



## **CONFLICT OF INTEREST POLICY**

United Way of Greater Rochester (the “Corporation”) is an organization subject to the New York State Not-for-Profit Corporation Law with respect to its governance, including dealing with conflicts of interest. The Nonprofit Revitalization Act of 2013 imposes several requirements with respect to conflicts of interest and related party transactions, in addition to the judge-made common law, which deals with these concerns.

Additionally, the Corporation is an organization described in Sections 501(c)(3) and 509(a)(1), (2) or (3) of the Internal Revenue Code of 1986, as amended (the “Code”), and so is subject to the requirements of Code Section 4958 with respect to various dealings with disqualified persons.

The corporation adheres to the highest standards of ethical conduct in governance and operations to ensure that board of directors, officers, staff, volunteers, and/or consultants do not have or give the appearance of having Conflicts of Interest and do not use their relationship with the organization for impermissible private benefit.

The Corporation has adopted this Conflict of Interest Policy (this “Policy”) to identify and limit the effect of any possible conflict between the personal interests of directors and officers and the interest of the Corporation. The purpose of this Policy is to ensure that decisions about corporate operations and the use and dispositions of corporate assets are made solely in terms of benefits to the Corporation and are not influenced by any private profit or other personal benefit to the individuals affiliated with the Corporation who take part in the decision.

### **Administration**

This Policy shall be adopted, overseen and administered by the Audit Committee. Questions about this Policy may be directed to the Secretary or designated compliance officer at 242-6532 or [laurie.ganon@uwrochester.org](mailto:laurie.ganon@uwrochester.org).

### **Definitions**

A “Related Party” is defined as the following:

- (a) Any individual who currently serves as:
  - (i) a voting member of the Board of Directors of the Corporation or any Affiliate of the Corporation;
  - (ii) an officer of the Corporation or any Affiliate of the Corporation;
  - (iii) a Key Person of the Corporation or any Affiliate of the Corporation; or
  - (iv) any other person who exercises the powers of directors, officers or Key Persons over the affairs of the Corporation or any Affiliate of the Corporation.

(b) Any Relative of those persons listed in (a) above. A “Relative” includes: spouse; domestic partner as defined in New York Public Health law Section 2954-A; ancestors; brothers and sisters (whether whole or half-blood); children (whether natural or adopted); grandchildren; great-grandchildren; and spouses or domestic partners of brothers, sisters, children, grandchildren, and great-grandchildren.

(c) Any entity in which an individual listed in (1) or (2) has a controlling interest. A controlling interest is defined as:

- for corporations, ownership (directly or indirectly) of more than 35% of the combined voting power;
- for partnerships or personal service corporations, ownership (directly or indirectly) of more than 5% of the profits interest; and
- for trusts or estates, ownership (directly or indirectly) of more than 35% of the beneficial interest.

“Key Person” includes any person, ***other than a director or officer***, whether or not an employee of the Corporation, who:

- (a) has responsibilities, or exercises powers or influence over the Corporation as a whole similar to the responsibilities, powers, or influence of directors and officers;
- (b) manages the Corporation or a segment of the Corporation that represents a substantial portion of the activities, assets, income, or expenses of the Corporation, which for these purposes shall be *ten percent (10%)*; or <sup>1</sup>
- (c) alone or with others controls or determines a substantial portion of the Corporation’s capital expenditures or operating budget, which for these purposes shall be *ten percent (10%)*.

“Affiliate” is any entity controlled by, or in control of, the Corporation.

A “Related Party Transaction” is any transaction, agreement, or other arrangement in which a Related Party has a financial interest and in which the Corporation or any Affiliate of the Corporation is a participant.

The following shall not be considered a Related Party Transaction:

- A transaction that is *de minimis*, which includes any transaction that does not exceed \$100,000 including a single transaction that exceeds this threshold or multiple transactions with a single third-party that exceed this threshold within a twelve (12) month period.

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<sup>1</sup> “Substantial” is not defined under the N-PCL. The Corporation needs to consider what is “substantial” for its operations. Threshold listed is suggestion only.

- A transaction that is not subject to approval by the Board of Directors pursuant to the Corporation's Contract Approval Policy.
- A benefit provided to a Related Party solely as a member of a class of the beneficiaries that the Corporation serves as part of its *[charitable]* activities, and which benefit is available to all similarly situated members of the same class on the same terms.

A "Conflict of Interest" is any transaction that is not a Related Party Transaction, but involves a transaction that could be perceived or interpreted to be in conflict with the Corporation's interest.

### **Annual Disclosure Statements**

- Duty to Complete Questionnaire. Each director shall complete a conflict of interest questionnaire prior to becoming a director and annually thereafter. Each officer or Key Person shall complete a conflict of interest questionnaire when assuming the relevant position and annually thereafter. The questionnaire shall be in the form approved by the Audit Committee.<sup>2</sup>
- Duty to Update Information. Each director, officer, or Key Person shall promptly advise the Secretary or designated compliance officer of any changes to the information provided in that individual's last completed conflict of interest questionnaire.

If during the course of a Board of Directors or any committee meeting, discussion, or deliberation any actual or potential conflict of interest or Related Party Transaction becomes apparent to a Board of Directors or any committee member, the individual must disclose such actual or potential conflict to the Board of Directors or the committee. If another director or any committee member becomes aware of any actual or potential Conflict of Interest or Related Party Transaction, he or she shall disclose such conflict if the conflicted Board of Directors or committee member is absent. In both cases, such disclosure shall be made a matter of record.

The Secretary or designated compliance officer will ensure that all individuals required to complete an annual disclosure statement do so in accordance with this Policy. If any individual fails to comply with the Policy's disclosure requirements, the Secretary or designated compliance officer will report such failure to the Audit Committee, which shall recommend appropriate corrective action.

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<sup>2</sup> Note that Code Section 4958 includes a 5-year look back for directors, officers, and other disqualified persons for purposes of excess benefit transactions. Requesting disclosures from these individuals is not required under the N-PCL or the Code, but the organization should consider maintaining the most recent disclosures from these individuals for this 5-year period.

## **Disclosures and List of Related Parties.**

All disclosures of interests in completed questionnaires or subsequent advice shall be compiled and reported by management to the Audit Committee.

A list of Related Parties identified through the annual disclosure process shall be assembled and provided to employees of the Corporation or other individuals who have authority to sign contracts, enter into transactions, and sign checks on behalf of the Corporation. Such individuals shall be responsible for reviewing the list of Related Parties before entering into a transaction to confirm whether it is a Related Party Transaction.

## **Review Process for Related Party Transactions**

Once a Related Party Transaction is identified, the individual who identified the Related Party Transaction shall complete a Related Party Transaction Review Request (attached to this Policy) and submit the form to the Secretary or designated compliance officer.

Upon receipt of a Related Party Transaction Review Request, the Secretary or designated compliance officer shall convene a meeting of the Audit Committee to review the Related Party Transaction before it is entered into by the Corporation. The Audit Committee shall review the Related Party Transaction to confirm that it is fair, reasonable and in the Corporation's best interests to enter into the transaction. The Audit Committee shall utilize the following process to approve transactions subject to this Policy:

- (a) The Audit Committee must approve in advance the Related Party Transaction. Any member of the Audit Committee who has a financial interest in the transaction may not participate in the vote, nor may he or she be present during voting or deliberations.
- (b) The Audit Committee must make its decision in reliance on appropriate data as to comparable arrangements to the extent they are available.<sup>3</sup>
- (c) The Audit Committee must adequately document its decision and deliberations in the corporate records.

## **Review Process for Conflicts of Interest**

A potential Conflict of Interest should be disclosed as it arises for consideration by the Audit Committee or individuals reviewing the matter to determine whether a Conflict of Interest exists and whether the individual should be recused from deliberations and voting.

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<sup>3</sup> This is required for any Related Party Transaction in which a Related Party has a substantial financial interest. For this purpose, "Related Party Transaction" shall mean any transaction (a) directly between the Corporation and the Related Party; or (b) between the Corporation and an entity in which the Related Party has a controlling interest as defined in paragraph (c) under the Related Party definition above.

If the Audit Committee determines that a Conflict of Interest exists, then the individual with the Conflict of Interest may not participate in the vote, nor may he or she be present during voting or deliberations on the matter.

The Audit Committee should also adequately document its decision and deliberations in the corporate records.

### **Quorum and Voting**

Directors or committee members who must leave a meeting due to a Conflict of Interest or Related Party Transaction shall be deemed present for voting purposes regardless of whether the individual returns to the meeting.<sup>4</sup>

### **Employee Conflicts of Interest**

All employees should deal with vendors without any appearance of favor or preference based on personal considerations. Employees must, at all times, exercise their best skill, care and judgment for the benefit of the Corporation and must refrain from being influenced by personal considerations of any kind in the performance of their duties. Whenever a Conflict of Interest—or even a *possible* Conflict of Interest—exists, it must be fully disclosed and the employee involved may then be required to refrain from participating in the consideration or determination of any transaction with the vendor.

Specifically, an employee of the Corporation with a potential Conflict of Interest in a particular matter shall promptly and fully disclose the potential conflict to his or her supervisor who shall then disclose the matter to the President or designated compliance officer. The President or designated compliance officer shall be responsible for determining the proper way for the Corporation to handle decisions which involve employee Conflicts of Interest. In making such determinations, the President or designated compliance officer may consult with legal counsel.

The President or designated compliance officer shall report to the Audit Committee at least annually concerning employee Conflicts of Interest that have been disclosed and contracts and transactions involving employee conflicts that the President or designated compliance officer has approved.

### **Compensation Decisions.**

A compensation decision for a Related Party is a Related Party Transaction. All recommendations for such matters shall be referred to the Audit Committee for review in accordance with this Policy once a recommendation is made by the Compensation Committee.

The Related Party shall not participate in the deliberations or voting on any matter relating to his or her compensation, provided, that a director may participate in deliberation or voting on compensation as a director that is made available or provided to all directors on

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<sup>4</sup> This will essentially count as a “no” vote by the individual who is recused from voting.

the same or substantially similar terms. Such individual may provide information to the Compensation Committee or Audit Committee reviewing the compensation decision.

All compensation will be measured against an appropriate recognized survey or surveys for compensation (if applicable) of corresponding rank, position, and/or specialty in the same or a *comparable* geographic area as that of the Corporation. There shall be sufficient and adequate documentation to support the reasonableness and appropriateness of all compensation decisions. All deliberations regarding compensation of a Related Party shall be documented in the minutes of the Compensation Committee and the Audit Committee.

**Violations of Conflict of Interest Policy**

If the Audit Committee determines that an individual has failed to comply with the policies and directives set forth in this Policy, it shall recommend or take appropriate corrective action.

## RELATED PARTY TRANSACTION REVIEW REQUEST

**Purpose:** The purpose of this form is to provide sufficient information to the Audit Committee of United Way of Greater Rochester (the "Corporation") so that the Audit Committee may review certain transactions ("Related Party Transactions") as required by the New York Not-for-Profit Corporation Law (the "N-PCL") and the Corporation's Conflict of Interest Policy.

**Instructions:** A staff member should complete this form when a Related Party Transaction is identified. Staff members should attach sufficient information to permit the Audit Committee to determine whether such transaction is fair and reasonable and in the Corporation's best interests. Once completed, the staff member should submit this form along with any attachments to the Secretary or designated compliance officer for the Audit Committee consideration.

**Describe the transaction, agreement or other arrangement and how it will benefit the Corporation.**

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**List all Related Parties involved in the transaction and why they are considered a Related Party.**

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**Describe the Related Party's interest in the transaction and, if applicable, how that interest is deemed "substantial."<sup>5</sup>**

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**Describe how the Corporation or an affiliate is involved.**

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**Describe generally the terms of the transaction and the amount(s) the Corporation will pay or be paid.**

**Describe any alternate transactions (to the extent available) and why the**

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<sup>5</sup> For this purpose, "substantial" shall mean any transaction (a) directly between the Corporation and the Related Party; or (b) between the Corporation and an entity in which the Related Party has a controlling interest as defined in paragraph (c) under the Related Party definition above

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**alternative transactions  
are not more favorable to  
the Corporation.\***

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\*Alternate transactions are required where the Related Party has a substantial financial interest in the transaction. If in doubt, please include alternate transaction information.