

[Client Logo]

# Governance Overview

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This document provides an overview of XYZ's governance arrangements and expectations. It serves as a reference, as an orientation and education tool, and as a vehicle for capturing certain governance policies and practices not otherwise reflected in separate documents.

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[Note: In line with customary law firm practice, this template contains bracketed annotations to guide the drafter when preparing the document for a client, including references to underlying legal authorities and to other model O&T documents. These annotations are for reference purposes only and should be removed before sending a draft to the client. In addition, certain portions of the template reflect specific "best practice" guidance and recommendations from various sources, including the IRS, Independent Sector and other nonprofit resource providers, and law firms.

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## Mission

Our mission is [conform to client articulation; add sections for Vision, Values, etc. as appropriate].

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## Charitable status

We are organized and operated for charitable purposes under section 501(c)(3) of the Internal Revenue Code.

We understand that, as a tax-exempt charitable organization, we must operate for public benefit and not for that of our directors, management, substantial donors, or other related or private persons or interests.

We understand that our assets are and must be irrevocably dedicated to charitable purposes, that we are limited in our legislative activities, and that we cannot participate in campaign activities on behalf of any political candidate. [Internal Revenue Code §501(c)(3)]

A number of the policies and practices set out in this Governance Overview reflect these central principles.

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## Board responsibilities

### Full board responsibilities

Under state law, XYZ's activities and affairs are conducted and all corporate powers are exercised by or under the direction of our Board. [California Nonprofit Corporation Law §5210] The Board's responsibilities include:

- determining our mission
- overseeing strategy development and execution
- monitoring program performance, outcomes, and impact
- reviewing budgets and budget performance
- selecting and evaluating the CEO, and determining his/her compensation
- selecting, orienting, and integrating new Board members
- setting fundraising strategy and engaging in development activities
- reviewing and approving branding and outreach strategies

- providing financial reporting, controls, and investment oversight
- assessing our risk profile and risk management practices
- providing legal and tax compliance oversight
- reviewing our governance structure, policies, and practices

[conform to client specifics as appropriate]

### Expectations of individual directors

We expect each individual director to fulfill these responsibilities by:

- learning about our strategy and programs
- learning about our planning processes, key metrics, and financial statements
- preparing for Board and committee meetings, including reviewing agendas, background materials, and draft minutes
- attending at least [75]% of Board and committee meetings and other Board activities
- participating in Board and committee discussions
- identifying ways to contribute to the Board's functioning, including assuming leadership positions and suggesting agenda items
- participating in fundraising activities as described in this Governance Overview
- complying with XYZ's policies including its Conflict of Interest Policy

[conform to client specifics as appropriate]

### Fiduciary duties

Directors have two basic state law duties to a corporation: a duty of care and a duty of loyalty.

- The duty of care requires that each director be informed about organizational activities, participate in decisions, and do so in good faith, in a manner that the director believes to be in the best interest of the organization, and with such care, including reasonable inquiry, of an ordinarily prudent person in similar circumstances. [California Nonprofit Corporation Law §5231(a)]
- The duty of loyalty requires that directors act in the interest of the organization and not in their own interest or in the interest of another entity. [California Nonprofit Corporation Law §5233]

In carrying out their duties, directors are generally entitled to rely upon information, including financial data, provided by officers and employees, counsel, independent accountants and other experts, and Board committees, so long as they in good faith believe such reliance to be warranted. [*California Nonprofit Corporation Law §5231(b)*]

### **Day-to-day management**

The Board selects, oversees, and monitors the performance of our CEO. The bylaws provide that the CEO is the general manager of the corporation and that he or she is responsible for our day-to-day management. [*O&T Bylaws §6.8*]

### **Fundraising expectations**

We expect individual directors to participate in our fundraising activities. This includes volunteering at events, making introductions, seeking contributions, and/or making personal financial contributions that are meaningful to the director.

### **Public communications**

We encourage directors to be advocates for the organization but not to engage in legislative activities, communicate with the media or make other public communications about XYZ except as coordinated with management. [*see Internal Revenue Code §§501(c)(3), 501(h) re political activities and lobbying; consider whether client mission/activities suggest need for more extensive call-out re lobbying or other political activity; consider call-out re use of organizational name – see conflicts policy*]

### **Indemnification and insurance**

California law includes various protections for directors of nonprofit corporations who act in accordance with their fiduciary duties of care and loyalty. In addition, the law permits nonprofits to indemnify directors in respect of claims against them by reason of their status as directors, and to procure director and officer liability insurance. [*California Nonprofit Corporation Law §§5238, 5239*] Our bylaws contain indemnification provisions reflecting these statutory powers and limitations [*O&T Bylaws §7*], [and we maintain D&O insurance].

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## **Board composition**

### **Number of directors**

Our bylaws provide that the number of authorized directors on our Board will be not less than \_\_\_ or more than \_\_\_. The Board fixes the exact number of authorized directors within this range. [*conform as appropriate; O&T Bylaws §3.2*]

### **Independence**

[*set out any client-specific mandatory board composition requirements, if any, and conform*

*caption accordingly*] [In addition,] as provided by state law and as stated in our bylaws, no more than 49% of the directors of XYZ may be individuals who have been compensated, or who have family members who have been compensated, by XYZ for services rendered to it within the previous twelve months. [*California Nonprofit Corporation Law §5227; O&T Bylaws §3.3*]

### **Goals**

We seek directors who possess the highest personal and professional integrity and values, who have a passion for the work of XYZ, and who are committed to making decisions in the best long-term interests of XYZ. We want our Board to reflect diversity in experience, gender, race, and age. We look for practical judgment as well as programmatic, financial, and other technical expertise. [*conform to client goals; consider use of separate Board composition and nomination appendix if client has detailed goals*]

### **Process**

Our Governance Committee is responsible for identifying and recruiting candidates for election to the Board. In doing so, the Committee may: consider expertise, diversity and other composition goals; contact, vet, and recruit potential nominees; and recommend nominees to the full Board. The full Board considers the nominees and votes to elect the new directors. [*California Nonprofit Corporation Law §5220; O&T Bylaws §3.4*]. [*conform to client practice; consider use of separate Board composition and nomination appendix if client has detailed review process*]

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## **Board terms**

### **Term [and term limits]**

Our bylaws provide that directors serve \_\_\_-year terms [and may not serve more than \_\_\_ consecutive terms] [unless otherwise determined by the Board.] [A former director, having reached the term limit, may be reelected after having been off the Board for one year.] [*conform to client practice; O&T Bylaws §3.4*]

### **[Staggered board]**

[Our bylaws also provide for staggered terms, with approximately one-third of the Board elected or re-elected each year.] This arrangement promotes an appropriate balance of experience and fresh perspectives on the Board. [*California Nonprofit Corporation Law §5220(a)*] [*delete or conform as appropriate*]

### **Removal**

Under our bylaws, directors may be removed without cause by a vote of a majority of the directors then in office. [*California Nonprofit Corporation Law §5222(a)(3); O&T Bylaws §3.7*]

Directors should understand that continued failure to attend Board and Board committee meetings may give rise to removal.

### Resignation

Directors who believe they are unable to carry out their responsibilities as directors are expected to discuss the situation with the Board Chair.

Directors who wish to resign should provide notice in accordance with the bylaws. [O&T Bylaws §3.6]

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## Committees | advisory committees

### Committee structure

Our Board establishes committees to help it effectively and efficiently meet its responsibilities.

[California Nonprofit Corporation Law §5212(a)]

Under state law, the Board may create two types of committees:

- **Board committees** are composed entirely of elected directors. They may exercise the full authority of the Board, subject to statutory limitations and the Board's decisions about their respective responsibilities. [O&T Bylaws §5.1]
- **Advisory committees** may be composed of directors and non-directors, including staff members, former directors, clients, policy advocates, volunteers, and community members]. They make recommendations to the Board and help carry out XYZ programs and initiatives. Under state law, they cannot exercise the authority of the Board. [O&T Bylaws §5.3]

The Board formally creates all Board and advisory committees.

### Committee charters and composition

We establish and maintain our Board and advisory committees as follows:

- The Board approves charters for each Board and advisory committee, setting out its responsibilities, limitations, and administrative features.
- Our [Governance] Committee makes recommendations to the Board about committee members and chairs.
- The [Board] appoints members and a chair for each committee.
- [add other administrative features, as applicable; e.g., all officers or committee chairs serve on Executive Committee etc]

The Board may change Board and advisory committee structure, responsibilities, and

composition in its sole discretion, in line with its authority and oversight role, [and subject to applicable law]. [bracketed phrase reflect fact that Nonprofit Integrity Act mandates Audit Committee responsibilities]

### Current Board and advisory committees

We currently have [four] Board committees (Executive, Finance, Governance, and Audit) and [one] advisory committee (Fund Development).

[conform to client committee structure]

The Board may form ad hoc committees, task forces, or working groups from time to time.

### [Advisory Council

Our Advisory Council is composed of national and state leaders in \_\_\_\_\_. Advisory Council members participate in our events, serve as ambassadors for XYZ, assist with fundraising, and provide an important source of advice and public support.

They are not officers or directors and do not have the authority or fiduciary responsibilities of Board members.] [conform to client specifics as appropriate; O&T Bylaws §5.4]

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## Board meetings

### Meeting schedule

Our Board generally holds regular meetings \_\_\_\_ times per year, [including an annual retreat.] [O&T Bylaws §4.1] Our Board may hold special meetings as provided in the bylaws. [O&T Bylaws §4.2]

### Meeting agendas

Our Board Chair and CEO collaborate to develop the specific agendas for Board meetings, with the understanding that certain items necessary for Board oversight will be brought to the Board periodically for review, discussion, and decision-making. Any director may request that an item be included on a meeting agenda.

### Advance materials

We provide our directors with regular financial and performance updates and with agendas and other written materials that are important to the Board's understanding of the items to be discussed at Board and committee meetings. [California Nonprofit Corporation Law §5231(a), (b)] We try to provide those materials sufficiently in advance of the meetings to allow time for review and for efficient use of directors' time. We generally transmit materials electronically with directors' consent. [California Nonprofit Corporation Law §21] [conform to client specifics as appropriate]

### Meetings

Meetings generally involve management presentations, committee reports, and Board discussions. The Board typically meets at our

headquarters office but on occasion may meet at other locations as well.

### **Executive sessions**

Our Board and each committee may meet at their discretion in executive session without any members of management present, [subject to the requirements of applicable public meeting laws].

### **Other attendees**

Our CEO attends all Board [and committee] meetings, except as may be directed by the Board, [and staff who support our Board and committees regularly attend their meetings]. [O&T Bylaws §6.8] The Board and each committee may request that any officer or employee, or outside consultants, counsel or other advisors, attend and participate in its meetings, subject as appropriate to customary confidentiality undertakings.

### **[Public meetings**

In line with our commitment to transparency, our Board holds public Board meetings, at which members of the public may observe. The Board retains the right to move meetings into closed sessions to discuss litigation, personnel, or other sensitive matters.] [*delete or conform as appropriate*]

### **Action by written consent**

The bylaws provide that our Board may take action without a meeting by unanimous written consent. These consents may be obtained via e-mail, scanned PDF, fax, or transmittal of hard copy. [O&T Bylaws §4.9]

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## **Information | advisors**

### **Access to information**

Under state law, directors have the right to inspect XYZ's books, records, documents, and physical properties. A director may conduct such inspection directly or through agents and may make copies of XYZ records in accordance with applicable federal and state law, including, without limitation, laws related to privacy and confidentiality. [California Nonprofit Corporation Law §6334; O&T Bylaws §8.1]

### **Confidentiality**

We expect directors to maintain the confidentiality of the Board's non-public deliberations, and of the information XYZ provides to them in writing and at meetings.

### **Outside advisors**

The Board and each Board committee have the authority to engage independent legal, financial or other advisors as they see fit. Management will cooperate with any such engagement. We expect directors to disclose any relationships with outside

advisors that may affect, or could be perceived to affect, the advisors' ability to provide independent and impartial advice to the Board or committee. [Internal Revenue Code §§501(c)(3), 4958; California Nonprofit Corporation Law §5233]

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## **Orientation | evaluation**

### **Orientation and education**

We have an orientation process for newly-elected directors. New directors receive written materials about our mission, operations, and governance arrangements. They meet with the CEO to discuss strategic, programmatic, financial, and compliance matters. We are committed to ongoing education of our directors. [California Nonprofit Corporation Law §5231(a), (b); conform as appropriate]

### **Periodic self-evaluation**

The Board conducts periodic self-evaluations. These are intended to facilitate examination and discussion by the Board of its effectiveness as a group. [Our Governance Committee oversees our self-evaluation process.] [*conform to client practices as appropriate*]

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## **Officers**

### **Officer positions**

The bylaws set out our officer positions. The Board appoints the officers. Under California law, officer positions may be held by directors, employees, or others; there is no requirement that officers must also be directors. Our bylaws provide that our Board Chair must be a director and that our CEO serves as our general manager and chief executive officer. [[California Nonprofit Corporation Law §5213]; O&T Bylaws §6] [*conform to client specifics as appropriate*]

### **Officer responsibilities**

We currently have five standing officer positions: [*conform to client specifics as appropriate, with particular attention to CFO/Treasurer matter*]

- The **Chair** presides over all Board [and Executive Committee] meetings, if present.
- The **Vice-Chair** presides over all Board meetings, in the absence of the Chair.
- The **Secretary** supervises XYZ's corporate records, including Board and committee minutes.
- The **Treasurer** supervises XYZ's finances and financial reporting. [The Treasurer serves as Chair of the Finance Committee.]

- The **CEO** is responsible for the day-to-day management of XYZ's activities and affairs.

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## Certain transactions

### Transactions with leadership

We will not engage in transactions with directors, officers, and key employees except as contemplated in our Conflict of Interest Policy and as permitted by applicable federal and state law.

### Loans to directors

Except as permitted by California law, we will not make any loan or other advance of money or property to, or guarantee the obligation of, any director or officer. [*California Nonprofit Corporation Law §5236*]

### Director compensation

We do not compensate our directors for services as members of the Board or any Board or advisory committee.

### Expense reimbursement

We may reimburse directors for reasonable expenses incurred in their activities as directors in accordance with internal policy. As permitted by California law, we may also advance money to a director for expenses reasonably anticipated to be incurred in the performance of the director's duties, so long as the individual would be entitled to be reimbursed for such expenses absent that advance. [*O&T Bylaws §3.9; California Nonprofit Corporation Law §§5235, 5236*]

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## Fundraising | gift acceptance

### Fundraising

We are committed to carrying out responsible fundraising activities, including ensuring that solicitation materials are accurate, that contributions and grants are used in accordance with donor intent, that we provide donors with appropriate acknowledgments, disclosures about our organization and use of funds, and other documentation, that we respect our donors' privacy, and that we comply with laws relating to fundraising practices. [*California Government Code §12580 et seq.; California Business & Professions Code §17510 et seq.; IRS Publication 1771*]

### Gift acceptance

We will not accept any gift that may violate our organizational documents, risk our tax-exempt status, be difficult to administer, or create undue expense or liability. We will also not accept a gift given for a purpose inconsistent with our mission or values, or that could damage our reputation.

We accept unrestricted gifts of cash and public company securities without review by our Board, it being understood that, for gifts of \$\_\_\_ or more, management has first reviewed the identity of the donor for reputational, policy, and related concerns.

We expect our management to review proposed restricted gifts of cash, public company securities or other assets and to consult with the Board as appropriate before accepting such gifts.

We expect our management to review proposed contributions of other assets, such as tangible personal property, real estate, private company securities, and trust interests, and to consult with the Board as appropriate before accepting such gifts.

The Board may adopt more detailed policies and consult with counsel as it finds appropriate. [*conform to client practice; IRS Form 990, Schedule M, Part I, Line 31*]

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## Organizational compliance

### [Ethical practices

We are committed to: be guided by our mission and values; manage our resources responsibly and prudently; review the effectiveness of our programs; maintain complete and accurate financial records; encourage our associates to bring forward concerns; cooperate with governmental authorities; carry out our confidentiality obligations; and maintain a working environment that reflects our values.] [*conform as appropriate to client situation and any existing code of ethics*]

### Legal compliance

We are committed to compliance with applicable federal, state and local laws, including laws relating to tax-exempt organizations and recipients of charitable contributions, and to carrying out our contractual obligations.

### [Compliance program

We maintain a compliance program intended to help us ensure that we comply with applicable laws, including detecting potential criminal conduct by employees. The Audit Committee oversees our compliance program, including addressing allegations as appropriate under our Whistleblower Policy and receiving reports from management.] [*delete or conform as appropriate*]

### Whistleblower policy

We maintain a Whistleblower Policy intended to facilitate open and honest communications by employees, directors, officers, and volunteers concerning our governance practices, finances and compliance with law, policy, and ethical principles.

[Our Audit Committee addresses issues arising under the policy.] [*conform to client practice; IRS Form 990 Part VI.B, Line 13*]

#### **Conflict of interest policy**

We maintain a Conflict of Interest Policy intended to facilitate compliance with federal and state laws relating to our interactions with directors, officers, employees and other persons. The policy addresses, among other things, “self-dealing” transactions under California law. It reflects IRS principles regarding private inurement and excess benefit transactions, and our directors’ duty of loyalty under state law. [*Internal Revenue Code §§501(c)(3), 4958; California Nonprofit Corporation Law §5233*]

The policy sets out procedures for addressing situations that involve, or may appear to involve, conflicts of interest. It also addresses loans to directors and officers, personal use of the XYZ name and assets, receipt of gifts, transactions with organizations that have common directors, and corporate opportunities.

We require disclosure about these matters by our directors, officers and key employees, including completion of annual questionnaires signed by those individuals. [*IRS Form 990 Part VI.B, Lines 12a, b, c; Internal Revenue Code §§501(c)(3), 4958; California Nonprofit Corporation Law §5233*]

#### **Records retention policy**

We maintain a Records Retention Policy designed to help us manage our records efficiently, report our performance accurately, comply with applicable laws relating to preservation and confidentiality of such records, and take appropriate actions, including litigation holds, in situations involving legal proceedings. [*IRS Form 990 Part VI.B, Line 14*]

#### **Compensation review policy**

We maintain a Compensation Review Policy intended to facilitate compliance with California and federal law and best practices relating to compensation of senior management. The policy sets out how our Board reviews and approves senior management compensation, including the use of external benchmarking information. [*California Nonprofit Corporation Law §5213(a); California Government Code §12586(g); IRS Form 990 Part VI.B, Lines 15a, b; Internal Revenue Code §§501(c)(3), 4958*]

[*add references to other policies as appropriate*]

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## **Financial reporting | disclosure**

#### **Financial reporting**

We are committed to recording transactions and reporting our financial position and results of operations accurately and in accordance with [generally accepted accounting principles] and applicable legal requirements.

#### **Internal controls**

We are committed to maintaining a system of internal controls designed to provide reasonable assurances that we efficiently carry out our operations, safeguard our assets, produce reliable financial statements, and comply with applicable legal and contractual requirements.

#### **[Audit committee]**

The charter for our Audit Committee reflects the requirements of the California Nonprofit Integrity Act, including its requirements relating to appointment, performance review, and termination of the independent accounting firm, review of financial statements and audit, and approval of performance of non-audit services by the accounting firm. [*California Government Code §12586(e)(2); IRS Form 990 Part XII, Line 2c*]

#### **[Annual audit]**

We engage an independent accounting firm to conduct an annual examination of our financial statements. The auditors examine our financial statements and internal controls and report on their examination and recommendations for changes in the financial statements, reporting practices, and controls. The auditor provides its report directly to our Audit Committee and Board. [*conform to client situation; California Government Code §12586(e)(1); IRS Form 990 Part XII, Lines 2a, b*]

#### **Financial reporting**

We make our annual financial statements and audit report available to the public on request as contemplated by the California Nonprofit Integrity Act[, as well as on our website]. We also make financial information available through our Form 990 filing. [*conform to client practices as appropriate; California Government Code §12586(e)(1); IRS Form 990 Part VI.C, Line 19*]

Within 120 days after the close of each fiscal year, we provide each director with an annual report containing certain information as contemplated by California law. The report includes financial information for the fiscal year, as reflected in our balance sheet and income statement, and information about any transactions with officers or directors exceeding \$50,000 and any indemnification payments exceeding \$10,000. [*California Nonprofit Corporation Law §6321, 6322*]

**Director independence**

We are required to report the number of independent directors on our Form 990 return filed with the IRS, which has a similar, but separate, definition of “independent” compared with California law. [*IRS Form 990 Part VI.B, Line 1b*] Each year, we ask directors for relevant information in order to enable us to meet this reporting requirement.

**Form 990 preparation, review, and access**

Our finance management leads our Form 990 preparation and review process. Steps generally include extensive interactions between staff and the independent accounting firm that prepares our return, and review and discussion of a draft of the filing among our CEO, CFO, and Audit Committee. [The full Board receives a copy of the Form 990 to review prior to filing.] Our Form 990s are available on Guidestar [and on our website]. [*conform to client practices as appropriate; IRS Form 990 Part VI.B, Lines 11a, b, Schedule O*]

**Governance documents**

We make our governance documents, including our articles of incorporation, bylaws, committee charters, and governance policies, available to the public upon request. [*conform to client practices as appropriate; IRS Form 990 Part VI.C, Line 19*]

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**Relationship to other documents**

This document states guiding principles for our governance arrangements and practices and summarizes statutory provisions and provisions of

our bylaws, Board committee charters, and specific policies regarding a number of topics. Nothing here limits, qualifies, or otherwise affects those materials; if there is any conflict between this Governance Overview and those documents, the documents will control. [Similarly, summaries of legal obligations are not intended to limit, qualify, or otherwise modify those duties under applicable law.]

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**Review**

The Board will periodically review this Governance Overview, and may amend it at any time.

**Last revised:** \_\_\_\_\_