

[Corporation Name]
CONFLICT OF INTEREST POLICY

ARTICLE I. PURPOSE

The purpose of this conflict of interest policy (the “Policy”) is to protect the interests of [Name of Corporation] (the “Corporation”) when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a Director, Officer, or Key Person of the Corporation or one of their relatives. The Corporation will not enter into any such transaction or arrangement unless it is determined by the Board in the manner described below to be fair, reasonable and in the best interests of the Corporation at the time of such determination

This Policy is intended to supplement, but not replace, any applicable state and federal laws governing conflicts of interest applicable to not-for-profit and charitable organizations.¹

Definitions of “Key Person,” “Related Party,” and other capitalized terms used in this policy can be found in Article 8 below.

ARTICLE 2. RELATED PARTY TRANSACTIONS AND DUTY TO DISCLOSE

Under this Policy, if the Corporation contemplates entering into a Related Party Transaction, the [Committee]² Board must determine if the transaction is fair, reasonable, and in the best interests of the Corporation. A Related Party Transaction is not necessarily a prohibited transaction.

If at any time during his or her term of service a matter for decision or approval comes before the Board in which a Related Party has a Financial Interest, that Financial Interest must be promptly disclosed in writing to the [Person Designated by the Board or Committee] [to the Chair of the Committee], together with all material facts. The Board [Committee] will then follow the procedures in Article 4 of this Policy.

Failure to disclose to the Board a known Financial Interest or a known potential Related Party Transaction may be grounds for removal from the Board or termination of employment by the Corporation.

¹ This conflict of interest policy is designed to comply with both Federal excess benefit transaction rules (26 U.S.C. §4958 *et seq.*) and New York State Not for Profit Corporation Law § 715 and 715-a. As a result, in some instances organizations may have to go further than would be required under either state or federal law alone to review a transaction in order to ensure that both sets of rules are satisfied.

² This policy has been drafted to give Boards the option of having related party transactions reviewed by Independent Directors serving on the Board or a Committee of the Board composed of Independent Directors, without the participation of the Related Party. As of May 27, 2017, oversight of the Conflict of Interest Policy may be conducted by a duly authorized committee, and it will no longer be necessary to for non-independent directors to recuse themselves.

ARTICLE 3. DISCLOSURE AND VOTING

Disclosure. Any Related Party shall disclose in good faith all material facts of his or her Financial Interest to the Board.

Non-Participation and Review. All transactions, agreements or any other arrangements between the Corporation and a Related Party, and any other transactions which may involve a potential conflict of interest, shall be reviewed by the [Committee] Board. No Related Party shall vote, act, or attempt to influence improperly the deliberations or voting on any matter in which he or she has been determined by the Board to have a Financial Interest. Any attempt by a Related Party to vote, act, or improperly influence deliberations or voting by a Related Party on any matter with which such person has a Financial Interest may be grounds for removal from the Board or termination from the Corporation. All Related Parties with a Financial Interest shall leave the room while such deliberations and voting are conducted, although at the request of the [Committee] Board they may provide information regarding the transaction prior to the deliberations.

Consideration of Alternate Transactions and Comparability Data.

If the contemplated Related Party Transaction pertains to compensation for services or the transfer of property or other economic benefit to a Related Party, prior to entering into the transaction the Board [Committee] must determine that the value of the economic benefit provided by the Corporation to the Related Party does not exceed the value of the consideration received in exchange by obtaining and reviewing appropriate comparable data, including by considering alternative transactions to the extent possible.³

Voting. The Corporation will not enter into any Related Party Transaction unless it is determined to be fair, reasonable and in the best interest of the Corporation and is approved by not less than a majority vote of the Directors present at the meeting. The Board [Committee] shall document the meeting contemporaneously as described in Article 6 of this Policy, including its consideration of any alternative transactions.

[Only Independent Directors shall vote on Related Party Transactions.]⁴

Compensation for Services.

A voting member of the Board of Directors or an Officer who receives compensation directly or indirectly from the Corporation for services or a Director serving as a voting member of any Committee whose jurisdiction includes compensation matters is precluded from voting or acting on matters pertaining to that Director's or Officer's compensation.

³ Beginning May 27, 2017, disinterested staff (rather than just board members) may oversee related party transactions that are de minimus or in the ordinary course of business, or that constitute a benefit to a related party solely as a class of charitable beneficiaries if the benefit is available to all similarly situated members of that charitable class on the same terms. Because "de minimus" or "ordinary course" will have different meanings for different nonprofit corporations, you are advised to consult with legal counsel when drafting your organization's conflict of interest policy. For guidance on this topic, visit https://www.charitiesnys.com/pdfs/Charities_Conflict_of_Interest.pdf.

⁴ This definition may be deleted if the Policy does not require review of Related Party Transactions to be conducted by Independent Directors

However, a voting member of the Board or any Committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation, either individually or collectively, may upon request of the Board or Committee provide information regarding compensation.

[No Loans.]

No loans shall be made by the Corporation to its Directors or Officers, or to any other entity in which any of the Corporation's Directors or Officers holds a Financial Interest, except to another charitable organization.]⁵

ARTICLE 4. AUDIT [OR OTHER] COMMITTEE REVIEW

The Board may delegate to the Audit [or other] Committee, which shall be composed solely of Independent Directors, the adoption, implementation of and compliance with this policy.⁶ The Board may delegate to the Audit [or other Committee] review and approval of any Related Party Transaction involving a Related Party and the Corporation, as contained in this Policy; provided that if the Related Party Transaction would otherwise require full Board approval, the Committee shall submit the Related Party Transaction to the Board for consideration, providing its recommendation as to whether or not to approve it.

ARTICLE 5. RECORDS OF PROCEEDINGS

The minutes of all meetings of the Board and all Committee meetings at which a Related Party Transaction is considered shall contain:

- The names of the persons who disclosed or otherwise were determined to have a potential or actual Financial Interest and/or conflict of interest, the nature of the potential or actual Financial Interest and/or conflict of interest, any action taken to determine whether a Financial Interest or conflict of interest exists, and the Board's [Committee's] determination as to whether a Financial Interest and/or conflict of interest exists.
- The names of the persons who were present for deliberations and votes relating to any determinations under this Article, including whether the Related Party and any directors who are not [Independent Directors] left the room during any such deliberations, the content of such deliberations, including consideration of alternative transactions, and whether or not the transaction with the Related Party was approved by the Board [Committee].
- The minutes shall document contemporaneously the deliberations and determination regarding any the Financial Interest or conflict of interest.

⁵ This provision is optional.

⁶ Consider identifying here which Committee has such authority.

ARTICLE 6. INITIAL AND ANNUAL WRITTEN DISCLOSURES

Prior to a Director's initial election to the Board, or an Officer or Key Person's employment by the Corporation, and thereafter on an annual basis, all Directors, Officers, and Key Persons shall disclose in writing to the [Person Designated by the Board]:

(i) Any entity of which the Director, Officer or Key Person is an officer, director, trustee, voting member, owner (in whole or in part) or employee and with which the Corporation has a financial relationship.

(ii) Any transaction in which the Corporation is a participant and in which the Director, Officer or Key Person, or one of his or her relatives might have a conflicting interest.

A copy of each disclosure statement shall be kept in Corporation's files and made available to any Director, Officer, or Key Person upon request.

ARTICLE 7. ANNUAL STATEMENTS

Each Director, Officer, and Key Person shall annually sign and submit to the [Person Designated by the Board] a statement which affirms such person: (a) has received a copy of this Policy, (b) has read and understands the Policy, and (c) has agreed to comply with the Policy.

ARTICLE 8. DEFINITIONS

- Affiliate. An affiliate of the Corporation is a person or entity that is directly or indirectly through one or more intermediaries, controlled by, in control of, or under common control with the Corporation.
- Board of Directors or Board. The body responsible for the management of the Corporation.
- Director. Any voting or non-voting member of the Board of Directors, whether designated as a director, trustee, manager, governor, or by any other title.
- Financial Interest. A person has a Financial Interest if such person would receive an economic benefit, directly or indirectly, from any transaction, agreement, compensation agreement (including direct or indirect remuneration as well as gifts or favors that are not insubstantial), or other arrangement involving the Corporation.

- Independent Director.⁷ A member of the Board of Directors (the “Board”) who:
 - is not and has not been an employee or a Key Person of the Corporation or an Affiliate of the Corporation within the last three years;
 - does not have a Relative who is or has been a Key Person of the Corporation or an Affiliate of the Corporation within the last three years;
 - has not received and does not have a Relative who has received more than \$10,000 in compensation directly from the Corporation or an Affiliate of the Corporation in any of the last three years (not including reasonable compensation for services or reimbursement for expenses reasonably incurred as a Director of the Corporation, as set by the Corporation);
 - does not have a substantial Financial Interest in and is not an employee of, and does not have a Relative who has a substantial Financial Interest in or is an Officer (as defined below) of, any entity that has provided payments, property or services to, or received payments, property or services from, the Corporation or an Affiliate of the Corporation in excess of the following, as applicable: (i) the lesser of \$10,000 or 2% of the entity’s consolidated gross revenue in any of the last three fiscal years if such consolidated gross revenue was less than \$500,000; (ii) \$25,000 if the entity’s consolidated gross revenue in any of the last three fiscal years was \$500,000 or more but less than \$10,000,000; or (iii) \$100,000 if the entity’s consolidated gross revenue in any of the last three fiscal years was \$10,000,000 or more;
 - is not and does not have a relative who is a current owner, whether wholly or partially, director, officer or employee of the Corporation’s outside auditor or who has worked on the Corporation’s audit at any time during the past three years;
 - is not in an employment relationship under control or direction of any Related Party (as defined below) and does not receive payments subject to approval of a Related Party; or
 - does not approve a transaction providing economic benefits to any Related Party who in turn has approved or will approve a transaction providing economic benefits to the Director.

- Key Person. A Key Person is a person, other than an Officer or Director of the Corporation, who:
 - Has responsibilities, or exercises powers or influence over the Corporation as a whole similar to the responsibilities, powers, or influence of directors and officers;
 - Manages the Corporation, or a segment of the Corporation that represents a substantial portion of the activities, assets, income or expenses of the Corporation; or
 - Alone or with others controls or determines a substantial portion of the Corporation’s capital expenditures or operating budget.⁸

- Officer. A person who has the authority to bind the Corporation as designated in the bylaws of the Corporation.

⁷ This definition may be deleted if the Policy does not require review of Related Party Transactions to be conducted by Independent Directors.

⁸ Consider identifying in the Policy the staff positions identified in this bullet and the preceding bullet.

- Related Party. Persons who may be considered a Related Party of the Corporation or an Affiliate of the Corporation under this Policy include:
 - Directors, Officers, or Key Persons of the Corporation or an Affiliate of the Corporation;
 - Relatives of Directors, Officers, or Key Persons;
 - any entity in which a person in (i) or (ii) has a 35% or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%;
 - Founders of the Corporation;
 - Substantial contributors to the Corporation (within the current fiscal year or the past five fiscal years);
 - Persons owning a controlling interest (through votes or value) in the Corporation;
 - Any non-stock entity controlled by one or more Key Persons;
 - Any other person who is, or has within the last five years, been in a position to exercise substantial influence over the affairs of the Corporation.

- Related Party Transaction. Any transaction, agreement or any other arrangement with the Corporation or an Affiliate of the Corporation in which a Related Party has a Financial Interest. Any Related Party Transaction will be considered a conflict of interest for purposes of this Policy.

- Relative. A Relative is a spouse or domestic partner as defined in section 2994-A of the New York Public Health Law, ancestor, child (whether natural or adopted), grandchild, great grandchild, sibling (whether whole or half blood), or spouse or domestic partner of a child (whether natural or adopted), grandchild, great grandchild or sibling (whether whole or half blood).

Adopted by the Corporation's Board of Directors at its meeting on _____, 20[].