

## **ARTICLE XII: CONFLICT OF INTEREST POLICY**

### **12.01 Purpose**

The purpose of the Conflict of Interest Policy is to protect the corporation's tax-exempt interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a director, advisor, officer, employee or affiliate of the corporation or might result in a possible excess benefit transaction.

It is important for the corporation's directors, advisors, officers, employees and affiliates to be aware that both real and apparent conflicts of interest or dualities of interest sometimes occur in the course of conducting the affairs of the corporation and that the appearance of conflict can be troublesome even if there is in fact no conflict whatsoever.

Conflicts occur because the many persons associated with the corporation should be expected to have, and do in fact generally have, multiple interests and affiliations and various positions of responsibility within the community. In these situations, a person will sometimes owe identical duties of loyalty to two or more corporations or entities.

Conflicts are undesirable because they potentially or eventually place the interests of others ahead of the corporation's obligations to its charitable purposes and to the public interest. Conflicts are also undesirable because they often reflect adversely upon the person(s) involved and upon the institutions with which they are affiliated, regardless of the actual facts or motivations of the parties. However, the long-range best interests of the corporation do not require the termination of all association with the person(s) who may have real or apparent conflicts that are harmless to all individuals or entities involved.

Each member of the Board of Directors, its advisors, the officers, the employees and the affiliates of the corporation has a duty of loyalty to the corporation. The duty of loyalty generally requires a director, advisor, officer, employee or affiliate to prefer the interests of the corporation over their own interest or the interests of others. In addition, directors, advisors, officers, employees and affiliates of the corporation shall avoid acts of self-dealing which may adversely affect the tax-exempt status of the corporation or cause there to arise any sanction or penalty by a governing authority.

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.

### **12.02 Definitions**

#### **12.02.01 Interested Person**

Any director, advisor, officer, employee or affiliate who has a direct or indirect financial interest, as defined below, is an interested person.

### **12.02.02 Financial Interest**

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

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

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

### **12.02.03 Compensation**

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

## **12.03 Procedures**

### **12.03.01 Duty to Disclose - Interested Persons**

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 considering the proposed transaction or arrangement, so as to permit an impartial and objective determination of whether a real or potential conflict of interest exists.

### **12.03.02 Duty to Disclose - Organization Members**

In connection with any actual or possible conflict of interest, any director, advisor, officer, employee or affiliate who is made aware of an actual or possible conflict of interest in regard to themselves or another member of the organization, must disclose the existence of the actual or possible conflict of interest.

### **12.03.03 Determining Whether a Conflict of Interest Exists**

After disclosure of the conflict, any financial interest and all material facts, and after any discussion with the interested person(s), they shall leave the governing board meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board members shall decide if a conflict of interest exists.

If a conflict or potential conflict is deemed by the board to exist, the interested person(s) is required, among other things, to refrain from participating in, or being present during, any discussion or vote regarding the matter on behalf of the corporation.

The interested person(s) may also be subject to restriction of voting privileges, job responsibilities, employment or removal from office, in accordance with any applicable bylaw provisions, unless the conflict or potential conflict can be appropriately managed or resolved.

#### **12.03.04 Procedures for Addressing the Conflict of Interest**

- An interested person(s) may make a presentation at the board meeting, and answer pertinent questions of the board, as their knowledge may be of great assistance in enabling them to fulfill their fiduciary duties to the corporation. After the presentation, they shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- The President or Secretary, in the order of presence, if appropriate, can appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- After exercising due diligence, the board shall determine whether the corporation 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.
- If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the board shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the corporation's best interest, for its own benefit and whether it is fair and reasonable. In conformity with the above determination, it shall make its decisions as to whether to enter into the transaction or arrangement.

#### **12.03.05 Voting**

Where the transactions involving a board member, officer, employee or affiliate has an interest exceeding five hundred dollars (\$500) but is less than five thousand dollars (\$5,000) in a fiscal year, a majority vote of the disinterested voting members is required. When the transaction involved exceeds five thousand dollars (\$5,000) in a fiscal year, then a unanimous vote of the disinterested voting members is required.

#### **12.03.06 Variations of the Conflicts of Interest Policy**

- If the board has reasonable cause to believe a director, advisor, officer, employee or affiliate 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.

- If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board determines the person has failed to disclose actual or possible conflict of interest, it shall take the appropriate disciplinary and corrective action it deems necessary.

## **12.04 Records Of Proceedings**

### **12.04.01 Meeting Minutes**

The minutes of the governing board and all committees with board delegated powers in regards to conflicts of interest shall contain:

- The names of the persons who disclosed or otherwise were found to have a financial or personal interest in connection with an actual or possible conflict of interest, the nature of the financial or personal interest, any actions taken to determine whether a conflict of interest was present, and the governing board or committee's decision as to whether a conflict of interest in fact existed.
- 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.
- Minutes taken in these meetings are not released via general requests. Disclosure of these minutes is only as needed and at the discretion of the majority of the board.

## **12.05 Compensation**

Persons who have a potential conflict of interest should not vote or use their personal influence with regard to the matter and should not be counted in determining a quorum for the action on the matter.

### **12.05.01 Board Members**

A voting member of the governing board who receives compensation, directly or indirectly, from the corporation for services is precluded from voting on matters pertaining to that member's compensation.

### **12.05.02 Employment**

Paid employees of the corporation may not simultaneously serve on the Board of Directors.

- **Directors** - If a Director would like a position of employment within the corporation, they must resign from their current position when the employment role is accepted.

- **Founding Advisor** - If a Founding Advisor would like a position of employment within the corporation, they will not be able to attend meetings in an advisory capacity. Once their employment has officially ended, they may return to their advisory role.

### **12.06 Periodic Reviews**

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

- Whether compensation arrangements and benefits are reasonable and consistent with the charitable purposes of the corporation, based on competent survey information and the result of arm's length bargaining.
- Whether partnerships, joint ventures and arrangements with management corporations conform to the corporation'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.

Periodic reviews shall happen, at minimum, on an annual basis.

### **12.07 Use Of Outside Experts**

When conducting the periodic reviews as provided for in Article VIII, TFG may, but need not, use outside advisers. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

### **12.08 Personal Conflicts**

#### **12.08.01 Partnership**

Any director, advisor, officer, employee or affiliate, who is in a relationship with any other director, advisor, officer, employee or affiliate outside of the organization. Partnerships include, but are not limited to, relationships of a business, romantic, financial or employment nature.

#### **12.08.02 Positions of Power and/or Influence**

Any relationships where one party has a position of power and/or influence over the other party. Positions of power and/or influence include, but are not limited to, relationships of a business, financial, employment, competitive or other hierarchical nature.

Those deemed to be in a personal conflict may not vote on:

- any business regarding compensation of the other party
- any business regarding a conflict of interest the other party may have

- any business regarding the removal of the other party from TFG
- any business regarding promotion or role change of the other party (i.e. officer positions, board member status, employment)

A personal conflict is only considered a conflict of interest if determined so by majority vote of the board.

At any point any board member can raise a conflict of interest concern, even if initially the personal conflict is determined not to be a conflict of interest.

### **12.08.03 Irreconcilable Differences**

When the outside affairs of those in personal conflicts, are affecting or could potentially affect TFG.

- The parties are given the opportunity to come to an agreement regarding who will step down.
- An agreement must be made within 7 days unless an appeal is submitted and approved by a majority vote of the board.
- If an agreement cannot be made between the parties, the determination will be made by a majority vote of the board.
- If a quorum is no longer present due to the removal of the involved parties' votes, if deemed necessary by the remaining board, the immediate past President or the Founding Advisors, in order of appearance, will be permitted to vote on the matter. If this is not possible due to availability or a conflict, a third-party member may be chosen by a unanimous vote of the remaining board members in order to meet the quorum.

### **12.09 Annual Statements**

Each director, advisor, officer, employee and affiliate shall annually sign a statement which affirms such person:

- Has received a copy of the Conflicts of Interest policy,
- Has read and understand the policy,
- Has agreed to comply with the policy,
- Has disclosed any possible conflicts of interest, or
- Has agreed that no such potential conflicts of interest exist, and
- Understands that the corporation 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.