

*adopted 1-27-12*

**EXECUTIVE COMPENSATION AND INTERMEDIATE SANCTIONS POLICY  
OF  
PROTECTION AND EDUCATION RE: ANIMALS,  
CULTURE AND THE ENVIRONMENT, INC.**

**Section 1. Introduction and Purpose.** This executive compensation and intermediate sanctions policy ("Policy") is hereby established by Protection and Education Re: Animals, Culture and the Environment, Inc. (the "Corporation") to ensure that its compensation arrangements with related parties are evaluated and entered at arms' length and that any compensation that is paid to a related party is reasonable and reflects fair market value.

More specifically, this Policy is intended to manage and avoid any transaction that would constitute an "excess benefit transaction" as that term is defined in Section 4958 of the Internal Revenue Code of 1986, as amended (the "Code"). The Corporation is a Colorado nonprofit corporation and is exempt from federal income tax as an organization described in Code Section 501(c)(3). The Corporation is an organization subject to the taxes on excess benefit transactions as set forth in Code Section 4958. Accordingly, it is the intent of the Corporation to avoid any transaction which could give rise to the excise (penalty) taxes imposed by Code Section 4958.

**Section 2. Definitions.** The following terms as used in this Policy are more fully defined in Code Section 4958 and the Treasury Regulations (the "Regulations") issued pursuant thereto. Key definitions can be summarized as follows:

- a. The term "Disqualified Person" means a person who is or has been in a position to exercise substantial influence over the affairs of the Corporation during the five years ending on the date of the transaction, a member of his or her family, or an entity in which the disqualified person has in excess of thirty-five (35%) percent control. Persons holding the following powers and responsibilities are deemed to be in a position to exercise substantial control over an organization: voting members of the governing body, the president, the chief executive officer, the chief operating officer, the treasurer and the chief financial officer. Others may be in a position to exercise substantial control over the Corporation if the facts and circumstances justify such a conclusion.
- b. The term "Excess Benefit" means the amount by which the value of the economic benefit provided by the Corporation directly or indirectly to or for the use of a Disqualified Person exceeds the consideration received from the Disqualified Person. In other words, an "Excess Benefit" occurs if the Disqualified Person receives better economic terms than the Corporation when they engage in a transaction.
- c. The term "Excess Benefit Transaction" means any transaction in which an economic benefit is provided by the Corporation directly or indirectly to or for the use of any Disqualified Person, if the value of the economic benefit provided

exceeds the value of the consideration, including services, received for providing such benefit. In other words, an "Excess Benefit Transaction" is a transaction with economic terms that benefit a Disqualified Person at the expense of the Corporation.

- d. The term "Fixed Payment" means a payment made in exchange for the provision of specified services or property, the amount of which is specified in a contract or determined by a fixed formula specified in a contract. A Fixed Payment may include an amount that depends upon specified future contingencies or events, including revenues generated by the Corporation, provided that no person is permitted to exercise discretion when calculating the amount thereof or determining whether or not to make such payment.

**Section 3. General Rule.** The Corporation intends to avoid any Excess Benefit Transaction whereby Excess Benefit is bestowed upon a Disqualified Person, as all these terms are defined. Transactions which present the risk of bestowing Excess Benefit will be scrupulously avoided. When a potential risk is identified, the procedures set forth below should be followed to manage the identified risk.

**Section 4. Procedures For Establishing A Rebuttable Presumption That A Transaction Is Not An Excess Benefit Transaction.** Pursuant to the Regulations issued under Code Section 4958, a rebuttable presumption that a transaction is not an Excess Benefit Transaction may be established. The Board of Directors of the Corporation (the "Board") will endeavor to establish the foregoing presumption by reviewing transactions which raise the risk of Excess Benefit. Persons having a conflict of interest will be excluded from this decision making process. If necessary, a subcommittee which may include directors as well as others who are free of conflict of interest may be formed for this purpose. The Board will accomplish this by complying with the following procedures whenever a potential risk is identified:

- a. The transaction shall be approved in advance by the Corporation's Board, a committee of the Board, or other parties authorized by the Board to act on its behalf (to the extent permitted by state law) composed entirely of individuals who do not have a conflict of interest with respect to the transaction at issue (the "Decision Making Body").
  - i. A person has a conflict of interest if that person:
    - (1) is a Disqualified Person (or a family member thereof) that is participating in or economically benefiting from the transaction at issue;
    - (2) is in an employment relationship subject to the direction or control of a Disqualified Person (or a family member thereof) that is participating in or economically benefiting from the transaction at issue;

- (3) receives compensation subject to approval by a Disqualified Person (or a family member thereof) that is participating in or economically benefiting from the transaction at issue;
  - (4) has a material financial interest affected by the transaction; or
  - (5) has previously received, or anticipates receiving, an economic benefit through a transaction approved, or to be approved, by a Disqualified Person (or a family member thereof) that is participating in or economically benefiting from the transaction at issue.
- b. The Decision Making Body shall obtain and rely upon appropriate data as to the comparability of the terms of the transaction prior to making its decision.
  - i. The Decision Making Body has appropriate comparability data if, considering the knowledge and expertise of its members, it has sufficient information to determine that the transaction in its entirety is reasonable or at fair market value.
  - ii. Relevant information with respect to a compensation transaction includes:
    - (1) compensation paid by similar organizations for functionally comparable positions;
    - (2) the availability of similar services within the geographic area;
    - (3) current compensation surveys performed by independent firms; and
    - (4) written offers from competing entities for the services of the Disqualified Person.
  - iii. If the Corporation's annual gross receipts are less than one million dollars, the Corporation will have considered appropriate comparability data as to a compensation arrangement if it has data on compensation paid by three comparable organizations in the same or similar communities for similar services.
  - iv. Relevant information with respect to a property transaction includes:
    - (1) current independent appraisals; and
    - (2) offers received in a competitive and open bidding process.
- c. The Decision Making Body shall adequately document the basis for its determination concurrently with making that decision.
  - i. Adequate documentation must include:
    - (1) the terms of the transaction approved;
    - (2) the date the transaction is approved;

- (3) the members of the Decision Making Body present during debate and who participated in voting;
- (4) the comparability data obtained and relied upon and how it was obtained; and
- (5) any actions taken by anyone on the Decision Making Body who had a conflict of interest with respect to the transaction.

In the event the Corporation wishes to establish the foregoing presumption with respect to a payment which is not a Fixed Payment, the Corporation will ensure that the procedures described above have been satisfied only after the exact amount of such payment has been determined, or a fixed formula for calculating the payment has been specified.

To the extent additional guidance is needed by the Decision Making Body in its deliberations, the Regulations under Code Section 4958 and/or legal counsel may be consulted for insight and guidance.

**Section 5. Rules Relating To Compensation For Services.** If the Corporation intends to compensate a Disqualified Person for services rendered to the Corporation, the Decision Making Body shall clearly indicate its intent to treat the economic benefit as compensation for services by providing written substantiation that is contemporaneous with the payment of the compensation. In addition to the substantiation required by Section 4(c), the Decision Making Body shall develop the following written substantiation with respect to compensation payments to a Disqualified Person:

- a. The Corporation shall report the economic benefit given to the Disqualified Person as compensation on an original Federal tax information return (e.g., Form 990, Form W-2, or Form 1099); or
- b. The Corporation shall reflect its intent that the economic benefit be considered compensation for services through:
  - i. An approved written employment or consulting contract executed on or before the date of the compensation payment; or
  - ii. Written resolutions of the Decision Making Body indicating that it approved the compensation payment for services on or before the date of the payment.