

OPEN SUPPLY HUB, INC.

CONFLICT OF INTEREST AND COMPENSATION APPROVAL POLICIES

Section I.01 Purpose of Conflict of Interest Policy

The purpose of this conflict of interest policy is to protect this tax-exempt 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 or any "disqualified person" as defined in Section 4958(f)(1) of the Internal Revenue Code, as amended (the "**Code**") and as amplified by Treasury Regulation Section 53.4958-3 and which might result in a possible "excess benefit transaction" as defined in Section 4958(c)(1)(A) of the Code and as amplified by Treasury Regulation Section 53.4958. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

Section I.02 Definitions

(a) **Interested Person.** Any director, principal officer, member of a committee with Board delegated powers, or any other person who is a "disqualified person" as defined in Section 4958(f)(1) of the Code and as amplified by Treasury Regulation Section 53.4958-3, who has a direct or indirect financial interest, as defined below, is an interested person.

(b) **Financial Interest.** A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

(i) an ownership or investment interest in any entity with which the Corporation has a transaction or arrangement,

(ii) a compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement, or

(iii) 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 more than *de minimis*.

A financial interest is not necessarily a conflict of interest. Under Section 10.03(b), 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.

Section I.03 Conflict of Interest Avoidance Procedures

(a) **Duty to Disclose.** In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors, members of committees with Board delegated powers, or members of the Board considering the proposed transaction or arrangement ("**disinterested persons**").

(b) **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/she shall leave the disinterested persons while the determination of a conflict of interest is discussed and voted upon. The remaining disinterested persons shall decide if a conflict of interest exists.

(c) **Procedures for Addressing the Conflict of Interest.** Except as provided in subsection (d) below, an interested person may make a presentation at a Board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

The chair of the Board or committee chairperson shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

After exercising due diligence, the Board or committee shall determine whether the Corporation can obtain, with reasonable efforts, a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the corporation's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.

(d) **Violations of the Conflicts of Interest Policy.** If the Board or committee has reasonable cause to believe 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.

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

Section I.04 **Records of Board and Board Committee Proceedings**

The minutes of meetings of Board and all committees with Board delegated powers shall contain:

(a) 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 disinterested persons' decision as to whether a conflict of interest in fact existed.

(b) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Section I.05 **Compensation Approval Policies**

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

A 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 that member's compensation.

When approving compensation for directors, officers and employees, contractors, and any other compensation contract or arrangement, in addition to complying with the conflict of interest requirements and policies contained in the preceding and following sections of this article as well as the preceding paragraphs of this section of this article, the Board or compensation committee shall also comply with the following additional requirements and procedures:

(a) prior to the first payment of compensation, the amount and terms of compensation shall be determined in consultation with disinterested persons;

(b) all disinterested persons who determine compensation arrangements must not have a conflict of interest with respect to the compensation arrangement as specified in Treasury Regulation Section 53.4958-6(c)(iii), which generally requires that each Board member or committee member approving a compensation arrangement between this organization and a "disqualified person" (as defined in Section 4958(f)(1) of the Code and as amplified by Treasury Regulation Section 53.4958-3)

(i) is not the person who is the subject of the compensation arrangement, or a family member of such person,

(ii) is not in an employment relationship subject to the direction or control of the person who is the subject of the compensation arrangement,

(iii) does not receive compensation or other payments subject to approval by the person who is the subject of the compensation arrangement,

(iv) has no material financial interest affected by the compensation arrangement, and

(v) does not approve a transaction providing economic benefits to the person who is the subject of the compensation arrangement, who in turn has approved or will approve a transaction providing benefits to the Board or committee member;

(c) the disinterested persons determining compensation shall obtain and rely upon appropriate data as to comparability prior to approving the terms of compensation. Appropriate data may include the following:

(i) compensation levels paid by similarly situated organizations, both taxable and tax-exempt, for functionally comparable positions. "Similarly situated" organizations are those of a similar size, purpose, and with similar resources,

(ii) the availability of similar services in the geographic area of this organization,

(iii) current compensation surveys compiled by independent firms, and

(iv) actual written offers from similar institutions competing for the services of the person who is the subject of the compensation arrangement.

(d) As allowed by Treasury Regulation Section 53.4958-6, if the Corporation has average annual gross receipts (including contributions) for its three (3) prior tax years of less than \$ one (1) million, the Board or compensation committee will have obtained and relied upon appropriate data as to comparability if it obtains and relies upon data on compensation paid by three (3) comparable organizations in the same or similar communities for similar services.

(e) The terms of compensation and the basis for approving them shall be recorded in written minutes of the meeting of the Board. Such documentation shall include the following:

(i) the terms of the compensation arrangement and the date it was approved;

(ii) the disinterested persons who determined the compensation arrangement;

(iii) the comparability data obtained and relied upon and how the data was obtained;

(iv) if the disinterested persons determine that reasonable compensation for a specific position in the Corporation or for providing services under any other compensation arrangement with the Corporation is higher or lower than the range of comparability data obtained, the Board or committee shall record in the minutes of the meeting the basis for its determination;

(v) if the disinterested persons determining compensation make adjustments to comparability data due to geographic area or other specific conditions, these adjustments and the reasons for them shall be recorded in the minutes of the Board or committee meeting;

(vi) any actions taken with respect to determining if a disinterested person had a conflict of interest with respect to the compensation arrangement, and if so, actions taken to make sure the member with the conflict of interest did not affect or participate in the approval of the transaction (for example, a notation in the records that after a finding of conflict of interest by a member, the member with the conflict of interest was asked to, and did, leave the meeting prior to a discussion of the compensation arrangement and a taking of the votes to approve the arrangement); and

(vii) The minutes of Board or committee meetings at which compensation arrangements are approved must be prepared before the later of the date of the next Board or committee meeting or 60 days after the final actions of the Board or committee are taken with respect to the approval of the compensation arrangements. The minutes must be reviewed and approved by the Board and committee as reasonable, accurate, and complete within a reasonable period thereafter, normally prior to or at the next Board or committee meeting following final action on the arrangement by the Board or committee.

Section I.06 **Annual Statements**

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

Section I.07 **Periodic Reviews**

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

(a) Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's-length bargaining.

(b) Whether partnerships, joint ventures, and arrangements with management organizations conform to the Corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes, and do not result in inurement, impermissible private benefit, or in an excess benefit transaction.

Section I.08 **Use of Outside Experts**

When conducting the periodic reviews as provided for in Section 10.07, 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 periodic reviews are conducted.