

**CPEX Pharmaceuticals, Inc.**  
**Code of Business Conduct and Ethics**

**Adopted and Effective May 13, 2008**

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## **I. INTRODUCTION**

CPEX Pharmaceuticals, Inc. (collectively with its subsidiaries, "CPEX" or the "Company") is committed to conducting our business in accordance with all applicable laws and regulations and in accordance with the highest standards of business conduct and ethics. This Code of Business Conduct and Ethics (the "Code") helps each of us in this endeavor by providing a statement of the fundamental principles and key policies and procedures that govern the conduct of our business. The Code applies to all our directors, officers and employees (collectively "employees").

This Code cannot provide answers to all issues that may arise. Employees are encouraged to seek assistance from the Chief Executive Officer or Chief Financial Officer if questions or concern arises with respect to any matter addressed in the Code. The Code is a statement of policies for individual and business conduct and does not, in any way, constitute an employment contract or an assurance of continued employment.

## **II. COMPLIANCE WITH LAWS**

CPEX upholds the letter and spirit of the laws in all locations in which our business operates and conducts transactions in full compliance with applicable laws and regulations as well as the listing standards of any exchange on which the Company's securities are traded. These are the conditions under which we compete, deliver value and act as responsible members of our communities. We are convinced of our ability to succeed honestly and expect all employees to abide by this conviction.

Employees are expected to comply with all applicable laws, regulations and the listing standards of any exchange on which the Company's securities are traded and to conduct themselves with the highest level of ethics and integrity. In some instances, there may be a conflict between the applicable laws of two or more countries, states or provinces. If such a conflict occurs, or if local law conflicts with the requirements of this Code, the more stringent course should be pursued. Employees are encouraged to seek advice when they are uncertain about what is required.

## **III. RESPONSIBILITY TO THE COMPANY**

Employees are expected to dedicate your best efforts to advancing the Company's interest and to make decisions that affect the Company based on the Company's best interest, independent of outside influences.

### **A. CONFLICTS OF INTEREST**

CPEX expects employees to act ethically and honestly in the best interest of the Company, including the handling of potential or actual conflicts of interest in personal and professional relationships. A "conflict of interest" arises when an employee's private interest interferes or even appears to interfere in any way with the Company's interests. Such a conflict can arise when an employee takes an action or has an interest that may make it difficult to perform his or her work objectively and effectively. Conflicts of

interest also arise when an individual benefits as a result of his or her position in the Company.

It is not possible to describe every situation in which a conflict of interest may arise, but the following are examples of situations that may constitute such a conflict:

- An employee or a family member receives an improper personal benefit as a result of the employee's position with CPEX.
- An employee or a family member has a financial interest in a transaction involving a CPEX competitor, customer or supplier.
- Owning or otherwise possessing, directly or indirectly, an interest in a competitor of, or a supplier, contractor or subcontractor doing business with, the Company, except for securities of such entities that are traded on a recognized securities exchange or in the over-the-counter market, if the amount of such ownership does not exceed 5% of the outstanding amount of the class of such securities.
- An employee works in any capacity for, or serves as a director of, a competitor, customer or supplier while employed by CPEX.
- An employee directs CPEX business to a supplier owned or managed by, or which employs, a relative or friend.

Full disclosure is the essential first step to remaining in full compliance with this policy. Employees must disclose any actual or reasonably apparent conflict of interest, including any existing or proposed transaction or relationship that reasonably could be expected to give rise to a conflict of interest. Employees must disclose such matters to their supervisor (or, if that person is involved in the matter, to the Chief Financial Officer who is responsible for consulting with the Chief Executive Officer or the Chair of the Audit Committee, as appropriate. Officers and directors must disclose such matters to the Chief Executive Officer and to the Chair or any other disinterested member of the Audit Committee charged with reviewing conflicts of interest.

The Board of Directors has adopted rules for what activities constitute conflicts of interest and potential conflicts of interest, as well as procedures for determining whether a relationship or transaction constitutes a conflict of interest, which it will review and, if appropriate, update from time to time. The current version of these rules and procedures are attached to this Code as Appendices A and B.

Following disclosure, any employee must avoid or terminate any activity that involves an actual or reasonably apparent conflict of interest unless it is determined at the appropriate level that the activity is not a conflict of interest or is otherwise not harmful to the Company or improper. Any such determination shall be made by the Chief Executive Officer or by the disinterested members of the Audit Committee as appropriate.

In addition, no director, director nominee or officer may enter into any transaction or relationship that is disclosable by the Company pursuant to SEC Regulation S-K, Item 404 without the prior approval of the Audit Committee. Nor may any employee directly or indirectly approve or represent the Company or the other party in arranging the terms

of any transaction between the Company and a party with which he/she has any relationship of a type that is disclosable by the Company pursuant to SEC Regulation S-K, Item 404. Any transaction between the Company and a party with which an employee has such a relationship shall be on an arms length basis. Details about this prohibition may be obtained through the Chief Financial Officer.

## **B. CORPORATE OPPORTUNITIES**

Employees owe a duty to the Company to advance its legitimate interests when the opportunity to do so arises. Employees who learn of a business or investment opportunity through the use of corporate property or information or his or her position in the Company, such as from a competitor or actual or potential customer, supplier or business associate of the Company, may not participate in the business opportunity or make the investment. Such an opportunity should be considered an investment opportunity for the Company. No employee may use corporate property, information or position for improper personal gain, or to compete with the Company.

## **C. INSIDER TRADING**

"Insider trading" is the purchase or sale of a publicly traded security on the basis of material nonpublic information about the issuer or the security. Certain employees may, in carrying out your responsibilities for the Company, become privy to nonpublic information regarding the Company or another public company (such as an alliance partner, supplier, or customer). All such nonpublic information should be considered inside information and should never be used for the employee's personal gain or that of family members, friends or acquaintances. Securities laws and Company policy prohibit employees from buying or selling securities on the basis of material, nonpublic information. Passing such information on to someone else who may buy or sell securities – known as "tipping" – is also prohibited.

Information is "material" if a reasonable likelihood exists that an investor would find the information "important" in determining whether to trade in a security, or the information, if made public, would likely affect the market price of a company's securities. Examples of material information include; unannounced dividends, earnings, financial results, important personnel changes, results of clinical trials, possible mergers or acquisitions, and important litigation developments.

Information is considered "nonpublic" unless adequate public disclosure has occurred, followed by sufficient passage of time for the securities market to digest the information. Adequate disclosure can include public filings with securities regulatory authorities and the issuance of press releases. A delay of one or two business days is generally considered a sufficient period of time for routine information to be absorbed by the market. Nevertheless, a longer period of delay might be considered appropriate in more complex disclosures.

If you are uncertain about the legal constraints on a purchase or sale of any Company securities or the securities of any other company that you are familiar with by virtue of

your relationship with the Company, you should consult with the Chief Executive Officer or Chief Financial Officer before making any such purchase or sale.

## **D. PROTECTION AND PROPER USE OF COMPANY ASSETS**

CPEX's assets include all the resources the Company maintains to conduct and plan our business. Among them are physical property and equipment, confidential information, intellectual property and other assets. Assets are used to promote the Company's interests and are never for personal gain. Employees are expected to protect CPEX's assets and ensure their efficient use.

### **1. Property and Equipment**

Employees must safeguard the Company's property and equipment and act to prevent careless or misguided use, waste, loss or theft, so that the Company can conduct business efficiently, compete successfully and be profitable. The Company's property and equipment may only be used for Company business. Incidental and occasional personal use of electronic mail and telephones are permitted, but such use should be minimized, as these uses cost the Company in both productive time and money.

### **2. Confidential and Proprietary Information**

Employees handle considerable information about business activities, operations and plans that are of great value to the Company and that are not known to the general public or competitors. Sensitive information such as trial data, marketing or strategic plans and product specifications are examples of the Company's information that must be maintained as confidential and proprietary.

Confidential information includes all nonpublic information that might be useful to competitors or others, or that could be harmful to the Company or those who do business with the Company if disclosed. Suppliers, business partners, and customers regularly provide confidential information to CPEX and trust that the information will be protected. Information received from third parties must be carefully safeguarded in accordance with good business judgment and practices as well as any applicable nondisclosure agreement(s). Unauthorized use or distribution of proprietary information is not allowed and could be illegal.

All employees must properly guard CPEX's confidential and proprietary information. This information should only be disclosed if there is a business necessity to do so (and then only subject to an appropriate non-disclosure agreement) or its disclosure is required by law.

Employees who possess or have access to confidential proprietary information should:

- Use the information only for business purposes and never for personal benefit or that of family members, friends or acquaintances.

- Carefully guard against disclosures of that information to people outside the Company. This requires discretion when speaking with family members, business or social acquaintances and when speaking in locations where the information can be overheard, such as public transportation, elevators or restaurants.
- Respect the privacy of customers, competitors and suppliers, and never accept information obtained through unethical or inappropriate means.
- Safeguard against careless opportunity, and never leave confidential and proprietary information visible or unattended. Files should be kept locked and protected. All computer security requirements must be observed.
- Never discuss confidential information with competitors such as price policy, costs, product roadmaps and innovations, inventories, marketing, production plans and capabilities. Collaboration or discussion of these subjects may be illegal.

Employees must comply with the above requirements and those of any confidentiality agreement signed at the outset of employment. Company restrictions relating to confidential information remain in full force beyond the conclusion of an individual's employment unless the information subsequently enters the public domain through proper means.

In keeping with these policies, employees should never disclose to anyone within the Company any confidential information about his or her former employer.

### **3. Information Resources**

The CPEX computer and network hardware, software, and data are key components of our business. Employees are responsible for protecting these resources from damage, destruction, viruses, alteration, theft, fraudulent manipulation, and unauthorized access, disclosure or use.

## **E. ENTERTAINMENT, GIFTS AND GRATUITIES**

When involved in making business decisions on behalf of the Company, employees' decisions must be based on uncompromised, objective judgment. Employees who interact with anyone conducting business with the Company (including suppliers, customers, competitors, contractors and consultants) must carry out such activities in the best interest of the Company based on consistent and unbiased standards. Personal relationships, gifts, hospitality, or anything else of direct or indirect value must not be used to influence decisions.

### **1. Receipt of Gifts**

Employees should not accept a gift from any organization or individual with which the Company does or seeks to do business, unless it:

- was unsolicited;
- is not a gift of cash or cash equivalents;
- is nominal in value (generally less than \$50, such as pens, pencils, calculators, or other logo item or memento);
- is given and accepted without obligation; and
- could not, in the view of a third party, affect the recipient's judgment.

If you receive a gift that does not comply with this policy, or you are unsure whether it complies, it should be reported in writing to the Chief Executive Officer or Chief Financial Officer.

## **2. Giving Gifts**

If an employee provides a gift in connection with the Company's business, it must be done in good taste and not excessively. Gifts must be of nominal value that does not go beyond common courtesies associated with accepted business practices. The above guidelines for receiving gifts should be followed in determining when it is appropriate to give gifts.

Our customers and suppliers likely have gift policies of their own. When providing a gift in connection with the Company's business, unless it is nominal in value, you should first consult with the proposed recipient to determine if such a gift violates his or her company's policies.

## **3. Meals and Entertainment**

Providing or accepting occasional business meals and entertainment is permissible when appropriate for business objectives, as long as they are customary and commonly accepted business courtesies and not excessive in value. Meals and entertainment should not be offered or accepted if they would likely result in a feeling or expectation of personal obligation, or might affect the business judgment or decision of either party.

## **4. Government Officials**

Special laws apply when dealing with public officials and when conducting business with government entities. What is acceptable in the commercial business environment may be entirely unacceptable in dealings with government officials. There are strict laws that govern providing anything of value, including gifts, meals, entertainment, transportation and lodging, to government officials or employees or members of your families. Employees must understand and comply with these laws.

Employees must never offer money or anything of value to a government official in an effort to obtain special advantage or in an attempt to improperly influence the official's acts or decisions. Further, employees must obtain written approval from the Chief Executive Officer, Chief Financial Officer or, in the case of any

officer or director, the Chair of the Nominating and Governance Committee before giving anything of value to a government official, including gifts, entertainment and travel arrangements. For further information, see "Bribery, Kickbacks and Fraud" and "Interacting with Government Officials" below.

#### **F. DISCLOSURES**

CPEX maintains a policy to make full, fair, accurate, timely and understandable disclosure in compliance with all applicable laws, rules and regulations in all reports and documents that the Company files with, or submits to, the Securities and Exchange Commission and in all other public communications made by the Company.

#### **G. BOOKS AND RECORDS**

Employees must complete all Company documents accurately, truthfully, completely, and in a timely manner, as well as comply with the Company's review and approval procedures. This includes but is not limited to expense reports, time sheets, reporting of vacation or paid time off, payroll and service records, bills, equipment orders, or invoices and other financial data such as might be submitted to Company auditors or government agencies. These records are critical to the management of the business. False, misleading, or incomplete information undermines the Company's ability to make good decisions about resources, personnel, and programs and, in some cases, violates the law.

Compliance with the accounting and internal control procedures of CPEX is mandatory. No undisclosed or unrecorded bank account, fund or asset may be established or maintained. Employees must never create a false or misleading report or request or make a payment or establish an account on behalf of the Company with the understanding that any part of the payment or account is to be used for a purpose other than as described by the supporting documents. Employees must never sign another's name or sign on behalf of anyone other than themselves, unless authorized to do so.

#### **H. RESPONDING TO INQUIRIES FROM THE MEDIA AND OTHERS**

CPEX designates particular individuals as directly responsible for handling inquiries and questions regarding the Company and our business from the media, financial analysts or other members of the financial community, government officials or the general public. Employees are thus instructed to refer any inquiries regarding our financial condition and statements and related matters to the Chief Executive Officer or Chief Financial Officer. All inquiries concerning the Company from the media, financial analysts or the general public should be referred to the Chief Executive Officer or Chief Financial Officer. Inquiries from regulators or governmental agencies should be referred to the Chief Executive Officer or Chief Financial Officer.

### **IV. RESPONSIBILITY TO EMPLOYEES**

CPEX promotes and strives for an environment in which all employees can develop and perform to the best of their abilities.

## **A. RESPECTING ONE ANOTHER**

The way employees treat each other and our work environment affects the way we do our jobs. All employees want and deserve a work place where they are respected and appreciated. CPEX highly values and respects our employees' diversity of backgrounds, skills and professional expertise. We encourage employees to value the diversity that their environment offers and expect you to treat all employees with the respect and integrity characteristic of CPEX.

## **B. SAFETY IN THE WORKPLACE**

The safety of all employees is of utmost concern for everyone. A safe working environment contributes greatly to good health. Employees must observe prescribed safety and health guidelines and notify supervisors or safety officers of unsafe working conditions, equipment or practices. Employees must also comply with all applicable laws, regulations and internal guidelines regarding environmental protection, handling of hazardous materials and disposal of waste.

## **C. EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION**

In addition to complying with applicable wage, labor and employment laws, it is the Company's policy to ensure equal employment opportunity without discrimination or harassment on the basis of race, color, national origin, citizenship, religion, marital status, gender, sexual orientation, age, disability or any other status protected by law.

All CPEX hiring and employment practices are to comply with local laws and regulations, guided by business considerations such as qualifications and capabilities. Any actions or practices which degrade employees or can reflect badly on the Company's reputation should be brought to the attention of the Chief Executive Officer or Chief Financial Officer.

## **D. PRIVACY**

The Company respects the privacy of all individuals including, but not limited to, its employees and participants in its clinical trials. CPEX collects and maintains personal information that relates to employment and participation in and results of clinical trials, including medical and benefit information, and follows all applicable laws and regulations regarding privacy and data protection. Personal data may be collected, processed and used for legitimate business purposes only and may not be released outside the Company without appropriate consent and/or approval and may be released by Human Resources only. The Company reserves the right to release personal information for legitimate business purposes in accordance with applicable laws in carrying out Company affairs and authorized investigatory or legal requirements.

Each employee must take care to protect such information and data from inappropriate or unauthorized use or disclosure, and to ensure compliance with applicable laws and regulations.

## **V. COMPETITION AND FAIR DEALING**

Employees are expected to deal fairly with the Company's customers, competitors and suppliers. Employees must never pursue unlawful or unethical means to gain unfair advantage of others through manipulation, concealment, abuse of privileged information, misrepresentation of material fact or any other unfair dealing practice.

### **A. BRIBERY, KICKBACKS AND FRAUD**

In dealing with employees, customers, suppliers, contractors, agents, competitors or government officials of any type or other employees, we conduct our business with the utmost integrity. Employees must not offer, give or receive any type of bribe, kickback or payoff (whether in cash, in kind, or in any other form) to anyone in order to influence some decision affecting the Company's business or for the personal gain of an individual. Employees may not offer, make, solicit or accept such prohibited payments either directly, through personal involvement, or indirectly, through a third party such as an agent or consultant acting on your behalf.

## **VI. INTERACTING WITH GOVERNMENT**

### **A. RELATIONSHIPS WITH PUBLIC OFFICIALS**

Special laws apply when dealing with public officials, and employees who interact with public officials must understand and comply with these laws.

To help employees understand their obligations, discussed below are some general principles that must be followed when dealing with public officials.

Employees are prohibited from offering money or anything of value to a public official in an effort to obtain a special advantage or in an attempt to improperly influence the official's acts or decisions. Additionally, employees must obtain written approval from the Chief Executive Officer or Chief Financial Officer before giving anything of value to a public official, including gifts, entertainment and travel arrangements. Legally mandated fees and liabilities (such as fees for permits or payments of tax liabilities) must be properly authorized and supported by proper documentation, including receipts.

The term "public official" is broadly defined to include not only elected officials but also employees of government agencies and government-controlled businesses, politicians, political parties, political candidates and employees of international organizations (e.g., the United Nations). It also includes anyone acting in an official capacity on behalf of a public official, as well as members of royal families.

Employees must not do indirectly what they may not do directly. Accordingly, employees may not use a third party, such as a consultant, contractor or a close relative of a public official, as a conduit for making an improper payment. Furthermore, employees may not ignore suspicious conduct by third parties acting on behalf of the Company. Both employees and the Company can be held liable for the acts of third parties under the appropriate circumstances.

Employees responsible for retaining third parties must conduct due diligence on the prospective agent, and must monitor the agent's activities to ensure the agent abides by applicable laws. Contact the Chief Executive Officer or Chief Financial Officer for additional guidance on performing due diligence. When appropriate, written agreements with third parties should include a statement that the agent will not make improper payments and will comply with all applicable laws.

Dealings with public officials are closely scrutinized by law enforcement officials. Therefore, employees must avoid even the appearance of impropriety in this context.

## **B. POLITICAL CONTRIBUTIONS**

Federal law and the laws of certain jurisdictions prohibit a corporation, such as CPEX, from making political contributions. This includes monetary contributions (e.g., in the form of a corporate check or a purchase of tickets to a political fundraiser), as well as "in-kind" contributions (e.g., the use of Company funds, assets, services or facilities on behalf of a political party, candidate or political committee (e.g., a political action committee ("PAC") or ballot measure committee). Furthermore, it is Company policy that CPEX as an enterprise does not endorse political candidates, parties or committees. To ensure that the Company is in compliance with these laws, employees should not make any political contribution or other expenditure using corporate funds to any candidate, campaign, political party, political committee or any entity exempt from federal income taxes under Section 527 of the Internal Revenue Code.

CPEX does not discourage or prevent individuals from making political contributions or engaging in political activities on their own behalf, provided that certain requirements are met. Employees' working hours could be considered the equivalent of a contribution by the Company. Therefore, employees will not be paid by the Company for any time spent running for public office, serving as an elected official, or campaigning for a political candidate. Furthermore, employees may not use any corporate funds or assets, such as corporate facilities or personnel, in connection with such activities. CPEX will not compensate or reimburse political contributions made or intended by employees in any form.

## **C. LOBBYING ACTIVITIES**

The U.S. federal government, each state, and certain localities have laws requiring registration and reporting by lobbyists and in some cases, by the lobbyist's employer. Generally, lobbying activity includes communicating with any member or employee of a legislative branch of government for the purpose of influencing legislation. The U.S. Government and many states, however, have extended the definition of lobbying activity to cover efforts to influence formal rulemaking by executive branch agencies or other official actions of agencies, including the decision to enter into a contract or other financial arrangement.

So that the Company may comply with lobbying laws, employees must notify the Chief Executive Officer or Chief Financial Officer before engaging in any activity on behalf of the Company that might be considered "lobbying" as described above.

## **VII. IMPLEMENTATION OF THE CODE**

### **A. SEEKING GUIDANCE**

This Code cannot and is not intended to answer all legal questions and expound all instances of ethical behavior. Situations may arise in which guidance must be sought to navigate a legal and an ethical course of action. Employees are encouraged to seek the advice of the Chief Executive Officer or Chief Financial Officer if they have any questions or if they are doubtful about the appropriate course of action.

### **B. REPORTING VIOLATIONS**

Every employee has the responsibility to ask questions, seek guidance, report suspected violations and express concerns regarding compliance with this Code or any of the Company's related policies. Anyone who believes that any other employee has engaged or is engaging in conduct that violates applicable law or this Code should promptly report such information to the Chief Executive Officer, Chief Financial Officer or the Company's Audit Committee. Any issue of financial misconduct should be reported promptly to the Chair of the Audit Committee.

You may also report such conduct anonymously, including through the Company's website at <http://www.cpexpharm.com>. The Company also has a 24-hour Helpline 888-329-6440, which employees can use to report violations of the Company's policies or to seek guidance on those policies, including complaints or concerns regarding Accounting Issues.

Employees may report suspected violations anonymously; however, there may be circumstances when the Company is obligated to divulge your identity. Providing your name may expedite the time it takes the Company to respond to the concern, and it also allows the Company to contact the employee directly if necessary during an investigation.

***The Company does not allow anyone to discipline, discriminate against or retaliate against any person who reports such conduct in good faith or who cooperates in any investigation or inquiry regarding such conduct.***

Employees should treat the information that they provide as confidential, and the Company will treat the information as confidential to the extent reasonable.

The Company's Chief Financial Officer shall maintain written records of all reports of material violations of this Code and the resolution thereof and of all waivers granted under this Code.

### **C. INVESTIGATION OF SUSPECTED VIOLATIONS**

All reported violations will be promptly investigated and treated confidentially to the extent reasonably possible. Employees who have reported a violation should not conduct their own preliminary investigations. Investigations of alleged violations may involve complex legal issues, and acting on your own may compromise the integrity of an investigation and adversely affect both you and the Company. Any such unauthorized investigation, as well as failure to cooperate with an authorized investigation, is a violation of this Code.

### **D. DISCIPLINE FOR VIOLATIONS**

The Company intends to use every reasonable effort to prevent the occurrence of conduct not in compliance with the Code and to stop any such conduct that may occur as soon as reasonably possible after its discovery. Subject to applicable law and agreements, employees who violate this Code and related Company policies and procedures may be subject to disciplinary action, up to and including termination of employment.

### **E. WAIVERS AND AMENDMENTS**

The Company will waive application of the policies set forth in this Code only where circumstances warrant granting a waiver. Waivers of the Code for the Company's directors and executive officers may be made only by the Company's Board of Directors or a committee of the Board that is granted such authority.

Waivers and amendments of the Policy will be promptly disclosed as required by law or regulation.

### **F. ACKNOWLEDGEMENT**

Each employee must indicate that he or she has received, read and will abide by this Code of Business Conduct and Ethics by signing and dating the attached acknowledgement and returning it promptly to the Chief Financial Officer.

**CPEX Pharmaceuticals, Inc.**

**Code of Business Conduct and Ethics**

**Acknowledgement and Agreement**

I have received and reviewed the Code of Business Conduct and Ethics and I understand its contents. I agree to comply fully with the standards, policies and procedures contained in the Code and the Company's related policies and procedures. I acknowledge that the Code does not, in any way, constitute an employment contract or an assurance of continued employment or any other rights.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Printed Name

\_\_\_\_\_  
Date

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

Address of workplace

**Please complete and return this acknowledgement form to:**

**Chief Financial Officer**  
CPEX Pharmaceuticals, Inc.  
2 Holland Way  
Exeter, New Hampshire 03833

## APPENDIX A

### CONFLICTS OF INTEREST RULES

#### I. IMPROPER CONFLICTS OF INTEREST

The Board of Directors has adopted the following rules to aid in determining whether a relationship or transaction constitutes a conflict of interest. The Board has determined that the following involve an improper conflict of interest under the Company's Code of Business Conduct and Ethics. This list is not exhaustive and is subject to review and revision by the Board from time to time.

##### A. EMPLOYEES AND OFFICERS. An employee or officer must not:

1. perform services as an employee, officer, director, advisor, consultant (directly or through an entity) or in any other capacity for a significant customer, significant supplier or direct competitor of the Company, other than at the request, or with the prior approval, of the Company;
2. have a financial interest in a significant supplier or significant customer of the Company, other than a direct or indirect investment representing less than five percent (5%) of the outstanding shares of a publicly-held company or less than five percent (5%) of the outstanding shares of a privately-held company; or
3. have a financial interest in a direct competitor of the Company, other than a direct or indirect investment representing less than five percent (5%) of the outstanding shares of a publicly-held company.

##### B. NON-EMPLOYEE DIRECTORS. A non-employee director must not:

1. perform services as an employee, officer, director, advisor, consultant (directly or through an entity) or in any other capacity for a direct competitor of the Company;
2. have, or permit any close relative to have, a financial interest in a direct competitor of the Company, other than a direct or indirect investment representing less than five percent (5%) of the outstanding shares of a publicly-held company;
3. use his or her position with the Company to influence any decision of the Company relating to a contract or transaction with a supplier or customer of the Company if the director or a close relative of the director:
  - (a) performs services as an employee, officer, director, advisor, consultant (directly or through an entity) or in any other capacity for such supplier or customer; or

- (b) has a financial interest in such supplier or customer, other than a direct or indirect investment representing less than five percent (5%) of the outstanding shares of a publicly-held company; or
4. induce or otherwise assist or participate, directly or indirectly, in a close relative's involvement with or investment in a significant supplier, significant customer or direct competitor of the Company in a manner that would be prohibited for the employee or officer under any of the prohibited activities listed above.

A "close relative" of a person includes a spouse, parent, sibling, child, mother- or father-in-law, son- or daughter-in-law or brother- or sister-in-law, and any other relative living in the same home with the person. A "significant customer" is a customer that has made during the Company's last full fiscal year, or proposes to make during the Company's current fiscal year, payments to the Company for property or services in excess of 5% of (i) the Company's consolidated gross revenues for its last full fiscal year or (ii) the customer's consolidated gross revenues for its last full fiscal year. A "significant supplier" is a supplier to which the Company has made during the Company's last full fiscal year, or proposes to make during the Company's current fiscal year, payments for property or services in excess of 5% of (i) the Company's consolidated gross revenues for its last full fiscal year or (ii) the customer's consolidated gross revenues for its last full fiscal year.

## **II. POTENTIAL CONFLICTS OF INTEREST REQUIRING DISCLOSURE**

The Board of Directors has determined that the following involve potential conflicts of interest that must be disclosed under the Company's Code of Business Conduct and Ethics and then addressed in any manner determined in accordance with the procedures thereunder:

- An employee, officer or director has a close relative who serves as an officer or director of a significant supplier, significant customer or direct competitor of the Company and such service would have been prohibited if the employee, officer or director were serving in that role under Section I of these rules.
- Any other material financial interest of an employee, officer or director in connection with any business relationship with the Company or any similar interest of a close relative of any of them that is known to the related employee, officer or director.

## APPENDIX B

### PROCEDURES FOR DETERMINING CONFLICTS OF INTEREST AND WAIVERS

In determining whether a conflict of interest exists and whether to waive a Code of Business Conduct and Ethics provision in a particular circumstance, the appropriate officer or the Audit Committee, as the case may be, should also consider:

- **the person involved in the potential conflict** (For example, whether the person is an officer or a director of the Company and, if a director of the Company, whether the person is an independent director. The more peripheral the person's relationship to the Company is, the less likely that person is to influence the Company's day-to-day operations and therefore the less likely the circumstance is to be disadvantageous to the Company);
- **the nature of the relationship or situation creating the potential conflict of interest** (For example, does the issue arise because the person serves as an officer of the Company and a director of a contracting party with the Company? Is the person a director of the Company and an officer of a contracting party with the Company? Is the person a director of the Company and a director of a contracting party with the Company? Or is the director or officer of the Company related to a person that is a director or officer of the contracting party with the Company? The more peripheral the relationship of the person to either of the companies involved, the less likely that person is able to influence either company's day-to-day decisions and therefore the less likely the relationship or activity is to be disadvantageous to the Company);
- **the nature of the company with which the director or officer is affiliated** (For example, is the company a competitor of the Company or a collaborator or a supplier or customer, and how significant a competitor, collaborator, supplier or customer is the company?);
- **the nature of any proposed transaction**, including:
  - the size of the transaction,
  - whether the Company has engaged in this type of transaction before, either with this party or others,
  - other connections with the other party,
  - leverage of the other party,
  - whether there were unusual terms associated with the transaction, and
  - whether the terms offered are those that the Board believes would be offered or could be obtained absent the relationship;
  - the level of involvement of the officer or director involving questions in any proposed transaction, including whether the waiver candidate will receive any compensation or other benefit tied to the transaction;

- whether the individual usurped a corporate opportunity;
- whether the proposed transaction or relationship would cause a director to lose his status as an independent director; and
- how any related disclosure would appear in, for example, The Wall Street Journal or other public forum.

After reviewing these considerations and any others it considers appropriate, the appropriate officer or the Audit Committee, as the case may be, should then consider whether the relationship or activity (i) will adversely affect the Company, (ii) was undertaken by the individual in good faith, (iii) constitutes a breach of loyalty to the Company and its stockholders, (iv) constitutes a violation of law, and (v) confers an improper personal benefit on the individual. The appropriate officer or the Audit Committee should then be in a position to determine if a conflict of interest exists and, if so, whether to waive the conflict if the relationship or activity is in the best interests of the Company or not opposed to those interests.