

### **Required Elements of University-Associated Entity Relationship**

The following requirements apply to any University Associated Entity.

A. Definitions. As used in these regulations:

1. An “Associated Entity” means any foundation, association, corporation, limited liability company (LLC), partnership, or other nonprofit entity that was: (a) established by officers of the University; or (b) that is controlled by the University; or (c) that raises funds in the name of the University; or (d) that has a primary purpose of providing services or conducting activities in furtherance of the University’s mission pursuant to an agreement with the University; or (e) that has a tax exempt status that is based on being a support organization for the University.
2. An “Athletically Related Associated Entity” means an Associated Entity that supports or conducts activities in furtherance of an Approving Institution’s intercollegiate athletics program, as determined by the chancellor of the Approving Institution.
3. “Approving Institution” means a constituent institution of the University of North Carolina or the General Administration that approves an Associated Entity.
4. “General Administration” means the Office of the President and the affiliated programs of the University that are not centers or institutes of a constituent institution.
5. “Major Associated Entity” means an Associated Entity which has annual expenditures of \$100,000 or more.
6. “Minor Associated Entity” means an Associated Entity which has annual expenditures of less than \$100,000.
7. “Special Purpose Entity” means an Associated Entity (including any approved subsidiary or affiliate of an Associated Entity) that is: (a) established by an Approving Institution or is controlled by an Approving Institution; (b) undertakes a specified activity for the Approving Institution as its sole purpose (e.g., constructing or managing facilities, research development, or intellectual property management); and (c) does not engage in fundraising activities.
8. “State” means the State of North Carolina.
9. “University” means the University of North Carolina, including its constituent institutions.
10. When “president or chancellor” is used in these regulations, it means the chancellor if the Approving Institution is a constituent institution and it means the president if the Approving Institution is the General Administration.

B. Approval of Associated Entities

1. Associated Entity must be Approved. An Associated Entity (including any subsidiary or affiliate of an existing Associated Entity) must be approved in writing by the president, the chancellor, or the president or chancellor’s designee. An Associated Entity must be approved in order to receive University-provided services or to be able to use any University names, logos, or marks.
2. Abide by Relevant University Policies. In order to obtain approved status, the Associated Entity must formally agree, pursuant to a written agreement described in subpart F.1., to abide by the policies or regulations established by the University and by the Approving Institution, including the requirements of this regulation, 600.2.5.2[R].
3. Removal of Approved Status. The Approving Institution may, in its sole discretion, remove the approved status of any Associated Entity at any time for any reason or no reason.

C. Organizational Requirements of an Associated Entity

1. Purpose to Benefit University. The Associated Entity must be organized for the primary purpose of (a) supporting the University or one or more of its constituent institutions or programs, and/or (b) conducting activities that are in furtherance of the mission of the University or of one or more of its constituent institutions or programs.
2. State Nonprofit Entity. The Associated Entity must be organized on a nonprofit basis as a separate legal entity recognized under and in compliance with North Carolina law. If a constituent institution proposes to establish or approve an Associated Entity on a for-profit basis, it must receive prior approval from the Board of Governors.
3. Tax Exempt Status. Except as provided in paragraph C.2. (concerning Associated Entities established on a for-profit basis), an Associated Entity must either (a) apply for, receive, and maintain both federal and State tax exempt status, or (b) be eligible to utilize the tax-exempt status of one or more constituent institutions or tax-exempt Associated Entities.
4. Dissolution of Associated Entity. The Associated Entity's governing documents including, but not limited to, articles of incorporation, by-laws, and operating agreement(s), must include provisions which provide that: (a) the Associated Entity must, if so directed by the Approving Institution, be dissolved as soon as practicable following the removal of approved status pursuant to Section B.3.; and (b) upon dissolution of the Associated Entity, all of its assets will revert to the University or the Approving Institution or another existing University approved Associated Entity unless otherwise designated by the donor of an asset.
5. Requirements for Members of Associated Entity Governing Body; Approval of Board Members for Athletically Related Associated Entities.
  - a. All Associated Entities. At least one senior academic or administrative officer of the Approving Institution or a designee of the president or the chancellor must sit as an ex-officio (either voting or nonvoting) or regular member of the Associated Entity's governing body, including any committee or subcommittee thereof that may be delegated authority to exercise the governing body's authority.
  - b. Athletically Related Associated Entities. No individual may be appointed to serve on the governing body of an Athletically Related Associated entity absent the prior approval of the chancellor of the Approving Institution.
6. Audit Committee Required.
  - a. A Major Associated Entity's by-laws must provide for a standing audit committee or other committee with an audit function which has at least one University employee as a member. The audit committee must receive the report of the individual or firm that conducts the Associated Entity's annual audit and relevant tax forms to be submitted by the Associated Entity.
  - b. A Minor Associated Entity's by-laws must provide for a committee which has these audit functions.
  - c. No employee of the Associated Entity may serve on an audit committee or a committee with an audit function. If practical, each audit committee or committee with an audit function should have a financial expert as a member.
  - d. A Special Purpose Entity is not required to have an audit committee provided that it is subject to independent audit at the request of one or more designated trustees, sureties, insurers, certificate holders or bondholders, or is audited during the Approving Institution's audit.
  - e. A single member LLC is not required to have an audit committee provided its operations are audited in connection with the audit of the member.

D. Financial and Accounting Controls

1. Sound Accounting and Business Principles. An Associated Entity must use sound fiscal and business principles, ensure that a sound internal control structure is in place, and follow generally accepted accounting procedures.
2. Annual CPA Audit. A Major Associated Entity and its single member subsidiaries (LLC or corporations) must be audited on an annual basis by an independent CPA firm, selected with the approval of the Approving Institution. A Minor Associated Entity must have an annual audit conducted either by the Approving Institution's internal auditor, another University internal auditor, or an independent CPA firm. A Special Purpose Entity must be audited on a periodic basis. A CPA firm providing an audit for a Major Associated Entity may not provide non-auditing services to the Associated Entity other than tax preparation services that are preapproved by the audit committee.
  - a. An Associated Entity of a constituent institution must provide copies of the audit report, management letters, and responses to management letters to the chancellor of the Approving Institution, through the chancellor to the governing board of the Approving Institution and the president, and through the president to the Board of Governors.
  - b. An Associated Entity of the General Administration must provide copies of the audit report, management letters, and responses to management letters to the president, and through the president to the Board of Governors.
3. Annual Budgets. Each Associated Entity must create an annual operations and capital budget. Each Athletically Related Associated Entity, and such other Associated Entities as may be directed to do so by the Approving Institution, shall submit its proposed annual operations and capital budget to the president or chancellor or designee of the Approving Institution for review and approval prior to adoption. Any subsequent changes to the approved annual operations and capital budget must be approved by the chancellor of the Approving Institution.
4. Officer and Employee Compensation. All salary and nonsalary compensation provided by the Associated Entity to its officers or employees must be approved by the Associated Entity's governing board. The Associated Entity must comply with Board of Governors Policy §300.1.1 concerning the prohibition of payments to specified University employees. This requirement does not prohibit the Associated Entity from reimbursing its officers or employees for expenditures made on behalf of the Associated Entity. Each Athletically Related Associated Entity shall submit an annual report to the chancellor of the Approving Institution detailing the salary and nonsalary compensation and reimbursements provided to each officer and each employee of the Associated Entity and each employee of the University assigned to the Associated Entity for the prior year, along with explanations for any adjustments to compensation.
5. Indemnification of University. The Approving Institution may require an Associated Entity to indemnify and hold the Approving Institution and the University harmless from any damages or liabilities that the Approving Institution or the University incurs as a result of the Associated Entity's actions.
6. University-Associated Entity Monetary Transfers. All transfers of funds from the Associated Entity to the University or to the Approving Institution must be documented in writing or electronically in a form that has a retrievable transaction trail. Each Athletically Related Associated Entity shall submit an annual report to the chancellor of the Approving Institution describing each transfer of funds from the Associated Entity to the Approving Institution or to third parties for the benefit of the Approving Institution for the prior year.
7. Whistleblower Protection. An Associated Entity must have a confidential and anonymous mechanism to encourage individuals to report any inappropriateness within the entity's financial management and must prohibit punishment of or retaliation against any employee for reporting problems.

8. Chief Executive Officer. The chief financial officer of the Approving Institution may not be the chief executive officer of an Associated Entity.

9. Acquisition of Debt. A Minor Associated Entity may not acquire debt in excess of \$100,000 that is not to be publicly traded without prior approval from the president or the chancellor or designee of the Approving Institution and consultation with the vice president for finance of the University. A Major Associated Entity may not acquire debt in excess of \$500,000 that is not to be publicly traded without prior approval from the president or the chancellor or designee of the Approving Institution and consultation with the vice president for finance of the University. In determining the level of scrutiny to give to the proposed transaction, the vice president shall take into account the amount of the debt in relationship to the Associated Entity's assets and income and the extent of experience of the Associated Entity in entering into similar debt transactions. A Special Purpose Entity that issues debt to construct facilities for the University must provide a financial or construction audit to the vice president for finance of the University at the vice president's request or to the governing board of the Approving Institution at the request of the chair of the governing board.

10. Audit Findings. Within 90 days of the issuance of an audit report with audit findings, the Associated Entity must demonstrate to the president or the chancellor of the Approving Institution and to the vice president for finance that satisfactory progress has been made to implement a corrective action plan. Failure of an Associated Entity to receive an unqualified audit opinion, to comply with the reporting requirements of this regulation, or to satisfactorily implement a corrective action plan in response to an audit finding may result in the Associated Entity's losing its approved status.

E. Insurance and Bonding

1. Bonding Required. Officers and employees of Major Associated Entities who have check-signing authority or who handle cash or negotiable instruments must be bonded in an amount determined to be reasonable by the Associated Entity's governing body, in collaboration with the Approving Institution. The governing body of a Minor Associated Entity should consider requiring bonding of appropriate employees.

2. Insurance. The governing body of an Associated Entity, working in collaboration with the Approving Institution's insurance and risk management personnel, should evaluate the potential risks arising from the operation of the Associated Entity and obtain commercially reasonable amounts of general liability and directors'/officers' insurance.

F. Provision of Administrative and Other Services by University for Associated Entity

1. Written Agreement Required. The Associated Entity must enter into a written agreement with the Approving Institution in which the Associated Entity agrees to abide by relevant policies and regulations established by the University and by the Approving Institution. An Associated Entity may only use University or constituent institution assets, facilities, and personnel pursuant to the terms of the written agreement.

2. Reimbursement of Costs. Any reimbursement to the Approving Institution or the University for services the Approving Institution or the University provides to the Associated Entity must be made pursuant to a written agreement between the University or the Approving Institution and the Associated Entity entered into before the service is provided.

3. Control of University Personnel. When University personnel provide services for the Associated Entity and there arises a conflict between the University and the Associated Entity, the University's employee must comply with the policies, regulations, and directives of the University.

G. Acceptance of Gifts by Associated Entity

1. Direction and Control of Fundraising and Development Activities. The fundraising and development activities of the Associated Entity shall be conducted subject to the policies and regulations of the Approving Institution and the University and coordinated with the Approving

Institution's development office. Absent prior approval from the Approving Institution, the Associated Entity may not engage in fundraising or development activities or receive gifts that impose obligations on the Approving Institution.

2. Restricted or Conditional Gifts that Require University Approval. An Associated Entity may not accept any restricted or conditional gifts that impose an obligation on the University or the Approving Institution or the State to expend resources in addition to the gift or that impose an obligation on the University's or the Approving Institution's operations without the Approving Institution's prior approval. In addition, an Associated Entity may not accept a gift which has any restriction that is unlawful.

3. Notification to Donors of Restricted Gift Policies. An Associated Entity must advise prospective donors of all restricted or conditional gifts to the Associated Entity if acceptance of the gift is conditioned upon the Approving Institution's approval.

#### H. Conflict of Interest and Ethics Policies

1. Policies Required. The Associated Entity must have in place conflict of interest and ethics policies, as approved by the Approving Institution, pertaining to relationships between the Approving Institution, the Associated Entity, members of the governing body of the Associated Entity and persons doing business with the Associated Entity, and establishing required ethical standards for the members of the governing body and employees of the Associated Entity.

2. Transactions Between Associated Entity and its Employees. All transactions (other than reimbursements as provided in §D.4.) between the Associated Entity and an individual member, manager, officer, director, or employee of the Associated Entity must be approved by the Associated Entity's governing body.

3. Recusal from Business Decisions. No Associated Entity individual member, manager, officer, director, or employee having a private business interest in an Associated Entity business transaction may be involved in the decision with respect to whether the Associated Entity should enter into such transaction.

4. Associated Entity Scholarships. No Associated Entity scholarship or fellowship award may be made to an individual member, manager, officer, director, or employee of the Associated Entity or to a family member of such person unless the recipient of the award is determined by an independent awards committee or is overseen by the Approving Institution's Financial Aid and Scholarship Office.

#### I. Reports required to be submitted by Associated Entity to University

1. The Associated Entity must file annual reports with the president or chancellor of Approving Institution covering the following items:

a. A list of all members of the Associated Entity's governing body;

b. A copy of the publicly disclosed portion of the Associated Entity's Form 990, or other series 990 form or other similar information return;

c. A copy of the Associated Entity's CPA audit report and related management letters and responses to management letters; and

d. A copy of the Articles of Incorporation, Articles of Organization, Bylaws, and other governing documents, and any revisions or amendments thereto.

2. At the request of the chancellor, president, or the chair of governing body of the Approving Institution, the Associated Entity must meet with the requesting person, his or her designee, or the internal auditor of the Approving Institution, provide any information requested, and allow that person to inspect any information requested for any reason, or no reason.

J. Miscellaneous Requirements

1. Associated Entity Communications. An Associated Entity must conduct business in its own name and all correspondence, advertisements, and other communications by the Associated Entity must clearly indicate that the communication is from the Associated Entity, and not from the Approving Institution or the University.
2. Lobbying and Political Activities. An Associated Entity must comply with all provisions of the Internal Revenue Code and all State laws regarding lobbying and political activity.
3. Associated Entity Courses and Seminars. An Associated Entity may not offer any course or seminar in which the University's name is used without first obtaining the permission of the institution(s) whose name(s) will be used.
4. Record Retention Schedule. An Associated Entity must have a policy governing retention and destruction of documents including electronic files and which prohibits destruction of documents if an audit, investigation into wrongdoing, or litigation is anticipated or underway.

K. Waiver

If the application of any of the requirements of these regulations to a particular Associated Entity in specific circumstances is of limited benefit and is unduly burdensome, the president may waive that requirement as to that specific Associated Entity under circumstances that are set out in writing and supported by the Approving Institution.

L. Effective Date

Every Associated Entity shall be in compliance with these regulations no later than January 1, 2015.