

ECU Office of Sponsored Programs Guidance
Independent Consultancy or University Sponsored Project: Which is Best for Me?

For purposes of distinguishing between an independent consultancy and a University sponsored project, **an independent consultant is defined as an individual who possesses special knowledge or skills and acts under self-employment to provide that expertise to a client for a fee.** Independent consultants analyze problems, make recommendations, and may or may not be involved in the implementation of solutions. They may be process consultants, applying general skills in one or more technical areas to any industry or organization, or they may be functional consultants, applying specialized skills to a particular environment. Independent consultants assist all types of businesses and organizations in finding and implementing solutions to a wide variety of problems, including those related to business start-up, marketing, manufacturing, strategy, organization structure, compliance, health and safety, education and training, technology, and communications.

When an ECU faculty member is engaged as an independent consultant by an external entity (a "client"), he/she is hired by that entity on an independent contractor basis as defined by the Internal Revenue Service and will receive an IRS 1099 form from the client for the payment received. **The faculty member operating as an external consultant must use his/her own resources (time, facilities, communication systems, equipment, supplies, etc.) in conducting the work.**

When a faculty member is serving as an independent consultant to an external entity, although his/her University employment and academic credentials can be presented as part of his/her qualifications, he/she cannot infer that the work is being conducted under the auspices of, or has the endorsement of, the University. Subject to the terms of the consulting agreement, a faculty member may include the consultancy on his/her curriculum vitae and such activity may be considered in annual reviews. However, independent consultant agreements are not considered university projects, are not entered into the University's sponsored project tracking system (RAMSeS), and are not included in any official University reports of departmental and college grant and contract activity.

The client's consulting agreement typically describes the project as a "work for hire" and/or specifies that all data, reports, and/or materials collected and produced by the consultant will belong solely to the client and/or are considered proprietary. Unless he/she specifically negotiates these terms, the faculty member is precluded from using the results of the project for instructional or research purposes, including publishing in academic journals. Ownership of any discoveries or inventions developed during the course of the project is also typically assigned to the client unless negotiated otherwise. Absent any language in the client's agreement that addresses ownership of data and patentable inventions, copyright and patent laws, respectively, give ownership to the creator/inventor. However, a client may argue this point, so it is advisable to clearly address ownership and licensing rights in the agreement. **The faculty member must ensure that there is a clear separation between the consultancy and his/her ECU responsibilities and activities so that University rights to any data, materials, discoveries, and inventions are not inadvertently jeopardized.**

A faculty member acting as an independent consultant is responsible for negotiating the consulting agreement with the client. He/she is responsible for his/her own acts and omissions and, because s/he is not acting as a University employee, the faculty member has no liability coverage under the North Carolina Tort Claims Act (N.C. Gen. Stat. § 143-291 *et seq.*), the North Carolina Defense of State Employees Act (N.C. Gen. Stat. §143-300.3 *et seq.*), or other University insurance. He/she does not have

access to UNC legal resources in the event of contractual disputes or liability issues. Because he/she is not acting as an employee of the University while conducting the project, he/she is responsible for paying his/her own Social Security and income taxes on earnings. He/she does not enjoy University benefits such as worker's compensation coverage or health insurance and retirement benefits related to the consultancy. If the faculty member acting as an independent consultant wishes to employ students or others to assist with the project, he/she is responsible for hiring and compensating such individuals outside of the University human resources system and for paying payroll taxes and, as applicable, providing worker's compensation coverage.

When the faculty member acts as an independent consultant, he/she establishes his/her billing rate. This rate is unrelated to the faculty member's University pay rate and can be significantly higher based on market forces. Consultant compensation may be negotiated as an hourly rate, a fixed fee, or a bracket amount (a range within which the total fee will fall). Some independent consultants enter into retainer agreements with clients. Others, especially those in high technology fields, charge on the basis of the client's performance, linking payments to measurable outcomes. **Negotiation of compensation for the consulting agreement rests entirely with the faculty member acting as an independent consultant.**

External consulting work by University faculty and EHRA employees must be disclosed under ECU's "External Professional Activities for Pay" policy (see <http://www.ecu.edu/cs-acad/ORIC/compliance/conflict-of-interest.cfm>), which assures that any potential conflicts of interest or commitment with ECU roles and responsibility that may arise from the independent consulting arrangement are appropriately managed.

When University resources (regular work time, facilities, communication systems, equipment, supplies, staff and/or student time, etc.) are required to conduct the work, or when the faculty member elects to retain the services and liability protections provided to employees acting on behalf of the University, the work should be handled under a University sponsored project agreement. A University sponsored project agreement is also appropriate when the project involves:

- Development of new disciplinary knowledge (i.e., basic or applied research);
- Collection of private information for research purposes from individuals through surveying, interviewing, or records access (i.e., human subject research);
- Use of data or materials in which the University or other entities may have intellectual property rights;
- Potential for new discovery or development of patentable inventions;
- Development of data or materials that the faculty member may wish to use in the future for instructional or other academic purposes, including research and publication;
- Sharing of data, materials, or technology with foreign collaborators or foreign entities.

The ECU Office of Sponsored Programs will negotiate appropriate terms and conditions regarding the University's and the faculty member's intellectual property rights based on the nature of the project and the relationship of the parties.

Under sponsored project agreements, the faculty member is subject to University policies regarding earnings, ethical compliance, and financial management of the project. Generally, faculty are not compensated for work on sponsored projects above their base pay during their contract period.

Instead, time spent on sponsored project agreements offsets regular work time, and the cost of that time is charged to the project. However, if the work occurs during the summer months, a nine-month faculty member may receive summer compensation for the work at a rate not to exceed his/her normal academic year rate of pay.

ECU human resources, purchasing, and travel regulations apply to all sponsored projects. Additionally, Facilities & Administration (F&A) costs will be charged to sponsored projects in accordance with University policy. Agreements with for-profit businesses and industry should carry a full F&A charge so that the work is not subsidized by the University. With compelling justification, reduced F&A rates may be approved during the proposal development process for local governments, non-governmental organizations, and private foundations that are not funded with Federal grant or contract funds or State of North Carolina appropriations. F&A waivers are approved by the Senior Associate Vice-Chancellor for Research.

When determining whether to conduct work for an external agency as an independent consultant or to have the University manage the work as a sponsored project, the faculty member must first determine who will provide the needed resources beyond faculty member's time. If the project can be completed without the use of university resources, then the faculty member should consider whether he/she desires protection of his/her intellectual property rights and the liability protections offered by the University and whether he/she is willing to establish a payroll system if other staff or students are required to complete the project. In all cases, the faculty member must balance the prospect of additional income with the risks and costs of operating as an independent consultant.