

# SAMPLE CONFLICT OF INTEREST POLICY

## ARTICLE I

### PURPOSE

It is in the best interest of the XYZ Organization to be aware of and properly manage all conflicts of interest, as well as – to the extent possible – any appearances of a conflict of interest, so as to protect the organization’s reputation and tax-exempt status. Therefore, this conflict of interest policy is designed to help directors, officers, committee members with governing board delegated powers and any other interested persons of the XYZ Organization, including volunteers, identify situations that present potential conflicts of interest and to provide the Organization with a procedure to appropriately manage such conflicts in accordance with legal requirements and the goals of accountability and transparency.

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 conflict of interest exists when an interested person (see Article II, Section 2 below) has a personal interest that conflicts with the interest of the XYZ Organization. This may be financial (see Article II, Section 3 below) or involve a duality of loyalty (see Article II, Section 4).

#### 2. INTERESTED PERSON

An interested person is any director, principal officer, or member of a XYZ committee with governing board delegated powers, or a major donor to XYZ Organization or anyone else who is in a position of control over XYZ Organization or who has a direct or indirect personal interest – either financial or as a result of dual loyalty as defined below.

#### 3. FINANCIAL INTEREST

A person has a financial interest if the person has, directly or indirectly, through business, investment, family or legal guardianship, including custodian or other legal representative:

- a. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement,
- b. A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement,
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement, or
- d. An interest in a business, enterprise or other nonprofit that competes with the Organization.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial or could be construed as an intention to influence the interested person(s).

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.

#### 4. DUAL LOYALTY

Conflict can arise in situations in which a person may have divided loyalties. An example is when a person is involved in two or more organizations. Often, time and fundraising and/or advocacy efforts might be diverted from the Organization to the other organization(s), or materials or confidential information from the Organization could be shared with the other organization(s) to the detriment of XYZ.

#### 5. PRIVATE INUREMENT

Private inurement is when an interested person benefits from his or her position with an organization. This can result in fines levied on both those who approved the arrangement and the organization. In some cases the organization may lose its nonprofit status as a result.

#### 6. EXCESS BENEFIT

Excess benefit refers to a benefit, including compensation, that is out of line with accepted practice or similar organizations as defined by such factors as mission, budget or geography. This can result in fines levied on both those who approved the arrangement and the organization. In some cases the organization may lose its nonprofit status as a result.

#### 7. FAMILY MEMBER

The use of the term “family member” applies to a spouse/life partner, parent, child or spouse of a child, brother, sister or spouse of a brother or sister of an interested person.

#### 8. PERCEIVED CONFLICT

A perceived conflict refers to situations where an analysis of the situation has determined, or would likely determine, that no actual conflict exists, but where persons in the community who

are unaware of the specifics are likely to see a conflict in the situation and hold a negative view of the organization as a result.

### 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 personal interest – or the likelihood that such personal interest might arise. He or she should be given the opportunity to disclose all material facts to the directors or members of committees with governing board delegated powers considering the proposed transaction or arrangement. Written disclosure is required annually, per Article VI below, but disclosure is also expected at any meeting where a potential conflict is raised.

It is the duty of all directors, officers, committee members with governing board delegated powers and any other interested persons of XYZ Organization to be aware of this policy.

#### 2. DETERMINING WHETHER A CONFLICT OF INTEREST EXISTS

After disclosure of the personal 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 members 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 involving the possible 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 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.

4. 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 that person of the basis for such belief and afford that person an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the interested person's response and after making further investigation as warranted by the circumstances, the governing board or committee determines that person 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 personal interest in connection with an actual or possible conflict of interest, the nature of the personal 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

While directors of the governing board are prohibited in the bylaws from receiving compensation for the services they provide as directors, there may be situations in which compensation is approved. In such cases:

- a. A director of the governing board who receives, whether directly or indirectly, compensation from XYZ Organization for services as allowed under the bylaws, is precluded from voting on matters pertaining to that director's compensation.
- b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from XYZ Organization for services is precluded from voting on matters pertaining to that member's compensation.

- c. No director of the governing board or any voting member of a committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from XYZ, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

ARTICLE VI  
ANNUAL STATEMENTS

Each director, officer, member of a committee with governing board delegated powers and other interested persons 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 that the XYZ Organization is charitable and in order to maintain its federal tax exemption it must be vigilant about adhering to its conflict of interest policy.

ARTICLE VII  
PERIODIC REVIEWS

To ensure XYZ Organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews of the conflict of interest policy shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether the conflict of interest policy is serving XYZ Organization as well as it could,
- b. Whether the conflict reporting form sufficiently captures information to adequately protect XYZ,
- c. Whether compensation arrangements and benefits are reasonable, based on competent survey information and the result of arm's length bargaining, and
- d. Whether partnerships, joint ventures, and arrangements with management organizations conform to XYZ's 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, XYZ 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.