

Conflict of Interest Policy

1. Purpose

[_____] (“Client”) and its leadership are subject to legal requirements relating to conflicts of interest. For example:

- The California Nonprofit Public Benefit Corporation Law (“Nonprofit Corporation Law”) limits transactions between Client and its directors, and provides that a majority of the board of directors must meet a specified independence standard.
- California corporation law principles provide that directors owe Client a duty of loyalty, which requires a director to act in the interest of the organization rather than in the personal interest of the director.
- Federal tax law and Client’s Articles of Incorporation provide that no part of the net earnings or assets of Client may inure to (benefit) its directors, officers, and other private persons.
- Federal tax law requires public disclosure regarding, among other things, relationships between Client and its leaders, the independence of Client’s board of directors (“Board”), and the compensation of Client’s leadership.

Client adopted this Conflict of Interest Policy (“Policy”) to facilitate compliance with these laws and provide procedures for addressing situations that involve, or may appear to involve, conflicts of interest. The Policy is intended to help Client avoid situations where the personal interests of senior leaders may affect, or be perceived as affecting, their judgment when carrying out their duties to Client, or which would result in personal gain at the expense of Client.

Client acknowledges that no policy can encompass every situation that presents risks to impartial decision-making. In the end, Client’s effective management of conflicts depends on the good judgment and integrity of its leadership as well as full compliance with the requirements set out in this Policy. Client encourages individuals to talk to the Executive Director if they have questions or concerns about specific situations.

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2. Core principles: disclosure + review process

It is the policy of Client that its directors, [non-directors serving on advisory committees,] officers, and key employees promptly and fully disclose any actual, apparent, or potential conflicts of interest (as defined below), that no senior leaders (as defined below) vote or otherwise participate in any decision by Client in any matters in which they have a conflict of interest, that Client follow a disciplined, documented process in making decisions about such matters, and that Client comply with all applicable legal requirements relating to such matters.

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3. Definitions: covered persons and situations

For the purposes of this Policy, the following terms have the following definitions:

- A “**conflict of interest**” arises when a senior leader involved in making a decision for Client may have a personal interest in the outcome. The personal interest may be economic, in that it may result in direct dealing with and

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financial benefit to the senior leader or to a family member, or the personal interest may be professional or [associational][social], such as when the senior leader, family member, or acquaintance of the senior leader is on the board of directors of, is an investor in or substantial donor to, works or provides services to, or collaborates or competes with, the other party to the proposed transaction or relationship with Client.

- **“Family member”** means any spouse, ancestors, mother-in-law, father-in-law, siblings (whether whole or half-blood), brother-in-law, sister-in-law, descendants, children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of siblings, children, grandchildren, and great-grandchildren.
- A **“key employee”** is any Client employee who receives more than \$150,000 in annual compensation and meets at least one of the following criteria: (a) has management responsibility over at least 10% of Client’s assets, income, expenses or activities, (b) has or shares authority to control or determine at least 10% of Client’s capital expenditures, budget, or employee compensation, or (c) has responsibilities, powers, or influence over Client as a whole similar to those of officers, directors, or trustees.
- **“Senior leaders”** are Client’s directors, [non-directors serving on advisory committees,] officers, and key employees (as defined below).

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4. Disclosure by covered persons

4.1 Disclosure

Upon election, hiring, or appointment, and annually thereafter, senior leaders must complete an annual affirmation and disclosure questionnaire in the form provided by Client. On this document, the senior leader must disclose all affiliations or other matters that could give rise to a conflict of interest and confirm the senior leader’s commitment to comply with this Policy.

4.2 Conflicts of interest as they arise

Senior leaders should promptly disclose to Client any affiliations or other matters that constitute or could result in a conflict of interest.

4.3 Continuing attention

Senior leaders have a continuing responsibility to review their business, personal, and philanthropic interests, and their family and other close relationships, for actual, apparent, or potential conflicts of interest, and to make such disclosure to Client as appropriate. This Policy is best served by adopting a “when in doubt, disclose” approach. If a senior leader is uncertain whether to identify a particular relationship, the senior leader should consult the Executive Director.

[4.4 Past transactions; failure to disclose

If the Board has reasonable cause to believe that a senior leader has failed to disclose actual or possible conflicts of interest, the Board will inform the senior leader of the basis for this belief and afford the senior leader an opportunity to explain the alleged failure to disclose. If, after hearing the senior leader’s response and making further investigation as warranted by the circumstances, the Board determines that the senior leader has failed to disclose an actual or possible conflict of interest, the Board will take appropriate disciplinary and corrective action.]

5. Procedures for reviewing conflicts

5.1 Abstention from decision-making

In all situations calling for disclosure, the interested senior leader should abstain from voting or otherwise participating in the decision other than by making the required disclosure and providing any other information requested by the decision-makers.

5.2 Review

With regard to an **employee**, the Executive Director will determine the appropriate response by Client in line with the principles set out in this Policy, including, without limitation, review by the Board. With regard to a **director or officer**, or on employee matters referred to it by the Executive Director, the Board will determine the appropriate response by Client in light of the nature of the conflict.

5.3 Action by the Board

The Board will take such actions as it believes are appropriate in the circumstances and as may be required under federal tax or state law principles and this Policy. These actions may include limiting review to specified directors, obtaining information from the interested senior leader, reviewing information about comparable transactions, tasking a committee to review, and obtaining advice from counsel or other advisors. As a general matter, the Board may approve a decision or transaction where a senior leader has a conflict of interest if the following steps are taken:

- **Non-participation by interested senior leader.** The interested senior leader leaves the room during the Board's consideration of the decision or transaction.
- **Factual consideration.** The disinterested Board members compile and review all material facts regarding the decision or transaction and the interest.
- **Findings by Board.** The disinterested Board members determine after reasonable investigation that Client cannot obtain with reasonable efforts a more advantageous arrangement with a person or entity that would not give rise to a conflict of interest, and that the decision or transaction is fair and reasonable to Client and for its benefit and not for the benefit of the interested senior leader.
- **Vote by Board.** The disinterested Board members vote to approve the decision or transaction by a majority of the directors then in office, not counting the votes of any interested Board members.
- **Documentation.** The Secretary (or some other Board member or officer in the Secretary's absence) prepares complete minutes of the Board's consideration of the decision or transaction. The minutes should note: a description of the decision or transaction and the date the action was taken; Board members who were present during the meeting and those members who voted; and data obtained and relied upon and how the data were obtained.

Note re self-dealing transactions: Client will not engage in any self-dealing transaction as defined in Section 5233 of the Nonprofit Corporation Law without taking the actions set out in this Section 5 and such other actions as may be appropriate under Section 5233. A self-dealing transaction is a transaction in which Client is a party and in which one or more of its directors has a material financial interest.

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[6. Decisions involving [_____]

[In situations involving a policy or other decision that may benefit senior leaders who are [clients] of Client, the Board will consider whether the situation is such that the Board exclude relevant senior leaders from the decision or take other appropriate steps, and will document its process accordingly.]

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7. Related matters

7.1 Common directors

As provided by Section 5234 of the Nonprofit Corporation Law, no contract or other transaction between Client and any other corporation of which one or more Client directors are directors is void or voidable because such director(s) are present at the Board meeting which approves the contract or transaction, if (a) the material facts as to the transaction and as to such director's other directorship are fully disclosed to the Board, and the Board approves the contract or transaction in good faith by a vote sufficient without counting the vote of the common director(s), or (b) the contract or transaction is just and reasonable as to Client at the time it is approved.

7.2 Board composition

In line with Section 5227 of the Nonprofit Corporation Law, at all times not more than 49% of the directors of Client may be "interested persons." An interested person means either (a) any person currently being compensated by Client for services rendered to it within the previous twelve months, whether as a full-time or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director in his or her capacity as director, or (b) any family member (as defined above) of any such person.

7.3 Loans to directors and officers

Except as permitted by Section 5236 of the Nonprofit Corporation Law, Client will not make any loan or other advance of money or property to, or guarantee the obligation of, any director or officer.

7.4 Personal use; gifts

Senior leaders may not use or authorize the use of the name, logo, or other property of Client for the benefit of the senior leader or any other person or entity, except as approved by Client. Senior leaders may not accept or give any payments, gifts, loans, or other favors from or to anyone who is doing, or wishes to do, business with Client, except for items of nominal value or as otherwise approved by Client.

7.5 Corporate opportunities

Senior leaders may not take personal advantage of opportunities that are discovered through the use of corporate property, information, or one's position, except as approved by Client.

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8. Relationship to other laws

This Policy is intended to supplement and not supersede any applicable federal or state laws including laws prohibiting or otherwise relating to self-dealing, private inurement, private benefit, or transactions with interested persons, or government or other contracts that may include conflict of interest requirements. Nothing in this Policy authorizes Client to engage in any act of self-dealing, inurement or any other act prohibited by law.

9. Annual Board review

The Board each year will review this Policy and the questionnaires received under this Policy, and consider appropriate actions to promote compliance with this Policy.