



Conflict of Interest Policy

Revised February 2010

The Northern Arizona University Foundation, Inc. (the "corporation") strives to maintain the highest ethical standards in all policies, procedures and activities and to avoid any conflicts of interest. As a result, the Corporation hereby adopts this policy. This policy governs certain conflict of interest transactions between the Corporation and directors (and their relatives), officers and their affiliates. This policy is intended to supplement and provide guidance under but not replace any applicable laws governing conflicts of interest under the Arizona Nonprofit Corporation Act. Furthermore, this policy does not address any applicable provisions under the Internal Revenue Code of 1986, as amended, including provisions governing tax-exempt organizations concerning excess benefit transactions with disqualified persons.

Section 1 General Policy on Affiliated Transaction Concerning Directors and Officers. No contract or other transaction between the Corporation and Interested Persons (as hereinafter defined), including the sale, lease or exchange of property to or from Interested Persons, the lending or borrowing of monies to or from Interested persons by the Corporation or the payment of compensation by the Corporation for services provided by Interested Persons, shall be void or voidable because of the relationship or interest between the Corporation and the Interested Persons or because any Interested Person is present at the meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies such transaction or because his, her or their votes are counted for such purpose if:

(a) The fact and nature of such relationship or interest is disclosed or known to the Board of Directors or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of any Interested Person(s); or

(b) The contract or transaction is fair and reasonable to the Corporation at the time the contract or transaction is authorized, approved or ratified in the light of circumstances known to those entitled to vote thereon at the time.

As used herein, the term "Interested Persons" shall mean any director or officer of the Corporation, or any corporation, firm, association or other entity in which one or more of the Corporation's directors or officers are directors, officers or members or are financially interested.

Any person seeking to establish that a contract or transaction described herein is void or voidable for any reason set forth herein shall first prove, by a preponderance of the evidence, that the provisions of subparagraphs (a) and (b) of Section 1 are not applicable.

Section 2 Additional Provision on Director Conflicts of Interest. The Arizona Nonprofit Corporation Act provides disclosure and procedural requirements for directors in certain conflict of interest transactions concerning the Corporation. This provision is meant to provide guidance in the event of such director conflict of interest transaction.

2.1 Conflicting Interest Transactions. To the extent required by law and in particular, Chapter 31, Article 6 of the Arizona Nonprofit Corporation Act, no transaction effected or proposed to be effected by the Corporation (or its subsidiary or an entity controlled by the Corporation) in which a director has a conflicting interest will be enjoined or set aside or give rise to an award of damages because the director, or any person with whom the director has a personal, economic or other association, has an interest in the transaction, if: (a) the directors' action with respect to the transaction was taken in compliance with A.R.S. §10-3862 (or its successor) or (b) the transaction, according to the circumstances at the Time of Commitment, was fair to the Corporation. To the extent that any of these terms are defined, reference should be made to Section 2.2 below and to Chapter 31, Article 6, of the Arizona Nonprofit Corporation Act, or such similar successor provisions.

2.2 Conflicting Interest Defined.

(a) "Conflicting interest" as used in Section 2.1 above, means a director's interest in a proposed or effected transaction by the corporation (or the Corporation's subsidiary or other entity controlled by the Corporation) if either:

(i) Whether or not the transaction is brought before the board of directors of the Corporation for action, the director knows at the Time of Commitment that the director or a Related Person either (a) is a party to the transaction or (b) has a beneficial financial interest in or is so closely linked to the transaction and of such financial significance to the director or a Related Person that the interest would reasonably be expected to exert an influence on the director's judgment if he or she were called on to vote on the transaction; or

(ii) The transaction is brought or is of such character and significance to the Corporation that it would in the normal course be brought before the board of directors of the Corporation for action, and the director knows at the Time of Commitment that any of the following persons:

- a. an entity of which the director is a director, general partner, agent or employee; or
- b. a person that controls such an entity or an entity that is controlled by or is under common control with one or more of such entities; or
- c. an individual who is a general partner, principal or employer of the director

is either a party to the transaction or has a beneficial financial interest in; or is in a "Business Relationship" with the party; or is so closely linked to the transaction and of such financial significance to the person that the director in that transaction would reasonably be expected to exert an influence over the director's judgment were he or she called on to vote on the transaction.

(b) For all purposes of this section 2.2, the terms "Related Person", "Time of Commitment" and "Business Relationship" are defined as follows:

(i) "Related Person" of a director means either: (a) the spouse, or a parent or sibling of the spouse, of the director, a child, grandchild, sibling, parent or spouse of a child, grandchild, sibling or parent, of the director, an individual having the same home as the

director or a trust or estate of which an individual specified herein is a substantial beneficiary; or (b) a trust, estate, incompetent, conservatee or minor of which the director is a fiduciary.

(ii) "Time of Commitment" with respect to a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the Corporation, its subsidiary or the entity in which it has a controlling interest, becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability or other damage.

(iii) Business Relationships between two persons include any of the following:

1. One person is employed by the other in a sole proprietorship or by an organization with which the other is associated as a trustee, director, officer, key employee, or greater than 35% owner;
2. One person is transacting business with the other (other than in the ordinary course of either party's business on the same terms as are generally offered to the public), directly or indirectly, in one or more contracts of sale, lease, license, loan, performance of services, or other transaction involving transfers of cash or property valued in excess of \$10,000 in the aggregate during the Foundation's tax year (indirect transactions are transactions with an organization with which one person is associated as a trustee, director, officer, key employee, or greater than 35% owner); and
3. The two persons are each a director, trustee, officer or greater than 10% owner in the same business or investment entity.

Ownership is measured by stock ownership (with voting power or value) of a corporation, profits or capital interest in a partnership or limited liability company, membership interest in a nonprofit organization, or beneficial interest in a trust. Ownership includes indirect ownership (e.g. ownership in an entity that has ownership in the entity in question); there may be ownership through multiple tiers of entities.

Privileged relationship exception. For purposes of this policy, a "business relationship" does not include a relationship between (1) attorney and client, (2) medical professionals (including psychologist) and patient, or (3) priest/clergy and penitent/communicant.

Section 3 Annual Reporting. Each director and officer of the Corporation shall annually complete a form that provides information and affirmations reasonably requested by the Corporation, including without limitation, the following:

- (a) Disclosure of any information relevant to this conflict of interest policy.
- (b) A statement that he or she has received a copy of the conflicts of interest policy, has read and understood such policy and agrees to comply with the policy.
- (c) A statement that he or she understands that the Corporation is a tax-exempt charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

Section 4 Interim Reporting. With respect to any particular matter then pending before the Corporation, each director and officer shall promptly disclose to the Board of Directors any matter that could reasonably be considered to constitute a conflict of interest transaction or relationship or other factor that could reasonable be considered relevant under this conflict of interest policy. Furthermore, the Corporation may require new officers and directors to complete this form upon election or appointment.

Section 5 Change in Policy. Any changes to the policy shall be communicated immediately to the Corporation directors.

Approved: October 20, 2006
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