



29 British American Boulevard, 2<sup>nd</sup> Floor  
Latham, NY 12110  
518-439-8311  
thearcny.org

## [Policy Number]: Conflict of Interest and Related Party Transactions

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Category: Corporate Compliance                      Effective Date: XXXXXXXX  
Department: XXXXXXXXXXXXXXXXXXXXXXXX              Last Revision Date(s): 12/6/2016

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### ARTICLE I: PURPOSE

\_\_\_\_\_ County Chapter, NYSARC, Inc. (hereinafter “(INSERT CHAPTER NAME)”), as a commitment to its members and the public at large, strives to maintain the highest ethical standards in the delivery of programmatic services through the design, implementation and adherence to clearly articulated policies and procedures in an effort to avoid either actual or the appearance of improper or undisclosed conflicts of interest. Each Director, Officer, and Key Person of (INSERT CHAPTER NAME) has a duty of loyalty to (INSERT CHAPTER NAME), which requires those individuals to prefer the interests of (INSERT CHAPTER NAME) over their own. (INSERT CHAPTER NAME) further wishes to clarify that where the terms “Director”, “Officer” and “Key Person” appear, all members of the (INSERT CHAPTER NAME) Executive Committee, as outlined in the Chapter’s By-laws, are considered part of this group and are subject to the requirements of this Policy.

The purpose of this policy (hereinafter the “Policy”) is to protect the interests of (INSERT CHAPTER NAME) when it is contemplating entering into a transaction or arrangement that might benefit the private interest, financial or otherwise, of a Director, Officer, or Key Person of (INSERT CHAPTER NAME). (INSERT CHAPTER NAME) will not enter into any such transaction or arrangement unless it is determined by the Board in a manner described below to be fair, reasonable, and in the best interests of (INSERT CHAPTER NAME) at the time of such determination.



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### ARTICLE II: DEFINITIONS

Affiliate. An affiliate of (INSERT CHAPTER NAME) is an entity that is directly or indirectly through one or more intermediaries, controlled by, and in control of, or under common control with (INSERT CHAPTER NAME).

Audit Committee. A committee of the (INSERT CHAPTER NAME) Chapter Board.

Board of Directors or Board. The body responsible for the management and governance of (INSERT CHAPTER NAME).

Conflict of Interest. Any situation in which a Director, Officer, or Key Person of (INSERT CHAPTER NAME) has a competing professional or personal interest in a matter, which is the subject of a decision or duty by that person. Such competing interest may make it difficult for such person to fulfill their duties impartially and can create an appearance of impropriety even if no unethical or improper act results from the conflict. Includes Related Party Transactions, defined below.

Director. Any voting or non-voting member of the governing board of (INSERT CHAPTER NAME).

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 (INSERT CHAPTER NAME).

Independent Director. A member of the Board of Directors who:

- Has not been an employee or an Affiliate of (INSERT CHAPTER NAME) within the last three years;



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- Does not have a Relative who has been a Key Person of (INSERT CHAPTER NAME) or an Affiliate of (INSERT CHAPTER NAME) 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 (INSERT CHAPTER NAME) or an Affiliate of the Chapter within the last three years; and
- Does not have a substantial Financial Interest in and has not been an employee of, and does not have a Relative who has a substantial Financial Interest in or was an Officer of any entity that has provided payments, property or services to or received payments, property services from NYSARC or an Affiliate of NYSARC in any of the last three fiscal years that exceeds of the lesser of (a) \$10,000 or (b) 2% of NYSARC or the Affiliate's consolidated gross revenue if revenue was less than \$500,000<sup>1</sup> (payment does not include charitable contributions or payments made by the corporation at fixed or non-negotiable rates as long as those services received by the corporation are also not otherwise available from another source).

Key Person. A Key Person is someone who is in a position to exercise substantial influence over the affairs of (INSERT CHAPTER NAME). This includes, but is not limited to:

- Voting members of the Board;
- Presidents, chief executive officers, chief operating officers or employee of any other title with similar responsibilities;
- Treasurers and chief financial officers or employee of any other title with similar responsibilities; or
- A "highly compensated" employee, within the meaning of section 4958 of the Internal Revenue Code and guidance issued by the Internal Revenue Service, who is in a position to exercise substantial influence over the affairs of (INSERT CHAPTER NAME).

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<sup>1</sup> If the entity's consolidated gross revenue was \$500,000 or more but less than \$10,000,000, the payments, property or services cannot exceed \$25,000; if the entity's consolidated gross revenue was more than \$10,000,000, the payments, property or services cannot exceed \$100,000.



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Officer. A person designated as such in the (INSERT CHAPTER NAME) Chapter By-laws.

Related Party. Persons who may be considered a Related Party of (INSERT CHAPTER NAME) under this Policy include:

- Directors, Officers, or Key Persons of (INSERT CHAPTER NAME) or an Affiliate of (INSERT CHAPTER NAME);
- Relatives of Directors, Officers, or Key Persons of (INSERT CHAPTER NAME) or any Affiliate of (INSERT CHAPTER NAME); and
- 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%.

Related Party Transaction. Any transaction, agreement or any other arrangement with (INSERT CHAPTER NAME) or an Affiliate of (INSERT CHAPTER NAME) in which a Related Party has a Financial Interest, *except that a transaction is not a Related Party Transaction if: (i) the transaction or the related party's financial interest in the transaction is de minimis, (ii) the transaction would not customarily be reviewed by the board or boards of similar organizations in the ordinary course of business and is available to others on the same or similar terms, or (iii) the transaction constitutes a benefit provided to a related party solely as a member of a class of the beneficiaries that the corporation intends to benefit as part of the accomplishment of its mission which benefit is available to all similarly situated members of the same class on the same terms.* Any Related Party Transaction will be considered a conflict of interest for purposes of this Policy.

Relative. A Relative is a spouse, ancestor, child (whether natural or adopted), grandchild, great grandchild, sibling (whether whole or half-blood), or spouse of a child (whether natural or adopted), grandchild, great grandchild or sibling (whether whole or half-blood).



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### ARTICLE III: POLICY & PROCEDURE

#### Duty to Disclose

In connection with initial and annual disclosures under Article VII of this Policy, Directors, Officers, and Key Persons must disclose the existence of the financial or other interest and be given the opportunity to disclose in good faith all material facts to the Audit Committee. In addition to initial and annual disclosures, Directors, Officers, and Key Persons are under a continuing obligation to similarly disclose the material facts surrounding actual or possible Conflicts of Interest as they arise, and may do so to the Board and/or Audit Committee, as appropriate.

#### Determining Whether a Conflict of Interest Exists

After disclosure of the financial or other interest and all material facts, and after discussion with the individual raising the potential conflict, he/she shall leave the meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board or Audit Committee members shall decide if a conflict of interest exists.

#### Procedures for Addressing the Conflict of Interest

The Director, Officer, or Key Person may make a presentation at the Board meeting, but after such presentation that individual shall leave the meeting during any discussion of, and/or vote on the transaction, arrangement or activity being addressed as the possible conflict of interest. Further, the individual with a conflict shall refrain from any attempts to improperly influence the deliberations and voting on the matter giving rise to the conflict.

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



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If a more advantageous transaction or arrangement is not reasonably possible under the circumstances that does not produce a conflict of interest, the Board shall determine by a majority vote of the disinterested Directors then present and voting whether the transaction or arrangement is in (INSERT CHAPTER NAME)s best interest, for its own benefit, and whether it is fair and reasonable.

### Violations of the Policy

If the Board determines that a Director, Officer, or Key Person has failed to disclose an actual or possible conflict of interest, it shall inform such person of the basis for such belief and afford the person the opportunity to explain the alleged failure to disclose.

If after hearing the individual's response and after making further investigation as warranted by the circumstances, the Board determines the individual has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action, including but not limited to consideration of the act as conduct detrimental to (INSERT CHAPTER NAME) in violation if its by-laws.

### **ARTICLE IV: AUDIT COMMITTEE REVIEW**

The Board delegate to the Audit Committee, which shall be composed solely of Independent Directors, the adoption, implementation of and compliance with this policy. The Board may delegate to the Audit Committee review and approval of any Related Party Transaction involving a Related Party and (INSERT CHAPTER NAME), as contained in this Policy; provided that if the Related Party Transaction is of a magnitude that would otherwise require full Board approval, the Audit Committee shall submit the Related Party Transaction to the Board for consideration, providing its recommendation as to whether or not to approve it.



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In the event the Board delegates the review and approval of Related Party Transactions to a committee, all references to the Board in this Policy shall be deemed to refer to such Committee and all references to a majority of the Board shall be deemed to refer to a majority of such Committee. Further, the Audit Committee shall report material findings on all matters arising under this Policy to the (INSERT CHAPTER NAME) Executive Committee and/or Board of Directors.

### ARTICLE V: RECORD OF PROCEEDINGS

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

- i) The name(s) 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 determine whether a Financial Interest or conflict of interest exists (including the basis for the Board's approval and the Board's consideration of alternative transactions), and the Board's decision with respect to whether a Financial Interest and/or conflict of interest exists.
- ii) The names of the persons who were present for discussions and votes relating to any determinations under Article III above, including whether the Related Party (and any members not considered to be Independent Directors) left the room during any such discussions, the content of such discussions, including discussion of alternative transactions, and whether or not the transaction with the Related Party was approved by the Board.

The minutes shall be documented contemporaneously to the decision and discussion regarding the Financial Interest or Conflict of Interest.



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### ARTICLE VI: INITIAL AND ANNUAL STATEMENTS/ DISCLOSURES

Prior to a member of the Board's initial election to the Board, and annually thereafter, such Directors shall sign and submit to the Secretary of (INSERT CHAPTER NAME) a written statement identifying, to the best of his or her knowledge:

- i) Any entity of which such member of the Board is an officer, director, trustee, member, owner, or employee and with which (INSERT CHAPTER NAME) has a relationship; and
- ii) Any transaction in which (INSERT CHAPTER NAME) is a participant and in which such member of the Board might have a conflicting interest.

A copy of each disclosure statement shall be provided by the Secretary of (INSERT CHAPTER NAME) to the Chairperson of the Audit Committee and also kept in (INSERT CHAPTER NAME)s files and made available to any Director upon request.

Further, each Director, Officer, and Key Person shall annually sign a copy of this statement and submit it to the Secretary of (INSERT CHAPTER NAME) that affirms that such person:

- Has received a copy of this Policy; and
- Has read and understands this Policy; and
- Has agreed to comply with this Policy.

A statement shall remain on file for no less than six years.



## ACKNOWLEDGEMENT

I, \_\_\_\_\_, by signing my name on the signature line below, hereby acknowledge that I have received and read a copy of this Policy in its entirety, understand the nature and contents of both documents and agree to comply with the requirements of both documents. I understand that my failure to sign this document shall be referred to the Audit Committee for further action.

Please check all statements that pertain to your disclosure:

I wish to report that to the best of my knowledge, information and belief, no situation in which I am involved personally or professionally could be construed as a violation of this Policy, or as placing me in a position of having a conflict of interest with the (INSERT CHAPTER NAME).

I wish to disclose the following circumstance that may possibly be a conflict of interest or violate this Policy:

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*(Disclosure does not automatically result in a violation, but will be subject to review).*

I am a person with an intellectual or other developmental disability, a parent, family member or blood relative of a person with a disability who receives services from a (INSERT CHAPTER NAME).

Other Disclosures:

I wish to report that I am an officer, director, trustee, member, owner, or employee of the following entity or entities with which (INSERT CHAPTER NAME) participates and in which I may have a conflicting interest:

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Signed: \_\_\_\_\_

Print: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_