



**[NAME OF CHARTER SCHOOL]**  
**CONFLICT OF INTEREST POLICY**

**ARTICLE I**  
**PURPOSE**

Section 1. The purpose of this conflict of interest policy (the “Policy”) is to protect the interests of [CHARTER SCHOOL] (the “Corporation”) when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a Trustee, Officer, or Key Person of the Corporation or one of their relatives. The Corporation will not enter into any such transaction or arrangement unless it is determined by the Board in the manner described below to be fair, reasonable and in the best interests of the Corporation at the time of such determination

Section 2. This Policy is intended to supplement, but not replace, any applicable state and federal laws governing conflicts of interest applicable to not-for-profit and charitable organizations.<sup>1</sup>

Section 3. Definitions of “Key Person,” “Related Party,” and other capitalized terms used in this policy can be found in Article X below.

**ARTICLE II**  
**RELATED PARTY TRANSACTIONS AND DUTY TO DISCLOSE**

Section 1. Under this Policy, if the Corporation contemplates entering into a Related Party Transaction, the [Committee]<sup>2</sup> Board must determine if the transaction is fair, reasonable, and in the best interests of the Corporation. A Related Party Transaction is not necessarily a prohibited transaction.

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

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

Section 2. If at any time during his or her term of service a matter for decision or approval comes before the Board in which a Related Party has a Financial Interest, that Financial Interest must be promptly disclosed in writing to the **[Person Designated by the Board or Committee] [to the Chair of the Committee]**, together with all material facts. The Board **[Committee]** will then follow the procedures set forth in this Policy.

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

### ARTICLE III DISCLOSURE AND VOTING

Section 1. Disclosure. Any Related Party shall disclose in good faith all material facts of his or her Financial Interest to the Board.

Section 2. Non-Participation and Review. All transactions, agreements or any other arrangements between the Corporation and a Related Party, and any other transactions which may involve a potential conflict of interest, shall be reviewed by the Board **[Committee]**. No Related Party shall vote, act, or attempt to influence improperly the deliberations or voting on any matter in which he or she has been determined by the Board to have a Financial Interest. Any attempt by a Related Party to vote, act, or improperly influence deliberations or voting by a Related Party on any matter with which such person has a Financial Interest may be grounds for removal from the Board or termination from the Corporation. All Related Parties with a Financial Interest shall leave the room while such deliberations and voting are conducted, although at the request of the Board **[Committee]** they may provide information regarding the transaction prior to the deliberations.

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

Section 4. Voting. The Corporation will not enter into any Related Party Transaction unless it is determined to be fair, reasonable and in the best interest of the Corporation and is

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

approved by not less than a majority vote of the Trustees present at the meeting. The Board **[Committee]** shall document the meeting contemporaneously as described in this Policy, including its consideration of any alternative transactions.

Only Independent Trustees shall vote on Related Party Transactions.

Section 5. Compensation for Services.

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

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

Section 6. [No Loans. No loans shall be made by the Corporation to its Trustees or Officers, or to any other entity in which any of the Corporation's Trustees or Officers holds a Financial Interest, except to another charitable organization.]<sup>4</sup>

ARTICLE IV

AUDIT [OR OTHER] COMMITTEE REVIEW

The Board may delegate to the Audit **[or other]** Committee, which shall be composed solely of Independent Trustees, the adoption, implementation of and compliance with this policy.<sup>5</sup> The Board may delegate to the Audit **[or other Committee]** review and approval of any Related Party Transaction involving a Related Party and the Corporation, as contained in this Policy; provided that if the Related Party Transaction would otherwise require full Board approval, the Committee shall submit the Related Party Transaction to the Board for consideration, providing its recommendation as to whether or not to approve it.

ARTICLE V

RECORDS OF PROCEEDINGS

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

- The names of the persons who disclosed or otherwise were determined to have a potential or actual Financial Interest and/or conflict of interest, the nature of the potential or actual Financial Interest and/or conflict of interest, any action taken to

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<sup>4</sup> This provision is optional.

<sup>5</sup> If not the Audit Committee, consider identifying here which Committee has such authority.

determine whether a Financial Interest or conflict of interest exists, and the Board's **[Committee's]** determination as to whether a Financial Interest and/or conflict of interest exists.

- The names of the persons who were present for deliberations and votes relating to any determinations under this Article, including whether the Related Party and any Trustees who are not Independent Trustees left the room during any such deliberations, the content of such deliberations, including consideration of alternative transactions, and whether or not the transaction with the Related Party was approved by the Board **[Committee]**.
- The minutes shall document contemporaneously the deliberations and determination regarding any the Financial Interest or conflict of interest.

## ARTICLE VI

### INITIAL AND ANNUAL WRITTEN DISCLOSURES

Section 1. Prior to a Trustee's initial election to the Board, or an Officer or Key Person's employment by the Corporation, and thereafter on an annual basis, all Trustees, Officers, and Key Persons shall disclose in writing to the **[Person Designated by the Board]**:

- (i) Any entity of which the Trustee, Officer or Key Person is an officer, Trustee, trustee, voting member, owner (in whole or in part) or employee and with which the Corporation has a financial relationship.
- (ii) Any transaction in which the corporation is a participant and in which the Trustee, Officer or Key Person, or one of his or her relatives might have a conflicting interest.

Section 2. A copy of each disclosure statement shall be kept in Corporation's files and made available to any Trustee, Officer, or Key Person upon request.

## ARTICLE VII

### CONFLICTS OF INTEREST UNDER THE GENERAL MUNICIPAL LAW

The General Municipal Law (the "GML") further defines prohibited conflicts of interest for school trustees, officers and employees.

Section 1. General Prohibitions. Under the GML, no school trustee, officer or employee may have an interest, direct or indirect, in any contract with the School, when such trustee, officer or employee, individually or as a member of the Board, has the power or duty to (a) negotiate, prepare, authorize or approve the contract, or authorize or approve payment under the contract; (b) audit bills or claims under the contract; or (c) appoint an officer or employee who has any of the powers or duties set forth above. No Treasurer may have an interest, direct or indirect, in a bank or trust company designated as a depository or paying agent or for investment of funds of his/her school. This, however, does not preclude payment of lawful

compensation and necessary expenses of a school employee in one or more public offices or positions of employment, the holding of which is not prohibited by law.

Section 2. Express Prohibitions. In addition, the GML clearly states that a school trustee, officer or employee may not:

(a) Directly or indirectly, solicit any gift, or accept or receive any gift having a value of \$75 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to or could reasonably be expected to influence him/her in the performance of his/her official duties, or was intended as a reward for any official action on his/her part;

(b) Disclose confidential information acquired in the course of his/her official duties or use such information to further his/her personal interests;

(c) Receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before the Board; or

(d) Receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before the Board whereby the compensation is to be dependent or contingent upon any action by the agency. This does not prohibit the fixing of fees based upon the reasonable value of services rendered.

Section 3. Exceptions. Prohibitions on conflict of interest pursuant to the GML do NOT apply to:

(e) The designation of a bank or trust company as a depository, paying agent, registration agent or for investment of funds of a municipality except when the chief fiscal officer, treasurer, or his/her deputy or employee, has an interest in such bank or trust company; provided, however, that where designation of a bank or trust company outside the municipality would be required because of the foregoing restriction, a bank or trust company within the municipality may nevertheless be so designated;

(f) A contract with a person, firm, corporation or association in which a municipal officer or employee has an interest which is prohibited solely by reason of employment as an officer or employee thereof, if the remuneration of such employment will not be directly affected as a result of such contract and the duties of such employment do not directly involve the procurement, preparation or performance of any part of such contract;

(g) The designation of a newspaper, including but not limited to an official newspaper, for the publication of any notice, resolution, ordinance or other proceeding where such publication is required or authorized by law;

(h) The purchase by a municipality of real property or an interest therein, provided the purchase and the consideration therefore is approved by order of the supreme court upon petition of the governing board;

(i) The acquisition of real property or an interest therein, through condemnation proceedings according to law;

(j) A contract with a membership corporation or other voluntary non-profit corporation or association;

(k) The sale of lands and notes pursuant to Section 60.10 of the local finance law;

(l) A contract in which an officer or employee has an interest if such contract was entered into prior to the time he/she was elected or appointed as such officer or employee, but this does not authorize a renewal of any such contract;

(m) Employment of a licensed physician as school physician for a school upon authorization by a two-thirds vote of the board of trustees;

(n) A contract with a corporation in which an officer or employee has an interest by reason of stockholdings when less than five percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by such officer or employee;

(o) A contract for the furnishing of public utility services when the rates or charges therefore are fixed or regulated by the public service commission;

(p) A contract for the payment of a reasonable rental of a room or rooms owned or leased by an officer or employee when the same are used in the performance of his/her official duties and are so designated as an office;

(q) A contract for the payment of a portion of the compensation of a private employee of an officer when such employee performs part-time service in the official duties of the office;

(r) A contract in which a school officer or employee has an interest if the total consideration payable thereunder, when added to the aggregate amount of all consideration payable under contracts in which such person had an interest during the fiscal year, does not exceed the sum of seven hundred and fifty dollars;

(s) A contract with a member of private industry council established in accordance with the federal job training partnership act or any firm, corporation or association in which such member holds an interest, provided the member discloses such interest to the council and the member does not vote on the contract.

Section 4. Disclosure of Interests.

(a) Any trustee, officer or employee who has, will have, or later acquires an interest in any actual or proposed contract with the Board must publicly disclose the nature and extent of such interest in writing to the Board as soon as he/she has knowledge of it.<sup>6</sup>

(b) Written disclosure of all interests shall be made part of and set forth in the minutes of the Board. Once made, no further disclosures with respect to additional contracts with the same party during the remainder of the fiscal year need be made.

## ARTICLE IX ANNUAL STATEMENTS

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

## ARTICLE X DEFINITIONS

Affiliate. An affiliate of the Corporation is a person or entity that is directly or indirectly through one or more intermediaries, controlled by, in control of, or under common control with the Corporation.

Board of Trustees or Board. The body responsible for the management of the Corporation.

Financial Interest. A person has a Financial Interest if such person would receive an economic benefit, directly or indirectly, from any transaction, agreement, compensation agreement (including direct or indirect remuneration as well as gifts or favors that are not insubstantial), or other arrangement involving the Corporation.

Independent Trustee.<sup>7</sup> A member of the Board of Trustees (the “Board”) who:

- is not and has not been an employee or a Key Person of the Corporation or an Affiliate of the Corporation within the last three years;
- does not have a Relative who is or has been a Key Person of the Corporation or an Affiliate of the Corporation within the last three years;
- has not received and does not have a Relative who has received more than \$10,000 in compensation directly from the Corporation or an Affiliate of the Corporation in any of the last three years (not including reasonable compensation

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<sup>6</sup> Even if a certain interest is not expressly prohibited by law, they may still be subject to disclosure requirements. Consult with legal counsel for any question regarding disclosure of specific items.

<sup>7</sup> This definition may be deleted if the Policy does not require review of Related Party Transactions to be conducted by Independent Trustees.

for services or reimbursement for expenses reasonably incurred as a Trustee of the Corporation, as set by the Corporation);

- does not have a substantial Financial Interest in and is not an employee of, and does not have a Relative who has a substantial Financial Interest in or is an Officer (as defined below) of, any entity that has provided payments, property or services to, or received payments, property or services from, the Corporation or an Affiliate of the Corporation in excess of the following, as applicable: (i) the lesser of \$10,000 or 2% of the entity's consolidated gross revenue in any of the last three fiscal years if such consolidated gross revenue was less than \$500,000; (ii) \$25,000 if the entity's consolidated gross revenue in any of the last three fiscal years was \$500,000 or more but less than \$10,000,000; or (iii) \$100,000 if the entity's consolidated gross revenue in any of the last three fiscal years was \$10,000,000 or more;
- is not and does not have a relative who is a current owner, whether wholly or partially, Trustee, officer or employee of the Corporation's outside auditor or who has worked on the Corporation's audit at any time during the past three years;
- is not in an employment relationship under control or direction of any Related Party (as defined below) and does not receive payments subject to approval of a Related Party; or
- does not approve a transaction providing economic benefits to any Related Party who in turn has approved or will approve a transaction providing economic benefits to the Trustee.

Key Person. A Key Person is a person who:

- Has responsibilities, or exercises powers or influence over the Corporation as a whole similar to the responsibilities, powers, or influence of Trustees and officers;
- Manages the Corporation, or a segment of the Corporation that represents a substantial portion of the activities, assets, income or expenses of the Corporation; or
- Alone or with others controls or determines a substantial portion of the Corporation's capital expenditures or operating budget.<sup>8</sup>

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

Related Party. Persons who may be considered a Related Party of the Corporation or an Affiliate of the Corporation under this Policy include:

- Trustees, Officers, or Key Persons of the Corporation or an Affiliate of the Corporation;
- Relatives of Trustees, Officers, or Key Persons;
- any entity in which a person in (i) or (ii) has a 35% or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%;
- Founders of the Corporation;
- Substantial contributors to the Corporation (within the current fiscal year or the past five fiscal years);

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<sup>8</sup> Consider identifying in the Policy the staff positions identified in this bullet and the preceding bullet.



- Persons owning a controlling interest (through votes or value) in the Corporation;
- Any non-stock entity controlled by one or more Key Persons;
- Any other person who is, or has within the last five years, been in a position to exercise substantial influence over the affairs of the Corporation.

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

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

Trustee. Any voting or non-voting member of the Board of Trustees, whether designated as a Trustee, trustee, manager, governor, or by any other title.

Adopted by the Corporation's Board of Trustees at its meeting on \_\_\_\_\_, 2018.