

## Consulting Agreements Guide

### Related Links

- [Addendum to Consulting Agreements](#)
- [Conflict of Interest and Conflict of Commitment Policies](#)

The University of Chicago encourages consulting relationships with commercial enterprises, as they may provide valuable experience to the faculty in their research and teaching activities while benefiting society.

The University has an interest in ensuring that faculty members adhere to University policies in consulting arrangements, and faculty members have an obligation to ensure such adherence. The consulting relationship between the faculty member and the commercial entity, however, is a personal agreement to which the University is not a party. Like other personal matters, the University generally does not provide legal or tax advice for personal consulting agreements. The faculty member will carry personal liability for any personal consulting agreement signed.

Please note that this Guide is **NOT LEGAL ADVICE**. It is strongly recommended that faculty seek the review of any proposed arrangement from his/her personal legal and tax advisors.

To help ensure that a consulting agreement contemplated by a faculty member is not in conflict with the duties that the faculty member has to the University, an [Addendum is To Consulting Agreements](#) is provided. This addendum may be attached to a company's consulting agreement to clarify the faculty member's duties to the University and to ensure that those duties supersede any contrary language proposed by the company.

Faculty members may address any additional questions or concerns about this Guide to the Polsky Center for Entrepreneurship [Science and Technology team](#) or the [Office of Legal Counsel](#).

### Policies

Faculty members are responsible for complying with University of Chicago policies. University policies that are generally most relevant to outside consulting include:

#### 1. Conflict of interest and conflict of commitment policies.

See [the University's Conflict of Interest and Conflict of Commitment Policies](#). The policies establish the procedures to be followed when faculty members have a potential conflict of interest between their consulting or other outside activities and their University roles. Please be aware that the conflict-of-interest issues that may present themselves are not confined to a conflict of commitment. These issues increase in complexity when the faculty member's role extends beyond consulting to include such other activities as: participating in company-sponsored research at the University (especially in the conduct of a clinical trial); taking equity ownership or equity options in the company; holding a management position in the company; or other similar roles. Contact [University Research Administration](#) for questions related to conflict of interest procedures and policies.

## **2. Patent policy**

(See University [Statute 18](#))

Ownership of intellectual property developed by faculty and staff is governed by University of Chicago Statute 18, which states in part: “Where research or other activities carried out at the University, or with the substantial aid of its facilities or funds administered by it result in inventions, discoveries, or device-like software, such products shall be disclosed to the University and shall be the property of the University from inception.”

## **3. Use of the University’s name**

(See University Statute 19)

Neither the faculty member nor the company for which he/she consults may use the University’s name or logo in connection with the consulting services, except that the faculty member may use the University’s name in identifying his/her title.

## **Common Issues**

The list below includes issues which University personnel have encountered in consulting agreements in the past, but it is not exhaustive. This information is not intended to constitute legal advice regarding the contractual terms between the faculty and third parties. Rather, it is intended to highlight issues that can arise in the course of a specific consulting arrangement that might be of concern or interest to the faculty member/consultant.

### **1. Time commitments**

The consultant should ensure that the scope of work defined in the consulting agreement is as closely tailored as possible to the work that the consultant expects to perform. For instance, a definition of services to be performed stating “the consultant shall provide such services as may be requested by the company from time to time” could lead to time-consuming deadline-driven projects or unexpected travel engagements. To resolve this issue, one could define the specific number of hours per week for which the consultant is expected to provide his/her services, and/or the place at which the services will be provided. Time devoted to consulting work must be consistent with the time allotted to faculty for outside commercial activities under the University’s Conflict of Interest Policy.

## **2. Intellectual Property Ownership and “Scope of Work”**

Does the work scope overlap with the faculty member’s research at the University? The work scope in a consulting agreement should be sufficiently detailed and sufficiently distinct from a faculty member’s research that, at any given time, he or she can always determine whether he or she is working as a consultant or as a University employee. For example, a problematic clause for an oncology researcher would be “the consultant shall provide services to the company in the area of cancer research.” The work scope of the consulting relationship should be narrowed to specific topics and projects which do not overlap with the faculty member’s research.

It is important to clearly differentiate between University-related and consulting-related work, because external consulting agreements almost always require that inventions and other intellectual property arising from the consulting relationship belong to the company. Faculty should consult the University’s Conflict of Interest Policy if they anticipate using any University facilities or equipment to perform any of their consulting work, as such use may violate the Conflict of Interest Policy and may also result in University ownership of inventions resulting from the consulting work, as described under the University’s Patent Policy.

In addition to potential conflicts with the University’s Patent Policy (see above), faculty should consider whether he/she would want to retain ownership of all or a portion of the intellectual property he/she creates for future use. In addition, faculty should review the language to ensure that it does not jeopardize future University research programs in which the faculty member participates. For instance, companies may seek rights to future inventions related to the consulting activity which might interfere with the University’s ability to give rights to other companies that sponsor University research. The consulting agreement could also hinder compliance with Federal funding requirements, which specify that the University will own intellectual property arising from Federally sponsored research.

## **3. Indemnification (“Hold Harmless”), Liability and Insurance**

Does the contract provide that the consultant will indemnify the company if it gets sued based on any of the consulting work? Are there any limits on the consultant’s potential liability? We recommend that faculty as a matter of course request deletion of any clause in a consulting arrangement requiring that the faculty member indemnify the company.

Consulting work for a company is a private matter between the consultant and the company. As a result, the University’s general insurance coverage, which covers faculty in the scope of their employment at the University, is not available to cover consulting work. If the faculty member believes there is potential for a claim by the company against him/her for his/her consulting work, the faculty member should check his/her personal liability and insurance policies (homeowner’s policy, etc.) to see what kind of protection may be afforded in the event of such a claim and consider purchasing additional or separate general or professional liability policies.

## **4. Location of Disputes. Does the contract stipulate that proceedings regarding legal disputes be settled somewhere other than Chicago, Illinois?**

Companies will often include a clause which states that the agreement is to be governed by the applicable laws of the state or country in which the company is located, and the agreement will be interpreted in courts within the jurisdiction of that state or country. Please be aware that in the event such a clause requires adjudication of claims in another state or country, the faculty member will be required to engage an attorney in that state or country, and likely will have to travel to that state or country to pursue the dispute, all at the consulting faculty member’s expense.

## **5. Confidential Information**

Is it clear what information the company considers to be confidential? Typically, a company will want to disclose proprietary information to the consultant and will want assurances that this information will be kept confidential. It should be very clear what information is confidential and what obligations exist to protect the information from disclosure. It would be prudent to require that any information the company wants to be kept confidential be clearly marked as “Confidential.” In the case where information that is considered confidential is disclosed orally, it is recommended that this information is reduced to writing and also marked as “Confidential.” Of note, the reduction to writing of oral disclosures is not always necessary, and the faculty member’s legal counsel can provide guidance on whether or not it should be required.

In the event that the faculty member wishes to disclose to a company information that is proprietary to the University and not generally available to the public (such as unpublished research results) and wishes to obligate the company not to disclose the information to others, a Confidential Disclosure Agreement (CDA) can be put in place prior to disclosing the information. Please contact the Polsky Center’s [Technology Science and Technology team](#) for more information.

## **6. Publication**

Faculty members should be aware that the confidentiality terms of many consulting agreements would prohibit the publication by the faculty member of the results of their consulting work. While such a restriction does not violate any University policy per se because the University is not a party to the consulting arrangement, faculty should be aware that this restriction is another reason to avoid overlap between company consulting work and a faculty member’s University research pursuits.

## **7. Non-compete clauses**

Companies will sometimes include non-compete clauses that prohibit faculty from consulting for or working with other companies. Sometimes these clauses are worded broadly enough that they can adversely impact a faculty member’s legitimate University research activities. Faculty members are advised to consider these clauses carefully in light of their University activities and discuss them with their personal attorneys before agreeing to any such requirements. Any exclusivity requirements that are broad enough to limit a faculty member’s activities in the context of their University research activities are unacceptable and must be avoided, as are any requirements that purport to place restrictions on anyone at the University other than the faculty member.

[Addendum to Consulting Agreements](#) (Word)