

PRUSA Art, Cultural and Education Foundation  
of America, Inc.

(A New York Not-for-Profit Corporation)

Conflicts of Interest Policy

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## Exhibit A

## **Section 1 Purpose**

It may reasonably be expected that conflicts of interest may arise, from time to time, during the legal existence of the PRUSA, Art, Cultural and Education Foundation of America, Inc. (the "Corporation"). Such conflicts may occur at any time when the Corporation makes purchases of goods and/or services, leases property and/or equipment, and/or conducts other financial transactions.

The purpose of this conflicts of interest policy is to protect the Corporation's interest when it contemplates entering into a transaction or arrangement that is reasonably expected to, or will benefit the private interest of an officer, director and/or any other person who has the ability to influence the management, operations or decisions of the Corporation. This policy is intended to supplement but not replace any applicable provisions of the Corporation's By-Laws, the New York Not-for-Profit Corporation Law and the laws of the State of New York governing conflicts of interest applicable to not-for-profit corporations.

## **Section 2 Interpretation of this Conflict of Interest Policy**

It is not necessary for a particular transaction to be specifically enumerated in this conflicts of interest policy in order for such transaction to be subject to the terms hereof. For the avoidance of doubt, a transaction which can reasonably be expected to have the appearance of a conflict of interest shall be subject to the terms of this Policy. It is assumed that all officers, directors and any other person with the ability to influence the management, operations or decisions of the Corporation will recognize such circumstances and shall act in

good faith to bring such circumstances to the attention of the Board of Directors in accordance with this Policy.

### **Section 3 Definitions**

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time, and any Regulations promulgated thereunder.

“Conflict of Interest” shall mean any Transaction between an Interested Person and the Corporation in which the Board of Directors has made a determination, in accordance with this Policy, that a conflict exists or reasonably appears to exist.

An “Interested Person” shall include any director, officer, or key employee of the Corporation or any its subsidiaries or affiliates (or any other person who, with respect to a Transaction, is in a position to exercise substantial influence over the management, operations or decisions of the Corporation), who directly or indirectly through such person’s business, employment, investments or family has an ownership, employment, investment or financial interest (or immediately potential interest) in any entity with which the Corporation has or is considering a Transaction.

“Policy” shall mean this conflicts of interest policy, as amended from time to time by the Corporation.

A “Transaction” shall mean any agreement, contract, transaction or other arrangement between the Corporation and an individual, any other corporation

(whether for-profit or not-for-profit), limited liability company, partnership, association, trust or other organization or entity.

#### **Section 4 Procedures**

**4.1 Duty to Disclose.** Each Interested Person shall disclose, in accordance with Section 4.2, to the President (unless the President is the Interested Person, in which case, the President shall give notice to the Vice President) and at least one other director of the Corporation who is not an Interested Person each circumstance in which such person is an Interested Person.

**4.2 Method of Disclosure.** A person with a duty to disclose pursuant to Section 4.1 shall satisfy his or her duty by providing written notice (a "Disclosure Notice") of such circumstances within two (2) days of the day in which such person becomes aware of such circumstances. A Disclosure Notice shall set forth any and all material facts surrounding the circumstances in which such person is an Interested Person, including but not limited to: (a) the names of all parties involved and with the relationship of such Interested Person to each party, (b) the nature of any contracts and/or agreements between the Interested Person and any third party affiliated with the Transaction, and (c) all financial arrangements of all parties in any such Transaction.

#### **4.3 Procedures for Addressing the Conflict of Interest.**

(a) Prior to the Corporation entering into the Transaction for which a Disclosure Notice shall have been delivered, the President or any two (2)

directors shall call a special meeting of the Board of Directors. At such meeting, the President shall provide each director with a copy of the Disclosure Notice.

**(b)** The Interested Person may make a presentation at such special meeting, but after such presentation, such Interested Person shall leave the meeting during the discussion of, and the vote on, the Transaction. Any officer or director may ask such Interested Person any question relevant to the circumstances giving rise to such person's status as an Interested Person and the Transaction.

**(c)** In no event shall an Interested Person be present or participate in any deliberations, discussions or vote in connection with the Transaction.

**(d)** The Board of Directors may, but shall not be required, appoint a disinterested person or committee to investigate alternatives to the Transaction. Upon such appointment, the disinterested person or committee shall have full authority to investigate and research alternatives to the Transaction, including, but not limited to, incurring expenses and approving reasonable contracts or arrangements.

**(e)** The Corporation shall exercise due diligence in determining whether to proceed with such Transaction. In making such determination, the Board of Directors shall determine whether the Corporation 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. 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 of Directors shall determine, by a majority vote of the disinterested directors, whether the Transaction is in the Corporation's best interest and for its own benefit and whether the Transaction is fair and reasonable to the Corporation. The Board of Directors shall make its decision as to whether to enter into the Transaction.

#### **4.4 Violations of the Conflicts of Interest Policy.**

(a) If the Board of Directors has reasonable cause to believe that a person subject to this Policy has failed to disclose an actual or potential conflict of interest, it shall inform the person of the basis for such belief and afford such person an opportunity to explain the alleged failure to disclose.

(b) If, after hearing the explanation of the person and making such further investigation as may be warranted in the circumstances, the Board shall take appropriate disciplinary and corrective action. Such corrective action may include, but shall not be limited to, undoing or unwinding a Transaction and holding the person who violated this Policy liable for any damages suffered by the Corporation.

#### **Section 5 Record of Proceedings**

The minutes of the Board shall contain:

1. The names of the persons who disclosed or otherwise were found to be an Interested Person in connection with an actual or possible conflict of interest, the circumstances giving rise to such person being an Interested

Person, any action taken to determine whether a conflict of interest was present, and the Board's decision as to whether a conflict of interest (or potential conflict of interest) in fact existed.

2. The names of the persons who were present for discussions and votes relating to the Transaction, the content of the discussion, including any alternatives to the proposed Transaction, and a record of any votes taken in connection therewith.

3. The disposition of the Transaction by the directors who are not Interested Persons or the committee appointed to investigate alternatives, including, but not limited to, whether it was decided to proceed with the Transaction or pursue an alternative transaction and the reasons therefor.

## **Section 6 Annual Statements**

Each year, each officer, director and employee shall sign a statement, a copy of which is annexed hereto as Exhibit A, which affirms that such person:

1. has received a copy of the Conflicts of Interest Policy,
2. has read and understands the Policy,
3. has agreed to comply with the Policy,
4. has disclosed, to the officer, director or employee's best knowledge, the identity of any entity in which such person is an officer, director, trustee, member, owner (either as a sole proprietor, partner or beneficial owner), or employee and with which the Corporation has a relationship,
5. has disclosed any Transaction in which the officer, director or employee may be an Interested Person, and



6. understands that the Corporation is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

The statement shall be delivered to the Secretary of the Corporation of the Corporation no later than sixty (60) days after the beginning of each year and, at the annual meeting of the Board of Directors, the Secretary of the Corporation shall provide the Chairman of the Board with copies of all completed statements.

### **Section 7 Periodic Reviews**

To ensure that the Corporation 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 of this Conflicts of Interest policy and any Transaction in which a conflict could arise shall be conducted.

### **Section 8 Use of Outside Experts**

In conducting the periodic reviews provided for in Section 7, the Corporation (or any committee appointed pursuant to this Policy) may, but need not, use outside advisors. If outside advisors are used, their use shall not relieve the Board of Directors from its responsibility for ensuring that periodic reviews are conducted and that such reviews are properly conducted.

### **Section 9 Miscellaneous**

**9.1 Severability.** If any provision contained in this Policy, or the application thereof to any person or circumstance, shall, for any reason and to any extent, be

invalid or unenforceable, the remainder of this Policy and the application thereof shall remain in full force and effect.

**9.2 Interpretation.** This Policy and the rights and liabilities of the parties subject to this Policy shall be construed under the provisions of the New York Not-for-Profit Corporation Law and the laws of the State of New York, as amended from time to time. In the event of a conflict between this Policy, the Corporation's By-Laws, the laws of the State of New York and the Corporation's Certificate of Incorporation, this Policy shall be construed in accordance with the laws of the State of New York, the Corporation's Certificate of Incorporation and the Corporation's By-Laws, in that order.

**9.3 Titles and Headings.** Article and Section headings and titles in this Policy are for convenience of reference only, and shall not control or alter the meaning of this Policy as set forth in the text.

**9.4 Interpretation of Syntax and Headings.** All references made, and pronouns used herein shall be construed in the singular or plural, and in such gender, as the sense and circumstances require.

**9.5 Facsimiles.** Where any notice or document is required to be signed by any party, a facsimile shall be acceptable as though such were an original.

EXHIBIT A

**Conflicts of Interest**

**Annual Statement**

TO: PRUSA, Art, Cultural and Education Foundation of America, Inc.

This annual statement is made pursuant to the Conflicts of Interest Policy of PRUSA Art, Cultural and Education Foundation of America, Inc., a New York not-for-profit corporation (the "Foundation").

The undersigned is:

- a director of the Foundation.
- an officer of the Foundation.
- an employee of the Foundation.

The undersigned affirms that he/she:

1. has received a copy of the Conflicts of Interest Policy,
2. has read and understands the policy,
3. has agreed to comply with the policy,
4. has disclosed, to the undersigned's best knowledge, the identity of any entity in which such person is an officer, director, trustee, member, owner (either as a sole proprietor, partner or beneficial owner), or employee and with which the Foundation has a relationship,
5. has disclosed any Transaction in which the undersigned may be an Interested Person (as defined in the Conflicts of Interest Policy), and
6. understands that the Foundation is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_