

## Understand your Rights, Responsibilities and Remedies

1. Does the agreement specify whether you will need to assign inventions and publication copyrights to the other party?
2. Does the agreement require the parties to designate what is confidential and covered by the non-disclosure clauses?
3. Does the agreement specify that it is a complete agreement and that prior oral or written promises will not be part of the contract?
4. Are you required to indemnify another party?
5. Are you subjecting yourself to the laws or jurisdiction of another state or foreign country?
6. Are you waiving or disclaiming any of your rights?
7. Are you agreeing to arbitration and is that satisfactory to you? Do you know the potential costs and what damages can be awarded?
8. Are all the terms and definitions in the agreement written clearly and unambiguously?
9. How will inventions and publications be disclosed and who will have an interest in the intellectual property?
10. Does the agreement involve a foreign affiliation or foreign support that must be disclosed or that may otherwise impact your other funding sources?

**This document is provided for informational purposes only and is neither comprehensive nor legal advice and should not be substituted for a review by a competent attorney.**



## What is a consulting agreement and when is it permissible to enter into one?

Professional services provided by faculty outside the scope of their employment with the university are considered to be outside consulting agreements. Washington State University encourages worthwhile professional outside services by faculty when the consulting does not interfere with the performance of university duties and when it does not present a conflict of interest. All consulting must be consistent with state law (RCW 42.52, especially RCW 42.52.120 and .160), federal law, and [university policy](#), including [BPPM 60.44](#) and [EP 27](#). Faculty must review and comply with [Section IV D.](#), "Policy on Compensated Outside Service By Faculty Members – Consulting" and [Section IV. E.](#), "Extended Professional Activities" of the Faculty Manual and obtain any necessary approvals prior to entering into a covered agreement.

### Reminders

Understand an agreement fully before you sign it. Make sure you know what all the terms and wording in the agreement mean. Some terms (e.g. consequential damages) have a long history of case law defining the term. If you are not familiar with a term, ask your attorney to explain it before you sign.

Unless you have contracting authority delegated from the President of the university, you cannot sign an agreement that binds the university.

All documents and papers in the university's possession, including those you store in your office or laboratory, are subject to disclosure to third parties under the Washington Public Records Act.



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## OUTSIDE CONSULTING AGREEMENTS:

### "THINGS TO CONSIDER"



### Is there a conflict with your academic career?

Your primary career is as a scholar and/or scientist with the university. Consider whether this consulting agreement will create barriers in your academic career. For example:

1. Does the agreement restrict your ability to publish?
2. Does the agreement prohibit or restrict your ability to publish?
3. Does the agreement require you to walk away from any knowledge gained during the consultation? If so, will that hinder your future research?
4. Does the agreement restrict current research in your lab?
5. Is university intellectual property impacted or involved?
6. If there is a non-disclosure agreement, will that hinder your publication or research? Is the agreement sufficiently limited in time and scope?
7. If necessary to protect your career, can you voluntarily terminate the agreement at any time? What are the consequences for doing so?



### Ability to perform the contract?

1. Are you able to meet all the requirements and obligations of the agreement without compromising your duties at the university?
2. If legal action is necessary, do you have the funds to manage that action and in the venue or jurisdiction named in the agreement?
3. Are you asked to ensure that other persons will follow the agreement or behave in a specific way? How can you do so?
4. Are you required to certify for or warrant something? Is that possible?
5. Does the contract require use of university resources and if necessary will you be able to enter into an agreement with the university to use those resources?
6. Do you need a security clearance and are you eligible for that clearance?

### Are you able to disclose information about the agreement to other sponsors and the government?

In addition to existing rules on [export controls](#) and [international collaborations](#), Federal law regarding foreign support is [evolving](#). Consider:

1. Are you able to disclose the dates of the outside funding or affiliation?
2. Are you able to disclose the location of the outside funding or affiliation?
3. Are you able to disclose the terms and conditions of the agreement?
4. Have you contemporaneously disclosed the agreement (including copies of possible) to the university while considering acceptance?
5. Has the university reviewed your existing sponsored projects to verify whether the agreement must be reported to the government?

### Is the agreement complete and understandable?

1. Does the agreement fully name the parties and provide necessary addresses and contact information?
2. Does the agreement clearly state its purpose (for example are you to be an employee or an independent contractor; are you to provide personal service only or will you provide materials or equipment?)
3. Do both parties make promises or give consideration in the agreement?
4. Does the agreement provide an end date and explain other ways that the agreement may be terminated?
5. How is the agreement amended or modified? Do you have an opportunity to approve modifications?
6. Does the agreement tell you what you will be paid and how you will be paid? Are taxes going to be withheld?
7. If another person is supposed to be bound by the agreement are they also signing it?
8. May you assign the work to someone else or use a subcontractor?
9. If damages are specified, are they reasonable?
10. Are all regulatory issues addressed?
11. Is someone with adequate authority signing the agreement?



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