

## **38. CONFLICT OF INTEREST, CONSULTING, AND DISCLOSURE**

### **38.1 INTRODUCTION**

State laws governing ethics and conflicts of interest are based on the premise that public employees are acting on behalf of government for the benefit of the public. As public employees of an institute serving the educational and public purposes of teaching, research, and professional service, there is an obligation to conduct research and official duties on behalf of the University in such a manner consistent with statutes and regulations. The avoidance of conflict of interest is vital to ensuring the integrity and objectivity in conducting and reporting research.

The purpose of this policy is:

- To set forth acceptable parameters relating to possible conflicts of interest which may arise from the outside professional activities of Georgia Institute of Technology employee,
- To define and establish a mechanism to reduce, eliminate, or manage a situation that may pose a real or potential Conflict of Interest;
- To ensure the integrity of research, education or business transactions of the Institute and to identify real or potential Conflicts of Interest;
- To ensure that each sponsored research at Georgia Tech is conducted in compliance with regulations promulgated by the sponsor thereof including but not limited to the National Science Foundation<sup>1</sup> and the National Institutes of Health<sup>2</sup> as appropriate, and
- To articulate activities that would be prohibited.

This policy applies to all Institute employees, including Emeritus faculty, visiting faculty and scientists, adjunct faculty, affiliates and Tech Temps. It applies to students and trainees if they are involved in the design, conduct or reporting of research at the Institute.

### **38.2 DEFINITIONS**

Definitions as used in this policy, the term:

1. "Agency" means any agency, authority, department, board, bureau, commission, committee, office, or instrumentality of the State of Georgia.
2. "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual,

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<sup>1</sup> NIH Guide – Objectivity in Research  
<http://grants2.nih.gov/grants/guide/notice-files/not95-179.html>

<sup>2</sup> NSF - IMPORTANT NOTICE Investigator Financial Disclosure Policy: October 7, 1996  
<http://www.nsf.gov/pubs/stis1996/iin117/iin117.txt>

trust or other legal entity.

3. "Conflict of Interest" means any situation in which:
- (a) it reasonably appears that a significant financial interest could affect the design, conduct, or reporting of activities funded or proposed for funding by a sponsor, or
  - (b) the personal interest of an employee or his or her family may prevent or appear to prevent the employee from making an unbiased decision with respect to the employee's employment with the institution.

Illustrative examples of such situations include, without limitation, the following situations:

- The employee, or a member of his or her family, has a significant financial interest in a business which transacts business with the Institute.
- The employee, or a member of his or her family, has a significant financial interest in an entity that competes or may compete with the Georgia Institute of Technology for sponsored activities.

4. "Conflict of Interest Committee" shall mean an advisory committee to the Provost that shall be composed of the Chief Legal Counsel, the Associate Vice Provost for Research, a representative for the student body and a member of the general faculty appointed by the Executive Committee of the Faculty Senate. In absence of a standing Committee the Provost shall appoint an ad hoc committee as dictated by the circumstance.<sup>3</sup>

5. "Consulting" means any professional activity related to the person's field or discipline, where a fee-for-service or equivalent relationship with a third party exists. Consulting includes organizing or operating any educational program outside Georgia Institute of Technology.

6. "Covered Persons" includes all Institute employees. Students and trainees if they are involved in the design, conduct or reporting of research at the Institute. Also included are Visiting Faculty and Scientists, Professors of the Practice, Affiliates, Adjunct Faculty, and Emeritus Faculty

7. ".Employee" means any person who, pursuant to a written or oral contract, is employed by an agency.

8. "Family" means spouse, dependent children and ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses the foregoing and any one who could reasonably be assumed to be family.

9. "Full-time" means 30 hours or more of work for the state per week for

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<sup>3</sup> As of July 1, 2009, the conflict of Interest Committee is composed of Robert M. Nerem, Randy Nordin, Ronald W. Rousseau, and Jilda Diehl Garton.

more than 26 weeks per calendar year.

10. "Investigator" means the principal investigator, co-principal investigators, key personnel<sup>45</sup>, and any other person at the institution who is responsible for the design, conduct, or reporting of research or educational activities funded or proposed for funding by a sponsor.

11. "Part-time" means any amount of work other than full-time work.

12. "Public Official" means any person elected to state office or any person appointed to a state office where, in the conduct of such office, the person so appointed has administrative and discretionary authority to receive and expend public funds and to perform certain functions concerning the public which are assigned to him or her by law.

13. "**Responsible Representative of the Institution**" means the supervisor of the school, laboratory, or department of the person making a disclosure or the next supervisory level for an individual who serves in such a position or an individual designated by the Provost to review one or more disclosures, develop conflict of interest management plans, or monitor compliance with this regulation or with a management plan.

<b>Position of Person Making Disclosure</b>	<b>Responsible Representative of the Institution</b>
1. Faculty Member 2. Associate or Assistant School Chair 3. Member of School Staff 4. Graduate Student 5. Post-doctoral Researcher 6. Research Scientist or Engineer	School Chair
1. GTRI Research Personnel and Staff	Laboratory Director
1. School Chair 2. Associate or Assistant Dean 3. College Staff	Dean
1. GTRI Laboratory Director 2. GTRI Chief Scientist 3. GTRI Administration	Vice President GTRI

<sup>4</sup> Consult sponsor guidelines. For NIH include all "Key Personnel" identified in the proposal. For NSF, include all individuals paid or cost shared under the project.

<sup>5</sup> If the research involves human subjects, include all personnel named in the protocol submitted to the Institutional Review Board. (NIH Guide - Financial Conflicts of Interest and Research Objectivity: Issues for Investigators and Institutional Review Boards, June 5, 2000 <http://grants.nih.gov/grants/guide/notice-files/NOT-OD-00-040.html>; FDA "Guidance: Financial Disclosure by Clinical Investigators" (March 20, 2001) <http://www.fda.gov/oc/guidance/financialdis.html>)

<ol style="list-style-type: none"> <li>1. Directors Managers and Staff <ol style="list-style-type: none"> <li>a. Student Services</li> <li>b. Admissions</li> <li>c. Graduate Studies</li> </ol> </li> </ol>	Appropriate Vice Provost
<ol style="list-style-type: none"> <li>1. Director and Staff of Interdisciplinary Centers that Report to the Vice Provost for Research</li> <li>2. Associate Vice Provost for Research</li> <li>3. Vice Provost for Enterprise Innovation Institute</li> <li>4. Director office of Information Technology</li> </ol>	Senior Vice Provost for Research and Innovation
<ol style="list-style-type: none"> <li>1. Dean</li> <li>2. Vice President, GTRI</li> <li>3. Senior Vice Provosts</li> <li>4. Vice President for Development</li> <li>5. Vice Provosts</li> <li>6. Provost's Staff</li> <li>7. Heads of Affiliated Organizations<sup>6</sup> who are Georgia Tech employees (GTF, GTAA, Alumni Association, GTRC/GTARC, etc)</li> </ol>	Provost and Executive Vice President for Academic Affairs
<ol style="list-style-type: none"> <li>1. Directors, Managers, and Staff <ol style="list-style-type: none"> <li>a. Business and Finance</li> <li>b. Auxiliary Services</li> <li>c. Facilities</li> <li>d. Environmental Health and Safety</li> <li>e. Housing</li> <li>f. Procurement</li> <li>g. Organizational Development</li> </ol> </li> </ol>	Appropriate Associate Vice Provost
<ol style="list-style-type: none"> <li>1. Associate Vice Presidents</li> </ol>	Executive Vice President
<ol style="list-style-type: none"> <li>1. Provost and Executive Vice President for Academic Affairs</li> <li>2. Executive Vice President</li> <li>3. Chief Legal Counsel</li> <li>4. Director, Internal Audit</li> <li>5. President's Staff</li> </ol>	President
<ol style="list-style-type: none"> <li>1. Manager, Director or Staff Member in Affiliated Organization<sup>7</sup> who is a Georgia Tech employee</li> </ol>	Head of Affiliated Organization
<ol style="list-style-type: none"> <li>1. Employees involved in the organization or operation of non-institute continuing education programs.</li> </ol>	Vice Provost for Distance learning and Professional Education

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<sup>6</sup> Affiliated organizations are also subject to their own conflict of interest policies and procedures as appropriate for non-profit (501.c.3) organizations. This policy applies to Georgia Tech employees who are delegated to work in affiliated organizations. Members of the boards of affiliated organizations who are not employed by Georgia Tech are not required to report annually under this policy but are subject to the limitations and requirements of this policy in carrying out Georgia Tech business or activities on behalf of Georgia Tech.

<sup>7</sup> *ibid*

14. "Significant Financial Interest", as defined in current Federal Regulations, includes personal compensation of anything of monetary value, including, but not limited to:

- (1) salary or other payments for services (e.g., consulting fees or honoraria);
- (2) equity interests (e.g., stocks, stock options or other ownership interests); and
- (3) intellectual property rights (e.g., patents, trademarks, copyrights and royalties from such rights).

The term does NOT include:

- (a) salary, royalties or other remuneration from the institution, or income from seminars, lectures, or
- (b) teaching engagements sponsored by public or nonprofit entities;
- (c) income from service on advisory committees or review panels for public or nonprofit entities; or
- (d) an equity interest that, when aggregated for the investigator and the investigator's spouse and dependent children, meets both of the following tests:
  - (i) does not exceed \$10,000 in value as determined through reference to public prices or other reasonable measures of fair market value, and
  - (ii) does not represent more than 5% ownership in any single entity, or salary, royalties or other payments that, when aggregated for the investigator and the investigator's spouse and dependent children, are not expected to exceed \$10,000 during the next twelve-month period.

15. "Substantial interest" is "the direct or indirect ownership of more than 25 percent of the assets or stock of any business."<sup>8</sup> An Employee may not have an ownership interest of more than 25% of the assets or stock in any business which Transacts Business with the State of Georgia including the Institute. Federal guidelines provide that interests of more than 5% (or \$10,000 in value) must be managed or eliminated, therefore caps of 24.9% are placed on the percentage of ownership an Employee may have in any business which Transacts Business with the Institute. Ownership interests below this cap may be managed as provided in this policy.

16. "Transact Business" or "Transact any Business" means to sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative and means to purchase surplus real or personal property on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative.

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<sup>8</sup> Official Code of Georgia 45-10-20

17. "Individual Conflicts" a Conflict of Interest may arise when an Employee has the opportunity to influence research, academic or Institute decisions in ways that could lead to personal financial gain. The financial gain may be derived from owning stock in a company that is sponsoring research, from ownership interest or employment in a company that may benefit as a licensee of an invention, from the existence or expectation of entering into a consulting arrangement with a company sponsoring research.

18. "Conflict of Commitment" when an employee undertakes external commitments which burden or interfere with the Employee's primary obligations to the Institute. Conflicts of Commitment may arise out of consulting arrangements or with an entrepreneurial interest when a faculty member is involved in a start up company.

19. "Institutional Conflicts" occur when the Institute, or one of its affiliated entities such as Georgia Tech Research Corporation, Georgia Tech Foundation or Georgia Advanced Technology Ventures, has a financial stake in the outcome of its research programs or licensed technology. The conflict may arise out of an equity interest in a start-up that licenses technology from the Institute or in the nature of royalties to be earned from licensing such technology.

### **38.3 CONFLICT OF INTEREST**

#### **38.3.1 Entrepreneurship**

The mission of Georgia Institute of Technology includes both assuring that research conducted at the Institute benefits the public and assisting the State of Georgia in creating or retaining industry, creating jobs, and promoting economic development. Georgia Institute of Technology recognizes that Employee participation in bringing their inventions and other results of research conducted at the Institute into public use through commercialization plays an important role in this mission. Such participation may involve creation of a new company, in which an Employee or Employees have an ownership interest, to license and commercialize such technology. The policies and procedures for licensing technology are set forth in the Intellectual Property Policy (Faculty Handbook Section [50](#)). New companies may or may not be housed in the Advanced Technology Development Center. Companies in which employees have such an interest may Transact Business with the Institute only after such transaction(s) are/has been reviewed by the Responsible Representative and the Conflict of Interest Committee, as set forth below, and found not to pose a Conflict of Interest or if the transactions are conducted under a written conflict of interest management plan as described in Section [38.4.6](#).

#### **38.3.3 Policy**

Activities which constitute a Conflict of Interest where there is Significant Financial Interest are prohibited unless a plan to reduce, eliminate or manage the Conflict of Interest has been expressly approved and/or pursuant to the provisions of this policy.

Activities which constitute Conflicts of Interest where an employee has a Substantial Interest are unlawful.

Full-time employees of the Board of Regents of the University System of Georgia may serve as members of governing boards of private, nonprofit, educational, athletic, or research related foundations and associations which are organized for the purpose of supporting institutions of higher education in this state and which in furtherance of this purpose may Transact Business with such institutions or with the Board of Regents of the University System of Georgia. However, full-time employees of the Board of Regents of the University System of Georgia may not serve as a member of a governing board of a for-profit company.<sup>9</sup>

Employees shall submit a written disclose not less than annually and, they must re-disclose when it changes, inform their Chair and the Office of Sponsored Programs Office when a submission poses a conflict of interest in sponsored research and they must inform the Institutional Review Board.

## **38.4 DISCLOSURE OF REAL OR POTENTIAL CONFLICTS OF INTEREST**

### **38.4.1 Disclosure to the State of Georgia**

Except as provided in subsection (b) of the Official Code of Georgia Annotated Section 45-10-26, any Public Official or Employee whether for himself or herself, or on behalf of any Business, or any Business in which such Public Official or Employee or any member of his family has a Substantial Interest who transacts business with the state or any agency thereof shall disclose such transactions. Such disclosure shall be submitted prior to January 31 each year to the Secretary of State on such forms as he or she shall prescribe and shall include an itemized list of the previous year's transactions with the dollar amount of each transaction reported and totaled. Such disclosure statements shall be public records.

### **38.4.2 Disclosure to the Institution**

Every Employee of the Institute, including all who participate in outside professional activities and/or sponsored research shall file a completed "Georgia Institute of Technology Report on Outside Professional Activity and Potential Conflict of Interest Form", commonly known as a "Request Form", at least annually to their **Responsible Representative** of the institution.

Employee will access the online Conflict of Interest system and complete the Conflict of Interest questionnaire;

In answering the questions, if an employee has indicated an actual or potential conflict, the system will notify a conflict of interest administrator and this

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<sup>9</sup> Official Code of Georgia 45-10-23, 45-10-24

administrator will review the questionnaire and forward it to the appropriate reviewer;

#### **38.4.3 Disclosure to Sponsors**

The principal investigator, co-principal investigators, key personnel, and any other person involved in the design, conduct, or reporting of research or educational activities proposed for funding by a sponsor will need to complete the Project-Specific Conflict of Interest Disclosure prior to submitting the proposal to a sponsor, and should disclose any and all Significant or Substantial Financial interests of the Employee (including those of the investigator's Family) that would reasonably appear to affect the design, conduct, or reporting of the activity. This conduct includes but is not limited to performance or business transactions related to the sponsored activity and reporting means any part of technical or financial reporting.

In addition, every Investigator shall report actual or potential conflicts of interest on the Proposal Routing Sheet that must be submitted to the Office of Sponsored Programs prior to submission of the proposal to the sponsor. Each such financial disclosure shall be updated by the Employee during the life of any award, as new reportable Significant Financial interests are recognized. . Every Investigator shall sign the following certification in any Request Form submitted to the Responsible Representative of the Institution:

"I certify that I have read and understood the Institute's conflict of interest policy; to the best of my knowledge, all required financial disclosures were made; and I will comply with any conditions or restrictions imposed by the Institute to manage, reduce or eliminate Conflicts of Interest."

In any proposal submitted to a potential sponsor, the Office of Sponsored Programs, the Georgia Tech Research Corporation and/or the Georgia Tech Applied Research Corporation shall be responsible for certifying that the Institution has implemented a written and enforced conflict of interest policy that is consistent with the provisions of Grant Policy Manual Section 510 of the National Science Foundation, the National Institutes of Health Guide for Objectivity in Research and other applicable sponsor regulations, and that to the best of his/her knowledge all financial disclosures required by such conflict of interest policy have been made and that all identified conflicts of interest will have been satisfactorily managed, reduced or eliminated prior to the institution's expenditure of any funds under the award, in accordance with the institution's conflict of interest policy.

#### **38.4.4 Disclosure to the Institutional Review Board**

Investigators submitting protocols to the Institutional Review Board (IRB) for the use of human subjects in research or other activities shall disclose any and all real or potential conflicts of interest that may appear to affect the design, conduct or reporting of such research. It is imperative that Investigators fully disclose to the IRB an ownership interest in any Business proposing to test any drug, device or other technology with human subjects or any potential financial interest in such

technology that the Investigators, the Investigators' spouse or dependents might have. The IRB shall conduct an independent review and may or may not impose restrictions, including denial of approval for the protocol, as it deems is in the best interest of the subjects and the Institute.

#### **38.4.5 Disclosure to Students**

Every investigator shall, prior to retaining students on research projects that may involve a potential or actual Conflict of Interest, disclose to a Responsible Representative of the Institution and to the student, the Investigator's interests in outside companies that may be perceived to benefit from the student's research. Special care needs to be taken when dealing with graduate students so that a potential or actual Conflict of Interest does not adversely affect their graduate education, i.e their ability to graduate or publish a dissertation\*

#### **38.4.6 Review of Financial Disclosures and Resolution of Conflicts of Interest**

When a financial disclosure or report of a conflict of interest is made to the Responsible Representative, he /she shall review the disclosure and will make a determination whether a conflict of interest exists. Should a conflict of interest exist, the Responsible Representative in consultation with the Conflict of Interest Committee, shall determine what restrictions, if any, should be imposed by the Institution to manage, reduce or eliminate such conflict of interest prior to the Institution's expenditure of any such funds pursuant to the procedure provided for below.

Restrictions and/or conflict management plans shall be in writing and forwarded to the designated official who will monitor the plan. The initial review by the Committee (or Responsible Representative if applicable) will consider the relationships between the Employee and the Institute to ensure adequate conditions or restrictions are in place which will manage, reduce or eliminate conflicts of interest such conditions may include, without limitation: public disclosure of significant financial interests; monitoring of research by independent reviewers; modification of the research plan; disqualification from participation in the portion of the sponsor funded research that would be affected by the Significant or Substantial Financial Interests; or divestiture of Significant or Substantial Financial Interests; or severance of relationships that create actual or potential conflicts.

Upon recommendation by a Responsible Representative, the Conflict of Interest Committee may determine that imposing conditions or restrictions would be either ineffective and that the potential negative impacts that may arise from a Significant or Substantial Financial Interest are outweighed by interests of scientific progress, technology transfer, or the public health and welfare. In such cases, the Responsible Representative and the Conflict of Interest Committee may recommend to the Provost that the institution allow research to go forward without imposing such conditions or restrictions provided, however, that there is ongoing review by the Responsible Representative and the Conflict of Interest Committee.

Notwithstanding the foregoing, nothing herein shall permit the Institute to authorize an activity that is contrary to the laws of the State of Georgia, federal regulations, or other restrictions imposed by regulation or contract by research sponsors. Furthermore, no activity involving human subjects may be authorized that has not been approved by the Institutional Review Board which, in compliance with 45CFR46 may, in its sole discretion, deny such approval.

Should the Responsible Representative of the Institution find that the Institution is unable to satisfactorily manage a conflict of interest prior to the Institution's expenditure of any such funds, that Representative shall immediately notify the Office of Sponsored Programs who shall inform the sponsor.

All determinations made or actions taken by a Responsible Representative of the Institution and/or the Conflict of Interest Committee shall be in writing and shall, together with all financial disclosures made hereunder, be maintained until at least three years after the later of the termination or completion of the award to which they relate, or the resolution of any government action involving those records. A copy of such written record shall be forwarded to the Office of Sponsored Programs if the Investigator is engaged in any research or other sponsored activity supported by the Department of Health and Human Services including but not limited to the National Institutes of Health. The Office of Sponsored Programs shall forward this information to the sponsor in compliance with regulation.

Written management plans must be reviewed annually or upon a change in circumstances affecting the plan and appropriate disclosures should continue during the ongoing management of any Conflict.

## **38.5 CONSULTING**

### **38.5.1 Principles and General Standards**

The Institute encourages and intends to assist all of its faculty members in the practice of their professions. It especially encourages them to consult. The practice of consulting calls for the faculty member to enter the non-academic world as a professional, usually as a teaching professional, with special disciplinary talents and knowledge. The Institute approves of such practices and set forth below are the principles and general standards for such practices.

Consulting can provide an important means of continuing education of the faculty and can provide them with a currency and experience in aspects of their professional field outside the context of the Institute itself. Though such attributes of consulting may make faculty better scholars and teachers, the employer--employee nature of the consulting process has in it the potential for diversion of faculty from their primary activities and responsibilities.

The basic principle of this policy statement, therefore, is that there needs to be a limitation upon the time that a Georgia Tech faculty member may spend in

consulting. The purpose of the policy on consulting and related activities is to state with both clarity and generality the limits on such activities and the reasons for those limits.

The limits set forth below are intended to strike a balance between consulting and regular faculty duties within the Institute and serve to safeguard the interest of both parties. In cases of ambiguity, the primary guide should be the intention to promote the interests of the Institute as a place of education, learning and research. It is the faculty member's obligation to obtain prior consent from the appropriate Institute officer.

As stated above, Georgia Tech encourages and assists faculty members in the practice of their profession. The Institution particularly encourages faculty to consult, by providing guidelines for this type of activity. It must be recognized, however, that professional consulting activities and involvement in business ventures can result in an apparent or actual conflict of interest with Georgia Tech. This policy provides several principles which should be followed to avoid conflicts.

It is not possible to anticipate all types of potential outside involvements. It is, therefore, always a faculty member's obligation to obtain prior written consent from his or her School Chair or Laboratory Director, Dean, or Director of GTRI, and the appropriate Institute officer before undertaking any activities. Written consent must be obtained by completing and obtaining authorization on a "Georgia Institute of Technology Report on Outside Professional Activity and Potential Conflict of Interest" form. Referred to as the "Request Form", these forms are available in each school or by calling Academic Affairs at (404) 894-5058.

In the case of a faculty member organizing or generating any continuing educational program not affiliated, sponsored, or endorsed in any way by the Institute, the faculty member must obtain permission from the Vice Provost for Continuing Education as indicated on the Request Form.

Members of the faculty may, for tax liability reasons, undertake consulting assignments through a personal corporation. This is not considered a conflict of interest in and of itself. However, see the "Prohibited Activities" subsection set forth below.

### **38.5.2 Conflict of Commitment**

The purpose of the policy on consulting and related activities is to state with both clarity and generality the limits on the time that a Georgia Tech Faculty may spend in consulting. The limits set forth below are intended to strike a balance between consulting and regular duties within the Institute and serve to safeguard the interest of both parties. In cases of ambiguity, the primary guide should be the intention to promote the interests of the Institute as a place of education,

learning and research. It is the Faculty's obligation to obtain prior consent from the appropriate Institute officer.

### **38.5.3 Prior Approval**

Georgia Tech encourages and assists faculty members in the practice of their profession. The Institution particularly encourages Faculty to consult, providing guidelines for this type of activity. It must be recognized, however, that professional consulting activities and involvement in business ventures can result in an apparent or actual Conflict of Interest. This policy provides several principles which should be followed to avoid conflicts.

It is not possible to anticipate all types of potential outside involvements. It is, therefore, always a faculty member's obligation to obtain prior written consent from his or her School Chair or Laboratory Director, Dean, or Director of GTRI, and the appropriate Institute officer before undertaking any activities. Written consent must be obtained by completing and obtaining authorization on a "Georgia Institute of Technology Report on Outside Professional Activity and Potential Conflict of Interest" form.

### **38.5.4 Distance Learning and Continuing Education**

In the case of a Faculty organizing or generating any continuing educational program not affiliated, sponsored, or endorsed in any way by the Institute, the faculty member must obtain permission from the Vice Provost for Distance Learning and Professional Education as indicated on the Request Form.

### **38.5.5 Use of Georgia Institute of Technology Facilities**

In competing for consultancies, faculty members are not to take advantage of their access to Georgia Tech facilities. State law precludes Georgia Tech employees from using State facilities or property for personal gain or benefit. Under appropriate circumstances, facilities may be used with approval and with appropriate charges made for use. This is not envisioned to exclude contracts with the Institute for the use of facilities or services such as the Computer Center or the Library or other facilities for which cost centers have been established.

### **38.5.6 Payment for Consulting**

Full-time Georgia Tech employees may not be on the payroll of other organizations except as a consultant. (Payment for services must be reported on an IRS 1099 Form, not on a W2 Form). To be listed otherwise may be in conflict with OMB Circular No.A-21 and result in financial penalties against Georgia Tech.

Members of the faculty may, for tax liability reasons, undertake consulting assignments through a personal corporation. This is not considered a conflict of interest in and of itself. However, see the "Prohibited Activities" subsection.

### **38.5.7 Activities Not Considered "Consulting"**

#### **(a) Publication**

Scholarly communications in the form of books, movies, television productions, art works, etc., though frequently earning financial profit for a faculty member and for another party (e.g., publisher), are not viewed as consultation. To attempt to distinguish between types of books, to assess the roles of book publication in different disciplines, or to challenge the historical relation between authorship and manuscript ownership would be fraught with danger and confusion. These reservations apply equally to the other types of scholarly communications cited.

#### **(b) Professional Service**

Under this category fall service on national commissions, on governmental agencies and boards, on granting agency peer-group review panels, on visiting committees or advisory groups to other universities, and on analogous bodies. The fundamental distinction between these activities and consulting is that they are public or Institute service. Although an honorarium or equivalent sometimes is forthcoming, these professional service activities are not undertaken for personal financial gain. Therefore, such service does not fall within the consulting category.

#### **(c) "Moonlighting"**

Faculty members may pursue a variety of endeavors for financial profit that are not directly related to the person's field or discipline. These efforts are part of the faculty member's private life and do not come under Institute regulation for this consulting policy. To emphasize again, however, such endeavors may be pursued only after the primary commitment to Georgia Tech has been fulfilled.

### **38.5.8 Consulting Agreements**

Consulting agreements are personal agreements between Employees and a private company. Georgia Tech cannot provide advice to Employees regarding private matters, however Employees should carefully review such agreements to ensure the terms are not in conflict with their employment agreement with Georgia Tech or GTRC nor in conflict with any Georgia Tech policy, including but not limited to this Conflict of Interest Policy and the Intellectual Property policy. Most companies require a consultant to sign a consulting agreement. Any Georgia Tech employee who is asked to sign such an agreement should consult with his or her personal attorney for review and advice. Any consultant agreement, as a minimum, should state that the consultant is an employee of Georgia Tech and, as such, has commitments, responsibilities and obligations (contractual or otherwise) that must be fulfilled and not negatively impacted by a consulting agreement terms/conditions or actual consulting.

To avoid conflict with Georgia Tech-assigned duties, following language is recommended as part of your consulting agreement:

"This agreement is made subject to the understanding that Consultant is an Employee of the Georgia Institute of Technology (GIT), that he/she must fulfill certain obligations including teaching, directing laboratory operations and conducting research; and that as a result of his/her employment by GIT, GIT has certain rights to intellectual property developed by him/her and any rights conveyed hereunder shall be subject to those rights. Under no circumstances are any rights to GIT or Georgia Tech Research Corporation intellectual property conveyed hereunder. All

consulting activity hereunder shall be on a non-interfering basis with normal GIT activities. Nothing contained in this Agreement shall directly or impliedly affect the obligations listed above."

### **38.5.9 The Number of Permissible Consulting Days**

The maximum number of consulting days permissible for a member of the General Faculty on a full-time appointment is thirteen days per academic quarter. Eight hours consulting is equivalent to one day. Institute holidays are included in each thirteen-week academic quarter from which the thirteen-day consultation limit is derived. A limited amount of "averaging" of consulting time among full-time quarters is permissible if, on occasion, a faculty member plans to consult for more than thirteen days in one quarter but no more than thirty-nine days for three academic quarters. Thirteen days of consulting per quarter, or fifty-two days for four quarters of active duty, is intended to be a liberal allocation, yet one that is fair to the Institute.

#### **(a) Consulting During Periods of Part-time Institute Employment**

The thirteen-day limit should be prorated for those members of the General Faculty holding part-time appointments, using the following formula:  $(13 \times F + (1-F) \times 6 \times 13)$ , where F is the fraction of full-time duty, thirteen represents the average number of weeks per quarter, and six represents the maximum number of days per week which are likely to be devoted to professional activities during the period of off-duty time. Thus, a faculty member holding a seventy-five (75%) appointment is permitted up to twenty-nine days of consulting per quarter.

#### **(b) Consulting During the Summer Term or During Periods of Leave Without Salary**

Faculty members on nine-month appointments with no salary supplement for the fourth quarter (usually, but not always, the Summer quarter) are not subject to the thirteen-day limit during that quarter. Nor does the limit apply to faculty members on leave without salary.

If the faculty member receives a salary for full-time service during the summer, the regular thirteen-day consulting limit shall apply.

#### **(c) Consulting While on Study Leave**

The purpose of study leave is to permit faculty members to take time off from normal Institute duties to advance their scholarly interests so that they may return to their posts with renewed vigor, perspective, and insight. A faculty member on study leave receiving full-time Institute salary may consult up to the regular thirteen-day limit per quarter during the period of sabbatical.

### **38.5.10 Consulting Services for Other State Offices**

As a general rule employees of the Institute may not receive compensation for services performed for other state offices (Georgia Code Section 45-10-20). Employees of one State agency may teach or work as consultants for another state agency provided they fall within one of the following classifications and provided they meet the conditions stated below.

Employees of one state agency may teach or work as consultants for another state agency if the transaction involves part-time employment by any agency of a chaplain, fireman, any person holding a doctorate or master's degree from an accredited college or university, a licensed physician, dentist, psychologist, registered nurse or a licensed practical nurse, or a licensed practical nurse, if employed by the State.

The President of the department or agency desiring to obtain the services of a person falling within the class of exceptions shall certify in writing the need for the services and shall set forth why the best interest of the state will be served by obtaining the part-time services of such a person in lieu of obtaining such services from a person not presently employed by the State.

The President of the department or agency employing the person in the class of exceptions shall certify in writing that the person whose services are desired is available to perform such services, that the performances of such services will not detract nor have a detrimental effect on the performance of the person's employment, and where appropriate, that the part-time employment of this person will be in the best interest of the State.

The two departments or agencies involved will then agree on the procedures under which the employee shall perform the additional services. The agreement shall specify the means of employment, whether as a part-time employee or as a consultant, the compensation, and other pertinent details and conditions of the employment relationship. The agreement may be terminated at any time by either of the parties to the agreement

### **38.6 PENALTIES**

1. Any employee who violates this policy shall be subject to disciplinary action up to and including dismissal.
2. Any appointed public official or employee who violates Official Code of Georgia Annotated Section 45-10-23 ("Full-time employees prohibited from transacting business with own state agency; exception to prohibition for

- Board of Regents employees"), Section 45-10-24 ("Part-time public officials with state-wide powers prohibited from transacting business with any state agency; part-time employees prohibited from transacting business with own state agency; exceptions to prohibitions"), or Section 45-10-26 ("Public officials and employees to file yearly disclosure statements concerning business transactions with state; statements to be public records") shall be subject to:
- A. Removal from office or employment;
  - B. A civil fine not to exceed \$10,000.00; and
  - C. Restitution to the state of any pecuniary benefit received as a result of such violation.
3. Any business which violates Code Section 45-10-23, 45-10-24, or 45-10-26 shall be subject to:
- A. A civil fine not to exceed \$10,000.00; and

Restitution to the state of any pecuniary benefit received as a result of such violation. .<sup>10 11</sup>

### **38.7 INSTITUTIONAL CONFLICTS**

Institutional Conflicts – occur when the Institute has a financial stake in the outcome of its research programs or licensed technology. The Conflict may arise out of an equity interest in a start-up that licenses technology from the Institute or in the nature of royalties to be earned from licensing such technology. For example, the Institute may benefit from GTRC's equity in licensees, equity is often taken in lieu of royalties or other license fees, this may create institutional conflicts for several reasons:

Owners of equity may cash out prior to product going to market this creates a situation under which GTRC may have an enhanced position relative to other shareholders.

The equity interest could have substantial value if the technology is successfully commercialized, creating a more apparent conflict.

GTRC should be permitted to take stock in Licensee Companies that do not have the financial resources to make full license payments but, as with Employees GTRC must avoid the appearance of Conflicts of Interest in research programs, education or business transactions. Therefore equity should not be held in significant amounts to confer management power in companies and ownership interests in companies should be disclosed. Review and approval may be provided by the Conflict of Interest Committee.<sup>12</sup>

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<sup>10</sup> Official Code of Georgia Section 45-10-28

<sup>11</sup> Source: Office of the President. Date: 5/2003

<sup>12</sup> Source: Executive Board. Date: 10/2004