



## **CONSULTANCY POLICY FOR DUNDALK INSTITUTE OF TECHNOLOGY**

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Version Control and Change History

Policy Name: **Consultancy Policy**

Responsibility:	Head of Innovation & Business Development	Approving Authority:	Governing Body
Date Policy will Take effect:	20-12-2018	Date Approved by Governing Body:	20 <sup>th</sup> Dec 2018 Ref 253
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Amendments:	<ul style="list-style-type: none"> <li>Remove monetary figure for hourly rate and % figure for employer PRSI replace with “DkIT part-time lecturer/hour day rate” and “current % employer PRSI contribution” [3.2]</li> </ul>		
Approved Version	30-03-2020		

## 1 INTRODUCTION

Dundalk Institute of Technology (DKIT) recognises the potential of consultancy activities to advance our contribution to the knowledge society, enhance the social and economic impact of Institute activities, and support the enterprising and innovative spirit of the campus population.

The generation of a profitable income stream from a diverse range of activities is a crucial part of DKIT's long-term Strategy. Consultancy has been identified as a means to create resources which can aid the development of the core activities of the Institute, particularly Research and teaching.

Staff<sup>1</sup> of the Institute are encouraged to engage in consultancy for external bodies as a legitimate and valued Institute activity provided such consultancy is consistent with the objectives of DKIT and the contractual responsibilities of each individual concerned.

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

## 2 POLICY RATIONALE AND SCOPE

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

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

The Policy applies to all DKIT members of staff undertaking consultancy work who should liaise with the DKIT TTO<sup>2</sup> as early as possible in any external consultancy engagement.

This Consultancy Policy has been adopted by DKIT to:

- Encourage and develop the Institute'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
- De-risk the engagement providing a clear consultancy framework for all stakeholders
- Manage our external links effectively to ensure appropriate returns to both employee and Institute for use of resources and intellectual endeavour
- Provide incentives for DKIT staff to undertake consultancy work capitalise on the benefits to staff and the Institute such as:
  - Increase the knowledge and reputation of the staff and the Institute
  - Develop new skills and experience for DKIT staff
  - Financial gain for both the DKIT staff and for the Institute

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<sup>1</sup> All references to staff or employees shall be understood to include Alumni staff. Academic staff refers to all staff working in a school and includes research staff and administrators etc.

<sup>2</sup> TTO Office representatives are either the Head of Innovation and Business Development or TTO Manager

- Influence teaching at DKIT
- Seed potential for new research opportunities

## **2.1 INSTITUTE CONSULTANCY**

In recognising the value of consultancy activities, the Institute provides professional indemnity insurances for employees when undertaking consultancy work on behalf of the Institute and will provide additional professional support through the DKIT Technology Transfer Office (TTO).

‘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.

Institute Consultancy is defined as a contractual arrangement for the provision by DKIT, or an employee or group of employees of DKIT, of defined professional services to a client (external party) using DKIT 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 DKITs preference that its staff operate through Institute Consultancy Contracts. 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.

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

In Institute Consultancy Contracts, it is DKIT 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. DKIT staff engaged on Institute Consultancy Contracts must adhere to the Organisation and Working Time Act<sup>3</sup>.

## **2.2 PRIVATE CONSULTANCY**

Private Consultancy is defined as an arrangement for the provision of professional services, where an individual operates as a consultant to a third party in a strictly private capacity, outside of his/her

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<sup>3</sup> See: <http://www.irishstatutebook.ie/eli/1997/act/20/enacted/en/html>

contractual duties to DKIT and without using DKIT name, DKIT space, equipment, services, or facilities. With Private Consultancy:

- As per DKIT Policy any staff member undertaking Private Consultancy needs to declare in advance any private Consultancy activities through the submission of a signed Authorisation for External Work form to the DKIT HR Department to seek prior written approval from the President of the Institute, of the Consultancy and that he/she is undertaking the Consultancy in a personal capacity and in his/her own time
- The individual is the contracting party undertaken by a member of staff in a personal and private capacity and in their own time
- The individual is not engaged on Institute business while carrying Private Consultancy out and is not therefore covered by any of the Institute's insurance policies
- The Institute does not accept any liability for the work carried out
- The Institute has no obligation under the Health and Safety at Work Act for work conducted outside its premises
- The individual must ensure that there is no conflict with the interests or confidentiality obligations of the Institute in undertaking the Private Consultancy
- A member of staff undertaking a Private Consultancy may not use the Institute name, logo, intellectual property, services, facilities, staff time, 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 Institute has any association with or involvement in the Private Consultancy
- A member of staff undertaking a Private Consultancy is not covered by the Institute'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 Institute has no legal contractual responsibility for any Private Consultancy.
- The Institute has no interest in the conditions under which the consultancy is conducted and has no claim on any income earned
- Private Consultancy cannot be processed through DKIT
- DKIT 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 Institute; this should be done in writing
- It is the individual'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.

### **3 DKITs CONSULTANCY PROCESS**

All consultancy activities potentially pose concerns in respect of liability and other such risks for both the Consultant and the Institute. Individuals engaging on consultancy opportunities with outside parties should involve the DKIT TTO in a timely manner as early as possible in the engagement.

### **3.1 CONSULTANCY AGREEMENTS**

It is the responsibility of the individual engaging on consultancy opportunities to discuss with their respective Head of School for approval. It is the responsibility of the DKIT TTO to draw up the relevant consultancy agreements. If the DKIT Consultancy Agreement is acceptable to the outside party, the contract can be signed by all parties<sup>4</sup> (see Appendix A). A copy of the completed contract will be held by the TTO for recording and quality assurance purposes.

If the Consultancy Agreement is not acceptable to the outside party in any detail, then TTO Office must be involved in the negotiation and drafting of the final Consultancy contract with the third party.

### **3.2 FINANCIAL PROCEDURES**

Each approved Institute Consultancy shall be managed through a designated project account with the DKITs TTO Office being the budget holder.

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 Institute's/Consultant's behalf, once requested by the TTO. Payment shall be requested in line with the standard payment terms of DKIT with deductions for tax (where applicable).

On completion of the project the Consultant and the TTO Office ensure 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.

DKITs TTO will advise the member of staff on all aspects of pricing (including current daily rates) and will negotiate with the outside party on behalf of the Institute 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 Institute 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 Institute premises involving non-DKIT personnel.

DKIT wishes to incentivise all DKIT consultancy stakeholders and accordingly has adopted the following income distribution procedures for consultancies to take account of the Institute's costs:

- DKIT part-time lecturer/hour day rate income of the Consultancy paid via payroll to the Consultant inclusive of current % employer PRSI contribution<sup>5</sup>
- Overhead rate at additional 30%
  - 50% thereof to the relevant School or Research Centre (or split pro-rata if more than 1 consultant)

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<sup>4</sup> Signatories include TTO, consultant, Head of School and External Party

<sup>5</sup> In line with Part time lecturer rate and MoU with Enterprise Ireland for Innovation Voucher services.

- 25% thereof to DKIT TTO.
- 25% thereof to DKIT Central Budget
- VAT applicable at 23%

DKIT reserve the right to agree income distribution on a case-by-case basis after discussions involving the Consultant, Head of School or Department, TTO and the Vice President for Finance and Corporate Affairs (or their nominees).

#### **4 COMPLIANCE**

It is imperative that staff members involved in consultancy whether working in an Institute capacity or Private capacity comply with the notification and approval procedures outlined in this Policy so that the Institute 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 DKIT's Intellectual Property Policy and Conflict of Interest
- Consultancy work undertaken in the name of the Institute requires that the Consultant completes and submits an Authorisation for External Work Approval form
- 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
- Institute Consultancy activities are managed and administered by the TTO Office, and all communications relating to Institute Consultancy activities shall be done in conjunction with TTO and communications copied to TTO
- All fees for Consultancy work must be priced according to the guidelines set out in this policy and confirmed by TTO Office
- A staff member undertaking Institute Consultancy is covered under the Institute's professional indemnity and public liability insurance
- A staff member undertaking Institute Consultancy has access to the range of Institute services, including financial and legal advice where applicable and on-going support
- Approved Institute Consulting activity will also be taken into consideration in promotion applications.

The DKIT TTO shall have responsibility for disseminating details of DKIT's Consultancy Policy to staff via the Heads of Schools, Head of Research and Departments. The Heads of Schools and Departments will have responsibility at local level for ensuring compliance with the Policy and will work with TTO 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 arrangements shall be regarded as a disciplinary matter and be subject to the Institute's standard disciplinary procedures.

## 5 APPENDIX A

Please note that this Consultancy Agreement is for Information purposes only as each contract will need modification to suit each individual case.

In addition clauses in the Agreement may be modified from time to time to reflect changes in legal or policy requirements

Dated \_\_\_\_\_ 20[●]

(1) [*Full legal name of the RPO*]

and

(2) [*Full legal name of the Client*]

## MODEL CONSULTANCY AGREEMENT



# CONSULTANCY AGREEMENT

This Agreement dated \_\_\_\_\_ 20[•] is between:

- (1) [•] (the “RPO”), [an academic institution incorporated or established under [statute or charter in Ireland],] whose [principal address or registered office] is at [•]; and
- (2) [•] (the “Client”), [a company or insert relevant entity type incorporated in [•] under registration number [•],] whose [principal place of business or registered office] is at [•].

## Background:

- A. The Client is engaged in the research and development of [•].
- B. The RPO has expertise in the field of [•].
- C. The Client wishes to engage the RPO to provide the Services in connection with [•], all subject to the provisions of this Agreement.

The Parties agree as follows:

## 1. Definitions

1.1 *Definitions.* In this Agreement, the following words shall have the following meanings:

<b>Affiliate</b>	In relation to a Party, means any entity or person that Controls, is Controlled by, or is under common Control with that Party.
<b>Claims</b>	All demands, claims and liability (whether criminal or civil, in contract, tort (including negligence) or otherwise) for losses, damages, legal costs and other expenses of any nature whatsoever and all costs and expenses (including legal costs) incurred in connection therewith.
<b>Commencement Date</b>	The commencement date as set out in Schedule 1.
<b>Completion Date</b>	The completion date as set out in Schedule 1.
<b>Confidential Information</b>	All technical or commercial information that: <ol style="list-style-type: none"><li>(i) in respect of information provided in documentary form or by way of a model or in other tangible form, at the time of provision is marked or otherwise designated to show expressly or by necessary implication that it is imparted in confidence;</li><li>(ii) in respect of information that is imparted orally, any information that the Disclosing Party or its representatives informed the Receiving Party at the time of disclosure was imparted in confidence; and</li><li>(iii) any copy of any of the foregoing.</li></ol>
<b>Consultant</b>	The individual(s) identified in Schedule 1 who will perform the Services on behalf of the RPO or such other persons as may be appointed in accordance with Clause 2.2.
<b>Control</b>	Direct or indirect beneficial ownership of 50% (or, outside a Party's home territory, such lesser percentage as is the maximum,

permitted level of foreign investment) or more of the share capital, stock or other participating interest carrying the right to vote or to distribution of profits of that Party, as the case may be.

<b>Fees</b>	The fees to be paid to the RPO by the Client as set out in Schedule 2.
<b>Foreground IP</b>	All Intellectual Property generated by the RPO in the performance of the Services.
<b>Intellectual Property</b>	All intellectual property of any description including copyright, trade marks, database rights, design rights, patents, utility models, and applications for, and the right to apply for any of the foregoing items.
<b>Parties</b>	The RPO and the Client, and “ <b>Party</b> ” shall mean either of them.
<b>Services</b>	The services to be provided by the RPO for the Client as more fully described in Schedule 1.

## 2. Consultancy services

- 2.1 *Services.* In consideration of the payment of the Fees by the Client to the RPO, the RPO shall provide the Services to the Client from the Commencement Date, all in accordance with the provisions of this Agreement.
- 2.2 *Consultant.* The Services will be performed by the RPO through the Consultant. The RPO may, at any time throughout the term of this Agreement, substitute any Consultant with an alternative Consultant with similar qualifications and experience on the same terms as set out in the Agreement. Unless otherwise agreed by the Parties in writing, a change in the named Consultant will not incur a change in the Fees.
- 2.3 *Timetable.* Where Schedule 1 states that Services are to be performed within a specific timeframe, then the RPO shall use reasonable efforts to perform the Services by the relevant date. Where Schedule 1 does not require that Services are to be performed within a specific timeframe, then the RPO shall nonetheless use reasonable efforts to perform the Services in a timely manner. Time for performance of the Services shall not be of the essence.
- 2.4 *Delays.* If the RPO foresees any potential delays in the completion of the Services, the RPO will notify the Client as soon as is reasonably practicable and take reasonable steps to mitigate any delay to the Completion Date.
- 2.5 *Reports.* The RPO will provide reports to the Client at the times and in the format specified in Schedule 1. If no times are specified in Schedule 1, the RPO will provide a report to the RPO within a reasonable time following completion of the Services and following the receipt by the RPO of all Fees due under this Agreement.
- 2.6 *Independent contractors.* The relationship of the RPO to the Client shall be that of independent contractor. This Agreement is not intended to, and does not, create any contract of employment or other legal relationship between the Client and any Consultant.

## 3. Fees

- 3.1 *Invoices.* The RPO shall provide the Client with invoices for the Fees due to the RPO in accordance with the payment milestones set out in Schedule 2. In the absence of payment milestones set out in Schedule 2, the RPO shall provide the Client with invoices monthly in arrears for Fees due in respect of Services delivered.
- 3.2 *Payment.* The Client shall pay all valid invoices within thirty (30) days of receipt.

- 3.3 *Daily rate.* Where Fees are quoted on a daily rate basis, a day shall mean up to seven (7) hours work. Any hours worked beyond seven (7) hours in a day shall be charged pro-rata to the Client.
- 3.4 *Expenses.* Unless otherwise stated in Schedule 2, the Fees are exclusive of all expenses reasonably incurred by the RPO in the performance of the Services and the RPO shall invoice the Client for the reimbursement of the same in addition to the Fees.
- 3.5 *Currency and VAT.* All amounts stated are to be paid in Euro and are exclusive of Value Added Tax which, subject to the provision of a valid Value Added Tax invoice, shall be paid by the Client in addition.

#### 4. Client's obligations

- 4.1 *Provision of facilities, information, etc. by the Client.* During the term of this Agreement, the Client shall, and shall ensure that its staff and agents:
- (a) co-operate with and assist the RPO, as the RPO reasonably requires;
  - (b) provide all information and documentation that the RPO reasonably requires; and
  - (c) make available to the RPO such facilities as the RPO reasonably requires.

#### 5. Intellectual Property

- 5.1 *Foreground IP.* All Foreground IP shall be the sole property of the Client. At the request and expense of the Client, the RPO shall execute such documents as may be necessary to transfer title to and apply for patents or other protections for such Foreground IP. All Foreground IP shall be treated as Confidential Information belonging to the Client.

#### 6. Confidentiality

- 6.1 *Confidentiality obligations.* Each Party (the "**Receiving Party**") undertakes from the Commencement Date:
- (a) to maintain as secret and confidential all Confidential Information obtained directly or indirectly from the other Party (the "**Disclosing Party**") in the course of or in anticipation of this Agreement and to respect the Disclosing Party's rights therein;
  - (b) to use such Confidential Information only for the purposes of this Agreement;
  - (c) to disclose such Confidential Information only to those of its employees, contractors and sub-licensees pursuant to this Agreement (if any) to whom and to the extent that such disclosure is reasonably necessary for the purposes of this Agreement; and
  - (d) to ensure that all those to whom disclosure of or access to such Confidential Information has been given, including its officers, directors, employees and professional advisers, comply with the provisions of this Agreement, and the Receiving Party shall be liable to the Disclosing Party for any breach of this Agreement by any of the foregoing.
- 6.2 *Exceptions to obligations.* The provisions of Clause 6.1 shall not apply to Confidential Information which the Receiving Party can demonstrate by reasonable, written evidence:
- (a) was, prior to its receipt by the Receiving Party from the Disclosing Party, in the possession of the Receiving Party and at its free disposal; or
  - (b) is subsequently disclosed to the Receiving Party without any obligations of confidence by a third party who has not derived it directly or indirectly from the Disclosing Party; or
  - (c) is independently developed by the Receiving Party by individuals who have not had any direct or indirect access to the Disclosing Party's Confidential Information; or

- (d) is or becomes generally available to the public through no act or default of the Receiving Party or its agents, employees, or Affiliates.

6.3 *Disclosure in accordance with legal obligations.* To the extent that the Receiving Party is required to disclose any of the Disclosing Party's Confidential Information by order of a court or other public body that has jurisdiction over it or under other legal obligations, such as under a *bona fide* freedom of information request, it may do so, provided that, before making such a disclosure the Receiving Party shall, unless the circumstances prohibit:

- (a) inform the Disclosing Party of the proposed disclosure as soon as possible, in any event, no later than five (5) working days after becoming aware of the proposed disclosure; and
- (b) permit the Disclosing Party to make representations (written or otherwise) in respect of the disclosure and/or confidential treatment of the Confidential Information.

6.4 *Duration of obligations.* The obligations of confidentiality and non-use set out in this Clause 6 shall survive termination of this Agreement for any reason for a period of five (5) years from the date of termination.

## 7. Warranties

7.1 *No implied warranties, etc.* Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.

7.2 *Performance of the Services.* The RPO shall use reasonable endeavours to perform the Services and shall use reasonable care and skill in the performance of the Services.

7.3 *No other warranties.* The Client acknowledges that this Agreement provides for the performance of consultancy and that specific results cannot be guaranteed. The RPO expressly does not warrant that any result or objective, whether stated in this Agreement or not, shall be achieved, be achievable or be attained at all or by a given Completion Date or any other date, nor does the RPO give any warranty that the content or use of any results, Intellectual Property, reports, information or other materials provided in connection with this Agreement will not constitute or result in any infringement of third-party rights.

## 8. Liability and indemnity

8.1 *Liability of the Parties.*

- (a) To the extent that either of the Parties has any liability in contract, tort (including negligence), or otherwise under or in connection with this Agreement, including any liability for breach of warranty, their liability shall be limited in accordance with the following provisions of this Clause 8.1. However, the limitations and exclusions of liability set out in this Clause 8.1 shall not apply to any indemnity against third party Claims given under Clause 8.2.
- (b) The aggregate liability of each Party shall be limited to the greater of (i) a sum equal to the total Fees paid to the RPO by the Client under this Agreement; or (ii) [●].
- (c) In no circumstances shall either Party be liable for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the other Party or its Affiliates that is (i) of an indirect, special or consequential nature; or (ii) any loss of profits, revenue, business opportunity or goodwill.
- (d) Nothing in this Agreement excludes or limits any person's liability to the extent that it may not be so excluded or limited under applicable law, including any such liability for death or

personal injury caused by that person's negligence, or liability for fraud or fraudulent misrepresentation.

8.2 *Indemnity.* The Client shall indemnify the RPO against all third party Claims which may be asserted against or suffered by the RPO and which relate to:

- (a) the use of any results, materials or other items generated or supplied in the course of the Services (the "**Delivered Items**"); or
- (b) the manufacture, distribution, sale, supply or use of any products or services which incorporate any Delivered Items,

by or on behalf of the Client or its Affiliates or subsequently by any third party, including claims based on product liability laws.

## 9. Term and Termination

9.1 *Commencement and termination by expiry.* This Agreement shall come into force on the Commencement Date and, unless terminated earlier in accordance with this Clause 9, shall terminate automatically by expiry upon completion of the Services.

9.2 *No replacement Consultant available.* If a Consultant becomes unavailable and the RPO is unable to provide a suitable replacement to perform the Services, then either Party may terminate this Agreement by written notice to the other Party, such termination to take effect as specified in the notice.

9.3 *Early termination.* Without prejudice to any other rights of remedies, either Party may terminate this Agreement, at any time, on written notice to the other Party (the "**Other Party**"):

- (a) if the Other Party is in material breach of its obligations under this Agreement and, where the breach is capable of remedy within thirty (30) days, the Other Party has not remedied the breach within thirty (30) days of receiving written notice which specifies the breach and requires the breach to be remedied; or
- (b) if: (i) the Other Party becomes insolvent or unable to pay its debts as and when they become due; (ii) an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction); (iii) a liquidator, examiner, receiver, receiver manager, or trustee is appointed in respect of the whole or any part of the Other Party's assets or business; (iv) the Other Party makes any composition with its creditors; (v) the Other Party ceases to continue its business; or (vi) as a result of debt and/or maladministration the Other Party takes or suffers any similar or analogous action.

9.4 *Consequences of termination.* On termination of this Agreement for any reason other than termination by the Client under Clause 9.3 above, the Client shall pay to the RPO:

- (a) any payment which was due to the RPO prior to the date of termination but which was not paid prior to termination; and
- (b) a proportion of the next payment (if any) falling due after the date of termination reflecting the RPO work prior to the date of termination and any non-cancellable commitments entered into by the RPO.

## 10. General

10.1 *Force majeure.* Neither Party shall have any liability or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement that result from circumstances beyond the reasonable control of that Party, including labour disputes involving that Party. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.

- 10.2 *Amendments.* This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.
- 10.3 *Sub-contracting.* Subject to the written authorisation of the Client, the RPO may sub-contract any part of the Services. The RPO shall be responsible for the work of any sub-contractor and for such sub-contractor's compliance with the provisions of this Agreement.
- 10.4 *Assignment.* Neither Party may assign, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other Party.
- 10.5 *Entire agreement.* This Agreement, including its Schedules, sets out the entire agreement between the Parties relating to its subject matter and supersedes all prior oral or written agreements, arrangements or understandings between them relating to such subject matter. Subject to Clause 8.1(d), the Parties acknowledge that they are not relying on any representation, agreement, term or condition which is not set out in this Agreement.
- 10.6 *Waiver.* No failure or delay by either Party in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.
- 10.7 *Notices.*
- (a) Any notice to be given under this Agreement shall be in writing and shall be sent by post, or by fax (confirmed by post) to the address of the relevant Party set out at the head of this Agreement, or to the relevant fax number set out below, or such other address or fax number as that Party may from time to time notify to the other Party in accordance with this Clause 10.7. The fax numbers of the Parties are as follows: The RPO – [●]; the Client – [●].
  - (b) Notices sent as above shall be deemed to have been received three (3) working days after the day of posting, or on the next working day after transmission (in the case of fax messages, but only if a transmission report is generated by the sender's fax machine recording a message from the recipient's fax machine, confirming that the fax was sent to the number indicated above and confirming that all pages were successfully transmitted).
- 10.8 *Interpretation.* In this Agreement:
- (a) the headings are used for convenience only and shall not affect its interpretation;
  - (b) references to persons shall include incorporated and unincorporated persons; references to the singular include the plural and vice versa; and references to the masculine include the feminine and vice versa;
  - (c) references to Clauses and Schedules mean clauses of, and schedules to, this Agreement;
  - (d) references in this Agreement to termination shall include termination by expiry; and
  - (e) where the word "including" is used it shall be understood as meaning "including without limitation".
- 10.9 *Further action.* Each Party agrees to execute, acknowledge and deliver such further instruments, and do all further similar acts, as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

10.10 *Announcements.* Neither Party shall make any press or other public announcement concerning any aspect of this Agreement, or make any use of the name of the other Party in connection with or in consequence of this Agreement, without the prior written consent of the other Party.

10.11 *Law and jurisdiction.*

- (a) This Agreement shall be governed by and construed in accordance with the laws of the Republic of Ireland and each Party agrees to submit to the exclusive jurisdiction of the courts of the Republic of Ireland.
- (b) Notwithstanding Clause 10.110, before commencing any litigation, each Party shall consider in good faith whether it would be reasonable in the circumstances for the Parties to agree to pursue any alternative dispute resolution processes. Such alternative processes may include internal escalation procedures and/or mediation in accordance with the WIPO mediation rules. For the avoidance of doubt, however, nothing in this Agreement shall prevent or delay a Party from seeking an interim injunction.

**Agreed by the Parties through their authorised signatories:**

For and on behalf of  
*[Insert full legal name of the RPO]*

For and on behalf of  
*[Insert full legal name of the Client]*

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Schedule 1

### Service Specification

<b>Service to be provided</b>	<p>Give details about the work to be undertaken including:</p> <ul style="list-style-type: none"> <li>• what will be actually be done;</li> <li>• what is its purpose;</li> <li>• who will undertake the work;</li> <li>• will it involve use of any facilities and equipment and if so whose;</li> <li>• are there any dependencies (i.e. obligations on either the Client or third parties that must be satisfied for the Services to be completed)?</li> </ul>
<b>Location for performance of the Services</b>	<p>Gives details about where the services will be performed.</p>
<b>Deliverables</b>	<p>List what will be provided to the client</p>
<b>Timescale</b>	<p>Commencement Date:</p>
	<p>Completion Date:</p>
	<p>Milestones:</p>
<b>Reports</b>	<p>Include details of what reports (both final and on-going) will be provided by the RPO and on what dates / intervals. If a particular format is to be used, this should also be specified.</p>
<b>Meetings</b>	<p>Give details of any meetings that will be held or attended and when and where these will take place.</p>
<b>Name of Consultant</b>	<p>Insert the full name of the consultant the RPO will use to perform the services.</p>



## Schedule 2

### Payment and Notices

<b>Fees</b> (exclusive of VAT)	[•]
<b>Payment milestones</b>	[•]
<b>Expenses</b>	[•]
<b>RPO's address for notices</b>	[•]
<b>Client's address for notices</b>	[•]