

Consulting for Companies – General Policy

Overview

The purpose and objective of the Howard Hughes Medical Institute is “the promotion of human knowledge within the field of the basic sciences (principally the field of medical research and medical education) and the effective application thereof for the benefit of mankind.” HHMI expects its scientific staff to adhere to certain fundamental principles in support of HHMI’s mission: (i) the pursuit of excellence in the ethical conduct of research; (ii) the exercise of sound judgment in research activities on the basis of scientific rather than personal or commercial considerations; and (iii) respect for the traditions and prevailing mores of academic biomedical research.

In service of these fundamental principles, HHMI has issued a number of policies relating to the conduct of science by, and the outside activities of, HHMI laboratory personnel. These policies are intended to balance HHMI’s institutional interest in the integrity and independence of its research with its interest in the effective application of research results for the benefit of mankind. Translation of research results for public benefit often requires interactions with the commercial sector. At the same time, HHMI research must be driven by scientific considerations rather than by personal, commercial, or other interests.

This policy on consulting provides general rules applicable to service by HHMI laboratory heads, as defined below, as consultants to companies. Policies with respect to specific types of consulting are covered by the general rules set forth in this policy as well as the specific rules described in the following policies:

- [Company Talks, Conferences, and Seminars](#)
- [Consulting for and Equity Ownership in a Start-Up Company and Other Private Companies](#)
- [Service as a Member of a Company’s Board of Directors](#)
- [Consulting in Connection with Litigation](#)

This general policy, together with the policies referenced above, are referred to as the “HHMI Consulting Policies.”

Special rules applicable to advising non-profit organizations and government entities are described in [HHMI's policy on Service to Non-Profit Organizations and Government Agencies](#).

Scope

The HHMI Consulting Policies apply to all HHMI laboratory heads. For purposes of these policies, the term “laboratory head” includes HHMI Investigators at HHMI’s host-based sites, and Group Leaders and Fellows at HHMI’s Janelia Research Campus (“Janelia”). Postdoctoral Associates, because they are in an intensive training period of their careers, may not consult for companies. In certain circumstances, Postdoctoral Associates are permitted to consult for a non-profit or

governmental agency as described in [HHMI's policy on Service to Non-Profit Organizations and Government Agencies](#).

Directors and managers of shared resource facilities at Janelia are not covered by this policy. Instead, their consulting is addressed under the same rules that apply to Janelia operational personnel. Janelia Senior Scientists may consult for companies in much the same way as Janelia laboratory heads, but must request Personal Time Off for any time they wish to take off work to consult for a company.

Other HHMI laboratory employees not listed above, such as bioinformatics specialists or technicians, may be permitted to consult under certain circumstances. Ordinarily, such personnel may consult for a company only if their laboratory is not collaborating with the company and their laboratory head and the appropriate HHMI Vice President approves the arrangement in advance. These employees should contact the [HHMI attorney](#) for their site before engaging in any outside consulting.

Policy

General Rule

HHMI permits laboratory heads to engage in consulting for companies as described in the HHMI Consulting Policies.

All consulting for companies is outside the scope of an individual's employment with HHMI. To minimize the chance that outside consulting activity by laboratory heads could interfere with HHMI research activities or create or appear to create conflicts of interest that could affect HHMI research, HHMI, through these HHMI Consulting Policies, places limits on the amount of time that a laboratory head may spend on outside consulting, the nature of services on behalf of a company that are permissible as a consultant, the extent to which a consultant may engage in other activities with a company, and equity ownership of the company by HHMI employees and certain members of his or her family.

What is Consulting?

HHMI considers consulting activity to include nearly any service on behalf of a company, including service on a company's scientific advisory board or panel; service as a member of a company's board of directors; service as a founder of a company; service in connection with litigation (for example as an expert witness); or giving a talk or attending a conference or seminar for a company.

Writing or reviewing scholarly books, articles, or other material for publication is not considered consulting and is not subject to this policy, even if the publisher is a for-profit entity. Similarly, because of the importance of the peer review and publication process to the scientific community, serving as an editor or reviewer for an academic journal is not considered consulting that is subject to this policy, even if the publisher is a for-profit entity. Accordingly, agreements for this type of service need not be reviewed and approved by HHMI.

General Limits on Consulting

Annual Time Limit for Laboratory Heads

Laboratory heads based at host institutions must adhere to the host institution's limits on the amount of time that may be spent on consulting activities. If the host institution does not have a stated limit on the time a laboratory head may spend annually on such activities, then HHMI laboratory heads at that site may engage in up to 36 days of consulting activity each year. The 36-day limit also applies to laboratory heads at the Janelia Research Campus. For purposes of the annual time limit, only the actual number of days spent consulting for companies during each year need be counted.

In addition to the above annual time limit on consulting, host-based laboratory heads are required to spend at least 75 percent of their professional time on research. Service as a consultant for a company is not research.

Types of Services Permitted

In order to maintain a clear distinction between research conducted for HHMI and the research of a company, HHMI does not permit its scientists who serve as consultants to conduct or direct research on behalf of companies as part of the consulting relationship. Conducting research includes not only the hands-on conduct of bench research, but also such activities as writing research protocols, assembling and analyzing raw data, and drafting manuscripts. Service as a consultant should not include any of these activities; instead, consulting services must be limited to giving advice and discussing ideas.

In some cases it will be clear that a proposed role involves conducting or directing research and is therefore not a role that an HHMI laboratory head may take on as a consultant. For example, serving in a managerial or operational role at a company involves directing research and is not permitted. In other cases it may be less clear whether a proposed role is one that an HHMI laboratory head can take on as a consultant. In these situations, it may be helpful to consider whether the laboratory head's proposed work with the company is likely to lead to co-authorship on a paper. As a general rule, co-authorship is a hallmark of collaborative research and a laboratory head who is serving as a consultant to a company should not be involved in the company's activities in such a way that he or she becomes a co-author on a paper with company scientists.

Laboratory heads working in the area of bioinformatics or related fields may be asked to write code for a company as a consultant. Because HHMI considers writing code to be the conduct of research, this type of service is not permitted. However, a laboratory head may advise a company as to how its personnel should write code, or comment on code written by company personnel. Similarly, laboratory heads may not build equipment for a company as a consultant, but may advise a company on how it should build equipment, or suggest improvements to equipment built by company personnel.

Compensation for Consulting

Compensation for consulting may include fixed amounts of cash and equity (such as stock or stock options) but may not include incentive or contingent features, such as bonuses based on performance or upon achievement of operational milestones related to the company's scientific program. Also, as described in [HHMI's policy on Human Subjects Research](#), a laboratory head may not accept compensation from a company that is sponsoring a clinical trial or study with which the laboratory head is involved.

Consulting and Holding an Equity Interest

A laboratory head may hold an equity interest, such as stock or stock options, in a company for which he or she consults. However, ownership of equity in a company may in certain circumstances create a conflict of interest for the consulting scientist that could affect or appear to affect the scientist's research as an HHMI employee. Because of this concern, a laboratory head generally may not hold a significant equity interest in a company for which he or she is a consultant.

In general, HHMI considers ownership of more than 5 percent of the equity of a company to constitute a significant equity interest in the company. An interest of less than 5 percent of a company may also constitute a significant equity interest depending on the circumstances. The determination of what constitutes a significant equity interest in a privately-held company, especially a start-up company, can be challenging because the equity in such companies may be difficult to value. In the case of a start-up company, in particular, the equity may have little or no ascertainable value for some time following formation of the company. For this reason, special rules apply in determining whether equity in private/start-up companies constitutes a significant equity interest, as described in [HHMI's policy on Consulting for and Equity Ownership in Start-Up and other Private Companies](#).

For purposes of its consulting policies, HHMI considers all equity the consulting scientist owns in a company regardless of how the shares are received (e.g., as a founder or other investor, as a consultant, or as an inventor). In determining a consulting scientist's equity ownership, HHMI applies federal securities laws and regulations relating to beneficial ownership, regardless of whether the company is a private or public company. Thus, a consulting scientist will be considered to own his or her direct holdings as well as indirect holdings, such as shares held by a trust or a partnership of which the consulting scientist is a beneficiary or partner and shares that could be acquired through the exercise of options or warrants he or she holds if the options or warrants are exercisable within 60 days of the calculation date. In addition, the consulting scientist is treated as owning any shares beneficially owned by the consulting scientist's immediate family members (spouse and children sharing the same household).

Access to HHMI Research

Consulting arrangements may not confer upon a company any rights in HHMI research or any preference in access to information or inventions resulting from HHMI research. A company may license the results of the HHMI research of a scientist who serves it as a consultant but must do so through traditional technology transfer means.

Consulting and Collaborating

Working with a company on a joint scientific project involving the ongoing work in an HHMI laboratory is a research collaboration, not consulting, and is addressed by [HHMI's policy on Research Collaborations](#). Because of the need to keep HHMI research separate from consulting activities, no one in an HHMI laboratory may consult for a company with which the laboratory is collaborating. Laboratory heads may choose between consulting and collaborating if both are possibilities. Alternatively, once collaborative work is completed, a consulting relationship often can be established.

Laboratory heads should be mindful about other scientific interactions with a company for which they consult; those interactions may constitute or become a research collaboration. For example, a collaboration by an HHMI scientist with an academic colleague who in turn collaborates with a company on the same project may constitute a collaboration by the HHMI scientist with the company. The transfer of scientific materials to or from a company may, depending on the circumstances, also constitute a collaboration with the company. Questions about whether the transfer of materials or other relationship amounts to a collaboration should be directed to the laboratory head's HHMI attorney responsible for the site, or at Janelia, to the Senior Director, Administrative Operations and Facilities.

Consulting and Company Funding

Because of the need to keep consulting and research activities separate, laboratory heads at HHMI host-based sites are not allowed to consult for any company that is sponsoring research in the consultant's laboratory. Consulting for a company that provides sponsored research support is not permitted regardless of the form of company funding (directed gift, sponsored research, etc.).

Similarly, laboratory heads at host-based sites cannot receive funding other than an unrestricted gift from any company for which they are providing consulting services. (Laboratories at Janelia may not accept company funding.) This prohibition on consulting applies regardless of the type of consulting activity proposed. For more information on HHMI's policies regarding company funding of HHMI research, please refer to [HHMI's policy on Company Funding Arrangements – Host-based Sites](#).

HHMI Review and Approval of Consulting Agreements with Companies

Laboratory heads should refer to [HHMI's policy on Company Talks, Conferences, and Seminars](#), for special rules that apply to review and approval of agreements relating to one- or two-day visits to companies to deliver a talk or participate in a company-sponsored conference or seminar. Host-based laboratory heads wishing to enter into any other consulting relationship with a company, or to modify or extend an existing arrangement, should contact their HHMI attorney. To facilitate HHMI's review process, a host-based laboratory head may be asked to complete the [Consulting Questionnaire](#) on the [HHMI Investigator Portal](#) (or the [Start-Up Questionnaire](#), also on the [HHMI Investigator Portal](#), in the case of a proposed consulting relationship with a start-up company).

Janelia laboratory heads or Senior Scientists wishing to enter into a consulting relationship with a company, or to modify or extend an existing arrangement, should either discuss the planned consulting with the Senior Director, Scientific Programs or the HHMI attorney responsible for

Janelia. Other Janelia laboratory personnel wishing to consult for a company should discuss the proposal with their laboratory head, and if their laboratory head approves, should then contact either the Senior Director, Scientific Programs or the HHMI attorney responsible for Janelia to discuss the planned consulting.

HHMI requires that certain terms be included in all consulting agreements for laboratory heads. These terms reflect HHMI's rules on such matters as the scope of services that an HHMI employee may provide to a company as a consultant, the relationship between services as a consultant and HHMI research, confidentiality, indemnification of HHMI in connection with the outside activities of its employees, and use of HHMI's or the laboratory head's name by the company. These and other provisions are included in a [model consulting agreement](#) that companies may use for consulting agreements for host-based laboratory heads. A similar [model consulting agreement](#) is available for use by laboratory heads and Senior Scientists at Janelia. Alternatively, HHMI has prepared a document which includes the terms it requires that can be attached to a company's standard agreement (a ["uniform provisions" document for host-based laboratory heads](#) and a ["uniform provisions" document for Janelia-based laboratory heads and Senior Scientists](#)), and has developed special versions of the uniform provisions that apply to [one- or two-day visits to companies to deliver a talk or participate in a conference or seminar for host-based laboratory heads](#), [one- or two-day visits to companies to deliver a talk or participate in a conference or seminar for Janelia-based laboratory heads and Senior Scientists](#), [consulting in connection with litigation for host-based laboratory heads](#), [consulting in connection with litigation for Janelia-based laboratory heads and Senior Scientists](#), [service for venture capital/investment firms for host-based laboratory heads](#), and [service for venture capital/investment firms for Janelia-based laboratory heads and Senior Scientists](#).

HHMI will not approve a proposed consulting agreement unless it includes the terms that HHMI requires. Laboratory heads should not sign any consulting agreement with a company until they have received approval from HHMI.

HHMI's review of a proposed consulting agreement is solely to consider whether the consulting arrangement complies with HHMI policies. HHMI employees who engage in consulting for companies may wish to seek their own legal counsel to advise them of their rights and obligations under a proposed consulting agreement, including any non-compete provisions that may limit their ability to consult for other companies.

Related Procedures, Forms and Policies

HHMI Host-Based Forms

- [Consulting Questionnaire](#) on the [HHMI Investigator Portal](#)
- [Start-Up Questionnaire](#) on the [HHMI Investigator Portal](#)
- [Model Consulting Agreement](#)
- [Uniform Consulting Agreement Provisions](#)
- [Uniform Provisions for Agreements in Connection with Seminars, Conferences, and Talks](#)
- [Uniform Consulting Agreement Provisions for Expert Witness Service](#)
- [Uniform Consulting Agreement Provisions for Venture Capital/Investment Firm Service](#)

HHMI-Janelia-Based Forms

- [Model Consulting Agreement](#)
- [Uniform Consulting Agreement Provisions](#)
- [Uniform Provisions for Agreements in Connection with Seminars, Conferences, and Talks](#)
- [Uniform Consulting Agreement Provisions for Expert Witness Service](#)
- [Uniform Consulting Agreement Provisions for Venture Capital/Investment Firm Service](#)

Policies

- [Human Subjects Research](#)
- [Research Collaborations](#)
- [Consulting for and Equity Ownership in Start-Up and Other Private Companies](#)
- [Service to Non-Profit Organizations and Government Agencies](#)
- [Consulting in Connection with Litigation](#)
- [Company Talks, Conferences, and Seminars](#)
- [Service as a Member of a Company's Board of Directors](#)
- [Company Funding Arrangements – Host-Based Sites](#)

Contact

Any questions about HHMP's general rules applicable to service by HHMI laboratory heads as consultants to companies may be raised with the [Scientific Officer](#) or [HHMI attorney](#) responsible for the site, or at Janelia with the Vice President & Executive Director, the Scientific Program Director, or the [HHMI attorney](#) responsible for Janelia.

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