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**PRELIMINARY**

**REPORT OF THE  
FOCUSED LEGAL ASSESSMENT  
BY THE TRANSACTIONAL ATTORNEYS WORKING GROUP AUDIT TEAM  
OF**

–

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## **I. INTRODUCTION**

This report (the “Report”) was prepared for the to summarize the focused legal assessment performed as a pro bono legal engagement by the Transactional Attorneys Working Group Audit Team. This engagement included a review of \_\_\_\_’s organizational structure, current governance, and general legal compliance with respect to a limited set of identifiable legal matters. This Report summarizes the scope and procedures of our review, identifies areas of potential liability exposure, and recommends specific actions to improve governance and eliminate or mitigate exposure to current and future liabilities. A legal assessment is not governed by any externally-agreed-upon or published standards, and there is no standardized arrangement within the legal profession for measuring legal compliance. Therefore, this Report highlights only a limited number of identified legal matters and should not be relied upon as a comprehensive review of \_\_\_\_’s overall legal compliance.

This Report represents a good faith effort by the Transactional Attorneys Working Group Audit Team to identify legal risks presented in several specific legal areas, including (1) Legal Form and Corporate Governance; (2) Internal Controls and Procedures; (3) Insurance; (4) Tax Matters; (5) Privacy and Intellectual Property; and (6) Employment Policies. The goal of this Report is to summarize and classify the risks identified within these five areas and to make \_\_\_\_’s Board of Directors and senior management aware of the risks. The focus of our review has been to identify issues that a government agency would be most likely to target in reviewing \_\_\_\_’s compliance as a not-for-profit organization. Accordingly, we have not focused on reviewing the qualitative aspects or operation of specific contracts, plans, programs or transactions. Finally, our review has focused on issues that could potentially result in significant cost or liability to \_\_\_\_.

This Report is based solely on information derived from (1) documents produced at our request; and (2) interviews with senior management. Our review has been limited to the subject matter described below. We can provide no assurances that problems existing outside of the scope of our review have been identified, that governmental regulators will agree with the assessments of risk provided in this Report, or that our recommendations will ameliorate completely the risks that have been identified.

This legal compliance review represents a snapshot in time. \_\_\_\_’s conduct may have changed or it may have entered into additional transactions or arrangements since the time we conducted our review.

## **II. CONFIDENTIALITY AND THE ATTORNEY-CLIENT PRIVILEGE**

This Report is and should continue to be treated as subject to the attorney-client privilege for members of \_\_\_\_'s governance and management control group. All communications between legal counsel preparing this Report and all members of \_\_\_\_'s control group should likewise be subject to the attorney-client privilege.

### **A. Identifying the Control Group**

We recommend that \_\_\_\_'s executive director prepare a list of the individuals included in this control group, either by position description or by name, so it is very clear who will and who will not be privy to this Report within the organization. A copy of that list should be included with any copies of this Report maintained in \_\_\_\_'s files and the list should also be provided to all applicable legal counsel with a copy of the Report for counsel's files. Ordinarily, for privileged materials such as this Report, the control group would include at least following:

1. Each member of \_\_\_\_'s Board of Directors
2. \_\_\_\_'s Executive Director
3. Each non-member of the Board of Directors who the Board has assigned to a Board Committee to deal with any of the legal risks identified in this Report
4. Each member of \_\_\_\_'s senior management, whether a corporate officer or not, who would ordinarily be utilized, or who is in fact utilized, to deal with the specific legal risks identified in this Report
5. Executive assistants to the persons identified above, without whose assistance the control group members could not reasonably accomplish their responsibilities

***If the reader is not clearly a member of the corporate control group identified above, this Report should be closed immediately and delivered directly to the Chairman of the Board of Directors for the \_\_\_\_\_.***

### **B. Discoverability or Admissibility of Legal Assessment Report**

It is important that the privilege attaching to this Report and to the disclosures to counsel not be waived, inadvertently or otherwise, except by the Board deliberately and for \_\_\_\_'s benefit. To avoid inadvertent waiver of this privilege, all copies of this Report and any accompanying materials should be numbered, marked as confidential materials, and stored in securely locked files as part of \_\_\_\_'s governance and management records. \_\_\_\_ should remind control group members of their continuing fiduciary obligation not to disclose confidential information obtained as a member of \_\_\_\_'s control group.

It is common for financial auditors and compliance consultants to request copies of a legal audit or a legal assessment report in connection with due diligence reviews or assessments of material contingent liabilities or compliance risk. Disclosure of this Report to these

individuals will result in waiver of the attorney-client privilege with respect to this Report. Accordingly, financial auditors and compliance consultants should not have access to this Report unless \_\_\_\_'s Board has first consulted with legal counsel and made a conscious decision to waive the attorney-client privilege. **ONCE THE PRIVILEGE IS WAIVED, IT MAY NOT BE ASSERTED AND THIS REPORT WILL BE SUBJECT TO DISCOVERY.**

The individual members of \_\_\_\_'s control group for this Report should resist all efforts by third parties, including without limitation state and federal agencies, the media, law enforcement agencies, the Illinois Attorney General, and courts, to obtain this Report or any portion thereof. It should be \_\_\_\_'s policy to attempt lawfully to move to quash any and all subpoenas or other process to obtain the Report, should any be served on \_\_\_\_ or a control group member.

Members of the control group should not mention the Report or its contents to third parties, and the existence of the Report should not be revealed or communicated to individuals outside the control group. Board minutes should refer to legal advice received rather than to this Report. Any person receiving legal process or correspondence alluding to or demanding the Report or any of its parts or components by any name or description should immediately alert the Chairman of the Board.

If this Report or any part thereof is to be disclosed in any manner to any person outside the control group, that decision should be the result of (1) an express determination by \_\_\_\_'s Board of Directors to disclose the Report to advance \_\_\_\_'s best interests or the public's interest, or (2) an explicit final order of a court having jurisdiction over \_\_\_\_ or the holder of this Report. Until such time, we strongly urge \_\_\_\_ to continuously and consistently assert that the Report and all related communications are protected by the attorney-client privilege.

### **III. SCOPE OF REVIEW**

The purpose of our review was to identify possible issues of legal exposure arising in the following high-risk areas:

1. **Corporate Governance and Internal Controls.** This component included a general review of the organization's Articles of Incorporation and Bylaws as well as board minutes, training materials and policies and procedures related to internal controls and procedures.
2. **Insurance.** This component included a general review of the organization's existing insurance coverage to determine the sufficiency thereof, both in terms of types and amounts of coverage.
3. **Federal Taxation Compliance.** The issues assessed include:
  - (a) Federal tax exemption: Overall compliance with the requirements for maintaining exempt status and avoiding intermediate sanctions.
  - (b) Conflicts policy and procedure.
  - (c) Unrelated business taxable income, including reviews of Forms 990 and 990-T for compliance.
  - (d) Form 990 filings as they relate to executive compensation and general compliance with IRS filing requirements.
4. **Privacy and Intellectual Property.** This component included a review of the organization's policies and procedures related to privacy and protection of intellectual property and information technology rights and responsibilities.
5. **Employment Policies.** \_\_\_\_\_ currently has no employment policies in place. However, in reviewing \_\_\_\_\_'s structure, we have identified some key provisions and suggestions for future employment policies adopted by \_\_\_\_\_.

#### **IV. REVIEW METHODOLOGY**

Unlike a financial audit, which is governed by generally accepted accounting principles and multiple position papers of regulatory and accreditation organizations, focused legal compliance reviews use methodologies designed to advise the client on the extent to which a particular set of circumstances may pose quantifiable legal risk. An assessment of the degree of legal risk is based upon the professional judgment of the legal counsel involved, as supplemented by interviews and meetings with organization personnel, the review of applicable documents and legal research.

During the period of \_\_\_\_\_, 2004, we reviewed the following categories of documents produced by \_\_\_\_ at its headquarters, located at \_\_\_\_\_:

1. Articles of Incorporation and Bylaws of \_\_\_\_\_.
2. Board and key committee meeting minutes of \_\_\_\_\_.
3. Tax returns of \_\_\_\_\_.
4. Material Agreements of \_\_\_\_\_.
5. Compliance plans.
6. Conflict of interest questionnaires.

Additionally, interviews were conducted of the following \_\_\_\_ employees: (Names of employees).

SUMMARY OF RECOMMENDATIONS

The following summarizes our recommendations:

A. **Legal Form and Governance Recommendations**

1. \_\_\_\_\_'s Bylaws should be amended: (i) to allow for an assistant secretary who is not a board member, or for the Secretary to delegate minute taking authority; (ii) to provide limits for committees' powers; (iii) to reflect the new address; and (iv) to reflect a conflict of interest policy.

2. Notices of Board meetings should be filed in the minute book with the minutes, or the minutes should include language to reflect that the meeting was held pursuant to due notice. Board minutes should avoid any references to lobbying. The Board should adopt resolutions when forming committees.

B. **Internal Controls and Procedures Recommendations**

1. The Board should consider a second signature for accounts at \_\_\_\_\_ and \_\_\_\_\_.

2. The petty cash log should be submitted to the Board with regular financial reports.

3. \_\_\_\_\_ should adopt the following policies: Whistleblower Policy, Code of Ethics Policy, Conflicts of Interest Policies, General Compliance Plan and Records Retention Policy.

C. **Insurance Recommendations**

1. \_\_\_\_\_ should keep all expired insurance policies in a manner easily accessible in the event a claim is made against it arising out of past acts.

2. \_\_\_\_\_ should request a copy of all actual group health/dental policies if it does not have them, and maintain copies in its files.

D. **Tax Law Recommendations**

1. \_\_\_\_\_ should amend its Articles of Incorporation and Bylaws. The Articles of Incorporation should include a clear statement of \_\_\_\_\_'s current not-for-profit purposes. The Bylaws should be amended to incorporate model language promulgated by the Internal Revenue Service to address conflicts of interest. The Bylaws should also reflect the current board structure and should include descriptions of the general duties of the Executive Director and other permanent staff members. These changes may decrease the likelihood of scrutiny from regulatory authorities regarding \_\_\_\_\_'s tax-exempt purpose.

2. \_\_\_\_\_ should remain vigilant at ensuring that IRS Forms 990 undergo appropriate financial review.

E. **Intellectual Property Recommendations**

1. \_\_\_\_\_ should seek further legal counsel regarding its compliance obligations regarding the collection, storage and use of employee financial, health, and other sensitive and personal data and information.

2. \_\_\_\_\_ should develop written policies regarding the handling, protection and use of \_\_\_\_\_ and third-party proprietary data and information, as well as intellectual property.

3. \_\_\_\_\_ should seek to become generally educated about opportunities for and methods by which it may become more knowledgeable about its potential exposure to violations of privacy rights and intellectual property, and to learn about ways to improve the use of its intellectual property assets.

4. \_\_\_\_\_ should insert copyright notices on its promotional materials.

F. **Employment Recommendations**

1. \_\_\_\_\_ should develop basic job descriptions for each current position.

2. \_\_\_\_\_ should conduct performance evaluations for its employees at least annually. Salary or other pay increases should be justified by satisfactory performance, as justified in these evaluations.

3. \_\_\_\_\_ should adopt basic policies prohibiting harassment and violence in the workplace, and that it abides by Equal Employment Opportunity requirements.

4. \_\_\_\_\_ should create a simple handbook of employment policies for its employees.

**V. NARRATIVE OF FINDINGS**

**A. Legal Form and Governance**

1. Articles of Incorporation and Bylaws

\_\_\_\_\_'s Articles of Incorporation and Bylaws generally appear complete under Illinois law. (See Tax Matters for further recommendations regarding IRS compliance with respect to the Articles and Bylaws).

2. Minutes

\_\_\_\_\_'s board meetings are generally held in January, March, May, July, September and November each year. The minutes are kept by \_\_\_\_\_, acting as "Assistant Secretary" and appear generally quite complete and well done. They are signed by \_\_\_\_\_ and kept, in order, in a minute book. Timely, notices of each meeting are e-mailed to each board member, together with financial and other preparatory material.

Review of these minutes, together with \_\_\_\_\_'s Bylaws, does indicate that there are several issues that should be addressed:

**a. Members**

The \_\_\_\_\_ Bylaws, in Article I, contemplate that \_\_\_\_\_ has members as well as a board of directors. Article I, Section 2 requires that the members shall meet on the first Friday of each August for its annual meeting. Article III, Section 3 provides that directors are to be elected by the members.

There are no minutes of meetings of the membership. Although it is clear that the \_\_\_\_\_ does meet and elect \_\_\_\_\_'s board of directors annually, it does not do so on a Friday in August.

Recommendation: \_\_\_\_\_'s Bylaws should be amended to conform to the \_\_\_\_\_ meeting dates, and minutes should be taken and kept of these annual meetings of members. Another possibility would be for \_\_\_\_\_ to amend its Articles of Incorporation and Bylaws and eliminate the need for members. 805 ILCS Section 107.03 provides that Illinois not-for-profit corporations may or may not have members.

**b. The Assistant Secretary**

\_\_\_\_\_'s Bylaws do not provide for such an office or function.

Recommendation: \_\_\_\_\_'s Bylaws should be amended to allow for an assistant secretary who is not a board member, or for the Secretary to delegate minute taking to an appropriate staff member.

**c. Notice**

Pursuant to the Bylaws, meetings of the \_\_\_\_ board of directors require notice. Although it does appear that timely notices have been sent, either the notices of board meetings should be filed in the minute book with the minutes, or alternatively, each set of minutes should state that the meeting was held pursuant to “due notice.”

Recommendation: The notices of board meetings should be filed in the minute book with the minutes, or each set of minutes should state that the meeting was held pursuant to “due notice.”

**d. Committees**

Article V of \_\_\_\_’s Bylaws provides for an Executive Committee and Special Committees to be established “by resolution duly adopted.” While \_\_\_\_ has several committees, there is no evidence of any Board resolutions “duly” adopting these committees. Additionally, the de facto committees that are in existence do not seem to take or keep minutes (with the exception of one set of 2002 minutes for the Development Committee). There is no language in the Bylaws as to how or when the committees will provide such minutes to the Board. Furthermore, under Illinois law, committees’ powers are limited (805 ILCS 105/108.40), and \_\_\_\_ may wish to include language in its Bylaws to limit the powers of its committees. **Exhibit A** hereto contains sample language that imposes some limitations on the powers of Board committees.

Recommendation: Committees should keep minutes and the Board should adopt resolutions when forming new special committees. The Bylaws should be modified to limit the committee’s powers under Illinois law and to provide a procedure for committee minutes to be forwarded to the Board.

**e. Principal Office**

Article VI, Section 2 of the Bylaws states that \_\_\_\_’s principal office is located at \_\_\_\_.

Recommendation: Amend the Bylaws to update \_\_\_\_’s current address.

**f. Lobbying**

There is a reference to “lobbying” in the Board minutes of March 18, 2002 to “lobbying.” Due to \_\_\_\_’s 501(c)(3) status, lobbying should be avoided.

Recommendation: Care should be taken to ensure that \_\_\_\_ avoids activities that could jeopardize its 501(c)(3) status.

**g. Conflicts of Interest**

While interviews and document reviews suggest that there are neither any conflicts of interest, nor any “insider” transactions, \_\_\_\_ has no formal policy on conflicts of interests.

Recommendation: The Board should adopt a \_\_\_\_ Board Conflict of Interest Policy and \_\_\_\_'s Bylaws should be amended to reflect such policy. (See Tax Matters for sample Bylaw language).

**h. General**

The minutes do not indicate how directors voted on each matter. While this is not required, it should be noted that at most Board of Director meetings, a number of meeting attendees are not entitled to vote.

Recommendation: Care should be taken at meetings to ensure that only members entitled to vote actually do vote.

**B. Internal Controls and Procedures**

1. Finance

**a. Budgeting Procedure**

The budget is prepared by \_\_\_\_ and sent to the Budget and Finance Committee of the Board. The budget includes all compensation recommendations. The Budget and Finance Committee then reviews the budget and makes its recommendations to the full Board for final action.

Recommendation: None.

**b. Auditing Procedures**

The general ledger is maintained by \_\_\_\_\_. It is reviewed on a monthly basis, and then \_\_\_\_\_ submits bi-monthly financial statements (income and expense statements and balance sheet) to the full Board for review. The report is year-to-date and prepared on a comparative basis against the budget.

Each year, an independent accounting firm (\_\_\_\_\_) prepares a year-end audit report to the Board. It also prepares all required tax returns.

Recommendation: None.

**c. Policies and Procedures Regarding Check Signing, Incurrence of Debt**

Policies:

Recommendation:

Petty Cash

\_\_\_\_\_ maintains petty cash in the maximum amount of \$ \_\_\_\_ at any one time. This is used primarily for reimbursing \_\_\_\_\_. \_\_\_\_\_ maintains a log of all disbursements and maintains receipts.

Recommendation: The petty cash log should be submitted to the Board with the regular monthly financial reports.

**d. Endowment Policies**

The endowment fund account is reviewed for compliance by a qualified representative of the \_\_\_\_\_, and reports are submitted to the Board.

Recommendation: None.

**e. Contracting**

(a) Policies and Procedures

\_\_\_\_\_ has only one contract, which is for the office's postage machine. Corporate policy permits contracts under \$1,000 to be approved and signed by the Executive Director, and all contracts, leases, debt instruments and the like over \$1,000 to be submitted to the full Board for approval. The Board generally delegates contractual authority to either the President or the Treasurer.

(b) Secretariat Procedures

The Executive Director prepares the annual report to the Secretary of State and the Illinois Attorney General. Copies are submitted to the Board.

Recommendation: None.

2. Corporate Compliance

**a. Whistleblower policy**

\_\_\_\_\_ has no Whistleblower policy in place at this time. Given the small size of \_\_\_\_\_'s staff and open workplace environment, no Whistleblower policy is needed at this time.

Recommendation: None.

**b. Code of Ethics policy**

\_\_\_\_\_ has no Code of Ethics policy in place at this time.

Recommendation: \_\_\_\_\_ should adopt a policy that sets forth a basic code of conduct. A sample policy providing Guidelines for Business Conduct is attached hereto as **EXHIBIT B.**

**c. Conflict of Interest Policy**

\_\_\_\_\_ has no Conflict of Interest Policy in place at this time.

Recommendation: Adopt a policy (*discussed further herein in section VI.D.1*).

**d. General Compliance Plan**

\_\_\_\_\_ has no General Compliance Plan in place at this time.

Recommendation: \_\_\_\_\_ should adopt a general compliance plan, which could be integrated with either or the Ethics and Conflicts of Interest Policies, and which should provide for general compliance with laws affecting the business of the company. *See EXHIBIT B* attached hereto.

**e. Designated Compliance Office and Complaints**

\_\_\_\_\_ has no designated compliance office. Complaints are taken directly to the Executive Director. There are currently five employees in the office.

An Employee Manual is under review by \_\_\_\_\_'s Board. This manual should include all of the policies covered in this section of the report and the manual should be adopted by \_\_\_\_\_'s Board of Directors. *See* section VI.F herein discussing recommended employment policies.

Recommendation: \_\_\_\_\_'s Board should recognize and support the Executive Director as the individual in charge of compliance with all corporate policies and who is to receive and act on all alleged violations thereof. The attached sample Guidelines for Business Conduct incorporate this recommendation and \_\_\_\_\_'s Board of Directors should adopt a policy to this effect. *See EXHIBIT B*.

**3. Records Retention**

\_\_\_\_\_ currently has no records retention policy.

Recommendation: \_\_\_\_\_'s Board should adopt a records retention policy. A suggested policy is attached hereto as **EXHIBIT C**.

C. **Insurance**

1. **Overview of Policies**

- (a) \_\_\_\_\_ has a standard suite of property and casualty insurance from a reputable insurer (described in more detail below).
- (b) This coverage does not include directors and officers liability coverage, however, and also does not include any professional liability coverage (the property and casualty policy has standard exclusions).
- (c) \_\_\_\_\_ provides medical insurance through the \_\_\_\_\_ for its five employees. This coverage is limited to medical and dental coverage (PPO & HMO options). \_\_\_\_\_ does not make life insurance or long term care insurance available to its employees.

2. **Property & Casualty Insurance**

\_\_\_\_\_ has property, casualty and workers compensation insurance under policies issued by affiliates of \_\_\_\_\_. These policies are effective from May 20, 2003 to May 20, 2004. The property and casualty policy is a standard package policy that provides business personal property (\$10,000 limit, replacement cost coverage) and general liability coverage. The liability coverage includes coverage for: “Personal Injury” and “Advertising Injury” coverage (which includes coverage for libel and slander and violation of right to privacy); and coverage for hired and non-owned automobiles (*e.g.* rental cars used for business purposes). \_\_\_\_\_’s liability coverage is in the amount of \$1 million per occurrence / \$2 million in the aggregate. \_\_\_\_\_’s workers compensation and employer’s liability policy provides coverage for \_\_\_\_\_’s obligations under the workers compensation law, and employer’s liability coverage (with employer’s liability limits of \$100,000 for each accident).

**Recommendation:** \_\_\_\_\_ has copies of some expired policies in the file, but we did not see copies of expired policies going back a number of years. \_\_\_\_\_ may have those expired policies elsewhere. \_\_\_\_\_ should keep all expired policies, in a manner easily accessible in the event a claim is made against it arising out of past acts.

3. **Directors & Officers / Professional Liability Coverage**

\_\_\_\_\_’s general liability coverage will not cover claims against \_\_\_\_\_, or against its directors or officers, alleging that \_\_\_\_\_’s directors or officers breached their duties to \_\_\_\_\_ or to its members. \_\_\_\_\_ has looked into and considered purchasing directors and officers liability coverage in the past, but such coverage was considered too expensive. \_\_\_\_\_’s general liability coverage also will not cover claims against \_\_\_\_\_ alleging legal malpractice. \_\_\_\_\_ does not purchase a separate professional liability coverage, because it coordinates the provision of volunteers to other organizations that provide pro bono legal services, but does not itself provide pro bono legal services.

Recommendation: \_\_\_\_ should continue to periodically monitor the cost and benefits of directors and officers insurance.

4. Health/Dental Insurance Coverage

Health and Dental coverage is provided to \_\_\_\_'s employees through the \_\_. Insurance is purchased through \_\_\_\_, but it is not itself the insurer. Insurers are . Both \_\_ offer HMO and PPO options. \_\_\_\_ makes coverage available to \_\_\_\_ for monthly fee per employee; it is up to \_\_\_\_ to determine what portion of the fee, if any, its employees will pay.

It is not clear, but it appears that \_\_\_\_\_ is the group policyholder. We did not see a copy of the actual group policy in the file. It does not appear that \_\_\_\_ has any obligation to pay \_\_\_\_\_ any additional amounts if another participating not-for-profit does not timely pay premiums to \_\_\_\_\_ (so that \_\_\_\_\_ can pay the insurer what it owes). However, since \_\_\_\_\_ will have an obligation to pay the insurers even if a participating organization defaults, a default by another member could result in higher membership fees to \_\_\_\_\_ in the future.

Recommendation: \_\_\_\_ should consider requesting a copy of the actual group policies if it does not have them, and maintain copies in its files.

D. Tax Matters

We reviewed the following documents provided to us by \_\_\_\_: (1) Letter from the Internal Revenue Service (the "IRS") dated \_\_\_\_ Granting Tax-Exempt Status to \_\_\_\_; (2) IRS Form 1023 - Application for Income Tax Exemption for \_\_\_\_; (3) IRS Forms 990 for \_\_\_\_ for the fiscal years \_\_\_\_; (3) Illinois Forms AG990 for \_\_\_\_ for the fiscal years \_\_\_\_\_ 1; (4) \_\_\_\_'s Articles of Incorporation and Bylaws; and (5) \_\_\_\_'s Audited Financial Statements for the years \_\_\_\_\_. Our response is limited to matters reasonably identifiable from our review of these documents. We have made no independent review of any of the information used to prepare these documents for purposes of this Report.

In reviewing the documents identified above, we found certain matters relating to \_\_\_\_'s tax-exempt status that require the attention of \_\_\_\_'s Board and management. Most of these issues center around three issues: (1) Updating \_\_\_\_'s governing documents to meet current IRS recommendations; (2) Preventing errors, omissions and other inconsistencies in \_\_\_\_'s tax filings to ensure that \_\_\_\_ files complete and accurate returns; and (3) Ensuring awareness by \_\_\_\_'s employees of certain restrictions that apply to tax-exempt organizations.

1. Articles and Bylaws

Although \_\_\_\_ is a not-for-profit corporation which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, its Articles of Incorporation do not contain all of the provisions required by the Internal Revenue Service ("IRS") for tax-exempt organizations. In addition, its Bylaws do not contain conflict of interest language that the IRS has stated it expects tax-exempt organizations to have. Both of these issues are likely related to the age of the \_\_\_\_ Articles and Bylaws.

We recommend that \_\_\_\_ amend its Articles of Incorporation and its Bylaws. \_\_\_\_ should revise its Articles of Incorporation to include a clearer statement of its not-for-profit purposes. **Exhibit D** provides a draft, revised statement that could be tailored to \_\_\_\_'s purposes and then used as an amended purpose. The Bylaws should be amended to include language requiring the Board to adopt a conflicts of interest policy. A sample provision that could be added to \_\_\_\_'s Bylaws to mandate a conflicts of interest policy is attached as **Exhibit E**. A sample conflicts of interest policy, modeled on the policy recommended by the IRS, is attached as **Exhibit F**.

2. Errors and Omissions in Tax Filings

Our review of the documents identified above indicated that \_\_\_\_'s IRS Forms 990 contain certain errors and omissions. These returns should be carefully prepared and reviewed by qualified financial or legal professionals to ensure accuracy and completeness. We recommend that \_\_\_\_ create policies and procedures to ensure that all tax filings will be carefully reviewed by qualified financial representatives. Each filing should be carefully scrutinized to avoid even immaterial errors and omissions. \_\_\_\_ should consider creating procedures to ensure that it selects a tax preparer with sufficient expertise and qualifications to generate accurate and complete tax filings.

3. Preventative Steps to Preserve Tax-Exempt Status

The Internal Revenue Code (the "Code") prohibits tax-exempt organizations from engaging in many activities, including certain lobbying and political activities, activities "outside" the organization's tax-exempt purpose, and activities which create private inurement or private benefit as defined by the Code. The IRS imposes sanctions on tax-exempt organizations for noncompliance with these prohibitions. We have found no information indicating that \_\_\_\_ has engaged in lobbying or other prohibited activities. Nonetheless, \_\_\_\_ should consider taking preventative steps to reduce the risk of any such activities occurring, such as by adopting a policy to make its staff aware of the restrictions on political activities and making its staff aware of the intermediate sanction rules that apply to tax-exempt organizations.

**a. Prohibitions on Political Activity**

The Code absolutely prohibits tax-exempt organizations from engaging in any political campaign activity. Section 501(c)(3) of the Code defines prohibited activity as participation or intervention in any political campaign on behalf of or in opposition to any candidate for public office. Any violation of this prohibition will result in the loss of the organization's tax-exempt status as well as the incurrence of substantial excise tax penalties.

Prohibited activity includes the publication or distribution of written or printed statements on behalf of or in opposition to a candidate. Written or oral endorsements of candidates and candidate ratings (even on a non-partisan basis) are prohibited. A Section 501(c)(3) organization also may not provide or solicit financial or other forms of support to or for candidates or political organizations.

In contrast to the Code's absolute prohibition against engaging in political activities, a tax-exempt organization may engage in activities the purpose of which is to influence legislation,

so long as those activities do not become a substantial part of the organization's activities. Unfortunately, there are no clear guidelines as to when lobbying activities will constitute a substantial part of an organization's activities. The Code permits some tax-exempt organizations to elect a special set of rules that provides specific guidelines about the amount of money that may be spent for legislative activities.

Legislative activities include: (a) advocating the adoption or rejection of legislation, (b) engaging in direct lobbying by communicating with legislators, their staffs and, under certain circumstances, executive branch officials who participate in the formulation of legislation for the purpose of proposing, supporting or opposing legislation, and (c) engaging in grass roots lobbying by urging the public to contact members of a legislative body for the purpose of proposing, supporting or opposing legislation.

\_\_\_\_\_ should consider taking steps to preserve and protect its tax-exempt status with respect to the rules prohibiting lobbying and political activity, as well as to avoid the potential application of the intermediate sanction rules. \_\_\_\_\_ should consider implementing a policy to make its staff aware of the prohibitions on political activities, particularly during election years. A sample policy prohibiting such activity is attached as **Exhibit G**.

**b. Prohibitions on Private Inurement**

Section 501(c)(3) of the Code and Treasury Regulation 1.501(c)(3)-1(c) provide that no part of the net earnings of a Section 501(c)(3) organization may inure to the benefit of private shareholders or individuals with an "inside" relationship to the charity. This is commonly referred to as the private inurement prohibition. Private shareholders or individuals, commonly referred to as "insiders," generally include officers, directors, major donors, and senior management.

The prohibition on private inurement applies to an organization's "net earnings." The concept of net earnings permits an organization to pay or receive "fair market value" or "reasonable compensation" for a good or service. If, however, a transaction results in the payment of more than fair market value or reasonable compensation for an item or service it purchases, or the receipt of less than fair market value or reasonable compensation for an item or service it sells, the transaction may result in private inurement.

**c. Private Benefit**

A Section 501(c)(3) organization must also be operated for the benefit of public, rather than private, interests. Thus, an organization must be able to establish that it is not organized or operated for the benefit of private interests, such as the charity creator or his family, its shareholders, or persons controlled, directly or indirectly, by such private interests. A public charity must be able to demonstrate that any benefits that flow from its corporate activities to private interests are incidental, both qualitatively and quantitatively, to the public benefits derived from the activity. The substantiality of the private benefit is measured in the context of the overall public benefit conferred by the activity. Unlike the private inurement prohibition, the "private benefit" prohibition is not limited to "insiders." Organizations that confer impermissible private benefits jeopardize their tax-exempt status.

**d. Intermediate Sanctions and the Rebuttable Presumption of Reasonableness**

Code Section 4958 contains a series of penalty excise taxes generally referred to as “intermediate sanctions.” Under those rules, disqualified persons (that is, persons in a position to exercise substantial influence over the affairs of the organization) who receive excess benefits, and the organizational managers who approve such benefits, are subject to the imposition of penalty excise taxes. It should be noted that there is no penalty excise tax applicable to the organization itself. However, in certain circumstances these penalties may be imposed in addition to loss of tax-exempt status.

For intermediate sanctions purposes, a benefit is an “excess benefit” if it has a value in excess of the fair market value of the goods and services for which it is given. A benefit will not be an excess benefit if it is reasonable. The legislative history underlying Code Section 4958 contains guidelines for raising a “rebuttable presumption of reasonableness.” The legislative history to Section 4958 provides that a taxpayer may raise a rebuttable presumption of reasonableness with respect to a transaction with disqualified individuals, such as executives of a tax-exempt organization, if such arrangement is approved by an independent board of directors or trustees (or committee thereof) that:

- (a) is composed entirely of individuals unrelated to and not subject to the control of disqualified person(s) involved in the arrangements;
- (b) obtained and relied upon appropriate data as to comparability; and
- (c) adequately documented the basis for its determination.

Although the intermediate sanction rules only apply to transactions between disqualified persons and organizational managers, the analysis contained therein provides a good process for determining the reasonableness of a public charity’s transactions.

In order to avoid any inadvertent application of the intermediate sanctions rules, \_\_\_\_\_ should ensure that all compensation and other transactions with individuals who would be considered “disqualified persons” under the intermediate sanctions rules are approved by disinterested directors. This will also help to prevent any inadvertent private inurement or private benefit problems.

**E. Privacy and Intellectual Property**

**1. Method**

As the starting point for the Assessment, we posed questions to \_\_\_\_\_’s staff members and reviewed the documents that were available and responsive to our request for documents dated \_\_\_\_\_. All questions asked were answered and, with only a few exceptions, all relevant and existing documents were made available. The primary documents reviewed consisted of trademark files, board minutes, \_\_\_\_\_’s website (\_\_\_\_\_), \_\_\_\_\_’s marketing brochures, and \_\_\_\_\_’s program files.

**2. Conclusions**

- (a) From a privacy and intellectual property standpoint, \_\_\_\_\_ maintains a very simple profile.
- (b) \_\_\_\_\_'s exposure to IP infringement claims and charges of violation of privacy rights is relatively low, due to: (i) its few intellectual property assets; (ii) the non-interactive nature of its website; (iii) its lack of commercial advertising and solicitations to and by third parties; (iv) its very limited use of personally-identifying information; (v) its distribution of its marketing materials only within the United States; (vi) its lack of a vehicle for acquiring non-exempt income; and (vii) its lack of an information technology network connectivity.
- (c) \_\_\_\_\_ may face future compliance problems, due to its lack of written policies and procedures regarding privacy and intellectual property matters, as well as its lack of knowledge about whether it has compliance obligations regarding these matters. As its marketing and advertising activities become more complex, \_\_\_\_\_ should periodically monitor its compliance obligations and revisit the need for policies. These matters should also be revisited as \_\_\_\_\_ expands or changes its use of personally-identifying information.

3. Specific Inquiries

**a. Data Collection**

INQUIRY: Does the organization collect, store, process, or use member's, customer's or client's personally-identifying information (e.g., name, telephone, address, social security #, e-mail, birth date)?

CONCLUSION: Yes. The \_\_\_\_\_ contains such information. Not Distributed, Sold or Used for any Other Purpose than Internal Statistical Analyses and Program Development and Monitoring.

**b. IP Ownership**

INQUIRY: Does the organization own, lease, license, or use copyright-protected materials, trademarks and logos, patented processes and products, trade secrets, or domain names?

CONCLUSION: Yes. It owns, and has registered as federal trademarks, \_\_\_\_\_ and \_\_\_\_\_, and owns unregistered, stylized/design versions. While it has brochures and a promotional video, the brochure doesn't contain a copyright notice and it was

unknown whether the video did. The video case and video needs to be viewed. It owns the \_\_\_\_ domain name and it was recently renewed. Need to check the registry for term date.

**c. Marketing of Products**

INQUIRY: Does the organization market, sell, or otherwise promote or advertise, via any channel using any medium, any goods or services that use material protected by copyrights or trademarks not owned by or licensed to the organization?

CONCLUSION: Yes. The information on the Web site and mailings and in-person distribution of the Brochures, which contain no third party marketing, promotional, advertising, or solicitation materials.

**d. Code of Conduct**

INQUIRY: Does the organization publicly claim to follow any industry code of conduct or best practices guidelines relating to the protection, security, collection, storage, processing or use of competitively sensitive, financial, confidential, or proprietary assets, data or information?

CONCLUSION: No. And, we are not aware of the existence of any such applicable code of conduct.

**e. Policies and Procedures**

INQUIRY: Does the organization maintain any written policies and procedures relating to the organization's principals and operating expectations regarding any of the above-referenced data collection, intellectual property ownership and marketing of products/services?

CONCLUSION: No such written policies and procedures exist. And, there is no training program associated with such matters.

INQUIRY: Does the organization have an enterprise-wide, personal-information-handling, privacy policy, and is it posted on your Web site, if any?

CONCLUSION: No privacy policy exists.

INQUIRY: Does the organization know whether it complies with that policy?

CONCLUSION: No privacy policy exists.

INQUIRY: Does the organization maintain any personal health, financial, or employee data and information?

CONCLUSION: Any such health, financial or employee data and information maintained by \_\_\_\_ relates to the employee/employer relationship and mainly consists of payroll related information.

INQUIRY: Has the organization determined whether any applicable privacy compliance obligations exist relating to such data and information collection?

CONCLUSION: The organization does not know whether it has any applicable privacy compliance obligations relating to its collection or processing of employee-related data and information.

**f. Internet Activities**

INQUIRY: Does the organization maintain an operating Web site on which any of the above-referenced marketing activities are conducted?

CONCLUSION: Yes, there is a Web site, however it is informational only, is not interactive, and does not contain third-party advertising content.

INQUIRY: Does this Web site contain a Privacy Policy or Privacy Statement outlining your organization's policies, if any, regarding its handling of personal information?

CONCLUSION: There is no Privacy Policy.

INQUIRY: Does the organization regularly check and update the applicability and accuracy of data and information on its Web site (including privacy policy and trademark/copyright notices)?

CONCLUSION: The accuracy and applicability of information on the Web site is checked two times each twelve months, or when something very important or special comes up. The site should be checked for copyright notices.

**g. Solicitations and Advertisements**

INQUIRY: Does the organization send to members, customers and clients any e-mails, faxes or telephone messages relating to

commercial solicitations of or advertisements for products and services of the organizations or for third parties?

CONCLUSION: Generally, except for an occasional e-mail, the primary distribution channel for the organization's marketing information is its Web site, direct mail, and personal distribution at events. It does no marketing of third-party materials.

INQUIRY: Does the organization know whether it complies with the applicable laws relating to such matters, or otherwise may receive the benefits of any waiver of or exceptions to them.

CONCLUSION: It does not know whether there are any laws or regulations applicable to its distribution of its marketing materials.

**h. Activities Outside US**

INQUIRY: Does the organization (via direct mail, e-mail, voice telephone, or facsimile) direct any of its offerings of products or services to persons located outside the United States or to persons anywhere who are known to be children?

CONCLUSION: The organization performs no such activities directed outside the U.S., or directed to children.

**i. Maintenance of IP**

INQUIRY: Does the organization have any policies or procedures relating to the acquisition, maintenance, protection, and commercialization of its intellectual property assets?

CONCLUSION: No. The organization maintains no such policies or written procedures.

INQUIRY: Are these assets sufficiently valuable or essential to the purpose of the organization to need more than ad hoc maintenance procedures?

CONCLUSION: No. The number of such assets are so few in number that, even though they are important to the brand of the organization, ad hoc internal maintenance, with primary responsibility residing with outside IP counsel, serves the organization's needs well.

**j. Publications**

INQUIRY: Does the organization file copyright applications for and keep records of your works of authorship (whether published or unpublished)?

CONCLUSION: No. It has not filed to register the copyright in either its brochures or its promotional video.

INQUIRY: Does the organization regularly acquire appropriate publication releases or written assignments of rights to any materials contributed to its publications by non-employees?

CONCLUSION: No. It has depended upon the outside production company to acquire any required releases and assignments. It doesn't know whether it needs such releases or assignments.

**k. Infringement Letters**

INQUIRY: Has the organization received or sent any correspondence or communications concerning any claim or assertion of misappropriation or infringement (i) by the organization of intellectual property rights of a third party, or (ii) by a third party of the organization's intellectual property rights which are "unanswered" or "unresolved?"

CONCLUSION: No.

**l. IP Agreements**

INQUIRY: All material licensing, development and consulting agreements, acquisition agreements and documents, assignments, other grants of rights, confidentiality agreements, escrow agreements, and any other agreements and material documentation relating to (i) the grant to the organization of rights in intellectual property, and (ii) the granting by the organization of rights in and to any intellectual property, and (iii) restrictions on the organization's ownership, right to use, or right to dispose of, any intellectual property.

CONCLUSION: Generally, the organization is not aware of having any such agreements and documents. However, it should find and review its Web site Hosting Agreement (which may be just a purchase order), and its Service Agreement with Chicago Video Productions (relating to the promotional video).

**m. IT Agreements**

INQUIRY: All computer, data processing and data communications equipment, and products and services agreements, including (i) any agreements relating to Internet, Intranet, extranet and other online products and services, or linking, hosting, outsourcing or other similar arrangements, (ii) information technology consulting services, (iii) hardware and software maintenance agreements and (iv) any other computer, electronic data processing and data communications agreements relating to the current operation, products and services of the organization, or its products, services and other projects in development.

CONCLUSION: Generally, the organization is not aware of having any such agreements and documents.

4. Documents

**a. IP Registrations**

REQUESTS: A schedule of all U.S. and foreign patents, registered copyrights, material unregistered copyrights, domain name registrations, trademarks, service marks, trade names, slogans, logos, brands, trade dress and similar designations of source or origin, and any registrations and applications pertaining to the foregoing, that relate to the current operation, products and services of the organization or its products and services in development, indicating for each the nature of the organization's interest thereto (e.g., owned, licensed, loaned).

COMMENTS:

- (i) List trademark
- (ii) List trademark
- (iii) Various Unregistered Formatives of the \_\_\_\_ and \_\_\_\_ marks.
- (iv) \_\_\_\_ does not license any IP from others.

**b. IT Software/DB**

REQUESTS: A schedule of all (i) material off-the-shelf computer programs, databases and other software, (ii) proprietary or customized computer programs, databases and other software (indicating the creators of such software), and (iii) any and all other material information technology systems, data, content, methods, processes and other intellectual property that relate to the current operation, products and services of the organization or its

products, services and other products in development, identifying and providing a brief description for each of the items (i), (ii), and (iii) above.

**COMMENTS:**

(i) The organization uses only \_\_\_\_\_ PC's installed with the Windows XP operating system, and does not participate in any networking, server, or client-server activities.

(ii) The organization does not develop or own proprietary or customized software or databases.

(iii) The organization does not have any other material information technology systems, data, content, methods, processes or intellectual property.

**c. IP Policies**

**REQUESTS:** A description of the policy of the organization with respect to the protection of (i) trade secrets and proprietary information, or (ii) any property in the nature of intellectual property, including copies of any policy statements, manuals, and other documents reflecting or referring to any such policies.

**COMMENTS:** The organization has no such policies.

**d. Agency Filings**

**REQUESTS:** All filings, compliance reports, deficiency notices, applications and correspondence of the organization with, all documents relating to investigations or reviews of the organization conducted by, and all approvals, authorities, determinations, rulings and orders relating to the organization of the: (a) U.S. Patent and Trademark Office; (b) U.S. Copyright Office, and (c) Federal Trade Commission, that relate to privacy or intellectual property.

**COMMENTS:** Except for the trademark registration files with the formal certificates of registration, there are no such filings, compliance reports, deficiency notices and correspondence.

**e. Infringement Notices**

**REQUESTS:** All correspondence involving the organization relating to any claim or assertion of misappropriation or infringement (i) by the organization of intellectual property rights of a third party, or (ii) by a third party of the organization's

intellectual property rights, in either case whether or not the issue has been resolved.

COMMENTS: The organization is not involved in and is not aware of any claims of misappropriation or infringement relating to intellectual property.

5. **Recommendations**

- a. \_\_\_\_\_ should seek further legal counsel regarding its compliance obligations regarding the collection, storage and use of employee financial, health, and other sensitive and personal data and information.
- b. \_\_\_\_\_ should develop written policies regarding the handling, protection and use of \_\_\_\_\_ and third-party proprietary data and information, as well as intellectual property.
- c. \_\_\_\_\_ should seek to become generally educated about opportunities for and methods by which it may become more knowledgeable about its potential exposure to violations of privacy rights and intellectual property, and to learn about ways to improve the use of its intellectual property assets.
- d. \_\_\_\_\_ should insert copyright notices on its promotional materials and confirm whether its service agreement with Chicago Video Productions has fully assigned to it all interests (including copyright) in its promotional video.

F. **Employment Policies**

\_\_\_\_\_ has no employment policies and no employee handbook. As a small employer, it is exempt from most federal and state employment laws, so these absences are not significant risks.

Recommendation: Despite \_\_\_\_\_'s small size, it should develop written policies in a few key employment areas:

1. Job Descriptions. A basic job description should be written for each current position. Each job description should identify the key responsibilities and necessary prerequisites for the position. The position description should be shown to prospective candidates for open positions, and used during annual evaluations of performance. It is entirely acceptable for position descriptions to change over time.

2. Annual Job Performance Evaluations. A performance evaluation for each employee should occur at least annually. Salary increases or other benefits should be justified by satisfactory performance as documented in the evaluations.

3. Harassment Prevention, EEO and Violence in Workplace Policies. \_\_\_\_\_ should adopt basic policies prohibiting harassment and violence in the workplace. It should also declare that it abides by Equal Employment Opportunity requirements. These policies may also be required for grants that \_\_\_\_\_ receives.

4. Simple Employment Policies Handbook. A 5-10 page booklet should be assembled describing basic workplace practices, such as how overtime hours are authorized, when the office is open, how checks, reimbursements, and other financial matters are handled, and whether progressive discipline is utilized. \_\_\_\_\_ should seek further legal assistance in developing such a handbook.

## EXHIBIT A

### SAMPLE BYLAWS PROVISION REGARDING BOARD COMMITTEES

#### Article V Committees

SECTION 3. Limitations on Committee Powers. No Committee shall have the authority of the Board of Directors to (1) Adopt a plan for the distribution of the assets of the corporation, or for dissolution; (2) Approve or recommend to members any act that is required by law to be approved by members, except that committees appointed by the board or otherwise authorized by the Bylaws relating to the election, nomination, qualification, or credentials of directors or other committee involved in the process of electing directors may make recommendations to the members relating to the electing directors; (3) fill vacancies on the board or on any of its committees; (4) elect, appoint or remove any officer or director or member of any committee, or fix the compensation of any member of a committee, or fix the compensation of any member of a committee; (5) adopt, amend, or repeal the Bylaws or the Articles of Incorporation; (6) adopt a plan of merger or adopt a plan of consolidation with another corporation, or authorize the sale, lease, exchange or mortgage of all or substantially all of the property or assets of the corporation; or (7) amend, alter, repeal or take action inconsistent with any resolution or action of the board of directors when the resolution or action of the board of directors provides by its terms that it shall not be amended, altered or repealed by action of committee.

**EXHIBIT B**

**SAMPLE GUIDELINES FOR BUSINESS CONDUCT**

**Guidelines for  
Business Conduct**

\_\_\_\_\_,  
an Illinois not-for-profit corporation

**Date:** \_\_\_\_\_

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**Code of Conduct**

- ◆ Obey the applicable laws and regulations governing our business conduct worldwide.
- ◆ Be honest, fair and trustworthy in all your \_\_\_\_ activities and relationships.
- ◆ Avoid all conflicts of interest between work and personal affairs.
- ◆ Foster an atmosphere in which fair employment practices extend to every member of \_\_\_\_.
- ◆ Strive to create a safe workplace and to protect the environment.
- ◆ Through leadership at all levels, maintain a culture where ethical conduct is recognized, valued and exemplified by all employees.

**GUIDELINES FOR ORGANIZATION**

The following Guidelines for Business Conduct will be supervised by the Executive Director. The Executive Director shall report to the Board of Directors.

**REPORTING**

All matters to be reported pursuant to these Guidelines shall be reported to the Executive Director.

**DISCIPLINE**

Failure to comply with the standards contained in these Guidelines may result in disciplinary action that may include termination, referral for criminal prosecution and reimbursement to \_\_\_\_\_ for any losses or damages resulting from the violation. Disciplinary action may be taken:

1. Against employees who authorize or participate directly in actions which are a violation of these Guidelines.
2. Against any employee who may have deliberately failed to report a violation or deliberately withheld relevant and material information concerning a violation of these Guidelines.
3. Against the violator's managerial superiors, to the extent that the circumstances of the violation reflect inadequate supervision or a lack of diligence.
4. Against any supervisor, department head, general manager or officer who retaliates, directly or indirectly, or encourages other to do so, against an employee who reports a violation of these Guidelines.

**HUMAN RESOURCES**

\_\_\_\_\_ realizes that its greatest strength lies in the talent and ability of its employees. It is \_\_\_\_\_'s policy to comply with all laws and to provide equal opportunity for employment and advancement, without regard to race, color, creed, age, sex, handicaps or national origin. \_\_\_\_\_'s policy prohibits racial, ethnic, religious or sexual harassment.

Racial, ethnic, religious and sexual harassment may include such conduct as slurs, jokes or intimidation.

Sexual harassment may include unwelcome sexual advances, unwelcome verbal or physical conduct of a sexual nature, or a perceived hostile workplace.

**CONFIDENTIAL**

Any complaint by an employee who is subjected to harassment, or any information concerning potential harassment, whether sexual, racial, ethnic or religious, should be reported immediately.

**DRUG ABUSE**

The use, possession, trafficking or promotion of illegal drugs is against the law and absolutely forbidden in or on any \_\_\_\_ property and anywhere else when working for \_\_\_\_ on \_\_\_\_ time.

No employee shall be under any influence of drugs or alcohol on or about \_\_\_\_ property or anywhere else when working for \_\_\_\_.

For the safety and health of all \_\_\_\_ employees, for the protection of the \_\_\_\_ image and the continuation of the excellence of \_\_\_\_ services, all violations of this section shall be immediately reported by any employees observing the same or by the employee involved.

**ENTERTAINMENT, GIFTS AND PAYMENTS –  
CUSTOMER AND SUPPLIER PERSONNEL**

\_\_\_\_'s services should always be free from the inference, perception or fact that favorable treatment was sought, received or given on the basis of employees receiving gifts, entertainment, favors, hospitality or other gratuities. Similarly, purchase of supplies, materials and services from vendors, suppliers and subcontractors must be accomplished in a manner that preserves the integrity of a procurement process based on quality and performance.

\_\_\_\_ specifically prohibits offering, giving, soliciting or receiving any form of bribe or kickback. These are criminal acts.

The following Guidelines should be observed in relations with customer and supplier personnel.

**RELATIONS WITH GOVERNMENT EMPLOYEES**

1. Federal, state and local government departments and agencies have regulations concerning acceptance by their employees of entertainment, meals and gifts from firms and persons with whom the departments and agencies do business or over whom they have regulatory authority. \_\_\_\_'s employees may not give, or offer to give, to such government employees any entertainment, meal or gift.
2. \_\_\_\_'s employees may not make loans, guarantee loans or make payments to such federal, state or local government employees.

**CONFIDENTIAL**

3. \_\_\_\_'s employees may entertain socially any relatives or friends employed by government agencies. It should be clear, however, that the entertainment is not relative to the business of \_\_\_\_\_. No expenditure for such social entertainment is reimbursable by \_\_\_\_\_ to the employee.

**POLITICAL PARTICIPATION**

No \_\_\_\_\_ funds or assets, including the work time of an employee, will be contributed, loaned or made available, directly or indirectly, to any political party or to the campaign of any candidate for a federal, state or local office. No funds or assets of \_\_\_\_\_ may be used for or contributed to any foreign political party, candidate or committee.

\_\_\_\_\_ encourages its employees to become involved in civic affairs and to participate in political activities. Employees must recognize, however, that their involvement and participation must be on an individual basis, on their own time and at their own expense. Further, when an employee speaks on public issues, it must be made clear that comments or statements made are those of the individual, and not \_\_\_\_\_.

**COMPLIANCE WITH GOVERNMENTAL LAWS,  
RULES AND REGULATIONS**

It is the policy of \_\_\_\_\_ that all employees obey governmental laws, rules and regulations during the performance of their duties.

**COMPLETE AND ACCURATE BOOKS,  
RECORDS AND COMMUNICATIONS**

Applicable laws and regulations establish the following requirements with regard to record-keeping and communications:

1. \_\_\_\_'s financial statements and all books and records on which they are based must reflect accurately all transactions of \_\_\_\_\_.
2. All disbursements of funds and receipts must be properly and promptly recorded.
3. No undisclosed or unrecorded fund may be established for any purpose.
4. No false or artificial statements or entries may be made for any purpose in the books and records of \_\_\_\_\_ or in any internal or external correspondence, memoranda or communication of any type, including telephone or wire communications.

Penalties for violations in this area could be severe for \_\_\_\_\_ as well as the employee involved.

### **AUDITING PROCEDURE**

In addition, \_\_\_\_\_'s independent auditors have suggested that the following additional procedures may be followed in connection with their annual examination of the financial statements of the \_\_\_\_\_.

1. Make specific inquiries as to internal control procedures and practices relevant to the prevention of improper acts, the results of which are reflected directly in the accounting records.
2. Extend procedures or other actions considered necessary to obtain further information concerning any matters that cause the independent auditors to suspect that improper acts have occurred.
3. Obtain representations from management personnel at appropriate levels of authority regarding compliance with these Guidelines for Business Conduct.
4. Report to the Board of Directors any matters that cause the independent auditors to suspect that improper acts have occurred.

**EXHIBIT C**

**SAMPLE RECORDS RETENTION POLICY**

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**RECORDS RETENTION POLICY**

***Introduction***

The purpose of this policy is to provide guidelines as to document retention, transfer and destruction practices to be applied by \_\_\_\_.

***Policy Recommendations***

**Financial Records**

\_\_\_\_ accumulates financial records which include all federal, state and local tax returns, including reports to the Attorney General, income and operating statements and balance sheets prepared from time to time, memoranda by and between \_\_\_\_ and the accounting firms, memoranda by and between the \_\_\_\_ staff and Board of Directors, and contracts and other documents which impose legal obligations on \_\_\_\_\_. It is recommended that these documents be retained for seven (7) full years following the close of each year for \_\_\_\_\_.

**Employee Records**

It is the policy of \_\_\_\_ to retain permanently the records with respect to its employees.

**Corporate Records**

It is the policy of \_\_\_\_ to retain permanently all corporate records, which includes Articles of Incorporation and amendments, by-laws and amendments, and all corporate minutes and communications regarding the corporate minutes.

**EXHIBIT D**  
**DRAFT REVISION OF THE**  
**CORPORATE PURPOSES OF**

The corporation is organized and shall be operated exclusively for charitable, scientific, or educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States Internal Revenue Law (the “Internal Revenue Code”). In furtherance of such purposes, the corporation may:

- (a) [Insert specific purposes];
- (b) Contract with other organizations, both for-profit and not-for-profit, with individuals, and with governmental agencies in furtherance of these purposes;
- (c) Raise funds from the public and from all other sources available; receive and maintain such funds and expend principal and income therefrom; and
- (d) Otherwise operate exclusively for charitable, scientific, or educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, in the course of such operation:
  - (i) No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, any private shareholder or individual, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein.
  - (ii) No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office, except as authorized under the Internal Revenue Code.
  - (iii) Notwithstanding any other provisions herein, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code.

**EXHIBIT E**

**MODEL CORPORATE BYLAWS PROVISION REGARDING  
ADOPTION OF CONFLICTS OF INTEREST POLICY**

**Conflicts of Interest.** \_\_\_\_ shall, at all times, maintain a conflict of interest policy, which shall comply with all requirements imposed from time to time by the Internal Revenue Service for such policies by organizations exempt from tax under Code Section 501(c)(3). Such policy shall become effective upon approval by the Board of Directors.

**EXHIBIT F**

**SAMPLE CONFLICTS OF INTEREST POLICY**  
**BASED ON IRS MODEL**

**Article I. Purpose**

The purpose of the conflicts of interest policy is to protect the Corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Corporation. This policy is intended to supplement but not replace any applicable state laws governing conflicts of interest applicable to nonprofit and charitable corporations.

**Article II.**  
**Definitions**

**1. Interested Person**

Any director, principal officer, or member of a committee with board-delegated powers who has a direct or indirect financial interest, as defined below, is an interested person. If a person is an interested person with respect to any entity of which the Corporation is a part, he or she is an interested person with respect to all entities in the health care system.

**2. Financial Interest**

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

- a. an ownership or investment interest in any entity with which the Corporation has a transaction or arrangement, or
- b. a compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement, or
- c. 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.

Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature.

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 board or committee decides that a conflict of interest exists.

**Article III.  
Procedures**

**1. Duty to Disclose**

In connection with any actual or possible conflicts of interest, an interested person must disclose the existence of his or her financial interest and must be given the opportunity to disclose all material facts to the directors and members of committees with board delegated powers considering the proposed transaction or arrangement.

**2. Determining whether a Conflict of Interest Exists**

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he or she shall leave the 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 board or committee meeting, but after such presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest.
- b. The chairperson of the board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transactions or arrangement.
- c. After exercising due diligence, the board or committee shall determine whether the Corporation can obtain a more advantageous transaction or arrangement with reasonable efforts 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 attainable under circumstances that would not give rise to a conflict of interest, the board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Corporation's best interest and for its own benefit and whether the transaction is fair and reasonable to the Corporation and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

**4. Violations of the Conflicts of Interest Policy**

- a. If the board or committee has reasonable cause to believe that a member 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.

- b. If, after hearing the response of the member and making such further investigation as may be warranted in the circumstances, the board or committee determines that the member has in fact 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 board and all committee with board-delegated powers shall contain:

1. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the board's or committee's decision as to whether a conflict of interest in fact existed.
2. 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 therewith.

**Article V.  
Compensation**

1. A voting member of the board of directors who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.
2. A faculty member who is a voting member of the board of directors and receives compensation, directly or indirectly, from the Corporation for services is precluded from discussing and voting on matters pertaining to that member's and other faculty members' compensation. No faculty member or faculty member director, either individually or collectively, is prohibited from providing information to the board of directors regarding faculty compensation.
3. A voting member of any Committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to the members' compensation.
4. Faculty members who receive compensation, directly or indirectly, from the Corporation, whether as employees or independent contractors, are precluded from membership on any committee whose jurisdiction includes compensation

matters. No faculty member, either individually or collectively, is prohibited from providing information to any committee regarding faculty compensation.

**Article VI.  
Annual Statements**

Each director, principal officer and member of a committee with board-delegated powers shall annually sign a statement, which affirms that 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 Corporation is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

**Article VII.  
Periodic Reviews**

To ensure that the Corporation operates in a manner consistent with its charitable purposes and that it does not engage in activities that could jeopardize its status as an organization exempt from federal income tax, periodic reviews shall be conducted.

**Article VIII.  
Use of Outside Experts**

In conducting the periodic reviews provided for in Article VII, the Corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the board of its responsibility for ensuring that periodic reviews are conducted.

**EXHIBIT G**

**SAMPLE POLICY PROHIBITING POLITICAL ACTIVITY**

As a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code, \_\_\_\_\_ (“The Organization”) is prohibited from participating or intervening in any political campaign on behalf of or in opposition to any candidate for public office. Political intervention includes not only financial contributions, but also the publication or distribution of written or oral statements on behalf of or in opposition to a particular candidate. There are no exceptions to this prohibition and even an insubstantial violation could result in monetary fines or could risk loss of The Organization’s tax-exempt status.

Notwithstanding these limitations, The Organization recognizes that its employees, officers, directors or other staff may wish to personally participate in the political process and have a Constitutional right to do so. In order to protect The Organization’s status as a tax-exempt organization, The Organization has set forth the following statement of policy with respect to Political Activities.

**POLICY REGARDING POLITICAL ACTIVITIES**

1. It is the policy of \_\_\_\_\_ not to participate in or intervene in, directly or indirectly, any political campaign on behalf of or in opposition to any candidate for public office.
2. The following resources may not be used for political activities under any circumstances:
  - a. The Organization’s facilities, computers, telephones, facsimile machines, copiers, or office supplies
  - b. The Organization’s bulk mailing privileges
  - c. Records, files or mailing lists (including lists of donors, employees or other contacts) maintained by the Organization
  - d. The Organization’s sales tax exemption for purchases of goods and services
  - e. The Organization’s name, logo, stationery, letterhead or seal
  - f. The Organization’s e-mail system or communications infrastructure
3. No political party, campaign, candidate or political committee may conduct any part of its activities in any facility owned, leased or rented by The Organization.
4. The Organization’s funds may not be used, directly or indirectly, to purchase promotional material, pay for campaign advertisements, or contribute in any way to a political campaign.
5. No individual may collect campaign or other political contributions from attendees at any function sponsored by or organized by The Organization.
6. The Organization’s employees, officers, directors or other staff may take part in partisan political activities freely during their own personal time, but they may not do so at the expense of or during the course of their responsibilities to the Organization.

7. When endorsing or opposing a candidate for political office (or when taking a position on an issue for the purpose of assisting or opposing a candidate), individuals shall communicate that they are speaking only for themselves and not on behalf of The Organization.

This policy will be administered by \_\_\_\_\_. If you have any questions concerning the policy, please contact her in advance of taking any action which might violate this policy.

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