Annex D

Participant Conduct

D-1 Participant Code of Conduct

General Principles

1 To promote and support the overall mission of the AARST Consortium on National Standards (Consortium) as well as the purposes and objectives of the voluntary consensus standards system.

2 To maintain a process that is open, honest, and fair to all participants.

3 To promote the development of consensus through the broad participation of a variety of interests and through a full airing and discussion of all points of view.

4 To adhere, both in letter and in spirit, to all duly established rules, regulations, and policies governing the Consortium's voluntary consensus standards system.

Code of Conduct Applicable to Participants

1 All persons serving on Consortium standards committees, including executive and management committees and staff (hereafter "Participants") shall act honestly, in good faith and with the highest professional standards.

2 Although it is recognized that legitimate differences of opinion can exist on individual issues, Participants are to act in a dignified and courteous manner, so as to avoid injuring others, their property, reputation, or employment by false, malicious or improper action and to avoid acting in a disrespectful or unprofessional manner towards other Participants.

3 Participants are seated on each consensus body committee to provide representation for the experience and vantage point of the stakeholder interest group for which they are to represent. Participants shall not be imposed upon or presumed to represent formal positions of the designated interest group or any organization, employer or peers associated with a designated stakeholder or interest group represented.

4 In order that the points of view and information Participants contribute to the Consortium's voluntary consensus standards system can be accurately evaluated by others, Participants are to always endeavor to make known their business, commercial, organizational, or other affiliations that might affect their interests or points of view, avoiding real or perceived conflicts of interest whenever possible.

5 In all discussion, debate, and deliberation, Participants are to confine their comments to the merits of the issues under review. Although Participants may forcefully advocate their views or positions, they are to be candid and forthcoming about any weaknesses in their position, and they are to refrain from debate and discussion that is disrespectful or unprofessional in tone or that is unduly personalized or damaging to the overall process of achieving consensus.

6 While exchanging viewpoints with other Participants can be useful in ultimately achieving consensus, Participants are to avoid informal conversations that harass, threaten, coerce or solicit coordination in an effort to sway the opinion of voting Participants.

7 No Participant is to ever attempt to withhold or prohibit information or points of view from being disseminated, particularly on the grounds that the Participant disagrees with the information or points of view. Disagreements are to be addressed and resolved through full presentation and discussion of all information and points of view not through withholding information or preventing points of view from being expressed.

8 Participants, including consultants, shall identify their sponsors, if any.
A "consultant" is someone who agrees to provide professional service in exchange for compensation, financial or otherwise. A "sponsor" is defined as an organization that provides funds specifically to support the individual's participation in the standards. Where being sponsored specifically for participation in standards work, the participant shall provide written notice to Consortium chairs or staff that is required to be kept in records and disclosed to the consensus body.

9 Participants are to treat all persons with respect and fairness and should not offer or appear to offer preferential treatment to any person or group.

10 Participants are to refrain from disseminating false or misleading information or from withholding information necessary to a full, fair, and complete consideration of the issues duly discussed.

11 Participants are to obey all applicable laws and Consortium policies, including Antitrust and other policies published in the Consortium bylaws or otherwise promulgated by the Executive Stakeholder Committee with mutual approval of the AARST Standards Management Council; and

12 Participants are to safeguard the Consortium's reputation and integrity by ensuring that any public statements relating to AARST or the Consortium, which are not official statements of AARST, are properly portrayed as the opinion of the individual making them.

Violation of Code of Conduct

Violations of this Code will result in disciplinary action against Participants, which may include termination of a Participant's continued participation in Consortium projects.

Intellectual rights

Participation includes required acceptance that work product resulting from participation shall be wholly owned by the publisher (AARST), to include all national and international publishing and intellectual rights associated with the work product creation and publication.

Attested: I have read, understand, and agree to abide by this Code of Conduct, the AARST Antitrust Policy and other terms included herein. I will conduct my work on behalf of the AARST Consortium on National Standards with the highest integrity and commitment to the principles stated above.

______________________________ __________________

Signature Date

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Name Printed

D-2 AARST Antitrust Policy

While AARST Antitrust policy requirements are expected to change with improvements over time, the following example provides guidance and scope of antitrust policy requirements relative to all participants in activities associated with AARST Consortium on National Standards.

AARST™
RADON PROFESSIONALS SAVING LIVES

The American Association of Radon Scientists and Technologists, Inc.

ANTITRUST POLICY STATEMENT FOR ASSOCIATION MEMBERS

April 2021

527 N. Justice Street
Hendersonville, NC 28739

ANTITRUST POLICY STATEMENT for ASSOCIATION MEMBERS

ANTITRUST COMPLIANCE PROGRAM

Trade associations, such as The American Association of Radon Scientists and Technologists (AARST), are subject to strict scrutiny under both federal and state antitrust laws. Since competitors in a particular industry join a trade association to pursue a common business purpose, trade associations are especially vulnerable to antitrust attack under federal and state laws. Trade associations and trade association members should exercise a great deal of care when carrying on certain activities so as to avoid any violation of the federal and state antitrust laws.

The consequences for violating the antitrust laws can be severe. A conviction can carry stiff fines for the association and its members, jail sentences for individuals who participated in the violation, and a court order dissolving the association or seriously curtailing its activities.

I. THE SHERMAN ACT AND THE FEDERAL TRADE COMMISSION ACT

Regarding trade association activities, the most important antitrust statutes are Section 1 of the Sherman Act and Section 5 of the Federal Trade Commission Act. Section 1 of the Sherman Act prohibits "contracts, combinations, or conspiracies ... in restraint of trade." By their very nature, trade associations involve a "combination" of competitors, so they are especially prone to antitrust attack.

Under the Sherman Act, any understanding or agreement affecting the price of a product or service, or a bid on a mitigation job is prohibited, regardless of the purpose of the understanding. Even if the agreement will benefit consumers, it is prohibited.

Of foremost importance to AARST members is the fact that the Sherman Act is a criminal conspiracy statute. Consequently, an executive who attends a meeting at which competitors engage in illegal discussions which relate to prices or bids may be held criminally responsible, even if he or she says nothing at the meeting. The executive's attendance at the meeting may be sufficient to imply acquiescence in the discussion, making him or her liable to as great a penalty as those who actively participated in the price-fixing or bid-rigging agreement.

Section 5 of the Federal Trade Commission Act forbids "unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce." It is distinct from Section 1 of the Sherman Act in that it does not require a "combination" to reach anticompetitive acts committed by individual companies. On the other hand, it will, like the Sherman Act, cover joint actions.

The Federal Trade Commission's authority in determining what constitutes an unfair method of competition or unfair or deceptive act or practice under any given circumstances is extremely broad. As a result, antitrust actions can be brought to cover a wide range of charges.

AARST has established an antitrust compliance program to protect the association and its members from possible antitrust liability. Under this program, every effort will be made to stop any potential antitrust violation before it begins.

II. PENALTIES FOR VIOLATION OF THE ANTITRUST LAWS

The federal antitrust laws may be enforced against associations, association members and the association staff, both by government officials and by private parties through treble damage actions. In each case, the potential penalties are quite severe.

The maximum penalty for an individual convicted of a violation of the Sherman Act is a fine of $1,000,000, twice the pecuniary loss of the victims, or twice the pecuniary gain of the wrongdoer, whichever is greater. In addition, an individual <u>may be imprisoned for up to ten years</u>. However, in no case can an individual convicted of a criminal Sherman Act Violation expect to be sentenced to less than 90 days of jail time. A corporation convicted of such a criminal offense may be fined as much as $100 million, twice the pecuniary loss of the victims, or twice the pecuniary gain of the wrongdoer.[1]

A violation of the Federal Trade Commission Act can result in the issuance of a cease and desist order, thereby placing extensive governmental restraints on the activities of an individual company, its officers and directors, an association and its members. Failure to obey such an order can result in penalties of as much as $10,000 per day.

In addition to governmental prosecution for a criminal or civil antitrust violation, a company or an association can face a private treble damages action brought by competitors or consumers. A finding of a violation of an antitrust law in a private action will result in payment by the defendant of three times the damages suffered by the plaintiff plus attorney’s fees.

In recent years, liability for corporate defendants have exceeded hundreds of millions of dollars.

III. ANTITRUST PROBLEM AREAS OF ASSOCIATION ACTIVITY

A. <u>Areas of General Concern</u>

As a practical matter, all professional associations such as AARST should focus their attention on five principal antitrust problem areas:

1. Price-Fixing

Experience shows that trade association members are most likely to violate, and the government is most likely to strictly enforce, the Sherman Act's ban on price-fixing or bid-rigging. Antitrust violations in the price-fixing or bid-rigging areas can be inferred simply from comparable price or bid behavior by association members. An oral or a written agreement is not needed to ground a charge of price-fixing or bid-rigging. Neither the reasonableness of the prices set or the amounts bid nor the potentially beneficial purposes underlying the agreement will constitute a defense in the event that price-fixing or bid-rigging is established.[2]

2. Agreement to Allocate Customers or Divide Territories

An agreement among members of an association to allocate customers or divide geographical territories is, in and of itself, a per se violation. The antitrust laws expressly prohibit any understanding or agreement between competitors

[1] As an example, in 1999, Hoffman-LaRouche paid $500,000,000 in fines, and BASF paid $225,000,000 in fines in an Antitrust Division vitamin price fixing case.
[2] Courts consider bid rigging as very serious antitrust offenses. In 2011, a United States District Court in Iowa sentenced the President of an Iowa ready mix-concrete firm to 48 months in prison for price fixing.

or members of an association involving division of territories or allocation of customers. Even an informal agreement whereby one member agrees to stay out of another's territory will constitute a criminal violation of the antitrust laws.

3. Membership Restrictions

If the members of an association derive an economic benefit from membership, the denial of membership to an applicant may constitute a restraint of trade because such a denial may limit the ability of the applicant to compete. Therefore, membership criteria must be carefully established with a view toward avoiding antitrust problems.

4. Standardization and Certification

An association that develops voluntary industry standards may face antitrust problems if such a standard unreasonably favors some competitors and unfairly discriminates against others. Similarly, association certification activities which further the interests of certain groups of members, to the exclusion of others, may result in antitrust problems.

5. Industry Self-Regulation

Associations commonly establish codes of ethics for their members, including procedures for enforcement of such codes. The association must guard against any efforts to enforce such codes of ethics if such enforcement would result in economic injury to certain members.

B. Bid-Rigging -- An Area of Special Concern for the Mitigation Industry

An antitrust problem area which is of concern for AARST is that of bid-rigging. A bid- rigging scheme bears some of the traits of both a price-fixing agreement and an agreement to divide customers, and, in fact, could be considered a synthesis of those two violations.

In U.S. v.W.F. Brinkley & Son Construction Co. [1986-1 Trade Cas. (CCH) & 66,963] (a highway construction case), the Fourth Circuit Court of Appeals upheld the lower court's jury instruction that "a conspiracy to allocate projects or rig bids is automatically or per se unreasonable and illegal." As a result, an agreement between two or more persons that one will submit a higher or lower bid than the other, or will submit no bid at all, will constitute a criminal restraint of trade violating the Sherman Act. In making their case, those alleging an unlawful bid-rigging conspiracy need not competitors. The antitrust injury caused by a bid-rigging scheme is the denial of the purchaser's property right to choose the lowest responsible bidder and to allocate its funds to that bidder.[3] Those individuals found guilty of bid-rigging face a mandatory jail sentence of at least 90days.

Recently, both the federal and state governments have prosecuted a number of antitrust cases involving bid-rigging on construction projects. U.S. v. Vandebrake [No. CR10-4025 MWBC N.D. Iowa 2011].

IV. HOW TO AVOID ANTITRUST PROBLEMS

AARST has adopted the following rules to insure against unintentional violations of the antitrust laws:

A. General Operating Procedures

1. A full description of the association's intention to comply fully with the antitrust laws is included in the written policies of the association.
2. All members of the board of directors of the association receive a copy of the association's antitrust policy statement, detailing what can and cannot be done at association meetings.
3. The association's Executive Director, based on advice from legal counsel, updates members concerning antitrust problems periodically and has formalized the association's antitrust compliance program.
4. The association's legal counsel approves, in advance, all new association programs or changes in existing programs that may have potential antitrust implications.
5. All association meetings are regularly scheduled, and members are not permitted to hold "rump" meetings.
6. An agenda is prepared for each meeting of the association and reviewed in advance by the

[3] See County of Orange v. Sullivan Highway Products, Inc. and North Dakota Cement Co.,

Executive Director or Chapter President.

7. Legal counsel is present at all meetings at which antitrust sensitive issues will be discussed.
8. The minutes of all meetings are approved by the Executive Director. The minutes reflect the association's policy of complying with the antitrust laws.
9. The minutes of all association meetings are accurate, and the AARST staff never submits minutes which have been doctored, which are incomplete, or which have not been approved by legal counsel.
10. No action by the association or its board of directors which has the effect of rejecting a membership application becomes final without approval by legal counsel.
11. The association has a formal record retention program.
12. No association staff member has authority to communicate with officials of the Federal Trade Commission or the Antitrust Division of the Department of Justice without prior approval of the association's legal counsel.

B. Membership Policy

AARST **does not**:

1. Exclude certain competitors from membership in the association, if the applicant meets bylaw requirements.
2. Restrict members from dealing with nonmembers.
3. Limit access to information developed by the association, unless such limitation is firmly grounded upon the need to protect trade secrets.

C. Self-Regulation and Codes of Ethics

The association **does not:**

1. Adopt regulations or policies which have price-fixing implications, such as restrictions on advertising of prices or bidding, or which unreasonably inhibit the ability of any member or group of members to compete.
2. Require members to refrain from dealing with any vendor, supplier, customer or other member.
3. Allow a single company to dominate board of director decision-making, operating practices and procedures or symposium and tradeshow activities.

D. **Topics of Discussion Which Must Be Avoided** at Association Meetings

1. Current or future prices or bids. (Great care must be taken in discussing past prices or bids.)
2. What constitutes a "fair" profit level.
3. Possible increases or decreases in prices.
4. Standardization or stabilization of prices.
5. Pricing procedures.
6. Bid-rigging.
7. Credit terms.
8. Control of sales.
9. Allocation of markets.
10. Refusal to deal with a corporation because of its pricing or bidding practices.
11. Whether or not the pricing or bidding practices of any industry member are unethical or constitute an unfair trade practice.