

**BOARD MEMBER  
&  
EMPLOYEE  
CONFLICT OF INTEREST  
POLICY**

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### SECTION 1 - PURPOSE:

**ESPERANZA** is a nonprofit, tax-exempt organization. Maintenance of its tax-exempt status is important both for its continued financial stability and for public support. Therefore, the IRS as well as state regulatory and tax officials view the operations of **ESPERANZA** as a public trust, which is subject to scrutiny by and accountable to such governmental authorities as well as to members of the public.

Consequently, there exists between **ESPERANZA** and its board, officers, and management employees and the public a fiduciary duty, which carries with it a broad and unbending duty of loyalty and fidelity. The board, officers, and management employees have the responsibility of administering the affairs of **ESPERANZA** honestly and prudently, and of exercising their best care, skill, and judgment for the sole benefit of **ESPERANZA**. Those persons shall exercise the utmost good faith in all transactions involved in their duties, and they shall not use their positions with **ESPERANZA** or knowledge gained there from for their personal benefit. The interests of the organization must be the first priority in all decisions and actions.

This policy is intended to supplement, but not replace, federal and state laws governing conflicts of interest applicable to nonprofit corporations (**ESPERANZA**'s). It applies to board members and staff with significant decision-making authority. Persons covered under this policy, as well as their relatives and associates, are hereinafter referred to as "interested parties."

### SECTION 2 - PERSONS CONCERNED:

This statement is directed not only to directors and officers, but to all employees who can influence the actions of **ESPERANZA**. For example, this would include all who make purchasing decisions, all persons who might be described as "management personnel," and anyone who has proprietary information concerning **ESPERANZA**.

### SECTION 3 - AREAS IN WHICH CONFLICT MAY ARISE:

A conflict of interest exists when an individual's loyalty to an organization or client is questionable due to conflicting personal interests.

Conflicts of interest may arise in the relations of directors, officers, and management employees with any of the following third parties:

1. Persons and firms supplying goods and services to ESPERANZA.
2. Persons and firms from whom ESPERANZA leases property and equipment.
3. Persons and firms with whom ESPERANZA is dealing or planning to deal in connection with the gift, purchase or sale of real estate, securities, or other property.
4. Competing or affinity organizations.
5. Donors and others supporting Agencies, organizations, and associations which affect the operations of ESPERANZA.
6. Family members, friends, and other employees.

A conflict of interest may exist when the interests or concerns of an interested party may be seen as competing with the interests or concerns of ESPERANZA. There are a variety of situations that raise conflict of interest concerns including, but not limited to, the following:

**A. Financial Interests** - A conflict may exist where an interested party directly or indirectly benefits or profits as a result of a decision, policy or transaction made by ESPERANZA. Examples include situations where:

- ESPERANZA contracts to purchase or lease goods, services, or properties from an interested party.
- ESPERANZA offers employment to an interested party, other than a person who is already employed by ESPERANZA.
- An interested party is provided with a gift, gratuity, or favor of a substantial nature from a person or entity that does business or seeks to do business with ESPERANZA.
- An interested party is gratuitously provided use of the facilities, property, or services of ESPERANZA.
- ESPERANZA adopts a policy that financially benefits an interested party.

A financial interest is not necessarily a conflict of interest. A financial conflict of interest exists only when the board decides a person with a financial interest has a conflict of interest.

**B. Other Interests** - A conflict also may exist where an interested party obtains a non-financial benefit or advantage that he/she would not have obtained absent his/her relationship with ESPERANZA.

Examples include where:

- An interested party seeks to obtain preferential treatment by ESPERANZA or recognition for himself/herself or another interested party.
- An interested party seeks to make use of confidential information obtained from ESPERANZA for his/her own benefit (not necessarily financial) or for the benefit of another interested party.
- An interested party seeks to take advantage of an opportunity or enables another interested person or other organization to take advantage of an opportunity that he/she has reason to believe would be of interest to ESPERANZA.
- ESPERANZA adopts a policy that provides a significant non-financial benefit to an interested party.

A conflict of interest exists only when the Board of Trustees decides there is a conflict.

#### SECTION 4 - NATURE OF CONFLICTING INTEREST:

A conflicting interest may be defined as an interest, direct or indirect, with any persons or firms mentioned in Section 3. Such an interest might arise through:

1. Owning stock or holding debt or other proprietary interests in any third party dealing with ESPERANZA. Holding office, serving on the board, participating in management, or being otherwise employed (or formerly employed) with any third party dealing with ESPERANZA.
2. Receiving remuneration for services with respect to individual transactions involving ESPERANZA.

3. Using ESPERANZA's time, personnel, equipment, supplies, or good will for other than ESPERANZA - approved activities, programs, and purposes.
4. Receiving personal gifts or loans from third parties dealing or competing with ESPERANZA. Receipt of any gift is disapproved except gifts of a value less than \$50, which could not be refused without discourtesy. No personal gift of money should ever be accepted.

#### SECTION 5 - INTERPRETATION OF THIS STATEMENT OF POLICY:

The areas of conflicting interest listed in Section 3, and the relations in those areas which may give rise to conflict, as listed in Section 4, are not exhaustive. Conflicts might arise in other areas or through other relations. It is assumed that the directors, officers, and management employees will recognize such areas and relation by analogy.

The fact that one of the interests described in Section 4 exists does not necessarily mean that a conflict exists, or that the conflict, if it exists, is material enough to be of practical importance, or if material, that upon full disclosure of all relevant facts and circumstances it is necessarily adverse to the interests of ESPERANZA.

However, it is the policy of the board that the existence of any of the interests described in Section 4 shall be disclosed before any transaction is consummated. It shall be the continuing responsibility of the board, officers, and management employees to scrutinize their transactions and outside business interests and relationships for potential conflicts and to immediately make such disclosures.

#### SECTION 6 - DISCLOSURE POLICY AND PROCEDURE:

Transactions with parties with whom a conflicting interest exists may be undertaken only if all of the following are observed:

1. The conflicting interest is fully disclosed;
2. The person with the conflict of interest is excluded from the discussion and approval of such transaction;
3. A competitive bid or comparable valuation exists; and
4. The [board or a duly constituted committee thereof] has determined that the transaction is in the best interest of the organization.

In case of such conflicts or the appearance thereof, board members and staff are expected to disclose the conflict prior to making any related grant decisions. Once such a disclosure has been made, the remaining board members will determine whether or not there is a potential conflict of interest. Should it be so considered, **the board member involved shall abstain from voting and shall not participate in the discussion** of the applicant organization other than to answer specific questions that may be raised by other board members.

Disclosure in the organization should be made to the **chief executive officer** (or if she or he is the one with the conflict, then to the board chair), who shall bring the matter to the attention of the [board or a duly constituted committee thereof].

Disclosure involving directors should be made to the board chair, (or if she or he is the one with the conflict, then to the board vice-chair) who shall bring these matters to the [board or a duly constituted committee thereof]. The [board or a duly constituted committee thereof] shall determine whether a conflict exists and in the case of an existing conflict, whether the contemplated transaction may be authorized as just, fair, and reasonable to ESPERANZA.

#### SECTION 7 - DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

An interested party is under a continuing obligation to disclose any potential conflict of interest as soon as it is known or reasonably should be known.

An interested party shall complete the Questionnaire attached as Appendix A to fully and completely disclose the material facts about any potential conflicts of interest. The disclosure statement and Affirmation of Compliance (Appendix B) shall be submitted upon

his/her association with ESPERANZA, and shall be reviewed annually thereafter. An additional disclosure statement shall be filed whenever a potential conflict arises.

Disclosure statements will be submitted as follows. For board members, the disclosure statements shall be provided to the Chair of the board. The Chair's disclosure statement shall be provided to the Secretary of the board or its equivalent. Copies also shall be provided to the Executive Director of ESPERANZA.

In the case of staff with significant decision-making authority, the disclosure statements shall be provided to the Executive Director of ESPERANZA. In the case of the Executive Director, the disclosure statement shall be provided to the Chair of the Board.

In all cases, the recipient is the designated reviewing official responsible for bringing potential conflicts to the attention of the appropriate authorities. The Secretary of the Board of Directors shall file copies of all disclosure statements with the official corporate records of ESPERANZA.

The decision of the [board or a duly constituted committee thereof] on these matters will rest in their sole discretion, and their concern must be the welfare of ESPERANZA and the advancement of its purpose.

#### **SECTION 8 - PROCEDURES FOR REVIEW OF POTENTIAL CONFLICTS**

Whenever there is reason to believe that a potential conflict of interest exists between ESPERANZA and a Board member or the Executive Director, the Board of Directors shall determine the appropriate response. This shall include, but not necessarily be limited to, invoking the procedures described below with respect to a specific proposed action, policy or transaction. The designated reviewing official has a responsibility to bring a potential conflict of interest to the attention of the board promptly for action at the next regular meeting of the board or during a special meeting called specifically to review the potential conflict of interest.

Where the potential conflict involves an employee of ESPERANZA other than the Executive Director, the Executive Director shall be responsible for reviewing the matter and may take appropriate action as necessary to protect the interests of ESPERANZA. The Executive Director shall report to the Chair the results of any review and the action taken. The Chair shall determine whether any further board review or action is required.

#### **SECTION 9 - PROCEDURES FOR ADDRESSING CONFLICTS OF INTEREST**

Where a potential conflict exists between the interests of ESPERANZA and an interested party with respect to a specific proposed action, policy or transaction, the Board of Directors shall consider the matter during a meeting of the board. ESPERANZA shall refrain from acting until such time as the proposed action, policy or transaction has been approved by the disinterested members of the Board of Directors of ESPERANZA. The following procedures shall apply:

An interested party who has a potential conflict of interest with respect to a proposed action, policy or transaction of the corporation shall not participate in any way in, or be present during, the deliberations and decision-making vote of ESPERANZA with respect to such action, policy or transaction. However, the interested party shall have an opportunity to provide factual information about the proposed conflict and/or action, policy or transaction. Also, the board may request that the interested party be available to answer questions.

- The disinterested members of the Board of Directors may approve the proposed action, policy or transaction upon finding that it is in the best interests of ESPERANZA. The board shall consider whether the terms of the proposed action, transaction or policy are fair and reasonable to ESPERANZA and whether it would be possible, with reasonable effort, to find a more advantageous arrangement with a party or entity that is not an interested party.
- Approval by the disinterested members of the Board of Directors shall be by vote of a majority of directors in attendance at a meeting at which a quorum is present. An interested party shall not be counted for purposes of determining whether a quorum is present, nor for purposes of determining what constitutes a majority vote of directors in attendance.

- The minutes of the meeting shall reflect that the conflict disclosure was made to the board, the vote taken and, where applicable, the abstention from voting and participation by the interested party. Whenever possible, the minutes should frame the decision of the board in such a way that it provides guidance for consideration of future conflict of interest situations.

#### **SECTION 10 - VIOLATIONS OF CONFLICT OF INTEREST POLICY**

If the Board of Directors has reason to believe that an interested party has failed to disclose a potential conflict of interest, it shall inform the person of the basis for such belief and allow the person an opportunity to explain the alleged failure to disclose.

If the board decides that the interested party has in fact failed to disclose a possible conflict of interest, the board shall take such disciplinary and corrective action as the board shall determine.

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EMPLOYEE or BOARD MEMBER

**CONFLICT OF INTEREST QUESTIONNAIRE**

It is expected that when a potential for conflict of interest exists, the individual affected will disclose it immediately and refrain from participation, discussion and/or voting on that issue.

<b>NAME:</b>		
<b>CAPACITY:</b>	<input type="checkbox"/> Board Member <input type="checkbox"/> Executive committee <input type="checkbox"/> Other: _____	<input type="checkbox"/> staff (position): _____ <input type="checkbox"/> volunteer

Please complete the questionnaire below, indicating any potential conflicts of interest. If you answer "yes" to any of the questions, please provide a written description of the details of the specific action, policy or transaction in the space allowed. Attach additional sheets as needed.

**Preliminary note:** In order to be more comprehensive, this statement of disclosure/questionnaire also requires you to provide information with respect to certain parties that are related to you.

These persons are termed "affiliated persons" and include the following:

- a. your spouse, domestic partner, child, mother, father, brother or sister;
- b. any corporation or organization of which you are a board member, an officer, a partner, participate in management or are employed by, or are, directly or indirectly, a debt holder or the beneficial owner of any class of equity securities; and
- c. any trust or other estate in which you have a substantial beneficial interest or as to which you serve as a trustee or in a similar capacity.

**Financial Interests** - A conflict may exist where an interested party, directly or indirectly benefits or profits as a result of a decision, policy or transaction made by ESPERANZA.

Check one		QUESTIONS - During the past 12 months (for each yes response, please describe in area provided, use separate page if necessary.):	If yes, please describe the nature of the services or property and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:
<input type="checkbox"/> YES	<input type="checkbox"/> NO	1. Has <u>ESPERANZA</u> proposed to contract or contracted to purchase or lease goods, services, or property from you or from any of your relatives or associates?	
<input type="checkbox"/> YES	<input type="checkbox"/> NO	2. Has <u>ESPERANZA</u> offered employment to you (not applicable to existing staff) or to any of your relatives or associates?	
<input type="checkbox"/> YES	<input type="checkbox"/> NO	3. Receipt of Payments, Gifts or Services - Have you, or any of your relatives or associates, been provided with any payment, service, research grant or support, gift, gratuity or favor of a substantial nature from a person or entity that does business or seeks to do business with <u>ESPERANZA</u> ? or provided the same to any entity or individual doing or seeking to do business with <u>ESPERANZA</u> ?	
<input type="checkbox"/> YES	<input type="checkbox"/> NO	4. Have you or any of your relatives or associates been gratuitously provided use of the facilities, property, or services of <u>ESPERANZA</u> ?	

<input type="checkbox"/> YES	<input type="checkbox"/> NO	5. Have you, a relative or an associate in a position to benefit financially from an action, policy or transaction made by <u>ESPERANZA</u> ?	
<input type="checkbox"/> YES	<input type="checkbox"/> NO	6. Substantial Interest, Personal Contracts or Arrangements - Do you have a substantial interest in, personal contract or arrangement with any entity or individual doing or seeking to do business with the <u>ESPERANZA</u> (this includes but is not limited to serving as a paid consultant or serving on the speaker's bureau of the company)?	
<input type="checkbox"/> YES	<input type="checkbox"/> NO	7. Business Dealings with Relatives Does "Your Spouse" have a business relationship or seeking to do business with <u>ESPERANZA</u> ?	
<input type="checkbox"/> YES	<input type="checkbox"/> NO	8. Does "Any parent or child of you or your current spouse" or "Any parent or child of your former spouse if the parent or child resided in your residence at any time" have a business relationship or seeking to do business with <u>ESPERANZA</u> ?	
<input type="checkbox"/> YES	<input type="checkbox"/> NO	9. Does "Any relative of you or your current or former spouse, by blood or marriage, with whom you have regular contact and about whom you have information or belief regarding items covered in this questionnaire" have a business relationship or seeking to do business with <u>ESPERANZA</u> ?	
<input type="checkbox"/> YES	<input type="checkbox"/> NO	10. Have you or any of your affiliated persons purchased services or property from <u>ESPERANZA</u> ?	

**Other Interests** - A conflict may also exist where an interested party obtains a non-financial benefit or advantage that he/she would not have obtained absent his/her relationship with ESPERANZA, or where his/her duty or responsibility owed to ESPERANZA conflicts with a duty or responsibility owed to some other organization.

Check one		QUESTIONS - During the past 12 months (for each yes response, please describe in area provided, use separate page if necessary.):	If yes, please describe the nature of the services or property and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:
<input type="checkbox"/> YES	<input type="checkbox"/> NO	1. Did you obtain preferential treatment, promotion, recognition or a non-salaried appointment as a consequence of your association with <u>ESPERANZA</u> for yourself or for any of your relatives or associates?	
<input type="checkbox"/> YES	<input type="checkbox"/> NO	2. Did you make use of confidential information obtained from <u>ESPERANZA</u> for your own benefit or for the benefit of a relative, associate, or other organization?	
<input type="checkbox"/> YES	<input type="checkbox"/> NO	3. Did you take advantage of an opportunity or enable a relative, associate or other organization to take advantage of an opportunity that you had reason to believe would be of interest to <u>ESPERANZA</u> ?	
<input type="checkbox"/> YES	<input type="checkbox"/> NO	4. Have you, a relative or an associate in a position to benefit in a non-financial way from an action, policy or transaction made by <u>ESPERANZA</u> ?	
<input type="checkbox"/> YES	<input type="checkbox"/> NO	5. Please indicate whether you or any of your affiliated persons had any direct or indirect interest in any business transaction(s) in the past year to which <u>ESPERANZA</u> was or is a party?	
<input type="checkbox"/> YES	<input type="checkbox"/> NO	6. Were you or any of your affiliated persons indebted to pay money to <u>ESPERANZA</u> at any time in the past year (other than travel advances or the like)?	

<input type="checkbox"/> YES	<input type="checkbox"/> NO	7. In the past year, did you or any of your affiliated persons receive, or become entitled to receive, directly or indirectly, any personal benefits from <u>ESPERANZA</u> or as a result of your relationship with <u>ESPERANZA</u> , that in the aggregate could be valued in excess of \$1,000, that were not or will not be compensation directly related to your duties to <u>ESPERANZA</u> ?	
<input type="checkbox"/> YES	<input type="checkbox"/> NO	8. Are you or any of your affiliated persons a party to or have an interest in any pending legal proceedings involving <u>ESPERANZA</u> ?	
<input type="checkbox"/> YES	<input type="checkbox"/> NO	9. Are you aware of any other events, transactions, arrangements or other situations that have occurred or may occur in the future that you believe should be examined by <u>ESPERANZA</u> 's [board or a duly constituted committee thereof] in accordance with the terms and intent of <u>ESPERANZA</u> 's conflict of interest policy?	

**AFFIRMATION OF COMPLIANCE - CONFLICT OF INTEREST**

I have received and carefully read the Conflict of Interest Policy for board members and staff with significant decision making authority of ESPERANZA and have considered not only the literal expression of the policy, but also its intent. By signing this affirmation of compliance, I hereby affirm that I understand and agree to comply with the Conflict of Interest Policy. I further understand that ESPERANZA is a nonprofit organization and that in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes without personal gain (other than by salary) by board members or staff.

Except as otherwise indicated in the Disclosure Questionnaire, I hereby state that I do not have any conflict of interest, financial or otherwise that may be seen as competing with the interests of ESPERANZA, nor does any relative or associate have such a potential conflict of interest. Nor shall I, any relative or associate benefit from any action, policy or transaction made by ESPERANZA in a manner that has not been previously disclosed.

If any situation should arise in the future that I think may involve me in a conflict of interest, I will promptly and fully disclose in writing the circumstances to the Chair of the Board of Directors of ESPERANZA or to the Chief Executive Director as applicable.

**GIFT POLICY AND DISCLOSURE**

As part of its conflict of interest policy, ESPERANZA requires that Board members, officers and employees decline to accept certain gifts, consideration or remuneration from individuals or companies that seek to do business with ESPERANZA or are a competitor of it. This policy and disclosure form is intended to implement that prohibition on gifts.

**Section 1** - "Responsible Person" is any person serving as an officer, employee or a member of the board of trustees of ESPERANZA.

**Section 2** - "Family Member" is a spouse, domestic partner, parent, child or spouse of a child, or a brother, sister, or spouse of a brother or sister, of a Responsible Person.

**Section 3** - "Contract or Transaction" is any agreement or relationship involving the sale or purchase of goods, services or rights of any kind, receipt of a loan or grant, or the establishment of any other pecuniary relationship. The making of a gift to ESPERANZA is not a "contract" or "transaction."

**Section 4** - Prohibited gifts, gratuities and entertainment. Except as approved by the Chairman of the Board or his designee or for gifts of a value less than \$50 which could not be refused without discourtesy, no Responsible Person or Family Member shall accept gifts, entertainment or other favors from any person or entity which:

1. Does or seeks to do business with ESPERANZA or,
2. Does or seeks to compete with ESPERANZA or,

3. Has received, is receiving, or is seeking to receive a Contract or Transaction with ESPERANZA.

**CERTIFICATIONS**

I further certify that the information set forth in the CONFLICT OF INTEREST QUESTIONNAIRE and attachments, if any, is true and correct to the best of my knowledge, information and belief.

In addition, I certify that I have read the above policy concerning gifts, and I agree that I will not accept gifts, entertainment or other favors from any individual or entity, which would be prohibited by the above policy. Following my initial statement, I agree to provide a signed statement at the beginning of each calendar year certifying that I have not received any such gifts, entertainment or other favors during the preceding year.

\_\_\_\_\_  
Name (Please print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date