

Guidance for Personal Agreements

This document provides guidance regarding personal agreements and may be useful when establishing a personal agreement. It is helpful to use this document as guidance in the early stages of contract negotiation. Some aspects of these guidelines may be required, depending on the applicable policies, such as the External Professional Activities Policy or the Clinical COI Policy. Please feel free to share with your personal legal counsel and contact [askCOI](#) for questions on this document and best practices.

General Principles and Best Practices

WashU is not a party to your personal agreements, nor will WashU formally approve and/or sign your personal agreement; however, an institutional review is required for all personal agreements submitted with prior approval requests for External Professional Activities to ensure compliance with all relevant WashU policies and any applicable federal regulations. WashU or a federal funding agency may also request a copy, with translation, of your personal agreement to confirm compliance with institutional or regulatory requirements.

Examples of overarching concepts to keep in mind as part of an agreement along with what to avoid.

- A. Seek personal legal counsel. WashU does not provide legal counsel for personal agreements. This guidance document is not intended, nor should it be construed as legal advice. You are highly encouraged to seek personal legal counsel when negotiating personal agreements to ensure your best interests are represented.
 - *What to avoid: Not reading the agreement in full before signing or signing an agreement that contains terms or conditions that are unclear or confusing.* Signing an agreement you have not read or do not fully understand could result in you being obligated to tasks, efforts, or conditions you would not otherwise have accepted.
- B. Clearly define your scope of work and responsibilities. Having a clear description of the services or deliverables you will be providing enables better estimation of time requirements, compensation rates, and potential overlap with your WashU activities.
 - *What to avoid: Lack of clarity around scope of activities and/or effort.* This could lead to conflict of commitment questions especially around your obligations to WashU and funding agencies or could allow for entity to act on your behalf.
- C. Clearly define your compensation and benefits. Having a concise and detailed compensation description, including compensation rate, fees, royalties, and bonuses for all services and activities enables you to easily assess compensation with regard to obligations, meet reporting requirements, or monitor expected income.
 - *What to avoid: Compensation or benefits information addressed in multiple areas of the agreement.* This can lead to confusion or inaccuracies in determining the total value of an agreement or ambiguity on compensation schedules or expected amounts.
 - *What to avoid: Receiving compensation or benefits not related to the scope of work or deliverables described in the contract.* A large amount of compensation or access to resources offered in exchange for very little or no work or effort may create an appearance of impropriety. Compensation should be directly tied to deliverables.

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- D. Include an accurate time commitment and limit on the number of hours/days you will commit to the activity. Having a clear limit on the amount of time included in the agreement that you are willing to provide helps to protect your time and ensure compliance with WashU's Consulting Privileges Policy (limit for external professional activities is one day per week/10 hours per week/520 hours per year for full time faculty).
- *What to avoid: Lack of clarity on time commitment, using percentages of effort to describe the time commitment, or committing (or capping commitment) beyond the one day (10 hours) per week.* The maximum potential amount of time is used by WashU and funding agencies when calculating commitment (e.g. 'up to 15 hours per week' or 'not to exceed 600 hours per year' both exceed allowances).
- E. Clearly specify the duration of the agreement and termination point. Having set durations and termination points for an agreement allow for a more delineated and defined record in terms of scope, compensation, and obligations for a given period of time.
- *What to avoid: Agreements that auto-renew or continue in perpetuity until formally terminated by a party to the agreement without an annual review of the terms and compensation.* This can lead to deviations from what was originally agreed upon when first executed (such as scope or deliverables), static compensation that may not reflect changing market conditions.
 - *What to avoid: Agreements that do not allow you to terminate it or only allow for termination for cause.*
- F. Require written, signed modifications or amendments to the agreement. Written and approved revisions allow for clear understanding of each party's obligations and ensure the agreement accurately reflects the work or output generated.
- *What to avoid: Verbal modifications or deviations from the contract.* Verbal changes can lead to confusion later on and are not enforceable; if under scrutiny, what is in writing is what will be relied upon.
- G. If engaging in external research, include language that clearly establishes that the research aims and objectives do not directly overlap with research being conducted at WashU. This clarifies that the external research you are engaging in is distinct and separate from research activities being undertaken at the WashU and can help address questions of relatedness or direct overlap with your institutional research, especially with funding agencies.
- *What to avoid: Any language that requires you to pursue similar aims or projects currently at WashU, or to pursue funding through WashU in furtherance of the external research.* Since WashU is not a party to the agreement, WashU resources including but not limited to space, research or clinical data, personnel, equipment, funding, and students cannot be included in the agreement without prior approval.

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- H. Specify how your name and role/appointment may be communicated (e.g. on a website) and for how long. Be cognizant of language pertaining to use of your name, likeness, or image. Having a defined term date or duration for continued use of your name or image can prevent misuse of your information after the agreement has ended. Use of WashU logos or branding typically requires prior written approval from [WashU Marketing and Communications](#).

- I. Clarify the personal, non-institutional nature of the activity and inform the other party of the applicability of WashU's IP policies by including the following paragraph in your contract:
 - o Notwithstanding anything herein to the contrary, [Entity] agrees that [Individual] serves [Entity] under this Agreement as an independent contractor, and not as an agent or representative of Washington University ("Institution"), that Institution exercises no authority or control over Individual while acting in such capacity, that Institution receives no benefit from such activity, that [Individual] and/or [Entity] cannot and will not make use of Institution resources or Institution managed funding in acting in such capacity, that Institution is not a party to this agreement, and that Institution makes no representations or warranties under this agreement and assumes no liability or obligation in connection with any such work or service undertaken by the Individual. [Entity] further agrees that any breach, error, or omission by [Individual] acting in such capacity or otherwise under this agreement, shall not be imputed or otherwise attributed to Institution. Moreover, nothing in this Agreement shall be read or understood to encumber, in any way, [Individual's] adherence to Institution's policies and any intellectual property that the Institution claims ownership of through the Institution's Intellectual Property Policy as such may be amended from time to time.

- J. Remove any terms that clearly create obligations in conflict with WashU policies – e.g. strict confidentiality requirements, ownership of intellectual property (including data), inappropriate access to PHI. This avoids having to violate the terms of the agreement to comply with WashU policies.

- K. Maintain a fully signed version of your agreement and any amendments or modifications. An unsigned agreement is unenforceable and does not provide reliable documentation of your activities and compensation associated with those activities.

Best practices for International Agreements

There are a few additional considerations when establishing a personal agreement with a foreign entity.

- A. Require translation of agreements into English (by independent 3rd party if feasible) and specify in the contract that the English version governs any conflicts between translations. 'Lost in translation' may seem like a cliché however being able to fully understand what is included in an agreement you are signing is key in avoiding confusion or inadvertently agreeing to objectionable terms. Furthermore, WashU and federal funding agencies will need the English version to evaluate for overlap.

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- B. Screen foreign entities for inclusion on restricted/watch lists. Some entities or organizations may have been identified as high risk or located in/affiliated with a high-risk government or country. Contact [WashU's Export Controls Office](#) (preferred) or use an online consolidated screening list to verify there are no restrictions or prohibitions on engaging with the entity.
- *What to avoid: Not annually screening entities in countries of concern (currently Iran, North Korea, China, and Russia).* Information is updated by federal agencies as new information or circumstances change, so do not rely on potentially outdated information.

Examples of Problematic Terms and Conditions

Below are some examples of problematic terms and conditions that may occur in External Professional Activities Agreements. While some are clearly problematic, others may be more subtle and easy to overlook:

- Terms giving the entity rights to IP developed outside of the agreed upon scope of work (e.g. 'the company shall have exclusive rights to IP developed while this agreement is in effect' as opposed to 'resulting from the scope of work under this agreement')
- Requirement to recruit WashU faculty, staff, or students/trainees to become involved with the entity.
- Requirement to pursue research funding or perform a scope of work on behalf of the entity that duplicates or overlaps your WashU research or activities.
- Requirement to pursue research funding through WashU that duplicates or further develops on the scope of work being completed for the entity.
- Restrictions on your ability to terminate or end the outside activity agreement. (e.g. 'consultant may terminate this agreement with appropriate notice and approval of the Organization')
- Requirement to keep the relationship with the entity private or 'confidential' and not disclose the relationship to WashU or funding agencies/sponsors. This includes not being able to provide a copy of the agreement or scope of work to WashU.
- Requiring disclosure of or prior review of data and/or manuscripts arising from your WashU research (unrelated to the scope of work under the outside activities agreement).
- Requirement to publish a certain number of papers and/or restricting your ability to include your WashU affiliation in the publication.
- Requirement to make WashU-based training opportunities available to entity personnel, including exchange of or preference for entity trainees, scholars, or employees to work in WashU labs or participate in WashU academic programs.

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