

# THE UNIVERSITY OF MISSISSIPPI FOUNDATION

## CONFLICT AND DISCLOSURE OF INTEREST POLICY

THIS CONFLICT AND DISCLOSURE OF INTEREST POLICY (this "Policy") is intended for the benefit of The University of Mississippi Foundation (the "Foundation") and its directors and officers. The purpose of this Policy is to protect the Foundation's interest when it is contemplating a transaction that might benefit the private interest of an officer or director of the Foundation. This Policy is intended to be consistent with the provisions of Mississippi law, particularly Miss. Code Ann. §79-11-269 (as the same may be amended from time to time) as attached hereto as Exhibit "A". This Policy is further intended to supplement but not replace any applicable state laws governing conflicts of interest applicable to nonprofit and charitable corporations. Capitalized terms used in this Policy shall have the meanings ascribed to such terms in the Definitions attached hereto as Exhibit "B".

- 1) **Procedures to Determine Whether a Conflicting Interest Exists.** In the event any Covered Person believes that he or she may have a Conflicting Interest, such Covered Person must:
  - a) Make the Required Disclosure;
  - b) Play no part, directly or indirectly, in the deliberation or vote of the Board of Directors of the Foundation (the "Board") with respect to the determination of whether a Conflicting Interest exists; and
  - c) Must remove himself or herself from the meeting or portion of the meeting at which the potential Conflicting Interest is discussed.

The minutes of the meeting of the Board at which the potential Conflicting Interest is discussed shall include the names of the persons who disclosed a potential Conflicting Interest, the nature of the potential Conflicting Interest and whether the Board or committee determined there was a Conflicting Interest.

- 2) **Procedures When a Conflicting Interest Has Been Determined to Exist.** In the event any Covered Person has a Conflicting Interest, such Covered Person must:
  - a) Make the Required Disclosure;
  - b) Play no part, directly or indirectly, in the deliberation or vote of the Board with respect to such transaction; and
  - c) Must remove himself or herself from the meeting or portion of the meeting at which the potential Conflicting Interest is discussed.

In order for the Board to proceed with a Conflicting Interest Transaction, it must be determined, by a majority vote of the non-interested members present, that the transaction is in the Foundation's best interests, is for its own benefit, and is fair and reasonable to the Foundation. The minutes of the meeting of the Board at which the transaction is discussed shall include the names of the person who disclosed a Conflicting Interest and the nature of the Conflicting Interest.

- 3) **Annual Disclosure of Interests.** This Policy shall be distributed annually to each Covered Person, and each Covered Person shall complete and submit annually to the Chairman of the Foundation the Disclosure of Interest and Confidentiality Statement attached hereto.
- 4) **Violation of Conflict of Interest Procedures.** Upon learning that a Covered Person may have willfully violated the provisions of this Policy, the Board shall form a special committee to investigate such violation. Upon receipt of such committee's report, the Board (excluding the person whose actions are being investigated) shall take such corrective or remedial action as it deems appropriate, including exoneration, censure or request for resignation.

**EXHIBIT "A"**

**Miss. Code Ann. § 79-11-269 (2005)**

§ 79-11-269. Conflict of interest transaction

(1) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one (1) of the following is true:

(a) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved or ratified the transaction;

(b) The material facts of the transaction and the director's interest were disclosed or known to the members entitled to vote and they authorized, approved or ratified the transaction; or

(c) The transaction was fair to the corporation.

(2) For purposes of this section, a director of the corporation has an indirect interest in a transaction if (a) another entity in which he has a material financial interest or in which he is a general partner is a party to the transaction; or (b) another entity of which he is a director, officer or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

(3) For purposes of subsection (1)(a) of this section, a conflict of interest transaction is authorized, approved or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (1)(a) of this section if the transaction is otherwise authorized, approved or ratified as provided in that subsection.

(4) For purposes of subsection (1)(b) of this section, a conflict of interest transaction is authorized, approved or ratified if it receives the vote of a majority of the members whose votes are entitled to be counted under this subsection. The vote of a member who is a director who has a direct or indirect interest in the transaction, and the vote of a member who is under the control of an entity described in subsection (2)(a) of this section, may not be counted in a vote of members to determine whether to authorize, approve or ratify a conflict of interest transaction

under subsection (1)(b) of this section. The vote of those members, however, shall be counted in determining whether the transaction is approved under other sections of Sections 79-11-101 et seq. A majority of the members, whether or not present, whose votes are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

## **EXHIBIT "B"**

### **DEFINITIONS**

- a) "Covered Persons" means each Director of the Foundation and each officer of the Foundation.
- b) "Conflicting Interest" means the interest a Covered Person, whether individually or through business, investment or family relationships, has respecting a transaction effected or proposed to be effected by the Foundation (or by a subsidiary of the Foundation or any other entity in which the Foundation has a controlling interest) in which a Covered Person has a direct or indirect interest.
- c) "Covered Person's Conflicting Interest Transaction" means a transaction effected or proposed to be effected by the Foundation (or by a subsidiary of the Foundation or any other entity in which the Foundation has a controlling interest) respecting which a Covered Person has a Conflicting Interest.
- d) "Required Disclosure" means disclosure in writing by the Covered Person who has a Conflicting Interest of (1) the existence and nature of the Covered Person's Conflicting Interest, and (2) all facts known to the Covered Person respecting the subject matter of the transaction that an ordinary prudent person reasonably would believe to be material to a judgment as to whether or not to proceed with the transaction. The Covered Person may make a presentation at the Board or committee meeting.

**DISCLOSURE OF INTEREST AND CONFIDENTIALITY STATEMENT**

1. Name:  
Address:  
Profession, Business or Occupation:  
Principal Employer or Firm:  
Title or Position:
  
2. Identify any business relationships, transactions or contracts between the Foundation and yourself individually or through business, investment or family relationships, in which you have a direct or indirect interest.
  
3. Identify and list any other activities in which you are engaged that may constitute a Covered Person's Conflicting Interest Transaction as to the Foundation.
  
4. Identify the monetary value to you resulting from the relationships, transactions, contracts, or activities listed in response to paragraphs 2 and 3 above.

By the execution of this Disclosure and Interest and Confidentiality Statement, I hereby certify that I have received and read a copy of the Conflict and Disclosure of Interest Policy (the "Policy") of the University of Mississippi Foundation ("the "Foundation) and that I will abide by its terms; to the best of my knowledge, the foregoing information is complete and accurate; and I will promptly report to the Chairman of the Foundation any circumstance in the future that may cause the information provided herein to be incomplete or inaccurate. All capitalized terms not defined herein shall have the meaning ascribed thereto in the Policy.

**CONFIDENTIALITY STATEMENT**

I hereby acknowledge that, as a Director of the Foundation, I have access to non-public information of the Foundation, including, but not limited to, information relating to the Foundation's finances, business plans, policies, and other proprietary information (collectively, "Confidential Information"). I further acknowledge that the Foundation at all times is and will remain the owner of the Confidential Information, and I hereby agree, consistent with the manner in which the Foundation protects its Confidential Information, to preserve the confidentiality of all such Confidential Information. I hereby certify that I have not used the Confidential Information for my own benefit and that I have not disclosed Confidential Information to any third party without the written consent of the Foundation. Further, I hereby agree that I will not use the Confidential Information for my own benefit and that I will not disclose Confidential Information to any third party without the prior written consent of the Foundation.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**DISCLOSURE OF INTEREST AND CONFIDENTIALITY STATEMENT**

1. Name:  
Address:  
Profession, Business or Occupation:  
Principal Employer or Firm:  
Title or Position:
2. Identify any business relationships, transactions or contracts between the Foundation and yourself or any Related Person in which you or such Related Person have a substantial interest.
3. Identify and list any other activities in which you or a Related Person are engaged that may constitute a Covered Person's Conflicting Interest Transaction as to the Foundation.
4. Identify the monetary value to you or any Related Person resulting from the relationships, transactions, contracts, or activities listed in response to paragraphs 2 and 3 above.

By the execution of this Disclosure and Interest and Confidentiality Statement, I hereby certify that I have received and read a copy of the Conflict and Disclosure of Interest Policy (the "Policy") of the University of Mississippi Foundation ("the "Foundation) and that I will abide by its terms; to the best of my knowledge, the foregoing information is complete and accurate; and I will promptly report to the Chairman of the Foundation any circumstance in the future that may cause the information provided herein to be incomplete or inaccurate. All capitalized terms not defined herein shall have the meaning ascribed thereto in the Policy.

**CONFIDENTIALITY STATEMENT**

I hereby acknowledge that, as a Trustee of the Foundation, I have access to non-public information of the Foundation, including, but not limited to, information relating to the Foundation's finances, business plans, policies, and other proprietary information (collectively, "Confidential Information"). I further acknowledge that the Foundation at all times is and will remain the owner of the Confidential Information, and I hereby agree, consistent with the manner in which the Foundation protects its Confidential Information, to preserve the confidentiality of all such Confidential Information. I hereby certify that I have not used the Confidential Information for my own or any Related Person's benefit and that I have not disclosed Confidential Information to any third party without the written consent of the Foundation. Further, I hereby agree that I will not use the Confidential Information for my own or any Related Person's benefits that I will not disclose Confidential Information to any third party without the prior written consent of the Foundation.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_