

Adopted: 10/6/2014

NEW YORK CITY ENERGY EFFICIENCY CORPORATION

CONFLICT OF INTEREST POLICY

Article I Introduction

The purpose of this Conflict of Interest Policy (the "Policy") is to protect the interests of the New York City Energy Efficiency Corporation. ("NYCEEC" or the "Organization") when it is contemplating entering into a transaction or arrangement that might directly or indirectly benefit the private financial or other interest of an officer, director or key employee of the Organization or their relatives. This policy is intended to supplement but not replace any applicable state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations.

The directors, officers and key employees of NYCEEC owe a duty of loyalty to the Organization which requires that in serving the Organization they act, not in their personal interests or in the interests of others, but rather solely in the interests of the Organization. Directors, officers and key employees must have an undivided allegiance to the Organization's mission and may not use their position as directors, officers or key employees, information they have about the Organization, or the Organization's property, in a manner that allows them to secure a pecuniary benefit for themselves or their Relatives. Accordingly, no director, officer or key employee may use his or her position at the Organization for personal gain or to benefit another at the expense of the Organization, its mission or its reputation.

As a public charity, the Organization is subject to the "intermediate sanctions" provisions of the Internal Revenue Code. Intermediate sanctions impose penalty taxes on any director, officer or key employee, among others, who engages in an "excess benefit transaction" with the Organization. An excess benefit transaction is a transaction with the Organization in which a person who is, or at any time during the past five-year period was, in a position to exercise substantial influence over the affairs of NYCEEC receives an economic benefit that exceeds the value of the services, property or payment the Organization receives in return. While additional procedures may be necessary in certain circumstances to prevent any excess benefit transaction, the procedures set forth in this policy should help guard against the occurrence of an excess benefit transaction.

A conflict of interest may arise when a person has an existing or potential financial interest or other material interest that impairs, or might appear to impair his or her independence or objectivity in the discharge of his or her responsibilities and duties to the Organization. As the Organization seeks to attract individuals who have knowledge, contacts or interests in fields of

relevance to the Organization to serve as its directors, officers and key employees, it is to be expected that such individuals may on occasion have business or personal interests which may give rise to conflicts of interest.

Conflicts of interest are not inherently illegal, nor are they a reflection upon the integrity of the individual involved. The manner in which the conflicted individual and the Board of Directors, officers and key employees deal with a possible conflict of interest shall determine whether they have fulfilled their duties to the Organization. Therefore, the crucial steps in handling conflicts of interest are disclosure of potential or actual conflicts, determination if a conflict exists, discussion and decisions by disinterested directors with respect to whether to enter into the transaction, agreement or other arrangement that involves a conflict, consideration of alternatives to the transaction, agreement or arrangement where appropriate, and making decisions regarding the transaction, agreement or arrangement by the disinterested directors on the basis of what is fair, reasonable and in the best interests of the Organization. Where a conflict of interest has been identified, a covered person must also cooperate with any plan adopted by the Organization to manage, reduce, or eliminate the conflict of interest.

This policy cannot describe all potential conflicts of interest, and its application may be uncertain at times. For instance, there also may be situations where the interests of other persons (such as close friends, clients, customers or business acquaintances) create a conflict (or the perception of a possible conflict) of interest. Covered persons should exercise the highest standards of ethical judgment and err on the side of caution and make full disclosure of any possible financial interest or other material interest that might impair or appear to impair his or her independence or objectivity in the discharge of his or her responsibilities and duties to the Organization. Possible damage to the reputation of the Organization should be considered at all times.

If there are any questions, the individual concerned should consult with the Compliance Officer.

Article II Definitions

“Compliance officer.” The person designated by NYCEEC’s Board of Directors from time to time as NYCEEC’s Compliance Officer for purpose of this Policy, or, if no one is so designated, the Secretary of NYCEEC.

“Conflict of interest” (also **“conflict”** and **“conflicting interest”**). Any circumstance in which the personal, professional, financial, or other interests of a covered person may potentially or actually diverge from, or may be reasonably perceived as potentially or actually diverging from, his or her obligations to the Organization or the interests of the Organization. It includes indirect conflicts, such as benefits provided to a relative of a covered person or an entity with which the covered person is associated, such as an owner, director, officer or employee. It shall include any relationship in which there may be a direct or indirect perceived or actual conflict of interest whether or not the covered person has a financial interest in the transaction. A conflict of interest shall not exist, however, solely based on the fact that a covered person may directly or indirectly benefit from a service which the Organization may provide to the public generally.

“Covered person.” Any director, officer or key employee.

“Financial interest” in a transaction A financial interest of a covered person (or, to such covered person’s knowledge, any relative) in a transaction or proposed transaction with the Organization (including any affiliate of NYCEEC), including an interest in another person, entity or Organization with which the Organization has or proposes to have a transaction, such as where the covered person (or, to such covered person’s knowledge, any relative of such covered person) has directly or indirectly:

- (a) A current or potential ownership or investment interest in such other person, entity or Organization; *provided, however*, that for public companies the covered person and relatives must own or control 1% or more of a class or series of any voting security (including any securities that may be acquired by such covered person upon the exercise of options or other derivative securities), or
- (b) legal or *de facto* power to control the election of a majority of directors, or legal or *de facto* power to exercise a controlling influence over the management or policies, of such other person, entity or Organization, or
- (c) a current or potential compensation arrangement with such other person, entity or Organization or otherwise stands to financially benefit from a relationship with such person, entity or Organization, whether or not contingent on the transaction or proposed transaction. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

“Independent director.” A director who (i) is not, and has not been within the last three years, an employee of the Organization, and does not have a relative who is or has been within the last three years a key employee of the Organization; (ii) has not received, and who does not have a relative who received, more than \$10,000 in direct compensation from the Organization within any of the last three fiscal years (other than reimbursement of reasonable expenses incurred as a director or reasonable compensation for services as a director); or (iii) is not an employee of or have a substantial financial interest in any entity that has made payments to or received them from the Organization for property or services which, in any of the last three fiscal years, exceeds the lesser of \$25,000 or two percent of the Organization’s consolidated gross revenues, and does not have a relative who is an officer of or has a substantial financial interest in any such entity. Payments in this context do not include charitable contributions.

“Key employee.” Any person who is, or at any time during the past five-year period was, in a position to exercise substantial influence over the affairs of NYCEEC as described in the Intermediate Sanctions provisions of the Internal Revenue Code whether or not legally an employee, as well as any person who is a “key employee” of NYCEEC for purposes of Internal Revenue Service Form 990.

“Officer.” A person elected or appointed to manage the organization’s daily operations, such as a president, vice president, secretary or treasurer, as determined by reference to the organization’s organizing document, bylaws or resolutions of its governing body or otherwise so

designated consistent with state law and, in addition (if not otherwise an officer) the top management official (*i.e.*, the person who has ultimate responsibility for implementing the decisions of the governing body or for supervising the management, administration or operation of the organization including any executive director), and the top financial official (*i.e.*, the person who has ultimate responsibility for managing the organization's finances). If two persons share such responsibility, both shall be deemed officers.

“Person, entity or organization.” Without limitation, natural persons, sole proprietorships, corporations, partnerships, limited liability companies, trusts, estates, joint ventures, unincorporated affiliations of any kind, government agencies, public boards and commissions and not-for-profit organizations or other entities or organizations.

“Related party.” Any person who is (i) a director, officer or key employee of the Organization (including any affiliate of NYCEEC); (ii) a relative of any director, officer or key employee of the Organization; (iii) an entity of which a director, officer, or key employee of the Organization or a relative of any such individual is a director, trustee, officer, or key employee or has managerial control; or (iv) an entity in which any individual described in clauses (i) and (ii) has a 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. An individual's ownership or beneficial interest in an entity shall be determined in accordance with the rules governing the constructive ownership of stock as set forth in Section 267(c) of the Internal Revenue Code of 1986, as amended (the “Code”), except that (i) in applying Section 267(c)(4) of the Code, the individual's family shall mean such individual's relatives, as defined in below, and (ii) Section 267(c)(3) of the Code shall not apply in determining such individual's ownership interest in a partnership.

“Related party transaction.” Any transaction in which a related party has a financial interest and in which the Organization (including any affiliate of NYCEEC) is a participant.

“Relatives.” An individual's spouse (or **domestic partner**), ancestors (including parents and step-parents and grandparents and step-grandparents), siblings (whether whole or half blood or by adoption or stepsiblings), descendants (including children, grandchildren, and great grandchildren whether natural or adopted), spouses (or domestic partners) of ancestors, siblings and descendants, in-laws (including father-, mother-, brother- or sister-in-law) and any person with whom the individual shares living quarters under circumstances that closely resemble a marital or familial relationship. A **“domestic partner”** includes any person (i) with whom the covered person or relative is in a domestic partnership or similar relationship pursuant to any federal, state or local law or law of a foreign jurisdiction or registered as a domestic partner of the covered person or relative under any employer registry or registry of any state, municipality or foreign jurisdiction; (ii) who is recognized as a beneficiary or covered person under the covered person's or relative's employment benefits or health insurance or under whose employment benefits or health insurance the covered person or relative is recognized as a beneficiary or covered person; or (iii) who is dependent or mutually interdependent on the covered person or relative for support or upon whom the covered person or relative is dependent or mutually interdependent for support.

“Transaction.” Without limitation, any agreement, understanding, transaction, arrangement, program or other activity with another person, entity or Organization.

Article III Procedures

Section 1. Duty to Disclose

Every covered person must disclose to the Organization’s Compliance Officer the existence of any possible conflict of interest, including any financial interest, which such person (or, to the best of such covered person’s knowledge, any of such person’s relatives) directly or indirectly has or may have in a transaction or proposed transaction with the Organization, promptly upon becoming aware of such possible conflict (such as at the time the covered person first became associated with the Organization or acquired such financial interest or conflicting relationship and in any case pursuant to any periodic inquiry from or certification to the Organization).

Any related party or other covered person who has a conflict, including an interest in a related party transaction, shall disclose in good faith to the audit committee, or if there is no such committee, the board of directors, the material facts concerning such conflict. Such disclosure may be made to the Compliance Officer, who shall disclose such information (if the director does not) to the other members of the board of directors or audit committee, or other board designated committee composed solely of independent directors, prior to such board or committee meetings considering the proposed transaction if not previously disclosed.

If the covered person is the Compliance Officer, disclosure shall be made to another appropriate corporate officer, who shall have the responsibilities of Compliance Officer with respect to such disclosure.

Section 2. Deliberations and Voting

Determinations regarding conflict matters shall be made by the board of directors or its executive committee (acting only through its independent directors), an audit committee or another authorized committee of the board composed solely of independent directors).

No related party or other covered person may participate in deliberations or voting relating to a matter with respect to which they may be conflicted, including any related party transaction; *provided, however*, that nothing in this policy shall prohibit the board of directors or any authorized board committee from requesting that such person present information concerning the transaction at a meeting of the board of directors or such committee prior to the commencement of deliberations or voting relating to such transaction. In no event shall a covered person or a related party influence improperly the deliberation or voting on the matter giving rise to a conflict or possible conflict. Directors who are not independent may be present at the time of such consideration but they may not participate in the deliberations or voting on matters covered by this policy if the Organization is a charitable corporation required to file an independent certified public accountant’s audit report with the Charities Bureau.

Determinations shall be made by majority vote of the directors present at the time of the vote, if a quorum is present at that time,

Section 3. Related Party Transactions

The following procedures shall apply only to related party transaction, not other types of conflicts.

If the related party has a substantial financial interest in a related party transaction, the board of directors, or an authorized committee of the Board, shall prior to entering into the transaction, consider alternative transactions to the extent available.

After the exercise of due diligence and deliberations (including, if required, consideration of whether a more advantageous transaction that is not a related party transaction is not reasonably available), the board of directors or authorized board committee shall determine whether the related party transaction is fair, reasonable and in the Organization's best interest at the time of such determination and, in conformity with the above determination, make its decision as to whether to enter into or continue the related party transaction.

The Organization shall not enter into any related party transaction unless the transaction is determined to be fair, reasonable and in the Organization's best interest at the time of such determination. Any transaction in violation of this Section 3 shall be deemed void or voidable.

If the board of directors approves and adopts an expense reimbursement policy permitting expenses that are (i) reasonably incurred, (ii) necessary to carrying out the Organization's purposes, and (iii) not excessive in amount to be reimbursed upon submission by the covered person of receipts, invoices or other similar documentation and a written description of the Organization's business purpose for incurring the expense, then the Organization may reimburse such expenses in accordance with the provisions of the expense reimbursement policy without requiring that each such reimbursement be approved in advance by the board of directors under this policy.

Section 4. Procedures for Addressing a Conflict of Interest if Not Involving a Related Party Transaction

The following procedures shall apply only to conflicts that are not related party transactions.

If a conflict arises other than from a related party transaction, the board of directors or authorized board committee may determine if it is advisable to ascertain if alternative arrangements with persons who are not in a conflict relationship should be investigated. Such investigation shall not be necessary if the proposed transaction is *de minimus* or the benefits to be derived for the Organization from such transaction are obvious (such as the goods or services being provided at a significant discount or otherwise on clearly advantageous terms) or there is prompt need to enter in the transaction. The board of directors or authorized board committee shall determine whether the proposed transaction is in the Organization's best interest, for its own benefit and fair and reasonable and, in conformity with the above determination, make its decision as to whether to enter into the transaction.

Section 5. Violations of the Conflict of Interest Policy

If the board of directors or committee has reasonable cause to believe a covered person or related party has failed to disclose an actual or possible conflict of interest and the related material facts, it shall inform such person of the basis for such belief and afford such person an opportunity to explain the alleged failure to disclose. If, after hearing such person's response and after making further investigation as warranted by the circumstances, the board of directors or committee determines such person has failed to disclose an actual or possible conflict of interest and the related material facts, it shall take appropriate disciplinary and corrective action.

Article IV Records of Proceedings

The minutes of meetings of the board of directors and all committees reviewing related party transactions and other conflicts of interest shall be prepared on a contemporaneous basis and shall contain:

- a. The names of the persons who disclosed or otherwise were found to have a possible financial interest in a transaction or proposed transaction or other possible conflict, the nature of the financial interest or other possible conflict, any action taken to determine whether a conflict of interest was present, and the board of directors' or committee's decision as to whether a conflict of interest in fact existed.
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the general content of the discussion, the basis for the board or committee approval including any alternatives to any proposed related party transaction which were considered if a related party had a substantial financial interest, any determination as to whether a transaction is in the Organization's best interest, for its own benefit and fair and reasonable, and any determination as to whether or not to enter into the transaction, and a record of any votes taken in connection with the proceedings.

Article V Compensation

A voting member of the board of directors or of any committee whose jurisdiction includes compensation matters who receives compensation, directly or indirectly, from the Organization for services (or who has a relative who receives such compensation) is precluded from voting on matters pertaining to that member's (or such relative's) compensation. However, no such person is prohibited from providing information to the board or any committee regarding compensation.

Article VI Statements from Covered Persons

Each director, officer and key employee shall promptly after the time that this Conflict of Interest Policy is adopted or, if later, when (or, in the case of directors, prior to the time) such

person assumes such position be provided with a copy of this policy and complete, sign and submit a written statement to the Secretary of NYCEEC identifying, to the best of such director's, officer or key employee's knowledge, (a) any entity of which such director is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or employee and with which the Organization has (or may likely have) a relationship, (b) any transaction in which the Organization is (or may likely be) a participant and in which the director might have a conflicting interest (including any financial interest in a transaction or proposed transaction) and (c) any existing or proposed related party transactions (including transactions involving affiliates of NYCEEC), substantially as set forth in the form of Annex A or such other certification form as shall from time to time be adopted by the board of directors.

At least annually thereafter (such as in connection with the annual audit, at the annual meeting of the Board or shortly thereafter), each director, officer and key employee shall submit a signed statement substantially in the form of Annex B or such other certification form as shall be adopted by the board of directors.

The Secretary of NYCEEC shall include a copy of all completed statements in the records of the Organization and provide a copy of all completed statements to the Compliance Officer (if a different person) and the Chair of the Audit Committee or, if there is no Audit Committee, to the Chair of the Board, or to the President if there is no Chair of the Board. A copy of each disclosure statement shall be available to any director of NYCEEC on request.

Article VII Adoption, Periodic Reviews and Amendment

This policy may be adopted or amended only by action of the independent directors on the Board of Directors **or** Executive Committee of NYCEEC by a majority of the directors present at the time of the vote, provided a quorum is present at such time. Directors who are not independent may be present at the time of such consideration but they may not participate in the deliberations or voting on matters covered by this policy.

To ensure that the Organization operates in a manner consistent with its tax-exempt purposes and does not engage in activities that could jeopardize its tax exempt status and its compliance with New York not-for-profit laws, periodic reviews of this policy and its implementation shall be conducted.

Names and Contact Information for Compliance Officer (and, if different, corporate secretary) (last updated 10/6/2014):

**Fred Lee
1359 Broadway, 19th Floor
New York, New York 10018
(646) 797-4617**

Name: _____

NEW YORK CITY ENERGY EFFICIENCY CORPORATION

Initial Disclosure Form

Note: if additional space is needed to provide answers, use the reverse or riders; terms in bold italics are defined in the Conflict of Interest Policy; if no information is required to answer a question, say “none,” “not applicable” or “NA.”

- A. **Conflicts of Interest Disclosures.** I have described below, to the best of my knowledge,
- (1) the names of all entities of which I am, or any *relative* is, an *officer, director*, trustee, member, owner (either as a sole proprietor, shareholder, member, partner or otherwise) or employee and with which the Organization (including any *affiliate* of NYCEEC) has an existing or proposed relationship and the nature of such role (with respect to relatives, limit your answer only to situations where the relative is an *officer, director*, trustee, member, owner or *key employee* of such entity),

 - (2) any *transaction* or proposed *transaction* in which the Organization is or may be a participant and in which I might have a *conflict of interest* or any other facts which may give rise to a *conflict of interest* and

 - (3) any *transaction* or proposed *transaction* in which the Organization (including any affiliate of NYCEEC) is a participant in which I, a *relative* of mine or any entity in which I or a *relative* have a 35% or greater ownership or beneficial interest (or with respect to a partnership or a professional corporation, a direct or indirect ownership interest in excess of 5%), have a *financial interest* (separately noting if such *financial interest* is thought by me to be a *substantial financial interest*):

(4) relatives of mine employed or retained by the Organization:

(5) Any other information which might be appropriate for disclosure relating to possible conflicts of interest:

B. Certifications. I hereby acknowledge that I:

- a. have received, read and understand, and agree to comply with, the Conflict of Interest Policy of the Organization (the “Policy”), and
- b. understand that the Organization is tax exempt and in order for the Organization to maintain any federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

PRINT NAME

SIGNATURE

DATE

Form of Subsequent Disclosure

Name: _____

NEW YORK CITY ENERGY EFFICIENCY CORPORATION

Additional Disclosure Form for _____, 20__

Note: if additional space is needed to provide answers, use the reverse or riders.

- A. **Changes from Initial Disclosure Form.** I have reviewed the disclosure form dated _____ (the "Initial Disclosure Form") [as supplemented by additional disclosure forms dated _____] [~~STRIKE THROUGH IF NOT APPROPRIATE~~] which I previously submitted pursuant to the Conflict of Interest Policy of NYCEEC and confirm that such [form is] [forms are] [~~STRIKE THROUGH INAPPROPRIATE PHRASE~~] currently correct except as otherwise noted below:

- B. **Certifications.** I hereby confirm the accuracy of all the statements made in Part B of the Initial Disclosure Form as if such statements were made as of the date of this certification

PRINT NAME

SIGNATURE

DATE