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**Faculty Consulting Agreements**

**General Guidelines**

The Health Sciences Compensation Plan (Plan) allows you to perform outside professional activities as long as the roles and scope of activities do not compromise your ability to fulfill your responsibilities as a faculty member, nor create [conflicts of interest](https://coi.ucsf.edu/sites/coi.ucsf.edu/files/UCSF%20Guidelines_Conflict%20of%20Interest.pdf) with your faculty activities.  While most agreements reflect mutual interest in advancing science and product development collaboratively with an outside company, some agreements include roles that are in direct conflict with your roles as a faculty member.

The following guidelines describe some of the issues that should be considered when entering into these personal agreements with outside companies. The recommendations do not reflect legal guidance, but provide an overview of some of the key terms and conditions that should be considered when entering into these agreements. They also reflect lessons learned about how to manage your relationship as a consultant and ensure that you comply with University and Plan requirements:

❖ **Consulting Agreements**

Consulting agreements can be executed with outside organizations for those activities allowed under the terms of the compensation plan.

Consulting agreements cannot be executed for any clinical activities, but must be executed as professional service agreements between the University and the outside organization.

Consulting agreements are personal contracts between you and an outside organization. The University is NOT a party to the consulting agreement.

Some general terms to be defined in any consulting agreement:

* The agreement should acknowledge your employment at UCSF. You cannot become an employee for the outside organization. The agreement should define your role as an independent consultant.
* The scope of activities should be clearly described in the agreement and not conflict with your roles and responsibilities as a faculty member. Some companies include a very broad scope of activities that could create conflicts or interfere with your roles as a faculty member. You should ensure that the agreement is focused on the primary roles you will have and does not suggest commitments beyond those you agree to fulfill.
* The agreement should not limit or impose restrictions on your ability to publish or control the content of your academic work.
* You should not be required to have any responsibility for marketing efforts on behalf of the company and cannot participate in speakers’ bureaus that are in violation of the [University Industry Relations Policy](https://policies.ucsf.edu/policy/150-30).
* You should not use your title or position as a UCSF faculty member to advance the company's agenda.
* As an outside professional activity, you cannot use University resources and facilities to fulfill your consulting responsibilities for the company.
* Should UCSF or UCSF Health consider purchasing or leasing any products or services from a company with which you have a consulting relationship, you cannot participate in any discussions or negotiations about these decisions.
* You can request that the consulting agreements be reviewed to ensure compliance with roles and responsibilities as a faculty member. A request for review can be submitted to: SOMConsultingAgreements@ucsf.edu This review is voluntary and does not represent a formal legal review. If you have questions related to the legal aspects of the agreement, you might want to have the agreement reviewed by outside counsel.

❖ **Roles and Responsibilities as a Consultant**

While consulting is the most common outside professional activity pursued by most faculty members, the Plan includes a variety of roles you can have with a company as long as they are disclosed in OATS and, for some activities receive prior approval by the University as described in the Plan.

* + **Consulting/Scientific Advisory Board:** You may serve in a consultant role with a company or serve on a scientific advisory board (Category II activity). You are personally responsible for ensuring that all agreements with the company comply with University and Compensation Plan requirements, including the [UC Patent Policy](https://policy.ucop.edu/doc/2500493/PatentPolicy), [UCSF COI Rule 11](https://coi.ucsf.edu/coi-disclosures-research), & [Conflict of Interest](https://coi.ucsf.edu/ucsf-policies-and-guidelines), reporting. If applicable, compliance with the [Guidelines & Requirements for Funds Received from Extramural Sources](https://brm.ucsf.edu/emf/guidelines-requirements-funds-received-extramural-sources),
	+ **Founder:** You may serve as a founder of a company (Category I activity) only with ***prior* written approval** from the Chair, Dean, and Chancellor. The request to serve in a founding role is submitted through OATS. Category I prior approval for a founding/co-founding role may require renewal on an annual basis.
	+ **Management/executive role:** You may **NOT** serve in any management or executive role for a company or other outside entity (e.g.; CEO, COO, CMO, etc.) except under limited circumstances that require prior approval from the Chancellor as a Category I exception. The request to serve in a founding role is submitted through OATS.

❖ **Management of** **Confidential Information**

All agreements with an outside company will include confidentiality requirements related to your consulting activities. The company will want assurances that you will keep the company’s proprietary information confidential. You should ensure that you are able to distinguish your role as a consultant from your role as a faculty member so that you do not undermine your rights and responsibilities to the University, including, but not limited to management of intellectual property related to your faculty role.

Confidentiality can be challenging for a faculty member to manage, since open, free exchanges of information in a public research university setting is expected. Disclosing confidential information intentionally or unintentionally is also a criminal offense as opposed to a civil offense which carries with it attendant penalties. It is prudent to limit the amount of confidential information you receive to the absolute minimum and to insist that any and all such information is transmitted to you in writing marked “confidential.” That way, you will know precisely what information you are responsible for keeping confidential. It is also a good idea to write into the contract that any verbal transmission of “confidential information” be reduced to writing within thirty days and sent to you marked ‘confidential.

There are also some circumstances where the confidential information could be disclosed through no fault of yours. The following suggested clause may be helpful to include in the agreement to protect yourself from unintended disclosure:

*The foregoing obligation of non-use and non-disclosure shall not apply to any portion of the Confidential Information which:*

*1. is or shall have been known to the consultant before his/her receipt thereof; and*

*2. is disclosed to the consultant by a third party; or*

*3. is or shall have become known to the public through no fault of the consultant.*

If the company is unwilling to include these clauses, you should discuss the confidentiality requirement with the Office of Technology Management (OTM) before executing the agreement. [See OTM’s Frequently Asked Questions for more information.](https://innovation.ucsf.edu/office-technology-management-faqs#What-will-the-OTM-do-with-my-invention-disclosure)

Finally, many consulting agreements will include confidentiality clauses that either don’t expire or remain in place for an unreasonably long time period. Be sure you specify the specific time period and limit it to a reasonable minimum. Two to three years is a commonly accepted time period. Time periods longer than five years become difficult to manage.

❖ **Implications of Consulting Activities on Industry Sponsored Clinical Research**

If you receive compensation, including stock, stock options, or convertible notes related to outside professional activities and also would like to obtain funding from the company for research activities, you must disclose your relationship to the Conflict of Interest Advisory Committee (COAIC) prior to initiating any research projects. You can disclose your relationship with the company tocoiac@ucsf.edu. You are expected to follow the recommendations of the COAIC for managing conflicts. For clinical trials, a faculty member **cannot** receive research funding from a company in which s/he has an equity position or receives compensation for consulting services.

❖ **Management of** **Intellectual Property**

As a member of a Clinical or Scientific Advisory Board, you are being asked to provide guidance on medical guidelines, recommendations, review insights and findings, and validation on an as-needed basis, all consistent with the role of an advisor to the company as long as the guidance and input does not violate the [UC Patent policy](https://policy.ucop.edu/doc/2500493/PatentPolicy) and IP developed by you in your faculty role.

For all outside consulting activities, a statement indicating that you are an employee of the University of California, with specific obligations to The Regents should be documented in the agreement. Any assignment rights provided by you as a consultant to a company is valid only to the extent permitted by law and to the extent it does not conflict with The Regents of The University of California’s rights and obligations to third parties.

Most companies acknowledge the employment relationship with the University and clarify that you are not an employee of the company. To ensure compliance with requirements as a University employee, however, if the agreement does not indicate your employment status, you should include the following statement as part of the consulting agreement:

*“Company X acknowledges Consultant is an employee of the University of California with pre-existing obligations to disclose and to assign patent rights to The Regents consistent with the Patent Agreement provided as Exhibit A and made a part of this agreement.”*

[A copy of the UC Patent Agreement](https://ucnet.universityofcalifornia.edu/forms/pdf/upay-585.pdf) should also be provided to the company to clarify your responsibilities as a faculty member.

If the company is unwilling to include this phrase and allow the Patent Agreement to be included as part of the consulting contract, you should seek guidance from the [Office of Technology Management](https://innovation.ucsf.edu/venture/office-technology-management-and-advancement) before signing the agreement. You can request assistance by sending an email to innovation@ucsf.edu.

The above notwithstanding, you should be aware that should there be a conflict with respect to management of intellectual property in the terms of the consulting agreement, **your obligations to the University of California Patent Policy and to The Regents of the University of California take precedence**. You have an obligation to assign inventions and patents to the University that you conceive or develop 1) within the course and scope of your employment, 2) when utilizing any University research facilities, or 3) through any connection with your use of gift, grant, or contract research funds received through the University. In addition, any assignment rights provided by you to a Company in the consulting agreement is valid only to the extent it is permitted by law and does not conflict with The Regents of the University of California’s rights and obligations to third parties.

❖  **Legal Jurisdiction for Consulting Agreements**

Consulting agreements will include a description of the laws of a particular state or country that will apply when resolving any dispute. In general, the laws of the country in which the company is incorporated apply. If you agree to provide services outside of California, you will have to hire an attorney to litigate any dispute in that state or country and will be both costly and disruptive. Although many companies are not willing to modify the legal jurisdiction, some are willing to modify the location for resolution of disputes. You should be aware of the jurisdiction for dispute resolution and discuss alternatives with the company, if appropriate, before signing the agreement.

❖  **Compensation Received for Outside Professional Activities**

* + For most outside professional activities, you will receive cash compensation, and stock, options, and convertible notes (non-cash) in lieu of compensation for your effort. The agreement should clearly specify what compensation will be offered and what “deliverables” you are expected to provide. In some cases, you may be asked to retain time sheets or other documentation to support the time spent on the activities.
	+ If stock, options, or convertible notes are provided in-lieu of compensation for outside work, the number of shares, offer price and vesting periods should be clearly described in the agreement. In general, since you have obligations for disclosing outside income and fulfilling requirements related to outside income thresholds, you should request that all stock options be offered at the current market value and disclosed as described in the Plan. Receiving stock options at the market value and disclosing the shares for valuation at the time they are offered will minimize any financial obligation to the Plan. Specific requirements for disclosure and valuation are described in your departmental plan.
* Compensation for outside professional activities, whether the compensation exceeds the time and/or earnings thresholds, must be made payable to you personally. Payment may not be made payable to the University since the University is not a party to your outside professional activities. The requirement that payment for outside professional activities be made payable to the individual faculty member is based on IRS regulations (“constructive receipt”).

Further information and a list of frequently asked questions regarding Faculty Outside Professional Activities is available for review:

<https://medschool.ucsf.edu/our-people/academic-affairs/frequently-asked-questions-about-outside-professional-activities>