



## CONFLICT OF INTEREST POLICY

### A. Purpose

The T.J. Martell Foundation for Cancer Research (the “Foundation”) is committed to maintaining the highest level of professionalism and integrity in all of its business dealings. In furtherance of this commitment, the Foundation adopts this Conflict of Interest Policy (this “Policy”). This Policy is informed by and intended to meet the requirements of Sections 715 and 715-a of the New York Not-for-Profit Corporation Law (“NPCL”) and Section 4958 of the Internal Revenue Code (the “IRC”), and related federal regulations.

### B. Conflicts of Interest

A conflict of interest exists when any transaction, agreement, or other arrangements with the Foundation financially benefits a Related Party (a “Conflict of Interest Transaction”). A Related Party is any person who is, or was in the prior five years:

1. A trustee, officer, or Key Person<sup>1</sup> of the Foundation;
2. A founder of, or Substantial Contributor to, the Foundation<sup>2</sup>;
3. A Relative<sup>3</sup> of any of the foregoing persons; and
4. A Controlled Entity<sup>4</sup> of any of the foregoing persons.

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<sup>1</sup> A “Key Person” is any person, other than a trustee or officer, whether or not an employee of the Foundation, who (i) has responsibilities, or exercises powers or influence over the Foundation as a whole similar to the responsibilities, powers, or influence of trustees and officers; (ii) manages the Foundation, or a segment of the Foundation that represents a substantial portion of the activities, assets, income or expenses of the Foundation; or (iii) alone or with others controls or determines a substantial portion of the Foundation’s capital expenditures or operating budget. *NPCL § 102(25)*.

<sup>2</sup> See *IRC § 4958; 26 C.F.R. § 53.4958-3(a)(1) and (e)(2)(i) and (ii)*. A “Substantial Contributor” is any individual who has given the Foundation more than \$5,000, if that amount is more than 2% of the total contributions the Foundation received that year. *IRC § 507(d)(2)(A)*.

<sup>3</sup> A “Relative” includes: a spouse, domestic partner, and grandparents, as well as siblings (by whole or half blood), children (whether natural or adopted), grandchildren or great-grandchildren, and the spouses or domestic partners of such persons. *NPCL § 102(22)*.

<sup>4</sup> A “Controlled Entity” is any corporation, trust or estate in which a person described in B (1) – (3) has a 35% or greater interest in the voting power, profits or beneficial interest, or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5% (individually or together with any other person described in Section B (1) – (3)). *NPCL § 102(23)*.

To be clear, the existence of a conflict of interest does not disqualify anyone from serving as an officer, trustee, or Key Person of the Foundation. Instead, this Policy sets forth the procedures required to openly and fairly address any conflicts of interest that may arise. Please note, however, that the failure to disclose conflicts of interest pursuant to this Policy will be subject to appropriate disciplinary and corrective action.

### C. Procedures

1. Duty to Disclose:
  - a. Disclosure Statement. On or before becoming a trustee, officer, or Key Person of the Foundation, and on an annual basis thereafter, each such person shall make a full, written disclosure in the applicable form attached hereto (the “Disclosure Statement”) outlining all interests, relationships and holdings that may give rise to a Conflict of Interest Transaction, and, further, that will enable the Foundation to make the required reports to the Internal Revenue Service (the “IRS”) on the annual Form 990.<sup>5</sup> This Disclosure Statement shall be kept on file by the Foundation and shall be updated by each trustee, officer, or Key Person at least annually, and as necessary to maintain its accuracy.
  - b. Disclosures in Current Transactions. When any Conflict of Interest Transaction comes before the Board, any trustee, officer or Key Person standing to benefit from the transaction, directly or through a Relative or a Controlled Entity, (an “Interested Party”) must make a contemporaneous, full disclosure in writing to the Board of the nature of his or her interest, together with all material facts.
2. Standard for Approving Conflict of Interest Transactions. The Board shall not authorize the Foundation to enter into any Conflict of Interest Transaction unless it is determined to be fair, reasonable and in the best interest of the Foundation at the time of such determination.
3. Evaluating Conflict of Interest Transactions. In order to help the Board evaluate whether a Conflict of Interest Transaction is fair, reasonable and in the best interest of the Foundation, the Board may invite the Interested Party to provide information regarding such transaction prior to any deliberations, but an Interested Party is prohibited from making any attempt to improperly influence the deliberation and, in the case of a trustee, from voting on the matter. After disclosure, and after any discussion with the Interested Party, he or she must leave the meeting while the transaction is discussed and voted upon.
4. Consideration of Alternate Transactions and Comparability Data: Compensation. When evaluating a Conflict of Interest Transaction in which an Interested Party has a substantial financial interest, the Board should consider alternative transactions to the extent possible, prior to entering into such transaction. In addition, certain Conflict of Interest Transactions require the Board to obtain and review appropriate comparability data prior to entering into the transaction in order to ensure that the value of the economic benefit

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<sup>5</sup> The IRS requires the Foundation to report on Schedule L of the 990 all Conflict of Interest Transactions where (i) the value of the transaction exceeded the greater of \$10,000 or 1% of the Foundation’s total annual revenue; or (ii) the value of the transactions with a Related Party exceeded \$100,000 in one year. The IRS will review all reported transactions to ensure they were fair to the Foundation. In addition, certain relationships between, and compensation to, Related Parties must also be reported on the 990.

provided by the Foundation to the Interested Party does not exceed the value of the consideration received in exchange. Specifically, when considering compensation: the trustees should consider (1) compensation levels paid by similarly situated organizations, (2) the availability of similar services within the same geographic area, (3) current compensation surveys compiled by independent firms, and (4) written offers of similar institutions competing for the same person's services.

5. Transactions not Requiring Board Review under this Policy. The Board need not review a Conflict of Interest Transaction in accordance with this Policy where (i) such transaction, or the Related Party's financial interest in the transaction, is *de minimis*; (ii) such transaction would not customarily be reviewed by the Board or the boards of similar organizations in the ordinary course of business and is available to others on the same or similar terms; or (iii) such 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. In each case, however, the Foundation must act in good faith and may not give unwarranted favoritism toward a Related Party.

#### **D. Committee Oversight**

1. The Board may delegate to the Finance and Audit Committee (which committee shall be composed solely of "Independent Trustees", as defined below), the authority to review and approve any contemplated Conflict of Interest Transaction in accordance with this Policy. In the event the Board delegates the review and approval of Conflict of Interest Transactions to the Finance and Audit Committee, all references to the "Board" in this Policy shall be deemed to refer to the Finance and Audit Committee.
2. Independent Trustee. An "Independent Trustee" is any member of the Board who is not, and, over the last three years has not been, and does not have a Relative who is, or over the last three years has been:
  - a. an employee or Key Person of the Foundation, or the recipient of more than \$10,000 in compensation<sup>6</sup> directly from the Foundation;
  - b. an employee of, or a person with a substantial financial interest in, any entity that has transacted business<sup>7</sup> with the Foundation in excess of (a) \$10,000 or 2% of such entity's consolidated gross revenues if the entity's consolidated gross revenue was less than \$500,000; (b) \$25,000 if the entity's consolidated gross revenue was \$500,000 or more but less than \$10,000,000; or (c) \$100,000 if the entity's consolidated gross revenue was \$10,000,000 or more;

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<sup>6</sup> For the purposes of this Section D(3), the term "compensation" does not include reimbursement for expenses reasonably incurred as a Trustee or reasonable compensation for service as a Trustee as permitted under NPCL § 202(a).

<sup>7</sup> For the purposes of this Section D(3), "transacted business" does not include charitable contributions, dues or fees paid to the Foundation for services which the Foundation performs as part of its nonprofit purposes, or payments made by the Foundation at fixed or non-negotiable rates or amounts for services received, provided that such services by and to the Foundation are available to individual members of the public on the same terms, and such services received by the Foundation are not available from another source.

- c. a current owner (whether wholly or partially), director, officer or employee of the Foundation's outside auditor, or involved in working on the Foundation's audit.
- d. in an employment or compensation relationship with another Related Party, such that either party directs, controls or approves the employment or compensation of the other.<sup>8</sup>

**E. Records of Proceedings.**

The minutes of all meetings of the Board at which a Conflict of Interest Transaction is considered shall be recorded contemporaneously and shall contain: (1) the name of the Interested Party, (2) the nature of the conflict of interest, (3) the names of the trustees who discussed whether to approve the contemplated transaction, (4) whether the Interested Party left the room during any discussion of whether to approve the transaction, (5) the substance of the discussion and the basis for approval, including any alternatives to the proposed transaction and any comparability data considered, and (6) the record of any votes taken in connection with the proceedings.

*This Policy was adopted on the 28th day of June, 2021 by act of the Board of Trustees. A copy of this Policy will be distributed to each trustee, officer and Key Person of the Foundation each year prior to the Foundation's annual meeting, will be affirmed at that meeting and such affirmation will be recorded in the minutes of that meeting, together with the Disclosure Statements.*

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<sup>8</sup> See NPCL § 102(a)(21) and 26 C.F.R. § 53.4958-6(a) and (c)(1)(iii).