Consulting Relationships Policy

I. Purpose

The purpose of this Policy is to outline requirements for Faculty engaging in consulting relationships while employed Albert Einstein College of Medicine (“Einstein”).

II. Scope

This Policy applies to all Einstein faculty.

III. Policy

Consulting relationships between faculty and industry, when structured transparently and appropriately to avoid conflicts with obligations to Einstein, may provide benefits to the public and the research community that are consistent with the academic mission of Einstein. For example, a consultant's unique expertise can be used to help guide and expedite the development of technologies and medicines that may have an overall benefit to society. In addition, the consultant may gain insight into the commercial process of drug or diagnostics development, which may in turn help to guide and inform academic initiatives in clinical and translation research. Therefore, Einstein encourages the participation of faculty in appropriate consulting opportunities with industry and other third parties.

While there are potential benefits to a consulting relationship, there are also potential disadvantages, even in situations where the consulting relationship does not conflict with obligations to Einstein. For example, many professional journals require disclosure of consulting relationships that the author has that are relevant to the subject matter of a proposed article. Thus, an author's consulting work for the manufacturer of a drug used in the research discussed in the article would have to be disclosed. This disclosure may cause others to doubt the author's objectivity.

Consulting relationships between Einstein faculty and industry or other third parties require pre-approval from both the department chair and the Dean through the Office of Biotechnology and Business Development. Einstein faculty who are contemplating a consulting relationship are advised to review the following policies from the Office of Biotechnology and Business Development Faculty Handbook and read the information and guidelines below. In addition, faculty who are contemplating a consulting relationship should seek legal advice from their own attorney before signing anything.

III.A. Einstein Procedures for Faculty Consulting Relationships

Einstein's policies require that all consulting relationships must be disclosed to and approved by the consultant's department chairperson (department chairs must obtain approval for their consulting relationships from the Executive Dean) and the Dean through the Office of Biotechnology and Business Development.
Consulting Relationships Policy

Development. The role of the department chair is to determine whether the proposed consulting relationship is consistent with the faculty member’s academic duties. The role of the Office of Biotechnology and Business Development is to make sure that the faculty member’s obligations to Einstein are not compromised by the proposed consulting relationship.

Consulting agreements are personal agreements between the faculty member and the company; Einstein is not a party to the agreement. Ultimately, the faculty member is personally responsible for ensuring that there is no conflict between his/her obligations to Einstein and his/her obligations to the company. Further, the faculty member is personally responsible and legally liable for compliance with the terms of the consulting agreement. EACH FACULTY MEMBER IS THEREFORE STRONGLY ENCOURAGED TO OBTAIN LEGAL ADVICE FROM HIS/HER PRIVATE ATTORNEY PRIOR TO SIGNING A CONSULTING AGREEMENT.

Faculty members who are considering a specific consulting relationship should take the following steps:

1. Discuss the proposed consulting relationship with his/her department chair.
2. Review this Policy, Required Consulting Contract Provisions (Appendix), and relevant Einstein policies.
3. Communicate to the company Einstein's Required Consulting Contract Provisions (Appendix) and provide company contact with a copy of the Addendum to Consulting Agreements for company's review. The company is strongly encouraged to sign this Addendum, as written, to expedite review and approval by the Office of Biotechnology and Business Development.
4. Obtain the proposed consulting contract from the company and review it, (along with the Addendum) with his/her attorney, keeping in mind the Issues to Discuss with Your Attorney set forth below (Appendix).
5. Complete the Consulting Agreement Submission Form (including faculty and department chair signatures) and provide a copy of the proposed agreement to the Office of Biotechnology and Business Development for review. An expedient review and approval will be facilitated if the Addendum has been signed by the company, as written, and included with the submission form.

The Office of Biotechnology and Business Development will communicate approval or any requested revisions to the faculty member, who will be responsible for interacting with the company or his/her own attorney to negotiate a final draft that can be approved by the Office of Biotechnology and Business Development.

III.B. Resources

Consulting Agreement Submission Form, BIOT-FRM-2018-001
https://www.einstein.yu.edu/download/?token=GeDLJon0arnRATZm%2fQ9juBn9Whi%2fnlr%2fK7rjgsZbkVw

Addendum to Consulting Agreement, BIOT-FRM-2018-003
https://www.einstein.yu.edu/download/?token=xTrGw1ViIN%2fA3u6dinchj0A3Y0ConxelbbzLZpmkJ80

Policy on Outside Professional Income, COI-POL-2018-003
https://www.einstein.yu.edu/download/?token=5Z2ICyq%2f1KvWbjcumH9nb8%2fR0i21%2fz3L585ShSbj09w
IV. Definitions

None.

V. Effective Date

Effective as of: 18 May 2018

VI. Policy Management and Responsibilities

Einstein’s Office of Biotechnology and Business Development is the Responsible Office under this Policy. Einstein’s Executive Dean is the Responsible Executive for this Policy. Einstein’s Director of the Office of Biotechnology and Business Development is the Responsible Officer for the management of this Policy.

VII. Approved (or Revised)

[Signature] 

Responsible Executive

[Date]

Date
Appendix 1: Guidelines for Consulting Relationships Between Einstein Faculty and Third Parties

Required Consulting Contract Provisions

The following provisions must be included in all consulting agreements. This requirement can be met by attaching the Addendum to Consulting Agreements document, which is to be signed by the company and the consultant.

Primacy of Your Obligations to Einstein

The consulting agreement must contain a provision which states that 1) the company acknowledges that the terms and conditions of the consulting agreement are subordinate to obligations which you have to Einstein as an Einstein faculty member and employee, and 2) in the event that there is any conflict or inconsistency between terms of the consulting agreement and your obligations to Einstein, the obligations to Einstein will govern.

Intellectual Property

As an employee of Einstein, all inventions made by you using Einstein resources are the property of Einstein. The consulting agreement must acknowledge the fact that under Einstein’s Patent Policy, you are required to assign to Einstein any Intellectual Property conceived or made by you as a result of research that has been or is supported entirely or partly by Einstein resources.

Non-Use of Einstein Name

The consulting agreement must state that company may not use the name of the Albert Einstein College of Medicine (including any variations or adaptations thereof).

Einstein is Not a Party and Has No Liability

It must be clear that Einstein is not a party to the consulting agreement and has no liability under the agreement. The consulting agreement is between the faculty member and the company.

Issues to Discuss with Your Attorney

Definition of the Scope or Field of Work

Is the scope of work defined as narrowly and specifically as possible to avoid the potential for conflicts with your academic research and your obligations to Einstein?

Confidentiality Provisions

Are you obligated to keep secret and not use the company’s confidential information? Are the restrictions and obligations that the company seeks to impose on you reasonable? What happens if you accidentally disclose some of the company’s confidential information? Could you be liable for damages?
Liability & Indemnification

Are you required to indemnify the company for any damages that result from your performance of your consulting services? Are you liable to the company if your consulting services are performed in a negligent manner? Will the company indemnify you if you are sued by a third party as a result the performance of your consulting services? Are you being asked to make any representations or warranties? Are these representations and warranties reasonable and appropriate?

Non-Compete Provisions

Are you precluded from entering into consulting or other agreements with other companies? Is this preclusion narrow or broad?

Governing Law and Jurisdiction

If a dispute arises between you and the company, will you be asked to travel to another state to defend yourself?

Remedies

Are you being asked to agree to an injunction in the event of your breach of the agreement? Is this fair and reasonable?

Termination Provisions

Can you terminate the agreement whenever you desire? Under what circumstances can the company terminate the agreement?

"Best Efforts" vs. "Reasonable Efforts" Wording

Are you required to use “best efforts” to perform your consulting obligations? What does this phrase mean?

Use of Your Name

Does the company have the right to use your name in any way? Does the company need to get your permission first?
Appendix 2: Guidelines for Departmental Approval of Consulting Relationships

Einstein's Consulting Relationships Policy, BIOT-POL-2018-004, requires each faculty member to obtain approval of any proposed consulting agreement from (1) his/her department chair and (2) from the Dean, through the Office of Biotechnology and Business Development.

The Office of Biotechnology and Business Development will only review a proposed consulting agreement after department chair approval has been obtained. The approval process conducted by the Office of Biotechnology and Business Development will focus on ensuring that the terms of a proposed consulting agreement do not conflict with the obligations of the faculty member to Einstein, including obligations regarding Intellectual Property rights.

Department chair approval is at the discretion of the chair. However, adherence to the following guidelines, in general, should result in the application of uniform criteria across departmental borders, which is preferred. Nonetheless, these guidelines focus only on the key issues to consider, and these guidelines are not intended to be comprehensive or to exclude other issues that may arise in individual circumstances.

Finally, please keep in mind that consulting agreements are binding legal contracts between the faculty member and the company. As such, the faculty member should always be encouraged to seek legal advice from his/her attorney prior to signing any consulting agreement.

Consulting agreements must comply with the following Einstein policies:

Conflict of Commitment - Will consultant be able to perform consulting duties without adversely affecting the amount of time or effort that he/she devotes to his/her academic duties (research, teaching, writing, etc.)?

Conflict of Interest - Is there any aspect of the consulting relationship which may create, or would appear to create, a conflict of interest that should be disclosed to the Committee on Conflict of Interest. For example:

- consultant receives significant research funding from company
- consultant conducts clinical studies for company
- consultant or his/her relatives have significant equity stake or ownership in company

Non-Use of Einstein Resources - Will the consulting services be performed without reliance on Einstein resources, including facilities, equipment, students, staff or other departmental personnel?
Appendix 3: Addendum to Consulting Agreement

Office of Biotechnology and Business Development

Addendum to Consulting Agreement

Addendum to Consulting Agreement between ____________________ (Consultant) and _____________________ (Company) dated ________________ (Agreement).

1. The purpose of this Addendum is to ensure that Consultant’s commitments to Company are consistent with Consultant’s obligations to the Albert Einstein College of Medicine (“EINSTEIN”). Thus, the undersigned agree that this Addendum is a part of the Agreement and further agree that if anything in the Agreement is inconsistent with this Addendum, this Addendum shall govern.

2. The Company acknowledges that the terms and conditions of the Agreement are subordinate to obligations which Consultant has to EINSTEIN as an EINSTEIN faculty member and employee, and in the event that there is any conflict or inconsistency between terms of the Agreement and the Consultant’s obligations to EINSTEIN, the obligations to EINSTEIN will govern.

3. The Company may not use the name of Albert Einstein College of Medicine or any variation or adaptation thereof without the prior written approval of EINSTEIN.

4. The Company agrees and understands that Consultant has a pre-existing obligation to assign to EINSTEIN all of Consultant’s rights in intellectual property conceived or made by Consultant as a result of research that has been or is supported entirely or partly by EINSTEIN resources. Company has no rights by reason of this Agreement in any intellectual property that is subject to Consultant’s obligations to EINSTEIN.

5. Each party to the Agreement acknowledges (i) that the Consultant is entering into the Agreement, and providing services to the Company, in the Consultant’s individual capacity and not as an employee or agent of EINSTEIN, (ii) EINSTEIN is not a party to the Agreement and has no liability or obligation hereunder, and (iii) EINSTEIN is intended as a third party beneficiary of this Addendum and certain provisions of this Addendum are for the benefit of EINSTEIN and are enforceable by EINSTEIN in its own name.

6. The above provisions shall be and hereby are in force and effect for the entire term of any Agreement between Consultant and Company.

ACCEPTED:

_______________________________  _______________________
Authorized Officer of Company Date

_______________________________  _______________________
Consultant Date
Appendix 4: Consulting Agreement Submission Form

Consulting Agreement Submission Form

This form is to be completed and signed by Einstein faculty members for submission of consulting agreements for review by the Office of Biotechnology and Business Development. Signature by the department chair signifies that consultant has obtained departmental approval to enter into a consulting relationship with the company.

Upon completion of the review, the Office of Biotechnology and Business Development will return an approval notice or set of comments to the faculty member as appropriate. Revisions to conform to Einstein's policies on intellectual property and academic obligations may be required. This form will be signed by the Office of Biotechnology and Business Development and a copy will be returned to the faculty member to indicate acceptance of the final version of the consulting agreement. A photocopy or scan of the fully executed agreement should be provided to the Office of Biotechnology and Business Development for its records.

Faculty Name: ______________________________
Faculty Department: ______________________________
Department Chairperson: ______________________________
Company/Organization Consulting for: ______________________________

By signing and submitting this form the undersigned faculty member confirms that he/she (i) has read and understands the GUIDELINES FOR CONSULTING RELATIONSHIPS BETWEEN EINSTEIN FACULTY AND THIRD PARTIES, (ii) understands that he/she will be personally responsible (and legally liable) for compliance with the terms of the consulting agreement and (iii) understands that he/she is STRONGLY ENCOURAGED TO OBTAIN LEGAL ADVICE FROM AN ATTORNEY PRIOR TO SIGNING A CONSULTING AGREEMENT.

Signatures:

_______________________________________   __________
Faculty Consultant                      Date

_______________________________________   __________
Approved by: Dept. Chair               Date

_______________________________________   __________
Approved by: Office of Biotechnology and Business Development  Date