



# CONFLICT OF INTEREST POLICY

Approved by the Board of Directors September 15, 2023

## **Section 1. Purpose and Goals**

The purpose of this conflict of interest policy (the “Policy”) is to protect the interests of Team New York Aquatics Inc. (“TNYA”) when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a Director, Officer, or Key Person of TNYA or one of their relatives. TNYA will not enter into any such transaction or arrangement unless it is determined by the Board in the manner described below to be fair, reasonable and in the best interests of TNYA at the time of such determination.

This Policy is intended to supplement, but not replace, any applicable state and federal laws governing conflicts of interest applicable to not-for-profit and charitable organizations.<sup>1</sup>

Definitions of “Key Person,” “Related Party,” and other capitalized terms used in this policy can be found in Section 7 below.

## **Section 2. Related Party Transactions and the Duty to Disclose**

Under this Policy, if TNYA contemplates entering into a Related Party Transaction, the Board must determine if the transaction is fair, reasonable, and in the best interests of TNYA. A Related Party Transaction is not necessarily a prohibited transaction.

If at any time during his or her term of service a matter for decision or approval comes before the Board in which a Related Party has a Financial Interest, that Financial Interest must be promptly disclosed in writing to the Secretary, together with all material facts. The Board will then follow the procedures set forth in this Policy.

Failure to disclose to the Board a known Financial Interest or a known potential Related Party Transaction is *per se* grounds for removal from the Board.

## **Section 3. Disclosure and Voting**

- (a) *Disclosure.* Any Related Party shall disclose in good faith all material facts of that Party’s Financial Interest to the Board.

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<sup>1</sup> This conflict-of-interest policy is designed to comply with both Federal excess benefit transaction rules (26 U.S.C. §4958 et seq.) and New York State Not for Profit Corporation Law § 715 and 715-a. As a result, in some instances organizations may have to go further than would be required under either state or federal law alone to review a transaction in order to ensure that both sets of rules are satisfied.

- (b) *Non-Participation and Review.* All transactions, agreements or any other arrangements between TNYA and a Related Party, and any other transactions which may involve a potential conflict of interest, shall be reviewed by the Board. No Related Party shall vote, act, or attempt to influence improperly the deliberations or voting on any matter in which that person has been determined by the Board to have a Financial Interest or conflict of interest. All Related Parties with a conflict of interest shall leave the room while such deliberations and voting are conducted, although at the request of the Board they may provide information regarding the transaction prior to the deliberations. A party's failure to comply with these requirements is *per se* cause for removal from the Board.
- (c) *Consideration of Alternative Transactions and Comparability Data.* If the contemplated Related Party Transaction pertains to compensation for services or the transfer of property or other economic benefit to a Related Party, prior to entering into the transaction the Board must determine that the value of the economic benefit provided by TNYA to the Related Party does not exceed the value of the consideration received in exchange by obtaining and reviewing appropriate comparable data, including by considering alternative transactions to the extent possible.
- (d) *Voting on Related Party Transactions.* TNYA will not enter into any Related Party Transaction unless it is determined to be fair, reasonable and in the best interest of TNYA and is approved by not less than a majority vote of the Independent Directors present at the meeting. The Board shall document the meeting contemporaneously as described in this Policy, including its consideration of any alternative transactions. Only Independent Directors shall vote on Related Party Transactions.
- (e) *Voting on Matters in Which a Related Party Has a Conflict of Interest.* If a motion concerns a matter that is not a Related Party Transaction, but a director or officer is found to have a conflict of interest with respect to that matter, the motion may be approved only with the approval of a majority of the unconflicted Directors present at the meeting; the conflicted directors shall be deemed present for purposes of quorum but not for determining whether the motion is approved. The Board shall document the meeting contemporaneously as described in this Policy, including its consideration of any alternative transactions.
- (f) *Compensation for Services.* Pursuant to section 8.11 of the Bylaws, compensation shall be determined by a Compensation Committee comprising all Independent Directors then in office. No person who receives compensation directly or indirectly may serve as a member, whether voting or non-voting, of the Compensation Committee, or act on any matters pertaining to that Director's or Officer's compensation; provided, that such a person may upon request of the Committee provide information regarding compensation.
- (g) *Delegation of Conflicted Officer Responsibilities.* If a Related Party is required not to participate in a matter pursuant to section 3(b) of this Policy but would otherwise participate in that matter solely in their capacity as an officer, the Board, or if the urgency of the situation requires a faster decision, the Co-Chairs, shall determine which person

shall exercise the functions of that recused officer with respect to that conflict.<sup>2</sup>

#### **Section 4. Compensation and Conflicts Committee Review**

The Board may delegate to the Compensation and Conflicts Committee (“CCC”), which shall be composed solely of Independent Directors, the adoption, implementation of and compliance with this policy. The Board may delegate to the CCC review and approval of any Related Party Transaction involving a Related Party and TNYA, as contained in this Policy; provided that if the Related Party Transaction would otherwise require full Board approval, the CCC shall submit the Related Party Transaction to the Board for consideration, providing its recommendation as to whether or not to approve it.

#### **Section 5. Records of Proceedings**

The minutes of all meetings of the Board and all Committee meetings at which a Related Party Transaction is considered shall contain:

- The names of the persons who disclosed or otherwise were determined to have a potential or actual Financial Interest and/or conflict of interest, the nature of the potential or actual Financial Interest and/or conflict of interest, any action taken to determine whether a Financial Interest or conflict of interest exists, and the Board’s determination as to whether a Financial Interest and/or conflict of interest exists.
- The names of the persons who were present for deliberations and votes relating to any determinations under this section, including whether the Related Party and any Directors who are not Independent Directors left the room during any such deliberations, the content of such deliberations, including consideration of alternative transactions, and whether or not the transaction with the Related Party was approved by the Board.
- The minutes shall document contemporaneously the deliberations and determination regarding any the Financial Interest or conflict of interest.

#### **Section 6. Initial and Annual Written Disclosures**

Prior to a Director’s initial election to the Board, or an Officer or Key Person’s employment by TNYA, and thereafter on an annual basis, all Directors, Officers, and Key Persons shall disclose in writing to the Secretary:

- Any entity of which the Director, Officer or Key Person is an officer, Director, trustee, voting member, owner (in whole or in part) or employee and with which TNYA has a financial relationship.
- Any transaction in which the corporation is a participant and in which the Director, Officer or Key Person, or one of his or her relatives might have a conflicting interest.

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<sup>2</sup> In the event that both of the Co-Chairs are also required not to participate pursuant to section 3(b) of this Policy, the Chair of the Compensation and Conflicts Committee, or in the absence or recusal of the Chair, the Independent Director with the longest term of Board service eligible to participate in the decision, shall exercise the functions set forth in section 3(f).

A copy of each disclosure statement shall be kept in Corporation's files and made available to any Director, Officer, or Key Person upon request.

### **Section 7. Annual Statements**

Each Director, Officer, and Key Person shall annually sign and submit to the Secretary a statement which affirms such person: (a) has received a copy of this Policy, (b) has read and understands the Policy, and (c) has agreed to comply with the Policy.

### **Section 8. Special Rules Regarding Participation by Related Parties in TNYA Activities**

Related Parties are welcome to participate in TNYA activities in exactly the same way as any TNYA member, but must at all times participate in those activities on the same terms as a member who is not a Related Party, except as required by the TNYA office they hold (if any).

Certain officers, coaches, and practice gatekeepers are given administrative access to Mindbody, TNYA's centralized membership, practice scheduling, and activity fee payment platform, to carry out TNYA functions. No officer may use this Mindbody access to bring about a result with respect to their own participation in TNYA activities (or the participation in TNYA activities of their Relative) that they or their Relative could not achieve by using the standard member interface on Mindbody.

If a member with administrative access would, as an ordinary member, be entitled to request that a Mindbody administrator execute an operation on their behalf (e.g. cancellation of a subscription in accordance with TNYA policy), that operation must be carried out by a disinterested officer, not the requesting officer, and logged separately in a document maintained by the Secretary open to inspection by the Board.

### **Section 9. Definitions**

Affiliate. An affiliate of TNYA is a person or entity that is directly or indirectly through one or more intermediaries, controlled by, in control of, or under common control with TNYA.

Board of Directors or Board. The TNYA Board of Directors.

Conflict of Interest. A conflict of interest includes, but is not limited to:

- (a) a Financial Interest;
- (b) a Misconduct Interest; or,
- (c) any other personal or private interest in a matter which tends, or would reasonably be perceived to tend, to impair a person's independence of judgment in the performance of that person's fiduciary duties with respect to that matter.

Director. Any member of the Board of Directors.

Domestic partner. A domestic partner is, with respect to another party, any person deemed a

domestic partner of the party by operation of law (including but not limited to New York Public Health Law § 2961[6-a]) or any person who is or would reasonably be perceived to be in a romantic relationship with that party. Any doubt in respect to the application of this definition shall be resolved in favor of a finding that the person is a domestic partner.

Financial Interest. A person has a Financial Interest if such person would receive an economic benefit, directly or indirectly, from any transaction, agreement, compensation agreement (including direct or indirect remuneration as well as gifts or favors that are not insubstantial), or other arrangement involving TNYA.

Independent Director. A member of the Board of Directors (the “Board”) who:

- is not a Co-Chair, Treasurer, Secretary, or Coaching Coordinator;
- is not and has not been an employee or a Key Person of TNYA or an Affiliate of TNYA within the last three years;
- does not have a Relative who is or has been a Key Person of TNYA or an Affiliate of TNYA within the last three years;
- has not received and does not have a Relative who has received more than \$10,000 in compensation directly from TNYA or an Affiliate of TNYA in any of the last three years (not including reasonable compensation for services or reimbursement for expenses reasonably incurred as a Director of TNYA, as set by TNYA);
- does not have a substantial Financial Interest in and is not an employee of, and does not have a Relative who has a substantial Financial Interest in or is an Officer (as defined below) of, any entity that has provided payments, property or services to, or received payments, property or services from, TNYA or an Affiliate of TNYA in excess of the lesser of \$10,000 or 2% of the entity’s consolidated gross revenue in any of the last three fiscal years
- is not and does not have a Relative who is a current owner, whether wholly or partially, Director, officer or employee of TNYA’s outside auditor or who has worked on TNYA’s audit at any time during the past three years;
- is not in an employment relationship under control or direction of any Related Party (as defined below) and does not receive payments subject to approval of a Related Party; or
- does not approve a transaction providing economic benefits to any Related Party who in turn has approved or will approve a transaction providing economic benefits to the Director.

Key Person. A Key Person is a person who:

- Has responsibilities, or exercises powers or influence over TNYA as a whole similar to the responsibilities, powers, or influence of Directors and officers;
- Manages TNYA, or a segment of TNYA that represents a substantial portion of the activities, assets, income or expenses of TNYA; or
- Alone or with others controls or determines a substantial portion of TNYA’s capital expenditures or operating budget.

Misconduct Interest. A person has a Misconduct Interest if that person or a Relative of that person is a complainant, respondent, or witness in acts alleged to constitute a breach of the TNYA Code of Conduct or any policy incorporated into the TNYA Code of Conduct by

reference.

Officer. A Board Officer or other officer as those terms are defined in section 7.1 of the Bylaws.

Related Party. Persons who may be considered a Related Party of TNYA or an Affiliate of TNYA under this Policy include:

- (a) Directors, Officers, or Key Persons of TNYA or an Affiliate of TNYA;
- (b) Relatives of Directors, Officers, or Key Persons;
- (c) any entity in which a person in (a) or (b) 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 5%;
- (d) Founders of TNYA;
- (e) Substantial contributors to TNYA (within the current fiscal year or the past five fiscal years);
- (f) Persons owning a controlling interest (through votes or value) in TNYA;
- (g) Any non-stock entity controlled by one or more Key Persons;
- (h) Any other person who is, or has within the last five years, been in a position to exercise substantial influence over the affairs of TNYA.

Related Party Transaction. Any transaction, agreement or any other arrangement with TNYA or an Affiliate of TNYA in which a Related Party has a Financial Interest. Any Related Party Transaction will be considered a conflict of interest for purposes of this Policy.

Relative. A Relative is a spouse, domestic partner, ancestor, child (whether natural or adopted), grandchild, great grandchild, sibling, or spouse or domestic partner of a child, grandchild, great grandchild or sibling (inclusive in all cases of step-relations). Any doubt in respect to the application of this definition shall be resolved in favor of a finding that the person is a Relative.