

# Conflict of Interest Policy

## **Article I Purpose**

The purpose of the conflict of interest policy is to protect this Not-for-Profit Corporation's (Organization) interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer, director or key employee of the Organization or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

## **Article II Definitions**

- 1) **Conflict of interest** – A financial interest is not necessarily a conflict of interest. A conflict of interest may exist in any related party transaction. However, a conflict of interest shall exist if, after an analysis of the facts and circumstances, it is determined that a related party transaction would likely result in a violation of the “private inurement” doctrine, or would likely result in an “excess benefit transaction” as those terms are generally understood, irrespective of whether or not this organization is otherwise subject to such applicable doctrines as a tax-exempt entity.
- 2) **Compensation** – Shall include direct and indirect remuneration as well as gifts or favors that are not insubstantial.
- 3) **Director** - means any member of the governing board of a corporation, whether designated as director, trustee, manager, governor, or by any other title. The term "board" means "board of directors" or any other body constituting a "governing board" as defined in this policy.
- 4) **Entire board** - means the total number of directors entitled to vote which the Organization would have if there were no vacancies. If the by-laws of the Organization provide that the board shall consist of a fixed number of directors, then the "entire board" shall consist of that number of directors. If the by-laws of the organization provide that the board may consist of a range between a minimum and maximum number of directors, then the "entire board" shall consist of the number of directors within such range that were elected or appointed as of the most recently held election of directors, as well as any Directors whose terms have not yet expired.
- 5) **Financial interest** - A person has a financial interest if the person has, directly or indirectly, through business, investment, or relatives:
  - a) An ownership or investment interest in any entity with which the Organization or its affiliate has a transaction or arrangement,
  - b) A compensation arrangement with the Organization or its affiliate or with any entity or individual with which the Organization has a transaction or arrangement, or
  - c) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization or its affiliate is negotiating a transaction or arrangement.

- 6) **Governing board** - means the body responsible for the management of a corporation or of an institutional fund.
- 7) **Independent director** - is a director who:
  - a) Is not and has not for the past 3 years been an employee of the Organization or its affiliate, and does not have a relative who has been a key employee for the same.
  - b) Has not received and does not have a relative who has received, in the past 3 years more than \$10K in direct compensation from the Organization or its affiliate.
  - c) Is not a current employee or does not have a substantial financial interest in, nor a relative who is a current officer or has such interest, in any entity that has made or received payments (not including charitable contributions) with the Organization or its affiliate in the last 3 years exceeding the lesser of \$25K or 2% of the consolidated gross revenues. For purposes of this definition the term "payments" does not include charitable contributions or dues or payments for services related to the charitable purposes of the Corporation.
- 8) **Interested person** - Any director, principal officer, key employee, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined herein.
- 9) **Key employee** - means any person who is in a position to exercise substantial influence over the affairs of the corporation.
- 10) **Related party** - means
  - a) Officer, as defined by statute;
  - b) Director, as defined by statute;
  - c) Key Employee, as defined by statute;
  - d) Relative, as defined by statute, of an Officer, Director, Key Employee; partnership or professional corporation where an Officer, Director or Key Employee, or a Relative thereof, directly or indirectly, has an ownership interest in excess of five percent (5%); or
  - e) entity where an Officer, Director or Key Employee, or a Relative thereof, directly or indirectly, holds a thirty-five percent (35%), or greater, ownership or beneficial interest.
- 11) **Related party transaction** - means any transaction, agreement or any other arrangement in which a related party has a financial interest and in which the Organization or any affiliate of the Organization is a participant.
- 12) **Relative** - means a person's (i) spouse, ancestors, brothers and sisters (whether whole or half-blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses or domestic partners of his or her brothers, sisters, children, grandchildren, and great-grandchildren.

### **Article III Procedures**

- 1) **Audit Committee**
  - a) If the Organization has gross revenues in excess of \$500,000 in any given fiscal year from 2014 to 2017 (or in excess of \$750,000 thereafter), it shall be required to establish an Audit Committee comprised solely of at least 3 independent directors.
- 2) **Duty to Disclose**

- a) In connection with any actual or possible conflict of interest, an interested person must disclose the existence of a financial interest and be given the opportunity to disclose all material facts to the directors and members of any appropriate committee with governing board delegated powers considering the proposed transaction or arrangement.
- b) If the organization has an audit committee, the potential conflict of interest should be disclosed to such audit committee; if no audit committee is established, then the disclosure shall be to the governing board. Nothing herein shall preclude an impromptu disclosure during the course of a meeting of the board, even if the Organization does have an audit committee.

### **3) Prohibition Against Influence and Determining Whether a Conflict of Interest Exists**

- a) All persons with a potential conflict of interest are prohibited from attempting to improperly influence the deliberation or voting on the matter giving rise to such conflict.
- b) Nothing herein shall prohibit the board or audit committee from requesting that a related party present information concerning a related party transaction at a board or committee meeting prior to the commencement of deliberations or voting on the issue.
- c) After disclosure of the financial interest and all material facts all interested persons shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

### **4) Procedures for Addressing the Conflict of Interest**

- a) An interested person may make a presentation at the governing board or committee meeting, but after the presentation, all interested persons shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- b) The chairperson of the governing board or committee may, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c) After exercising due diligence, the governing board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- d) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

### **5) Violations of the Conflicts of Interest Policy**

- a) If the governing board or committee has reasonable cause to believe an interested person has failed to disclose actual or possible conflicts of interest, it shall inform the

member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

- b) If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

#### **Article IV Records of Proceedings**

The minutes of the governing board and all committees with board delegated powers shall contain:

- a) The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.
- b) The names of the persons who were present for discussions relating to the transaction or arrangement, the general substance of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.
- c) Nothing herein requires a verbatim transcript of the disclosure, discussions, or deliberations; nor shall a record of the names of directors who specifically voted in favor or against any particular proposal be required. However, the request of any director who specifically asks that his or her particular vote be reflected in the minutes shall be honored.

#### **Article V Compensation**

- 1) A voting member of the governing board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
- 2) A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
- 3) No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

#### **Article VI Annual Statements**

- 1) Each director, principal officer, and key employee shall annually sign a statement which affirms such person:

- a) Has received a copy of the conflicts of interest policy,
  - b) Has read and understands the policy,
  - c) Has agreed to comply with the policy, and if applicable
  - d) Understands the Organization is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.
- 2) Prior to the initial election of any director, and annually thereafter, each director shall complete, sign and submit to the secretary of the Organization a written statement identifying, to the best of the director's knowledge, any entity of which such director is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or employee and with which the Organization has a relationship, and any transaction in which the Organization is a participant and in which the director might have a conflicting interest.
- 3) The secretary of the Organization shall make a copy of all completed statements available to the chair of the audit committee and/or the chair of the board.

**Article VII  
Periodic Reviews**

To ensure the Organization operates in a manner consistent with its purposes (and, if applicable, does not engage in activities that could jeopardize its tax-exempt status), periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a) Whether compensation arrangements and benefits are reasonable, based on competent survey information or comparable data, and the result of arm's length bargaining.
- b) Whether partnerships, joint ventures, and arrangements with other organizations conform to the Organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further the Organization's purposes and do not result in inurement, impermissible private benefit or in excess benefit transactions

**Article VIII  
Use of Outside Experts**

When conducting the periodic reviews as provided for in Article VII, the Organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

Adopted by Resolution of the Board on \_\_\_\_\_, 20\_\_

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By: \_\_\_\_\_, Secretary