

New York Battery and Energy Storage Technology Consortium
CONFLICT OF INTEREST POLICY

The New York Battery and Energy Storage Technology Consortium (“NY-BEST” or the “Corporation”) is an organization subject to the New York State Not-for-Profit Corporation Law with respect to its governance, including dealing with conflicts of interest. The Nonprofit Revitalization Act of 2013, and amendments thereto, imposes several requirements with respect to conflicts of interest and related party transactions, and incorporates common law and best practices for dealing with these concerns.

The Corporation adheres to the highest standards of ethical conduct in governance and operations to ensure that Board members, staff, volunteers, and/or consultants do not have or give the appearance of having conflicts of interest and do not use their relationship with the organization for personal gain.

The Corporation has adopted this policy designed to avoid any possible conflict between the personal interests of directors and officers and the interest of the Corporation. The purpose of this policy is to ensure that decisions about corporate operations and the use and dispositions of corporate assets are made solely in terms of benefits to the Corporation and are not influenced by any private profit or other personal benefit to the individuals affiliated with the Corporation who take part in the decision.

Administration

This policy statement and the policies and directives which it sets forth shall be adopted by, implemented by and administered for the Corporation by the Board of Directors or committee of independent directors designated by the Board. Questions about this policy statement may be directed to the Secretary or the Board’s designated compliance officer.

Definitions

A Related Party is defined as the following:

- (a) Any individual who currently serves in the following capacities:
 - (i) a voting member of the Board of Directors of the Corporation or any Affiliate of the Corporation;
 - (ii) an officer of the Corporation or any Affiliate of the Corporation; or
 - (iii) any other person who exercises the powers of directors or officers over the affairs of the Corporation or any Affiliate of the Corporation.

- (b) Any Relative of those persons listed in (a) above. A “Relative” includes: spouse; domestic partner, ancestors; brothers and sisters (whether whole or half-blood); children (whether natural or adopted); grandchildren; great-grandchildren; and spouses or domestic partners of brothers, sisters, children, grandchildren, and great-grandchildren.

(c) Any entity in which an individual listed in (i) or (ii) has a controlling interest. A controlling interest is defined as:

- for corporations, ownership (directly or indirectly) of more than 35% of the combined voting power;
- for partnerships or personal service corporations, ownership (directly or indirectly) of more than 5% of the profits interest; and
- for trusts or estates, ownership (directly or indirectly) of more than 35% of the beneficial interest.

Affiliate is any entity controlled by, or in control of, the Corporation.

The following shall **not** be considered a Related Party:

- other organizations that are tax-exempt under federal law; and
- any employee who is not highly compensated¹ and is not otherwise considered a Related Party under this Policy.

A Related Party Transaction is any transaction, agreement or other arrangement in which a Related Party has a financial interest and in which the Corporation or any Affiliate of the Corporation is a participant.

A Conflict of Interest is any transaction that is not a Related Party Transaction, but involves a transaction that could be perceived or interpreted to be in conflict with the Corporation's interest.

Independent Directors are directors who:

- (a) are not, and have not been within the last three (3) years, compensated as an officer or employee of the Corporation or an Affiliate;
- (b) have not received total compensation exceeding \$10,000 in any of the last three (3) fiscal years from the Corporation or an Affiliate (excludes reimbursement for expenses reasonably incurred or reasonable compensation for service as a director);
- (c) do not have a relative who meets the requirements under (b);
- (d) are not a current employee of or do not have a substantial financial interest in an organization that made payments to, or received payments from, the Corporation or an Affiliate for property or services exceeding the lesser of \$25,000 or 2% of such organization's consolidated gross revenues in any of the last three (3) fiscal years (payment does not include charitable contributions);
- (e) do not have a relative who is a current officer of or has a substantial financial interest in and entity described in (d) above;

¹Highly compensated employee is defined under Code Section 414(q)(1)(B)(i) and is adjusted annually for inflation. The amount for 2016 is \$120,000.

- (f) do not own (wholly or partially) or are a director, officer or employee of the Corporation's outside auditor or worked on the Corporation's audit at any time over the last three (3) years; and
- (g) do not have a relative who meets the requirements under (f).

Payment does not include charitable contributions, dues or fees paid to the corporation for services which the Corporation performs as part of its purposes, provided that such services are available to the public on the same terms.

Annual Disclosure Statements

- **Duty to Complete Questionnaire.** Each director and officer shall complete a conflict of interest questionnaire prior to becoming a director or officer and annually thereafter. The questionnaire shall be in the form approved by the Board of Directors.
- **Duty to Update Information.** Each director and officer shall promptly advise the Secretary or designated compliance officer of any changes to the information provided in that individual's last completed conflict of interest questionnaire.

If during the course of a Board or committee meeting, discussion, or deliberation any actual or potential conflict of interest or related party transaction becomes apparent to a Board or committee member, the Board or committee member must disclose such actual or potential conflict to the Board of Directors or committee. If another Board or committee member becomes aware of any actual or potential conflict of interest or related party transaction, he or she shall disclose such conflict if the conflicted Board or committee member is absent. In both cases, such disclosure shall be made a matter of record.

The Secretary or designated compliance officer will ensure that all individuals required to complete an annual disclosure statement do so in accordance with this Policy. If any individual fails to comply with the Policy's disclosure requirements, the Secretary or designated compliance officer will report such failure to the Board of Directors, which shall recommend appropriate corrective action.

Disclosures and List of Related Parties

All disclosures of interests in completed questionnaires or subsequent advice shall be compiled and reported by management to the Board of Directors.

A list of Related Parties identified through the annual disclosure process shall be assembled and provided to employees of the Corporation or other individuals who have authority to sign contracts, enter into transactions and sign checks on behalf of the Corporation. Such individuals shall be responsible for reviewing the list of Related Parties before entering into a transaction to confirm whether it is a Related Party Transaction.

Review Process for Related Party Transactions

Once a Related Party Transaction is identified, the individual who identified the Related Party Transaction shall inform, in writing, the Secretary or designated compliance officer.

Upon receipt of written notice, the Secretary or designated compliance officer shall convene a meeting of the Board of Directors to review the Related Party Transaction before it is entered into by the Corporation. The Board of Directors shall review the Related Party Transaction to confirm that it is fair, reasonable and in the Corporation's best interests to enter into the transaction. The Board of Directors shall utilize the following process to approve transactions subject to this Policy:

- (a) The Board of Directors must approve in advance the Related Party Transaction. Any member of the Board of Directors who has a financial interest in the transaction may not participate in the vote, nor may he or she be present during voting or deliberations.
- (b) The Board of Directors must make its decision in reliance on appropriate data as to comparable arrangements to the extent they are available.
- (c) The Board of Directors must adequately document its decision and deliberations in the corporate records.

Review Process for Conflicts of Interest

A potential Conflict of Interest should be disclosed as it arises for consideration by the Board, committee or individuals reviewing the matter to determine whether a Conflict of Interest exists and whether the individual should be recused from deliberations and voting.

If the Board or committee determines that a Conflict of Interest exists, then the individual with the Conflict of Interest may not participate in the vote, nor may he or she be present during voting or deliberations on the matter.

The Board or committee should also adequately document its decision and deliberations in the corporate records.

Quorum and Voting

Directors or committee members who are present at a meeting, but not present at the time a vote is taken due to a conflict of interest or related party transaction shall be deemed present at the time the vote is taken.²

² This will essentially count as a "no" vote by the individual who is recused from voting.

Employee Conflicts of Interest

All employees should deal with vendors without any appearance of favor or preference based on personal considerations. Employees must, at all times, exercise their best skill, care and judgment for the benefit of the Corporation and must refrain from being influenced by personal considerations of any kind in the performance of their duties. Whenever a conflict of interest – or even a *possible* conflict of interest – exists, it must be fully disclosed and the employee involved may then be required to refrain from participating in the consideration or determination of any transaction with the vendor.

Specifically, an employee of the Corporation with a potential conflict of interest in a particular matter shall promptly and fully disclose the potential conflict to his supervisor who shall then disclose the matter to the Chair or designated compliance officer. The Chair or designated compliance officer shall be responsible for determining the proper way for the Corporation to handle decisions which involve employee conflicts of interest. In making such determinations, the Chair or designated compliance officer may consult with legal counsel.

The Chair or designated compliance officer shall report to the Board of Directors at least annually concerning employee conflicts of interest which have been disclosed and contracts and transactions involving employee conflicts which the Chair or designated compliance officer has approved.

Compensation Decisions

Compensation decisions for Related Parties are a Related Party Transaction. All recommendations for such matters shall be referred to the Board of Directors for review in accordance with this policy once a recommendation is made by the Board designated Compensation Committee.

The Related Party shall not participate in the deliberations or voting on any matter relating to his compensation, provided, that a director may participate in deliberation or voting on compensation for services as a director that is made available or provided to all directors on the same or substantially similar terms. Such individual may provide information to the designated Compensation Committee or Board of Directors reviewing the compensation decision.

All compensation will be measured against an appropriate recognized survey or surveys for compensation (if applicable) of corresponding rank, position and/or specialty in the same or a *comparable* geographic area as that of the Corporation. There shall be sufficient and adequate documentation to support the reasonableness and appropriateness of all compensation decisions. All deliberations regarding compensation of a Related Party shall be documented by the designated Compensation Committee on behalf of Board of Directors.

Violations of Conflict of Interest Policy

If the Board of Directors determines that an individual has failed to comply with the policies and directives set forth in this policy statement, it shall recommend or take appropriate corrective action.

