

# Bylaws of Fair Observer

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## Article 1 Offices

### Section 1. Principal Office

The principal office of the corporation (the “**Corporation**”) is located in the County of San Mateo, State of California.

### Section 2. Change of Address

The designation of the county or state of the Corporation's principal office may be changed by amendment of these bylaws. The board of directors (the “**Board of Directors**” or the “**Board**,” each director individually, a “**Director**,” and together, where applicable, the “**Directors**”) may change the principal office from one location to another by noting the changed address and effective date below, and such changes of address shall not be deemed, nor require, an amendment of these bylaws:

New Address: \_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

New Address: \_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

New Address: \_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

### Section 3. Other Offices

The Corporation may also have offices at such other places, within or without its state of incorporation, where it is qualified to do business, as its business and activities may require, and as the Board of Directors may, from time to time, designate.

## **Article 2**

### **Nonprofit Purposes**

#### **Section 1. IRC Section 501(c)(3) Purposes**

This Corporation is organized exclusively for one or more of the purposes as specified in Section 501(c)(3) of the Internal Revenue Code.

#### **Section 2. Specific Objectives and Purposes**

The specific objective and purpose of this Corporation shall be to inform and educate the general public about issues affecting humanity through a multimedia news analysis platform providing a plurality of perspectives from around the world. This platform is in effect a journal that is currently online but may take other forms later. The platform/journal transcends borders, beliefs and backgrounds to create a truly global discourse. The Corporation will *inter alia* showcase hitherto marginalized narratives and educate the public about the common humanity of various peoples around the world.

#### **Section 3. Membership**

The Corporation shall have no members.

## **Article 3**

### **Directors**

#### **Section 1. Number**

The Corporation shall have a minimum of three (3) Directors and a maximum of twelve (15) Directors. Collectively, all Directors at any given time shall be known as the Board of Directors. The Board of Directors, by resolution of a majority of the entire Board, may designate positions with duties and responsibilities, to each or a few of the members of the Board. Subject to Section 5 of Article 3, the Board shall elect one Director to serve as chairperson (the “**Chairperson**”) for the period of a Term (as defined below), with the right to be reelected at the end of the Term for a subsequent Term as Chairperson, or for further Terms thereafter, consecutive or otherwise, for the maximum period that the person is permitted to serve as a Director on the Board.

#### **Section 2. Qualifications**

Directors of the Corporation shall qualify the age or any other specific requirement that may be in force with regards to Directors or officers in this state at any given point in time.

### **Section 3. Powers**

Subject to the provisions of the laws of this state and any limitations in the articles of incorporation and these bylaws, the activities and affairs of this Corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board.

### **Section 4. Duties**

It shall be the duty of the Directors to:

- a. perform any and all duties imposed on them collectively or individually by law, by the articles of incorporation, or by these bylaws;
- b. appoint and remove, employ and discharge, and, except as otherwise provided in these bylaws, prescribe the duties and fix the compensation, if any, of all officers, agents, and employees of the Corporation;
- c. supervise all officers, agents, and employees of the Corporation to assure that their duties are performed properly;
- d. meet at such times and places as required by these bylaws; and
- e. register their addresses with the secretary (the “**Secretary**”) of the Corporation, and any notices of meetings mailed or telegraphed to them at such addresses shall be valid notices thereof.

### **Section 5. Term of Office**

The initial Directors (the “**Initial Directors**”) and, where applicable, their designated positions on the Board are listed in **Schedule 1** hereto. Each of the Initial Directors shall hold office for a period of five (5) years in their designated positions or any other positions they may be subsequently elected to within said duration, and thereafter shall continue to hold such aforesaid position for the duration until his or her successor is elected and qualifies.

After the five (5) year period provided for the Initial Directors to serve in their positions or any other positions they may be elected to within said duration, said Initial Directors shall be up for reelection at the Corporation’s annual meeting (the “**Annual Meeting**”) to serve for a period of one (1) year (a “**Term**”), which Term shall be renewable every year, if the Director in question seeks reelection and is reelected at the Annual Meeting.

All other Directors shall serve in their positions for a Term, which Term shall be renewable every year for a maximum of ten (10) Terms, consecutive or otherwise, if the Director in question seeks reelection and is reelected at each applicable Annual Meeting.

### **Section 6. Committees**

The Board of Directors, by resolution of a majority of the entire Board, may designate from among its members, one or more committees, each consisting of one or more Directors, and each of which, to the extent provided in such resolution, shall have all the authority of the Board except that no such committee shall have authority as to any of the following matters:

- (a) the submission to the Board of any action as to which the Board's authorization is required by statute, the articles of incorporation or by these bylaws;
- (b) the filling of vacancies in the Board or in any committee thereof;
- (c) the fixing of compensation of the Directors for serving on the Board or on any committee thereof;
- (d) the amendment or repeal of the bylaws or the adoption of new bylaws; and
- (e) the amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable.

The Board may designate one or more Directors as alternate members of any such committee who may replace any absent member or members at any meeting of such committee.

Each such committee shall serve at the pleasure of the Board. The Board shall have the power at any time to fill vacancies in, to change the membership of, or to discharge any such committee. Each committees shall keep minutes of their proceedings and shall report the same to the Board at the first meeting of the Board following the committee's proceedings, and any action by the committee shall be subject to revision and alteration by the Board, provided that no rights of a third party shall be affected in any such revision or alteration.

### **Section 7. Compensation**

Directors shall serve without compensation except that a reasonable fee may be paid to Directors for attending Annual and special meetings of the Board. In addition, they shall be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their duties. Any payments to Directors shall be approved in advance in accordance with this Corporation's conflict of interest policy, as set forth in Article 10 of these bylaws.

### **Section 8. Place of Meetings**

Meetings shall be held at the principal office of the Corporation unless otherwise provided by the Board or at such other place as may be designated from time to time by resolution of the Board.

### **Section 9. Annual Meetings**

Annual Meetings of the Board of Directors shall be held on the first Tuesday of March every year, unless such day falls on a legal holiday, in which event the Annual Meeting shall be held at the same hour and place on the next business day.

At the Annual Meeting of the Board of Directors, Directors shall be elected by members of the Board. Voting for the election of Directors shall be by written ballot. Each Director shall cast one vote per candidate, and may vote for as many candidates as the number of candidates to be elected to the Board. The candidates receiving the highest number of votes up to the number of Directors to be elected, shall be elected to serve on the Board.

## **Section 10. Special Meetings**

Special meetings of the Board of Directors may be called by the Chairperson of the Board, the CEO, the vice president, the secretary, by any two Directors, or, if different, by the persons specifically authorized under the laws of this state to call special meetings of the Board. Such meetings shall be held at the principal office of the Corporation or, if different, at the place designated by the person or persons calling the special meeting.

## **Section 11. Notice of Meetings**

Unless otherwise provided by the articles of incorporation, these bylaws, or provisions of law, the following provisions shall govern the giving of notice for meetings of the Board:

- a. Annual Meetings.** No notice need be given of any Annual Meeting of the Board.
- b. Special Meetings.** At least three (3) days' prior notice shall be given by the Secretary of the Corporation to each Director, with regards to each special meeting of the Board. Such notice may be oral or written, may be given personally, by email, by telephone or by facsimile machine, and shall state the place, date, and time of the meeting and the matters proposed to be acted upon at the meeting. In the case of email or facsimile notification, the Director to be contacted shall acknowledge personal receipt of the notice by a return email, message or telephone call within twenty-four (24) hours of the first email or facsimile transmission.
- c. Waiver of Notice.** Whenever any notice of a meeting is required to be given to any Director of this Corporation under provisions of the articles of incorporation, these bylaws, or the law of this state, a waiver of notice in writing signed by the Director, whether before or after the time of the meeting, shall be equivalent to the giving of such notice.

## **Section 12. Quorum for Meetings**

A quorum shall consist of a majority of the members of the Board of Directors.

Except as otherwise provided under the articles of incorporation, these bylaws, or provisions of law, no business shall be considered by the Board at any meeting at which the required quorum is not present, and the only motion which the chair shall entertain at such meeting is a motion to adjourn.

## **Section 13. Majority Action as Board Action**

Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present is the act of the Board of Directors, unless the articles of incorporation, these bylaws, or provisions of law require a greater percentage or different voting rules for approval of a matter by the Board. For the avoidance of doubt, and without prejudice to the requirements of this Section 13 of Article 3, where the Board comprises three (3) Directors, and a meeting is held by a majority of the Board, no resolution or decision can be passed unless no less than two (2) Directors vote in favor of it.

## **Section 14. Conduct of Meetings**

Meetings of the Board of Directors shall be presided over by the Chairperson of the Board, or, if no such person has been so designated, or in his or her absence, the CEO of the Corporation, or in his or her absence, by the vice president of the Corporation, or in the absence of each of these persons, by an

acting chairperson chosen by a majority of the Directors present at the meeting. The Secretary of the Corporation shall act as secretary of all meetings of the Board, provided that, in his or her absence, the presiding officer shall appoint another person to act as secretary of the meeting.

Meetings shall be governed by the Chairperson of the Board or the person acting in that capacity at a meeting, insofar as such rules are not inconsistent with or in conflict with the articles of incorporation, these bylaws, or with provisions of law.

Any one or more members of the Board or of any committee thereof may participate in a meeting of said Board or of any such committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time, and participation by such means shall constitute presence in person at the meeting.

### **Section 15. Action without Meeting**

Without prejudice to the foregoing and except as otherwise permitted by the articles of incorporation, any action required or permitted to be taken by the Board may be taken without a meeting if: (i) all Directors entitled to vote are notified of the action; and (ii) consent in writing to the adoption of a resolution authorizing the action, is given by a majority of the Directors.

No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days after the meeting, written consents signed by a majority of members of the Board are given to the Corporation by delivery to its principal office, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of the Board are recorded. Delivery made to the Corporation's principal office shall be by hand or by certified or registered mail or by email.

### **Section 16. Vacancies**

Vacancies on the Board of Directors shall exist (1) on the death, resignation, or removal of any Director, or (2) whenever the number of authorized Directors is increased.

Any Director may resign effective upon giving written notice to the chairperson of the Board, the Board as a whole, the CEO, or the secretary, unless the notice specifies a later time for the effectiveness of such resignation. No Director may resign if the Corporation would then be left without a duly elected Director or Directors in charge of its affairs, except upon notice to the office of the attorney general or other appropriate agency of this state.

Directors may be removed from office, with or without cause, as permitted by and in accordance with the laws of this state.

Unless otherwise prohibited by the articles of incorporation, these bylaws, or provisions of law, vacancies on the Board may be filled by approval of the Board. If the number of Directors then in office is less than a quorum, a vacancy on the Board may be filled by approval of a majority of the Directors then in office or by a sole remaining Director. A person elected to fill a vacancy on the Board shall hold office until the next election of the Board of Directors or until his or her death, resignation, or removal from office.

### **Section 17. Nonliability of Directors**

The Directors shall not be personally liable for the debts, liabilities, or other obligations of the Corporation.

### **Section 18. Indemnification by the Corporation of Directors and Officers**

The Directors and officers of the Corporation shall be indemnified by the Corporation to the fullest extent permissible under the laws of this state.

### **Section 19. Insurance for Corporate Agents**

Except as may be otherwise provided under provisions of law, the Board of Directors may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the Corporation (including a Director, officer, employee, or other agent of the Corporation) against liabilities asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Corporation would have the power to indemnify the agent against such liability under the articles of incorporation, these bylaws, or provisions of law.

## **Article 4 Advisory Boards**

### **Section 1. Designation of Advisory Boards**

The Board of Directors may, in its sole discretion, pass a resolution appointing any number of prominent, accomplished and respected members of society in a variety of professional fields, including, but not limited to, politics, business, academia, technology and journalism, to sit on any of the established advisory boards (the “**Advisory Boards**”) of the Corporation. Members of the Advisory Boards shall not be compensated for their role and shall perform such advisory role and be appointed for such term as shall be provided in a resolution of the Board of Directors.

### **Section 2. Responsibility of Advisory Boards**

The Advisory Boards shall advise the Board of Directors by providing suggestions and recommendations on how best to manage the affairs of the Corporation and to achieve its objectives and purposes.

## **Article 5 Editorial Board**

### **Section 1. Designation of Editorial Board**

The Board will appoint an Editor-in-Chief, a Managing Editor and a Deputy Managing Editor, together known as the Editorial Board, to set the editorial agenda, draft editorial guidelines, uphold editorial standards and take care of other editorial matters for the platform/journal that the Corporation publishes and that is referred to in Section 2 of Article 2. Future appointments to the Editorial Board will be the

prerogative of the Editor-in-Chief and the Board will not make any further appointments to the Editorial Board.

### **Section 2. Independence of the Editorial Board**

The Board will not interfere in the functioning of the Editorial Board. All decisions regarding editorial matters, including, but not limited to, issues to be covered, content to be published and editors to be selected, will be made by the Editorial Board. The autonomy of the Editorial Board is sacrosanct for the Corporation.

### **Section 3. Removal and Resignation from the Editorial Board**

Any member of the Editorial Board may be removed following a resolution of the Board of Directors requiring two-thirds majority of the total number of Directors. The Board of Directors shall also give the member of the Editorial Board at least one (1) month's notice outlining reasons for removal before the resolution is put to vote and the member of the Editorial Board will have the opportunity to respond to the notice.

Any member of the Editorial Board may resign at any time by giving written notice to the Board of Directors or to the CEO or Secretary of the Corporation. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

## **Article 6 Officers**

### **Section 1. Designation of Officers**

The officers of the Corporation shall be a Chief Executive Officer (the "CEO"), a Secretary, and a Chief Financial Officer (the "CFO"). The initial officers of the Corporation and their designated positions are listed in **Schedule 2** hereto. The Corporation may also have one or more vice presidents, assistant secretaries, general counsels and assistant general counsels, deputy CFOs, and other such officers with such titles as may be determined from time to time by the Board of Directors.

### **Section 2. Qualifications**

Any person may serve as an officer of this Corporation, including, but not limited to, any members of the Board of Directors at the same time as their service on the Board, there being no conflict of interest in relation to these kind of circumstances for purposes of these bylaws or the articles of incorporation.

Any officer may hold any number of officer positions, provided the positions of CEO and CFO shall always be held by two (2) separate individual persons.



### **Section 3. Election and Term of Office**

Officers shall be elected by the Board at any time, and each officer shall hold office until he or she resigns or is removed or is otherwise disqualified to serve, or until his or her successor shall be elected and qualified, whichever occurs first.

### **Section 4. Removal and Resignation**

Any officer may be removed, whether with cause or without, by the Board of Directors, at any time. Any officer may resign at any time by giving written notice to the Board of Directors or to the CEO or Secretary of the Corporation. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The above provisions of this Section 4 of Article 6 shall be superseded by any conflicting terms of a contract which has been approved or ratified by the Board relating to the employment of any officer of the Corporation.

### **Section 5. Vacancies**

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer, shall be filled by the Board of Directors. In the event of a vacancy in any office other than that of the CEO, such vacancy may be filled temporarily by appointment by the CEO until such time as the Board shall fill the vacancy. The Board may decide to fill or not to fill vacancies occurring in offices of officers appointed at its discretion.

### **Section 6. Duties of the Chief Executive Officer**

The CEO shall, subject to the control of the Board of Directors, supervise and control the affairs of the Corporation and the activities of the officers. He or she shall perform all duties incident to his or her office and such other duties as may be required by law, by the articles of incorporation, or by these bylaws, or which may be prescribed from time to time by the Board of Directors. Unless there is an elected Chairperson of the Board, or another person is otherwise specifically appointed as acting chairperson of the Board of Directors, the CEO shall preside at all meetings of the Board of Directors. Except as otherwise expressly provided by law, by the articles of incorporation, or by these bylaws, he or she shall, in the name of the Corporation, execute such deeds, mortgages, bonds, contracts, checks, or other instruments which may from time to time be authorized by the Board of Directors.

### **Section 7. Duties of Secretary**

The Secretary shall:

- a. certify and keep at the principal office of the Corporation the original, or a copy, of these bylaws as amended or otherwise altered to date;
- b. keep at the principal office of the Corporation or at such other place as the Board may determine, a book of minutes of all meetings of the Directors, and, if applicable, meetings of committees of Directors, recording therein the time and place of holding, whether Annual or special, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof;

- c. ensure that the minutes of meetings of the Corporation, any written consents approving action taken without a meeting, and any supporting documents pertaining to meetings, minutes, and consents shall be contemporaneously recorded in the corporate records of this Corporation. "Contemporaneously" in this context means that the minutes, consents, and supporting documents shall be recorded in the records of this Corporation by the later of (i) the next meeting of the Board, committee, membership, or other body for which the minutes, consents, or supporting documents are being recorded, or (ii) sixty (60) days after the date of the meeting or written consent;
- d. see that all notices are duly given in accordance with the provisions of these bylaws or as required by law;
- e. be custodian of the records and of the seal of the Corporation and affix the seal, as authorized by law or the provisions of these bylaws, to duly executed documents of the Corporation;
- f. exhibit at all reasonable times to any Director of the Corporation, or to his or her agent or attorney, on request therefor, the bylaws, the membership book, and the minutes of the proceedings of the Directors of the Corporation; and
- h. in general, perform all duties incident to the office of Secretary and such other duties as may be required by law, by the articles of incorporation, or by these bylaws, or which may be assigned to him or her from time to time by the Board of Directors.

### **Section 8. Chief Financial Officer**

The CFO shall:

- a. have charge and custody of, and be responsible for, all funds and securities of the Corporation, and deposit all such funds in the name of the Corporation in such banks, trust companies, or other depositories as shall be selected by the Board;
- b. receive, and give receipt for, monies due and payable to the Corporation from any source whatsoever;
- c. disburse, or cause to be disbursed, the funds of the Corporation as may be directed by the Board of Directors, taking proper vouchers for such disbursements;
- d. keep and maintain adequate and correct accounts of the Corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains, and losses;
- e. exhibit at all reasonable times the books of account and financial records to any Director of the Corporation, or to his or her agent or attorney, on request therefor;
- f. render to the CEO and Directors, whenever requested, an account of any or all of his or her transactions as CFO and of the financial condition of the Corporation;
- g. prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports; and
- h. in general, perform all duties incident to the office of the CFO and such other duties as may be required by law, by the articles of incorporation of the Corporation, or by these bylaws, or which may be assigned to him or her from time to time by the Board of Directors.

## **Section 11. Compensation**

The salaries of the officers, if any, shall be fixed from time to time by resolution of the Board of Directors. In all cases, any salaries received by officers of this Corporation shall be reasonable and given in return for services actually rendered to or for the Corporation. All officer salaries shall be approved in advance in accordance with this Corporation's conflict of interest policy, as set forth in Article 10 of these bylaws.

## **Article 7 Execution of Instruments, Deposits, and Funds**

### **Section 1. Execution of Instruments**

The Board of Directors, except as otherwise provided in these bylaws, may by resolution authorize any officer or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

### **Section 2. Checks and Notes**

Except as otherwise specifically determined by resolution of the Board of Directors, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the Corporation shall be signed by the CFO and countersigned by the CEO of the Corporation.

### **Section 3. Deposits**

All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

## **Article 8 Corporate Records, Reports, and Seal**

### **Section 1. Maintenance of Corporate Records**

The Corporation shall keep at its principal office:

- a. minutes of all meetings of Directors and committees of the Board, indicating the time and place of holding such meetings, whether annual or special, how called, the notice given, and the names of those present and the proceedings thereof;
- b. minutes of all meetings of the Corporation's Advisory Boards, indicating the time and place of holding such meetings, how called, the notice given, and the names of those present and the proceedings thereof;

- c. adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains, and losses; and
- d. a copy of the Corporation's articles of incorporation and bylaws as amended to date.

## **Section 2. Corporate Seal**

The Board of Directors may adopt, use, and at will alter, a corporate seal. Such seal shall be kept at the principal office of the Corporation. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

## **Section 3. Directors' Inspection Rights**

Every Director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the Corporation, and shall have such other rights to inspect the books, records, and properties of this Corporation as may be required under the articles of incorporation, other provisions of these bylaws, and provisions of law.

## **Section 4. Principal Officers' Inspection Rights**

Every principal officer shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the Corporation, and shall have such other rights to inspect the books, records, and properties of this Corporation as may be required under the articles of incorporation, other provisions of these bylaws, and provisions of law.

## **Section 5. Right to Copy and Make Extracts**

Any inspection under the provisions of this article may be made in person or by agent or attorney and the right to inspection shall include the right to copy and make extracts.

## **Section 6. Periodic Report**

The Board shall cause any annual or periodic report required under law to be prepared and delivered to the appropriate office of this state, if any, of this Corporation, to be so prepared and delivered within the time limits set by law.

# **Article 9**

## **IRC 501(c)(3) Tax Exemption Provisions**

### **Section 1. Limitations on Activities**

No substantial part of the activities of this Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(h) of the Internal Revenue Code), and this Corporation shall not participate in, or intervene in (including the

publishing or distribution of statements), any political campaign on behalf of, or in opposition to, any candidate for public office.

Notwithstanding any other provisions of these bylaws, this Corporation shall not carry on any activities not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or (ii) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code.

## **Section 2. Prohibition Against Private Inurement**

No part of the net earnings of this Corporation shall inure to the benefit of, or be distributable to, its members, if any, its Directors or trustees, officers, or other private persons, 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 of this Corporation.

## **Section 3. Distribution of Assets**

Upon the dissolution of this Corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this Corporation, shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code or shall be distributed to the federal government, or to a state or local government, for a public purpose. Such distribution shall be made in accordance with all applicable provisions of the laws of this state.

## **Section 4. Private Foundation Requirements and Restrictions**

In any taxable year in which this Corporation is a private foundation as described in Section 509(a) of the Internal Revenue Code, the Corporation: (i) shall distribute its income for said period at such time and manner as not to subject it to tax under Section 4942 of the Internal Revenue Code; (ii) shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code; (iii) shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code; (iv) shall not make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Internal Revenue Code; and (v) shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code.

# **Article 10 Conflict of Interest and Compensation Approval Policies**

## **Section 1. 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 and as amplified by Section 53.4958-3 of the IRS Regulations and which might result in a possible "excess benefit transaction" as defined in Section 4958(c)(1)(A) of the Internal Revenue Code and as amplified by Section 53.4958 of the IRS Regulations. 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 2. Definitions

- a. **Interested Person.** Any Director, principal officer, member of a committee with governing Board delegated powers, or any other person who is a "disqualified person" as defined in Section 4958(f)(1) of the Internal Revenue Code and as amplified by Section 53.4958-3 of the IRS Regulations, 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:
  - 1. an ownership or investment interest in any entity with which the Corporation has a transaction or arrangement;
  - 2. a compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement; or
  - 3. 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 not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Section 3, paragraph b., a person who has a financial interest may have a conflict of interest only if the appropriate governing Board or committee decides that a conflict of interest exists.

## Section 3. 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 and members of committees with governing Board delegated powers considering the proposed transaction or arrangement.
- 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 governing 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.
- c. **Procedures for Addressing the Conflict of Interest.** An interested person may make a presentation at the governing 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 Chairperson or acting chairperson of the governing Board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

After exercising due diligence, the governing 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 governing 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 governing Board or committee has reasonable cause to believe an interested person has failed to disclose actual or possible conflicts of interest, it shall inform the interested person of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

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

#### **Section 4. Records of Board and Board Committee Proceedings**

The minutes of meetings of the governing 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 governing Board's or committee's decision as to whether a conflict of interest in fact existed; and
- 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 5. Compensation Approval Policies**

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

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 that member's compensation.

No voting member of the governing Board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation, either individually or collectively, is prohibited from providing information to any committee regarding 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 5 of Article 10, the Board or a duly constituted compensation committee of the Board shall also comply with the following additional requirements and procedures:

- a. the terms of compensation shall be approved by the Board or compensation committee prior to the first payment of compensation;
- b. all members of the Board or compensation committee who approve compensation arrangements must not have a conflict of interest with respect to the compensation arrangement as specified in IRS 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 Internal Revenue Code and as amplified by Section 53.4958-3 of the IRS Regulations):
  - 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 Board or compensation committee 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;

As allowed by IRS Regulation 4958-6, if this organization has average annual gross receipts (including contributions) for its three (3) prior tax years of less than \$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.

- d. the terms of compensation and the basis for approving them shall be recorded in written minutes of the meeting of the Board or compensation committee that approved the compensation. Such documentation shall include:
  1. the terms of the compensation arrangement and the date it was approved;
  2. the members of the Board or compensation committee who were present during debate on the transaction, those who voted on it, and the votes cast by each Board or committee member;
  3. the comparability data obtained and relied upon and how the data was obtained;



4. if the Board or compensation committee determines that reasonable compensation for a specific position in this organization or for providing services under any other compensation arrangement with this organization 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;
5. if the Board or committee makes 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;
6. any actions taken with respect to determining if a Board or committee member 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
7. 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 sixty (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 6. 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 7. Periodic Reviews**

To ensure the Corporation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. 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; and
- 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 8. Use of Outside Experts**

When conducting the periodic reviews as provided for in Section 7 of this Article 10, the Corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing Board of its responsibility for ensuring periodic reviews are conducted.

## **Article 11 Amendment of Bylaws**

Subject to the power of the members, if any, of this Corporation to adopt, amend, or repeal the bylaws of this Corporation and except as may otherwise be specified under provisions of law, these bylaws, or any of them, may be altered, amended, or repealed and new bylaws adopted by approval and resolution of the Board of Directors.

## **Article 12 Construction and Terms**

If there is any conflict between the provisions of these bylaws and the articles of incorporation of this Corporation, the provisions of the articles of incorporation shall govern.

Should any of the provisions or portions of these bylaws be held unenforceable or invalid for any reason, the remaining provisions and portions of these bylaws shall be unaffected by such holding.

All references in these bylaws to the articles of incorporation shall be to the articles of incorporation, articles of organization, certificate of incorporation, organizational charter, corporate charter, or other founding document of this Corporation filed with an office of this state and used to establish the legal existence of this Corporation.

All references in these bylaws to a section or sections of the Internal Revenue Code shall be to such sections of the Internal Revenue Code of 1986 as amended from time to time, or to corresponding provisions of any future federal tax code.