

THE J.R.S. BIODIVERSITY FOUNDATION

CONFLICT OF INTEREST POLICY

Approved by the Board of Trustees, October 26, 2016

Article I

1. Purpose

The purpose of a conflict of interest policy is to protect the Foundation's interest when it is contemplating entering into a transaction or arrangement or making a grant that might benefit the private interest of an employee, officer or trustee of the Foundation. Recognizing that the Foundation encourages the active involvement of its employees and trustees in the larger community and in organizations addressing issues that are also within the Foundation's mission, charitable purpose and programmatic interests, a further purpose of this policy is to protect the Foundation's reputation and support its fundamental commitment to integrity by establishing processes to address actual and potential conflicts openly and fairly. The policy also serves to protect employees and trustees from accidental or perceived conflicts of interest that might negatively impact their professional activities.

This policy is intended to supplement but not replace federal law prohibiting self-dealing, private inurement or certain transactions benefiting disqualified persons or any applicable state laws governing conflicts of interest applicable to nonprofit and charitable foundations.

Article II

Definitions

1. Covered Person

This policy covers each trustee and officer of the Foundation and each employee, agent, temporary employee or consultant of the Foundation who has decision-making authority as an individual or as a member of a committee or grant-making team.

2. Interested Person

Any covered person, who has a direct or indirect financial interest, as defined below, is an interested person. If a person is an interested person with respect to any entity that is a member of a group, he or she is an interested person with respect to all entities in that group.

3. Financial Interest

A person has financial interest if the person has, directly or indirectly, through business, investment or family -

- a. an ownership or investment interest in any entity with which the Foundation has or proposes to have a transaction or arrangement, or to which it may make a grant, or

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- b. a compensation arrangement with any entity or individual with which the Foundation has or proposes to have a transaction or arrangement, or to which it proposes to make a grant, or
- c. a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Foundation proposes to have a transaction or arrangement, or to which it proposes to make a grant.

4. Other Definitions

- a. Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in value or nature.
- b. An ownership or investment interest includes any substantial ownership or investment, but excludes an interest in a publicly-owned entity that is only passive and insubstantial to both the person and the entity.
- c. Family interests include interests of a spouse or equivalent, or a parent, sibling, child, grandchild, great grandchildren or the spouse of any such descendants or any other person living in the same household. For the avoidance of doubt, an interest held by any member of a trustee's family, which will include the family member, the family members' spouse and descendants and their respective spouses and other persons living in the same household, shall be treated as an interest of each other member of the trustee's family.
- d. A group of entities is defined by common ownership or control of more than 50% of the voting power of each member of the group.
- e. The terms "board or committee" as used in this policy means the Foundation's Board of Trustees or other committee or group exercising decision-making authority to which an interested person reports or on which an interested person serves.
- f. The term "disqualified person" has the meaning set forth in §4946 of the Internal Revenue Code of 1986 as amended (the "Code"), and generally includes: (A) a substantial contributor to the Foundation (anyone who (together with his or her spouse) has contributed more than \$5,000 to the Foundation at a time when such contributions are more than 2% of the total contributions the Foundation has received); (B) a trustee or officer of the Foundation; (C) an owner of more than 20% of either the total combined voting power of a corporation, the profits interest of a partnership or the beneficial interest of a trust or unincorporated enterprise, which is a substantial contributor to the Foundation; (D) a family member (spouse, ancestors, descendants, spouses of descendants, siblings, and spouses of siblings) of any individual described in (A), (B) or (C); and (E) a corporation, partnership, trust or estate of or in which persons described in (A), (B), (C) or (D) own more than 35% of the total combined voting power, profits interest or beneficial interest.

5. Other Interests Subject to This Policy

a. Relationships with Grantees:

With respect to entities that may be actual or potential recipients of grants made by the Foundation, an individual will be regarded as having a financial interest in the entity, if the person has, directly or indirectly through family, an employment or governing relationship (such as serving as a trustee) (even if uncompensated) or has the potential to receive, directly or indirectly through family, any substantial

financial or other benefit from the grant or from the relationship with the grant recipient not otherwise available to the public on substantially the same terms. A reported conflict of this nature, may not be regarded as an actual conflict if, under the circumstances (such as, for example, the size of the entity and the location of the branch of the entity to which the grant is being made) the grant from the Foundation is not likely to produce a conflict.

The actual or potential receipt by a covered person of any substantial gift or favor from a grantee or from a third party in connection with an actual or potential grant constitutes compensation and a financial interest. Reimbursement by the Foundation of out-of-pocket expenses incurred for the purposes of investigating or monitoring grantees consistent with the Foundation's policies and procedures for reimbursement of ordinary and reasonable business expenses, would not, by itself, be considered to be compensation for these purposes. Participating in dinners or social events that are purchased by the Foundation would not, by itself, constitute compensation for these purposes.

b. Relationships Between the Foundation and Former Trustees

A former Trustee may, once two years have elapsed since service on the Board, accept a staff position at the Foundation. A former Trustee may accept contract work from the Foundation immediately on the termination of Board service. A former Trustee may, after one year has elapsed since service on the Board, apply for grants from the Foundation.

c. Other Potentially Conflicting Interests:

There may exist other, less obvious or more remote actual or potential conflicts of interest that are sufficiently substantial and probable that their appearance calls into question the fairness or propriety of the Foundation's decision-making processes. Any person who is concerned about the appearance of such an interest or potential interest is encouraged to review the matter with the Executive Director or the President of the Board, as appropriate. Any such interest may be disclosed by any person and may be addressed in the discretion of the President or the Executive Director, pursuant to the procedures contained in this policy.

**Article III
Certain Prohibited Conflicts**

1. Business Gifts

- a. The Foundation recognizes that it is traditional and acceptable in many cultures, including the United States business and philanthropic culture, to give and receive business gifts and courtesies having a nominal value. However, the offer or receipt of a gift having a substantial value can present a conflict of interest, particularly if the gift is offered or given in the context of an intention or expectation of influencing a business or grant decision. Furthermore, receipt of a substantial gift or benefit may present questions of receipt by a disqualified person of impermissible benefit or other prohibited self-dealing for a private charitable foundation.
- b. No covered person may accept, from any entity with which the Foundation has or proposes to have a commercial arrangement or transaction, or to which it has or proposes to make a grant,

any gift or benefit other than a customary business courtesy or present having only a nominal and insubstantial value.

- c. Offers of gifts or benefits having a greater than nominal or insubstantial value and offers exhibiting an expectation of influencing business decisions must be reported to the Foundation through the Executive Director or President of the Board as appropriate and may not be accepted.

2. Grantee Benefits

It is the Foundation's policy that covered persons may not accept reimbursement for or a gift of business travel or expenses from grantees, potential grantees or third persons in connection with a grant or proposed grant. This policy is intended to assure that resources that are available to grantees are used for their own charitable purposes and not to benefit the Foundation or its employees, officers or trustees or to reimburse the Foundation for expenses relating to our own grant investigation or monitoring activities. Accordingly, all out-of-pocket expenses of covered persons for travel, lodging, meals and the like associated with any grantee or grant shall be reimbursed to the covered person only by the Foundation directly and in accordance with the Foundation's policies and procedures for ordinary and reasonable business expenses.

3. Other Benefits from Grantees

The Foundation's policy on being the sole provider of direct reimbursement of ordinary and reasonable out of pocket expenses is also intended to protect against any violation, indirectly through or on behalf of a grantee, of the laws applicable to the Foundation prohibiting self-dealing, private inurement or impermissible benefit. Accordingly, covered persons may not accept any gift or other benefit, including travel, accommodations or entertainment, that is not both (i) reasonably in furtherance of his or her activities on behalf of the Foundation and (ii) reasonable in nature and insubstantial in value. The meaning of reasonable in nature and insubstantial in value should be evaluated in light of all relevant circumstances and with a sensitive appreciation of the adverse effects upon the reputation of the Foundation that could result from public disclosure of questionable gifts or benefits.

4. Honoraria

Acceptance of cash or any substantial in-kind honorarium will normally constitute compensation to the recipient and a financial interest under this policy. No covered person may accept honoraria from or on behalf of an actual or potential grantee without the approval of the Executive Director or the President of the Board of Trustees.

5. Self-dealing

Notwithstanding any other provision of this policy, the Foundation shall not enter into any transaction with a trustee or any other disqualified person which is an act of direct or indirect self-dealing under Code § 4941 (such as a direct or indirect sale or exchange of property or services, a lease, or a loan between the Foundation and a disqualified person) unless the transaction is one that the Internal Revenue Service recognizes as being an exception to the rules relating to disqualified persons (for

example, an outright gift from the disqualified person to the Foundation or the payment of compensation for services necessary to carrying out the Foundation's charitable purposes).

Article IV Procedures

1. Duty to Disclose

In connection with any actual or possible conflicts of interest, an interested person must disclose the existence and nature of his or her financial interest to the President, the Executive Director or the committee that is considering the proposed transaction, arrangement, or grant.

Any person who has a concern regarding the actual or potential conflicts of interest or the appearance of such a conflict with respect to any covered person is encouraged to review the matter with their point of contact with the Foundation or the Executive Director, as appropriate.

2. Determining Whether a Conflict of Interest Exists

After disclosure of the financial interest, the interested person or persons may participate in discussion of the proposed arrangement, but shall leave the board or committee meeting while the financial interest of the person(s) is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists. The conflict shall be determined not to exist or shall be resolved pursuant to paragraph 8 or 9 below prior to the decision to enter or not enter the proposed arrangement.

Nothing in this policy shall authorize a board or committee to approve, or the Foundation to engage in, an act of self-dealing, private inurement or a transaction affording a prohibited benefit to a disqualified person or any other act prohibited by applicable law.

Nothing in this policy shall authorize any covered person to accept any gift, favor, prerequisite or benefit having a substantial value except pursuant to all applicable policies, procedures and practices of the Foundation.

3. Procedures for Addressing Conflicts of Interest in Commercial Matters

- a. The President of the board or chair of a committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- b. After exercising reasonable due diligence, the board or committee shall determine whether the Foundation can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.
- c. If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the board or committee shall determine by a majority vote of the disinterested members whether the transaction or arrangement is in the Foundation's best interest and for its own benefit and whether the transaction is fair and reasonable to the Foundation and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

4. Procedures for Addressing Conflicts of Interest in Grantmaking

The Foundation expects and encourages active involvement by Foundation trustees, officers, and employees in oversight of the management and operation of philanthropic and charitable organizations, including grantees engaged in furthering the mission and programmatic objectives of the Foundation.

- a. Each interested person shall disclose his or her conflicts to the President of the board or chair of a committee as early as possible but in all events prior to the first decision of the board or committee with respect to the proposed grantee or grant affected by the conflict. For grantmaking teams this disclosure should occur prior to the grant being placed under review and the disclosed interest should be recorded in the appropriate files relating to the proposed grant.
- b. The President of the board or chair of the committee shall, if he or she deems it appropriate, appoint a disinterested person or committee to investigate the nature of any benefits that the interested person(s) may receive, directly or indirectly, by reason of the proposed grant or grants.
- c. After exercising reasonable diligence, the board or committee shall determine whether the proposed grant is or can be structured so that no substantial benefit of or from the grant is received by the interested person(s) (i) that would not otherwise be available to a member of the public on substantially the same terms and (ii) that otherwise may influence inappropriately the decisions of the Foundation or of the interested person in relation to the proposed grant. The board or committee will record its determination in the minutes of the meeting at which the determination is made.
- d. If the board or committee has made the determination required by paragraph 9(c) above, then the person(s) who would otherwise be deemed to be interested person(s) shall not be so deemed and they may participate fully in the development, consideration, approval and administration of the proposed grant or grants.
- e. If the board or committee cannot make the determination provided in paragraph 4(c) with respect to any otherwise interested person, the board or committee nevertheless may consider the merits of the proposed grant or grants under paragraph 4(f), provided that the interested person(s) is not a “disqualified person” and that person(s) shall be recused from consideration of the proposed grant or grants and shall not participate in their administration. Furthermore, the interested person shall recuse themselves with normal activities of oversight such as discussion of performance and amendments to funding agreements for the entire duration of the funded grant. The board or committee will record its decision that the paragraph 4(c) determination cannot be made in the minutes of the meeting at which it reaches its decision.
- f. The board or committee shall determine by a majority vote of its disinterested members whether the proposed grant or grants (i) is consistent with the Foundation’s charitable purposes, (ii) is in the Foundation’s best interest and for its benefit and (iii) is fair and reasonable to the Foundation, notwithstanding the interest of the interested person(s). The Foundation shall implement that proposed grant or grants in conformity with such determination.
- g. A board or committee may act through a sole disinterested member. If a committee has no disinterested member, it shall refer the proposed grant or grants to the executive committee or the board. If the board has no disinterested members, it nevertheless may act with respect to a

proposed grant or grants through such of its members and or such procedures as it may deem appropriate.

5. Violations of the Conflict of Interest Policy

- a. If the board or committee has reasonable cause to believe that a person has failed to disclose an actual or possible conflict of interest, it shall inform the person of the basis for such belief and afford the person an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the response of the person and making such further investigation as may be warranted in the circumstances, the board or committee determines that the person has in fact failed to disclose an actual or possible conflict of interest, it shall take such disciplinary and corrective action as it deems appropriate.

Article V Records of Proceedings

The minutes of the board or committee or the permanent records with respect to each grant shall contain

1. 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, the board's or committee's decision as to whether a conflict of interest in fact existed and the actions or decisions taken pursuant to this policy to resolve any conflict found to exist.
2. the names of the persons who were present for discussions and voted 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 therewith.

Article VI Annual Statements

Each trustee, officer and employee of the Foundation shall annually sign a statement which affirms that such person

1. has received a copy of the conflict of interest policy,
2. had read and understands the policy,
3. has agreed to comply with the policy, and
4. understands that the Foundation is a charitable organization and a private foundation and that it may not participate in any private inurement, private benefit or self-dealing transactions.

Article VII Periodic Reviews

To ensure that the Foundation operates in a manner consistent with its charitable purposes and that it does not engage in activities that could jeopardize its status as an organization exempt from federal

income tax, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

1. Whether compensation arrangements and benefits are reasonable and are the result of arm's-length bargaining.
2. Whether commercial arrangements reflect reasonable payments for goods and services and do not result in inurement, impermissible private benefit or self-dealing.
3. Whether grant arrangements, including program related investments, conform to written policies, are properly recorded, further the Foundation's charitable purposes and do not result in inurement, impermissible private benefit or self-dealing.

Article VIII Use of Counsel and Other Advisers

In exercising its authority and responsibilities hereunder, including in conducting the periodic reviews provided for in Article VII, the Foundation and its board and committees may, but need not, use internal or external counsel or other advisers. The board or committee shall be entitled to rely in good faith upon the conclusions and recommendations of internal or of external counsel or of other advisers to the maximum extent permitted by applicable law. If outside advisers are used for the periodic reviews provided in Article VII, their use shall not relieve the board of its responsibility for ensuring that periodic reviews are conducted.