INTRODUCTION

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 which 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. Einstein faculty who are contemplating a consulting relationship are advised to review the following policies from the 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.

Policy for Outside Professional Income

Policy on Conflicts of Interest
http://www.aecom.yu.edu/home/policies2/conflict_of_interest.htm

Policy on Industrial Research Collaborations
http://www.aecom.yu.edu/home/policies2/IndustrialResearchCollaboration.htm
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. 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 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.


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.

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 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 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.
APPENDIX
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 Yeshiva University or 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
Are you being asked to travel to another state to defend yourself if a dispute arises between you and the company?

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?