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**Trustee, Director, Officer, Key Employee (TDOKE), and  
Highest Compensated Employee Questionnaire  
Effective 1/1/09**

This form was developed to assist the organization in collecting information relative to reporting transactions and relationships in its annual filing of IRS Form 990. The organization is not required to perform more than a reasonable effort to obtain this information. Please complete the questions to the best of your knowledge and ability and sign and date the form at the end.

Name: \_\_\_\_\_

Board position: \_\_\_\_\_ (ie: president, treasurer, director, key employee etc.)

For the Tax year: \_\_\_\_\_ (ie: 2008 or year ended 6/30/09)

**Independence**

- A)** During the tax year were you an employee of the organization and compensated?  Yes  No
- B)** During the tax year did you receive compensation in your role as an officer of the organization other than reimbursement of out of pocket expenses?  Yes  No
- C)** During the tax year did you receive compensation in your role as an employee or an officer of an organization that is related to the organization (see glossary for definition of related)?  Yes  No
- D)** During the tax year if you are a director of the organization- did you, as an independent contractor, or an entity owned more than 35% by you receive more than \$10,000 in compensation in a single transaction or over \$100,000 in aggregate?  Yes  No
- E)** Did a family member of yours receive compensation exceeding \$10,000?  Yes  No
- F)** During the tax year did you or any family member receive any loans, grants or have any business transactions with the organization or related organizations?  Yes  No
- G)** During the tax year, did the organization enter into any transactions with an entity (other than a tax-exempt organization) of which you were (1) an officer, (2) a director, (3) a trustee, (4) a key employee, (5) a partner or member with an ownership interest in excess of 5% if the entity is treated as a partnership, or (6) a shareholder with an ownership interest in excess of 5% if the entity is a professional corporation?  Yes  No

Exceptions: Donors, members of religious orders taking a vow of poverty & consumers or members of the organization receiving benefits in that role.

Comments:

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Any "Yes" response maybe an indication of a lack of independence as defined by the Internal Revenue Service. The organization may request additional clarifying information as a result of your response to make a determination prior to filing of IRS Form 990. *Note: there is no penalty or cause for concern should it be determined that you are not independent- it is for reporting purposes only.*

**Family and Business Relationships**

- A)** During the tax year did you have a family relationship with any other officer, director or key employee of the organization or an organization that is related to the organization?  Yes  No

If so, describe the family relationship(s).

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- B)** During the tax year did you have a business relationship with any other officer, director or key employee of the organization or an organization that is related to the organization?  Yes  No

If so, describe the business relationship(s) including the volume of business during the tax year.

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Any "Yes" response maybe reportable as defined by the Internal Revenue Service. The organization may request additional clarifying information as a result of your response to make a determination prior to filing of IRS Form 990. *Note: there exceptions for certain business transactions which depend on the facts, circumstances and amount of business.*

Signed \_\_\_\_\_

Dated \_\_\_\_\_

## Examples

### Independent Voting Member

**Example 1.** B is a voting member of the organization's board of directors. B is also a partner with a profits and capital interest greater than 5% in a law firm, C, that charged \$120,000 to the organization for legal services in a court case. The transaction between C and the organization must be reported on Schedule L because it is a transaction between the organization and an entity of which B is a more than 5% owner, and because the payment from C to the organization exceeded \$100,000 (see instructions to Schedule L, Part IV, regarding both factors).

Accordingly, B is not an independent member of the governing body, because the \$120,000 payment must be reported on Schedule L as an indirect business transaction with B. If B were an associate attorney (an employee) but not an officer, director, trustee, key employee, or owner of the law firm, then the transaction would not affect B's status as an independent member of the organization's governing body.

**Example 2.** D is a voting member of both the organization's governing body and the governing body of C, a related organization. D's daughter, E, received \$40,000 in taxable compensation as a part-time employee of C. D is not an independent member of the governing body, because E received compensation from C, a related organization to D, and the compensation was of a type (compensation to family member of a member of C's governing body) and amount (over \$10,000).

**Example 3.** C is an attorney employed by a law firm that is not a related organization with respect to the organization. The organization and the law firm enter into an arrangement where C serves the organization, a 501(c)(3) legal aid society, pro bono on a full-time basis as its vice president and as a board member while continuing to receive her regular compensation from the law firm. The organization does not provide any compensation to C for the services provided by C to the organization, and does not report C's compensation on Form W-2 or Form 1099-MISC. The law firm does not treat any part of C's compensation as a charitable contribution to the legal aid society. Nothing in these facts would prevent C from qualifying as an independent member of the organization's governing body.

**Example 4.** D, a volunteer director of the organization, is also the sole owner and CEO of M management company (an unrelated organization), which provides management services to the organization. The organization pays M an annual fee of \$150,000 for the management services. D does not qualify as an independent member of the organization's governing body, because D receives indirect financial benefits from the organization through M.

### Business Relationship

**Example 1.** B is an officer of the organization, and C is a member of the organization's governing body. B is C's brother-in-law. The organization must report that B and C have a family relationship.

**Example 2.** D and E are officers of the organization. D is also a partner in an accounting firm with 300 partners (with a 1/300th interest in the firm's profits and capital), but is not an officer, director, trustee, or key employee of the accounting firm. D's accounting firm provides services to E in the ordinary course of the accounting firm's business, on terms generally offered to the public, and receives \$100,000 in fees during the year. The relationship between D and E is not a reportable business relationship, either because (1) it is in the ordinary course of business on terms generally offered to the public, or (2) D does not hold a greater-than-35% interest in the accounting firm's profits or capital.

**Example 3.** F and G are trustees of the organization. F is the owner and CEO of an automobile dealership. G purchased a \$45,000 car from the dealership during the organization's tax year in the ordinary course of the dealership's business, on terms generally offered to the public. The relationship between F and G is not a reportable business relationship, because the transaction was in the ordinary course of business on terms generally offered to the public.

**Example 4.** H and J are members of the organization's board of directors. Both are CEOs of publicly traded corporations and serve on each other's boards. The relationship between H and J is a reportable business relationship, because each is a director or officer in the same business entity.

**Example 5.** K is a key employee of the organization, and L is on its board of directors. L is a greater-than-35% partner of a law firm that charged \$60,000 during the organization's tax year for legal services provided to K that were worth \$600,000 at the law firm's ordinary rates (thus, the ordinary course of business exception does not apply). However, the relationship between K and L is not a reportable business relationship, because of the privileged relationship of attorney and client.

## Glossary

### Related Organization

In the case of a parent/subsidiary relationship:

- power to remove and replace (or to appoint or elect, if such power includes a continuing power to appoint or elect periodically or in the event of vacancies) a majority of the nonprofit organization's or other organization's directors or trustees,
- management or board overlap where a majority of the subsidiary organization's directors or trustees are trustees, directors, officers, employees, or agents of the parent organization.

In the case of brother/sister nonprofit organizations:

- the same persons constitute a majority of the members of the governing body of both organizations.

In the case of stock corporations and other organizations with owners or persons having beneficial interests, whether such organization is taxable or tax-exempt, control means any of the following relationships:

- ownership of more than 50% of the stock (by voting power or value) of a corporation,
- ownership of more than 50% of the profits or capital interest in a partnership,

- ownership of more than 50% of the profits or capital interest in a limited liability company taxed as a partnership, regardless of the designation under state law of the ownership interests as stock, membership interests, or otherwise,
- being a managing partner or managing member in a partnership or limited liability company which has three or fewer managing partners or managing members (regardless of which partner or member has the most actual control),
- being a general partner in a limited partnership which has three or fewer general partners (regardless of which partner has the most actual control),
- being the sole member of a disregarded entity, or
- ownership of more than 50% of the beneficial interest in a trust

**Highest Compensated Employee**

One of the five highest compensated employees of the organization (including employees of a disregarded entity of the organization) other than officers or key employees. The five highest compensated employees are determined by the amounts of reportable compensation for the calendar year ending with or within the organization's tax year. Highest paid employees must receive at least \$100,000 in reportable compensation to be reported in Core Form Part VII Section A.

**Family Relationship**

The family of an individual includes only his or her spouse, ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great grandchildren, and spouses of brothers, sisters, children, grandchildren, and great grandchildren. Does not include cousins.

**Business Relationship**

- 1) One person is employed by the other in a sole proprietorship or by an organization with which the other is associated as a trustee, director, officer, key employee, or greater-than-35% owner;
- 2) One person is transacting business with the other (other than in the ordinary course of either party's business on the same terms as are generally offered to the public), directly or indirectly, in one or more contracts of sale, lease, license, loan, performance of services, or other transaction involving transfers of cash or property valued in excess of \$10,000 in the aggregate during the organization's tax year (indirect transactions are transactions with an organization with which the one person is associated as a trustee, director, officer, key employee, or greater-than-35% owner); and
- 3) The two persons are each a director, trustee, officer, or greater than 10% owner in the same business or investment entity.

Ownership is measured by stock ownership (either voting power or value) of a corporation, profits or capital interest in a partnership or limited liability company, membership interest in a nonprofit organization, or beneficial interest in a trust. Ownership includes indirect ownership (e.g., ownership in an entity that has ownership in the entity in question); there may be ownership through multiple tiers of entities.

Privileged relationship exception. For purposes of line 2, a “business relationship” does not include a relationship between (1) attorney and client, (2) medical professional (including psychologist) and patient, or (3) priest/clergy and penitent/communicant.

**Key Employee**

For purposes of Form 990 reporting, an employee of the organization (other than an officer, director, or trustee) who meets all three of the following tests:

- 1) \$150,000 Test. Receives reportable compensation from the organization and all related organizations in excess of \$150,000 for the calendar year ending with or within the organization’s tax year;
- 2) Responsibility Test. The employee:
  - a. has responsibilities, powers or influence over the organization as a whole that is similar to those of officers, directors, or trustees;
  - b. manages a discrete segment or activity of the organization that represents 10% or more of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole; or
  - c. has or shares authority to control or determine 10% or more of the organization’s capital expenditures, operating budget, or compensation for employees.
- 3) Top 20 Test. Is one of the 20 employees (that satisfy the \$150,000 Test and Responsibility Test) with the highest reportable compensation from the organization and related organizations for the calendar year ending with or within the organization’s tax year.