

Auxiliary Services Corporation Contract

AGREEMENT made this 30th day of January 2019, by and between STATE UNIVERSITY OF NEW YORK, a corporation organized and existing under the laws of the State of New York, with its principal office located at State University Plaza, Albany, New York 12246, hereinafter referred to as "State University", acting through the Health Science Center at Brooklyn, located at 450 Clarkson Ave. Brooklyn, New York 11203-2098, hereinafter referred to as "Campus" and Faculty Student Association of Downstate Medical Center, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York, having its principal place of business located at MSC 1219; 450 Clarkson Ave. Brooklyn, New York 11203-2098, hereinafter referred to as "Corporation".

The Campus requires certain auxiliary services in order to carry out various activities in support of its essential educational mission; and

The Corporation has been organized for the purpose of providing such services at the Campus and is capable of doing so; and

The parties desire to enter into an agreement under which the Corporation will provide such services for the Campus, including such terms for the use of State University facilities by the Corporation.

Accordingly, in consideration of the mutual covenants and conditions herein contained, the parties agree as follows:

1. The term of this agreement will commence on July 1, 2017, and shall continue for a term of five years through June 30, 2022. This agreement may be terminated in whole or in part by mutual agreement of the parties upon one hundred eighty (180) days prior written notice, in accordance with the notice provisions of this agreement.
2. The Corporation will conduct its activities in accordance with the policies of the Campus and the State University, including the Board of Trustees' Guidelines for Auxiliary Services Corporations as required by the New York Education Law, §355 and any supplementary or administrative requirements issued thereunder, which Guidelines and supplementary requirements are attached hereto and made a part hereof as Exhibits B and B-1 respectively. The Corporation must be informed of any changes made to Exhibits B and B-1 during the term of this agreement, and shall comply with such.

The Corporation, in accordance with the terms and conditions of this agreement, will operate the activities and services set forth in Exhibit C attached hereto and made a part hereof. Prior to engaging in any additional activities, the Corporation and the Campus will amend this agreement by adding such activities to Exhibit C, which amendment must be approved by

the Chancellor or designee and the NYS Attorney General and the Office of the State Comptroller.

Any services provided by the Corporation may be provided to the Campus on an exclusive basis, upon mutual agreement of the parties.

3. The annual budget of the Corporation shall be submitted to the State University prior to the start of its fiscal year. The budget shall be reviewed and approved by the campus president, or designee, and shall include a provision for payment of amounts owed to the Campus (e.g., rent and utilities), for amounts sufficient to maintain adequate reserve levels under State University requirements set forth in Exhibit B-1, and for a reasonable percentage of their revenue, after payment of all expenses, from the Corporation's operations to be paid to the Campus, either in cash and/or in-kind, to support the programs of the Campus.

4. State University shall make available to the Corporation in accordance with the terms and conditions of this agreement, the facilities (collectively, "Campus Support") designated in Exhibit D, attached hereto and made a part hereof. Additions to or withdrawals from Exhibit D shall be made by written mutual consent of the Campus and the Corporation and shall be subject to approval as an amendment to this agreement.

5. The Corporation shall take good care of the property set forth in Exhibit D, and shall maintain it in a clean, sanitary and orderly condition. The Campus shall keep such specified premises in good repair and make all necessary capital improvements in order to comply with all applicable federal, state and municipal health and safety codes. Capital improvements including alterations or new construction, other than installation of movable and built-in equipment, must be managed and contracted by the Campus in accordance with New York State Education Law (§355 and §376). Any alteration or improvement to the premises that may be paid for by the Corporation shall become the property of the State University upon termination of this agreement or as mutually agreed to by the Campus and the Corporation.

6. Any services to be provided by the Corporation under the terms of this agreement may be provided by the Corporation through a sub-contractor. However, the Corporation retains the primary responsibility for the delivery of all services under this agreement, including those services that may be rendered by a sub-contractor. Corporation sub-contracts requiring the payment of State funds will be required to comply with all procedures applicable to State University contracts including Standard Contract Clauses and Standard Affirmative Action Clauses, Exhibits A and A-1.

Any contract let by the Corporation to a subcontractor that is necessary to carry out the primary services of food service, bookstore, and vending under its contractual obligations to the State University and all other contracts that

exceed an annual contract value of \$100,000 shall be advertised and awarded pursuant to a competitive procurement process.

7. The Corporation shall comply with all the requirements and procedures of New State York Executive Law Article 15-A ("15-A") and its implementing regulations (5NYCRR140-145) to ensure the meaningful participation of Minority-owned business enterprise and Women-owned business enterprise in its contracts and subcontracts. Thus, State University Standard Affirmative Action Clauses, Exhibits A-1 must be attached to all the Corporation contracts and subcontracts. In further compliance with 15-A, the Corporation will have reporting obligations to SUNY which for reference are fully set forth in State University MWBE policy (Policy Item 7556).

Information that the Corporation will submit to SUNY in compliance with this reporting obligation under 15-A that may include, but not limited to reports, forms, contracts, subcontracts. This information shall be used for the purposes of meeting the Corporation's obligations under 15-A and other applicable law.

If any information that is submitted by the Corporation is of proprietary nature that should be kept confidential and are identified as such by the Corporation or a third party, SUNY will keep such information confidential only to the extent permitted by New York State Freedom of Information Law ("FOIL") as set forth in Article 6 of the New York State Public Officers Law).

8. The Corporation shall, upon termination of this agreement, return the facilities provided hereunder, or the applicable portion thereof in the event of partial termination or cessation of a particular activity in accordance with paragraph 1 above, in good and clean condition.

9. The Corporation shall defend, indemnify and hold harmless the State University and the State of New York from and against any claim, damage, fine, judgment, expenses, or charge suffered, imposed, assessed or incurred for any violation or occasioned by any act, neglect or omission of the Corporation, its officers, employees, agents, or sub-contractors. The Corporation shall defend, indemnify and hold harmless the State University and the State of New York from and against legal proceedings, judgments, or damages which may arise as the result of the Corporation's sub-contracting any of the services provided hereunder. The responsibility of the Corporation shall not be extended to claims, liability or damages arising out of the negligence of the State University, its officers, employees, agents, or sub-contractors.

In the event any damage or loss is caused to the equipment or facilities provided by the Campus hereunder, by the negligence or improper conduct of the Corporation, its officers, employees, agents or sub-contractors, the Corporation shall cause the said damage or loss to be repaired or replaced

as speedily as possible at its own cost and expense. Notwithstanding the above, to the extent such damage or loss is due to the negligence of the State University, its officers, employees, or agents, the Corporation shall be relieved of its responsibility for the repair or replacement of such damaged or lost equipment or facilities.

In no event shall anything contained in this agreement be deemed to impose liability of any nature upon the Corporation for loss or damage to persons or property, to the extent caused by the Campus, its officers, employees, or agents, or by any third party over which the Corporation exercises no control.

In the event any of the services hereunder are provided by a sub-contractor, the Corporation will ensure that such sub-contractor shall obligate itself to assume liability in accordance with the provisions of this agreement.

10. Payments for food service, board contracts and any other Corporation services mutually agreed to by the Campus and the Corporation and purchased by students, shall be collected and disbursed in accordance with the following:

- a) The Corporation may collect the approved amount directly from the students.
- b) In the alternative, the Corporation may elect to have the Campus collect such amount directly from the students. The Campus will deposit said receipts in the local campus depository. Disbursement of said receipts shall be made to the Corporation direct account, no later than 15 days of a deposit. It is understood by the parties that students' pending receipt of bona fide financial aid awards may defer such payments. "Receipts" shall be defined as the date which payments are received by the Campus from the students or the date on which financial aid awards are distributed to student accounts. The Corporation hereby assigns to the State University its right to collect any unpaid amounts due from the student as billed by the Campus in accordance with this provision. The right extends to referral to the NYS Attorney General for collection or to an authorized collection agency.
- c) The Campus and Corporation activities pertaining to the receipt, deposit, disbursement and documentation of the payments herein are subject to OSC post audit oversight under §8 of the New York State Finance Law.

11. Charges for use of facilities, utilities, and other campus costs associated with the operations of the Corporation, as detailed in Exhibit D, will be determined by the Campus. At the option of the Corporation, these charges may be separately delineated or reflected as a single total amount. These charges shall be paid to the Campus by the Corporation according to terms established by the Campus.

Exhibit D also shall contain a description of the methodology for assessing costs for those items listed therein.

12. In performing this agreement, the Corporation will receive, maintain, process or otherwise will have access to confidential information on students and/or customers of the Campus. Pursuant to the Gramm-Leach-Bliley Act (P.L. 106-102) and the Federal Trade Commission's Safeguards Rule (16 CFR Part 314), the Corporation must implement and maintain a written Information Security Program in order to protect such customer information. Customer information is defined as "any record containing nonpublic personal information as defined in 16 CFR §313(n)" (the FTC's Privacy Rule) "about a customer of a financial institution, whether in paper, electronic, or other form" (16 CFR §314.2). Examples of nonpublic personal customer information include, but are not limited to, name, address, phone number, social security number, bank and credit card account numbers and student identification numbers.

The safeguards that must be implemented under the Program must comply with the elements set forth in 16 CFR §314.4 and must achieve the objectives enunciated in 16 CFR §314.3, namely to: 1) ensure the security and confidentiality of student and/or campus customer records and information; 2) protect against any anticipated threats or hazards to the security or integrity of such records; and 3) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any student and/or campus customer.

The Corporation shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). The Corporation shall be liable for the costs associated with any breach of these provisions if caused by the negligent or willful acts or omissions of the Corporation or its agents, officers, employees, or subcontractors.

If the Corporation sub-contracts with a third party for any of the services that it is required to undertake in furtherance of this agreement, the Corporation must ensure that such third parties implement practices which protect nonpublic personal information of students and/or campus customers to which they receive, maintain, process or otherwise are permitted access.

The Corporation agrees to maintain data security that conforms to generally recognized "industry standards" and best practices that the Corporation applies to its own processes and systems. Generally recognized industry standards include but are not limited to the current standards and benchmarks set forth and maintained by the Payment Card Industry/Data Security Standards (PCI/DSS) - see <http://www.pcisecuritystandards.org/>.

13. Campus hereby grants the Corporation a non-exclusive right to use its name and marks for the benefit of and with the advance approval of the campus.

14. The Corporation and its sub-contractors shall be responsible for compliance with all applicable laws, rules, orders, regulations, codes and requirements of Federal, State and Municipal governments applicable hereto.

15. This agreement consists of the following documents:

1. Standard NY Contract Clauses—Exhibits A and A-1
2. Guidelines and Administrative Requirements for Auxiliary Service Corporations—Exhibits B and B-1
3. Corporation Services and Activities—Exhibit C
4. Facilities, Utilities, and Other Campus Services Provided—Exhibit D
5. Description of Affiliated Organizations and Campus-provided Resources—Exhibit E

16. In the event of any controversy of terms, the priority of the interpretation of documents shall be in the following order:

1. Exhibits A
2. Exhibit A-1
3. Guidelines and Administrative Requirements for Auxiliary Service Corporations—Exhibits B and B-1
4. This Agreement
5. Corporation Services and Activities—Exhibit C
6. Facilities, Utilities, and Other Campus Services Provided—Exhibit D
7. Description of Affiliated Organizations and Campus-provided Resources—Exhibit E

17. The parties agree that any amendment to this agreement or to any exhibit hereto will not become effective until it has received the approval of both the NYS Attorney General and the Comptroller and when necessary any regulatory agencies.

18. A waiver of a provision or breach of the agreement shall not constitute a subsequent waiver of such provision or breach of this agreement.

19. Any notice to either party hereunder must be in writing, signed by the party giving it, and shall be served either personally or by certified or registered mail or recognized overnight courier service or fax addressed as follows:

TO THE CAMPUS PRESIDENT: Wayne J. Riley, MD, President (or successor)
Downstate Medical Center; MSC 1
450 Clarkson Avenue
Brooklyn NY 11203-2098

TO THE STATE UNIVERSITY: University Controller
State University Plaza
Albany, New York 12246

TO THE CORPORATION:
Richard J. Bentley, President (or successor); MSC 1219
Faculty Student Association of Downstate Medical Center, Inc.
450 Clarkson Ave
Brooklyn, NY 11203-2098

A copy of such notice shall also be sent to such other person or corporation as may hereafter be designated in writing by either party.

Any notice served or mailed hereunder shall be effective as of the date of receipt.

IN WITNESS WHEREOF, the parties have entered into this agreement the day and year first above written.

Accepted and Agreed**SUNY Health Science Center at Brooklyn Corporation**By: [Signature]By: Richard J BentleyName: Wayne J. Riley, M.D.Name: Richard J BentleyTitle: PresidentTitle: PresidentREVIEWED BY COUNSEL [Signature]Date: 1/28/11Date: 1/18/19**CORPORATE ACKNOWLEDGMENT**STATE OF New York
COUNTY OF Kings) SS:

On this 18th day of January, 2019, before me personally came Richard Bentley, to me known, who being duly sworn, did depose and say that he resides in Manhasset, NY; that he is the President of Faculty Student Assn of Downstate Med Ctr Inc., the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal, that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

ELISA RODRIGUEZ
Notary Public, State of New York
Registration No. 01RO6302648
Qualified in Nassau County
Commission Expires May 5, 2022

[Signature]
Notary Public

In addition to the acceptance of this agreement, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

SUNY Controller's OfficeBy: [Signature]Name: TERE M'GOWANTitle: CONTROLLERDate: 2/22/19

APPROVED AS TO FORM
Attorney General of the State of New York
Comptroller

By: [Signature]Date: MAR 04 2019

Benjamin L. Maggi
BENJAMIN L. MAGGI
ASSISTANT ATTORNEY GENERAL

APPROVED AND FILED

New York State
APPROVED
DEPT. OF AUDIT & CONTROL

By: [Signature]Date: MAR 20 2019

[Signature]
FOR THE STATE COMPTROLLER

Exhibit A

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a Contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. PROHIBITION AGAINST ASSIGNMENT
Except for the assignment of its right to receive payments subject to Article 5-A of the State Finance Law, the Contractor selected to perform the services herein are prohibited in accordance with Section 138 of the State Finance Law from assigning, transferring, conveying, subletting or otherwise disposing of its rights, title or interest in the contract without the prior written consent of SUNY and attempts to do so are null and void. Notwithstanding the foregoing, SUNY may, with the concurrence of the New York Office of State Comptroller, waive prior written consent of the assignment, transfer, conveyance, sublease or other disposition of a contract let pursuant to Article XI of the State Finance Law if the assignment, transfer, conveyance, sublease or other disposition is due to a reorganization, merger or consolidation of Contractor's its business entity or enterprise and Contractor so certifies to SUNY. SUNY retains the right, as provided in Section 138 of the State Finance Law, to accept or reject an assignment, transfer, conveyance, sublease or other disposition of the contract, and to require that any Contractor demonstrate its responsibility to do business with SUNY.

3. COMPTROLLER'S APPROVAL. (a) In accordance with Section 112 of the State Finance Law, Section 355 of New York State Education Law, and 8 NYCRR 316, Comptroller's approval is not required for the following contracts: (i) materials; (ii) equipment and supplies, including computer equipment; (iii) motor vehicles; (iv) construction; (v) construction-related services; (vi) printing; and (vii) goods for State University health care facilities, including contracts for goods made with joint or group purchasing arrangements.

(b) Comptroller's approval is required for the following contracts: (i) contracts for services not listed in Paragraph (3)(a) above made by a State University campus or health care facility certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$250,000; (ii) contracts for services not listed in Paragraph (3)(a) above made by a State University campus not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$50,000; (iii) contracts for services not listed in Paragraph (3)(a) above made by health care facilities not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$75,000; (iv) contracts whereby the State University agrees to give something other than money, when the value or reasonably estimated value of such consideration exceeds \$10,000; (v) contracts for real property transactions if the contract value exceeds \$50,000; (vi) all other contracts not listed in Paragraph 3(a) above, if the contract value exceeds \$50,000, e.g. SUNY acquisition of a business and New York State Finance Article 11-B contracts and (vii) amendments for any amount to contracts not listed in Paragraph (3)(a) above, when as so amended, the contract exceeds the threshold amounts stated in Paragraph (b) herein. However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued

under such centralized contract.

(c) Any contract that requires Comptroller approval shall not be valid, effective or binding upon the State University until it has been approved by the Comptroller and filed in the Comptroller's office.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS.
To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the

filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by SUNY of any SUNY-approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION.
In accordance with Section 139-d of the State Finance Law, if this contract was awarded based on the submission of competitive bids, Contractor affirms, under penalty of perjury, and each person signing on behalf of Contractor, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to SUNY a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION.
In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 *et seq.*) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an exami-

nation, as SUNY and its representatives and entities involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. SUNY shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate SUNY official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, SUNY's or the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

Identification Number(s). Every invoice or New York State Claim for Payment submitted to the State University of New York by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State University of New York is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the State University of New York contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

(a) In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement

in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(1) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(2) at SUNY's request, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(3) Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(b) Contractor will include the provisions of "1", "2" and "3", above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a Contractor or sub-contractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. SUNY shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, SUNY shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit A, the terms of this Exhibit A shall control.

14. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of

competent jurisdiction of the State of New York.

17. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certification, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. **MacBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165(5) of the State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. **OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl St., 7th Floor
Albany, NY 12245
Tel: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development

Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414

email: mwbecertification@esd.ny.gov
<https://ny.newnycorps.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to SUNY;

(b) The Contractor has complied with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Search Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that SUNY may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with SUNY in these efforts.

21. RECIPROCITY AND SANCTIONS

PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact the NYS Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal or similar services, then in accordance with Section 163(4-g) of the State Finance Law, the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to SUNY, the Department of Civil Service and the State Comptroller.

24. PURCHASES OF APPAREL AND SPORTS EQUIPMENT. In accordance with State Finance Law Section 165(7), SUNY may determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder as defined in State Finance Law Section 163 based on (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including employee compensation, working conditions, employee rights to form unions and the use of child labor; or (b) bidder's failure to provide information sufficient for SUNY to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.

25. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

26. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the Contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract,

the Department of Taxation and Finance or SUNY discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if SUNY determines that such action is in the best interests of the State.

27. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.oqs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

THE FOLLOWING PROVISIONS SHALL APPLY ONLY TO THOSE CONTRACTS TO WHICH A HOSPITAL OR OTHER HEALTH SERVICE FACILITY IS A PARTY

28. Notwithstanding any other provision in this contract, the hospital or other health service facility remains responsible for insuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, state and local statutes, rules and regulations. In the foregoing sentence, the word "service" shall be construed to refer to the health care service rendered by the hospital or other health service facility.

29. (a) In accordance with the 1980 Omnibus Reconciliation Act (Public Law 96-499), Contractor hereby agrees that until the expiration of four years after the furnishing of services under this agreement, Contractor shall make available upon written request to the Secretary of Health and Human Services, or upon request, to the Comptroller General of the United States or any of their duly authorized representatives, copies of this contract, books, documents and records of the Contractor that are necessary to certify the nature and extent of the costs hereunder.

(b) If Contractor carries out any of the duties of the contract hereunder, through a subcontract having a value or cost of \$10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that, until the expiration of four years after the furnishing of such services pursuant to such subcontract, the subcontractor shall make available upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, copies of the subcontract and books, documents and records of the subcontractor that are necessary to verify the nature and extent of the costs of such subcontract.

(c) The provisions of this section shall apply only to such contracts as are within the definition established by the Health Care Financing Administration, as may be amended or modified from time to time.

1. DEFINITIONS. The following terms shall be defined in accordance with Section 310 of the Executive Law:

STATE CONTRACT herein referred to as "State Contract", shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the State University of New York ("University") is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or an combination of the foregoing, to be performed for, or rendered or furnished to the University; (b) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University as an owner of a state assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project.

SUBCONTRACT herein referred to as "Subcontract", shall mean any agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between a State agency and a prime contractor, in which a portion of the prime contractor's obligation under the State contract is undertaken

or assumed by a business enterprise not controlled by the prime contractor.

WOMEN-OWNED BUSINESS ENTERPRISE herein referred to as "WBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more United States citizens or permanent resident aliens who are women; (b) an enterprise in which the ownership interest of such women is real, substantial and continuing; (c) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any Contract or any goal, set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract may not be divided between the minority-owned

business enterprise goal and the women-owned business enterprise goal.

MINORITY-OWNED BUSINESS ENTERPRISE herein referred to as "MBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more minority group members; (b) an enterprise in which such minority ownership is real, substantial and continuing; (c) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000.00), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

MINORITY GROUP MEMBER shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America. (d) Asian and Pacific Islander persons having origins in any

of the Far East countries, South East Asia, the Indian Subcontinent or Pacific Islands.

CERTIFIED ENTERPRISE OR BUSINESS shall mean a business verified as a minority or women-owned business enterprise pursuant to section 314 of the Executive Law. A business enterprise which has been approved by the New York Division of Minority & Women Business Development ("DMWBD") for minority or women-owned enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women, and that also meets the financial requirements set forth in the regulations.

2. TERMS. The parties to the attached State Contract agree to be bound by the following provisions which are made a part hereof (the word "Contractor" herein refers to any party other than the University:

1(a) Contractor and its Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(b) Prior to the award of a State Contract, the Contractor shall submit an equal employment opportunity (EEO) policy statement to the University within the time frame established by the University.

(c) As part of the Contractor's EEO policy statement, the Contractor, as a precondition to entering into a valid and binding State Contract, shall agree to the following in the performance of the State Contract: (i) The Contractor will not discriminate

against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State Contracts; (ii) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the State Contract, all qualified applicants will be afforded equal employment opportunities without discrimination; (iii) At the request of the University the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(d) Form 108 - Staffing Plan To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

(e) Form 112 - Workforce Employment Utilization Report ("Workforce Report")

(i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to SUNY of any changes to the previously submitted Staffing Plan. This

information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

(ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

(iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or

subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

(f) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(g) The Contractor shall include the provisions of this section in every Subcontract in such a manner that the requirements of the provisions will be binding upon each Subcontractor as to work in connection with the State Contract, including the requirement that Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the Contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the State Contract.

(h) To ensure compliance with the requirements of this paragraph, the University shall inquire of a Contractor whether the work force to be utilized in the performance of the State Contract can be separated out from the Contractor's and/or Subcontractors' total work force and where the work of the State Contract is to be performed. For Contractors who are unable to separate the portion of their work force which will be utilized for the performance of this State Contract, Contractor shall provide reports describing its entire work force by the specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories which the agency may specify.

(i) The University may require the Contractor and any Subcontractor to submit compliance reports, pursuant to the regulations relating to their operations and implementation of their affirmative action or equal employment opportunity program in effect as of the date the State Contract is executed.

(j) If a Contractor or Subcontractor does not have an existing affirmative action program, the University may provide to the Contractor or Subcontractor a model plan of an affirmative action program.

Upon request, the Director of DMWBD shall provide a contracting agency with a model plan of an affirmative action program.

(k) Upon request, DMWBD shall provide the University with information on specific recruitment sources for minority group members and woman, and contracting agencies shall make such information available to Contractors

3. Contractor must provide the names, addresses and federal identification numbers of certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State Contract and a description of the Contract scope of work which the Contractor intends to structure to increase the participation by Certified minority- and/or women-owned business enterprises on the State Contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract which the Contractor intends to be performed by a certified minority- or woman-owned business enterprise. In the event the Contractor responding to University solicitation is joint venture, teaming agreement, or other similar arrangement that includes a minority- and women owned business enterprise, the Contractor must submit for review and approval: i. the name, address, telephone number and federal identification of each partner or party to the agreement; ii. the federal identification number of the joint venture or entity established to respond to the solicitation, if applicable; iii. A copy of the joint venture, teaming or other similar arrangement which describes the percentage of interest owned by each party to the agreement and the value added by each party; iv. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, teaming agreement, or other similar arrangement.

4. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN. The University shall determine whether Contractor has made conscientious and active efforts to employ and utilize minority group members and women to perform this State Contract based upon an analysis of the following factors:

(a) Whether Contractor established and maintained a current list of recruitment sources for minority group members and women, and whether Contractor provided written notification to such recruitment sources that contractor had employment opportunities at the time such opportunities became available.

(b) Whether Contractor sent letters to recruiting sources, labor unions, or authorized representatives of workers with which contractor has a collective bargaining or other agreement or understanding requesting assistance in locating minority group members and women for employment.

(c) Whether Contractor disseminated its EEO policy by including it in any advertising in the news media, and in particular, in minority and women news media.

(d) Whether Contractor has attempted to provide information concerning its EEO policy to Subcontractors with which it does business or had anticipated doing business.

(e) Whether internal procedures exist for, at a minimum, annual dissemination of the EEO policy to employees, specifically to employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions. Such dissemination may occur through distribution of employee policy manuals and handbooks, annual reports, staff meetings and public postings.

(f) Whether Contractor encourages and utilizes minority group members and women

employees to assist in recruiting other employees.

(g) Whether Contractor has apprentice training programs approved by the N.Y.S. Department of Labor which provides for training and hiring of minority group members and women.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor.

5. PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES. Based upon an analysis of the following factors, the University shall determine whether Contractor has made good faith efforts to provide for meaningful participation by minority-owned and women-owned business enterprises which have been certified by DMWBD:

(a) Whether Contractor has actively solicited bids for Subcontracts from qualified M/WBEs, including those firms listed on the Directory of Certified Minority and Women-Owned Business Enterprises, and has documented its good faith efforts towards meeting minority and women owned business enterprise utilization plans by providing, copies of solicitations, copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publications of such advertisements; dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the University, with certified minority- and women-owned business enterprises, and the reasons why any such firm was not selected to participate on the project.

(b) Whether Contractor has attempted to make project plans and specifications available to firms who are not members of associations with

plan rooms and reduce fees for firms who are disadvantaged.

(c) Whether Contractor has utilized the services of organizations which provide technical assistance in connection with M/WBE participation.

(d) Whether Contractor has structured its Subcontracts so that opportunities exist to complete smaller portions of work.

(e) Whether Contractor has encouraged the formation of joint ventures, partnerships, or other similar arrangements among Subcontractors.

(f) Whether Contractor has requested the services of the Department of Economic Development (DED) to assist Subcontractors' efforts to satisfy bonding requirement.

(g) Whether Contractor has made progress payments promptly to its Subcontractors.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor. It shall be the responsibility of Contractor to ensure compliance by every Subcontractor with these provisions.

6. MWBE Utilization Plan.

(a) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan prior to the execution of the contract.

(b) MWBE Utilization Plan (Form 7557-107).

Contractors are required to submit a Utilization Plan on Form 7557-107 with their bid or proposal. Complete the following steps to prepare the Utilization Plan:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. insert a description of the contract scope of work which the Contractor intends to structure to increase the

participation by NYS Certified minority- and women-owned enterprises on the State contract;

- iii. insert the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the Contractor intends to be performed by a NYS Certified minority- or women-owned business; and

(c) Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and during the term of the contract must be reported on a revised MWBE Utilization Plan and submitted to the SUNY University-wide MWBE Program Office.

(d) The University will review the MWBE Utilization Plan and will issue the Contractor a written notice of acceptance or deficiency within twenty (20) day of its receipt. A notice of deficiency shall include the:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. name of any MWBE which is not acceptable for the purpose of complying with the MWBE participation goals;
- iii. reasons why it is not an acceptable element of the Contract scope of work which the MWBE Program Office has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the Contract by MWBEs; and
- iv. other information which the MWBE Program Office determines to be relevant to the MWBE Utilization Plan.

(e) The Contractor shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the University a written remedy in response to the notice of deficiency.

i. If the written remedy that is submitted is not timely or is found to be inadequate, the University-wide MWBE Program Office shall notify the Contractor and direct the Contractor to submit, within five (5) business days, a request for partial or total waiver of MWBE participation goals on forms provided by the University-wide MWBE Program Office.

ii. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

(f) The University may disqualify a Contractor as being non-responsive under the following circumstances:

- i. If a Contractor fails to submit a MWBE Utilization Plan;
- ii. If a Contractor fails to submit a written remedy to a notice of deficiency in a MWBE Utilization Plan;
- iii. If a Contractor fails to submit a request for waiver; or
- iv. If the MWBE Program Office determines that the Contractor has failed to document Good Faith Efforts.

(g) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.

(h) Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the

occurrence of such a material breach, SUNY shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

7. Waivers.

(a) For Waiver Requests Contractor should use (Form 7557-114) – Waiver Request.

(b) If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete the University shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

(c) If University, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the University may issue a notice of deficiency to the Contractor. The contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

8. Quarterly MWBE Contractor Compliance Report.

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form 7557-114) to the University by the 5th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

9. GOALS. (a) GOALS FOR MINORITY AND WOMEN WORK FORCE PARTICIPATION.

(i) The University shall include relevant work force availability data, which is provided by the DMWBD, in all documents which solicit bids for State Contracts and shall make efforts to assist Contractors in utilizing such data to determine expected levels of participation for minority group members and women on State Contracts.

(ii) Contractor shall exert good faith efforts to achieve such goals for minority and women's participation. To successfully achieve such goals, the employment of minority group members and women by Contractor must be substantially uniform during the entire term of this State Contract. In addition, Contractor should not participate in the transfer of employees from one employer or project to another for the sole purpose of achieving goals for minority and women's participation.

(b) GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION.

For all State Contracts in excess of \$25,000.00 whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing or all State Contracts in excess of \$100,000.00 whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of sixteen percent (16%) for Certified Minority-Owned Business Enterprises and fourteen percent (14%) for Certified Women-Owned Business Enterprises.

10. ENFORCEMENT. The University will be responsible for enforcement of each Contractor's compliance with these provisions. Contractor, and each Subcontractor, shall permit the University access to its books, records and accounts for the purpose of investigating and determining whether Contractor or Subcontractor is in compliance with the requirements of Article 15-A of the Executive Law. If the University determines that a Contractor or Subcontractor may not be in compliance with these provisions, the University may make every reasonable effort to resolve the issue and assist the Contractor or Subcontractor in its efforts to comply with these provisions. If the University is unable to resolve the issue of noncompliance, the University may file a complaint with the DMWBD.

Failure to comply with all of the requirements herein may result in a

finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, remedies or enforcement proceedings as allowed by the Contract.

11. DAMAGES FOR NON COMPLIANCE.

Where the University determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay liquidated damages to the University. Such liquidated damages shall be calculated as an amount equaling the difference between:

a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the University, Contractor shall pay such liquidated damages to the University within sixty (60) days after such damages are assessed, unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the University.

Exhibit B


 <p>Category: Financial Related Entities</p> <p>Responsible Office: University Controller</p>	<p>Policy Title: Auxiliary Services Corporations Guidelines</p> <p>Document Number: 9400</p> <p>Effective Date: June 22, 2016</p> <p>This policy item applies to: State-Operated Campuses</p>
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Summary

State-operated campuses are authorized to contract with campus-related Auxiliary Services Corporations (ASCs). ASCs are authorized to provide a defined set of auxiliary services where students and faculty/staff have a significant interest in the quality and price of the services provided. An ASC may also provide services to Campus-Related Entities and Other Related Entities, State University of New York (University) hospitals, clinics, long-term care facilities (e.g., Long Island Veterans Home) and members of the public at events that are consistent with the mission of the University and whose purpose will directly benefit the campus.

An ASC may provide the following services:

- Food service including concessions and administering pouring and similar rights;
- Bookstores, campus stores, and computer stores;
- Amusements, vending, and laundry operations;
- Other student/faculty-related services such as ID card operations, cable television, banking services, telecommunication services, transportation or bus services, operation and management services for special events, and hair salons and nail shops;
- Administrative support (payroll, purchasing, etc.) to Campus-Related Entities, Other Related Entities, and other entities related to the campus, including, but not limited to student government associations;
- Student housing services through an Affiliate of the ASC; and
- Ownership of real property directly by the ASC, or indirectly through an Affiliate of the ASC for use in its operations to carry out its missions and services. An ASC may hold real estate directly related to its authorized services to the campus without establishment of an Affiliate if the ASC establishes a written plan that must be approved by the ASC Board, the campus president, and the Chancellor or designee before acquisition of any real property. The plan should include:
 - An acceptable business plan for the property and services thereon and linkage to the ASC's mission, objectives, and tax exempt status;
 - A risk identification, assessment, and monitoring plan; and
 - Adequate ASC liability insurance, reinsurance, and Officers and Directors insurance coverage.

Any proposed exceptions to these guidelines must be approved in writing by the Chancellor or designee. Any

proposed amendments to these guidelines must be approved by the Board of Trustees upon the recommendation of the Chancellor and Audit Committee.

Policy

I. Structure and Governance

The charter or certificate of incorporation of the ASC should make reference to the University campus it will benefit in terms of purposes, objectives and programs. Each campus should have only one ASC unless otherwise authorized by the Chancellor or designee. The ASC must be a non-profit corporation organized and existing under the laws of the State of New York and tax-exempt under the Internal Revenue Code (IRC). The campus will oversee the activities of the ASC through a contract with the campus and representation on the ASC's board of directors (ASC Board). Any exceptions to this structure require the campus president's approval in consultation with the Chancellor or designee.

The ASC Board is responsible for the governance and oversight of the ASC's affairs, personnel, and properties. The ASC Board is also responsible for issuing necessary policies, ensuring the ASC operates in accordance with its mission and all legal requirements, and monitoring the ASC's financial condition.

The ASC will be the main campus entity representing students and faculty in the management of services where these constituencies have the dominant interest. As such, the ASC Board should consist of faculty, students, and officers of the administration of the campus, and may further include alumni, local business leaders, and members of the local community. No members of the Campus Council, other than the student representative, may serve on the ASC Board. The student constituency, including any student serving in the capacity of a Campus Council representative, shall have not less than 1/3, but no more than 1/2 of the voting membership on the ASC Board. Any faculty members on the ASC Board must be appointed by the campus faculty governance organization. The campus president (including any acting or interim president approved by the Board of Trustees) or designee will be an *ex officio*, voting member of the ASC Board, but may not serve as the chair of the ASC Board or as the manager or president of the ASC. The campus president may appoint to the ASC Board no more than two voting members from the local business community who have management expertise in areas related to the services provided by the ASC.

An ASC may establish one or more Affiliates as permitted by law. Each Affiliate should be a non-profit corporation organized and existing under the laws of the State of New York and tax-exempt under the IRC, unless a different corporate structure is more appropriate as determined by the ASC Board. Prior to formation of an Affiliate, a plan outlining the structure, governance, purpose, and initial and planned funding/capitalization of each proposed Affiliate, must be approved in writing by the campus president and Chancellor or designee. The majority of the governance body of each Affiliate should also be members of the ASC Board; provided, however, that the governance body composition of any Affiliate formed for the purpose of providing student housing or owning real property shall not include any student representation. The remaining members of the governance body of the Affiliate shall be appointed as provided for in the Affiliate's organizational documents.

The certificate of incorporation and other organizing documents (e.g. bylaws or operating agreement) of an ASC and each of its Affiliates must provide that the net assets of the organization be distributed to the University, or other University-approved entity organized for similar purposes, on behalf of the campus or the ASC, respectively, in the event that the ASC or any of its Affiliates is dissolved. Dissolutions and dispositions of related net assets are subject to all applicable laws, regulations, and restrictions. Copies of all organizing documents, including all amendments thereto, must be on file with the Office of the University Controller.

II. Accountability, Compliance and Reporting

The ASC and each of its Affiliates must operate in accordance with sound business practices, and, at a minimum, must:

- Comply with the Auxiliary Services Corporations Administrative Requirements.
- Obtain the ASC Board's approval of the annual budget and the audited financial statements.
- Cause an appropriate official of the ASC to provide periodic fiscal reports to the ASC Board for its review.
- Develop, administer, and communicate written policies and procedures for all key business functions. These policies and procedures should, at a minimum, cover the following areas: (i) cash receipts and disbursements, (ii) investment management, (iii) procurement (including travel expenses and credit cards), (iv) payroll, (v) inventory, (vi) administrative services, (vii) conflicts of interest, and (viii) whistleblower. Such policies must require that disbursements are reasonable business expenses that support the campus, are adequately

documented, and do not conflict with the law. If an ASC or any of its Affiliates engages a third-party (e.g. the campus foundation) to provide administrative support services, each must ensure that this third-party has in place, to the extent applicable, the written policies and procedures enumerated above.

- Comply with all applicable laws, including the Non-profit Revitalization Act of 2013, each as amended from time to time.
- Establish and maintain a system of internal controls designed to provide reasonable assurance of the achievement of objectives, reliability of financial reporting, safeguarding of assets, effectiveness and efficiency of operations, and compliance with laws and regulations.

Each ASC and its Affiliates must prepare annual financial statements (consolidated or separately issued) in conformity with U.S. generally accepted accounting principles and have an audit conducted by a licensed independent certified public accounting firm or sole practitioner (independent auditor) in accordance with generally accepted auditing standards. To enable the University to include pertinent information in its annual financial statements, the audit must be completed within 90 days after the close of the ASC's (or Affiliate's) fiscal year.

Consistent with principles of good governance, the independent auditor should be appointed only after a competitive procurement process. The term of appointment must be for no more than a five-year term, after which each ASC and/or Affiliate (as applicable) must solicit these services through a new competitive procurement process.

The books and records, financial condition, operating results, and program activities of the ASC and its Affiliates are also subject to periodic audit by the Office of the University Auditor and, to the extent allowed by law, by outside regulatory bodies. All audit reports from whatever source, the certified (consolidated) financial statements and any management letter, together with the associated corrective action plan of the ASC and each of its Affiliates, must be promptly provided to the campus president and the Office of the University Controller. Management's corrective action plan should include the planned timeframe for addressing the independent auditor comments. Additionally, on an annual basis, each ASC must certify to the University that it and each of its Affiliates has complied with the terms of the contract between it and the campus, including the provisions of these guidelines.

The ASC and its Affiliates also must meet all regulatory filing requirements on a timely basis (e.g. federal and state taxing authorities).

III. Linkage to Campus

A formal contract, in substantial accord with the model contract developed by the University (Appendix A), must be executed between the campus and the ASC. The contract should authorize the ASC to operate on campus, and should enumerate its activities and those of each Affiliate it establishes. Each authorized activity to the ASC should be identified in the contract (Exhibit C), with written amendments required for new activities. The contract must be approved by the Chancellor or designee (and external State agencies when required), can extend for a period of not more than 10 years,^[1] and must be terminable by the University in whole or part with 180 days written notice given by the University.

Any reimbursement to the campus for the use of space, utilities, and other services that the campus provides to the ASC should be consistent with the approved annual budget and terms and conditions of the contract with the campus (Exhibit D).

The ASC's use, if any, of the campus name and marks for appropriate purposes, must be authorized pursuant to the contract between the ASC and the campus.

IV. Amendments

These guidelines may be amended from time to time by the Board of Trustees upon public notice and the recommendation of the Chancellor and Audit Committee of the Board of Trustees. All guideline amendments shall become effective upon a duly adopted amendment to the contract between the University and the ASC.

^[1] Contract terms exceeding five years are subject to pre-approval by External State agencies and may not be approved without a satisfactory business justification.

Definitions

Affiliate means an entity formed by the ASC to assist it in meeting the specific needs of, or providing a direct benefit to the campus, the University as a whole, or the associated ASC. The objective and purpose of the Affiliate must be consistent with the overall mission of the University.

Campus Council means a council for a State-operated campus as provided by NYS Education Law §356, to perform functions, prescribed by statute and the Board of Trustees, at its respective campus.

Campus-Related Entity means any of the Alumni Associations, Auxiliary Services Corporations, and Campus-Related Foundations of the University on behalf of a State-operated campus. The objective and purpose of a Campus-Related Entity must be consistent with the overall mission of the University.

Other Related Entity means an entity other than a Campus-Related Entity that is formed to meet the specific needs of, or provide a direct benefit to, a campus or the University as a whole and is approved by the Chancellor or designee in accordance with established University guidelines. The governance structure of an Other Related Entity must include the right of the University or the University on behalf of a campus to appoint, elect or otherwise participate in the selection of the board or other governing body of such entity, either as a sole member, or as one of the members, or otherwise designated with such right. The objective and purpose of an Other Related Entity must be consistent with the overall mission of the University. Student government associations and clinical practice management plans are not within the definition of Other Related Entity.

Other Related Information

New York Non-profit Revitalization Act of 2013 amending the Not-For-Profit Corporation Law

Procedures

There are no procedures relevant to this policy.

Related Policies

SUNY Policy Doc. No. 9600 Foundations Guidelines

SUNY Policy Doc. No. 9300 Alumni Associations Guidelines

SUNY Policy Doc. No. 9500 Other Related Entities Guidelines

Forms

There are no forms relevant to this policy.

Authority

Internal Revenue Code §501(c)(3) (Exemption from tax on corporations).

History

On December 17, 1975, the guidelines were established, BOT Resolution 75-330.

On May 27, 1992, the guidelines were amended, BOT Resolution 92-104.

On April 29, 2003, the guidelines were amended, BOT Resolution 03-39.

On March 22, 2011 the guidelines were amended, BOT Resolution 2011-018.

9400 - Auxiliary Services Corporations Guidelines

On June 22, 2016, the guidelines were amended, BOT Resolution 2016-46. Campus-Related Entities Policies.

Appendices

Standard Contract Clauses State University of New York - Exhibit A

Standard Contract Clauses - Affirmative Action Clauses - Exhibit A-1

Appendix A - Auxiliary Services Corporation (ASC) Model Contract and Exhibits C, D, E

Appendix B - Auxiliary Services Corporation Guidelines - Exhibit B

Appendix C - Auxiliary Services Corporations Administrative Requirements - Exhibit B-1

**State University of New York
Administrative Requirements for Auxiliary Services Corporations**

Summary

The State University of New York (University) system administration has prescribed a set of administrative guidelines governing auxiliary services corporations' administrative functions, including corporate fiscal stability requirements. Auxiliary services corporations (corporations) are campus based, not-for-profit organizations, providing dining, vending, campus stores, student ID cards and other essential services to campuses.

Requirements

I. Officers

Whenever reference is made in these guidelines to the campus president or vice chancellor, such reference shall be deemed to also include such officer's designee.

II. Organization

- A. Board of Directors – The board of directors shall be constituted as provided in the University Board of Trustees Guidelines for Auxiliary Services Corporations. Further, the student directors shall be selected from and by the students or the representative student governing body. Directors representing the campus administration shall be appointed by the campus president.
- B. Campus Communication – The management of the corporation is vested in the board of directors as provided by not-for-profit law. However, the continuance of contractual relations between the corporation and the campus depends upon a close harmony of practice and purpose between both parties. The campus president shall receive minutes of all board meetings, have access to all corporate books and papers and be informed about significant matters of corporate business.
- C. Employment – The corporation shall engage employees to the extent necessary to conduct its business. Corporation may employ State Paid personnel provided that the corporation work complies with Section VI.3, and (1) that time worked for the corporation is either outside the employee's normal State obligation work hours, or (2) that the employee's State time is appropriately charged as time off to their State leave credits, or (3) the State is reimbursed by the corporation for the cost of corporation related work on State time.

- D. Charter/By-Law Changes – If substantial changes (e.g., impacts the mission; adds, significantly changes, or eliminates services; creation of a single member corporation, etc.) are proposed to the charter or by-laws of the corporation during the term of the agreement, sixty (60) days prior written notice of such proposed change(s) shall be reported to the campus president and the university controller. No such change will take effect without the written approval of the campus president and the university controller. Changes to the charter or by-laws of a less significant nature (e.g., term limits, signature authority, creation of subcommittees, etc.) should be reported to the president and the university controller within 30 days of approval by the corporation's board.
- E. Inter-campus Auxiliary Cooperative Agreements – Corporations are encouraged to pursue inter-campus relationships between and among corporations that lead to service efficiencies, cost reductions, and/or improvements, as being consistent with the corporations' missions to support the University both on a campus and system-wide basis. This relationship should be governed by an agreement defining the scope of cooperative services, custody of funds, allocation of revenue and expenses, responsibility for liabilities, responsibility for financial reporting, and other clarifying language appropriate under the circumstances.

III. Financial

- A. General Budget – The corporation shall prepare each year a general budget as well as budgets for each auxiliary service under its control or supervision.
 - 1. Budget Approval – The budget shall be submitted to the campus president for review and approval at least sixty (60) days prior to the commencing date of the corporation's fiscal year for which the budget is prepared. The review and approval or disapproval by the campus president must be made at least fifteen (15) days prior to the commencing date of the corporation's fiscal year. A copy of the approved budget shall be forwarded promptly to the university controller by the campus president.
 - 2. Availability and Expenditures of Income – No income shall be available to the corporation for any purpose until the budget shall have been approved as herein provided by the campus president.
- B. Accounting Records – The corporation shall keep books of account and records of all its operations. It shall maintain systems of bookkeeping and accounting acceptable to the vice chancellor and to the New York State comptroller and shall permit inspection of said books, records and papers of any kind by the vice chancellor, university audit, and the state comptroller.
- C. Insurance – The corporation and all affiliates of the corporation, including separate LLCs, shall have adequate insurance (e.g., liability and Officers and Directors insurance) to protect against all risks.

D. Corporate Fiscal Stability – In order to ensure the long-term viability of the corporation and the sustainability of the services it provides, the corporation should:

- ensure there are adequate financial resources and funding streams to support operations;
- closely monitor operating and, if appropriate, capital budgets to ensure that the corporation operates within those budgets;
- ensure adequate liquidity is maintained to support operating needs, meet inflationary increases and unexpected emergencies; and
- maintain strong internal controls.

In this regard, the following unrestricted net asset classifications are required and will be measured annually at the end of the corporation's fiscal year. They are:

1. Capital assets, net of related debt – Equal to the original cost of fixed assets, including land, buildings, building/leasehold improvements and equipment less accumulated depreciation and any related debt. Capital assets net of related debt clearly identifies the corporation's ownership share and related equity/net asset balance related to plant and equipment.
2. Unrestricted, designated for operating reserves – This designated net asset class is determined as one twelfth (1/12), representing one month, of previous year's operating expenses. Operating expenses include all expenses except campus support, investment losses, and non-recurring expenses (e.g., loss on sale of assets). This is a minimum threshold for operating reserves.
3. Unrestricted, board designated–Net assets designated for a particular purpose by the corporation's board.
4. Unrestricted, undesignated – Represents the remaining unrestricted net asset determined as the total unrestricted net assets less the designated unrestricted net assets in items 1, 2, and 3 above.

The University will measure the fiscal stability requirements for each corporation in accordance with the criteria set forth above on an annual basis. If the unrestricted, undesignated net assets are in a negative position, the corporation is deemed not to have met the fiscal stability requirement measurement. For those corporations that do not meet these corporate fiscal stability requirement, the University may consider other additional factors to evaluate the financial condition of the corporation. Based on this evaluation, the University will determine if the corporation must establish a written plan to satisfy these requirements within a three-year timeframe. Total unrestricted undesignated net assets should not accumulate to an excessive amount.

IV. Public Information

The corporation shall have available for inspection by any member of the campus community the minutes of annual or any regular meetings, annual certified financial statements and annual budgets and subsequent revisions.

V. Standard Contract Clauses

The corporation shall adhere to all provisions included in Exhibits A and A-1 (New York State Standard Contract Clauses).

VI. Inappropriate Activities

Corporations shall not engage in any of the following activities or practices:

1. those contrary to the policies of the University or the campus;
2. the purchase of real estate (land and/or buildings) for the purpose of investment or speculation;
3. the employment of faculty or staff personnel or their remuneration, when the service performed is not directly related to the operations of the corporation;
4. the provision of furnishings for faculty or student housing not owned by the corporation;
5. financing of campus capital construction projects not included within the space made available to the corporation; or
6. Except in concert with and under the direct supervision of the campus development office, active solicitation of gifts and bequests.

VII. Agency Funds

- A. The campus president may, upon request, authorize the corporation to act as fiscal agent. Agency funds are maintained by the corporation which have an established relationship with the University. These funds are maintained in agency accounts. Agency funds are resources held by a corporation in a custodial or fiscal agent capacity for the benefit of individual students, faculty or staff members, or appropriately recognized organizations and are not funds of the corporation itself. The corporation has a fiduciary responsibility to ensure the funds are maintained and used in accordance with the approved purpose.

- B. Administration of Agency Funds

Corporations that are authorized to administer agency funds must comply with the following administrative procedures:

1. The corporation shall develop and maintain up-to-date comprehensive written policies and procedures for the administration of agency accounts. They should address the establishment of agency accounts; procurement and disbursement of agency funds, including travel reimbursements; agency fund cash receipt controls;

investment of agency funds; and inactive accounts. Furthermore, the corporation should establish adequate internal controls over the cash receipt and disbursement processes to help safeguard the agency funds.

2. A formal application process must be used to establish any new accounts, culminating with the approval of the Campus President or designee. The application should include the name and purpose of the account, source of funds, allowable types of expenditures, and authorized signatories.
3. Upon approval of the account application, a formal agreement regarding the administration of the account should be established between the corporation (fiscal agent) and the campus faculty, staff or campus organization that is requesting fiscal agent services. The agreement should, at minimum, address the following items:
 - a. Definition of services to be provided
 - b. Responsibilities of both parties
 - c. Definition of types of allowable disbursements
 - d. Authorization signatures for disbursements
 - e. Administrative/management fees and other costs
 - f. Limitations on the types of investments allowed
 - g. Interest earnings allocation, if any
 - h. Monthly reporting requirements
 - i. A process to review and/or close inactive accounts after a specified time frame
 - j. Dispute resolution process
 - k. Procedure for annual review to amend the agreement, as necessary
4. A reasonable administrative/management fee may be collected by the corporation.
5. As part of its fiduciary responsibilities, the corporation administering an agency account must develop an understanding of the objectives and purposes of the account. Further, the fiscal agent is to be more than a depository and disbursing agent for the organization who owns the agency account. They must ensure all funds are adequately safeguarded, receipts are credited to the appropriate agency account, and disbursements are properly authorized and in accordance with the agency account agreement. In performing these fiduciary responsibilities they should:
 - a. Provide receipts to the agency account holders upon the receipt of any funds.
 - b. Require the use of standard agency account disbursement forms that describes the purpose of the expenditure and includes the signature of an authorized account signor and a supervisor – cannot be the same individual
 - c. Verify signatures on disbursement requests to those authorized in the agency account agreement.
 - d. Verify that the disbursement meets the intent of the agency account, from which the funds are being disbursed.
 - e. Require disbursement requests be accompanied with adequate supporting documentation, including original receipts and invoices, to allow for sound judgment when processing disbursements.

- f. Require the signature of a designated individual in the campus finance/business office for reimbursements (e.g., travel) over a specified dollar amount (campus / corporation threshold) that are made to the authorized account signatory.
- 6. Monthly reports of activities should be prepared and provided to each agency account holder. These reports should be reconciled monthly by the account owner, with any discrepancies addressed in a timely manner.
- 7. Reconciliation of agency account balances to monthly bank statements should be performed in a timely manner and verified by an individual independent of the reconciliation process.
- 8. Agency funds may not be commingled with funds of the corporation. However, agency account funds may be combined or commingled for efficiency and investment purposes.
- 9. In the event agency account balances are combined, detailed accounting records must be maintained and investment income allocations applied to ascertain the appropriate balances associated with each agency account.
- 10. Agency accounts should not be used for depositing monies belonging to the State (the State has an ownership and equitable title in the funds) either as general revenues or as revenues accountable through an Income Fund Reimbursable (IFR) account, nor should such monies be utilized for the purposes of the corporation.
- 11. For agency accounts that are inactive for longer than one year the corporation should follow-up with the account owner to determine whether the account should remain open or be closed. Accounts closed due to inactivity may be re-established by completing a new account application.

Exhibit C

**State University of New York
Auxiliary Services Corporation
Services and Activities**

- A. Services to be provided by the Corporation (enumerate all distinct services/activities – i.e., each dining hall; RA Meals; Athlete's Meals, etc.)
1. **Exclusive Campus Bookstore**
 2. **Exclusive Mobile Vending Licensing**
 3. **Financial Aid Student Advance Loans**
- B. Fiscal Agent Services (enumerate all services/activities/entities)
1. **All DMC student governments**
 2. **Childrens Center of SUNY Brooklyn, Inc.**
 3. **Trust and Agency Accounting Services to DMC student governments and various other campus organizations as appropriate within SUNY Agency Account Guidelines**
- C. Services to be provided by sub-contractor to the Corporation; enumerate all distinct services/activities.
1. **Automated Teller Machine Services**
 2. **Commencement Photography**
 3. **Exclusive Campus-wide Laundry Machine Services**
 4. **Exclusive Campus-wide Vending Machine Services -all types**
 5. **Food Service: Catering and Coffee Carts**
 6. **Student Health Insurance**
 7. **Exclusive Hospital Gift Shop**
 8. **Shared Car Rental Services**
 9. **Parking Services to campus community**

**State University of New York
Auxiliary Services Corporation
Facilities, Utilities, Equipment and Other Campus Support, Goods and
Services Provided by the Campus**

A. Description of campus space provided

Building Name	Square Footage	Space Description
Student Center	2792	Food Preparation Facility Campus Store Office
Basic Science Building	287	Vestibule -Coffee Cart
Public Health Academic Building	34	Alcove- ATM
University Hospital	660	Retail Store -Gift Shop
North Residence Hall	757	Laundry Room
South Residence Hall	757	Laundry Room
Nurse's Residence	935	Laundry Room
All Buildings	315	Hallway Alcoves—35 Vending Units

B. Description of utilities provided:
HVAC, Electricity

C. Description of equipment and other campus support, goods and services provided:

Routine campus recharged services (ex: Central Stores, Mail)

D. Description of reimbursement provided to the campus

Whenever FSA uses campus recharged services (ex: Central Stores, Mail), the campus invoices FSA and FSA then reimburses the campus.

EXHIBIT E

State University of New York

Auxiliary Services Corporation

Description of Affiliated Organizations and Campus-provided Resources

A. Name and address of affiliates

The Faculty Student Association of Downstate Medical Center, Inc. has NO subsidiary affiliated corporations.

B. Description of services and activities

None

C. Description of space utilized for each service provided

Building Name **None**

Square Footage **None**

Space Description **None**

D. Personnel assigned: **None**

E. Description of equipment provided: **None**