**NYC DISTRICT MANAGEMENT ASSOCIATION, INC.**

**ANNUAL DISCLOSURE QUESTIONNAIRE[[1]](#footnote-2)**

**WHY WE ARE ASKING YOU TO FILL OUT THIS QUESTIONNAIRE:**

The NYC District Management Association, Inc. (the “DMA”) is subject to legal and disclosure requirements relating to its Board of Directors, officers and key persons.[[2]](#footnote-3) They include the following:

1. Federal tax law requires public disclosure by the DMA in its Form 990 about business and family relationships between the DMA and its leaders, the independence of the DMA’s Board of Directors and the compensation paid by the DMA to officers, Directors, key persons or members.
2. Federal tax law and the DMA’s Certificate of Incorporation provide that no part of the net earnings or assets of the DMA may inure to Directors, officers or other private persons. New York law provides that the DMA may not be organized or operated for the private gain of any person.
3. New York Not-for-Profit Corporation Law conflict of interest regulations govern transactions between the DMA and its Directors, officers and key persons, or with organizations in which those individuals have a financial interest.
4. New York law provides that Directors owe the DMA a duty of loyalty, which requires Directors to act in the interest of the organization rather than in the personal interest of any Director.

The DMA’s Conflict of Interest Policy provides and New York State law requires that the DMA obtain information each year from its directors, officers, and key persons in order to comply with New York State’s conflict of interest rules. In addition, the IRS recognizes the use of questionnaires in satisfying the diligence required of nonprofits in preparing Form 990 disclosure about Directors, officers, trustees and key persons. This Questionnaire is the tool we use for these purposes.

**Prepared by Lawyers Alliance for New York**

**in partnership with the New York City Department of Small Business Services**

**Current as of [date]**

**INSTRUCTIONS FOR COMPLETING THE QUESTIONNAIRE:**

**Please answer the questions on page 2 as they relate to the \_\_\_\_ fiscal year, which ended on \_\_\_\_\_\_\_\_\_, \_\_\_\_ and then sign on page 3. If you answer “yes” to any of the questions below, please explain in the space provided following the list of questions. If you need additional space, please attach a separate sheet.**

This Questionnaire relates, in part, to the DMA;’s Conflict of Interest Policy. A copy of the policy is attached for your reference. Please review the policy before signing the affirmation on page 3.

**Once you have completed the questions and signed and dated the affirmation on page 3, please return this Questionnaire to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.**

Please note:

* Exhibit A contains the definitions of the terms in **bold font** set forth in the questions. Please review these definitions before you answer the questions.
* Exhibit B[[3]](#footnote-4) contains a list of the DMA’s Directors, officers and key persons and will assist you in answering question 15.
* Exhibit C sets out the Form 990 questions regarding governance, management and disclosure for your reference and as provided by Form 990 requirements.
* Your assistance is greatly appreciated.

|  |  |  |
| --- | --- | --- |
| **ANNUAL DISCLOSURE QUESTIONS** | **YES** | **NO** |
| 1. In the last three years, have you received any **compensation** from the DMA or any **affiliate** of the DMA as an employee, Director officer or independent contractor? |  |  |
| 1. Are you aware of any **compensation** paid in the last three years by the DMA or any **affiliate** of the DMA to a **relative** as an employee, Director, officer or independent contractor? |  |  |
| 1. Do you have a **financial interest** in the DMA or any **affiliate** of the DMA? |  |  |
| 1. Are you aware of a r**elative’s financial interest** in the DMA or any Affiliate of the DMA? |  |  |
| 1. Are you aware of any **transactions** between the DMA and any **entity** in which you are an officer, Director, trustee, employee, LLC member, LLC manager, general partner or **owner** of more than a 35% equity interest in the **entity**? |  |  |
| 1. Are you aware of any **transactions** between the DMA and an **entity** in which a **relative** is an officer, Director, trustee, employee, LLC member, LLC manager, general partner,or an **owner** of more than a 35% equity interest in the **entity**? |  |  |
| 1. Do you have a **financial interest** or have you been a Director, trustee, employee or officer of an entity that has made payments to or received payments from the DMA or any **affiliate** of the DMA? |  |  |
| 1. Do you have a **relative** that has a **financial interest** or has been a Director, trustee, employee or officer of an entity that has made payments to or received payments from the DMA or any **affiliate** of the DMA? |  |  |
| 1. Do you have any outstanding loans to or from the DMA or any **affiliate** of the DMA? |  |  |
| 1. Are you aware of any outstanding loan to or from the DMA or any **affiliate** and a **relative**? |  |  |
| 1. Did the DMA provide any **grant or other assistance** to you? |  |  |
| 1. Are you aware of any **grant or other assistance** provided by the DMA to a **relative**? |  |  |
| 1. Are you aware of any **grant or other assistance** provided by the DMA to any **entity** in which you are an officer, Director, trustee, employee, LLC member, LLC manager, general partner, or an **owner** of more than a 35% equity interest? |  |  |
| 1. Are you aware of any **grant or other assistance** provided by the DMA to any **entity** in which a r**elative** is an officer, Director, trustee, employee, LLC member, LLC manager, general partner, or **owner** of more than a 35% equity interest in the **entity**? |  |  |
| 1. Are you a **relative** of, or do you have any **business relationship** with, any of the individuals listed on Exhibit B? |  |  |
| 1. Do you have an interest of more than 35% in any **entity** doing business with the DMA that was not otherwise disclosed in response to the prior questions? |  |  |
| ***Please answer Question 17 below only if you are a director of the DMA.*** | | |
| 1. Are you aware of any relationship or transaction not otherwise disclosed that constitutes or could constitute an actual or apparent conflict of interest between you and the DMA or that could impair or appear to impair your status as an **independent director**? |  |  |
| **EXPLANATION OF RESPONSES (IF YOU ANSWERED “YES”; PLEASE ADD ADDITIONAL PAGES IF NECESSARY):** | | |

**Affirmation and Signature**

By signing below, you confirm that (i) you have received, read in full, and understood the DMA’s Conflict of Interest Policy; (ii) you agree to comply with the Conflict of Interest Policy; (iii) you understand that the DMA is a tax-exempt organization; (iv) you understand that, in order to maintain its federal tax-exempt status, the DMA must engage primarily in activities that accomplish one or more of its tax-exempt purposes; (v) the disclosure above is accurate and complete; and (vi) you will notify the DMA promptly upon becoming aware of any error or material change in the information you have provided in this Questionnaire.

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Signature Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name Date

**EXHIBIT A**

**DEFINITIONS**

**Affiliate.** An affiliate of the DMA is a person or entity that is directly or indirectly through one or more intermediaries, controlled by, in control of, or under common control with the DMA.

**Business relationship** means any of the following:

* Person A is employed by Person B (i.e., in a sole proprietorship or by an organization with which Person B is associated as a trustee, Director, officer, Key Person, or greater-than-35% owner).
* Person A is transacting business with Person B (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 Person B is associated as a trustee, Director, officer, Key Person, or greater-than-35% owner).
* Person A and Person B are each a Director, trustee, officer, or greater than 10% owner in the same business or investment entity.
* Please note that a “business relationship” does not include a relationship between an attorney and client, a medical professional (including psychologist) and patient, or a priest/clergy and penitent/communicant.

**Compensation** includes all forms of cash and non-cash payments or benefits provided in exchange for services, including salary and wages, bonuses, severance payments, deferred payments, retirement benefits, fringe benefits, and other financial arrangements or transactions such as personal vehicles, meals, housing, personal and family educational benefits, below-market loans, payment of personal or family travel, entertainment, and personal use of the DMA’s property.

**Entity** means sole proprietorship, for-profit or nonprofit corporation, limited liability company, limited liability partnership, general or limited partnership or other organization.

**Financial Interest** means an economic benefit, directly or indirectly, from any transaction, agreement, compensation agreement, including direct or indirect remuneration as well as gifts or favors that are not insubstantial or other arrangement involving the DMA.

**Grant or other assistance** means awards, prizes, cash allocations, stipends, scholarships, fellowships, research grants, and similar payments and distributions made by the organization during the tax year. It does not include salaries or other compensation to employees.

**Independent Director** means a member of the Board of Directors who:

1. is not and has not been an employee or a Key Person of the DMA or an Affiliate of the DMA within the last three years;
2. does not have a Relative who is or has been a Key Person of the DMA or an Affiliate of the DMA within the last three years;
3. has not received and does not have a Relative who has received more than $10,000 in compensation directly from the DMA or an Affiliate of the DMA in any of the last three years (not including reasonable compensation for services or reimbursement for expenses reasonably incurred as a Director of the DMA, as set by the DMA);
4. does not have a substantial Financial Interest in and is not an employee of, and does not have a Relative who has a substantial Financial Interest in or is an Officer (as defined below) of, any entity that has provided payments, property or services to, or received payments, property or services from, the DMA or an Affiliate of the DMA in excess of the following, as applicable: (i) the lesser of $10,000 or 2% of the entity’s consolidated gross revenue in any of the last three fiscal years if such consolidated gross revenue was less than $500,000; (ii) $25,000 if the entity’s consolidated gross revenue in any of the last three fiscal years was $500,000 or more but less than $10,000,000; or (iii) $100,000 if the entity’s consolidated gross revenue in any of the last three fiscal years was $10,000,000 or more;
5. is not and does not have a Relative who is a current owner, whether wholly or partially, Director, officer or employee of the DMA’s outside auditor or who has worked on the DMA’s audit at any time during the past three years;
6. is not in an employment relationship under control or direction of any Related Party (as defined below) and does not receive payments subject to approval of a Related Party; or
7. does not approve a transaction providing economic benefits to any Related Party who in turn has approved or will approve a transaction providing economic benefits to the Director.

**Key Person** means, with respect to the DMA, any individual or entity, other than a Director or Officer, whether or not an employee of the DMA, who:

1. has responsibilities, or exercises powers or influence over the DMA as a whole similar to the responsibilities, powers, or influence of Directors and Officers;
2. manages a segment or activity of the DMA that represents a substantial portion of the activities, assets, income or expenses of the DMA, as compared to the DMA as a whole; or
3. alone or with others controls or determines a substantial portion of the DMA’s capital expenditures or operating budget.

**Owner** means sole proprietor, stockholder, member or partner. 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 (for example, ownership in an entity that has ownership in the entity in question); there may be ownership through multiple tiers of entities.

**Related Party** means a person who is a:

* + Director, Officer, or Key Person of the DMA or an Affiliate of the DMA;
  + Relative of a Director, Officer, or Key Person;
  + any entity in which a person in (i) or (ii) has a 35% or greater ownership or beneficial interest or, in the case of a partnership or professional DMA, a direct or indirect ownership interest in excess of 5%;
  + Founder of the DMA;
  + Substantial contributor to the DMA (within the current fiscal year or the past five fiscal years);
  + Person owning a controlling interest (through votes or value) in the DMA; or
  + Any non-stock entity controlled by one or more Key Persons of the DMA.

**Relative** means a person who is a spouse, ancestor, child (whether natural or adopted), grandchild, great-grandchild, sibling (whether whole- or half-blood), or spouse of a child (whether natural or adopted), grandchild, great-grandchild or sibling (whether whole- or half-blood), or a domestic partner as defined in section 2994-A of the New York Public Health Law.

**Transaction** includes, without limitation, real estate and equipment leases, loan, provision of services, sale of goods, licenses and joint ventures, partnerships and entities in which the DMA is a party or **owner**.

**EXHIBIT B**

**LIST OF DIRECTORS, OFFICERS AND KEY PERSONS OF the DMA**

The following is a list of individuals who are anticipated as being reported on the IRS Form 990 as a current or former Director, officer or key person of the DMA .

|  |  |
| --- | --- |
| **Name** | **Title** |
|  | Executive Director |
|  | Chairperson |
|  | Vice-Chairperson |
|  | Secretary |
|  | Treasurer |
|  | Director |
|  | Director |
|  | Director |
|  | Director |
|  | Director |
|  | Director |
|  | Director |
|  | Director |
|  | Director |
|  | Director |
|  | Director |
|  | Key Person |
|  | Key Person |
|  | Key Person |

**For the Administrator: Instructions for completing Exhibit B**

On Exhibit B, list the top management official, Directors, officers and Key Persons of the DMA. In deciding which individuals to list, please use the following definitions which also appear in the instructions to the IRS Form 990.

***Top Management Official*** meansthe person who has ultimate responsibility for implementing the decisions of the Board or for supervising the management, administration or operations of the DMA, such as the Chief Executive Officer or Executive Director. If this ultimate responsibility resides with two or more individuals, then each individual should be included.

***Director*** meansa member of the organization’s governing body, but only if the member has voting rights. A Director that served at any time during the DMA’s tax yearis deemed a current Director. Members of advisory boards that do not exercise any governance authority over the DMA are not considered Directors.

***Officer***meansthe persons elected or appointed to manage the DMA’s daily operations, such as the President, Vice-President, Secretary, Treasurer, including the Top Management Official and the chief financial official with the ultimate responsibility for managing the DMA’s finances, even if such persons are not elected Officers of the Board according to the DMA’s Bylaws.

***Key person*** means a person who is, or has within the last five years, been in a position to exercise substantial influence over the affairs of the DMA. This includes, but is not limited to:

* Voting members of the Board;
* Presidents, chief executive officers, chief operating officers or employee of any other title with similar responsibilities;
* Treasurers and chief financial officers or employee of any other title with similar responsibilities; or
* A “highly compensated” employee, within the meaning of section 4958 of the Internal Revenue Code and guidance issued by the Internal Revenue Service, who is in a position to exercise substantial influence over the affairs of the DMA.

Related Party. Persons who may be considered a Related Party of the DMA or an Affiliate of the DMA under this Policy include:

* + Directors, Officers, or Key Persons of the DMA or an Affiliate of the DMA;
  + Relatives of Directors, Officers, or Key Persons;
  + any entity in which a person in (i) or (ii) has a 35% or greater ownership or beneficial interest or, in the case of a partnership or professional DMA, a direct or indirect ownership interest in excess of 5%;
  + Founders of the DMA;
  + Substantial contributors to the DMA (within the current fiscal year or the past five fiscal years);
  + Persons owning a controlling interest (through votes or value) in the DMA;

Any non-stock entity controlled by one or more Key Persons.

**EXHIBIT C**

**IRS FORM 990 QUESTIONS**

IRS Form 990 requires disclosure of information about the DMA’s governing body, management, disclosure practices and governance policies (including procedures for handling conflicts of interest). Federal tax law requires the DMA to make a reasonable effort to obtain such information. The instructions to Form 990 provide that reasonable efforts include obtaining information through a questionnaire that recites the Form 990 questions. These questions are as follows:

***Page 3, Part IV, Line 25a*** asks if the DMA engaged in an excess benefit transaction with a disqualified person during the year.

***Page 3, Part IV, Line 25b***asks if the DMA became aware that it had engaged in an excess benefit transaction with a disqualified person from a prior year.

***Page 3, Part IV, Line 26*** asks if a loan to or by a current or former officer, director, trustee, key employee, highly compensated employee, or disqualified person was outstanding as of the DMA’s tax year.

***Page 3, Part IV, Line 27*** asks if the DMA provided a grant or other assistance to an officer, director, trustee, key employee, or substantial contributor, or to a person related to such an individual.

***Page 4, Part IV, Lines 28a, 28b, and 28c*** ask whether during the tax year, any person who is a current or former officer, director, trustee or key employee:

* Had a direct business relationship with the DMA (other than as an officer, director, or employee), or an indirect business relationship through ownership of more than 35% in another entity (individually or collectively with another person(s)).
* Had a family member who had a direct or indirect business relationship with the DMA.
* Serve as an officer, director, key employee, partner or member of an entity (or a shareholder of a professional DMA) doing business with the DMA.

***Page 6, Part VI, Line 1b*** asks you to enter the number of voting members of the DMA’s board of directors that are independent.

***Page 6, Part VI, Line 2*** asks if any officer, director, trustee or key employee has a family relationship or a business relationship with any other officer, director, or key employee.

1. [↑](#footnote-ref-2)
2. A “key person” is anyone, other than a Director or officer, whether or not an employee, who (i) has responsibilities, or exercises power or influence over the DMA as a whole similar to the responsibilities, power, or influence of Directors and officers; (ii) manages the DMA, or a segment of the DMA that represents a substantial portion of the activities, assets, income or expenses of the DMA; or (iii) alone or with others controls or determines a substantial portion of the DMA’s capital expenditures or operating budget. N-PCL § 102(a)(25). [↑](#footnote-ref-3)
3. Exhibit B should be filled out by the person(s) administering this Questionnaire before it is circulated. [↑](#footnote-ref-4)