

**KANSAS STATE UNIVERSITY**  
**FOUNDATION**

Title	Conflict of Interest Policy	Version	1
Committee:	Governance Committee	Approval Date	12/16/2014
Approved By	Fred Cholick (President / Chief Executive Officer)	Approval Date	12/16/2014

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**Rationale**

This Conflict of Interest Policy (“Policy”) of The Kansas State University Foundation (hereinafter the “Foundation”) is to protect the interests of the Foundation when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a member of the Board of Directors of the Foundation (“Board”), an Officer of the Foundation, a member of a Foundation Committee with Board-delegated powers (“Committee”), or any Key Employee as may be designated by the Board.

**Applies to**

This policy applies to Foundation Board members, Officers, Foundation Committee members or any Foundation Key Employees.

**Policy**

The Policy will protect the confidentiality of communications made in “**Executive Session**” as defined below. In order to preserve and protect the integrity of the Foundation and its decisions, and to foster an open and trusting relationship between and among members of the Board and the Foundation staff, this Policy requires such members of the Board, Officers, Committee members and the Foundation Key Employees to maintain the highest standard of corporate ethics not only to avoid conflicts of interest in the Foundation’s affairs, but also to avoid even the appearance of impropriety that undisclosed dualities of interest can create. This Policy is intended to supplement but not replace any applicable laws governing conflicts of interest and fiduciary duties applicable to nonprofit and charitable corporations.

Any Interested Person who has a Personal or Private Interest in a measure, contract, resolution, grant, or other transaction presented to the Board or a Committee thereof for deliberation, authorization, approval, or ratification; or any Interested Person who reasonably believes such an interest exists in another person; must make a prompt, full, and frank disclosure of the Personal or Private Interest, either verbally or in writing, to the Board or Committee prior to its acting on such contract or transaction. The Interested Person must disclose the existence of his or her

other Personal or Private Interest and all material facts, known to him or her about the Personal or Private Interest and potential Conflict of Interest.

### **Enforcement and Violation of the Policy:**

- The President and Board shall review and monitor the annual disclosure forms and bring to the attention of the Board or appropriate committee the disclosed Personal or Private Interests.
- If the Board or Committee has reasonable cause to believe that an Interested Person has failed to disclose an actual or possible Personal or Private Interest, has disclosed to a Third-Party a Confidentiality or has engaged in a Prohibited Action, it shall inform the Interested Person of the basis for such belief and afford the Interested Person an opportunity to explain the alleged failure to disclose, alleged breach of Confidentiality or alleged Prohibited Action.
- If, after hearing the response of the Interested Person and making such further investigation as may be warranted in the circumstances, the Board or Committee determines that the Interested Person has in fact failed to disclose an actual or possible Personal or Private Interest, disclosed to a Third-Party a Confidentiality or has engaged in a Prohibited Action, it shall take appropriate disciplinary and corrective action as outlined herein.

### **Disciplinary and Corrective Action:**

- If the Board determines that an Interested Person has failed to disclose an actual or possible Personal or Private Interest, has disclosed to a Third-Party a Confidentiality, or engaged in a Prohibited Action, the Board may do one or more of the following:
  - Counsel the Interested Person regarding his or her obligations under this Policy;
  - Exclude the Interested Person from future discussions and voting on the matter at issue and any related matters;
  - Exclude the Interested Person from participation on specified committees or as an officer of the Foundation.
- If the Board determines that an Interested Person has failed to disclose an actual or possible Personal or Private Interest, disclosed to a Third-Party a Confidentiality, or engaged in a Prohibited Action, and the disciplinary and corrective actions outlined above would be insufficient to protect the best interests of the Foundation or would impair the Interested Person's ability to fulfill his or her responsibilities to the Foundation, then the Interested Person may be removed from his or her position as Director, Principal Officer, committee member, or employee in accordance with the applicable Foundation Bylaws, policies and procedures.

### **Record Keeping**

The minutes of the meetings of the Board and all Committees with board-delegated powers must include:

- The names of the persons who disclosed or otherwise were found to have a Personal or Private Interest in connection with an actual or possible Conflict of Interest, the nature of the Personal or Private Interest, any action taken to determine whether a Conflict of Interest was present, and the Board’s or Committee’s decision as to whether a Conflict of Interest in fact existed; and
- The names of the persons who were present for discussions and votes relating to the transaction or arrangement; the content of the discussions, including any alternatives to the proposed transaction or arrangement; and a record of any votes taken in connection therewith.

**Distribution of Policy**

This Policy must be distributed to all Interested Persons. Annually the Compliance Officer will distribute to each such Interested Person an annual statement, (provided in Schedule A), the Annual Disclosure Information Form, and applicable parts of the Compliance Questionnaire. Each such Interested Person will complete and sign such that the person:

- Received a copy of the Policy;
- Has read and understands the Policy;
- Agrees to comply with the Policy;
- Understands that the Policy applies to all of the Foundation’s Committees and subcommittees having Board-delegated powers.

**Compensation**

- A voting member of the Board who receives compensation, directly or indirectly, from the Foundation 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 Foundation for services is precluded from voting on matters pertaining to that member’s compensation.
- Individuals who receive compensation, directly or indirectly, from the Foundation are precluded from membership on a committee whose jurisdiction includes compensation matters. No individual is prohibited from providing information to any committee regarding his or her compensation.

**Definitions**

Term	Definition
Aware	Aware means actual knowledge without any duty to inquire.
Business relationships	Business relationships between two persons include the following: 1. One person is employed by the other in a sole proprietorship or by an

	<p>organization with which the other is associated as a, <a href="#">director</a>, <a href="#">officer</a>, <a href="#">key employee</a> or greater-than-35 percent owner.</p> <p>2. One person is transacting business with the other, 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 organization’s tax year. Indirect transactions are transactions with an organization with which the one person is associated as a <a href="#">director</a>, <a href="#">officer</a>, <a href="#">key employee</a> or greater-than-35 percent owner.</p> <p>3. The two persons are each a <a href="#">director</a>, <a href="#">officer</a> or greater than 10 percent <a href="#">owner</a> in the same business or investment entity.</p> <p><u>Exceptions to the above rules (do not report transactions meeting the exceptions below):</u></p> <ol style="list-style-type: none"> <li>1. The ordinary course of business exception: <ol style="list-style-type: none"> <li>a) Requires the transaction to be on the same terms as are generally offered to the public</li> </ol> </li> <li>2. The privileged relationship exception: <ol style="list-style-type: none"> <li>b) One of three privileged relationships (attorney and client, medical professional and patient, priest/clergy and penitent/communicant)</li> </ol> </li> </ol> <p><i>Note:</i> Ownership is measured by stock ownership (either voting power or value) of a corporation, profits or capital interest in a partnership or limited liability company, 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.</p>
<b>Compensation</b>	<p>Compensation is defined as direct and indirect remuneration (whether in cash or in kind), as well as gifts or favors that are substantial in nature. Compensation does not include payments received as a result of deferred gift arrangements or life income arrangements including, by way of illustration, Charitable Remainder Trusts and Gift Annuities.</p>
<b>Confidentiality</b>	<p>Confidentiality means any written or oral communication and all practices, procedures, member lists and other confidential information that has come into a Board member’s possession and that has been identified as confidential by Foundation. Confidentiality includes any communications covered under the attorney-client privilege whether or not provided in Executive Session.</p>
<b>Conflict of Interest</b>	<p>A Conflict of Interest exists with respect to any issue on which the Foundation may act where (i) an Interested Person has a Personal or Private Interest, or (ii) an Interested Person is “aware” that a member of his or her Family has a</p>

	Personal or Private Interest.
<b>Executive Session</b>	Executive Session shall mean those times when the Board or any Committee closes a meeting.
<b>Family relationships</b>	Family relationships include: Unless specified otherwise, the family of an individual includes only his or her spouse, ancestors, brothers and sisters (whether whole or half-blood), children (whether natural or adopted), grandchildren, great grandchildren and spouses of brothers, sisters, children, grandchildren and great grandchildren.
<b>Highest Compensated Employee</b>	Highest compensated employee is one of the five highest compensated employees of the organization (including employees of a disregarded entity of the organization) other than <a href="#">officers</a> , <a href="#">directors</a> , or <a href="#">key employees</a> . The five highest compensated employees are determined by the amounts of reportable compensation (over \$100,000 of reportable compensation) for the calendar year ending with or within the organization's tax year.
<b>Interested Person</b>	Interested Person includes the following: <ul style="list-style-type: none"> <li>• <b>Officer</b> – is a person elected or appointed to manage the organization's daily operations, such as a president, vice-president, secretary, or treasurer. All officers are covered by this policy with no minimum compensation threshold.</li> <li>• <b>Board of Directors</b> – a member of the organization's governing body, but only if the member has voting rights.</li> <li>• <b>Committee member with Board delegated powers</b> – a voting member of a committee that has received its power through delegation from the Board of Directors.</li> <li>• <b>Key Employee</b> – is an employee of the Foundation (other than an officer, Board of Directors or subcommittee member) who meets all three of the following tests, applied in the following order: <ul style="list-style-type: none"> <li>○ Receives reportable compensation from the organization and all related organizations in excess of \$150,000 for the calendar year ending with or within the organization's tax year.</li> <li>○ Responsibility Test <ul style="list-style-type: none"> <li>• Has responsibilities, powers, or influence over the organization as a whole that is similar to those of officers, Board of Directors or subcommittee members;</li> <li>• Manages a discrete segment or activity of the organization that represents 10% or more of the activities, assets, income, or expenses;</li> <li>• Has or shares authority to control or determine 10% or more of the organization's capital expenditures, operating budget or compensation for employees. <ul style="list-style-type: none"> <li>▪ One of the 20 employees (that satisfy the \$150,000 Test and Responsibility Test) with the highest reportable compensation from the organization and related organizations for the calendar year ending with or within the organization's tax year.</li> </ul> </li> </ul> </li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Former officers, directors, key employees</b>—is a person who meets <b>both</b> of the following conditions: The organization did (or should have) reported the individual on the Foundation's Form 990, for any one or more of the five prior years in one or more of the following capacities: officer, director, trustee, or key employees <b>and</b> The individual received reportable compensation (e.g. W-2 wages or 1099 services) from the organization and related organizations, in the calendar year ending with or within the organizations current tax year in excess of the threshold amount (\$100,000 for former officers and key employees, \$10,000 for services for a director or trustee)</li> </ul> <p>If a person is an Interested Person with respect to any entity related to the Foundation, he or she is an Interested Person with respect to all entities in the Foundation organization.</p>
<b>Ownership</b>	<p>Ownership is measured by stock ownership (voting power or value, whichever is greater) of a corporation, profits or capital interest (whichever greater) in a partnership or limited liability company, beneficial interest in a trust, or control of a nonprofit organization. Ownership includes indirect ownership, <i>e.g.</i>, ownership in an entity that has ownership in the entity doing business with the organization; there may be ownership through multiple tiers of entities.</p>
<b>Personal or Private Interest</b>	<p>A Personal or Private Interest is defined as one or more of the following interests, arising directly or indirectly:</p> <ul style="list-style-type: none"> <li>• An ownership or investment interest in any entity (other than a 5% or less ownership in a publicly-traded corporation) with which the Foundation has a business transaction or arrangement, including but not limited to contracts of sale, leases, loans, joint ventures, or arrangement for the performance of securities;</li> <li>• A compensation arrangement with the Foundation or with any entity or individual with which the Foundation has a transaction or arrangement;</li> <li>• A position in a public office or institution, whether appointed, elected or employed, which will require participation in matters involving the Foundation;</li> <li>• An uncompensated consultant, officer, committee member or board member of any entity with which the Foundation has a transaction or arrangement or to which the Foundation makes any expenditure of funds; or</li> <li>• Any other interest which may compete with or conflict with the interests of the Foundation.</li> </ul>
<b>Prohibited Action</b>	<p>In addition to the policies and procedures set forth herein governing Conflicts of Interest and Confidentiality, it shall be a violation of this Policy to engage in any Prohibited Action. Prohibited Actions shall include any of the following: acceptance by any Principal Officer or Director of any personal</p>

	loans or credit extensions by the Foundation, receipt of gifts (which exceed the IRS de minimus rules) from third parties dealing with the Foundation, or any ethical violation detrimental to the Foundation.
<b>Third Party</b>	Third-Party means anyone who is not covered under the Foundation's attorney-client privilege or is not authorized by the Board to participate in the Executive Sessions of the Board.

## Procedures

### The following procedures are required for Board action when a Conflict of Interest exists:

- The Interested Person may make a presentation at the Board or Committee meeting, but after such presentation and discussion, the Interested Person must leave the meeting during the vote on the transaction or arrangement that result in the Conflict of Interest.
- The Board or Committee shall review and consider:
  - Alternatives to the proposed measure, contract, resolution, grant, transaction or other conflict of interest.
  - Whether the transaction is fair and reasonable to the Foundation.
  - Whether the transaction or arrangement is in the Foundation's best interest and for its benefit.
  - Other market arrangements.
  - The Board shall exercise special care in these considerations.
- The transaction or arrangement that would result in the Conflict of Interest must be reviewed by the Governance Committee before being presented to the Board.
- The Board or Committee may also appoint, if appropriate, a disinterested person or special committee to investigate alternatives to the proposed measure, contract, resolution, grant, transaction or other Conflict of Interest.
- The Board or Committee shall determine by a majority vote of the disinterested members whether the transaction or arrangement is in the Foundation's best interest and for its own benefit and whether the transaction is fair and reasonable to the Foundation and will make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.
- The Board or Committee will further follow all conflicts of interest laws to the extent they apply to the Board.

### Confidentiality Procedures:

- **Executive Sessions:** All Executive Sessions will be conducted consistent with the Foundation Bylaws and state law. Only those individuals authorized under the Foundation Bylaws to participate in Executive Session shall attend and participate.
- **Written Material:** The Board or Committee will keep all written or documented Confidentiality separate from documents that are available to Third-Parties and will not reproduce or disclose such Confidentiality to any Third-Party unless expressly authorized to do so by formal action of the Board.

- **Communications with Third-Parties:** The Board of Directors or Committee may not communicate to any Third-Party any Confidentiality unless expressly authorized to do so by formal action of the Board.
- **Consultation with Foundation Counsel:** To avoid an unauthorized disclosure of Confidentiality, the Board or Committee shall consult with the Foundation’s legal counsel prior to responding to any Third-Party’s request for the release of Confidentiality. Confidentiality may not be released without the prior approval of the Foundation’s legal counsel in consultation with the Foundation’s administration and the Board.

**References & Links**

There are no references or links applicable to this policy.

**Contact**

Department Name or Person	Phone Number
President/CEO	785-532-7566
Sr. VP Finance and Operations/CFO/COO	785-532-7594
Assoc VP Finance and Compliance	785-532-7552
Compliance Officer	785-532-7567