

## **CONFLICT OF INTEREST POLICY**

**Adopted: April 24, 2018**

### **Background**

The HUTHER DOYLE MEMORIAL INSTITUTE, INC. (the “Corporation”) is subject to the New York Not-for-Profit Corporation Law with respect to its governance, including dealing with conflicts of interest. The Nonprofit Revitalization Act of 2013 imposed several new requirements with respect to conflicts of interest, in addition to the judge-made common law which deals with these concerns.

Additionally, the Corporation is an organization described in Sections 501(c)(3) and 209(a)(1), (2) or (3) of the Internal Revenue Code of 1986, as amended (the “Code”), and so is subject to the requirements of Code Section 4958 with respect to various dealings with disqualified persons.

The directors and officers of the Corporation are responsible for upholding a public trust. We are called to a higher standard of stewardship in order to meet the special privileges that our tax-exempt status allows. The action of the directors and officers should meet or exceed these higher standards rather than only minimally satisfy the requirements of tax-exempt status. Areas of behavior to be avoided include personal conflicts of interest by directors and officers, their families and business associates, questionable investments, improper treatment of consumers, improper use of funds raised (especially for personal remuneration), expensive and inefficient fundraising practices, failure to meet legal requirements and similar offenses.

The Corporation has adopted the following policy designed to avoid any possible conflict between the personal interests of directors and officers and the interest of the Corporation. The purpose of this policy is to insure that decisions about operations of the Corporation, and the use and disposition of its assets are made solely in terms of benefits to the Corporation and are not influenced by any private profit or other personal benefit to the individuals affiliated with the Corporation who take part in the decision.

In addition to actual conflicts of interest (as defined by this policy), directors, officers and employees are also obliged to avoid actions that could be perceived or interpreted to be in conflict with the Corporation’s interest. While these situations are not specifically covered by this policy, such individuals should disclose these situations as they arise for consideration by the Board, committee or individuals reviewing the matter to determine whether the individual should be recused from deliberations and voting.

This Conflict of Interest Policy (the “Policy”) is intended to contain in a single policy the relevant legal rules and best practices which govern the Corporation and its handling of conflicts of interest which include related party transactions as defined under the New York Not-for-Profit Corporation Law.

No policy can anticipate the fullest range of factual circumstances which may entail a conflict of interest. Accordingly, it is important to interpret and apply this Policy in a way which best assists the Corporation's governing Board and others in meeting their obligations under the law. Questions arising under or about this Policy should be forwarded of KELLY REED for consideration and resolution.

### **Who is subject to this Policy?**

Any person who is a Related Party is subject to this policy. Related Party is defined as:

1. Any individual who currently serves or has served in the following capacities within the past five (5) years:
  - a. a voting member of the Board of Directors of the Corporation or of any Affiliate of the Corporation ("Board Member");
  - b. an officer of the Corporation or any Affiliate of the Corporation, including, but not limited to (i) a President or Chair, Chief Executive Officer (CEO), Chief Operating Officer (COO) and any other individual who has ultimate responsibility (individually or shared) for implementing the decisions of the Board or for supervising the management, administration, or operation of the Corporation (e.g., Executor Director); and (ii) a Treasurer, Chief Financial Officer (COO) and any other individual who has ultimate responsibility (individually or shared) for managing the finances of the Corporation; or
  - c. a Key Employee of the Corporation or any Affiliate of the Corporation.
2. Any Relative of those persons listed in (1) above. "Relative" includes: spouse; domestic partner as defined in New York Public Health law Section 2954-A; ancestors; siblings (whether whole or half-blood)' children (whether natural or adopted); grandchildren; great-grandchildren; and spouses of siblings, children, grandchildren, and great-grandchildren.
3. Any entity in which an individual listed in (1) or (2) has controlling interest. A controlling interest is defined as:
  - a. for corporations: ownership (direct or indirect) or more than 35% of the combined voting power;
  - b. for partnerships or personal service corporations: ownership (direct or indirect) of more than 5% of the profit interest; and
  - c. for trusts or estates: ownership (direct or indirect) of more than 35% of the beneficial interest.
4. Key Employee includes any person who currently is, or was at any time during the past five (5) years, in a position to exercise substantial influence over the affairs of the Corporation. Facts and circumstances indicating that a person is in a position to exercise

substantial influence include, but are not limited to the following:

- a. the person is a founder or creator of the Corporation;
  - b. the person is a substantial contributor to the Corporation;
  - c. the person's compensation is based primarily on revenues from the Corporation's activities that the person controls;
  - d. the person has or shares authority to control or determine a substantial part of the Corporation's capital expenditures, operating budget, or compensation for employees;
  - e. the person manages a discrete segment or activity of the Corporation that is a substantial part of the Corporation's activities, assets, income, or expenses;
  - f. the person owns a controlling interest in a corporation, partnership, or trust that is considered a Related Party; and
  - g. the "person" is a non-stock organization controlled directly or indirectly by one or more Related Parties.
5. Facts and circumstances indicting that a person is not a Key Employee include, but are not limited to the following:
- a. the person has taken a bona fide vow of poverty as an employee, agent, or on behalf of a religious organization;
  - b. the person is an independent contractor whose sole relationship to the Corporation is providing professional advice and who has no decision-making authority and will derive no direct or indirect benefit from the transaction except for the customary fees for professional advice;
  - c. the person is the direct supervisor of an individual who is not a Key Employee;
  - d. the person does not participate in any management decisions affecting the Corporation as a whole or affecting a discrete segment of the organization that represents a substantial portion of its activities, assets, income, or expenses of the Corporation, as compared to the Corporation as a whole;
  - e. the person receives any preferential treatment is also offered to all other donors making comparable contributions and offered as a part of a solicitation intended to attract a substantial number of contributions.
6. An Affiliate is any entity controlled by, in control of, or under common control with the Corporation.

**Who is NOT subject to this Policy?**

Other organizations that are tax-exempt under Code Section 501(c)(3).

Any employee who is not highly compensated and is not otherwise considered a Related Party under this Policy.

## **What transactions or relationships are subject to this Policy?**

Any transaction, agreement or other arrangement in which a Related Party has a financial interest, and in which the Corporation or any Affiliate is a participant (“Related Party Transaction”).

## **What steps need be taken?**

The Board shall approve a Related Party Transaction only where the Board determines that the transaction is fair, reasonable and in the Corporation’s best interests. The Board shall utilize the following process to approve transactions subject to this Policy:

1. The Board must approve the Related Party Transaction in advance. Any member of the Board who has a conflict of interest as defined in this Policy may not participate in the vote, nor may he or she be present during voting or deliberations.
2. The Board must make its decision with reliance on appropriate data about comparable arrangements, to the extent they are available.
3. The Board must adequately document its decision and deliberations in the corporate records.

## **Annual Disclosure Statements**

Prior to initial election and annually thereafter, all Directors shall complete, sign, and submit to the Secretary a written statement identifying, to the best of the Director’s knowledge, any entity of which such director is an officer, director, trustee, member, owner, or employee, and with which the Corporation has a relationship, and whether there is a conflict of interest. The disclosure of a relationship shall not, by itself, constitute a conflict of interest. The governing Board may require the same submission to be made by officers and Key Employees. The Secretary shall provide a copy of all completed disclosure statements to the chairperson of the Audit Committee.

## **Employee Conflicts of Interest**

An employee of the Corporation with a potential conflict of interest in a particular matter shall promptly and fully disclose the potential conflict to his supervisor. The employee shall thereafter refrain from participating in deliberations, discussions, as well as any decisions, relating to the matter, and follow the direction of the supervisor regarding which Corporate actions are subject to this conflict of interest determination. The President shall be responsible for determining the proper way for the Corporation to handle decisions which involved unresolved employee conflicts of interest. In making such determinations, the President may consult with legal

counsel.

The President shall report to the Board at least annually concerning employee conflicts of interest which have been disclosed ad contracts and transactions involving employee conflicts which the President has approved.

### **Oversight/Administration**

This policy shall be overseen ad administered by the Board including the adoption of any amendments to this policy.