

OPEN SOURCE ENDOWMENT FOUNDATION CONFLICT OF INTEREST POLICY

1. **Purpose of Policy.** This conflict of interest policy is designed to foster public confidence in the integrity of Open Source Endowment Foundation (the “Organization”) and to protect the Organization’s interests when it is contemplating entering a transaction with (or that might benefit) an “Insider” as defined in this policy. For avoidance of doubt, this policy does not apply to non-economic interests (e.g. situations where a director serves on the Board of a potential grantee), and that the Board may, in its discretion, establish a separate policy or procedure for conflicts involving such interests.
2. **Definitions.** The following definitions apply for purposes of this policy.
 - a. “Insider” is intended to track the federal tax law definition of “disqualified person.” This is a technical definition because certain federal tax rules apply to transactions between a Foundation and its disqualified persons to ensure that no disqualified person receives an “excess benefit”, with significant excise taxes imposed on individuals for violations of these rules. For that reason, it is crucial for the Organization to (a) understand who its Insiders are and (b) apply this policy to any transactions with or benefitting those individuals or organizations. An Insider is any person in the following categories (or who have been in one of the following categories during the prior five years) are all Insiders: (1) directors, (2) officers¹, or (3) persons with substantial influence over the Organization. The family members of the individuals in these roles are also Insiders. Finally, an organization is an Insider if it is 35% or more owned in aggregate by Insiders.
 - b. The term ‘officers’ consists of the president, chief executive officer, chief operating officer, treasurer and chief financial officer, executive director, or any person with the responsibilities of any of these positions.
 - c. The term “persons with substantial influence” has the meaning provided in Internal Revenue Code Section 4958(f)(1)(A), which incorporate a “facts and circumstances test”, but may an organization’s founder(s), substantial contributor(s), persons with managerial authority or control over a significant portion of an organization’s budget.
 - d. The term “family members” consists of spouses, ancestors, children, grandchildren, great-grandchildren, brothers, sisters, and the spouses of their children, grandchildren, great-grandchildren, brothers, and sisters.
 - e. Ownership of an entity for purposes of this policy is measured by voting stock for corporations, profits interests for partnerships, and beneficial interests for trusts and estates.
3. **Conflict of Interest.** A “conflict of interest” is present when (A) an Insider has a financial

¹ The term ‘officers’ is defined to include a president, chief executive officer, chief operating officer, treasurer and chief financial officer, executive director, or any person with the responsibilities of any of these positions.

interest (direct or indirect) in a transaction that is under consideration by the Organization, and (B) that interest is significant enough that a director, officer, or other person with substantial influence at the Organization may not be able to vote or exercise their influence impartially in the Organization's best interests. For example, a senior staff member has a conflict of interest when their compensation is being considered for approval. A director likely has a conflict of interest if the Organization is considering purchasing goods or services from a company owned by their family members.

4. **Duty to Disclose; Evaluation of Conflict.** It is the duty of all directors, officers, and key employees² of this organization to disclose their financial interests (and the financial interests of any related individuals or organizations who are Insiders), with respect to any transaction that is under consideration by the Organization. The disclosure needs to be made to the Board or a Board Committee empowered to approve the transaction ("Committee") promptly upon the individual becoming aware of the proposed transaction and must include all material facts regarding the financial interests posing a potential conflict.
5. **Procedures for Addressing a Conflict of Interest.** The Board or Committee receiving that information shall determine (1) if a conflict of interest exists and (2) if so, whether it is appropriate for the Organization to proceed, notwithstanding that conflict. The Insider(s) (or the director related to them, if applicable) shall not be present during the Board or Committee's discussion or determination of whether a conflict of interest exists or the evaluation of the transaction, except to answer questions. The Board or Committee shall ascertain that all material facts regarding the transaction and the interested person's conflict of interest have been disclosed to the Board or Committee, and shall compile appropriate data to evaluate the potential conflict and the transaction.

After exercising due diligence, which may include investigating alternatives that present no conflict, the Board or Committee shall determine whether it is able to find, in good faith and applying their business judgment, that the transaction is in the Organization's best interest, for its own benefit, and is fair and reasonable to the Organization. If the Board or Committee is able to make those findings, the majority of members of the Board or Committee then in office may approve the transaction and document their findings pursuant to this policy.

6. **Recordkeeping.** The minutes of any meeting of the Board and any Committee pursuant to this policy shall contain:
 - a. the name of each interested person who disclosed or was otherwise determined to have an interest in a transaction;
 - b. the nature of the interest and whether it was determined to constitute a conflict of interest;
 - c. any alternative transactions considered;
 - d. the members of the Board or Committee who were present during the debate on the

² A "key employee" is a technical term defined in the instructions to Form 990. In short, an individual is a key employee if they earn more than \$150,000 in reportable compensation from the Organization (or related organizations), are among the top 20 most compensated employees of the Organization, and have significant authority at the organization (i.e., authority similar to a director or officer, manages a discrete activity or program that constitutes 10% of the Organization's activities, assets, income, or expenses, or has or shares control of 10% of the Organization's budget)

- transaction, those who voted on it, and to what extent interested persons were excluded from the deliberations;
- e. any comparability data or other information obtained and relied upon by the Board or Committee and how the information was obtained; and
 - f. and the result of the vote, including, if applicable, the terms of the transaction that was approved and the date it was approved.

The records must be prepared by the later of the next meeting of the Board or Committee or 60 days after the final action of the Board or Committee with respect to the transaction, and must be approved by the Board or Committee within a reasonable time afterwards.

7. **Annual Disclosure and Compliance Statements.** Each director, each corporate officer, the top management official, the top financial official, and each key employee of the Organization, and others that the Organization may identify, shall annually sign the Statement of Compliance and Annual Disclosure attached as Exhibit A. All such statements by directors and officers shall be filed with the minutes of the meetings of the Board or Committee; statements by others shall be retained in their personnel files.
8. **Violations.** If the Board has reasonable cause to believe that an Insider with a role at the organization has failed to disclose actual or possible conflicts of interest, including those arising from a transaction with a related Insider, it shall inform such individual of the basis for this belief and afford them an opportunity to explain the alleged failure to disclose. If, after hearing their response and making further investigation as warranted by the circumstances, the Board or Committee determines that the insider has failed to disclose an actual or possible conflict of interest, the Board or Committee shall take appropriate disciplinary and corrective action.
9. **Past Transactions.** In situations where a transaction involving a conflict of interest is discovered after it has already occurred or begun (because, for example, the interest was inadvertently not disclosed prior to the transaction, or the Organization's leadership did not realize that a review was necessary or advantageous), the Board or Committee shall conduct a review as described above and determine whether disciplinary or corrective action is possible or warranted. In appropriate cases, the Board or Committee may determine, upon completion of the review, that ratification of the transaction is in the Organization's best interest, for its own benefit, and is fair and reasonable to the Organization.
10. **Annual Review of Policy.** To ensure that the Organization operates in a manner consistent with its charitable purposes and its status as an organization exempt from federal income tax, the Board shall authorize and oversee an annual review of the administration of this conflict of interest policy. The review may be written or oral. The review shall consider the level of compliance with the policy, the continuing suitability of the policy, and whether the policy should be modified and improved.

Exhibit A

OPEN SOURCE ENDOWMENT FOUNDATION

**CONFLICT OF INTEREST POLICY:
STATEMENT OF COMPLIANCE AND ANNUAL DISCLOSURE**

Open Source Endowment Foundation (the “Organization”) follows a conflict of interest policy designed to foster public confidence in our integrity and to protect our interest when we are contemplating entering a transaction or arrangement that might benefit the private interest of a director, a corporate officer, our top management official and top financial official, any of our key employees, any person with substantial influence over the Organization, or other Insiders. We have provided you with a copy of the Organization’s conflict of interest policy and are asking you to confirm your receipt and that you will comply with the policy.

In addition, we are providing you an annual disclosure form. The Organization must annually file Form 990 with the Internal Revenue Service. In order to complete Form 990 fully and accurately, we need each officer, director and key employee to disclose interests that may pose a potential conflict of interest for purposes of Form 990. A “conflict of interest,” for purposes of Form 990, arises when a person in a position of authority over an organization, such as an officer, director, or key employee, may benefit financially from a decision he or she could make in such capacity, including indirect benefits such as to family members or businesses with which the person is closely associated. Only financial interests must be listed on this disclosure form.

The purpose of this disclosure is to provide the Board of Directors or other governing body with a meaningful opportunity to determine whether a conflict of interest exists, by disclosing any interest that could give rise to a conflict of interest. Complete, accurate disclosure gives the governing body the information it needs to fulfill its fiduciary obligations and to make decisions that are in the best interest of the organization.

By signing below, you hereby:

- Acknowledge that you have received a copy of the conflict of interest policy of the Organization, have read and understood it, and agree to comply with its terms.
- Represent that you have completed the attached table with all financial interests (and the financial interests of your family members) that you are aware of that could give rise to a conflict of interest in the context of your duties to the Organization and that you have not previously disclosed in a prior annual statement.

Signature

Date

Printed Name

Annual Disclosure of Family and Financial Interests		
1	Names of Family Members	
2**	Transactions or arrangements with Open Source Endowment Foundation	
3**	Transactions or affiliations with other organizations	
4**	Substantial business or investment holdings	
5**	Transactions or affiliations with businesses	

* Family members refers to: spouses, ancestors, children, grandchildren, great-grandchildren, brothers, sisters, and the spouses of their children, grandchildren, great-grandchildren, brothers, and sisters. Please list all family members that either currently have a business relationship to the Organization, are in a line of business or employment that could conceivably intersect with the Organization, or have other financial interests that could conceivably result in a conflict of interest in the context of your duties.

** Rows 2-5 are requesting information regarding both your financial interests and the interests of the family members listed at Row 1.