

Guidelines to Professional Consulting Activities and Agreements

Purpose

UTSA supports and encourages outside consulting activities, as such relationships often provide valuable experiences to employees in their research and/or teaching activities. This document is intended to provide helpful advice and guidelines regarding key aspects of consulting activities, including how they relate to the employee's obligations to the University regarding intellectual property, conflicts of interest, and the legal and practical implications of the terms and conditions often contained within consulting agreements.

Consulting Activities

Outside consulting is a professional activity related to an individual's scope of employment, where the individual generally receives compensation from a third party and is not acting as an agent or representative of UTSA. HOP policy 1.33 establishes procedures and sets limits on outside consulting activities. The consulting agreement is a private agreement between the employee and outside entity. UTSA assumes no responsibility for private, professional services performed by its faculty, staff, or students. It is the individual's responsibility to ensure that the agreement is consistent with UTSA employment obligations, *i.e.*, the requirement to disclose and assign intellectual property inventions to the University.

However, professional consulting through sponsored research agreements can be more beneficial to all parties for the following reasons:

- Allows for utilization of UTSA's facilities, resources and the involvement of UTSA students and staff;
- Provides opportunities to involve students and post doctorates in applied research;
- Minimizes the potential for intellectual property conflicts between the sponsor and the University;
- Provides opportunities to participate in translational research;
- Reflects UTSA sponsored research productivity by UTSA.

Responsibilities to the University for Private Professional Consulting Activities

Consulting is only permitted provided the employee's obligation to UTSA is met. The nature and extent of all outside consulting arrangements should be discussed with the employee's supervisor prior to the engagement and periodically reviewed especially if the consulting role changes. UTSA employees need prior written approval (e.g., using the [Request for Prior Approval of Outside Activity Form](#)) before they engage in any outside activity. Consulting agreements may not impose restrictions on an employee's ability to perform University research and to obtain sponsored research funding.

Responsibilities to the Outside Entity for Private Professional Consulting Activities

UTSA has no obligation to or potential liability for an employee's consulting arrangement with an outside entity. Employees should have an arrangement in place that clearly defines the technical scope and terms of the consulting activity (e.g., written contract or other agreement with the outside entity). In addition, consulting agreements may be governed by the laws of states other than Texas. This means that any lawsuits arising from the consulting relationship

would be filed in a state other than Texas according to that state's laws and would thus apply to that suit. It is strongly recommended that employees seek review of any proposed arrangement by their personal legal and tax advisors.

Reporting Requirements in accordance with University Policies

Employees are required to disclose all consulting activities as stated in HOP 1.33 and 10.04 policies. Consulting may give rise to issues that are addressed by these policies. Basically, the time devoted to the consulting activity cannot interfere with an employee's institutional responsibilities and associated expectations for performance. The general rule of thumb is that outside activities will not exceed 20 percent of an employee's full-time obligation to UTSA during time periods in which the employee holds a full-time employment. These outside activities must not reduce the employee's full-time obligation to UTSA. Please see UTSA HOP 1.33 Section IX.A.5 for a more detailed description.

Employees are required to confidentially disclose *all* inventions, intellectual property rights and interests either developed within the course and scope of the employee's outside employment or resulting from activities performed at UTSA's Office of Commercialization and Innovation. This disclosure provides UTSA an opportunity to assess, together with the employee and/or Company, as to whether or not the invention is subject to the provisions under the UTSA Intellectual Property policy.

Use of University Facilities and Resources

Employees may not use UTSA facilities or resources in personal consulting activities. The Texas Government Code (Title 10, Subtitle E, Chapter 2203) requires that state property, including UTSA and all of its assets, may be used only for state purposes. More information on computing resources can be found at the [UTSA Standard for Acceptable Use of Information Resources](#). Note that University assets include, but are not limited to, research data, laboratories, laboratory supplies, equipment, computers, licensed software, and computer networks.

Research data or results created by an employee using university assets are owned by UTSA, except to the extent that rights to such research data have not been contractually assigned or licensed to a third party. Only research data that is publicly available shall be used for approved outside consulting.

Involvement of UTSA Students and Staff

The involvement of students and staff in an employee's outside consulting activities should be undertaken with caution. UTSA employees may not engage or employ students, post-doctoral fellows or other researchers to provide services under the auspices of a personal consulting arrangement without the prior written consent of the department chair or equivalent supervisor, and/or the respective college dean or equivalent second level of supervising authority. Safeguards must be instituted on a case-by-case basis to ensure that such performance does not compromise UTSA duties scholarly mission of the university. Faculty must avoid even the appearance of directing students into research activities that serve their own personal interests at the perceived expense of scholarly achievement. Such arrangements with students may also require review and approval by the University's Committee on Conflict of Interest and Intellectual Property (CCOI). Employees should contact the Office of Research Integrity and Infrastructure (ORII) at ccoi@utsa.edu.

Confidential and Proprietary Information

It is not uncommon for a company to disclose proprietary information to a consultant. Problems may arise when a UTSA employee gains access to confidential/proprietary information through the personal consulting activity. Employees should understand exactly what information is confidential, and what their obligation(s) is to protect such information from disclosure. Failure to understand the terms can have serious legal consequences, inclusive of but not limited to the potential inability of UTSA to protect the employee in a court of law.

Confidential information, including research or other data acquired or developed through conducting UTSA business or research activities (e.g., as a result of a grant, contract, cooperative agreement, or other sponsored agreement) may not be used for personal gain, or to grant unauthorized access to others; confidential information includes any information that is not broadly available to the general public, and comes into the employee's possession as a result of his/her UTSA employment.

Intellectual Property Issues

Under the UT System Regents' Rules and Regulations for Intellectual Property, all discoveries and inventions developed by University employees within the source and scope of employment of the individual or resulting from activities performed at the University belong to the Board of Regents. These rules and regulations apply to all persons employed by the U.T. System and/or any U.T. System institution, including, but not limited to, full and part-time faculty, staff, visiting faculty members, researchers, and students enrolled in U.T. System institution programs, e.g., undergraduate or graduate degree programs or certificate programs inclusive of pre- and post-doctoral fellows.

All inventions and intellectual property created by a UTSA employee outside the course and scope of employment of the individual which is developed or created on his/her own time without support of the University or any use of the University facilities or resources, is the exclusive property of the employee. Consult with ORII and the Office of Commercialization to ensure a discovery is outside of these criteria.

Faculty and staff consultants shall avoid enter into consulting agreements that result in assigning inventions and intellectual property to an outside entity. Employees are strongly encouraged to include a provision(s) in their respective consulting agreement(s) stating that the outside entity acknowledges the consultant is a UTSA employee, and that he/she is required to disclose all inventions to UTSA assigning to UTSA, all intellectual property resulting from activities that fall within the scope of employment (see Special Terms and Conditions).

Special Terms and Conditions Recommended for Inclusion in Consulting Agreements

Consulting agreements should recognize that all faculty and staff members have pre-existing and controlling obligations with UTSA. All UTSA employees agree to abide by UTSA's Intellectual Property Policies and Procedures and should include the following provision to his/her consulting contract:

- *As a member of the faculty or staff of The University of Texas at San Antonio ("UTSA"), a public university of The University of Texas System (the "UT System"), Consultant (a) has a pre-existing obligation to assign and has assigned rights in certain intellectual property he or she creates to the Board of Regents of the UT System (the "Board") and (b) is also obligated to follow applicable federal and state law and applicable rules, regulations, and policies of the Board, the UT System and UTSA (the law and rules, regulations and policies collectively the "Governing Regulations").*

- *The Governing Regulations may change from time to time and cover topics including, but not limited to, ownership of intellectual property, managing conflicts of interest or commitment, and use of state resources. UTSA Handbook of Operating Procedures, Section 10.15 (weblink) is a good source for some of the Governing Regulations.*
- *Company acknowledges that this consulting or employment agreement is subject to the Governing Regulations, and that if a provision in this agreement conflicts with the Governing Regulations, the Governing Regulations will control.*

Contact Information

If you still have questions after reviewing the guidelines, you should first consult with your department chair or equivalent supervisor. If the supervisor is unable to answer your questions, you may be referred to the appropriate University office:

- Office of Sponsored Project Administration at 458-5194
- Office of Commercialization and Innovation at 458-6963 or oci@utsa.edu.
- Office of Research Integrity at 458-4531 or ccoi@utsa.edu.
- Institutional Compliance and Risk Services at 458-4992 or James.Weaver@utsa.edu.

Relevant Policies

UTSA employees are responsible for complying with the following UT System and UTSA policies:

- HOP 1.33 – Conflict of Interest, Conflict of Commitment, and Outside Activities
- HOP 10.04 – Conflicts of Interest in Research and Intellectual Property
- Regents' Rules and Regulations, Series 90101
- Board of Regents' Rule 30104 Conflict of Interest, Conflict of Commitment, and Outside Activities
- UTS125 - Processing of Intellectual Property Agreements
- UTS175: Disclosure of Significant Financial Interests and Management and Reporting of Financial Conflicts of Interest in Research
- UTS 180: Conflict of Interest, Conflict of Commitment, and Outside Activities
- UTS Guidelines for Management and Marketing of Intellectual Property Owned by the Board of Regents