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## **Conflict of Interest Policy (Short Example)**

This Conflict of Interest Policy of (insert the name of the “Organization”): (1) defines conflicts of interest; (2) identifies classes of individuals within the Organization covered by this policy; (3) facilitates disclosure of information that may help identify conflicts of interest; and (4) specifies procedures to be followed in managing conflicts of interest.

- 1. Definition of conflicts of interest.** A conflict of interest arises when a person in a position of authority over the Organization may benefit financially from a decision he or she could make in that capacity, including indirect benefits such as to family members or businesses with which the person is closely associated. This policy is focused upon material financial interest of, or benefit to, such persons.
- 2. Individuals covered.** Persons covered by this policy are the Organization’s officers, directors, chief employed executive and chief employed finance executive.
- 3. Facilitation of disclosure.** Persons covered by this policy will annually disclose or update to the Chairman of the Board of Directors on a form provided by the Organization their interests that could give rise to conflicts of interest, such as a list of family members, substantial business or investment holdings, and other transactions or affiliations with businesses and other organizations or those of family members.
- 4. Procedures to manage conflicts.** For each interest disclosed to the Chairman of the Board of Directors, the Chairman will determine whether to: (a) take no action; (b) assure full disclosure to the Board of Directors and other individuals covered by this policy; (c) ask the person to recuse from participation in related discussions or decisions within the Organization; or (d) ask the person to resign from his or her position in the Organization or, if the person refuses to resign, become subject to possible removal in accordance with the Organization’s removal procedures. The Organization’s chief employed executive and chief employed finance executive will monitor proposed or ongoing transactions for conflicts of interest and disclose them to the Chairman of the Board of Directors in order to deal with potential or actual conflicts, whether discovered before or after the transaction has occurred.

# Conflict of Interest Policy (Extended Example)

## Article I: Purpose

The purpose of the conflict of interest policy is to protect the \_\_\_\_\_ interest when it is contemplating entering in to a transaction or arrangement that might benefit the private interest of an officer or director of the \_\_\_\_\_ 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. Interested Person

Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

### 2. Financial Interest

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- a. An ownership or investment interest in any entity with which the \_\_\_\_\_ has a transaction or arrangement,
- b. A compensation arrangement with the \_\_\_\_\_ or with any entity or individual with which the \_\_\_\_\_ 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 \_\_\_\_\_ is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or factors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. (Under Article III, Section 2), a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

## **Article III: Procedures**

### **1. Duty to Disclose**

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

### **2. Determining Whether a Conflict of Interest Exits**

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she 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 member shall decide if a conflict of interest exists.

### **3. 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, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- b.** The chairperson of the governing board or committee shall, 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 \_\_\_\_\_ 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 \_\_\_\_\_ best interest, for its own benefit, and whether is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter in to the transaction or arrangement.

### **4. Violations of the Conflicts of Interest Policy**

- a.** If the governing board or committee has reasonable cause to believe a member 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, it shall take appropriate disciplinary and corrective action.

#### **Article of 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 and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

#### **Article V: Compensation**

- a.** A voting member of the governing board who receives compensation, directly or indirectly, from the \_\_\_\_\_ for services is precluded from voting on matters pertaining to that member's compensation.
- b.** A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the \_\_\_\_\_ for services is precluded from voting on matters pertaining to that member's compensation.
- c.** No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the \_\_\_\_\_, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

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

Each director, principal officer and member of a committee with governing board delegated powers 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
- d. Understands the \_\_\_\_\_ 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.

**Article VII: Periodic Reviews**

To ensure the \_\_\_\_\_ operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic review 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, and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the \_\_\_\_\_ written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

**Article VIII: Use of Outside Experts**

When conducting the periodic reviews as provided for in Article VII, the \_\_\_\_\_ 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.

## Whistleblower Policy

This Whistleblower Policy of (insert the name of the “Organization”): (1) encourages staff and volunteers to come forward with credible information on illegal practices or serious violations of adopted policies of the Organization; (2) specifies that the Organization will protect the person from retaliation; and (3) identifies where such information can be reported.

- 1. Encouragement of reporting.** The Organization encourages complaints, reports or inquiries about illegal practices or serious violations of the Organization’s policies, including illegal or improper conduct by the Organization itself, by its leadership, or by others on its behalf. Appropriate subjects to raise under this policy would include financial improprieties, accounting or audit matters, ethical violations, or other similar illegal or improper practices or policies. Other subjects on which the Organization has existing complaint mechanisms should be addressed under those mechanisms, such as raising matters of alleged discrimination or harassment via the Organization’s human resources channels, unless those channels are themselves implicated in the wrongdoing. This policy is not intended to provide a means of appeal from outcomes in those other mechanisms.
- 2. Protection from retaliation.** The Organization prohibits retaliation by or on behalf of the Organization against staff or volunteers for making good faith complaints, reports or inquiries under this policy or for participating in a review or investigation under this policy. This protection extends to those whose allegations are made in good faith but prove to be mistaken. The Organization reserves the right to discipline persons who make bad faith, knowingly false, or vexatious complaints, reports or inquiries or who otherwise abuse this policy.
- 3. Where to report.** Complaints, reports or inquiries may be made under this policy on a confidential or anonymous basis. They should describe in detail the specific facts demonstrating the bases for the complaints, reports or inquiries. They should be directed to the Organization’s chief employed executive or Chairman of the Board of Directors; if both of those persons are implicated in the complaint, report or inquiry, it should be directed to (SUPPLY TITLE). The Organization will conduct a prompt, discreet, and objective review or investigation. Staff or volunteers must recognize that the Organization may be unable to fully evaluate a vague or general complaint, report or inquiry that is made anonymously.

## Document Retention and Destruction Policy

This Document Retention and Destruction Policy of (insert the name of the “Organization”) identifies the record retention responsibilities of staff, volunteers, members of the Board of Directors, and outsiders for maintaining and documenting the storage and destruction of the Organization’s documents and records.

1. **Rules.** The Organization’s staff, volunteers, members of the Board of Directors and outsiders (i.e., independent contractors via agreements with them) are required to honor these rules: (a) paper or electronic documents indicated under the terms for retention below will be transferred and maintained by the Human Resources, Legal or Administrative staffs/departments or their equivalents; (b) all other paper documents will be destroyed after three years; (c) all other electronic documents will be deleted from all individual computers, data bases, networks, and back-up storage after one year; and (d) no paper or electronic documents will be destroyed or deleted if pertinent to any ongoing or anticipated government investigation or proceeding or private litigation.

2. **Terms for retention.**

a. Retain permanently:

*Governance records* – Charter and amendments, Bylaws, other organizational documents, governing board and board committee minutes.

*Tax records* – Filed state and federal tax returns/reports and supporting records, tax exemption determination letter and related correspondence, files related to tax audits.

*Intellectual property records* – Copyright and trademark registrations and samples of protected works.

*Financial records* – Audited financial statements, attorney contingent liability letters.

b. Retain for ten years:

*Pension and benefit records* -- Pension (ERISA) plan participant/beneficiary records, actuarial reports, related correspondence with government agencies, and supporting records.

*Government relations records* – State and federal lobbying and political contribution reports and supporting records.

c. Retain for three years:

*Employee/employment records* – Employee names, addresses, social security numbers, dates of birth, INS Form I-9, resume/application materials, job descriptions, dates of hire and termination/separation, evaluations, compensation information, promotions, transfers, disciplinary matters, time/payroll records, leave/comp time/FMLA, engagement and discharge correspondence, documentation of basis for independent contractor status

(retain for all current employees and independent contractors and for three years after departure of each individual).

*Lease, insurance, and contract/license records* – Software license agreements, vendor, hotel, and service agreements, independent contractor agreements, employment agreements, consultant agreements, and all other agreements (retain during the term of the agreement and for three years after the termination, expiration, non-renewal of each agreement).

d. Retain for one year:

*All other electronic records, documents and files* – Correspondence files, past budgets, bank statements, publications, employee manuals/policies and procedures, survey information.

3. **Exceptions.** Exceptions to these rules and terms for retention may be granted only by the Organization's chief staff executive or Chairman of the Board.

## Policy on the Process for Determining Compensation

This Policy on the Process for Determining Compensation of (insert the name of the “Organization”) applies to the compensation of the following persons employed by the Organization:

\_\_\_\_ The Organization’s **chief employed executive**<sup>1</sup> (CHECK IF APPLICABLE)

\_\_\_\_ Other **Officers**<sup>2</sup> or **Key Employees**<sup>3</sup> of the Organization by title: \_\_\_\_\_

\_\_\_\_\_  
(CHECK IF APPLICABLE; SUPPLY TITLES).

The process includes all of these elements: (1) review and approval by the board of directors or compensation committee of the Organization; (2) use of data as to comparable compensation; and (3) contemporaneous documentation and recordkeeping.

1. **Review and approval.** The compensation of the person is reviewed and approved by the board of directors or compensation committee of the Organization, provided that persons with conflicts of interest with respect to the compensation arrangement at issue are not involved in this review and approval.
2. **Use of data as to comparable compensation.** The compensation of the person is reviewed and approved using data as to comparable compensation for similarly qualified persons in functionally comparable positions at similarly situated organizations.
3. **Contemporaneous documentation and recordkeeping.** There is contemporaneous documentation and recordkeeping with respect to the deliberations and decisions regarding the compensation arrangement.

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<sup>1</sup> **Chief employed executive** – The CEO (i.e., Chief Executive Officer), executive director, or top management official (i.e., a person who has ultimate responsibility for implementing the decisions of the Organization’s governing body or for supervising the management, administration, or operations of the Organization).

<sup>2</sup> **Officer** – A person elected or appointed to manage the Organization’s daily operations, such as a president, vice-president, secretary or treasurer. The officers of the Organization are determined by reference to its organizing document, bylaws, or resolutions of its governing body, or as otherwise designated consistent with state law, but at a minimum include those officers required by applicable state law. Include as officers the Organization’s top management official and top financial official (the person who has ultimate responsibility for managing the Organization’s finances).

<sup>3</sup> **Key Employee** – An employee of the Organization who meets all three of the following tests: (a) \$150,000 Test: receives reportable compensation from the Organization and all related organizations in excess of \$150,000 for the year; (b) Responsibility Test: the employee: (i) has responsibility, powers, or influence over the Organization as a whole that is similar to those of officers, directors, or trustees; (ii) manages a discrete segment or activity of the Organization that represents 10% or more of the activities, assets, income, or expenses of the Organization, as compared to the Organization as a whole; or (iii) has or shares authority to control or determine 10% or more of the Organization’s capital expenditures, operating budget, or compensation for employees; and (c) Top 20 Test: is one of the 20 employees (that satisfy the \$150,000 Test and Responsibility Test) with the highest reportable compensation from the Organization and related organizations for the year.

## Joint Venture Policy

This Joint Venture Policy of (insert the name of the “Organization”) requires that the Organization evaluate its participation in joint venture arrangements under Federal tax law and take steps to safeguard the Organization’s exempt status with respect to such arrangements. It applies to any joint ownership or contractual arrangement through which there is an agreement to jointly undertake a specific business enterprise, investment, or exempt-purpose activity as further defined in this policy.

1. **Joint ventures or similar arrangements with taxable entities.** For purposes of this policy, a joint venture or similar arrangement (or a “venture or arrangement”) means any joint ownership or contractual arrangement through which there is an agreement to jointly undertake a specific business enterprise, investment, or exempt-purpose activity without regard to: (1) whether the Organization controls the venture or arrangement; (2) the legal structure of the venture or arrangement; or (3) whether the venture or arrangement is taxed as a partnership or as an association or corporation for federal income tax purposes. A venture or arrangement is disregarded if it meets both of the following conditions:
  - (a) 95% or more of the venture’s or arrangement’s income for its tax year ending within the Organization’s tax year is excluded from unrelated business income taxation [including but not limited to: (i) dividends, interest, and annuities; (ii) royalties; (iii) rent from real property and incidental related personal property except to the extent of debt-financing; and (iv) gains or losses from the sale of property]; and
  - (b) the primary purpose of the Organization’s contribution to, or investment or participation in, the venture or arrangement is the production of income or appreciation of property.
2. **Safeguards to ensure exempt status protection.** The Organization will: (a) negotiate in its transactions and arrangements with other members of the venture or arrangement such terms and safeguards adequate to ensure that the Organization’s exempt status is protected; and (b) take steps to safeguard the Organization’s exempt status with respect to the venture or arrangement. Some examples of safeguards include:
  - (i) control over the venture or arrangement sufficient to ensure that it furthers the exempt purpose of the organization;
  - (ii) requirements that the venture or arrangement gives priority to exempt purposes over maximizing profits for the other participants;
  - (iii) that the venture or arrangement not engage in activities that would jeopardize the Organization’s exemption; and
  - (iv) that all contracts entered into with the organization be on terms that are arm’s length or more favorable to the Organization.

## Sample Gift Acceptance Policy

*This policy is designed for small arts organizations. Organizations with planned giving programs should draft a more extensive policy in consultation with legal counsel.*

*Sample policy language can streamline the policy adoption process and is a good starting point. But it is never a good idea to simply insert your organization's name and present the document to the board for approval. The policy **MUST** be discussed and tailored to reflect your organization's culture and to conform to your other policies.*

*This sample policy is distributed with the understanding that the originator is not engaged in rendering legal or accounting counsel. We urge you to seek professional services to address your specific concerns.*

[Organization] relies on charitable contributions to fulfill its mission. While [Organization] prefers unrestricted gifts, it recognizes and encourages appropriate collaborations with a variety of stakeholders, including donors, which ensure careful control of the content and integrity of its programs and fiscal responsibility.

[Organization] will encourage donors to seek their own legal or tax counsel before making a gift.

[Organization] accepts gifts of cash and marketable securities and, at the discretion of the Board of Directors, remainder and lead interests in trusts, real estate, closely held securities, tangible items, retirement plans through bequests or beneficiary designation and life insurance. Tangible items offered to [Organization] may be accepted if they can be readily sold or if they are of "related use." [Organization] will clarify with the donor under what circumstances, if any, it will pay for legal or professional fees with respect to completing a gift.

[Organization] reserves the right to refuse any gift that it believes is too restrictive in purpose or not in its best interest. The acceptance of a questionable gift or the decision to fulfill a questionable request from a donor will be brought to the board of directors. The board's discussion will be guided by consistency with our mission and preservation of our goodwill in the community.