The University's policy is that it accepts no responsibility for the use made of University facilities by a staff member undertaking a consultancy negotiated directly with an outside body, nor for the results of the work undertaken, nor for the advice offered on the basis of that work. Moreover, the University regards the unauthorised use of University facilities as academic misconduct. Its policy also is that staff

members must not hold themselves out as representing the University and must not use University letterhead in connection with such consultancies.

Nevertheless, though it is still the University's view that it ought not and does not want to be responsible for work done by staff members under a consultancy, this policy may not be sufficient for the University to avoid being joined as a party in any action related to an agreement by a University staff member with an outside body. If staff members engage in consultancies without professional indemnity insurance cover, the University's own professional indemnity insurance may not cover it. However, it is still possible that it may be joined in any action arising out of conduct by a staff member engaging in such a consultancy.

7.3.2 Requirement to use ARI.

In light of the above, the University requires staff members engaging in consultancies with outside bodies to negotiate them through ARI (except as provided in paragraph 7.3.3). The particular advantage is the availability of professional indemnity insurance cover. Other advantages are described in paragraph 6.2.2 above. ARI is entitled to charge a fee for this service, although the fee can often be built into the project costing by ARI.

7.3.3 Exemptions.

(a) The following classes of activity are exempt from the requirement to negotiate consultancies through ARI:

- contracts with publishers for writing and/or publishing works of conventional scholarly output, ie, books, chapters in books, book reviews, journal articles, editing etc;
- agreements for the examination of theses;
- consultancies that are the same in all material respects as a consultancy for which an individual exemption has previously been granted by the Vice-President (Services and Resources), or delegate, under para (b) below.

However, the Head of Department must be notified of all such consultancies (see 7.2.4 (a) below).

(b) Exemption from the requirement to negotiate consultancies through ARI may be granted by the Vice-President (Services and Resources), or delegate, in individual cases on the following grounds:

- that the staff member has a separate professional indemnity insurance cover which is sufficient to cover the risks involved;
- that a statutory indemnity from liability is provided to the staff member in relation to the relevant consulting activity;
- that the consulting activity is of a nature that presents minimal or no risk to the University of attracting liability for negligence.

7.3.4 Procedures and Appeals.

(a) All applications for approval or exemption of a consultancy shall be referred to the Head of Department at first instance (see form at Appendix B). If the Head is satisfied that the consultancy is consistent with the staff member's departmental teaching, research and administrative duties, the Head shall then:

(i) refer the application to ARI for conclusion of the consultancy agreement;

(ii) refer an application for an individual exemption under paragraph 7.3.3(b) to the Vice-President (Services and Resources), or delegate; OR

(iii) where an application relates to a consultancy of an exempt class, as defined in paragraph 7.3.3 (a) above, take no further action.

(b) When an exemption has been refused by the Vice-President (Services and Resources), or delegate, the applicant may appeal to the Vice-Chancellor and President, who may establish an Appeals Committee comprising no more than three persons to provide advice on the matter.

7.3.5 Other terms and conditions.

Consultancies are likely to contain provisions that the intellectual property produced from the consultancy will belong to the party commissioning the work, although this should always be clarified before agreeing to a consultancy. See paragraph 8 for other matters that should be considered before a consultancy agreement is entered into.

7.4 Pricing and Reimbursement

7.4.1 Direct costs.

The price charged for a consultancy is essentially a matter for negotiation provided that, at a minimum, all direct costs to the University (except the cost of the academic staff member's University salary and on-costs) are included. These direct costs must be reimbursed to the relevant University department or other cost centre (see Appendix A for details of direct costs).

7.4.2 Indirect costs.

(a) Reimbursement to the department: The price charged to the outside body must also include a component representing 12.5% of the fee to be received by the staff member. This component must be paid into the departmental consulting fund in the staff member's department. This payment is:

(i) in recognition of the role of the University in providing an environment in which it is possible for staff to undertake consultancies; and

(ii) in lieu of recovery of indirect costs, as it is unlikely that the price charged will specifically include a component for the indirect costs of the consultancy.

(b) Exemptions:

(i) The following classes of activity are exempt from the requirement that a component representing 12.5% of the fee to be received by the staff member be paid into the departmental consulting fund:

- contracts with publishers for writing and/or publishing works of conventional scholarly output, ie, books, chapters in books, book reviews, journal articles, editing etc;
- agreements for the examination of theses.

(ii) Staff members may seek an individual exemption from this requirement from the Vice-President (Services and Resources), or delegate. If the Vice-President (Services and Resources), or delegate, after taking advice from the relevant Head of department, is satisfied that the consultancy will not incur any indirect cost to the University, the Vice-President (Services and Resources), or delegate, may waive the reimbursement.

8. TERMS AND CONDITIONS OF RESEARCH GRANTS, AGREEMENTS FOR CONTRACT RESEARCH AND CONSULTANCIES

It is essential that agreements with outside bodies for research grants or for contract research are entered into on terms and conditions that protect the interests of both the University and individual staff. Below are descriptions of some terms that the University believes must be considered and appropriately dealt with in any such agreements. Staff members engaging in consultancies are also advised to pay attention to these matters when negotiating the terms of their consultancies.

8.1 Publication of Results

8.1.1 In normal circumstances the conditions of an agreement for contract research or a research grant will allow the researcher complete freedom to publish the results of the research; and give the researcher the right to retain all notebooks, data, etc relating to the research project. However, the University recognises that in certain circumstances it will also be necessary to apply some restrictions to the publication of information obtained pursuant to a research grant or contract. In such a case it is the obligation of the staff member to ensure that all agreements are respected and the University will regard the breach of such agreements as misconduct. Examples of appropriate confidentiality agreements are available from ARI Pty Ltd.

8.1.2 Students. The extent to which publication of student theses can be restricted is dealt with in paragraph 5 of the Policy on Commercial Development of the University's Intellectual Property.

8.1.3 The general nature of the work carried out under any research grant or agreement for contract research shall not be secret and particulars of all such grants and contracts shall be published annually by the University. This shall show the nature of the work, and the amount and sources of the funding.

8.2 Ownership of Intellectual Property

It is essential that research grants or agreements for contract research make appropriate provision for the ownership of intellectual property produced under such agreements. As a general rule, ownership of intellectual property arising out of research grants or agreements for contract research should be vested in ARI Pty Ltd on behalf of the University; and the agreement should recognise that the intellectual contribution in any invention or other potential intellectual property is considered the paramount determinant of the ownership of the property. These matters are open to negotiation; but it is important that provisions dealing with them are acknowledged in any agreements.

Where the University grants a licence to the outside body, or to any other body, to develop the property commercially, the licence should be subject to a time limit for exploitation. Refer to the University's policy on the commercial development of its intellectual property.

8.3 Control of Work

8.3.1 <u>Milestones</u>.

Some forms of research agreement make continued funding conditional upon certain "milestones" or specified outcomes. Such "milestones" are acceptable if they are specified as activities intrinsic to research methods reasonably expected of the project under contract (as is the case with shorter-term applied research contracts), and not acceptable if they refer to specific outcomes which cannot be guaranteed and which would lead, in the case of failure, to the University's being obliged to continue experiments indefinitely and without further financial support.

8.3.2 Reporting.

No agreement should contain a provision imposing an obligation on the University to provide a report "to the satisfaction of the outside body". All agreements specifying reporting requirements should specify that the researcher shall provide a report "in an agreed format acceptable to the outside body", so that the outside body is guaranteed a report of an acceptable size and nature, whose content reflects the work which the University has agreed to undertake.

8.3.3 Variations.

It is important that agreements contain a provision that variations to the agreement cannot occur without the University's concurrence. This is to protect the University from the outside body unilaterally increasing the amount or level of work on a project, changing its character or quality, or otherwise varying it in a way that may cause the University financial loss or lessen its academic appropriateness and interest.

8.3.4 Termination.

Should an agreement be terminated, it is important that the agreement recognise that any unspent funds may be committed for some period after the termination, particularly funds ear-marked for salaries. All agreements should acknowledge that staff employed pursuant to the agreement must be employed in accordance with the University's conditions of appointment.

8.4 Ownership of equipment on completion of agreement

All agreements for contract research should state clearly what is to happen to the equipment purchased pursuant to the contract, and where appropriate, a statement assigning the ownership to the University. As a general rule, only where an outside body pays all project costs, including a full overhead component, should it reasonably expect equipment to return to it. Where less than a full contract price is negotiated, then equipment may be offset against part of the overhead; or part of anticipated royalties; or future agreed access to the equipment by the company.

8.5 Professional indemnity

All agreements should specify which party is to bear the liability for loss or damage arising out of work performed pursuant to an agreement. This should be done regardless of whether the parties are insured for professional indemnity.