



Overview of the External Contract Addendum February 10, 2022

New Federal External Contract Requirements

- [OSTP, January 4, 2022](#) - Guidance on implementation of National Security Presidential Memorandum-33 (Jan. 14, 2021)
 - “...research agencies will require that individuals disclose contracts associated with participation in programs sponsored by foreign governments, instrumentalities, or entities, including foreign government-sponsored talent recruitment programs...”
 - [NSF, as of January 10, 2022](#)
 - PIs must identify all current and pending projects regardless of source of funding.
 - [NIH, January 25, 2022](#)
 - PIs and Key Personnel must upload copies of external foreign contracts related to research.
- [“Foreign” entity means](#)
 - Any organization or its representatives with headquarters outside the United States, or subsidiaries of foreign registered parent companies.
 - [External contract means](#)
 - Any external contract that is not part of a faculty member’s Cornell employment duties.

Why a Contract Addendum?

1. Faculty have pre-existing and primary employment obligations to Cornell
e.g., Invention Disclosure and Assignment, Conflict of Interest and Commitment (Col/CoC)
2. Faculty have federal disclosure and regulatory obligations
e.g., federal funder disclosure requirements, Col/CoC, Export Control and anti-bribery and anti-corruption requirements.
3. Federal sponsor scrutiny of external research support implicates new potential liabilities (incl. criminal sanctions) for faculty and Cornell due to either poorly constructed or overly broad external agreement clauses.
4. Cornell is NOT a party to or responsible for faculty external arrangements such as consulting contracts, however, Cornell has a vested interest in assisting our faculty comply with these pre-existing and concurrent obligations.
5. Faculty remain responsible for negotiating their external activity arrangements; Cornell is not taking on the responsibility for negotiating contract details, but is providing an Addendum to simply and cleanly address these compliance and employment obligations.
6. Adding the addendum to all new external contracts protects both the faculty and Cornell without requiring further scrutiny as to each contract or agreement.

Note:

- WCM already requires all external contracts to include the Addendum;
- The Addendum has been used by Ithaca faculty who have asked for OGC's review of their agreements; and
- All Cornell faculty already need to satisfy COC and secure approval of their Chair for external consulting.

Why does my External Activity implicate ‘pre-existing obligations’?

Entering an external employment or consulting arrangement can raise many issues. Primarily:

- Real or perceived conflicts of interest or commitment;
- Prospective federal funding proposal disclosures surrounding potential foreign influence
e.g., Current and Pending Support, foreign entity connections, or Other Support and Biosketch info;
- Potentially conflicting inventions and intellectual property (IP) assignment clauses;
- Non-disclosure obligations that conflict with pre-existing responsibilities to Cornell or the federal government
e.g., confidentiality applied to the agreement itself; and
- Export Controls requirements that apply regardless of the agreement’s omission of such regulatory implications.

The Addendum is Short and Simple

ADDENDUM TO CONSULTING AGREEMENT (“Addendum”)

This Addendum is hereby incorporated into that certain Consulting Agreement between _____ (“Consultant”) and _____ ([“Company”] or [“Entity”]) dated _____ (“Consulting Agreement”).

1. The purpose of this Addendum is to ensure that Consultant’s commitments to Company are consistent with Consultant’s obligations to Cornell University and, where applicable, its Weill Cornell Medical College (collectively, “Cornell”). The undersigned agree that this Addendum is a part of the Consulting Agreement and further agree that if anything in the Consulting Agreement is inconsistent with this Addendum, this Addendum shall govern with respect to such inconsistency.
2. Company acknowledges that the terms and conditions of the Consulting Agreement are subordinate to obligations which Consultant has to Cornell as a Cornell faculty member, researcher and/or employee. Company understands and agrees that Consultant is an employee of Cornell, and that Consultant’s services under the Consulting Agreement may not restrict or limit Consultant’s obligations to Cornell or Consultant’s activities within the course and scope of their employment with Cornell.
3. The parties further understand and agree that Consultant is required to comply with Cornell policies related to faculty conflicts of interest and commitment, patent and intellectual property, and scientific or research misconduct, and that such compliance takes priority over, and shall supersede, any obligations Consultant may have to Company under the Consulting Agreement. Consultant may not have principal investigator responsibility for research outside of Cornell, and outside activities may not include the extension of Cornell research into the consulting activity.
4. Company understands and agrees that Consultant is obliged to assign and has preemptively assigned to Cornell all of Consultant’s rights in intellectual property resulting from activities conducted in the course of Consultant’s employment at Cornell or supported by more than incidental use of Cornell resources. Company has no rights by reason of the Consulting Agreement in any intellectual property that is subject to Consultant’s employment-related obligations to Cornell. Company further acknowledges that Consultant does not have the authority to assign, license or otherwise transfer rights in any of Cornell’s inventions.
5. The undersigned acknowledge (i) that Consultant is entering into the Consulting Agreement, and providing services to Company thereunder, as a private individual and not as an employee or agent of Cornell; (ii) Cornell is not a party to the Consulting Agreement and has no liability or obligation thereunder; (iii) Cornell is intended as a third party beneficiary of this Addendum and certain provisions of this Addendum are for the benefit of Cornell and are enforceable by Cornell in its own name; and (iv) Cornell and Consultant may have current or prospective legal and regulatory obligations to report this consulting activity and disclose the Consulting Agreement to applicable funding agencies, as well as obligations under applicable privacy laws, U.S. Export Control regulations, and/or applicable anti-corruption and anti-bribery laws.
6. The above provisions shall be and hereby are applicable to the entire term of the subject Consulting Agreement between Consultant and Company.

AGREED and ACCEPTED:

Authorized Official of Company

Signature

Date

Consultant

Signature

Date

Exceptions

- Part-time faculty will not be required to use the addendum.
- Contracts unrelated to your work for the university
 - e.g. using your house as an Airbnb.
- Contracts with Cornell or its units
 - e.g., sponsored research, employment and royalty agreements for Cornell IP.
- Traditional scholarship activities
 - e.g., publishing agreements and book deals.
- Serving as consulting or expert witness in litigation.

The Addendum is Accepted by Corporations

- *Brookhaven Science Associates, LLC*
- *Honda*
- *ETH Zurich*
- *Samsung*
- *Syngenta*
- *Intel*
- *Waymo*
- *Weizmann Institute*
- *SHY Therapeutics LLC*
- *Neurosciences Cognitive Laboratory*
- *Cross Chem LLC*
- *Stratuscent Inc*
- *Symbrosia Inc.*
- *BirdgeBio Pharma*