

(sample conflict of interest policy – private independent foundation)

XYZ FOUNDATION

Policy on Conflicts of Interest and Disclosure of Certain Interests

This conflict of interest policy is designed to help directors, officers and employees of XYZ Foundation (the “Foundation”) identify situations that present potential conflicts of interest and to provide the Foundation with a procedure which, if observed, will allow a transaction to be treated as valid and binding even though a director, officer or employee has or may have a conflict of interest with respect to the transaction. The policy is intended to comply with the procedure prescribed in Minnesota Statutes, Section 317A.255, governing conflicts of interest for directors of nonprofit corporations and with Section 5.7 of the Foundation’s Bylaws, the terms of which are described in paragraph 5 of this policy. In the event there is an inconsistency between the requirements and procedures prescribed herein and those in section 317A.255, the statute shall control, except as it may be limited by Section 5.7 of the Bylaws. All capitalized terms, other than Foundation and Board of Directors of the Foundation, are defined in paragraph 2 of this policy.

1. **Conflict of Interest Defined.** For purposes of this policy, the following circumstances shall be deemed to create Conflicts of Interest:

A. **Direct Interests.** A Contract or Transaction between the Foundation and a Responsible Person or Family Member.

B. **Indirect Interests.** A Contract or Transaction between the Foundation and an entity in which a Responsible Person or Family Member has a Material Financial Interest or of which such person is a compensated or uncompensated director, officer, agent, partner, associate, trustee, personal representative, receiver, guardian, custodian, conservator or other legal representative.

C. **Gifts, Gratuities and Entertainment.** A Responsible Person accepting gifts, entertainment or other favors from any individual or entity that:

- (i) does or is seeking to do business with the Foundation; or
- (ii) has received or is receiving or is seeking to receive a grant or loan or to secure other financial commitments from the Foundation;

under circumstances where it might be inferred that such action was intended to influence or possibly would influence the Responsible Person in the performance of his or her duties. This does not preclude the acceptance of items of nominal or insignificant value or entertainment of nominal or insignificant value which are not related to any particular transaction or activity of the Foundation.

1. Definitions.

A. A “Conflict of Interest” is any circumstance described in Part 1 of this Policy.

B. A “Responsible Person” is any person serving as an officer, employee or member of the Board of Directors of the Foundation.

C. A “Family Member” is a spouse, parent, child, brother, sister, or spouse of a child, brother, or sister of a Responsible Person.

D. A “Material Financial Interest” in an entity is a financial interest of any kind, which, in view of all the circumstances, is substantial enough that it would affect a Responsible Person’s or Family Member’s judgment with respect to transactions to which the entity is a party. For purposes of this policy, a financial interest with respect to a Contract or Transaction shall constitute a Material Financial Interest if, but only if, an ordinarily prudent person in a like position would reasonably conclude that such interest would affect his or her judgment with respect to the Contract or Transaction.

E. A “Contract or Transaction” is any agreement or relationship involving the sale or purchase of goods, services or rights of any kind, the providing or receipt of a grant or loan, or the establishment of any other type of pecuniary relationship with the Foundation.

F. “Board” is the Foundation’s Board of Directors.

3. Board action. As provided in Section 5.7 of the Foundation’s Bylaws, a Contract or Transaction involving a Conflict of Interest may be approved by the Board if the material facts as to the Transaction and the Conflict of Interest are fully disclosed or known to the Board and the Board approves the Contract or Transaction in good faith by the affirmative vote (without counting the interested director) of a majority of the entire Board at a meeting at which there is a quorum present, again without counting the interested director.

4. Procedures.

A. Prior to Board action on a Contract or Transaction involving a Conflict of Interest, a director who knows he or she has a Conflict of Interest and who is in attendance at the meeting shall disclose all facts material to the Conflict of Interest. Such disclosure shall be reflected in the minutes of the meeting.

B. A director who does not plan to attend a meeting at which he or she has reason to believe that the Board will act on a matter in which the person knows he or she has a Conflict of Interest shall disclose to the Chair of the meeting all facts material to the Conflict of Interest. The Chair shall report the disclosure at the meeting and the disclosure shall be reflected in the minutes of the meeting. If the director having the

Conflict of Interest is the Chair, then the required disclosure shall be made to, and the required report to the board shall be made by, the Vice Chair.

C. A person who knows he or she has a Conflict of Interest shall not participate in the Board's discussions of the matter except to disclose material facts and to respond to questions. Such person shall not attempt to exert his or her personal influence with respect to the matter, either at or outside the meeting.

D. A person who is known to have a Conflict of Interest with respect to a Contract or Transaction that will be voted on at a meeting shall not be counted in determining the presence of a quorum for purposes of the vote. The person known to have a Conflict of Interest may not vote on the Contract or Transaction. Such person's ineligibility to vote shall be reflected in the minutes of the meeting.

E. Responsible Persons who are not directors of the Foundation, or who have a Conflict of Interest with respect to a Contract or Transaction that is not the subject of Board or committee action, shall disclose to the President any Conflict of Interest that such Responsible Person knows he or she has with respect to such Contract or Transaction. Such disclosure shall be made as soon as the Conflict of Interest is known to the Responsible Person. The Responsible Person shall refrain from any action that may affect the Foundation's participation in such Contract or Transaction. The President shall promptly report such Conflict of Interest to the Chair or the Chair's designee.

F. If it is not entirely clear whether or not a Conflict of Interest exists, then the individual with the potential conflict shall disclose the circumstances to the Chair or the Chair's designee, who shall determine whether there exists a Conflict of Interest that is subject to this policy.

5. Confidentiality. Each Responsible Person shall exercise care not to disclose confidential information acquired in connection with such status or information the disclosure of which might be adverse to the interests of the Foundation. Furthermore, a Responsible Person shall not disclose or use information relating to the business of the Foundation for the personal profit or advantage of the Responsible Person or a Family Member.

6. Review of Policy; Annual Disclosure.

A. Each new Responsible Person shall be required to review a copy of this policy and to acknowledge in writing that he or she has done so.

B. Each Responsible Person shall annually complete a two-part disclosure form which shall be submitted to the President. The first part will identify the businesses and nonprofit organizations of which such Responsible Person, the Responsible Person's spouse (if any), or any dependent child of the Responsible Person, is a director, officer, employee or partner, and a copy of this part shall be distributed to all directors and trustees. The second part will identify the business organizations in which such

Responsible Person, the Responsible Person's spouse (if any), and any dependent children of the Responsible Person, have, in the aggregate, an ownership interest of 5 percent or more, and a copy of this part will be submitted by the President to the Foundation's legal counsel, who shall review the same and, upon the basis of that review, report to the Chair and the President concerning such actual or potential conflicts as may appear to be present. In connection with its review, the Foundation's legal counsel may request, and shall be entitled to receive, such additional information from any Responsible Person as the legal counsel deems necessary or appropriate in connection with the report to be rendered pursuant to this paragraph. Any information regarding the business interests of a Responsible Person or a Family Member shall be treated as confidential and shall generally be made available only to the Chair, the President and any committee appointed to address Conflicts of Interest, except to the extent additional disclosure is necessary in connection with the implementation of this policy.

C. This policy shall be reviewed annually by each Responsible Person. Any changes to the policy shall be communicated immediately to all Responsible Persons.

END

XYZ FOUNDATION

Conflict of Interest Information Form – Part I
20__

Name: _____

Date: _____

Please list below the name of each business or nonprofit organization of which you, your spouse (if any), or any dependent children of yours is a director, officer, employee or partner:

I hereby certify that the information set forth above is true and complete to the best of my knowledge. I have reviewed, and agree to abide by, the Conflict of Interest Policy of XYZ Foundation that is currently in effect.

Signature: _____

Date: _____

XYZ FOUNDATION

Conflict of Interest Information Form – Part II
20__

Name: _____

Date: _____

Please list below the name of each business organization in which you, your spouse (if any), or any dependent children of yours have, in the aggregate, an ownership interest of 5% or more:

I hereby certify that the information set forth above is true and complete to the best of my knowledge. I have reviewed, and agree to abide by, the Conflict of Interest Policy of XYZ Foundation that is currently in effect.

Signature: _____

Date: _____