

## CONSIDERATIONS FOR FACULTY AND RESEARCHERS WHEN ENGAGING IN OUTSIDE PROFESSIONAL ACTIVITIES

The University recognizes that a faculty member's outside professional activities "often bring professional benefits to the faculty member and the University." See Rules and Procedures of the Faculty of Princeton University and Other Provisions of Concern to the Faculty ("Rules"), Section IV.M.3. "Outside professional activities" are those "not directly associated with the fulfillment of a faculty member's teaching, research, and administrative commitments to the University. Such activities generally bring into play the academic expertise of the Faculty member...They may or may not involve compensation." Rules, Section IV.M.3. For example, sometimes University employees are approached by an outside entity to serve in their personal (non-University) capacity as a board member, provide consulting services, conduct or supervise research, or provide expert advice.

Before accepting an offer or signing a contract<sup>1</sup> to partake in such outside engagements, there are a number of issues faculty and researchers should consider. This document discusses some of those considerations and provides examples to illustrate how certain issues might arise and how they may be managed. This document should not be construed as legal advice, and each individual should use their judgment and discretion in determining whether or not engaging a personal attorney to advise them on their personal (non-University) contracts with outside entities is warranted.

### I. Requirement to Disclose Outside Engagements

Faculty and researchers should familiarize themselves with the rules on disclosing outside engagements as part of the University's annual disclosure program and in connection with their sponsored research activities. The annual disclosure program requires the disclosure of domestic and foreign outside engagements and financial interests so that the University may conduct a conflict of interest and conflict of commitment assessment. (These conflict disclosures should be updated throughout the year, as needed.) Further, disclosing certain outside activities is required in connection with research programs funded by government agencies and other external sources through Princeton. If you have questions about how the conflict disclosure rules apply to your outside engagements, you should contact the [Office of Research Integrity and Assurance](#) (RIA). If you have questions about what should be disclosed in connection with the pursuit or management of external research funding through Princeton – the disclosure rules and expectations can be complicated and vary by funding agency – you should consult with your departmental grant managers and the [Office of Research and Project Administration](#) (ORPA).

**Example:** Professor has received permission from the Dean of the Faculty (DOF) to spend two (2) months per calendar year as a visiting professor at a foreign university. The foreign university provides Professor an office and lab space, compensation, and living and travel expenses, as well as funding for lab equipment. Working with the research office at the foreign university, Professor submits a grant application to the foreign government's office of science, which is funded and will support research in the lab at the foreign institution.

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<sup>1</sup> An outside entity may refer to an agreement as a contract, memorandum or letter of agreement, memorandum of understanding (MOU), or another similar term.

Although Professor has received approval from DOF for this outside engagement, Professor is required to disclose detailed information about the visiting position on their Princeton annual disclosure form, including income of \$5,000 or more. Professor will also need to update their<sup>2</sup> CV/biosketch to reflect the visiting professorship. Professor is further required to disclose their research funding and non-monetary research support (e.g., lab equipment, staff) from the foreign university (as well as any associated time commitments, even if unpaid) on their research grant applications to sponsors.

## **II. Foreign Talent Programs**

Faculty or researchers may be presented with an opportunity to participate in a “foreign talent program.” Although joining such a program is not prohibited generally, the U.S. government is extremely skeptical of such programs, scrutinizes them heavily, and in some cases has barred participants from engaging in U.S. sponsored research. In cases involving federal research funding, the U.S. government expects disclosure of one’s participation in a foreign talent program, and Princeton’s internal annual disclosure form also requires such disclosure.

The President’s National Science and Technology Council (NSTC), which coordinates the government’s science and technology policy, defines a foreign talent program as follows:

“[An] effort organized, managed, or funded by a foreign government, or a foreign government instrumentality or entity, to recruit science and technology professionals or students (regardless of citizenship or national origin, or whether having a full-time or part-time position). Some foreign government-sponsored talent recruitment programs operate with the intent to import or otherwise acquire from abroad, sometimes through illicit means, proprietary technology or software, unpublished data and methods, and intellectual property to further the military modernization goals and/or economic goals of a foreign government. Many, but not all, programs aim to incentivize the targeted individual to relocate physically to the foreign state for the above purpose. Some programs allow for or encourage continued employment at United States research facilities or receipt of Federal research funds while concurrently working at and/or receiving compensation from a foreign institution, and some direct participants not to disclose their participation to United States entities. Compensation could take many forms including cash, research funding, complimentary foreign travel, honorific titles, career advancement opportunities, promised future compensation, or other types of remuneration or consideration, including in-kind compensation.”

Federal agencies are most concerned about foreign programs that compensate researchers who are simultaneously employed at U.S. research institutions, including universities. Other potentially problematic characteristics of certain foreign talent programs may include, but are not limited to: commitment to keep the terms of the agreement confidential; material time commitments; language that restricts the disclosure of the results of work conducted under the agreement; requirement to assign or otherwise turn over any intellectual property that is developed; restrictions on terminating the agreement; and requirement to provide appointments

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<sup>2</sup> To promote inclusivity, this document uses pronouns “they, their or them” instead of “him or her.”

(visitors or collaborators) at the U.S. entity to researchers or staff from the foreign entity. If you have any questions about whether your engagement or proposed engagement may be considered participation in a foreign talent program, please contact Elizabeth Adams ([ehadams@princeton.edu](mailto:ehadams@princeton.edu)) or Stuart Leland ([sleland@princeton.edu](mailto:sleland@princeton.edu)).

**Example:**

Professor has been contacted by a foreign university, which offers to assist Professor with an application to the government of the foreign university, which promises to fund an “honorary” or visiting professorship for Professor at the foreign university. The funding through the foreign university will be used to compensate Professor and cover the Professor’s transportation, lodging, and other activities associated with the visiting professorship. The foreign university provides Professor with a letter of invitation, which states that the Professor will hold the position of visiting professor at the foreign university, includes an annual three-month commitment that comprises both teaching and research, restricts the disclosure of the agreement and results of the work at the foreign university, requires that Professor assign to the foreign university any intellectual property that is developed by the Professor in connection with the engagement, and requires permission of the foreign government to terminate the agreement.

Given the terms of this letter, Professor should recognize that this engagement will likely be deemed “foreign talent program” participation in the eyes of the U.S. government.<sup>3</sup> Before agreeing to the terms of the offer, Professor should consult with DOF to determine whether such an arrangement would comply with the Rules and Procedures of the Faculty, and with ORPA to explore whether foreign talent program participation is permitted by Professor’s research sponsors or may limit the ability of Professor to obtain sponsors for their University research going forward. Professor should also recognize that provisions in the letter restricting disclosure conflict with the requirement of the Professor to disclose the engagement to Princeton and to their U.S. research sponsors, and that the intellectual property clause may also conflict with Princeton’s patent policy (Rules, Section VIII.D.2).

### **III. Contract Considerations**

#### **1. Harmonizing the Written Contract with the Faculty Member’s Expectations**

Before entering into any contract in connection with an outside engagement, you should ensure that the terms of the contract accurately and completely capture your expectations about the nature and scope of the engagement. It is often best for agreements to be set down in writing, and the terms should be clear to avoid any misunderstandings. Ambiguous terms in a contract can be problematic and lead to disputes. Also, should a contract become the subject of scrutiny by the U.S. government, it may be difficult to convince the government that your actual obligations are less substantial than what the contract reflects.

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<sup>3</sup> Not all of the terms in the invitation letter in this example need to exist for the U.S. government to determine that this invitation is for participation of Professor in a foreign talent program. For example, a foreign talent program may not always include monetary compensation.

**Example:** Another university offers Professor an honorary or visiting professorship for which Professor will be compensated. Professor expects to attend one or two meetings or events throughout the year and give a few lectures or speeches. However, the document that the university presents to Professor reflects a significant time commitment and duties that include supervising or conducting research, mentoring students, and teaching. The institution assures Professor that these are just formalities and that Professor will not be required to fulfill all of these contractual obligations. Before accepting the appointment and signing the document, Professor should revise the terms of the document to clearly state their understanding of the type of work and time commitment involved.

## **2. Ensure that Scope and Time Commitment are Consistent with Princeton’s Rules**

When entering into a contract with an outside entity, you should ensure that the contract defines the services you are providing, the start and end date, and your time commitment in a manner that is consistent with Princeton’s [policies](#). It is important to be mindful of Princeton’s policy on outside activities. For example, the Rules provide that “[a] Faculty member on full-time appointment has a primary obligation to the University, and outside professional activities, whether gainful or not, shall not be allowed to interfere with teaching, scholarly research, and other duties in the department or the University.” Rules, Section IV.M.1. Furthermore, “[d]uring a calendar year (vacation periods excepted), a Faculty member on full-time appointment shall devote an average of *no more than one working day a calendar week* to outside professional activity during the academic year and portions of the summer for which salary is drawn through the University.” Rules, Section IV.M.2.

**Example:** Professor is presented with a contract from XYZ Corp. to consult in connection with the development of XYZ’s new product. The contract states that it will “commence on October 1, 2022 and continue until product launch. Professor is required to provide consultancy as requested by XYZ throughout the term.” Professor objects to this provision because (1) it fails to describe the specific services that Professor is to provide; (2) there is no predictable, well-defined end date for the services, and (3) there is no specific time commitment defined, so XYZ could require Professor to consult for more than one day per week, in violation of Princeton’s rules. Professor insists on the following clause: “The contract shall commence on October 1, 2022 and expire on October 1, 2023. During the term of the contract, Professor shall provide no more than 5 hours of consultancy per week at the request of XYZ. The services that may be provided by Professor are set forth in detail in Exhibit A to the contract.”

## **3. Confidentiality**

Often, contracts will include a confidentiality provision designed to protect certain information from disclosure, such as proprietary data that the outside entity may wish to share with you to aid you in performing the outside work. However, it is important for you to ensure that there is no restriction on disclosing the existence and terms of the contract to the University or to any other entity that may be legally entitled to see the contract. For example, a new National Institutes of Health (NIH) [policy](#) requires grant proposals to include “copies of contracts, grants or any other agreement specific to senior/key personnel foreign appointments and/or employment with a

foreign institution” as supporting documentation. If such documents are not in English, then translated copies must be provided.

**Example:** Professor has been presented a contract from XYZ Corp. to provide consulting services in connection with XYZ’s efforts to address a technical issue it is having with one of its machines. Under a confidentiality provision in the contract, Professor is required to keep confidential at all times “the existence of the contract, the terms of the contract, and blueprints and specifications of the machine.” Professor objects to the part of the provision which prohibits them from disclosing the existence of the contract and its terms to Princeton and others that the Professor may be required to disclose to under law.

#### **4. Inventions, Patents, and Other Intellectual Property**

It is common for contracts with outside entities to include an intellectual property clause. The purpose of such clause is to define the extent to which you and the outside entity will own the results and inventions that may arise out of the work you provide under the agreement. It is important to ensure that the contract does not grant any intellectual property of the University or related to your University work to the outside entity. In that regard, the Rules state that “[i]n outside professional activities, whether compensated or not, a Faculty member shall not...violate the University’s patent policy [or] permit an outside agent to have a preferred position with respect to information emanating from University activities.” Rules, Section IV.M.4. The University’s [Patent Policy](#) provides that

“The University shall own all rights in any discovery or invention resulting from research carried on by any Faculty member, employee, or student

- a) in which all or part of the cost thereof is paid from University funds or from funds administered by the University, or
- b) which is made as a direct result of University duties, or
- c) which has been developed in whole or in part through the utilization of University resources.”

**Example:** Professor has been presented with the opportunity to consult for XYZ Corp. in the professor’s area of expertise. Professor and a colleague in their department have been doing a good deal of academic work in the area. XYZ Corp. offers Professor a contract with the following provision: “Professor will perform the services as a work for hire and XYZ Corp. shall own all rights in any of their writings or inventions that arise out of this agreement or are related to XYZ Corp.’s current or future business. Professor shall also grant XYZ Corp. an exclusive license to use any intellectual property that Professor and his or her colleagues at Princeton invent or own in this area of technology.” Professor rightly objects to this provision because it purports to license to XYZ Corp. intellectual property that is owned by the University, including (i) work of Professor’s colleagues and (ii) research conducted at or supported by Princeton (which may include research funded by the U.S. government or competitors of XYZ Corp.) that may be relevant to XYZ Corp.’s business or technology.

## 5. Princeton's Name, Trademarks and Logos

You should not permit an outside entity to use Princeton's name, trademarks, or logos in a way that implies that Princeton endorses the outside entity or its products or activities. Princeton is not a party to your outside engagements and should not be under any obligation with respect to them.

**Example:** XYZ Corp. has presented Professor with a personal contract for consulting services with the following clause: "XYZ Corp. shall be permitted to include Princeton's shield on its 'Collaborators' page on its website." Also, the signature line reads, "Professor, on behalf of Princeton University's Department Y." Professor objects because the contract (i) would authorize an outside entity to use Princeton's logo in a manner that could imply endorsement or affiliation, and (ii) attempts to bind Princeton to the terms of the contract, not just Professor personally. Note that the authority to grant rights to use the University's trademarks or logos resides with the [Office of Communications](#).

## 6. Visitors

The contract should not *require* Princeton to host any visitors from the outside entity (or otherwise commit Princeton resources to visitors or the outside entity) or to send any Princeton students or personnel to the outside entity.

**Example:** Professor has agreed to travel abroad to teach a summer course at another university. The university has presented Professor with a contract, which includes the following provisions: "Professor will prepare and provide a 6-week course to be mutually agreed upon at University during the summer of 20##. University, in return, will send a faculty member to Princeton to prepare and provide a 6-week course to be mutually agreed upon during the summer of 20##. During the summers of 20## and 20##, the parties will exchange up to two scholars for purposes of conducting research on topics to be agreed upon." Professor rightly objects to this clause because this personal contract of Professor would create obligations on Princeton University in terms of sending and receiving faculty and researchers from the other university. Princeton welcomes scholars from around the world, but their visits must be in accordance with Princeton's policies and approved via appropriate University channels, e.g., the [Office of the Dean of the Faculty](#).

## 7. Restricted Parties

When contracting with a foreign institution or company, you should contact the [Export Controls Office](#) to ensure that the institution or company is not on a U.S. government restricted party list.

**Example:** Professor has been approached by the principal of XYZ Corp., which is headquartered in a foreign country. On behalf of the company, the principal of XYZ asks Professor if they would be willing to consult for XYZ. Before Professor enters into negotiation

with XYZ, they contact the University's [Export Controls Office](#), which checks XYZ and its principal to ensure that neither is on the U.S. government's restricted party list.

## **8. Choice of Law and Resolution of Disputes**

You should be attentive to “choice of law” and dispute resolution clauses in contracts. Ordinarily, it is best for the contract to be governed by U.S. law, and disputes should be resolved in the U.S. (ideally New Jersey), not in a foreign country.

**Example:** Professor is presented with a contract from a state-controlled foreign university in Country XYZ. The contract states: “All disputes related to or arising under this contract shall be resolved in the courts located in Country XYZ, and the laws of Country XYZ shall apply to the contract.” Professor is unaware that the laws of Country XYZ may prohibit them from disclosing the terms of the contract to Princeton or the U.S. government, and that the laws of Country XYZ make breach of contract a criminal offense punishable by imprisonment. Professor objects to the clause because, even though a dispute may be unlikely, Professor has no practical way to resolve disputes in Country XYZ and does not know the possible repercussions of becoming subject to Country XYZ's laws.