

# ATHABASCA UNIVERSITY

## CODE OF CONDUCT AND CONFLICT OF INTEREST GUIDELINES FOR THE BOARD OF GOVERNORS

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## CODE OF CONDUCT AND CONFLICT OF INTEREST GUIDELINES FOR THE BOARD OF GOVERNORS

### 1. Introduction and Purpose

Athabasca University (the “University”) is dedicated to the removal of barriers that restrict access to, and success in, university studies and to increasing equality of educational opportunity for adult learners worldwide. We are committed to excellence in teaching, research, and scholarship and to being of service to the general public. Athabasca University, the open University of Canada, erodes obstacles to education and transforms lives and communities as a different kind of university – one that’s open, flexible, and everywhere.

The University’s vision is supported by its commitment to the following core values:

- Integrity
- Community
- Adaptability
- Respect
- Excellence

The Board of Governors of Athabasca University is committed to the highest standards of ethics, integrity and responsible stewardship. This *Code of Conduct and Conflict of Interest Guidelines for the Board of Governors* (the “Code”) defines the standards of conduct expected of all Board members with respect to ethical conduct and Conflicts of Interest when carrying out responsibilities and duties for or on behalf of the Board.

### 2. Application

This Code applies to all Members, including all committee members and the President when acting as a Member. When the President is acting in their capacity as an employee, or as a senior official or designated senior official under the *Conflicts of Interest Act*, the *Code of Conduct for Members of the University Community* applies.

The provisions of this Code are in addition to, and not in substitution for, any obligations imposed on a Member by statute or common law. Compliance with the Code does not otherwise relieve a Member from any obligations under the law.

Athabasca University’s reputation for honesty and integrity among its stakeholders is key to its success. In conducting University business, Members must respect and comply with the laws and regulations of Alberta and Canada and other jurisdictions in which the University conducts business.

Upon being appointed or elected to the Board, and annually thereafter, each Member must complete an Acknowledgement and Agreement form acknowledging and agreeing that he or she has received a copy of the Code, will conscientiously and in good faith observe the provisions of the Code, and that a breach of the Code may result in remedial action up to and including a request for resignation or a recommendation for removal from the Board.

### 3. Interpretation and Definitions

In this Code,

- a. **"Board"** means the Board of Governors of Athabasca University.
- b. **"Board Chair"** means the individual appointed as Chair of the Board. The Chair is the "chair" of the University for the purposes of the *Conflicts of Interest Act*, as that term is defined at section 23.92(1)(a) therein, and is a "senior official" for the purposes of the *Conflicts of Interest Act*, as that term is defined at section 23.92(1)(k) therein; as such, the Board Chair must comply with all requirements of senior officials set out in the *Conflicts of Interest Act*.
- c. **"Close Relative"** means a spouse, adult interdependent partner (as defined in the *Adult Interdependent Relationship Act*), parent, brother, sister, child by birth or adoption, aunt and uncle of a Member, and the child or spouse of any of them.
- d. **"Code"** means this Code of Conduct, as amended, supplemented, revised or restated from time to time.
- e. **"Code Administrator"** means the Board Chair. In the event of an allegation that the Board Chair has breached the Code, or where the Board Chair has a real or apparent conflict of interest, or where the Board Chair would otherwise be inappropriate to act in the circumstances as the Code Administrator, the Code Administrator will be the Board Governance Committee Chair.
- f. **"Conflict of Interest"** is divided into and includes each of the following categories:
  - i. An **actual conflict of interest** refers to a situation where a Member exercises a power or performs a duty or responsibility, and in so doing, there is the opportunity to further his or her Private Interest, or there is a conflict with the Member's Private Duty;
  - ii. A **potential conflict of interest** refers to a situation where a Private Interest or Private Duty of a Member could influence the exercise of the Member's power or performance of his or her duties or responsibilities as a Member; and
  - iii. A **perceived conflict of interest** refers to a situation where informed people may reasonably hold the apprehension that a conflict of interest exists on the part of a Member in relation to a Private Interest or Private Duty.
- g. **"Conflict of Interest Advisor"** means the Conflict of Interest Advisor appointed by the Board and described in Section 6.
- h. **"Corporation"** means any incorporated association, no matter where or how constituted or incorporated, whether a business or not-for-profit corporation, but not a partnership, trust or estate.
- i. **"Member"** means a member of the Board, a member of a Board committee, or both of them.
- j. **"President"** means the individual as constituted in the *Post-secondary Learning Act* and the *Athabasca University Regulation* and appointed by the Board to serve as President, Interim President, or Acting President of the University. The President is the "chief executive officer" of the University as well as a "senior official" and a "designated senior official" for the purposes of the *Conflicts of Interest Act* at sections 23.92(1)(b), 23.92(1)(k) and 23.92(1)(d) (respectively) and as designated by Order in Council 085/2018 of the Lieutenant Governor in Council of

Alberta.

- k. **"Private Duty"** means a duty that a Member owes to someone other than the University.
- l. **"Private Interest"** means a pecuniary or economic interest or advantage and includes any real or tangible benefit that personally benefits the Member, his or her associate, or a Related Person to the Member.
- m. **"Related Person"** means:
  - i. a Close Relative;
  - ii. a Corporation of which the Member or Close Relative of the Member:
    - A. is a director or officer; or
    - B. has direct or indirect material ownership, control, or direction of securities:
  - iii. a partnership of which the Member or a Close Relative of the Member is a partner, other than a limited partnership in which any such person is a limited partner;
  - iv. a trust or estate in which the Member or a Close Relative of the Member serves as a trustee or in a similar capacity or has a beneficial interest.
- n. **"University Secretary"** means the individual holding the position of University Secretary and acting as secretary to the Board.
- o. **"University"** means Athabasca University.

## 4. Standards of Behaviour

### 4.1 Duties

The Board is entrusted with the management, administration and control of the property, revenue, business and affairs of the University.

Members' duties are set out in this Code, the *Post-secondary Learning Act* and the common law. Taken together, the fundamental duties of Members include the following:

- a. **Fiduciary Duty:** The *Post-secondary Learning Act* requires Members to act honestly and in good faith in serving the best interests of the University. In placing the University's interests ahead of their own personal interests, each Member must:
  - be honest in his or her dealing with the University and others on behalf of the University;
  - disclose to the Board any personal interests that he or she holds that may conflict with the interests of the University in accordance with the requirements set out in this Code;
  - remain impartial and loyal to the best interests of the University and not act as a delegate or representative of any interest, stakeholder, or group that may conflict with the University;
  - maintain the confidentiality of information submitted to the Member in confidence, and in accordance with the requirements set out in this Code and any applicable legislation and University policies; and
  - respect the Board and Board decisions and not undermine any decision of the Board, regardless of whether the Member agrees with or voted for the decision.

- b. Duty of Care:** Members must exercise the degree of care, skill, and diligence reasonably expected from a person having or representing to have his or her knowledge and experience.
- c. Duty of Knowledge:** Members must be familiar with and generally knowledgeable about:
  - the University's mandate, goals, objectives, and operations;
  - the community, business and political environment within which the University operates;
  - legislation applicable to the University and Members; and
  - the current governance policies and practices of the University.
- d. Duty of Compliance:** Members must comply with all applicable laws and with policies applicable to Members, including this Code.
- e. Duty to Disclose:** Members must disclose information within their knowledge that is or may be of significance to University interests or that otherwise may conflict with University interests.

## 4.2 Expectations & Prohibitions

Members owe a duty to the University to advance its legitimate interests when the opportunity to do so arises.

In fulfilling their responsibilities and duties, Members are expected to:

- advance and uphold the mission, vision and values of the University;
- act as a responsible steward of University resources, in a manner consistent with the trust and confidence placed in the Board and that will bear the closest public scrutiny;
- act in a manner consistent with the general spirit and intent of the Code;
- attend all meetings of the Board and meetings of Board committees of which they are a member;
- devote the necessary time and attention required to prepare for meetings of the Board and Board committees;
- participate fully and frankly in the deliberations and discussions of the Board and Board committees;
- act in a manner which is courteous of others, including to treat others with respect and dignity;
- avoid any situation that impairs or has the potential to impair the Member's independence or impartiality in performing the duties of a Member or would otherwise cause, or have the potential to cause, damage to the University or its reputation;
- acknowledge that the Board Chair is the only official spokesperson of the Board; and
- act consistent with the Board's protocols on Board communications and public comment.

Members are prohibited from:

- acting in self interest or furthering their private interests by virtue of their position;
- taking for themselves opportunities that properly belong to the University or are discovered through the use of the University's property, information or position;
- using the University's property, information or position for personal gain; and

- competing with University interests.

### **4.3 Protection and Proper Use of University's Assets**

Theft, carelessness and waste have a direct impact on the University. Any suspected incidents of fraud or theft should be immediately reported to the Board Chair for investigation.

The University's assets may only be used for University purposes and never for illegal purposes. Members have an obligation to protect the University's assets, including proprietary information. They have the obligation to preserve proprietary information and protect assets even after leaving the Board. The Board must ensure there are appropriate safeguards and policies in place to ensure the assets are protected.

Proprietary information includes any information that is not generally known to the public and that may have commercial or competitive value. Examples of proprietary information are intellectual property, operating and marketing plans, and student and employee information.

### **4.4 Fair Dealing**

Members must deal fairly with the University's stakeholders. Members must not take unfair advantage of anyone through illegal conduct, manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair-dealing practice.

### **4.5 Special Obligations of the Board Chair**

In addition to their obligations owed as Members, the Board Chair:

- a. Must not take part in a decision in the course of carrying out their office or powers knowing that the decision might further their own private interest, the private interest of their minor or adult child, or the private interest of any person directly associated with them, pursuant to section 23.925(1) of the *Conflicts of Interest Act*;
- b. Must not use their office or powers to influence or to seek to influence a decision to be made by or on behalf of the Crown or a public agency to further their own private interest, the private interest of their minor child, or the private interest of any person directly associated with them, or to improperly further any other person's private interest, pursuant to section 23.925(2) of the *Conflicts of Interest Act*;
- c. Must not use or communicate information not available to the general public that was gained by them in the course of carrying out their office or powers to further or seek to further a private interest of their own, or any other person's private interest, pursuant to section 23.925(3) of the *Conflicts of Interest Act*; and
- d. Must not fail to appropriately and adequately disclose an actual, potential, or perceived Conflict of Interest in the manner specified in this Code, pursuant to section 23.925(4) of the *Conflicts of Interest Act*.

## 5. Confidential Information

In the course of performing their duties, Members will have access to confidential information or other non-public information relating to the University or its affairs, and may also learn of other confidential or non-public information relating to third parties.

Members must maintain and take all reasonable steps to protect and safeguard the confidentiality of all such confidential and non-public information and must not disclose or release any such confidential or non-public information unless authorized by the Board, or required by law to do so.

Proceedings in closed and *in-camera* sessions of the Board and Board committees are confidential. Members must comply with all applicable policies that may restrict circulation and disclosure of materials prepared for such sessions, and Members must hold in confidence all views and opinions expressed by other Members or individuals in such sessions.

## 6. Conflicts of Interest

### 6.1 Conflict of Interest Advisor

The Board appoints an external Conflict of Interest Advisor (the “Advisor”) to provide the Board with confidential, objective, expert advice about Conflicts of Interest for the purposes set out in this Code.

The terms of reference for the Advisor are attached as Schedule A.

### 6.2 Defined

A Conflict of Interest may arise in a situation in which a Private Interest or Private Duty of a Member conflicts, potentially conflicts, or appears to conflict with or influence the objective exercise or proper discharge of the Member’s duties to the University, including his or her duty to act in the best interests of the University.

Conflicts of Interest are generally divided into the following categories.

- An **actual conflict of interest** refers to a situation where a Member exercises a power or performs a duty or responsibility, and in so doing, there is the opportunity to further his or her Private Interest, or there is a conflict with the Member’s Private Duty;
- A **potential conflict of interest** refers to a situation where a Private Interest or Private Duty of a Member could influence the exercise of the Member’s power or performance of his or her duties or responsibilities; and
- A **perceived conflict of interest** refers to a situation where informed people might reasonably hold the apprehension that a conflict of interest exists on the part of a Member in relation to a Private Interest or Private Duty.

### 6.3 Conflict of Interest Situations

Some Conflicts of Interest are clear, whereas others are less obvious. The following are provided as a non-exhaustive list of examples of Conflicts of Interest:

- influencing the purchase of goods or services for the University from a company or firm in which a Member or a Related Person has financial interest;
- using the position as Member to obtain employment with the University for the Member or a Related Person;
- using confidential or non-public information obtained as a Member for any purpose other than in the University's interest;
- serving on the board of another organization and being in possession of information confidential to the University that is of importance to a matter being considered by the board of the other organization;
- participating in or attempting to influence the appointment, hiring, promotion or evaluation of a Close Relative to positions within the University;
- using the University's resources or facilities for a Member's personal benefit or the benefit of Related Persons;
- attempting to influence the outcome of a specific program or facility at the University to which the Member or a Related Person has made a significant financial contribution; and
- any employment, association or activity, including political activity, that is, or may reasonably be seen to be, incompatible with the Member's duties, or otherwise be seen to impair their ability to discharge the Member's duties in an impartial fashion, or cast doubt on the integrity or impartiality of the Board or the University.

### 6.4 Concurrent Activities

Members involved in a concurrent appointment, business, undertaking, employment, or self-employment (collectively "concurrent activity") other than their position with the University are in a situation of potential conflict and therefore must report the activity in accordance with the Conflicts of Interest procedures in section 7 of this Code so that the activity may be assessed and, if appropriate, managed. The Board Chair must report any concurrent activity in writing directly to the Ethics Commissioner of Alberta.

Members holding a position with the Board are encouraged to consult with the Code Administrator before accepting or beginning any concurrent activity for a preliminary and non-binding opinion whether the activity may be a potential conflict or whether such a conflict may be manageable or not. Members may pursue concurrent activities without the prior approval of the University, provided the activity does not create a Conflict of Interest, but must promptly notify the Code Administrator (or in the case of the Board Chair, the Ethics Commissioner) upon engagement in the activity.

The requirement to report and have approved concurrent activity does not apply to appointments for which the Member will not receive nor be entitled to receive remuneration, unless the appointment otherwise creates a Conflict of Interest.

## 6.5 Gifts and Events

Members must avoid creating an actual or perceived Conflict of Interest due to the acceptance of any gift or event invitation offered to them directly or indirectly as a result of their position or the performance of their duties with the Board.

The Code is not intended to preclude the acceptance of every gift or event invitation. A Member must use their discretion and ensure Conflicts of Interest are avoided when choosing whether or not to accept a gift or invitation which is offered.

If a gift or event invitation is offered to a spouse, adult interdependent partner or minor child of a Member, the same considerations apply as if the gift or invitation were given to the Member directly. Where a gift or invitation includes more than one ticket to an event, the total cost of all tickets received by the Member and their family are to be included in valuing the gift or event invitation.

### a. Gifts

Gifts offered by individuals or organizations who expect and receive nothing in return may not be an actual Conflict of Interest. However, a Member must recognize that acceptance may nonetheless create the perception of a Conflict of Interest. Before accepting any gift, the Member should consider any perceptions that might exist and must decline the gift if those perceptions cannot be reasonably resolved. Gifts of cash or cash equivalents must be declined.

Situations where Members personally contribute on a voluntary basis towards the purchase of a gift or donation to another individual or community organization, or for the purchase of a gift to a fellow Member or their family, is not considered activity giving rise to a Conflict of Interest.

Situations which are not expected to create an actual or apparent Conflict of Interest include where gifts are given as:

- appreciation for participation in an event or an academic research project;
- appreciation for service to the University;
- recognition as part of the University's formal service and performance awards;
- an award for winning a competition or contest;
- a prize drawn at random for attending an event;
- an expression of sympathy or celebration of a significant event or occasion;
- recognition of an accomplishment;
- an exchange between friends where unrelated to any position or duties performed for the University;
- an exchange of hospitality between persons doing business together; or
- an incident of protocol, social obligation or cultural practice.

Any gift permitted by this section is still subject to monetary limits. Gifts may be accepted by a Member without special approval where:

- (a) the total value of the gift does not exceed \$250; and

- (b) the total value of all gifts received by the Member from that offeror within a calendar year does not exceed \$500.

Gifts that are accepted without special approval but which exceed any maximum value specified in this Code must be returned as soon as practical to the offeror. If the gift cannot be returned, it will become property of the University and must be relinquished to the Code Administrator.

This section does not apply to gifts being accepted by a Member on behalf of the University.

**b. Events**

A Member may be invited to attend an event. Acceptance and attendance at such an event may not be an actual Conflict of Interest. However, a Member must recognize that acceptance and attendance may create the perception of a Conflict of Interest. Before accepting and attending any event, the Member should consider any perceptions that might exist and must decline the invitation if those perceptions cannot be reasonably resolved.

Where a Member is offered tickets to an event, but the offeror is not attending with the Member and is instead offering the tickets to do with as the Member pleases, the tickets are to be treated as a gift rather than an event invitation.

Situations which are not expected to create an actual or apparent Conflict of Interest include events, for example, where:

- the event is open to the general public (e.g., annual parades, small community BBQs, Calgary Stampede, Edmonton K-Days);
- attending the event is within the scope of duties or obligations normally accompanying the Member's position with the University; or
- the Member pays for their own costs of attendance (including registration fees, food, and beverages).

Any acceptance of an event invitation permitted by this section is still subject to monetary limits. Event invitations may be accepted by a Member without special approval where:

- a. If the invitation is being made to the Chair by a donor or friend of the University:
  - i. the total value of attending the event does not exceed \$1,000; and
  - ii. the total value of attending all event invitations attended by the Chair from that donor or friend of the University in a calendar year does not exceed \$2,000.
- b. For any other event:
  - i. the total value of attending the event does not exceed \$500; and

- ii. the total value of attending all event invitations attended by the Member from that offeror in a calendar year does not exceed \$500.
- c. Notwithstanding the above, if the event is a conference, seminar, or similar event that the Member has been invited to speak at or participate in (beyond making opening or closing remarks) that relates to their University responsibilities or major academic interests:
  - i. the total value of attending the event does not exceed \$8,000;
  - ii. the total value of attending all such event invitations made by that offeror does not exceed \$16,000 in a calendar year; and
  - iii. the total value of attending the event is not otherwise unreasonable in the circumstances.

Acceptance of invitations to, and attendance at, events which are sponsored by a charitable foundation, the Governor General of Canada, a provincial Lieutenant Governor, any Canadian federal, provincial, municipal, or regional government, or any member of any such government, a consul or ambassador of a foreign country, or a not-for-profit organization (provided the not-for-profit is not constituted to serve management, union or professional interests and does not have for-profit enterprises or representatives of for-profit enterprises as a majority of its members), are not subject to monetary limits.

Where a Member accepts an invitation and attends an event which exceeds a maximum value or is held to be unreasonable, and the Member did not have special approval, the amount by which the value of the event exceeded the maximum value or was unreasonable will become a debt owed to the University by the Member.

For the purposes of this Code, the value of an event includes all provided registration fees, food, beverages, accommodation, transportation and other costs directly related to attendance and participation.

**c. Guidance, Valuations and Special Approvals**

A Member who is uncertain as to whether the acceptance of a gift or event invitation may create a Conflict of Interest is encouraged to seek initial guidance from the Code Administrator.

If the valuation or reasonability of any gift or event attendance is in dispute, it will be as determined in the sole discretion of the Code Administrator.

Where a Member is offered a gift or invited to an event which may exceed a maximum value, or where an event may be construed as unreasonable in the circumstances, the Member may apply to the Code Administrator in writing to seek special approval to accept the gift or event invitation. Special approvals will only be granted if acceptance would not create an unmanageable Conflict of Interest and would not otherwise be contrary to the principles of this Code.

Upon receipt of a request for guidance, special approval, or the need to determine the valuation of a gift or an event, the Code Administrator will reply in writing; having acted reasonably, considered the best interests of the University, and ensured there are no Conflicts of Interest in providing guidance or making the determination.

## 7. Protocol for Dealing with Conflicts of Interest

### 7.1 General

The Board Chair is primarily responsible to interpret and apply the Code's provisions on Conflict of Interest on the Board's behalf, as set out in this Code. The Board Chair therefore acts as Code Administrator. In circumstances where it would be inappropriate for the Board Chair to act as Code Administrator, the Board Governance Committee Chair acts as Code Administrator.

### 7.2 Duty to Avoid or Manage

Members are responsible to recognize Conflicts of Interest and to avoid or manage them in a manner that is consistent with the Member's duty to act in the best interests of the University and in accordance with this Code.

Members should be guided by the principle that preserving the appearance of integrity is as important as actual integrity.

### 7.3 Conflict Disclosure Statement

Every Member must complete a Conflict Disclosure Statement ("Disclosure Statement") upon his or her initial appointment and update the Disclosure Statement at any time he or she becomes aware of new or additional relevant information, or as required by changed circumstances.

The Conflict of Interest Advisor will meet with Members upon their appointment or election, and thereafter as required by changed circumstances, to provide guidance and assistance in completing or updating Disclosure Statements.

Disclosure Statements are filed with the University Secretary, who will retain the records at the Board's office and provide copies to the Board Chair and the Conflict of Interest Advisor.

Where a Member has disclosed a conflict in the Disclosure Statement, the disclosure, and plans to manage any actual, potential or apparent Conflict of Interest, will be reviewed and approved by the Code Administrator and reported to the Board at the next Board meeting.

### 7.4 Ongoing Disclosure

In addition to filing a Disclosure Statement, all Members have an ongoing duty to disclose any Conflict of Interest, whether it is an actual, potential, or perceived conflict, as soon as the issue arises and before the Board or its committees deal with any matter at issue that may be related to the Conflict of Interest.

Members must make their disclosure of a Conflict of Interest to the Code Administrator.

### 7.5 Raising Conflict of Interest Issues

It is the responsibility of other Members who are aware of a Conflict of Interest on the part of a fellow

Member to raise the matter for clarification, first with the Member in question and, if unresolved, with the Code Administrator.

A Member, or any member of the University community, who believes another Member may have a Conflict of Interest may raise the matter in writing to the Code Administrator.

Where any individual raising a Conflict of Interest or possible Conflict of Interest is not comfortable raising it directly with either the Code Administrator, he or she may disclose the circumstances in writing to the Conflict of Interest Advisor. Where the Conflict of Interest Advisor is of the view that the circumstances giving rise to a possible Conflict of Interest, the Conflict of Interest Advisor will encourage the individual to report the circumstances to the Code Administrator as appropriate and will offer to provide assistance by reporting the circumstances on the person's behalf or by any other means the Conflict of Interest Advisor considers appropriate in the circumstances.

Where the individual indicates an intention to not report the circumstances to the Code Administrator, and the Conflict of Interest Advisor is of the view that there is a Conflict of Interest that is not being appropriately managed, the Conflict of Interest Advisor will advise the individual of this conclusion and that the Conflict of Interest Advisor intends to raise the disclosed circumstances to the Code Administrator, as appropriate. The Conflict of Interest Advisor may recommend an appropriate course of action, up to and including, that the Code Administrator conduct an investigation into the disclosed circumstances.

Repeatedly raising allegations of Conflicts of Interest in bad faith is a violation of the Code and may be subject to discipline in accordance with section 8 of this Code and any other relevant provisions.

## **7.6 Resolving Conflict of Interest Issues**

Where a Conflict of Interest is identified to the Code Administrator, the following steps will be taken:

- (a) In straight-forward cases, the Code Administrator will review the circumstances and provide the Member potentially in a Conflict of Interest with advice on whether a Conflict of Interest exists and, if so, the steps required to manage the Conflict of Interest. In all such cases, the Code Administrator will inform the Governance Committee of the issue raised and how it was resolved.
- (b) In cases where it is not clear whether there is a Conflict of Interest or how it should be handled, the matter will be referred to the Governance Committee who will review the circumstances and determine by majority vote if a Conflict of Interest exists and, if so, the steps required to manage the Conflict of Interest. If the Member potentially in a Conflict of Interest is a member of the Governance Committee, he or she shall be absent from the discussion and shall not vote on the issue.
- (c) The Code Administrator will advise the Board of each case and how the situation has been addressed.

Throughout the process, the Code Administrator may seek advice from the Conflict of Interest Advisor.

## 7.7 Conflicts Related to Board and Committee Agenda Items

Every Member must declare a Conflict of Interest in respect of any Board or Board committee agenda item as soon as becoming aware of it, whether or not such Conflict of Interest has previously been disclosed in the Member's Disclosure Statement.

The University Secretary will monitor the subject matter of the Board or Board committee agendas for possible Conflicts of Interest for individual Members. If the University Secretary has reason to believe that an agenda item could result in a Conflict of Interest for a Member, the University Secretary will alert the Member, and make reasonable efforts to discuss the issue with the Member before circulating information to that Member so that Member can make a disclosure accordingly. If the matter is scheduled for a closed or *in camera* session, the University Secretary will withhold the information from all Members in a Conflict of Interest in respect of the agenda item.

Where a Member has a Conflict of Interest in respect of an agenda item, the Member:

- (a) shall be absented from any discussions or vote concerning such matter that may occur during a closed or *in camera* session of the meeting;
- (b) shall not participate in the discussion of, or vote concerning, such matter even if it occurs during an open session of the meeting;
- (c) even if otherwise excluded from participation or attendance due to a Conflict of Interest, may be specifically called upon by the Board Chair to attend and answer questions put in debate through the Board Chair, or committee Chair, as applicable, before again withdrawing from making comment or, in the case of a closed or *in camera* meeting, from the meeting place; and
- (d) shall be counted in the quorum for a meeting at which the Member attends, notwithstanding that the Member is absented while any matter is considered in respect of which a Conflict of Interest exists for that Member.

If a Member discloses a Conflict of Interest, a summary of the disclosure will be recorded in the minutes of the meeting, as well as any restrictions on the Member's participation.

If a Member has made a disclosure in respect of a Conflict of Interest related to certain subject matter, the Member will be provided with only that portion of the minutes of the meeting that record the decision made respecting that subject matter but not that portion of the minutes that reflect the details of any discussion that took place, unless the minutes relate to an open session or are otherwise made publicly available.

Where a Conflict of Interest is discovered after consideration of a matter, the Conflict of Interest must be brought to the attention of the Board or committee, through the University Secretary, and appropriately recorded at the first opportunity. If the Board or committee determines that the Member's involvement has, or could be perceived to have, influenced the decision, the Board or committee must re-examine the matter and may rescind, vary or confirm its decision. The Board or committee may seek the advice of the Conflict of Interest Advisor on the appropriate course of action in such cases.

## **7.8 Confidentiality and Anonymity**

Except where disclosure of such information is authorized or is required by this Code or by law, any information disclosed by any person to the University pursuant to this Code will be held in confidence. The University will only make such information available to those persons who need to access the information to carry out their roles under this Code, or for the purposes of this Code.

The Board will not tolerate any retaliation, directly or indirectly, against any person who, honestly and in good faith, participates in a process under this Code.

The anonymity of a person who brings forward information pursuant to this Code will be maintained, except where permitted by that person or where disclosure of the person's identity is required by this Code or by law. However, information provided anonymously will not be acted upon unless the information can be substantiated based on other sources, documents or communications.

## **8. Reporting Non-Compliance and Responding to Breaches of the Code**

### **8.1 Reporting Non-Compliance**

Any person who has a reasonable and good faith belief that a Member has breached any part of this Code should make a written complaint to the Code Administrator. A person who makes a report will be protected from retaliation for such reporting.

### **8.2 Complaint Reporting, Investigations and Responses**

Upon receipt of a complaint, if the Code Administrator believes the complaint has merit, the Code Administrator will conduct an investigation and will notify the Member alleged to have breached the Code as to the nature of the allegation. The Code Administrator may contact any parties necessary for the purposes of investigating and making a final determination. Prior to the Code Administrator's final determination, the Member alleged to have breached the Code will be provided an opportunity to respond.

The Code Administrator will make the final determination in a written report. The Member will be informed that a determination has been made, provided with a summary of the final written report, and the Code Administrator, along with any other appropriate parties, will include a recommendation as to any disciplinary response necessary.

### **8.3 Responses to Breaches of the Code**

Members acknowledge that a breach of any term of the Code may subject them to sanction of the Board, including a request by the Code Administrator for the resignation of the Member or a referral by the Code Administrator of the matter to the Board to discuss and vote on any further action.

Based on the extent of the breach of the Code, the Board will determine an appropriate course of action. Such action may include, but is not limited to:

- issuing an oral or written reprimand to the Member;
- requesting the Member to take appropriate corrective action;
- requesting the Member to resign; and/or
- advising the Minister or the Lieutenant Governor in Council, as appropriate, that the Member is no longer capable of acting as a Member or fulfilling the duties of a Member, pursuant to the *Athabasca University Regulation*.

Any disciplinary action imposed will be commensurate with the seriousness of the breach, taking into account mitigating and aggravating factors, and will be addressed in accordance with any relevant legislation.

## 9. Administrative

### 9.1 University Secretary

The University Secretary is responsible for providing each Member, upon appointment or election, with:

- a copy of the Code;
- copies of any written materials with commentary or explanations of provisions of the Code;
- an Acknowledgement and Agreement form; and
- a Disclosure Statement form.

The University Secretary is also responsible for maintaining a current record of Disclosure Statements.

Upon a Member taking office, the Secretary is responsible for providing the Conflict of Interest Advisor with written notice of the name of the Member, the starting and ending dates of the Member's term of office, and the Member's current contact information. The University Secretary is also responsible for providing the Conflict of Interest Advisor with copies of the Disclosure Statements and the Acknowledgement and Agreement submitted by each Member.

The University Secretary is responsible to assist Members with Conflict of Interest issues by monitoring the subject matter of Board and Board committee agendas for potential conflicts of interest for individual Members; alerting a Member to business coming before the Board or a Board committee that might raise a Conflict of Interest for the Member; and withholding information as required by the circumstances.

### 9.2 Annual Reporting

Before January 31 in each year, the Conflict of Interest Advisor is responsible for making a written report to the Board Chair with an overview of the Advisor's activities, specific cases, and systemic issues during the immediately preceding calendar year, as provided for in the Terms of Reference.

Before April 30 in each year, the Board Chair is responsible for making a written report to the Board on the administration of the Code during the immediately preceding calendar year.

### 9.3 Notice Period and Amendments

The University may amend this Code from time to time, including, but not limited to:

- a. when necessary to comply with any direction of the Ethics Commissioner of Alberta; or
- b. when necessary to comply with any new or modified legislation.

Amendments made respecting any content relating to the content required by section 23.922 of the *Conflicts of Interest Act* will be made in accordance with that legislation and any other applicable legislation.

Changes to this Code will be made public on the University's website on or before April 30, 2019, after receiving approval from the Ethics Commissioner of Alberta pursuant to section 23.922 of the *Conflicts of Interest Act*. Following being made public, the University will observe a notice period through to August 31, 2019, where this Code will be publicly available for review but not yet implemented.

This Code will be implemented on September 1, 2019, at which time it will replace articles 6 and 7 of the General Bylaws of the Board (the "Bylaws"). Prior to implementation of the Code, articles 6 and 7 of the Bylaws remain in effect.

## THE GOVERNORS OF ATHABASCA UNIVERSITY

### TERMS OF REFERENCE FOR THE CONFLICT OF INTEREST ADVISOR

#### 1. Purpose

The Governors of Athabasca University (the “Board”) retains the services of an external advisor responsible for providing advice on the interpretation and application of the Code’s standards of conduct and guidelines on Conflict of Interest (the “Conflict of Interest Advisor or Advisor”).

The Conflict of Interest Advisor contributes to the good governance of the University and assists the Board in maintaining the highest standards of conduct, integrity and impartiality in decision-making.

#### 2. Appointment

The Conflict of Interest Advisor is appointed by the Board on the recommendation of the Board Governance Committee. The Advisor shall be appointed on such terms and conditions as the Board approves and serves at the pleasure of the Board.

The Advisor shall have the following qualifications while holding office:

- demonstrated understanding of law and ethics as they relate to Conflicts of Interest;
- membership in good standing of The Law Society of Alberta or a former judge of the Court of Appeal of Alberta, Supreme Court of Alberta, or Supreme Court of Canada;
- resident of Alberta;
- qualified to be a director of a Corporation in Alberta; and
- independent of any office of the University.

#### 3. Role and Responsibilities

The primary role of the Conflict of Interest Advisor is to provide the Board, its committees and Members with confidential, objective, external advice about conflicts of interest for the purposes provided for in the Code.

In addition, the Advisor will:

- meet with Members upon their appointment or election to discuss Conflicts of Interest generally and to specifically provide guidance in completing the Disclosure Statement;
- meet with each Member to update and review his or her disclosures for the purposes of the Code; and

- receive questions on potential Conflicts of Interest that may be submitted to him or her pursuant to the Code.

#### **4. Confidentiality**

The Conflict of Interest Advisor must sign a confidentiality agreement upon his or her appointment. The Conflict of Interest Advisor is expected to maintain confidentiality with respect to information disclosed to him or her in the course of performing his or her duties, including all information contained in a Disclosure Statement or otherwise provided to the Conflict of Interest Advisor, except that the Conflict of Interest Advisor may disclose such information:

- to those persons who need to have access to the information in order to carry out their roles under this Code, on a confidential basis, for the purposes set out in the Code;
- to the Information and Privacy Commissioner appointed under the *Alberta Freedom of Information and Protection of Privacy Act* if required and in accordance with the provisions of that Act; or
- pursuant to an order of the Information and Privacy Commissioner of Alberta or a court of competent jurisdiction.

#### **5. Reporting**

The Conflict of Interest Advisor will provide a report to the Board Chair as required, and before January 31 each year with an overview of the Conflict of Interest Advisor's activities, specific cases and systemic issues. The report will describe the number and general nature of matters brought to the Conflict of Interest Advisor's attention.

#### **6. Protocol in Respect of Conflict of Interest Advisor Conflicts**

Where the Conflict of Interest Advisor holds private interests, or occupies a position or office, which has the potential to place him or her in a Conflict of Interest or has the potential to otherwise compromise the integrity of the role, conduct or advice of the Conflict of Interest Advisor, the following shall apply:

- The Conflict of Interest Advisor will inform the Board Chair of the circumstances in question.
- The Board Chair will ensure that the Members are informed of the conflict.
- The Board Chair will arrange for alternate advice for the Members in relation to the specific matter.
- In all other respects, the Conflict of Interest Advisor's appointment will continue.

Schedule B - Acknowledgement and Agreement

**The GOVERNORS OF ATHABASCA UNIVERSITY  
Code of Conduct and Conflict of Interest for The Board of Governors (the "Code")**

**ACKNOWLEDGEMENT AND AGREEMENT**

To: The Governors of Athabasca University

And to: *Conflict of Interest Advisor*  
*University Secretary*

I, \_\_\_\_\_, acknowledge and agree that:

- 1) I have received a copy of the Code.
- 2) I will conscientiously and in good faith observe the provisions of the Code.
- 3) A breach of the Code may result in remedial action, up to and including a request for resignation or a recommendation for removal from the Board of Governors.

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

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Schedule C – Conflict Disclosure Statement

**The Governors of Athabasca University  
Code of Conduct and Conflict of Interest for The Board of Governors (the "Code")**

**CONFLICT DISCLOSURE**

To: *The Governors of Athabasca University*

And to: *Conflict of Interest Advisor  
University Secretary*

I, \_\_\_\_\_, certify, after due consideration, that to the best of my knowledge:

[select for each row]

- 1) I do not have any potential, actual or apparent Conflicts **True / False**
- 2) No Related Person of mine has any potential, actual or apparent Conflicts **True / False**
- 3) If I have selected "False" in either row above, a Conflict may exist for which the relevant people and circumstances are fully described below:

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