

Conflict of Interest Report

*Prepared for the System Dynamics Society of New York*



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## **INTRODUCTION**

The New York Nonprofit Revitalization Act of 2013 (hereinafter referred to as the “Act” or “NPRA”) introduces major regulatory changes for nonprofits in New York (Schneiderman, 2013). As the first major amendment to the Not-for-Profit Corporation Law (hereinafter referred to as “NPCL”) in the last 40 years, the Act reduces the number and types of corporations (charitable or non-charitable), the amount of bureaucratic paperwork that nonprofits face (clearer statutory guidance), modernizes the work of boards of directors by introducing technology tools to engage and make decisions as well as increases the fiduciary role of boards to govern and provide oversight of nonprofit corporations (e.g. effective January 2016, the board chair and paid executive manager cannot be the same person). To fulfill their fiduciary role, the Act requires that every corporation adopt a conflict of interest policy with procedures to manage conflicts of interest and related party transactions, to ensure that its directors, officers and key employees act in the best interests of the corporation.

**NOTE: Any reference in this document to “board” shall mean the System Dynamics Society, Inc.’s Policy Council. Any reference to “directors,” “officers,” or “members” shall mean Policy Council Officers and Policy Council Members. Any reference to “policy” shall mean “guideline.”**

The unique nature of the System Dynamics Society as a 501(c)(3) registered in Massachusetts and charity operating in New York requires that it consider the requirements of the law in both states. The Act specifies that a conflict of interest occur when a board member personally benefits directly or indirectly **from a nonprofit’s policy or action**. For example, a board member who suggests that the nonprofit should buy a product from the board member’s company will have a conflict of interest as s/he can make a profit from the organization’s actions. Compensation can also be a cause for conflict if the person receiving compensation from the organization is a part of the decision making process. This does not mean that a board must avoid all conflicts of interest. When the transaction which creates a conflict is in the best interest of the organization (a board member’s product is the least expensive option), a board may consider it. On the broadest level, a conflict of interest policy (with procedure for managing conflicts of interest) guides board behavior and decision-making to ensure decisions are in the best interest of the corporation.

## **LEGAL REQUIREMENTS NEW YORK NONPROFIT REVITALIZATION ACT OF 2013**

The legal requirements pursuant to the New York Nonprofit Revitalization Act of 2013 (hereinafter referred to as the “Act” or “NPRA”) in regard to conflict of interest policies closely match the legal requirements in Massachusetts. Pursuant to the Act and the New York Not-for-Profit Corporation Law (hereinafter NPCL), which has been amended in accordance with the Act, there are seven provisions that are required to be included in a conflict of interest policy.<sup>1</sup>:

- (1) a definition of the circumstances that constitute a conflict of interest;
- (2) procedures for disclosing a conflict of interest to the audit committee or, if there is no audit committee, to the board;
- (3) a requirement that the person with the conflict of interest not be present at or participate in or vote of the board or committee deliberation on the matter giving rise to such conflict;
- (4) a prohibition against any attempt by the person with the conflict to influence improperly the deliberation or voting on the matter giving rise to such conflict;
- (5) a requirement that the existence and resolution of the conflict be documented in the corporation's records, including in the minutes of any meeting at which the conflict was introduced, discussed or voted upon; and
- (6) procedures for disclosing, addressing, and documenting related party transactions in accordance with section seven hundred fifteen of the NPCL.
- (7) all members of the board will have access to information pursuant to the conflict of interest

Additionally, pursuant to the Act and NPCL, and applicable Massachusetts law, before a director is initially elected, and annually thereafter, the director must complete, sign, and submit to the board secretary a written statement identifying: a) any entity of which the director is an officer, director, trustee, member, owner, or employee, and b) any transaction in which the corporation is a participant and in which the director might have a conflicting interest. The secretary must provide all statements to the audit committee, and if there is no audit committee, to the board chair.

In response to the Act, the Society created a new conflict of interest guideline. According to the bylaws of the System Dynamics Society, Inc. all guidelines shall be treated as policy. To comply with New York and Massachusetts law, the guideline must be approved and put into effect.

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<sup>1</sup> Requirements set forth in Section 4 of the Act and Section 715-a(c) of the NPCL

## **RECOMMENDATIONS TO THE SYSTEM DYNAMICS SOCIETY POLICY COUNCIL**

### **Adopting the guideline**

As is required when adopting a new guideline, the System Dynamics Society, Inc. Policy Council Officers and Policy Council Members will receive a copy of the conflict of interest guideline to review before discussing the guideline during the Policy Council meeting. All Policy Council Officers and Policy Council Members, and key employees will be able to identify a potential personal conflict or related party transaction (as defined herein) so that they may alert the Policy Council to any potential conflicts. Once the conflict of interest guideline is on the agenda and the motion has been made to adopt the proposed guideline, the Policy Council should discuss the guideline and ensure that all Policy Council Officers and Policy Council Members, and key employees understand the new guideline.

### **Documenting Conflicts**

All conflict of interest discussions must be documented in the Policy Council meeting minutes and should be published on the Society website. In addition, all Society Policy Council Officers and/or Policy Council Members, committee members, or key employees (as defined below) must fill out an Annual Declaration of Conflict of Interest Form (attached) to be distributed to the Policy Council Secretary<sup>2</sup>. These forms should be accessible to stakeholders, as a way to increase transparency within the organization.

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<sup>2</sup> Requirement pursuant to Section 4 of the Act and Section 715-a(c) of the NPCL

## **CONFLICT OF INTEREST GUIDELINE FOR THE SYSTEM DYNAMICS SOCIETY**

### **Article I - PURPOSE**

The purpose of this Conflict of Interest Guideline (hereinafter “Guideline”) is to protect the tax-exempt organization’s (System Dynamics Society, Inc. [hereinafter referred to as the “Society”]) interest when contemplating entering into a transaction or arrangement that might benefit the private interest of a Policy Council Officer, Policy Council Member, committee member, or key employee (as defined below). This Guideline is to set forth procedures for the monitoring, reporting, review and oversight, and approval or ratification of any action taken in connection with conflicts of interest and related party transactions. This Guideline, as a part of the Society’s Policies, is intended to supplement but not replace any applicable state and federal laws governing a conflict of interest applicable to nonprofit organizations.

### **Article II - DEFINITIONS**

1. Independent Director<sup>3</sup> - An Independent Director, as defined by New York law, is a director who:

- (a) is not, and has not been, an employee of the corporation or an affiliate of the corporation within the last three years, and does not have a relative who is a key employee of the corporation or an affiliate of the corporation now or within the last three years;
- (b) has not received, and does not have a relative who has received in any of the last three years, more than ten thousand dollars in direct compensation from the corporation or an affiliate of the corporation, other than reimbursement for reasonable expenses incurred as a director or reasonable compensation for service as a director; and
- (c) is not a current employee of, or have a substantial financial interest in, or have a relative who is an officer of or has a substantial financial interest in, any entity that has made payments to, or received payments from the corporation or an affiliate of the corporation for property or services in an amount which in any of the last three years exceeds the less of twenty-five thousand dollars or two percent of such entity consolidated gross revenues.

(For purposes of this subparagraph, “payment” does not include charitable contributions.)

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<sup>3</sup> NPCL § 102(a)(24)

**NOTE:** "Director" is defined by the Act as any member of the governing board of a corporation, whether designated as director, trustee, manager, governor, or by any other title. The term "board" means "board of directors" or any other body constituting a "governing board."

2. Key Employees<sup>4</sup> - Any person who is in a position to exercise substantial influence<sup>5</sup> over the affairs of the Society. This term shall include committee members, the Executive Director, Executive Editor, and under certain circumstances may include volunteers if the volunteer is engaging in an activity that would have substantial influence over the affairs of the Society.

3. Interested Person - Any Policy Council Officer or Policy Council Member, committee member, or key employee who has a direct or indirect financial interest as defined below, is an interested person.

4. Financial Interest - A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- (a) an ownership or investment interest in any entity with which the Society has a transaction or arrangement, or
- (b) a compensation arrangement with the Society or with any entity or individual with which the Society has a transaction or arrangement, or
- (c) a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Society is negotiating a transaction or arrangement within the last three years. Compensation includes direct and indirect remuneration as well as gifts or favors that are worth \$10,000 or more, or
- (d) is an employee of an entity or individual with which the Society is negotiating a transaction or arrangement with.

5. Related Party - A related party means

- (a) any director, officer, or key employee of the Society or any affiliate of the Society;
- (b) any relative of any director, officer or key employee of the Society or any affiliate of the Society; or
- (c) any entity on which any individual described in clauses (a) and (b) of this subparagraph has a thirty-five percent (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 five percent (5%).

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<sup>4</sup> NPCL § 102(a)(25)

<sup>5</sup> For further guidance on what may be considered "substantial influence" see 26 C.F.R. 53.4958-3

6. Related Party Transaction<sup>6</sup> - A “related party transaction” is defined as any transaction, agreement or other arrangement in which a related party (defined above) has a financial interest and in which the Society or any affiliate of the Society is a participant. Such a transaction may be referred to herein as simply “transaction” or “arrangement.”

7. Relative<sup>7</sup> - Relative of an individual is defined as the (i) spouse, domestic partner, child, grandchild, brother or sister (whether by whole or half-blood) of the individuals; and (ii) the spouse or domestic partner if a child , grandchild, brother or sister of the individual.

8. Affiliate - An affiliate of a corporation means any entity controlled by, in control of, or under common control with such corporation.

9. Conflicts of Interest - A conflict arises whenever the interests of the Society come into conflict with a financial or personal interest of a Policy Council officer, member, committee member, or key employee, or otherwise whenever such persons’ personal or financial interest could be reasonably viewed as affecting his or her objectivity or independence in fulfilling their duties to the Society. A related party transaction as defined above is considered a conflict and procedures for handling such transactions are set forth below.

While it is not possible to describe or anticipate all the circumstances that might involve a conflict of interest, a conflict of interest typically arises whenever a Policy Council officer, member, committee member, or key employee has (directly or indirectly):

- (a) a direct or indirect interest (financial or otherwise) in a transaction, agreement or any other arrangement and in which the Society or any affiliate participates;
- (b) a compensation arrangement or other interest in a transaction with the Society;
- (c) a compensation arrangement or other interest in or affiliation with any entity or individual that:
  - (i) sells goods or services to, or purchases goods or services from, the Society;
  - (ii) competes with the Society; or
  - (iii) the Society has, or is negotiating, or contemplating negotiating, any other transaction or arrangement with;
- (d) the ability to use his or her position, or confidential information or the assets of the Society, to his or her (or an affiliated party’s) personal advantage, or for an improper or illegal purpose;

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<sup>6</sup> NPCL § 102(a)(23)-(24)

<sup>7</sup> NPCL § 102(a)(25)



- (e) solicited or accepted any gift, entertainment, or other favor where such gift might create the appearance of influence on the officer, member, or key employee (other than gifts of nominal value, which are clearly tokens of respect and friendship unrelated to any particular transaction);
- (f) acquired any property or other rights in which the Society has, or the officer, member, or key employee knows or has reason to believe at the time of acquisition that the Society is likely to have, an interest;
- (g) been indebted to the Society, other than for amounts due for ordinary travel and expense advances; or
- (h) any other circumstance that may, in fact or in appearance, make it difficult for the officer and/or member, or key employee to exercise independent, objective judgment or otherwise perform effectively.

### **Article III – PROCEDURES FOR THE DISCLOSURE AND HANDLING OF CONFLICTS OF INTEREST**

1. Duty to Disclose: In connection with any actual or possible conflict of interest (which includes related party transactions), an interested person must disclose the existence of the conflict of interest and be given the opportunity to disclose all material facts to the Policy Council Officers and Policy Council Members, committee members, and key employees considering the proposed transaction or arrangement. The interested party should submit a Disclosure of Conflict of Interest to the Policy Council President as soon as the conflict is identified or is believed to exist. **(Form attached.)**

2. Determining Whether a Conflict of Interest Exists: After disclosure of the conflict of interest and all material facts, and after any discussion with the interested person, s/he shall leave the Policy Council meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Policy Council Officers and Policy Council Members, and committee members shall decide if a conflict of interest exists. Only independent directors may be part of this process. A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate Policy Council Officers and/or Policy Council Members, committee members, and key employees decide that a conflict of interest exists.

### 3. Procedures for Addressing the Conflict of Interest:

(a) An interested person may present information relating to the conflict of interest at the Policy Council meeting, but after the presentation, s/he shall leave the meeting during the discussion of, and refrain from the vote on, the transaction or arrangement involving the possible conflict of interest. Any person with a conflict of interest is prohibited against any attempts to influence improperly the deliberation or voting on the matter giving rise to such conflict.

(b) The President of the Policy Council (i.e. Chair of the Board of Directors) shall, if appropriate, appoint an independent director or committee to investigate alternatives to a proposed related party transaction or arrangement. All investigations shall be made in a confidential and sensitive manner so that information will be disclosed only as needed to facilitate review of the investigation materials or otherwise as required by law.

(c) After exercising due diligence, the independent Policy Council Officers and Policy Council Members, committee members, and key employees shall determine whether the Society 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. **If a more advantageous transaction exists, then the board is legally bound to choose the alternative transaction.**

(d) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the independent Policy Council Officers and Policy Council Members, committee members, and key employees shall determine by a majority vote whether the transaction or arrangement is in the Society's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement. Pursuant to Policy 5, Section 2 of Society's Policies, "Meetings of the Policy Council," a quorum shall require the presence of at least six members of the Policy Council, including at least two officers.

### 4. Violations of the Conflicts of Interest Policy:

(a) If the Policy Council Officers and Policy Council Members, committee members, and key employees have reasonable cause to believe that an officer, member, committee member, or key employee has failed to disclose actual or possible conflicts of interest, 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.

(b) If it is determined that the person has failed to disclose an actual or possible conflict of interest, the Policy Council shall take appropriate disciplinary and corrective action.

## **Article IV – RECORDS OF PROCEEDINGS**

The minutes of the Policy Council shall contain:

(a) The names of the interested person or persons who disclosed the conflict of interest, or otherwise were found to have an actual or possible conflict of interest, the nature of the conflict, any investigation or action taken to determine whether a conflict of interest was present, and the independent Policy Council Officers and/or Policy Council Members, committee members, and key employee's decision as to whether a conflict of interest in fact existed.

(b) The names of the independent Policy Council Officers and/or Policy Council Members, committee members, and key employees who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

#### **Article V - COMPENSATION**

(a) A voting member of the Policy Council who receives compensation, directly or indirectly, from the Society for services 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 Society for services is precluded from voting on matters pertaining to that member's compensation.

(c) A voting member of the Policy Council (governing board) or any person whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Society, either individually or collectively, is prohibited from providing information on compensation.

#### **Article VI – REQUIRED ANNUAL STATEMENTS**

All Policy Council Officers and Policy Council Members, committee members, and key employees shall annually sign a statement in which such person affirms:

(a) has received a copy of the conflicts of interest guideline,

(b) has read and understands the guideline,

(c) has agreed to comply with the guideline,

(d) sets forth any entity which that Policy Council officer and/or member, committee member, and key employee is an officer, director, trustee, member, owner, or employee and with which the Society has a relationship, and any transaction in which the Society is a participant and in which the Policy Council officer and/or member, committee member, and key employee might have a conflicting interest.

(e) has alerted the board of any conflict or potential conflict and the nature of the conflicts, and

(f) understands that the Society is non-profit and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

### **Article VII – PERIODIC REVIEWS**

To insure the Society operates in a manner consistent with its stated 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:

- (a) Whether compensation arrangements and benefits are reasonable, based on competent survey information and the result of arm's length bargaining.
- (b) Whether partnerships, joint ventures, and arrangements with management organizations conform to Society's written guideline, 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 VIII – USE OF OUTSIDE EXPERTS**

When conducting periodic reviews as provided for in Article VII, the Society 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. All Policy Council members have a right to the information presented by the advisor.

New York State has adopted legislation satisfying the requirements of section 508(e) relating to private foundation governing instruments, except where such law conflicts with any mandatory direction of an instrument by which assets were transferred prior to June 1, 1971, and such conflicting direction has not been removed legally. (Information derived from Revenue Ruling 75-38, 1975-1 C.B. 161.)

### **Article IX - RECORD OF CONFLICT IN PUBLIC CHARITY FILING**

The Secretary will enter details of all conflicts in the yearly public charities filing in accordance with the Attorney General's Non-Profit Organizations/Public Charities Division requirements.

Dated: June 23, 2014

This Conflict of Interest guideline Statement was prepared based on the sample guideline attached as Exhibit "A" to Form 1023 of the I.R.S. and amended to include provisions required by the New York Nonprofit Revitalization Act of 2013.

## **MOTION TO ADOPT CONFLICT OF INTEREST GUIDELINE**

The motion is to approve the new Conflict of Interest Guideline. The New York Nonprofit Revitalization Act of 2013 requires that the Policy Council (board of directors) or designated committee of the Policy Council, oversee the adoption, implementation, and compliance with the Conflict of Interest Guideline.

### **Motion: Approval of Conflict of Interest Guideline**

Formal Motion: Move that the Policy Council approve the Conflict of Interest Guideline. The guideline was written to meet the new legal standards outlined in the New York Non Profit Revitalization Act of 2013. The Society will adhere to the laws, rules, and mandates of all state, federal, and local governing bodies. The Society will maintain a set of guidelines that are compliant with required regulations and consistent with the operation of the Society as a not for profit organization. The Conflict of Interest Guideline is “compliant with required regulations and consistent with the operation of the Society as a not for profit organization”, as stated in Policy 16.

**ANNUAL DECLARATION OF CONFLICT OF INTEREST FORM**

Pursuant to the New York Nonprofit Revitalization Act of 2013, System Dynamics Society Policy Council President, officers, members, committee members, and key employees shall complete, sign, and submit to the secretary of the corporation a written statement identifying, to the best of the director’s knowledge, any entity of which such officer, member, or key employee is an officer, director, trustee, member, owner (either as sole proprietor or a partner), or employee and with which the corporation has a relationship, and any transaction in which the corporation is a participant and in which the officer, member, or key employee might have a conflicting interest. Each officer, member and key employee must annually re-submit such a written statement. The Secretary of the Society shall provide a copy of all completed statements to the audit committee or if no such committee, the Policy Council President.<sup>8</sup>

**Full Name:** \_\_\_\_\_

**Position in the Society:** \_\_\_\_\_

I hereby disclose that I am an officer, director, trustee, member, owner (either as sole proprietor or a partner), or employee of the following entity with which the Society has a relationship: (If no such association exists, write “N/A”)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ I have NO conflict of interest or related party transaction to report.

\_\_\_\_\_ I have a conflict of interest or related party transaction to report. (Describe below.)

Statement of Conflict of Interest or Related Party Transaction:

I affirm that my statement fully discloses the existence of the conflict of interest.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I affirm that I have received a copy of the Conflict of Interest Guideline. I have read and understand the Guideline and agree to comply with the Guideline. In this Annual Declaration of Conflict of Interest, I have disclosed any conflict of interest or related party transaction and the nature and material facts of the conflict or transaction. I understand that the Society is a non-profit corporation and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
<sup>8</sup> NPCL 715-a(c)

**DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST FORM**

*The New York Nonprofit Revitalization Act of 2013 requires nonprofit corporations to have procedures in place for the disclosure and documentation of a conflict of interest.<sup>9</sup> The purpose of this form is for the disclosure of a potential conflict of interest by any Policy Council officer and/or member, committee member, or key employee who believes that a potential conflict of interest or related party transaction exists, shall use this form for the purpose of disclosure and subsequent discussion, consideration, and vote by the appropriate Policy Council Officers and/or Policy Council Members, committee members, and key employees at the next Policy Council meeting in accordance with the procedures set forth in Article III of the Society’s Conflict of Interest Guideline. Note: This form is not necessary if the potential conflict of interest has already been disclosed by way of the Annual Declaration of Conflict of Interest form.*

**Full Name:** \_\_\_\_\_

**Position in the Society:** \_\_\_\_\_

*I affirm that I have received a copy of the Conflict of Interest Guideline. I have read and understand the Guideline and agree to comply with the Guideline. In this document I am fully disclosing any conflict and the nature of the conflict. I understand that the Society is non-profit and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.*

*I affirm that my statement fully discloses the existence of the potential conflict of interest.*

*Statement of Potential Conflict of Interest:*

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<sup>9</sup> NPCL 715-a(2)