



Executive Memorandum No. 37

Policy on Forming a University-related Subsidiary or Affiliate

The University of Nebraska will form a University-related subsidiary or choose to affiliate with another entity only if there is a compelling legal and/or business justification.

1. Policy Purpose

The University exercises responsible stewardship over the University's tangible and intangible assets (including use of the University's name and logos), manages risk exposure, facilitates compliance, and manages costs associated with reporting and other legal requirements. This stewardship extends to the University's relationship to its subsidiaries and affiliates. As such, the University imposes controls on the formation of University-related subsidiaries and on affiliations with other entities.

2. Definitions

- a. Affiliate – a corporation or other legal entity that has a legal relationship with the University, such as through an affiliation agreement or other contractual arrangement but is not directly or indirectly controlled by the University and exists apart from the University.
- b. Parent – an entity that owns or controls another entity.
- c. Subsidiary – a corporation or other legal entity owned or controlled directly or indirectly by another entity (called the “parent”).

3. Procedures

- a. If a campus or other organizational unit of the University has the need or desire to (1) create a subsidiary or (2) enter into an affiliation with a third party that requires the contribution of University resources in any manner other than an arm's length exchange of consideration, the Chancellor will submit a proposal for such subsidiary or affiliation to the Executive Vice President and Provost, the Vice President for Business and Finance, and the Vice President and General Counsel for their

examination. For this purpose, resources included, but are not limited to, faculty or staff time, cash, and real, personal, and intangible property (including the University's name, brands, and logos).

- b. These administrators will make recommendations to the President of the University as to whether compelling business and/or legal reasons support forming a University subsidiary or contributing University resources in an affiliation with a third party.
 - i. The President may deny the formation or affiliation. The decision of the President is final.
 - ii. If the President determines there is a compelling reason for formation of a new subsidiary, he or she will recommend formation to the University Technology Development Corporation (UTDC), which will determine if a new entity is warranted or if the goals can be achieved by an existing entity. If UTDC determines there is a compelling reason for formation of a new subsidiary, it will recommend the matter to go to the Board of Regents, which must grant final approval.
 - iii. If the President determines there is a compelling reason to contribute University resources to an affiliation with a third party entity, the President will either approve the matter or, if the affiliation will require contribution of University resources valued at more than \$5 million or involve funds flow of a value exceeding \$5 million, he or she will bring the matter to the Board of Regents, which will have final decision authority.
- c. For all University-related subsidiaries formed pursuant to this Executive Memorandum, UTDC shall be the parent corporation and sole member.

NOTE: The use of University resources in support of legally independent entities is governed also by other University policies, including Bylaw 1.10, Code of Ethics; Bylaw 3.4.5, Outside Employment; Bylaw 3.8, Conflict of Interest; and RP-3.2.8, Conflict of Interest and Conflict of Commitment.

Dated this 15th day of July, 2020.



Ted Carter, President

Reference: July 15, 2020