

## **SAMPLE CONFLICT OF INTEREST POLICY AND DISCLOSURE STATEMENT**

### Purpose of Policy and Duties of Directors and Officers

The Directors and Officers of [Name of Organization] ("organization acronym") or the "Organization") owe a duty of loyalty to the Organization which requires that in serving the Organization they act, not in their personal interests or in the interests of others, but rather solely in the interests of the Organization. Directors and Officers must have an undivided allegiance to the Organization's mission and may not use their position as Directors or Officers, information they have about the Organization, or the Organization's property, in a manner that allows them to secure a pecuniary or other material benefit for themselves or their relatives.<sup>1</sup> Accordingly, no Director or Officer may use his or her position at the Organization for personal gain or to benefit another at the expense of the Organization, its mission or its reputation.

A conflict of interest may arise when a person has an existing or potential financial interest or other material interest that impairs, or might appear to impair his or her independence or objectivity in the discharge of responsibilities and duties to the Organization. This Policy is intended to protect the Organization's interests when it is contemplating entering into a contract, transaction or arrangement that might benefit the private interests of a member of the Organization's Board of Directors or an Officer of the Organization.<sup>2</sup> This Policy is also meant to aid Directors and Officers of the Organization in performing the duties imposed upon them by the laws of the State of \_\_\_\_\_ and the United States of America with respect to their management responsibilities and fiduciary obligations to the Organization. The Organization is committed to transparency and openness in its operations.

Every Director and Officer must discharge his or her duties in good faith, with the degree of care that an ordinarily prudent person in a like position would exercise under similar circumstances. This requires using common sense, being diligent and attentive to the Organization's needs, and making thoughtful decisions in the best interest of the Organization. No Director or Officer may take personal advantage of a business opportunity that is offered to the Organization unless the Board of Directors of the Organization first determines not to pursue such opportunity.

Each Director or Officer must protect the confidential information of the Organization and must not use confidential information of the Organization for his or her personal benefit, or use such confidential information or his or her position as a Director or Officer to the detriment of the Organization. Confidential information is information obtained through the Director's or Officer's position that has not become public information.

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<sup>1</sup> For the purposes of this Policy, relative means spouse or significant other living in the same household ("life partner"), brothers or sisters (by whole or half blood), life partners of brothers or sisters (by whole or half blood), ancestors, children, grandchildren, great-grandchildren, and life partners of children, grandchildren and great-grandchildren.

<sup>2</sup> This Policy also applies to the employees identified in Section 8 below.

### Direct or Indirect Financial or Other Material Interest

1. Contracts, transactions or arrangements of the Organization in which a Director or Officer has a direct or indirect financial or other material interest shall not be prohibited, but they shall be subject to scrutiny. Any such proposed contract, transaction or arrangement (collectively, "Arrangement") is to be reviewed to determine that it is in the best interests of the Organization.
2. For the purposes of this Policy, a Director or Officer has a direct or indirect financial or other material interest in a proposed or existing Arrangement if he or she, or one of his or her relatives:
  - (a) has a substantial financial interest directly in the proposed or existing Arrangement; or
  - (b) has a substantial financial interest in any other organization that i) is a party to the proposed or existing Arrangement; or ii) is in any way involved in the proposed or existing Arrangement, including through the provision of services in connection therewith (an "involved organization"); or
  - (c) holds a position as trustee, director, officer, member, partner, or employee in any such party or involved organization.

A Director's or Officer's financial interest will be considered substantial if it involves:

- (a) an ownership or investment interest representing more than 1% of the outstanding shares of a publicly traded company or 5% of the outstanding shares or comparable interest of a privately owned company with which the Organization has or is negotiating an Arrangement or which is an involved organization with respect to the Arrangement; or
- (b) an ownership or investment interest, which produces a significant amount of income for or constitutes a significant part of the net worth of the Director or Officer, or a relative of the Director or Officer, in any entity with which the Organization has or is negotiating an Arrangement or which is an involved organization with respect to the Arrangement; or
- (c) a compensation arrangement of any kind with any entity or individual with which the Organization has or is negotiating an Arrangement or with any involved organization with respect to the Arrangement.

### Disclosure of Interest and Participation in Meeting

3. Each Director and each Officer of the Organization shall promptly disclose any direct or indirect financial or other material interest which he or she has or reasonably expects to have in any proposed or existing Arrangement with the Organization prior to the start of any negotiations with respect to such matter. A direct or indirect financial interest required to be disclosed under this Policy shall be disclosed in writing to the Chairperson of the Board.

Such disclosure shall include all material facts and supply any reasons why the Arrangement might be or not be in the best interest of the Organization. The Chairperson of the Board shall refer the issue to the full Board, the Executive Committee, or other Board Committee having decision-making authority over the substantive matter in question (the "Board or Committee").

4. The Director or Officer who discloses a direct or indirect financial or other material interest in a proposed or existing Arrangement may make a presentation and respond to questions by the Board or Committee, but after such presentation, he or she shall leave the meeting during the discussion of, and vote on, the Arrangement that results in the conflict of interest. As part of any such presentation, the Director or Officer shall provide to the Board or Committee any reasons why the Arrangement might be or not be in the best interest of the Organization. The Board or Committee shall determine whether the Organization can obtain a more advantageous Arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest. The Board or Committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed Arrangement. If a more advantageous contract, transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the Board or Committee shall determine by majority vote of the disinterested members of the Board or Committee whether the Arrangement is in the Organization's best interest and whether it is fair and reasonable to the Organization and shall make its decision as to whether to enter into the Arrangement in conformity with such determination.

#### Minutes of Meeting

5. The names of the Directors and Officers who disclosed or otherwise were found to have a direct or indirect financial or other material interest in a proposed or existing Arrangement of the Organization, the nature of the interest, and the extent of the Director's or Officer's participation in the relevant Board or Committee meeting on matters related to the financial or other material interest shall be recorded in the minutes for that meeting. The minutes also shall include a record of any determination as to whether the Arrangement was in the best interest of and fair and reasonable to the Organization, notwithstanding the interest, and the specific reasons supporting the determination, including any alternatives to the proposed or existing Arrangement, the names of the persons who were present for discussions and votes relating to the proposed or existing Arrangement, and a record of any votes taken in connection therewith.

#### Co-Investment Interest

6. Each Director and each Officer of the Organization also shall disclose whether he or she, or one of his or her relatives, has personal funds invested with an investment manager providing, or expected to provide, investment management services to the Organization or in a professionally managed investment fund in which the Organization is invested or is considering investing (a "co-investment interest"). For the purposes of this Conflicts Policy, a "professionally managed investment fund" shall not include mutual funds or other similar investment vehicles generally available to the investing public on essentially the same terms.

Such co-investment interest shall be disclosed in writing to the Chairperson of the Board. Such disclosure shall include all material facts, including, but not limited to, fee arrangements and any preferential treatment received by the Director or Officer, or one of his or her relatives, and not available to other investors necessary to determine whether such co-investment interest may provide a benefit to the Director or Officer, or one of his or her relatives. If the Chairperson of the Board determines that the co-investment interest may provide some advantage to the Director or Officer, or one of his or her relatives, the Chairperson of the Board shall refer the issue to the Organization's Investment Committee. The Director or Officer who discloses a co-investment interest may make a presentation and respond to questions from the Investment Committee but shall not be present during the discussion of, and vote on, how to address the co-investment interest. The Investment Committee shall determine what, if any, corrective action is required with respect to the co-investment interest, including, but not limited to, terminating the investment relationship or seeking an adjustment in fee structure.

#### Failure to Disclose

7. If the Board or Committee has reasonable cause to believe that a Director or Officer has failed to disclose a direct or indirect financial or other material interest or co-investment interest subject to this Policy, it shall inform the Director or Officer of the basis for such belief and afford the Director or Officer an opportunity to explain the alleged failure to disclose. If, after hearing the response of such individual and making such further investigation as may be warranted in the circumstances, the Board or Committee determines that the Director or Officer has in fact failed to disclose a direct or indirect financial or other material interest or co-investment interest subject to this Policy, it shall take appropriate disciplinary and corrective action.

#### Employees Covered by Policy

8. This Policy shall apply to the Chief Executive Officer, the Chief Operating Officer and the Chief Financial Officer.

#### Annual Disclosure Statement

9. Each Director and Officer has a duty to place the interest of the Organization foremost in any dealing with the Organization and has a continuing responsibility to comply with the requirements of this Policy. Promptly following the adoption of this Policy, and thereafter not later than the first day of \_\_\_\_\_ of each year, each Director and Officer shall acknowledge his or her familiarity with this Policy and shall disclose in writing to the Chairperson of the Board any existing financial or other material interests or co-investment interests subject to this Policy by completing a Conflict Of Interest Disclosure Statement. The Conflict Of Interest Disclosure Statements shall be reviewed by the Chairperson of the Board. Any issues not previously disclosed shall be referred by him or her to the Board or appropriate Committee. The Conflict Of Interest Disclosure Statements shall be retained in the confidential files of the Chairperson of the Board.

Policy Supplements Applicable Laws

10. This Policy is intended to supplement but not replace any applicable state or federal laws governing conflicts of interest applicable to nonprofit charitable corporations.

## Sample Conflict-of-Interest Disclosure Statement

The Conflict of Interest Policy of the Organization requires any Director or Officer of the Organization to disclose any direct or indirect financial or other material interest or co-investment interest that he or she has or reasonably expects to have in any proposed or existing contract, transaction or arrangement with the Organization, or in any other matter under consideration or to be considered by the Board of Directors, the Executive Committee, or any other Board Committee.

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**Please initial each statement that applies to you:**

- \_\_\_ I have read and am familiar with the Conflict Of Interest Policy.
- \_\_\_ I am not aware of any direct or indirect financial or other material interest or co-investment interest that is required to be disclosed under the Conflict Of Interest Policy.
- \_\_\_ I have described in the attached letter every direct or indirect financial or other material interest or co-investment interest which is required to be disclosed under the Conflict Of Interest Policy. (Please attach a letter providing complete details of any direct or indirect financial or other material interest or co-investment interest subject to the Policy.)

During the time I am a Director or Officer of the Organization, I agree to report promptly any future situation that might involve or appear to involve me or any of my relatives in any potential conflict of interest with the Organization.

I am completing this disclosure statement based on the definitions below that are taken from the Conflict of Interest Policy.

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

**Please return this statement in the enclosed envelope not later than \_\_\_\_\_.**

For the purposes of this Policy, a Director or Officer has a **direct or indirect financial or other material interest** in a proposed or existing contract, transaction or arrangement (collectively, "Arrangement") if he or she, or one of his or her relatives:

- (a) has a substantial financial interest directly in the proposed or existing Arrangement; or
- (b) has a substantial financial interest in any organization that i) is a party to the proposed or existing Arrangement; or ii) is in any way involved in the proposed or existing

Arrangement, including through the provision of services in connection therewith (an “involved organization”); or

(c) holds a position as trustee, director, officer, member, partner, shareholder or employee in any such party or involved organization.

A Director's or Officer's financial interest will be considered substantial if it involves:

(a) an ownership or investment interest representing more than 1% of the outstanding shares of a publicly traded company or 5% of the outstanding shares or comparable interest of a privately owned company with which the Organization has or is negotiating an Arrangement or which is an involved organization with respect to the Arrangement; or

(b) an ownership or investment interest, which produces a significant amount of income for or constitutes a significant part of the net worth of the Director or Officer, or a relative of the Director or Officer, as defined in the Policy, in any entity with which the Organization has or is negotiating an Arrangement or which is an involved organization with respect to the Arrangement; or

(c) a compensation arrangement of any kind with any entity or individual with which the Organization has or is negotiating an Arrangement or with any involved organization with respect to the Arrangement.

Each Director and each Officer of the Organization also is required to disclose whether he or she, or one of his or her relatives, has personal funds invested with an investment manager providing, or expected to provide, investment management services to the Organization or in a professionally managed investment fund in which the Organization is invested or is considering investing (a “co-investment interest”). For the purposes of this Conflicts Policy, a "professionally managed investment fund" shall not include mutual funds or other similar investment vehicles generally available to the investing public on essentially the same terms.

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