

## THE DAVID AND LUCILE PACKARD FOUNDATION CONFLICT OF INTEREST POLICY

### Introduction

The David and Lucile Packard Foundation (“the Foundation”) acknowledges its special character as a family foundation and the legacies of goals, guiding principles, and values from its founders, David and Lucile Packard. One value is integrity, described by the Board as follows:

### **Integrity**

The Board and staff will be open and honest with one another, the community and Foundation grantees. They will encourage the highest possible standards of conduct and ethics.

The founders’ goals and guiding principles include promoting philanthropy and encouraging the Trustees to participate in the design and implementation of the Foundation’s programs and to suggest ideas for the Foundation to consider. The Foundation recognizes the value of collaboration between and among the Foundation’s Trustees, Officers, and employees and other exempt organizations, and the importance of having its Trustees, Officers, and in some cases its employees serve as directors or officers of other exempt organizations. Therefore, the Foundation does not wish to prohibit grants to other charitable organizations which have directors in common with the Foundation.

The Foundation strives to avoid conflicts of interest as well as the appearance of impropriety to ensure that the Foundation continues to operate in accordance with the founders’ wishes and to maintain the public trust inherent in its tax exempt status and private foundation classification.

Therefore, the Foundation adopts this Conflict of Interest Policy for the Board of Trustees and Officers. This policy describes the persons who may be involved in actual or potential conflicts of interest and imposes a continuing duty of disclosure. The Foundation also adopts guidelines for handling potential conflicts of interest, keeping records, and ensuring compliance with the policy. The guidelines cannot cover all possible conflict of interest situations. Nevertheless, the Policy Statement, General Principles, and Continuing Duty of Full Disclosure shall apply.

The purpose of the Conflict of Interest Policy is to protect the interests of the Foundation when it is contemplating entering into a transaction or arrangement that might benefit (or be perceived to benefit) the private interest of a Trustee or Officer of the Foundation and to protect the Trustees and Officers. This policy and the guidelines are intended to supplement but not replace the procedures set forth in Sections 5233 through 5237 of the California Nonprofit Corporation Law governing conflicts of interest applicable to directors of nonprofit public benefit corporations. This policy and the guidelines are further intended to implement procedures to protect against entering into prohibited self-dealing transactions and having excise taxes imposed under Section 4941 of the Internal Revenue Code. *See Attachment 1 - Definitions of “conflicts of interest” and “self-dealing.”*

## **I. Policy Statement**

It is the policy of the David and Lucile Packard Foundation (“the Foundation”) to assure that any conflicts of interest or potential conflicts of interest are fully disclosed to the Board of Trustees, Committee of the Board, Officer or employee before a proposed decision is made or a proposed transaction is completed.

It shall be the continuing responsibility of all Trustees and Officers to review their outside business interests, philanthropic interests, personal interests, family and other close relationships for actual or potential conflicts of interest with respect to the Foundation, and to immediately disclose the nature of the interest or relationship. The interests of a member of the family of a Trustee or Officer shall be attributed to the Trustee or Officer. *See Attachment 1 – Definitions of “family members.”*

No Trustee or Officer or other person with an actual or potential conflict of interest shall vote on or otherwise take part in any decision of the Foundation that directly or indirectly benefits such person or a member of such person’s family.

## **II. General Principles**

In their dealings with the Foundation, all Trustees and Officers must be ever mindful of potential conflicts of interest. To assure compliance with the self-dealing rules, to avoid inadvertent violations, to live up to the public trust and avoid the appearance of impropriety, and to fulfill fiduciary duties, the Foundation expects: (a) full disclosure of relationships and financial and other interests likely to influence a person’s decision-making; (b) abstention or recusal by a Trustee with a potential conflict of interest as described below; and (c) careful consideration of the facts and decisions by disinterested members of the Board of Trustees, or when appropriate, by a Committee of the Board, Officer, or staff. *See Attachment 2 – Guidelines for Identifying Prohibited Self-Dealing Transactions and Exceptions.*

In all cases, a Trustee with an actual or potential conflict of interest (financial or other) in a matter proposed for action by the Board or Committee may be counted for a quorum and may provide information and answer questions.

(a) Recusal. When a Trustee has a financial interest in a proposed transaction, the Trustee shall be recused (leave the room), and shall not participate in the deliberation on the merits of the proposal or the vote. Recusal is required in the following situations:

(1) Payment directly to Trustee. If the proposed transaction involves direct payment of compensation (including payment or reimbursement of expenses) by the Foundation to a Trustee, the full Board (not a Committee) shall consider the proposal. A disinterested majority of all Trustees then in office is required to approve compensation for a Trustee for services other than as an Officer or Trustee. *See Attachment 3 – Guidelines for Permissible Payments of Compensation for Personal Services of Trustees and Officers.*

(2) Payment indirectly to Trustee. If the proposed transaction involves indirect payment by the Foundation to a Trustee through a grant that the grantee may use for payment or reimbursement of expenses for the Trustee’s services to the grantee, the full Board (not a Committee) shall consider the proposal. The terms of the grant shall prohibit use of grant funds to

pay compensation (other than payment or reimbursement of expenses) for the Trustee's services to the grantee. A disinterested majority of all Trustees then in office is required to approve the grant in which a Trustee has a financial interest. *See Attachment 4 – Guidelines for Grants to Exempt Organizations When Trustees Have Financial Interests.*

(b) Abstention. When a Trustee is a mere common director and has no financial interest in a grant proposal, the Trustee shall abstain (shall not vote), but may remain in the room during the discussion, deliberation on the merits of the proposal, and the vote. *See Attachment 5 – Guidelines for Grants to Exempt Organizations with Common Directors (Trustees have no financial interests).*

In all cases, the existence and nature of the relationship or the conflict of interest disclosed, the interested Trustee's abstention or recusal, and the vote of the other Trustees shall be reflected in the minutes of the meeting of the Board or Committee.

### **III. Continuing Duty of Full Disclosure**

Disclosure of relationships and interests shall be made by each Trustee and Officer in writing following the adoption of the Conflict of Interest Policy and annually thereafter on a form approved by the General Counsel. All disclosure statements shall be maintained in confidence and access to financial information (if any) shall be limited to persons who have a reasonable need to know the contents thereof. Unless well known to the Board, Committee, Officer, or employee considering a proposed grant or transaction, disclosure shall be made, orally or in writing, at any time a proposed transaction or grant involving an actual or potential conflict of interest is being considered. Disclosure shall also be made by a Trustee or Officer at any time when the personal interest of a Trustee or Officer (or member of his or her family) could affect the activities, property, employees, or services of the Foundation, or involves any matter potentially requiring action by the Board, Committee, or the President exercising powers delegated by the Board, including grant proposals.

Disclosure shall be made to the President (or, if the President is the one with a conflict, then to the Chairman of the Board). The President (or the Chairman of the Board) shall investigate the facts, seek advice from the General Counsel or other counsel to the Foundation on legal issues as necessary, and report to the Board of Trustees or the Committee on the Board.

### **IV. Effective Date.**

This Conflict of Interest Policy is intended to incorporate and supplement existing policy and procedures. The written Conflict of Interest Policy is effective upon adoption by the Board of Trustees at a meeting held on September 11, 2003, and is modified on October 15, 2003.

Acknowledgement and Agreement of Trustee or Officer:

I confirm that I have read this Conflict of Interest Policy, and I agree to comply with its terms.

Date: \_\_\_\_\_

By: \_\_\_\_\_

(signature)

Title: \_\_\_\_\_

(Trustee or Officer)

ATTACHMENTS:

1. Definitions
2. Guidelines for Identifying Prohibited Self-Dealing Transactions and Exceptions
3. Guidelines for Permissible Payments of Compensation for Personal Services of Trustees and Officers
4. Guidelines for Grants to Exempt Organizations When Trustees Have Financial Interests
5. Guidelines for Grants to Exempt Organizations with Common Directors (Trustees have no financial interests)
6. Guidelines Limiting Gifts, Honoraria, and Hospitality

## **Attachment 1**

### **Definitions**

“Conflicts of Interest:” Conflicts of interest arise when a person involved in making a decision for the Packard Foundation may have a personal interest in the outcome. The personal interest may be economic, that is, it may result in a financial benefit to the person or to a family member, or the personal interest may be sentimental or professional, such as when the person or a family member is on a proposed grantee’s board of directors or advisory board, or works for a proposed grantee. Conflict of interest transactions may result in violations of the federal laws applicable to private foundations that prohibit self-dealing or the California conflict of interest and self-dealing rules.

“Self-dealing:” The Internal Revenue Code and Regulations applicable to private foundations prohibit certain transactions directly or indirectly between the Packard Foundation and its Trustees, Officers, management employees, or members of their families. The federal self-dealing rules also prohibit transactions that may result in an economic benefit to these people because of their ownership or beneficial interest in a business entity, trust, or estate. The self-dealing rules apply to transactions regardless of the amount paid. If a prohibited self-dealing transaction occurs, excise taxes may be imposed, whether the transaction is detrimental or beneficial to the Foundation. The Foundation’s Articles of Incorporation prohibit violations of the federal self-dealing rules.

“Family members.” For purposes of identifying potential self-dealing transactions and applying the rules applicable to private foundations, the Foundation shall use the definition of family members in Section 4946(d) of the Internal Revenue Code. Members of the family of a Trustee or Officer include only the spouse, children, grandchildren, great grandchildren, spouses of the foregoing, and ancestors (parents, grandparents, etc.).

For purposes of disclosures of potential conflicts of interest, the Foundation shall define family members more broadly to include all of the persons listed above, as well as a Trustee’s or Officer’s “significant other,” and other close relationships with family (such as brothers and sisters and their children and spouses).

## **Attachment 2**

### **Guidelines for Identifying Prohibited Self-Dealing Transactions and Exceptions**

The private foundation rules in the Internal Revenue Code and Regulations prohibit certain kinds of transactions, directly or indirectly, between the Packard Foundation and a Trustee or Officer, or a member of their families, or a business entity, trust, or estate in which they have an interest. *See Attachment 1 – Definitions of “family members” under the private foundation rules.*

Specific transactions are potentially self-dealing, and, unless an exception applies, shall be prohibited (particularly if benefits go from the Foundation to the individual). Exceptions shall be determined on a case by case basis, with advice from the General Counsel or other counsel to the Foundation. The specific transactions that are potentially self-dealing and examples of common exceptions are as follows:

- (a) **Sale, exchange, or lease of property**  
(exception: lease of property by a Trustee or Officer to the Foundation without charge);
- (b) **Loan of money or other extension of credit**  
(exception: loan or extension of credit by a Trustee or Officer to the Foundation without interest or other charge, and loan proceeds used exclusively for charitable purposes);
- (c) **Furnishing of goods, services, or facilities**  
(exception: furnishing goods, services or facilities by a Trustee or Officer to the Foundation without charge and used exclusively for charitable purposes);
- (d) **Payment of compensation, or payment or reimbursement of expenses**  
(exception: payment of reasonable compensation (and expenses) for “personal services” of Trustee or Officer that are reasonable and necessary to carry out the Foundation’s charitable purposes);
- (e) **Transfer or use of any of the Foundation’s income or assets**  
(exception: only incidental or tenuous benefit to Trustee or Officer from use of Foundation’s income or assets); and
- (f) **Agreement to pay a government official**  
(exception: limited travel expenses solely within the United States, scholarship or fellowship grants, or costs to attend conferences sponsored by the Foundation).

**Attachment 3**  
**Guidelines for Permissible Payments of Compensation**  
**for Personal Services of Trustees and Officers**

The Foundation may pay Trustees and Officers (and members of their families) reasonable compensation for “personal services” to the Foundation necessary to carry out the Foundation’s charitable purposes. Services as a Trustee or an Officer are “personal services.” Services in any other capacity shall be reviewed by the General Counsel or other counsel to the Foundation to determine whether the services are within the exception for “personal services.” Reasonableness is determined by reviewing compensation market surveys and other reliable data for comparable positions at comparable organizations.

The Board of Trustees shall determine, and shall not delegate the authority to determine, the compensation (if any) of any Trustee for his or her services as a Trustee, an Officer, or in any other capacity. The Board may, however, delegate authority to review reasonableness of the proposed compensation of a Trustee to the Compensation Committee for recommendation to the Board. The ultimate determination of reasonableness and decision on compensation shall be made by a majority of disinterested Trustees then in office.

The Board may delegate authority to review reasonableness and determine compensation of any Officer who is not a Trustee for his or her services as an Officer or in any other capacity to a Compensation Committee of the Board consisting of persons not related to or controlled by the Officer whose compensation for services as an Officer or in any other capacity is being considered. The Board may also delegate authority to the Compensation Committee to review reasonableness and determine compensation of any person who is a family member of a Trustee or Officer for his or her services to the Foundation.

The Board or Committee shall review data of comparables, consider the person’s performance, determine whether the proposed compensation, including benefits, is reasonable, and render its decision or its recommendation.

The Trustee whose compensation is being considered may be counted for a quorum, may provide information and answer questions, but shall be recused (leave the room) for the deliberation on the merits of the proposed compensation and for the vote. When compensation for a family member of a Trustee is being considered, the Trustee shall be recused for the deliberation on the merits of the proposed compensation and the vote.

The remaining Board members will vote on the proposed compensation. The disinterested Trustees should determine whether they are unrelated to and not subject to influence or control of the interested Trustee. Before approving the proposed compensation, the disinterested Trustees should be able to determine that the proposed compensation is fair and reasonable to the Foundation. Compensation for a Trustee (or family member) must be approved by a majority of disinterested Trustees then in office.

The disclosure of material facts, the interested Trustee’s recusal, the disinterested Trustees’ independence, and the determinations and vote of the disinterested Trustees shall be reflected in the minutes of the meeting of the Board or Committee.

#### **Attachment 4**

### **Guidelines for Grants to Exempt Organizations When Trustees Have Financial Interests**

A Foundation Trustee may serve in dual roles, as a Trustee of the Packard Foundation and as a director of a proposed grantee, or as an officer, employee, consultant or adviser to the grantee. In some cases, the Trustee's services are provided to the grantee pro bono. In other cases, the Trustee (or a family member) receives payment of compensation (whether as director's fee, honorarium, salary, or consulting fee), payment or reimbursement of expenses, or compensation and expenses.

It is the continuing responsibility of each Trustee and Officer to fully disclose to the members of the Board of Trustees any relationship or affiliation, or financial interest, that such Trustee, Officer, or family member, may have with any organization or person being considered for a proposed grant. Neither the Program Committees nor the President shall have the authority to approve any grant to or other transaction with any organization in which a Trustee (or member of the Trustee's family) has a financial interest.

These guidelines apply when a Foundation Trustee (or a family member) could receive compensation, or expenses, or both compensation and expenses, indirectly through a proposed grant by the Foundation to an exempt organization grantee. These guidelines apply if the proposed grantee is not controlled by the Foundation or the interested Trustee, the grantee assumes supervision and control over grant funds, and the grantee will assure that grant expenditures are reasonable and appropriate. The Foundation will prohibit use of the proposed grant funds for payment of compensation other than expenses for the interested Trustee (or family member). The Foundation will not "earmark" or designate use of the proposed grant funds for any particular person (including the interested Trustee) or expense.

All material facts about the proposed grant and the Trustee's (or family member's) relationship with the grantee, financial interest in the grantee and/or the proposed grant, and role in the activities funded by the proposed grant should be disclosed to or known by the Board.

Because of his or her financial interest in the grant, the interested Trustee's role in the Foundation's decision making process should be limited to responding to requests for information about the grantee or the grant proposal. The interested Trustee shall be mindful of the conflicts of interest and shall not advocate for approval of the proposal or exert undue influence on the other Trustees, Officers, or staff. The interested Trustee may be counted for a quorum, may provide information and answer questions, but shall be recused (leave the room) for the deliberation on the merits of the proposal and the vote.

The remaining Board members will vote on the proposed grant. The disinterested Trustees should determine whether they are independent of the interested Trustee and the proposed grantee. Before approving the proposed grant, the disinterested Trustees should be able to determine that the grant is fair and reasonable to the Foundation, and is being made in the Foundation's best interests. The grant must be approved by a majority of disinterested Trustees then in office.

The disclosure of material facts including the Trustee's (or family member's) financial interest, the interested Trustee's recusal, the disinterested Trustees' independence, and the determinations and vote of the disinterested Trustees shall be reflected in the minutes of the meeting of the Board of Trustees.

**Attachment 5**  
**Guidelines for Grants to Exempt Organizations with Common Directors**  
**(Trustees have no financial interests)**

Conflicts of interest or potential conflicts may arise from a person's dual roles. Examples: a Foundation Trustee serves as a Board member of a proposed grantee; a Foundation Trustee or close family member is employed by or does business with a proposed grantee; or a family member of a Foundation Trustee serves as a board member of a proposed grantee. If the proposed grantee pays the Trustee or family member any compensation or expenses, the Trustee has a financial interest in the grantee and may also have a financial interest in the proposed grant or other transaction between the Foundation and the grantee.

It is the continuing responsibility of each Trustee and Officer to fully disclose to the members of the Board of Trustees or Program Committee (for grants approved by the Board or a Committee) or to the President (for grants approved by the President), any relationship or affiliation that such Trustee, Officer, or family member, may have with any organization or person being considered for a proposed grant. The President shall not be authorized to approve any grants to organizations of which the President (or member of the President's family) is a common director or officer.

The federal self-dealing laws and the state corporation laws generally do not prohibit making grants to other charitable organizations for charitable purposes, even if there are Trustees or Officers of the Foundation who are also trustees, directors, or officers of the proposed grantee (common directors). To be a mere common director, the Trustee (and members of the Trustee's family) cannot have any financial interest in a grantee or in a proposed grant or other transaction between the Foundation and the grantee. As long as the Trustee who is a common director does not have a material financial interest in a proposed transaction, the California Nonprofit Corporation Code permits making grants to organizations with common directors with full disclosure to the Foundation of the Trustee's dual role, and approval by a majority of the Board of Trustees or Committee of the Board without counting the vote of the common director.

In presenting proposed grants for consideration by the Foundation, the Trustee or Officer who is merely a common director or officer of the Foundation and the proposed grantee shall keep foremost in mind the Foundation's primary purposes and the program guidelines adopted from time to time by the Board, and shall not exert undue influence on the other Trustees, Officers, or staff.

The Trustee who is a common director may be counted for a quorum, may participate in the discussion, may remain for the deliberations on the merits of the proposal, but shall abstain (shall not vote) on the proposed grant.

The existence and nature of the common director's relationship and the abstention shall be reflected in the minutes of the meeting of the Board of Trustees or Committee of the Board.

**Attachment 6**  
**Guidelines Limiting Gifts, Honoraria and Hospitality**

Trustees and Officers of the Packard Foundation, or members of their families, shall not knowingly receive or accept any gifts or hospitality, any pecuniary gain or anything else of value from past, current, or potential grantees, vendors, suppliers, consultants, contractors, or managers who have existing or proposed business or grantor-grantee relationships with the Foundation. This limitation includes payments, gifts, honoraria, loans, or entertainment.

The following are permissible exceptions to this limitation:

(a) Gifts of nominal value or meals and social invitations that are in keeping with good business ethics and do not obligate the recipient to take or refrain from taking any action, or to make or refrain from making any decision on behalf of the Foundation.

(b) Payments for serving in an official capacity or for providing personal services (not related to the Foundation) to an organization or entity described in this section, as long as such payments are disclosed to the Foundation in accordance with the Conflict of Interest Policy and such payments are not made with Foundation grant funds. (*See Attachment 4 – Guidelines for Grants to Exempt Organizations When Trustees Have Financial Interests, if a payment may be made with Foundation grant funds.*)