



## University of Vermont Foundation

### **CONFLICT OF INTEREST POLICY**

#### **A) POLICY STATEMENT**

Every director of The University of Vermont and State Agricultural College Foundation, Inc. ("UVM Foundation") shall discharge his or her duties as a director in good faith, with the care a prudent person in a like position would exercise under similar circumstances, and in a manner reasonably believed to be in the best interests of UVM Foundation. In this connection, it is the policy of UVM Foundation and the Board of Directors of UVM Foundation ("Board") that each director (individually, a "Director") has the affirmative duty to identify, disclose, and manage conflicts in conformance with this Conflict of Interest Policy ("Policy") and applicable law. UVM Foundation recognizes that Directors may, from time to time, face possible conflicts of interest or situations in which the appearance of conflict of interest could be detrimental to UVM Foundation. There is nothing inherently wrong with a conflict of interest that may arise so long as the conflict is disclosed on a timely basis and appropriately managed by the Board. The purpose of this Policy is to promote timely disclosure of all conflicts of interest and to manage each conflict so that no Director is in a position to advance an initiative or transaction that is incompatible with such member's fiduciary duty to UVM Foundation or to participate in the deliberation or voting of any transaction in which a such Director's independence and objectivity of judgment is impaired by reason of the conflict of interest.

#### **B) DEFINITIONS**

*Conflict of interest.* A conflict of interest arises when a reasonable observer would conclude, based on an understanding of all relevant circumstances, that there is an apparent or actual divergence between a Director's private interests and his or her fiduciary duties to UVM Foundation that may prevent the Director from acting impartially in the discharge of his or her fiduciary duties regarding a particular matter. Conflicts may involve non-financial as well as financial (direct or indirect) interests. The Director may be personally involved in a proposed transaction, have an employment, fiduciary or investment relationship with an entity with which UVM Foundation is dealing, or have a family relationship with a person or entity with which UVM Foundation is engaged. For purposes of this Policy, a conflict of interest arises where the relevant material facts affect a Director, a member of his/her immediate family, or an affiliate, as herein defined. In the case of conflicts involving a member of the immediate family or an affiliate of a Director, the Director is obligated to disclose to UVM Foundation when he or she knows or reasonably should know of a conflict.

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The Board recognizes the value of having individuals serve on the Board who may also have connections to other nonprofit organizations, colleges or universities, or to other university-related fundraising foundations. Accordingly, it shall not be considered a conflict of interest simply because a Director (or a member of a Director's immediate family) serves as a director, officer, trustee, or employee of a nonprofit organization, college or university, or another university-related fundraising foundation. Rather, in each such case, a conflict of interest will arise only if (and to the extent that) the other organization and UVM Foundation (and/or UVM) will participate in a transaction in which the interests of the organizations will be adverse to one another. In the case of transactions involving UVM, the rules set forth below under the heading "UVM Trustees and Employees" below shall apply.

*Apparent conflict.* An apparent conflict exists when a reasonable observer would conclude, based on an understanding of all relevant circumstances, that a Director's ability to discharge his or her duties as a Director, as summarized in the Policy Statement above, are compromised by his or her personal interest.

*Member of the immediate family.* A member of the immediate family of a Director includes a spouse or civil union partner, child, parent, sibling, or such relations by marriage or civil union partnership, person claimed as a dependent for federal income tax purposes, and any relative residing in the same household as the Director. There may be other family members as to whom disclosure should also be made to avoid the appearance of a conflict, and doubts should be resolved in favor of disclosure.

*Affiliate.* An affiliate includes a business, association, corporation, or other legal entity in which a Director or a member of his/her immediate family is a director, trustee, officer, partner, joint venturer, principal, employee, owner, and/or holder of five percent (5%) or more of voting stock or a controlling interest. In addition, an affiliate is an entity from which the Director or a member of his/her immediate family otherwise annually receives or has the right to receive \$1,000 or more compensation, income, or other financial consideration or value.

### **C) EXAMPLES FOR DIRECTORS**

It is not possible to provide an all-inclusive list of situations giving rise to a conflict of interest. In general, Directors may not use their positions or confidential information to which they become privy as Directors for the gain of themselves or others. Below are examples of situations presenting potential, actual or apparent conflicts.

- 1. Commercial transactions.** Commercial transactions between a Director and UVM Foundation are not *per se* barred under this Policy. In such situations, however, due to the actuality or appearance of a conflict, it is essential that, as to such proposed transactions, there is strict adherence to disclosure and recusal protocols. Such transactions will be permissible if (a) the transaction is at fair market value; (b) UVM Foundation considers alternative competitive proposals; (c) the Director with the purported conflict has fully disclosed the same to the Board; and (d) UVM Foundation determines that the transaction is fair and reasonable to, and clearly in the best interests of, the institution, despite an actual or apparent conflict.

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- 2. Confidential, Proprietary, or Privileged Information.** Except as required by law, no Director shall, without proper Board or institutional authorization, give or release UVM Foundation information or data ("Information") of a confidential, proprietary or privileged nature, or use such Information to gain personal advantage or avoid personal detriment, insofar as such Information is not in the public domain. This rule applies to Directors during and after their UVM Foundation service relative to Information acquired in the course of their service as a Director, and every Director shall comply with UVM Foundation's Director Confidentiality Statement.
- 3. Business Opportunities.** No Director shall divert from UVM Foundation for private gain of self or others a business opportunity in which UVM Foundation would foreseeably engage in furtherance of its mission, unless (a) UVM Foundation has been offered, and through an authorized official declined, a right of first refusal; and (b) the Director has fully disclosed his or her intention to pursue the business opportunity to the Board.
- 4. Employment or Retention of Immediate Family Members or Affiliates.** No Director may be directly or indirectly involved in the hiring, supervision, performance evaluation, compensation or retention of personal or business services by UVM Foundation of an immediate family member or an affiliate.
- 5. Remuneration, Gifts, and other Consideration**
  - a) **From External Parties.** No Director shall solicit or accept from any person, organization, corporation, or other legal entity (or representatives thereof) seeking to do, or doing, business with, or otherwise gain benefit from, UVM Foundation, any remuneration, gift, gratuity, services, loans, travel, entertainment or other consideration of more than nominal value in exchange for a promise, or reasonable inference, that the Director's influence with UVM Foundation has been exchanged for such consideration. This prohibition applies without limitation to vendors, contractors, sponsors, donors, and job or admissions applicants.
  - b) **From UVM Foundation.** It shall be not be considered a conflict of interest for a Director to accept from UVM Foundation (1) gifts or other items of modest value in consideration of his/her service or retirement from UVM Foundation service; (2) customary *honoraria*; (3) reasonable reimbursement for travel, food, and lodging for expenses incurred by the Director in connection with the business of the Board; and (4) complimentary tickets to University functions or events for a Director and his/her guest where the presence of the Director is deemed to serve the best interests of UVM Foundation.
- 6. Employment of UVM Foundation Personnel.** A Director wishing to employ or retain UVM Foundation personnel for private consulting or other non-UVM Foundation purposes must first obtain approval from the UVM Foundation President & CEO. If the President & CEO denies the proposal on the grounds that a conflict does, or may, arise, the Director shall disclose the proposed employment or consulting arrangement to the Board Chair. The Board Chair will either authorize or decline to authorize the proposal, conferring with the Executive Committee in his/her

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discretion. If the proposal is authorized, the Chair shall communicate the authorization in writing to the Director, with a copy to the President & CEO. The Director's Conflict of Interest Disclosure Form shall then be amended to reflect the affiliation.

- 7. Testimony.** A Director, who testifies in person or through recorded or written communication before any public body or public official, whether judicial, legislative or administrative, shall make it initially and clearly known on the record when s/he is speaking on the matter as a UVM Foundation representative. Directors shall obtain authorization to speak on behalf of UVM Foundation by seeking permission from the Executive Committee of the Board.

### **D) UNIVERSITY TRUSTEES AND EMPLOYEES**

This Policy shall be applied uniformly to all Directors, including any person who concurrently serves as a member of the Board of Trustees of the University of Vermont and State Agricultural College ( "University") or as an officer or key employee of the University (for purposes of this section, a "University Director"), subject to the following understandings: (1) No University Director shall be disqualified from voting on general policies, budgets, or other broad matters concerning UVM Foundation (even though they may in part relate to the Memorandum of Understanding between the University and UVM Foundation) by virtue of such Director being a University Director; and (2) a University Director may be disqualified from voting on contracts or similar specific matters (and from participating in deliberations relating to such contracts or similar matters) in which there is or may be a material conflict of interest (or the appearance of a material conflict of interest) between the obligations of such Director to the University and his/her obligations to UVM Foundation.

Each of the Directors, including the University Directors, shall be entitled to inspect and copy the books, records, and documents of UVM Foundation at any reasonable time to the extent reasonably related to the performance of the Directors' duties as a director, including duties as a member of a Board committee, but not for any other purpose or in any manner that would violate applicable law (including privacy laws) or any duty owed to UVM Foundation. This inspection and copy right shall be uniformly applied to all Directors unless a specific conflict of interest involving a particular matter requires that access to the information be restricted as to the conflicted (or potentially conflicted) Director.

Each University Director understands that, notwithstanding the obligations he or she may owe to UVM, he or she owes to UVM Foundation all of the fiduciary duties owed by a director of a nonprofit corporation under the Vermont Nonprofit Corporation Act and will discharge such duties in a manner consistent with this Policy.

### **E) SUMMARY OF PROTOCOL**

Upon commencement of Board service, Directors shall file Conflicts Disclosure forms, and shall review and update them no less than once annually and more frequently as circumstances dictate.

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In advance of any meeting at which a conflict may foreseeably arise, the Director must disclose the conflict to the Committee Chair (and/or to the Board Chair if the conflict will arise during a Board meeting). If the Director does not intend to recuse him or herself from the deliberations and voting concerning the matter, the material facts relating to the conflict must be described in sufficient detail to enable the Committee Chair (or Board Chair), Chair of the Audit and Stewardship Committee (or his/her designee if it pertains to the Chair of the Audit and Stewardship Committee), and President & CEO of UVM Foundation (or his/her designee if it pertains to the President & CEO of UVM Foundation) to determine whether the Director may participate in the deliberations and voting with respect to the matter. Relevant material facts may include the benefits that could inure to the Director; the extent to which, if any, the Director is participating in a competitive process to enter into a transaction or business affiliation with UVM Foundation; whether the Director is privy, in his or her capacity as a Director, to proprietary or other non-public UVM Foundation information that could be advantageous to the Director in relation to other parties interested in a proposed transaction; and/or if UVM Foundation would be likely to enter into the proposed transaction or relationship in the absence of the Director's UVM Foundation affiliation.

The Director, Committee Chair, or Board Chair may request an opinion on the existence of a conflict from the Audit and Stewardship Committee and/or UVM Foundation legal counsel. In the event that a Board Chair or a Committee Chair conflict is in issue, the disclosure shall be made to the Board Vice Chair, who may also request an opinion from the Audit and Stewardship Committee and/or UVM Foundation legal counsel. In connection with any actual or possible conflict of interest, it is the duty of the Director to disclose the existence of the conflict and whether they are directly or indirectly involved.

Once having disclosed the conflict, the Director may him/herself decide to decline to participate in discussion of, and any vote upon, the matter as to which a conflict exists. In such instances, the meeting record shall reflect his/her self-recusal and abstention. If the Director does not her/himself decline to participate in discussion of the matter as to which a conflict exists, the Committee (or Board) Chair shall, prior to consideration of the matter, identify the conflict. In the event that a Board Chair or Committee Chair conflict is in issue, the Board Vice Chair shall identify the conflict. The Director as to whom a conflict is identified may participate in the discussion of the matter if a majority of the members of the Committee or the Board vote to authorize such participation; if such authorization is given, the Director shall nonetheless abstain from voting on the matter. The Director shall be excused from any portion of an Executive Session devoted to the matter as to which a conflict arises. The Director is prohibited from lobbying for votes on conflict transactions both during and outside of Board meetings and includes phone calls and/or discussions outside of Board venues.

A Director who recuses from participation in discussion of, and/or voting upon, a matter before a Committee or the Board shall not be counted toward a quorum for such vote.

### **F) PROTOCOL**

#### **1. Disclosure Forms**

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Each Director shall file a Conflicts Disclosure Form (the "Form") at the time of initial appointment and by May 30 of each subsequent year of service. The Form will require the Director to acknowledge his/her review of the Policy and to agree to disclose on the Form and as otherwise required by the Policy any matter as to which a conflict does, or may, exist. The Director shall update the Form during the year as circumstances dictate. Forms will be filed with the Chair of the Audit and Stewardship Committee and maintained by UVM Foundation after the Audit and Stewardship Committee's review.

### **2. Role of UVM Foundation Counsel**

Prior to any Committee and Board meeting, the Chair of the Board, the Chair of the Committee, the Chair of the Audit and Stewardship Committee, or UVM Foundation President & CEO may engage UVM Foundation counsel to review the agenda in relation to Director Forms to determine whether a conflict may, or will, arise. If a conflict is identified, counsel shall contact the Director and the Committee (or Board) Chair regarding the relevant agenda item. The Director and the Chair shall otherwise proceed as described in the "Summary of Protocol" section of this Policy. Upon request of the Director and/or the Committee or Board Chair, counsel shall provide an opinion as to whether a conflict of interest arises as to such Director. All such opinions shall be subject to applicable privileges under law.

### **3. Approval of a Conflict of Interest Transaction**

If a conflict is identified subsequent to any action by the Board in which a conflicted Director participated, such action shall be voidable by the Board in accordance with the Vermont Nonprofit Corporation Act and otherwise applicable procedures relating to Board meetings and action.

Notwithstanding the preceding paragraph, a conflict of interest transaction is not voidable or the basis for imposing liability on the Director if the transaction (a) was fair at the time it was entered into or (b) is approved in advance by vote of the Board or a Committee if (i) the material facts of the transaction and the Director's interest are disclosed or known to the Board or Committee; and (ii) Directors approving the transaction in good faith reasonably believe that the transaction is fair to UVM Foundation. Any such approval by vote of the Board or a Committee must receive an affirmative vote of a majority of the Directors on the Board or Committee who have no direct or indirect interest in the transaction. Any Director who recuses from participation in discussion of, and/or voting upon, a matter before the Committee or Board (or does not so recuse him or herself but has a direct or indirect interest in the transaction) shall not be counted toward a quorum for such vote.

In cases in which the Board or a Committee considers approval of a conflict of interest transaction, its review of the material facts and its resulting decision shall be documented in the meeting minutes.

#### **4. Post-Transaction Challenge Procedure**

Complaints of non-compliance with this Policy shall be filed promptly and in writing with the Chair of the Audit and Stewardship Committee, with copies to the Chair of the Board and the Secretary of the Board. Disposition of such complaints shall be handled in the same manner as proposed or approved transactions under this Policy and, as to a non-compliant Director, under relevant provisions of UVM Foundation Articles of Incorporation, Bylaws, and Vermont Nonprofit Corporation Act.

#### **G) GOVERNING LAW**

This Policy incorporates by reference any obligations imposed upon UVM Foundation, the Board, and/or any Director by federal or state law.

*Adopted April 27, 2012  
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