

THE LIVERPOOL CITY REGION LOCAL ENTERPRISE PARTNERSHIP

DECLARATION OF CONFLICTS FORM

MEMBER: _____ (the “Member”)

DATE: _____

SITUATIONAL CONFLICTS – (SEE NOTE 1 BELOW)

The LEP Board was previously constituted as an incorporated body until a partition in governance arrangements was effected through the creation of a separate company board to oversee the LEP Company. However, the LCR LEP Board will continue to operate its declaration of conflicts in the same manner as previously and be guided by the relevant sections of the Companies Act 2006. As such, the Member hereby declares the nature and extent of all actual or potential / direct or indirect conflicts of interest arising from the Member’s interests listed below, and requests that the LCR LEP Board (the “LEP Board”) authorises the declared conflict(s).

Nature and extent of conflict(s) of interest	Agenda item number and title (if applicable)	Whether non-disclosure of confidential information is requested (Yes/No)	Asked to absent the meeting (if applicable) (Yes/No)	Authorisation granted and conditions of authorisation (Yes/No)
[◆]				
(1)	(2)	(3)	(4)	(5)

(1), (2) and (3) for completion by the Board Member before the Meeting

(4) and (5) for completion by the Secretary or Chairman at the Meeting

TRANSACTIONAL CONFLICTS (SEE NOTE 2 BELOW)

The Member hereby declares the nature and extent of any interest that they have in proposed commissions, contracts or arrangements on which the LEP Board will advise, recommend or otherwise lead to the award of public funds under its oversight

Nature and extent of conflict(s) of interest	Agenda item number and title (if applicable)	Whether non-disclosure of confidential information is requested (Yes/No)
[◆]		

Although no longer acting as or having the legal capacity of Directors of the LEP Company the discipline, rigour and transparency required of company directors in discharging their duties will be adopted by the LCR LEP Board and the notes below will guide Members as to the expectations of the LCR LEP in declaring any conflicts of interest.

Note 1: Situational conflicts of interest (as guided by section 175 Companies Act 2006 (2006 Act)) where board authorisation IS required

Whilst no statutory definition of a “conflict of interest” exists, a useful test as to what a situational conflict is, is to regard an “interest” as a very broad term that includes anything or any connection which could potentially divert a director’s mind from giving sole consideration to promoting the company’s (where he is a director) success.

A company director is under a positive duty to avoid situations in which he has, or could have, a direct **or indirect** interest that conflicts, or **might** conflict, with the interests of the company, unless the conflict has been previously authorised by the other directors (**section 175 duty**). This applies, in particular, to the exploitation of any property, information or opportunity, whether or not the company could itself take advantage of the property, information or opportunity.

By way of example only, a director may find that his personal interests conflict with the interests of or his duties to the company in circumstances where:

- he is a politician such as a Local Authority representative or Councillor;
- he is a competitor in some respects of the company;
- he is a major shareholder in the company;
- he is, or is a potential, customer of, or supplier to, the company;
- he owns property which is adjacent to the company's property and whose value could be affected by the company's activities;
- he holds an advisory relationship (for example, legal or financial) with the company or a competitor of the company;
- he is a director or trustee of the company's pension fund;

- he wants to take up an opportunity which has been offered to, but declined by, the company;
- he is in a position where he can make a profit as a result of his directorship; or
- he has been appointed by and represents a shareholder in the company.

In addition, if any person connected with the director (for example, family members, business partners, civil partners, companies in which the director owns 20% or more of the shares) has an interest which conflicts with that of the company, this will also potentially put the director in breach of his section 175 duty.

This duty does not apply to a conflict of interest arising in relation to a proposed transaction or arrangement with the company as that is covered by section 177 (see below).

Directors must review carefully any possible conflicts, either existing or potential, that they are aware of and seek authorisation of these.

The non-conflicted directors should move to authorise any conflict situations as soon as possible. It is open to them to impose any limitations or conditions on any authorisations they grant, including any time limitation. In any event, it is recommended that companies review any authorisations they have granted to their directors on a regular basis.

Example:

Mr C sits on the board of Company A. The business of Company A's next board meeting is to discuss plans to award a financial support package to a local business deemed to go "above and beyond" in terms of running its business in an environmentally friendly way (for which there have been a number of applications received). Company B (where Mr C is an executive board member) has applied for the award in order to expand its business.

Mr C is clearly conflicted by virtue of his influential situation on the board of Company A – his influence on where the support package is awarded might lead to a personal gain on his part in terms of continued employment or a pay increase. He would need to seek authority from the board of Company A in order to take part in discussions regarding the support package. If thought appropriate, the authorising directors might apply conditions on Mr C with regards his attendance at meetings where the support package is to be discussed.

Note 2: Transactional conflicts of interest where authorisation is NOT required (as guided by section 177 2006 Act)

Transactional conflicts are conflicts where a director has an interest in an organisation (where he holds no influence on the actions that company takes) that is or is planning on doing business with the company where the director sits on the board, and where there is no other situational conflict arising.

Directors are under a duty to declare to the board the nature and extent of any interest that they have in proposed contracts or arrangements with the company, unless the other directors are, or should reasonably be, already aware of the interest, it is de minimis or it concerns the terms of his service contract which are to be considered by the directors (or a board committee) at a separate meeting. The director need not be a party to the transaction for the duty to apply. Further, any interest of a person connected to the director may also be caught and require declaration by the director.

This duty is separate from the duty to avoid conflicts of interest described above and directors do not have to obtain advance authorisation of any such interests from either the board or the members. However, they must declare their interests to the full board in advance of the company entering into the contract, in order for the company to have an opportunity to consider any such interest when deciding whether or not it should go ahead with the contract. A director may declare his interest at the first possible board meeting or by way of written notice to the board (in the form of this declaration). There is now an obligation on directors to update any declarations if their interest should change.

Directors should also at the same time declare any interests that they have in existing contracts or arrangements with the company. This is not a "general duty" as defined by the 2006 Act but any failure to do so as regards existing interests is a criminal offence and could result in a substantial fine.

Example:

Company A is going to tender for a distribution contract with Company B. Mr C sits on the board of Company B and is a minority shareholder in Company A. Mr C should declare to the board of Company B that he is a shareholder of Company B but, unless any other situational conflict should arise, he would not need authority from the board to discuss the agenda item in which the distribution contract is discussed.