

# VIETNAM VETERANS MEMORIAL FUND, INC.

## CONFLICT OF INTEREST POLICY

### Article I

#### Purpose

The purpose of the conflict of interest policy is to protect Vietnam Veterans Memorial Fund Inc.'s ("VVMF") interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization (a "conflict of interest").

### Article II

#### Definitions

#### **1. Interested Person**

An Interested Person is any director, principal officer, member of a committee with governing board delegated powers, key employee, highest compensated employee, or person in a position to exercise substantial influence over the affairs of the Organization who:

- a. Has a direct or indirect Financial Interest, as defined below, or
- b. Whether or not the transaction is brought before the board of directors of the Organization for action, knows at the time of commitment that the Interested Person or a Related Person either:
  - (i) Is a party to the transaction, or
  - (ii) Has a Financial Interest in or is so closely linked to the transaction and is of such financial significance to the Interested Person or a Related Person that the interest would reasonably be expected to exert an influence on the Interested Person's judgment if the Interested Person were called on to vote on the transaction, or
- c. When the transaction is brought before the board (or is of such character and significance to the Organization that it would in the normal course be brought before the board for action) any of the following persons are described in subdivisions a. or b. above:
  - (i) An entity, other than the corporation, of which the Interested Person is a director, general partner, agent or employee;
  - (ii) A person that controls one or more of the entities specified in item (i) of this subdivision;
  - (iii) An individual who is a general partner, principal or employer of the

Interested Person.

## **2. Financial Interest**

A person has a Financial Interest if the person has, directly or indirectly, through business, investment, or a Related Person:

- a. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement,
- b. A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement, or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

## **3. Related Person**

A Related Person of an Interested Person means either: (i) the spouse, or a parent or sibling of the spouse, of the Interested Person; (ii) a child, grandchild, sibling or parent of the Interested Person; (iii) the spouse of a child, grandchild, sibling or parent of the Interested Person; (iv) an individual having the same home as the Interested Person; (v) a trust or estate of which an individual specified in this Article II, Section 3, is a substantial beneficiary; or (vi) a trust, estate, incompetent, conservator or minor of which the Interested Person is a fiduciary.

## **4. Qualified Person**

A Qualified Person means any director, principal officer, or member of a committee with governing board delegated powers, who is not an Interested Person with respect to a transaction or arrangement under consideration.

## **5. Authorized Body**

The Qualified Persons of the board of directors or any board committee with board delegated powers considering the proposed transaction or arrangement.

## **Article III** **Procedures**

### **1. Duty to Disclose**

In connection with any actual or possible conflict of interest, an Interested Person must disclose the existence of the conflict of interest and be given the opportunity to disclose all

material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

## **2. Determining Whether a Conflict of Interest Exists**

After disclosure of an actual or possible conflict of interest and all material facts, and after any discussion with the Interested Person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The Qualified Persons shall decide if a conflict of interest exists.

## **3. Procedures for Addressing the Conflict of Interest**

a. An Interested Person may make a presentation at the governing board or committee meeting. If the Interested Person has a duty of confidentiality with respect to information relating to the transaction or arrangement preventing him/her from disclosing all material facts know to him/her regarding the transaction or arrangement, he/she shall disclose the existence and nature of the transaction or arrangement and the limitations imposed by that duty before any vote. The Interested Person shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

b. The chairperson of the governing board or committee shall, if appropriate, appoint a Qualified Person or committee containing Qualified Persons to investigate alternatives to the proposed transaction or arrangement.

c. After exercising due diligence, the governing board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, then a majority of the Qualified Persons on the Authorized Body, shall determine whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination the Qualified Persons on the Authorized Body shall make its decision as to whether to enter into the transaction or arrangement. The governing board or committee shall make such determination pursuant to the terms of the Rebuttable Presumption Checklists for transactions involving compensation and property, which are attached hereto as **Exhibits A** and **B**, respectively

## **4. Violation of the Conflict of Interest Policy**

a. If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

b. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

**Article IV**  
**Records of Proceedings**

The minutes of the governing board and all committees with board delegated powers shall contain:

a. The names of the persons who disclosed or otherwise were found to have a Financial Interest in connection with an actual or possible conflict of interest, the nature of the Financial Interest, any action taken to determine whether a conflict of interest was present, and the governing board's 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 content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

**Article V**  
**Compensation**

a. A voting member of the governing board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.

b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.

c. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

**Article VI**  
**Annual Statements**

Each director, principal officer and member of a committee with governing board delegated powers shall annually sign a Conflict of Interest Disclosure Statement (**Exhibit C**) which affirms such person:

a. Has received a copy of the conflicts of interest policy,

- b. Has read and understands the policy,
- c. Has agreed to comply with the policy, and
- d. Understands the Organization is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

**Article VII**  
**Periodic Reviews**

To ensure the Organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

**Article VIII**  
**Use of Outside Experts**

When conducting the periodic reviews as provided for in Article VII, the Organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

**CERTIFICATE OF ADOPTION**

The foregoing Conflict of Interest Policy was duly adopted by the Board of Directors of VVMF, Inc. effective as of December 7, 2018.

VIETNAM VETERANS MEMORIAL FUND, INC.

By \_\_\_\_\_

John Dibble, Chairman

**EXHIBIT A**

**Rebuttable Presumption Checklist - Compensation**

1. Name of Person:
2. Position Under Consideration:
3. Duration of Contract, if any (1 year, 3 year, etc.):
4. Proposed Compensation:
  - Salary:
  - Bonus:
  - Deferred Compensation:
  - Fringe Benefits:
  - Auto Allowance:
  - Liability Insurance Premiums:
  - Foregone Interest on Loans:
  - Other:
5. Description of Types of Comparability Data Relied Upon (*e.g.*, association survey, phone inquiries, direct comparisons based on Form 990/990-PF data, etc.)
  - a)
  - b)
  - c)
6. Sources and Amounts of Comparability Data for Each Peer Organization:
  - Salaries:
  - Bonuses:
  - Deferred Compensation:
  - Fringe Benefits:
  - Liability Insurance Premiums:
  - Forego Interest on Loans:
  - Others:
7. Office or File Where Comparability Data Kept:
8. Total Proposed Compensation:
9. Maximum Total Compensation Per Comparability Data:

\$ \_\_\_\_\_

10. Compensation Package Approved by Authorized Body:

Salary:

Bonus:

Deferred Compensation:

Fringe Benefits:

Auto Allowance:

Liability Insurance Premiums:

Foregone Interest on Loans:

Other:

11. Date Compensation Approved by Authorized Body:

12. Members of the Authorized Body Present (indicate with "X" if voted in favor):

13. Comparability Data Relied Upon by Approving Body and how Data was Obtained:

14. Names of and Actions (if any) by Members of Authorized Body Having Conflict of Interest:

15. Date of Preparation of the records including the checklist (must be prepared by the later of next meeting of authorized body, or 60 days after authorized body approved compensation):

**EXHIBIT B**

**Rebuttable Presumption Checklist - Property**

1. Name of Person:
2. Description of property to be transferred or used:
3. Location of Property
4. Comparability Data:
  - A. Appraiser(s) name and address:
  - B. Appraiser(s) qualifications:
  - C. Date(s) of appraisal(s):
  - D. Fair market value per appraisal(s):
  - E. Appraisal method(s) used (*e.g.*, sales comparison, income analysis, replacement costs, *etc.*):
  - F. Offers received from open and competitive bidding:
6. Date Transaction Approved by Authorized Body:
7. Members of the Authorized Body Present (indicate with "X" if voted in favor):
8. Names of and Actions (if any) by Members of Authorized Body Having Conflict of Interest:
9. Date of Preparation of the records including checklist by Authorized Body (must be prepared by the latter of next meeting of Authorized Body, or 60 days after Authorized Body approved compensation):



**EXHIBIT C**

**CONFLICT OF INTEREST DISCLOSURE STATEMENT**

As part of its Conflict of Interest Policy ("Policy"), VVMF, Inc. ("Organization") requires that members of the Board of Directors ("Board"), members of any Board committee, officers, key employees, highest compensated employees, and other persons with substantial influence, disclose Financial Interests that could lead to an actual or apparent conflict of interest. This disclosure form is intended to implement the Policy's annual disclosure requirement.

**I. Disclosure.**

A. Name Of Responsible Person: \_\_\_\_\_

Capacity:                    \_\_\_\_\_ Member of Board of Directors

                                  \_\_\_\_\_ Officer

                                  \_\_\_\_\_ Key Employee

                                  \_\_\_\_\_ Other person with substantial influence

B. Have you, any of your Related Persons, or any entity in which you or a Related Person has a Financial Interest engaged in any of the following transactions with the Organization in the past year:

(i) provided services or property to the Organization in exchange for consideration?

                                  \_\_\_\_\_ YES

                                  \_\_\_\_\_ NO

(ii) had any direct or indirect interest in any transaction to which the Organization was or is a party?

                                  \_\_\_\_\_ YES

                                  \_\_\_\_\_ NO

(iii) become indebted to pay money to the Organization (other than travel advances or the like)?

                                  \_\_\_\_\_ YES

                                  \_\_\_\_\_ NO

(iv) received, or become entitled to receive, directly or indirectly, any personal benefits from the Organization or as a result of your relationship with the Organization, that in the aggregate could be valued in excess of \$100, that were not or will not be compensation directly related to your duties to the Organization?

                                  \_\_\_\_\_ YES

                                  \_\_\_\_\_ NO

(v) received compensation from an organization that is related to the Organization through common supervision or control?

\_\_\_\_\_ YES

\_\_\_\_\_ NO

If yes, please describe the proceeding(s) and if a Related Person or entity is involved, the identity of the Related Person or entity and your relationship with that person or entity:

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C. Do you have a family relationship or a business relationship with any other officer, director, trustee, or key employee of the Organization?

\_\_\_\_\_ YES

\_\_\_\_\_ NO

D. Did you receive or accrue compensation from any unrelated organization for services rendered to the Organization?

\_\_\_\_\_ YES

\_\_\_\_\_ NO

E. Are you aware of any other events, transactions, arrangements or other situations that have occurred or may occur in the future that you believe should be examined by the Organization in accordance with the terms and intent of the Organization's conflict of interest policy?

\_\_\_\_\_ YES

\_\_\_\_\_ NO

If yes, please describe the situation(s) and if a Related Person or entity is involved, the identity of the Related Person or related entity and your relationship with that person or entity:

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I HEREBY CONFIRM that I have received, read, understand and will comply with the Organization's Conflict of Interest Policy, and that my responses to the above questions are complete and accurate to the best of my information and belief. I understand that the Organization is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes. I agree that if I become aware of any information that might indicate that this disclosure is inaccurate or that I have not complied with this Policy, I will notify the Chair of the Board or the President immediately.

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Signature

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Date