Starfish Greathearts Foundation USA

Amended and Restated Conflict of Interest Policy

Adopted by the Board of Directors on [Date]

Article I Purpose

The purpose of this Amended and Restated Conflict of Interest Policy is to protect Starfish Greathearts Foundation USA's (the "Charity") interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an director, officer or key person of the Charity or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

Article II Applicability

The policy applies to any person who is:

1) A director of the Charity or an "affiliate" (as defined below);
2) An officer of the Charity or an affiliate; and
3) A "key person" (as defined below) of the Charity or an affiliate or any other person who exercises the powers of a trustee/director, officer or key person of the Charity or an affiliate.

(each, a "Covered Person" or "you").

This policy also applies to transactions or arrangements with an "Other Related Party" (as defined below).

An "affiliate" is a person or entity that is directly or indirectly through one or more intermediaries controlled by or in control of the Charity.

A "key person" is any person, other than a director or officer, whether or not an employee of the Charity, who (i) has responsibilities, or exercises powers or influence over the Charity as a whole, similar to the responsibilities, powers or influence of directors and officers; (ii) manages the Charity, or a segment of the Charity, that represents a substantial portion of the activities, assets, income or expenses of the Charity; or (iii) alone or with others controls or determines a substantial portion of the Charity's capital expenditures or operating budget. A key person can be a person in a position to exercise substantial influence over the Charity's affairs (e.g., founders or substantial contributors) but does not have to be an employee of the Charity.

An "Other Related Party" is a relative of a Covered Person or any entity in which a Covered Person or relative of a Covered Person has a 35% or greater ownership or beneficial interest, or, in the case of a partnership or a professional corporation, a direct or indirect ownership interest in excess of 5%.

A "relative" is a (i) spouse or domestic partner (as defined in Section 2994(a) of the New York Public Health Law); (ii) ancestor, sibling (whether whole or half-blood), child (whether natural or adopted), grandchild or great-grandchild; or (iii) the spouse or domestic partner of a sibling (whether whole or half-blood), child (whether natural or adopted) grandchild and great-grandchild.

Article III. Conflicts of Interest

A conflict of interest arises whenever the interest of the Charity come into conflict with a financial interest of a Covered Person, or otherwise whenever a Covered Person's financial interest could be reasonably viewed as affecting his or her objectivity or independence in fulfilling their duties to the Charity.

A "**financial interest**" is a direct or indirect economic benefit (salary, commission, sale of product or service, or some other form of economic benefit) from a transaction, agreement or compensation arrangement. Gifts or favors that are not insubstantial are another form of economic interest.

The existence of a financial interest does not mean that the Charity cannot enter into a transaction in which a conflict of interest arises. It means that a careful analysis must be performed by the board or committees with governing board delegated powers considering the proposed transaction or arrangement (the "committees") pursuant to Article III to decide if that transaction is one the Charity can enter into.

Although it is impossible to give examples of each and every potential conflict of interest, a conflict of interest typically arises whenever a Covered Person or Other Related Party has (directly or indirectly):

1) An ownership or investment interest in any entity with which the Charity has a transaction or arrangement;

2) A compensation arrangement with the Charity or with any entity or individual with which the Charity has a transaction or arrangement; or

3) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Charity is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

<u>Article IV Conflict of Interest Disclosure and Questionnaire</u>

You must disclose in good faith and in writing to the board or committees the existence of the financial interest and all material facts all material facts related to conflicts of interest (including those that implicate an Other Related Party but not a Covered Person) (including the nature of your or the Other Related Party's interest and information about any proposed transaction or other arrangement) to the directors and members of committees. Disclosures should be made in advance before an action is taken on the matter. Conflict identification and analysis can be difficult and, therefore, you are at all times expected to err on the side of caution and disclose all instances where a conflict of interest or appearance of a conflict exists.

Each current director, officer, and key person, as well as nominees for election as director (prior to his or her initial election), must sign and submit to the Secretary a statement in which it confirms that it: (a) has received a copy of the policy; (b) has read and understood the policy; (c) has agreed to comply with the policy; and (d) understands the Charity is charitable and in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

In addition, each current director, officer, and key person, as well as nominees for election as director (prior to his or her initial election), must sign and submit to the Secretary at least once per year (and updated as appropriate) a completed Potential Conflict of Interest Disclosure Statement (each, a "Disclosure Statement") in which the individual discloses to the board or committee that, to the best of its knowledge:

1) Any entity in which the individual or a relative is an officer, director, trustee, member, owner (either as a sole proprietor or a partner) or employee, and with which the Charity has a relationship;
2) Any financial interest the individual or a relative may have in any corporation, organization, partnership, or other entity which provides goods or services to the Charity for a fee or other compensation; and
3) Any position or other material relationship the individual or a relative may have with any not-for-profit corporation with which the Charity has a business relationship.

A copy of each completed Disclosure Statement must be kept in the Charity's files. The Secretary also shall provide a copy of all completed Disclosure Statements to the board chair. If the Charity has an audit committee, the Disclosure Statements can be given to the Chair of the audit committee instead.

Article V Procedure

A. Determining Whether a Conflict of Interest Exists

The board or committee will review all conflicts of interest and related party transactions and determine whether to approve or ratify any such matter.

The board or committee has the discretion to carve out the following types of transactions that would otherwise be considered as transactions that are subject to the conflict of interest policy procedures set out in this policy:

(i) a de minimis transaction. There is no fixed definition of what constitutes a de minimis transaction. The board or committee can determine whether a transaction is de minimis based on the size of the Charity's assets, its income or its expenses. This decision should be documented – either in the board or committee minutes or in a resolution;

(ii) a transaction in which the benefit being provided to the related party by the Charity is a benefit that the Charity provides as part of its mission and that benefit is provided to other similarly situated beneficiaries on the same terms; or

(iii) a transaction that would not usually be reviewed by the board (or the board of a similarly situated nonprofit) in the ordinary course of business, and is available to others on the same terms.

B. Procedures for Addressing the Conflict of Interest

1) A person with an interest in any matter under review by the board or committee is not allowed to participate in any deliberations or voting by the board or committee with respect to the matter giving rise to the potential conflict and must not improperly influence the deliberation or voting on the matter giving rise to the conflict. The board or committee may seek background information or additional information from that person prior to the board's or committee's deliberations or vote on the matter.

2) In some instances, where a Covered Person has a substantial financial interest in the transaction, additional investigation/inquiry must be performed by the board or the committee. As part of its investigation, the board or committee must consider alternative transactions to the extent available.

The chairperson of the governing board or committee may, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

After exercising due diligence, the governing board or committee shall determine whether the Charity can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

4) In order to approve a transaction or arrangement giving rise to a conflict of interest, the board or committee must conclude that it is, under the terms and within the circumstances and conditions presented, in the Charity's best interest, fair and reasonable. Approval requires the majority vote of the disinterested directors or committee members, as applicable, present at the meeting when the underlying transaction is voted on.

C. Violations of the Conflicts of Interest Policy

1) If the governing board or committee has reasonable cause to believe a Covered Person has failed to disclose actual or possible conflicts of interest, it shall inform that Covered Person of the basis for such belief and afford the Covered Person an opportunity to explain the alleged failure to disclose.

2) In the event that the Charity and/or Covered Person in error enters into or otherwise participates in a conflict of interest transaction that requires pre-approval by the board or committee pursuant to this policy, such transaction shall promptly upon discovery of such error be presented to the board or committee for its review and the board or committee shall in accordance with the procedures prescribed by applicable law consider whether to (i) ratify such transaction; (ii) direct the rescission or modification of the transaction (if possible to do so); (iii) take any disciplinary action and/or (iv) make changes to the Charity's controls and procedures in connection with such errors.

<u>Article VI Records of Proceedings</u>

The minutes of the governing board meeting (or committee meeting) during which a potential or actual conflict of interest is disclosed or discussed shall be documented contemporaneously with the meeting and contain:

1) The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.

2) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

<u>Article VII Compensation</u>

A. A voting member of the governing board who receives compensation, directly or indirectly from the Charity is precluded from voting on matters pertaining to that member's compensation.

B. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Charity for services is precluded from voting on matters pertaining to that member's compensation.

C. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Charity, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

Article VIII Periodic Reviews

To ensure the Charity operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

1) Whether compensation arrangements and benefits are reasonable, based on competent survey information and the result of arm's length bargaining.

2) Whether partnerships, joint ventures, and arrangements with management organizations conform to the Charity's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes, and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

Article IX Use of Outside Experts

When conducting the periodic reviews as provided for in Article VII, the Charity may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

Article X Policy Adoption and Oversight

The board is responsible for providing oversight of the adoption and implementation of, and compliance with this policy.