



WRIGHT STATE UNIVERSITY  
POLICY ON AFFILIATED  
ENTITIES

October 7, 2016

## **WRIGHT STATE UNIVERSITY POLICY ON AFFILIATED ENTITIES**

**WHEREAS**, Wright State University (the “University”) has determined that it is necessary and desirable to create affiliated non-profit entities (“Affiliated Entities”) to pursue business-related activities to support its university mission;

**WHEREAS**, other public universities in Ohio have also participated in the creation of affiliated non-profit entities to pursue business-related activities in support of their university missions;

**WHEREAS**, the University desires to establish a framework within which such Affiliated Entities, present and future, shall operate to support the University’s mission; and

**WHEREAS**, Affiliated Entities may create financial, legal or other risks to the University, and the University desires to mitigate such risks through a policy on affiliated entities;

**THEREFORE**, the University is establishing this policy to (a) provide a framework for establishing Affiliated Entities at the University, (b) provide a procedure for the ongoing monitoring of their activities and the University’s relationships with them by the Board of Trustees, and (c) mitigate financial, legal and other risks to the University created by the Affiliated Entity. Existing Affiliated Entities shall be reviewed for operations consistent with this policy and shall also comply with the management and oversight-related requirements of this policy.

### **A. Definition of an Affiliated Entity**

An Affiliated Entity is a legal entity that:

1. is separate from the University;
2. has a bona fide business purpose and is formed or operated to support a public purpose that is consistent with the mission of the University; and
3. is created, controlled, or strongly influenced by the University; receives significant support from the University in the form of funds, staff or other resources; or uses the University’s name.

### **B. Creation of Affiliated Entities**

University resources may be used to establish Affiliated Entities, subject to review and approval by the Board of Trustees. The Board may approve the creation of an Affiliated Entity upon a written recommendation from the President, which should address the proposed Affiliated Entity’s purpose and objectives, corporate and governance structure, scope of activities, budget and business plan, and associated risks (Appendix A). Particular attention should be paid to the

level of University involvement and control and to the financial or other resources committed to the Affiliated Entity. In preparing the recommendation, the President should ensure that the Provost, the Chief Financial Officer and the Office of General Counsel have been consulted. In the event that the University desires to affiliate with an already existing entity, the President shall also prepare a written recommendation that addresses the same considerations referenced above for newly created Affiliated Entities and the President should also ensure that the Provost, the Chief Financial Officer and the Office of General Counsel have been consulted.

### **C. Guiding Principles for Affiliated Entities at Wright State University**

In its decisions relating to approval and ongoing oversight of Affiliated Entities, the Board of Trustees will be guided by the following principles:

1. An Affiliated Entity may be established to promote, enable, sponsor, or complement educational, scientific, research, charitable, health-care related, cultural activities, or community and regional service activities for the benefit of the University and in a manner consistent with the University's mission.
2. Affiliated Entities must be managed in a manner consistent with their own enabling documents and the University's purpose, mission, and procedures.
3. Affiliated Entities must use sound fiscal and accounting procedures.
4. The details of the University's relationship with each Affiliated Entity -- including the University's oversight of the Affiliated Entity -- shall be memorialized in a memorandum of agreement that must be approved by the President.
5. While Affiliated Entities may be heavily dependent upon the University at their inception, their business strategy should include a plan for achieving self-sufficiency within a reasonable period of time.
6. Directors, officers and employees of an Affiliated Entity must adhere to the highest standards of ethics. Each Affiliated Entity must adopt and enforce an appropriate conflict of interest policy and such University Policies as may be deemed appropriate.
7. Affiliated Entities must follow corporate formalities, including without limitation, holding regular meetings, maintaining minutes of such meetings and holding itself out to third parties as a separate legal entity.
8. Affiliated Entities that use the University name and/or logo must enter into a separate license agreement with the University.

### **D. Oversight of Affiliated Entities**

Affiliated Entities will be created to engage in business activities that complement the University's mission. To achieve this goal, they must maintain a requisite degree of

independence and separateness from the University. At the same time, because they will be supported with University resources, the University must exercise an appropriate level of oversight over their activities. The University's interests will be protected as follows:

1. Affiliated Entity articles of incorporation, code of regulations or similar founding documents shall require that at least two members of the Affiliated Entity's board of directors be comprised of individuals nominated by the President of the University ("University Directors"). If a majority of the directors are not University Directors, the code of regulations shall provide the University with "reserve powers", which require that the University Directors approve certain material transactions, and/or require the affirmative vote of a supermajority of the board, including at least one University Director, to approve such material transactions. The reserve powers shall be applicable to the following list of transactions:
  - a. amending the articles of incorporation, code of regulations or similar founding documents;
  - b. dissolving the Affiliated Entity or selling, leasing or disposing of substantially all of its assets;
  - c. creating or dissolving subsidiaries of the Affiliated Entity;
  - d. approving budgets;
  - e. incurring significant legal or financial obligations;
  - f. incurring any liability for which the University could be directly responsible; and
  - g. changing the business purpose of the Affiliated Entity.
2. The University Directors who are University employees will receive letters of appointment from the President confirming that service on the Affiliated Entity board of directors is within the scope of their University duties. The letters of appointment will instruct the University Directors to consult with appropriate offices and individuals regarding material transactions.

The letters of appointment will advise University Directors that, in performing their fiduciary obligation to act in the best interest of the Affiliated Entity, they will be responsible for ensuring that:

- a. the Affiliated Entity is governed and managed in compliance with state and federal law and in conformance with its articles of incorporation, code of regulations or similar founding documents;
- b. prudent business judgment is exercised in the performance of all Affiliated Entity activities;

- c. the Affiliated Entity complies with the terms of its agreements with the University;
  - d. University resources are used in compliance with the terms under which they are provided;
  - e. the Affiliated Entity complies with the terms of agreements entered into with other governmental units and private business entities; and
  - f. Affiliated Entity management and employees adhere to the highest standards of ethical business behavior.
3. Affiliated Entities will enter into a memorandum of agreement (reference Appendix B) with the University that states the amount and appropriate use of grants, loans or other resources provided by the University to the Affiliated Entity. The memorandum of agreement shall require the Affiliated Entity to procure or otherwise arrange for appropriate directors' and officers' insurance for its directors and officers. The memorandum of agreement also must require the Affiliated Entity to submit an annual report to the University and the Board of Trustees in a form to be determined by the Chief Financial Officer. At a minimum, such reports should include the following:
- a. financial statements and footnotes;
  - b. audit procedures (either audited statements or AUP as determined by the University);
  - c. 990/990-T and/or respective required tax filings;
  - d. annual budget reports;
  - e. disclosure of material contingent liabilities and litigation;
  - f. a list of the current directors and officers;
  - g. disclosure of significant events that change the financial profile or operations of the organization;
  - h. proof of compliance with Ohio Attorney General charitable registration requirements, and if applicable;
  - i. progress report towards financial independence.

## **E. Sunset Provisions**

It is expected that some Affiliated Entities will have finite life spans and that it will no longer be appropriate for any such Affiliated Entity to continue its relationship with the University or to continue to exist as a separate entity. At least every five years, the University will assess whether each existing Affiliated Entity shall continue its relationship with the University or continue to exist as a separate entity. The University shall use the reporting process set forth in this policy and the applicable memorandum of agreement, as well as inquiries of Affiliate Entity management, to make its determination. If, after appropriate consultation within the University and with the Affiliated Entity, it is determined that it is no longer desirable for the University to continue its relationship with the Affiliated Entity or for the Affiliated Entity to continue to exist as a separate entity, a recommendation to that effect will be made to the University's Board of Trustees.

## **F. Definitions**

As used in the Wright State University Policy on Affiliated Entities the following words and terms contained in the policy and any appendices attached thereto shall have the meaning set forth below.

1. AUP – “Agreed Upon Procedures” to be used in an audit process.
2. D&O – “Directors and Officers”
3. Enabling Documents – An Affiliated Entity's documents that have been drafted, approved and filed to establish Affiliated Entity's legal existence within the State of Ohio or any other state or with any other government entity.
4. GAAP – “Generally Accepted Accounting Procedures”
5. Newly Created Affiliated Entities – A legally registered organization that has filed necessary documentation with the State of Ohio or any other state or governmental entity to establish its legal existence as an organization whose purpose and existence is dedicated to supporting the purpose and the mission of Wright State University.
6. Sound Fiscal and Accounting Procedures - Those procedures used in the areas of fiscal and accounting practices and policies that conform to standards and requirements of commonly held standards, procedures, policies and requirements of established, professional governing bodies for the professions or disciplines of accounting and finance.
7. Supermajority – Two-thirds of an Affiliated Entity's governing board.
8. University Director – A member of an Affiliated Entity's governing board who is appointed by the University President who is a University employee or an individual who has been determined by the University President, with the approval of the University's

Board of Trustees, to have significant, close ties with the University which shall include but not be limited to: a University alumni, a past University employee, or an individual who has worked closely with the University in supporting its purpose and mission.

## APPENDIX A

### Considerations For Creation of Affiliates

#### ***Policy Considerations: “Will the Affiliate Serve the Best Interests of the University?”***

- Is the affiliate formed to achieve a public purpose which is consistent with the mission of the University?
- Does the plan project a reasonable probability that the affiliate’s objectives can be attained?
- Have the appropriate internal constituencies been consulted (e.g., faculty, affected departments, etc.)?
- Will the affiliate’s activities conflict or compete with existing university activities?
- How will the affiliate be received by external constituencies?

#### ***Financial Considerations: “What are the Financial Implications of Establishing the Affiliate?”***

- Has a thorough and a credible budget and/or business plan been prepared?
- What level of financial support is expected to be provided by the University, and is it reasonable and appropriate?
- What are the financial risks to the University and how are they addressed?
- If the affiliate will use University facilities or services, is proper reimbursement assured?
- What is the proposed distribution of the affiliate’s revenues and surplus?
- What are the provisions for recovery of University investment?

#### ***Governance Considerations: “Is the Appropriate Governance Structure Established?”***

- Who should represent the University on the affiliate’s board of directors?
- Are the proposed public members of the board of directors qualified to oversee the mission and operations of the affiliate?
- Has responsibility for supervision of the activities of the affiliate been clearly delegated to an official (e.g., vice president or dean) within the University?
- Has a timeline been established for performance review and assessment?
- Is the inclusion of reserve powers in the affiliate’s governing documents appropriate?

#### ***Legal Considerations: “Are There Adequate Safeguards to Avoid or Minimize Legal Risks and Financial Exposure?”***

- Is the affiliate properly structured to maintain the appropriate degree of separation from the University?
- If University employees will be involved with the affiliate, have they complied with all University employment policies?
- Is there a plan to manage real or potential conflicts of interest?
- What are the risks of legal liability that may result from the activities of the affiliate? Are these risks adequately insured? What level of risk is the University prepared to accept?

- Will the activities of the affiliate give rise to questions regarding ownership of intellectual property?

## APPENDIX B

### Items Addressed in Memorandum of Agreement

#### *Governance Matters*

- Acknowledgement that affiliate is legally separate and independent from the University, and neither party assumes the other's liabilities
- University representation on affiliate governing board
- Reserve powers to be exercised by the University in certain actions by affiliate, including University review/approval of new business ventures and subsidiaries
- Disposition of assets upon dissolution of affiliate
- Creation of an audit committee of the affiliate governing board, if appropriate
- Adoption of policies on ethics, conflicts of interest, whistleblowers, compensation, and procurement
- Provision of legal services

#### *Financial Matters*

- Requiring an accounting system with appropriate controls and reporting functions, and if appropriate, an annual audit by an independent certified public accountant.
- Annual adoption by the affiliate governing board of a detailed operating budget and capital expenditure plan
- Transactions between affiliate and University treated as ordinary business transactions, with proper review and approvals
- Provisions regarding use of University registered marks
- Recovery of costs incurred for provision of personnel, facilities, or services by University
- Provision of administrative services by University to affiliate
- Requiring an accounting system with reporting in accordance with GAAP
- Officers/staff members bonded as appropriate; general liability and D&O insurance; and other insurance
- University's right to inspect books and records
- Requiring that no substantial part of operations be devoted to lobbying/participating in political campaigns
- Requiring that no fees or remuneration be paid to University employees without University approval