 NORTHEAST OHIO MEDICAL UNIVERSITY	Policy No: 3349-1-190
POLICY TITLE: Affiliated Entities (Affinity Principles)	EFFECTIVE DATE: 6/25/2014
RESPONSIBLE DEPARTMENT: Office of the President, Office of the Vice President for Administration and Finance, Office of the General Counsel	All Affiliate Entities

(A) PURPOSE

The purpose of this policy is to establish a framework for the University to use in establishing, implementing, and monitoring its relationships with legally separate entities that support or complement the mission of the University. The University has a vital interest in and recognizes the valuable role played by each of its Affiliates in meeting the mission of the University. The University is committed to providing quality support for the efforts and activities of each Affiliate, while seeking to maintain the appropriate independence from its Affiliates.

(B) SCOPE

The Policy covers all Affiliated Entities as defined herein. It does not cover a contractual relationship with external parties, clinical practice sites or partners.


(C) DEFINITIONS

(1) “Affiliated Entity” or “Affiliate” refers to an organization that has a legal existence separate from the University, which is formed or operated to support or complement the mission of the University, and:

- (i) is controlled or strongly influenced by the University, or
- (ii) receives significant financial support from the University, or
- (iii) uses the University’s resources, name, or identity.

There are three types of Affiliated Entities:

- (i) “Arms-Length Affiliate” refers to entities that use University resources, but do so through a relationship that is defined by a contract/memorandum of understanding between the parties. The University may act as fiscal agent or have other financial or operational ties to an Arms-Length Affiliate.


 NORTHEAST OHIO MEDICAL UNIVERSITY	Policy No: 3349-3-190
POLICY TITLE: Affiliated Entities (Affinity Principles)	EFFECTIVE DATE: 6/25/2014
RESPONSIBLE DEPARTMENT: Office of the President, Office of the Vice President for Administration and Finance, Office of the General Counsel	All Affiliate Entities

- (ii) “Regular Affiliate” refers to entities that have closer ties to the University than an Arms-Length Affiliate, but the University does not have a Significant Interest in the entity.
 - (iii) “Significant Interest Affiliate” refers to entities in which the University holds a Significant Interest.
- (2) “Approved Agreement” refers to a memorandum of agreement or memorandum of understanding properly executed between the University and its Affiliate.
- (3) “Significant Interest,” for the purpose of this policy, refers to any of the following that apply to the Affiliate:
- (i) the University holds a significant *financial investment* in the Affiliate, which is defined for this policy as an investment of \$250,000 or more;
 - (ii) the Affiliate presents a significant *compliance risk* to the University; or
 - (iii) the Affiliate provides *essential services* to the University.


(D) POLICY STATEMENT

(1) Propriety of Creating Affiliates and Affiliated Entities


The Board of Trustees and the Senior Leadership of University have a responsibility to ensure that the University’s activities with regard to Affiliates are conducted in a proper manner. To protect the University’s interests, and as a condition of the Affiliate’s use of the University’s name and resources, the following principles shall apply:

 NORTHEAST OHIO MEDICAL UNIVERSITY	Policy No: 3349-3-190
POLICY TITLE: Affiliated Entities (Affinity Principles)	EFFECTIVE DATE: 6/25/2014
RESPONSIBLE DEPARTMENT: Office of the President, Office of the Vice President for Administration and Finance, Office of the General Counsel	All Affiliate Entities

- (a) The formation, purpose and operations of Affiliates must promote, sponsor, or complement educational, scientific, research, charitable, health-care, economic development or cultural activities for the benefit of the University, or one of its component units;
 - (b) The University’s relationship with each Affiliate will be memorialized through an Approved Agreement;
 - (c) Affiliates shall provide for at least one University representative with full voting rights on its governing board;
 - (d) Affiliates must use sound fiscal and accounting procedures;
 - (e) Affiliates must be managed in a manner consistent with their own enabling documents and the University’s purpose and mission;
 - (f) Affiliates must adhere to high ethical standards;
 - (g) Affiliates must abide by University policies unless otherwise specified in writing; and
 - (h) The University’s relationship with an Affiliate is not necessarily intended to be perpetual. Relationships with Affiliates will be examined at least every ten years to determine whether the relationship will be continued or whether the triggering of a sunset provision is appropriate.
- (2) Process for Establishing an Affiliate or a Relationship between an Affiliate and an External Entity
- (a) Affiliates may be established by the University or entities outside the University. The University unit or external entity desiring to establish an Affiliate or relationship with an Affiliate shall develop a detailed proposal which will include:

 NORTHEAST OHIO MEDICAL UNIVERSITY	Policy No: 3349-3-190
POLICY TITLE: Affiliated Entities (Affinity Principles)	EFFECTIVE DATE: 6/25/2014
RESPONSIBLE DEPARTMENT: Office of the President, Office of the Vice President for Administration and Finance, Office of the General Counsel	All Affiliate Entities

- (i) Goals and objectives of establishing the Affiliate;
 - (ii) Proposed organizational and governing board structures (the proposed governing board structure shall reserve at least one Board seat for a University representative) for the Affiliate;
 - (iii) Projected budget and business plan for the next five years;
 - (iv) Thorough risk assessment that defines and classifies risks inherent to both the proposed entity and the University, including potential conflicts of interest. The risk assessment must include mitigation strategies and metrics designed to quantify risk throughout the life of the Affiliate and the considerations set forth in Appendix A; and
 - (v) Draft Approved Agreement defining the Affiliate’s relationship with the University.
- (b) The proposal shall be reviewed, and if appropriate approved by, the appropriate Vice President, the Office of Administration and Finance, and the Office of General Counsel and then forwarded to the Senior Leadership of the University.
 - (c) The Senior Leadership of the University shall review the proposal, and if deemed appropriate, recommend the establishment of the Affiliate to the President of the University. One member of the Senior Leadership of the University must be recommended to be assigned the oversight responsibilities for the Affiliate.
 - (d) Any Significant Interest Affiliate may require the approval by the Board of Trustees before its creation. The President will use his/her discretion when determining whether to refer the matter to the Board of Trustees.

 NORTHEAST OHIO MEDICAL UNIVERSITY	Policy No: 3349-3-190
POLICY TITLE: Affiliated Entities (Affinity Principles)	EFFECTIVE DATE: 6/25/2014
RESPONSIBLE DEPARTMENT: Office of the President, Office of the Vice President for Administration and Finance, Office of the General Counsel	All Affiliate Entities

- (e) The President shall appoint representatives who will serve on Affiliate’s governing board.
- (f) Depending on the circumstances and the degree of separateness of the entity, legal representation with respect to the preparation of organizational documents may be provided by the University, the Office of the Attorney General, outside counsel to the University, or private counsel retained on behalf of the Affiliate.


(3) Oversight of Affiliates

The University shall exercise oversight over established Affiliates through the following mechanisms:

- (a) Inclusion of University representatives on the Affiliate’s governing board;
- (b) Provision for reserve powers on behalf of the University in the Affiliate’s governing documents, if appropriate; and
- (c) Execution of an Approved Agreement between the University and the Affiliate outlining expectations and responsibilities, including Affiliate governance requirements.

(4) University Representatives on Affiliate Boards

Each Affiliate shall provide for at least one University representative with full voting rights on its governing Board. University representatives on Affiliate governing boards shall be appointed by the President and shall be required to follow the guidelines and expectations articulated by the University as conditions for their service. The guidelines and expectations will be memorialized in a letter of appointment for each University representative on an Affiliate board and shall include the following provisions, at a minimum:

 NORTHEAST OHIO MEDICAL UNIVERSITY	Policy No: 3349-3-190
POLICY TITLE: Affiliated Entities (Affinity Principles)	EFFECTIVE DATE: 6/25/2014
RESPONSIBLE DEPARTMENT: Office of the President, Office of the Vice President for Administration and Finance, Office of the General Counsel	All Affiliate Entities


- (a) The University representative on the Affiliate governing board shall keep the President informed of the Affiliate’s activities on a regular basis, as the President determines appropriate.
- (b) The University representative shall consult with the President, as deemed appropriate, on any proposal to be presented the Affiliate governing board relating to the creation of new corporate subsidiaries or new lines of business. With respect to these matters, the University representatives shall exercise their votes as members of the Affiliate governing board in accordance with instructions they receive from the University through its President or designee.
- (c) Any grant or loan of University funds, or any action that could reasonably be construed as a guarantee or inducement for any other grant or loan, to an Affiliate or any Affiliate subsidiary shall be subject to the prior written approval of the University’s President or designee.
- (d) These requirements shall apply to any renamed or reorganized corporate structure or organization that the Affiliate may create or authorize.

(5) Policies of the University and Affiliated Entities

Unless otherwise specified in writing, policies of the University are binding upon its Affiliates.

(6) Reserve Powers

Reserve powers are specific acts of the Affiliate that must be authorized by the University representatives on the Affiliate governing board to be effective, even if the University representatives are not in the majority on the governing board. As determined appropriate by the University, these reserve powers must be memorialized in the Affiliate’s governing documents. Examples of acts that may be subject to reserve powers include dissolution, liquidation, merger, consolidation, and formation of subsidiaries. Reserve powers are not required of

 NORTHEAST OHIO MEDICAL UNIVERSITY	Policy No: 3349-3-190
POLICY TITLE: Affiliated Entities (Affinity Principles)	EFFECTIVE DATE: 6/25/2014
RESPONSIBLE DEPARTMENT: Office of the President, Office of the Vice President for Administration and Finance, Office of the General Counsel	All Affiliate Entities

each Affiliate, but will be an additional consideration when Affiliate relationships are established.

(7) Approved Agreements


The University shall enter into an Approved Agreement with each Affiliate addressing the University/Affiliate relationship and expectations and governance requirements. The Approved Agreement may also address University services and financial contributions, use of University marks, and other support provided by the University. Each Approved Agreement will be tailored to the specific needs of each Affiliate. The Approved Agreement will specify that University policies are binding on the Affiliates unless otherwise specified in writing. Appendix B contains a list of potential issues to be addressed in the Approved Agreement.

(8) Sunset Provisions


It is expected that some Affiliates will have finite life spans and that it will no longer be appropriate for an Affiliate to continue its relationship with the University or to continue to exist as a separate entity. At least every ten years, the University will assess existing Affiliates for the need for continued affiliation and separate entity status.

If it is determined that there is no reason for an Affiliate’s continued existence as a separate entity, the University may direct through its reserve powers, if applicable, or suggest to the Affiliate that the entity be dissolved. It will be determined on a case-by-case basis whether the University can assist the Affiliate in its dissolution and whether the remaining activities of the Affiliate, if any, can or should be assumed by the University. If it becomes evident during the incorporation process that the Affiliate will have a finite existence, the Affiliate governing board should consider inserting automatic sunset provisions into its governing documents.

(9) Grandfathered Affiliates

 NORTHEAST OHIO MEDICAL UNIVERSITY	Policy No: 3349-3-190
POLICY TITLE: Affiliated Entities (Affinity Principles)	EFFECTIVE DATE: 6/25/2014
RESPONSIBLE DEPARTMENT: Office of the President, Office of the Vice President for Administration and Finance, Office of the General Counsel	All Affiliate Entities

Those Affiliates in existence on the effective date of this Policy are exempt from the requirements set forth in Section D (2) (a)-(c) of this Policy.

 NORTHEAST OHIO MEDICAL UNIVERSITY	Policy No: 3349-3-190
POLICY TITLE: Affiliated Entities (Affinity Principles)	EFFECTIVE DATE: 6/25/2014
RESPONSIBLE DEPARTMENT: Office of the President, Office of the Vice President for Administration and Finance, Office of the General Counsel	All Affiliate Entities

Appendix A – Considerations for Creation of Affiliates

Policy Issues: “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 Affiliate have a plan which has a reasonable probability of success? Have the appropriate internal constituencies been consulted (e.g., faculty, affected departments, etc.)?
- Will the Affiliate’s activities conflict or complete with existing university activities?
- How will the Affiliate be received by external constituencies?

Financial Issues: “What are the Financial Implications of Establishing the Affiliate?”

- Has a thorough and credible budget and/or business plan been prepared?
- What level of financial support is expected to be provided by the University, does it serve a public purpose, the mission of 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 Issues: “Is the Appropriate Governance Structure Established?”

- Who should represent the University on the Affiliate’s Board of Directors?
- Are the proposed University Representatives for 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?

 NORTHEAST OHIO MEDICAL UNIVERSITY	Policy No: 3349-3-190
POLICY TITLE: Affiliated Entities (Affinity Principles)	EFFECTIVE DATE: 6/25/2014
RESPONSIBLE DEPARTMENT: Office of the President, Office of the Vice President for Administration and Finance, Office of the General Counsel	All Affiliate Entities

Legal Issues: “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?

 NORTHEAST OHIO MEDICAL UNIVERSITY	Policy No: 3349-3-190
POLICY TITLE: Affiliated Entities (Affinity Principles)	EFFECTIVE DATE: 6/25/2014
RESPONSIBLE DEPARTMENT: Office of the President, Office of the Vice President for Administration and Finance, Office of the General Counsel	All Affiliate Entities


Appendix B – Items Addressed in Memorandum of Agreement/Understanding

Governance Matters

- Acknowledgment that Affiliate is legally independent from the University, and neither party assumes the other’s liabilities.
- Affiliate is identifiably separate from University.
- University representation on Affiliate governing board.
- Requiring reserve powers to be exercised by the University in certain actions by Affiliate, including University review/approval of new business ventures and subsidiaries or other entities.
- Fundraising Affiliates organized and operated as non-profit, non-stock corporations.
- Disposition of assets upon dissolution of Affiliate.
- Creation of an audit committee of the governing board.
- Adoption of policies on ethics, conflict of interest, whistleblowers, compensation, and procurement.
- Provision of legal services.

Financial Matters

- Requiring an accounting system with appropriate controls and reporting functions and 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 the University.
- Provision of administrative services by University to Affiliate.
- Responsibilities for insurance.
- Requiring an accounting system with reporting in accordance with GAAP.
- Detailed operating budget and capital expenditure plan.
- Officers/staff members bonded as appropriate; general liability and D&O insurance.

 NORTHEAST OHIO MEDICAL UNIVERSITY	Policy No: 3349-3-190
POLICY TITLE: Affiliated Entities (Affinity Principles)	EFFECTIVE DATE: 6/25/2014
RESPONSIBLE DEPARTMENT: Office of the President, Office of the Vice President for Administration and Finance, Office of the General Counsel	All Affiliate Entities

University's right to inspect books and records.

Requiring that no substantial part of operations devoted to lobbying/participating in political campaigns.

Requiring that no fees or remuneration shall be paid to University employees without University approval.