

# THE WEST VIRGINIA FIRST FOUNDATION, INC.

## PUBLIC ACCESS POLICY

[Adopted February 2, 2024]

A. The West Virginia First Foundation, Inc. (the "Foundation") is a private nonprofit corporation created by the State of West Virginia and certain Local Governments by virtue of the West Virginia First Memorandum of Understanding (the "MOU") entered into by and among the State of West Virginia, counties, cities, villages, and towns located within the geographic boundaries of the State of West Virginia.

B. The Foundation is organized and exists under W. Va. Code 31E-1-101 *et seq.* and shall be operated exclusively for charitable, educational and scientific purposes within the meaning of § 501(c)(3) of the Internal Revenue Code of 1986, as amended, to hold and manage the proceeds of Judgments and other funds for the support of evidenced-based strategies, programming and/or services used to expand the availability of treatment for individuals affected by substance use disorders and/or addition, to develop, promote and provide evidence-based substance use prevention strategies, to provide substance use avoidance and awareness education, to engage in enforcement to curtail the sale, distribution, promotion or use of opioids and other drugs, to decrease the oversupply of licit and illicit opioids and to support recovery from addiction to be performed by qualified providers as described in the Memorandum of Understanding.

C. The Foundation is governed by the Board of Directors ("Board") vested with all the powers and authorities conferred upon it by the Articles of Incorporation issued by the office of the Secretary of State of West Virginia on May 18, 2023, and the Foundation's Bylaws adopted on October 31, 2023.

D. The Foundation aims to work with and support the State and the Local Governments, other government bodies and private organizations to carry out its purposes and to engage public and private persons and entities through government cooperation, expert involvement, and participation of key stakeholders.

E. The Board desires to have a meeting policy for the Foundation that enhances the Foundation's operations by giving the public meaningful opportunities to observe and contribute to the work of the Foundation.

NOW, THEREFORE, in the furtherance of the above stated purposes, the Board adopts this policy:

### 1. MEETINGS

1.1. The Board will hold meetings open to the public in accordance with the Bylaws of the Foundation and this policy.

1.2. Before the beginning of its initial or fiscal year, the Board by its Chair shall publish notice of the schedule of its regular meetings for the ensuing fiscal year on its website and by other means. The Board shall hold at least one regular meeting during each quarter of the fiscal year. The

Board from time to time may change the schedule of its regular meetings.

1.3. Notice for each regular or special meeting shall be published on the Foundation's website and may be transmitted using other means of communication. If a meeting is to be livestreamed or conducted virtually, the link to such meeting shall be published on the Foundation's website and transmitted by an email subscription listserv or similar mode of transmission. The Board by its Chair shall publish notice of the agenda for a regular or special meeting no earlier than 14 days and no later than three hours before the commencement of the meeting.

1.4. The Chair may call an emergency meeting without public notice in extraordinary circumstances as the Chair in his sole discretion determines. The Chair shall make reasonable efforts to give notice to the public of each meeting.

1.5. The Board may conduct any meeting, and may permit people to observe or, at the invitation of the Chair, to participate, personally, virtually, or telephonically. The Chair may require each person who attends any meeting to identify themselves as a condition of their attendance at the meeting whether personally, virtually, or telephonically. The Chair may exclude any unidentifiable person from any meeting for that reason.

1.6. There shall be an opportunity for questions and public comment at each of the quarterly regular meetings described in Section 1.2. This opportunity shall be designated on the agenda as "Public Comments." Each person speaking during the Public Comments portion of the meeting shall be limited to not more than five (5) minutes to present their comments or questions.

1.7. Persons, including the public and the news media, may have the opportunity to speak during any meeting of the Board if the Board's agenda provides for it or upon the Chair's recognition.

1.8. The Chair may direct a member of the public, press, or any person to be excluded or removed from a meeting for being disruptive or otherwise impeding the conduct of the business of the Foundation.

1.9. Nothing in this policy shall be construed to limit the Board's authority to take action by unanimous written consent as described in § 4.7 of the Bylaws and W. Va. Code 31E-8-821 or similar law.

1.10. Committees of the Board, panels or working groups, including, but not limited to the Standing Committees, any Special Committee, and any other committees that the Board from time to time in its discretion might create, regardless of such committee's composition of Board members and non-Board members, shall not be required to meet in public. Except as provided for in the Bylaws, committees of the Board shall be advisory in nature and authority and shall not possess any authority to bind the Board or the Foundation, unless such authority shall be expressly and specifically given by the Board. From time to time the Board may direct that a committee, panel, or group be required to meet in public.

## **2. COMMUNICATIONS**

Although communications of members of the Board outside of formal meetings are not subject to

public disclosure, members of the Board are encouraged to foster professional relationships with each other and communicate outside of formal Foundation meetings for the benefit of the Foundation and the expeditious furtherance of the Foundation's purposes. Notwithstanding anything in this policy or otherwise, members of the Board may communicate with each other outside of meetings in person, by telephone, email, or any other means of communication.

### **3. EXECUTIVE SESSION**

3.1. If the Board determines, in its sole discretion, that subjects, materials, persons, or otherwise to be discussed or as may arise from time to time are or should remain confidential, the Board, by a majority vote of its members present at a meeting, may enter executive session from which the public, news media, or other persons may be excluded. The reasons that the Board may meet in executive session, include, but are not limited to, the following subjects:

- (a) Matters arising from the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal, or compensation of an officer or employee or a prospective officer or employee;
- (b) Matters in an application or letter of solicitation for funds of the Foundation but only to the extent that the applicant or writer with credible and sufficient cause seeks confidentiality about ideas, concepts, plans, patterns, devices, software, procedures, methods, applications, technologies, financial information, customer, client or patient information (including identities, specific needs and any of such customer, client or patient information), or any compilation or combination of the foregoing that is disclosed to the Foundation and marked or indicated as confidential or proprietary;
- (c) Taxation matters;
- (d) Potential or existing contract matters with or about professional advisers, accountants, lawyers, and management and investment consultants;
- (e) Matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of funds, or other matters involving commercial competition, which if made public, might adversely affect the financial or other interests of the Foundation;
- (f) Matters under discussion with one or more lawyers acting as counsel or in anticipation of an engagement therefor about pending or imminent legal action, policy matters, or other matters the Board determines require confidentiality or are subject to the attorney-client privilege; and
- (g) Any matter that by federal law, state law, or rule of court is or may be held to be confidential, or that, by election of the Board, may remain confidential by federal law, state law, or rule of court is or may be held to be confidential.

The Board shall not take any action while in executive session and shall be permitted to act only outside of executive session. Any action taken by the Board while in executive session shall be null and void and unenforceable.

## **4. RECORDS**

4.1. As used in this policy, “record” means a document in any format – paper, electronic (including, but not limited to, business e-mail, text messages, or other forms of memorialized communication), or otherwise – that is created or received by the Foundation, the Board, members of the Board, legal counsel, or staff, regarding the Foundation’s functions, policies, decisions, procedures, operations, or other activities. All Foundation Staff, Board Members, Committees, Expert Panelists, and contractors for the Foundation are required to retain records in accordance with this policy and the Foundation’s Record Retention Policy.

4.2. Notwithstanding anything stated in this Policy, the Foundation is not required to disclose to the public any records, including, without limitation, records made pertaining to an executive session of the Board, personal information, confidential documents protected by the attorney-client privilege, draft documents or related work-product, trade secrets, proprietary information, protected health and medical records, donor profile records and other confidential donor information, records relating to sensitive employment issues, tax issues, the purchase or sale of property, and other similar records, as determined by the Executive Director or the Board; records, notes or materials of committees of Board members or panels or groups or committees of persons that comprise who persons are not Board members, including, but not limited to the Standing Committees, any Special Committee and any other committees that the Board from time to time in its discretion might create; and other similar records.

## **5. POSTED INFORMATION**

5.1. The Foundation regularly shall make public on its website the following records of the Foundation:

- (a) All meeting agendas and minutes of the Board as the Board approved them;
- (b) All written consents and resolutions of the Board;
- (c) All financial information of the Foundation appropriate for public disclosure;
- (d) A funding and outcomes dashboard to show all programs receiving Foundation money and the outcomes of those programs;
- (e) Periodic reports of the operations of the Foundation;
- (f) A list of applicants for funds from the Foundation;
- (g) Notices of meetings; and
- (h) Other information the Foundation deems to be in the public interest.

5.2. The records described in § 5.1 and the following additional records shall be made available upon request pursuant to this Section 5.

- (a) Copies of the Foundation’s most recent financial audit report conducted by an independent accounting firm, IRS 990, 990-PF-, 990-EZ, 990-T, and 990-N returns with personal information of personnel and confidential information redacted, are available for public inspection upon demand.
- (b) Post-grant performance audits of grantees upon the Board’s approval.

5.3. The requester for records under § 5 must identify the name and contact information of the request and the records requested with sufficient clarity to allow the Foundation to identify,

retrieve and review the records.

5.4. The Foundation may ask for the requester's identity if disclosure of identity or intended use would benefit the requester by enhancing the Foundation's ability to identify, locate, or deliver the public records that have been requested.

5.5. In processing request for inspection of a record, the Foundation does not have an obligation to create new records. An electronic record is deemed to exist so long as a computer is already programmed to produce the record through the Foundation's standard use of sorting, filtering, or querying features.

5.6. In processing a request for inspection of a record, a Foundation employee may accompany the requester during inspection to make certain original records are not taken or altered.

5.7. Records need only be retained in accordance with the Records Retention Policy. Records requested outside of the time period outlined in the schedule need not be provided if unavailable.

5.8. If a requester asks that documents be delivered to them, they may be charged the actual cost of the postage and mailing supplies, or other actual costs of delivery.

5.9. A requester may be required to pay in advance for the actual costs involved in providing a copy of the record. The requester may choose whether to have the record duplicated upon paper, upon the same medium on which the public record is kept, or upon any other medium on which the Foundation determines that the record can reasonably be duplicated as an integral part of the Foundation's normal operations.

5.10. If a requester asks that documents be delivered to them, they may be charged the actual cost of the postage and mailing supplies, or other actual costs of delivery. There is no charge for emailed documents.

## **6. DENIAL AND REDACTION OF RECORDS**

6.1. If the requester makes an ambiguous or overly broad request or has difficulty in making a request such that the Foundation cannot reasonably identify what records are being requested, the request may be denied, but the Foundation must then provide the requester an opportunity to revise the request by informing the requester of the way records are maintained and accessed by the Foundation.

6.2. If the Foundation withholds, redacts, or otherwise denies requested records, it must provide an explanation for the denials. When making records available for public inspection or copying, the Foundation shall notify the requester of any redaction or make the redaction plainly visible.

## **7. COMPLIANCE WITH MEMORANDUM OF UNDERSTANDING AND LAW**

7.1. Notwithstanding anything stated herein and to the extent a conflict exists with this policy, the Foundation shall comply with the terms and provisions of the Memorandum of Understanding as the Chair or the Board shall reasonably interpret, construe, or enforce them.

7.2. Notwithstanding anything stated herein to the extent a conflict exists with this policy, the Foundation shall comply with a final, non-appealable judgment, decree, or order of a court of competent jurisdiction.

7.3. Definitions not otherwise defined herein have the definitions ascribed thereto in the Bylaws of the Foundation or the Memorandum of Understanding or as context otherwise suggests or requires.