



THE CITY UNIVERSITY OF NEW YORK

AUXILIARY ENTERPRISE CORPORATION GUIDELINES

I. Preamble2

II. Overview2

 A. Purpose and Permitted Activities2

 B. Prohibited Activities3

 C. Self-Supporting3

III. Authority3

IV. Structure, Governance And Dissolution4

 A. Structure4

 B. Governance.....4

V. Accountability and Compliance5

 A. Corporate and Fiduciary Responsibilities5

 B. Tax Requirements5

 C. Contracts6

 D. Authorized Signatories6

 E. Use of College Name and Marks7

 F. Compliance with Investigations7

VI. Insurance and Indemnification7

 A. Insurance7

 B. Indemnification7

VII. Personnel Matters8

 A. Classification/Definitions8

 B. Salary/Compensation9

 C. Tax ID10

 D. Payroll Period10

 E. Hiring Process10

 F. Legally-Mandated Employee Benefits12

 G. AEC Employer Responsibilities13

 H. Recordkeeping14

VIII. Conflict of Interest14

IX. Memorandum Of Understanding.15

 A. Use of Facilities15

 B. Provision of Space and Services15

X. Financial Management15

 A. Budgeting16

 B. Cash and Treasury Management16

 C. Purchasing17

 D. Accounting18

 E. Capital Assets Management18

XI. Financial Reporting And Audit19

 A. Reporting to the Board/Financial Statements19

 B. Independent Auditor19

 C. CUNY Financial Accounting and Reporting Requirements19

 D. CUNY Audit Rights20

XII. Policy Manual21

XIII. Internal Controls21

XIV. Records Retention.....21

XV. Exceptions and Amendments21

XVI. Related Information22

I. PREAMBLE

The purpose of this policy is to establish guidelines regarding the auxiliary enterprise corporations (each an “AEC”) that support The City University of New York (“CUNY” or the “University”). Although independent, each AEC is organized for the sole purpose of supporting CUNY and a particular CUNY college or school (each a “college”), its students, faculty, staff and other members of the college community. Through the provision of non-instructional auxiliary enterprises and services (“auxiliary services”) such as fiscal administration of a college’s food service operations, short-term licensing of college facilities to third parties, and other activities in cooperation with the college, an AEC can assist its supported college in meeting its higher education goals.

As a condition of an AEC’s use of the University’s or a college’s name, facilities and/or other resources, an AEC must accept and follow these Guidelines, which are intended to protect the University’s interests, as well as to help ensure that the AEC operates in a prudent, lawful manner. As further described in this document, each AEC shall be:

- organized solely for the benefit of a particular supported college, its students, faculty, staff, and other members of the college community;
- operated in a fiscally prudent manner and consistent with its governance documents and applicable federal, state and local law and regulation; and
- guided by best practices in good governance and ethical judgment.

II. OVERVIEW

A. Purpose and Permitted Activities

The AECs are entities created and operated for the principal purpose of benefiting the students, faculty, staff, and other members of the community of the various colleges by providing auxiliary services and by otherwise supporting the educational mission of the college and the University. Each AEC supports a particular college. Examples of auxiliary services that an AEC may provide include:

- Food service operations, including catering and vending;
- Beverage “pouring rights” contracts and similar arrangements;
- Bookstores and campus stores, both physical and virtual;
- Copy machines, laundry centers, games and amusements, and similar operations;
- ATMs and other banking services;
- Student, faculty and staff housing and related services;
- Sports, health, and recreation facilities licensing, memberships and camps;
- Parking operations and transportation services;
- Childcare centers, art galleries, and performing arts centers;
- Short-term licensing of college facilities to third parties;
- Trademark licensing;
- Campus telecommunication services such as WiFi extenders¹;

¹ This does not include cell tower and similar arrangements, unless structured as a short-term facility use license.

- Such other auxiliary services as mutually agreed by the AEC and the college.

An AEC may provide auxiliary services through: (i) direct operation (e.g., parking operations), (ii) a subcontract with another vendor (e.g., transportation services), or (iii) by acting as the college's fiscal agent in connection with a college or University contract or facility (e.g., pouring rights, theater operations) or asset licensing program (e.g., short-term facility use, trademarks). Other structures and activities may be permitted upon approval of the supported college and the CUNY Office of the General Counsel and the CUNY Office of Budget and Finance.

An AEC's tax exempt status is based on the premise that it will be providing the traditional types of auxiliary services that directly assist students, faculty and staff in their education and work (e.g., food service, bookstores, parking, etc.). An entity that is primarily a repository of revenues from facility or intellectual property licensing, and does not provide traditional auxiliary services as its principal activity does not meet the definition of an AEC and may not meet the criteria for tax exemption.

B. Prohibited Activities

AECs shall not engage in activities that do not relate to their primary purpose or mission of providing auxiliary services, except as permitted by Section X.A.3 with respect to the use of surplus funds. Examples of prohibited activities include:

- offering instructional or certificate programs, whether credit or noncredit-bearing, and including adult and continuing education;
- receipt and/or management of sponsored grants for research or for college programs, except for those non-instructional programs for which the AEC is the college-designated fiscal administrator. AECs may accept and administer grants for programs they directly operate, such as government funding for child care centers, and for non-instructional college programs for which the college has designated the AEC to be its fiscal administrator, such as government funding for a performing arts center;
- holding "depository accounts" for college offices or departments, student organizations, or other college-related groups, that are not controlled by the AEC. AECs may hold and administer funds with restricted purposes, such as use for a specific program or department and may deposit surplus funds (as defined in X.A.3) with the City University Construction Fund (CUCF) to fund college capital projects. However, such funds shall be included in the AEC's budget and are subject to the same management, accounting, reporting and control requirements as other funds held by the AEC;
- activities prohibited by applicable federal, state or local law or regulation, or CUNY or college policy.

C. Self-Supporting

The AECs are intended to be self-supporting; revenues generated by an AEC are expected to be sufficient to cover its expenses.

III. AUTHORITY

By resolution of June 27, 1983, the University's Board of Trustees authorized the

establishment of an AEC at each CUNY college campus and under each college's name. Some AECs were established prior to this date pursuant to individual Board of Trustees resolutions.

Pursuant to Article XVI of the Bylaws of the University's Board of Trustees ("CUNY Bylaws"), an AEC shall have responsibility for the oversight, supervision and review of college auxiliary enterprises.

IV. STRUCTURE AND GOVERNANCE

A. Structure

1. AECs. Each AEC shall be organized and operated as a New York not-for-profit corporation that is legally separate from its supported college and the University. It shall obtain and maintain status as a tax-exempt, charitable organization under §501(c)(3) of the Internal Revenue Code and applicable New York State laws. The certificate of incorporation of each AEC shall make reference to the CUNY college it will benefit in terms of purposes, objectives, and programs. The governing documents of each AEC shall be reviewed by CUNY's Office of the General Counsel and approved by the CUNY Board of Trustees.

2. Affiliates. An "Affiliate" for purposes of these Guidelines is an entity formed by an AEC to assist it in meeting the specific needs of, or providing a direct benefit to a college or an associated AEC. An AEC may establish one or more Affiliates as permitted by law. Each Affiliate should be a New York not-for-profit corporation that is tax-exempt under the Internal Revenue Code, unless a different organizational structure (e.g., a limited liability company) is more appropriate as determined by the AEC board. Prior to formation of an Affiliate, a plan outlining the structure, governance, and purpose of the proposed Affiliate must be approved in writing by the college president or dean (each a "president") upon consultation with the CUNY Offices of the General Counsel and Budget and Finance. An Affiliate may be created under the University's or a college's name only with the approval of the CUNY Board of Trustees.

Throughout these Guidelines, references to an AEC shall be deemed to include any Affiliate of that AEC.

3. Dissolution. The governance documents of each AEC must provide that in the event of its dissolution, the AEC's net assets shall be distributed to the University or another University-approved entity, for the benefit of the college that the AEC was created to support.

4. Documentation. Copies of all governance documents, including all amendments thereto, must be on file with the college and the CUNY Office of the General Counsel.

B. Governance

1. Role of Board. An AEC's governing body (each a "board") is responsible for the governance and oversight of the AEC's affairs, personnel and properties. The AEC's board is also responsible for issuing necessary policies, ensuring that the AEC operates

in accordance with its mission and all legal requirements, and monitoring the AEC's financial condition.

2. Composition of Board. The composition of the AEC's board, including its membership, committee structure, and adherence to term limits, if any, shall be in full compliance with the requirements of Article XVI of the CUNY Bylaws, the AEC's certificate of incorporation and bylaws, and these Guidelines.

3. Audit Committee. Even if not so required by New York Not-For-Profit Corporation Law (N-PCL) § 712-a, AECs must have an audit committee whose voting members consist solely of independent directors, as defined by the N-PCL. The audit committee shall oversee the accounting and financial reporting processes of the AEC and the audit of the AEC's financial statements and shall review the Internal Revenue Service (IRS) Forms 990 for the AEC before they are signed and filed.

V. ACCOUNTABILITY AND COMPLIANCE

A. Corporate and Fiduciary Responsibilities

Each AEC shall meet all requirements of the N-PCL and other applicable laws covering its organizational structure. Among other things:

- Its board shall conduct its business, including meetings, elections of officers, other voting, and the keeping of minutes and other records, in full compliance with its bylaws, applicable law, and these Guidelines;
- It shall maintain on file all official minutes of meetings, including all resolutions considered at a meeting and the disposition of each, signed by the individual officially writing the minutes. Given that minutes may not be immediately available after a meeting, promptly after each meeting, the Secretary of the AEC shall prepare a summary of the actions taken, including the disposition of all resolutions, and make the summary widely available through posting on the AEC's website or some other means of widespread publication to the campus community.; and
- It shall be familiar with, and fulfill, its fiduciary responsibilities under the New York Prudent Management of Institutional Funds Act (NYPMIFA), N-PCL Article 5-A, and any other statutes that define its fiduciary responsibilities.

Each AEC shall comply with all other federal, state and local laws and University and college policies applicable to its organization and activities, including without limitation the University's policies and procedures regarding reporting and/or use of non-tax levy funds.

Each AEC shall operate in accordance with sound business practices and develop, administer and communicate written policies and procedures for all key business functions, as further described in these Guidelines.

B. Tax Requirements

Each AEC shall make all required filings with the IRS and the New York State Department of Taxation and Finance, and follow all other applicable tax laws enforced

and/or promulgated by the IRS or New York State, including without limitation, as applicable:

- IRS and NYS filings and tax payments regarding sales tax and unrelated business income (UBI) and tax; and
- laws relating to payroll and vendor payments (Form 1099).

Each AEC shall make available for public inspection its Form 1023 request to the IRS for tax-exempt status, its IRS “determination” letter as a 501 (c)(3) organization, and its Form 990s for the past three years. It shall provide copies of these documents to those who request them, as is required by law. An AEC may, but is not required to, comply with this section by posting the relevant documents on a website accessible to the public.

C. Contracts

In general each AEC should refrain from entering into contracts regarding activities that will be carried out, overseen or administered by its supported college or the University, not the AEC (e.g., independent consultants for the college, software hosted on college systems or using college/student data), except to the extent that the college has designated the AEC to be its fiscal agent for such activity, as set forth in the Memorandum of Understanding between the college and the AEC. Instead, with the approval of the AEC board, it may provide funding or reimbursement for the costs of such contracts entered into by the college or University or generally for the projects they relate to. No AEC shall enter into any contract that: (i) would obligate its supported college or the University without the prior written approval of the college president or designee or (ii) relates to a college capital project without the prior approval of the University’s Office of Facilities Planning, Construction and Management.

All AEC contracts shall be for the benefit of the supported college and the University. Among other things, AECs shall not enter into fiscal agency or other agreements on behalf of non-CUNY entities.

Consistent with N-PCL § 716, an AEC shall not provide a loan to any of its directors or officers, including without limitation the college president, or to any entity in which a director or officer has a financial interest or is a director or officer. Any loan from an AEC to its supported college is subject to the approval of the CUNY Board of Trustees prior to its acceptance by the college.

D. Authorized Signatories

All AEC contracts shall be signed by the chief executive officer (CEO) of the AEC (typically also the Chair) unless the AEC’s bylaws permit otherwise. The AEC CEO may delegate his or her signing authority to another AEC board member generally, or specifically for a particular contract, but not to a college or AEC employee who is not a member of the AEC board, except as specifically permitted pursuant to Section X.C below. All such delegations must be in writing, updated annually, and kept with records of the AEC.

E. Use of College Name and Marks

An AEC may, solely in connection with its lawful activities to benefit its supported college, use the name, logos, seals, and other symbols and marks of the college, pursuant to the terms and conditions of the Memorandum of Understanding between the AEC and the college.

F. Compliance with Investigations

Each AEC shall cooperate with the University and government authorities regarding any investigation of the AEC's activities in support of a college or CUNY generally, as the case may be.

VI. INSURANCE AND INDEMNIFICATION

As independent entities, the AECs are not indemnified by New York State or New York City, as is the University and its colleges. If sued, an AEC is responsible for hiring its own counsel and paying any damages for which it may be found liable. Consequently, the AECs need to have insurance to cover these costs.

A. Insurance

1. D&O Insurance. Each AEC shall obtain and maintain directors and officers liability insurance in the amount of at least \$1 million per occurrence and in the aggregate.

2. General Liability Insurance. An AEC shall obtain comprehensive general liability insurance in such amounts determined by the AEC board to be reasonable and appropriate in consideration of the AEC's activities. If an AEC does not maintain general liability insurance covering its operations in general, it should obtain insurance on a per event basis for any events sponsored by it, in particular those (i) occurring off campus or (ii) for which it has signed a contract pursuant to which it indemnifies one or more other parties. Notwithstanding the foregoing, CUNY requires an AEC to obtain liability insurance in the following situations:

- The AEC operates a child care center;
- The AEC directly operates a performing arts center, theater or art gallery, or is the college's fiscal agent with respect to such a facility;
- The AEC is sponsor of an event that will be open to the general public, unless the AEC board and the college president or his or her designee have determined that the event is low risk and the risks can be sufficiently managed by the college's office of public safety; or
- The AEC is the sole or co-sponsor of an event at which alcohol will be served.

3. Other Insurance. An AEC shall obtain and maintain such other insurance as is required by law or prudent given the AEC's activities (e.g., workers compensation insurance, employers liability insurance, property insurance, etc.)

B. Indemnification

Each AEC's bylaws shall include a provision indemnifying its directors and officers in a manner consistent with the provisions of Article 7 of the N-PCL.

VII. PERSONNEL MATTERS

A. Classification/Definitions

1. AEC Employees & Other Staff

(a) *General.* Each AEC should have adequate and qualified staff to carry out its operations. Individuals hired by the AEC must be informed in writing that they are employees of the AEC, not the college, and will not receive the retirement, health and other fringe benefits associated with employment by the college and University (although they will receive benefits, if any and as applicable, offered by the AEC). As self-supporting entities, AEC staff should be: (A) employed by the AEC or (B) college or Research Foundation employees dedicated, in whole or in part, to AEC duties and whose salary for such work is reimbursed by the AEC. Each AEC shall comply with all University procedures regarding non-tax levy payrolls of the University's related entities.

(b) *AEC Employees Must be Conducting AEC Work.* Individuals paid on an AEC payroll must be carrying out work for the AEC, not the college. Examples include, but are not limited to, an AEC's executive director, accountants, bookkeepers and clerical staff. Individuals working for the college should be paid on a college or RF payroll, although as noted below, the AEC may reimburse the college for all or part of the cost of the individual's salary. College employees who spend a percentage of their work-day on AEC matters should have such portion of the AEC work reimbursed to the college by the AEC as set forth in Section VII.B.4.

(c) *Status.* AEC employees shall be hired as full-time, part-time or hourly at-will employees unless they meet the definition of independent contractor or are approved volunteers, as described below.

2. Independent Contractors

(a) *Definition.* An AEC may engage an individual as an independent contractor if the AEC directs the work product of the individual, but does not direct the manner in which the work is performed. If the AEC controls and directs the individual's work product, as well as the details and manner of the performance of the work, the individual should be engaged as an AEC employee. Independent contractors, by definition, are self-employed. Independent contractors are most likely to perform highly skilled, specialized work, provide their own tools and materials for conducting and providing such work, and may on occasion perform work or provide services off-site. An independent contractor retains the right to hire and pay assistants and assign or contract part of the work.

(b) *Procedures.* AECs engaging independent contractors shall follow the procurement rules and best practices in these Guidelines and shall enter into a written agreement with the individual providing the services.

3. Volunteers

(a) *General Rule.* An AEC may engage volunteers only to provide incidental services

that are not typically provided by AEC or CUNY employees. Examples of permitted volunteers include students providing ushering services in exchange for the right to see the performance at the college and authorized student intern and training programs at an AEC-operated child care center.

(b) *Student Interns*. Students who contribute work hours to an AEC in exchange for CUNY academic credit and learning and training opportunities in compliance with the FLSA may be categorized as unpaid interns. The internship experience should be for the benefit of the intern and the intern must not displace a regular AEC or college employee. The intern should work under close supervision of the existing staff. The intern is not entitled to a job at the conclusion of the internship. Volunteer student interns are not eligible for wages or employment benefits. The AEC may pay an intern a stipend (see VII.B.3 below). However, the AEC must keep a record of time and work performed by the student to support the classification as an unpaid intern and also to provide evidence that the work and compensation is not the same as that of an employee.

(c) *Written Agreement*. AECs engaging volunteers as permitted by this policy shall give to the individual providing the services a written statement setting forth the parameters of the volunteer activities prior to engagement.

B. Salary/Compensation

1. Compensation of AEC Employees. Where feasible, compensation standards for AEC staff, with specified minimum and maximum pay ranges, shall be comparable to positions at the supported college and at AECs supporting other CUNY colleges, with similar responsibilities.

2. Honoraria. An honorarium is a payment by an AEC to an individual for services for which fees are not traditionally required, such as a guest lecturer or speaker, and is given as a gesture of good will and appreciation. The honorarium payment and the amount are both discretionary; it is not a fee charged by the person being honored. In accordance with IRS regulations, an honorarium is reportable by the payee on Form 1099-Misc as income to the individual. Honoraria should not be paid to persons employed by CUNY or the AEC.

3. Stipends. A stipend is a fixed sum of money that is paid periodically for services or to defray expenses. The term “stipend” is used by AECs to refer to several types of payments, including both wages and non-wage payments.

(a) *Stipends as wages*. This typically refers to payments by an AEC for services, often short-term or temporary, by individuals whose work is directed by the AEC. These payments are considered wages to employees, are subject to employment tax withholding, and are reportable to the IRS on Form W-2.

(b) *Stipends as non-wage payments for services*. This includes payments by an AEC to volunteer student interns. Payment is not measured by hours devoted to the performance of the position, but is typically a lump sum amount determined at the start of the activity. These payments are not considered wages and have no employment

taxes withheld from them. However, the payments are taxable income to the recipient and are reportable to IRS on Form 1099 if the payments to an individual total \$600 or more for the calendar year.

4. Compensation of CUNY employees. No AEC shall underwrite any compensation for CUNY or college faculty and staff except as follows:

- An AEC may provide funding to CUNY, in an amount to be determined by the University Offices of the General Counsel and Budget and Finance, to enable the hiring of counsel and other professional staff or services to assist the AECs with legal, financial and/or tax matters. Any lawyer engaged pursuant to this provision shall be part of the Office of the General Counsel;
- An AEC may reimburse its supported college for all or part of the salary and related costs of college employees doing work for the AEC, such as administrative staff in Higher Education Officer titles, accountants and clerical staff. Applicable law and CUNY employment regulations, procedures and contractual requirements, must be met for CUNY employees doing work for the AEC where their salaries and related costs are being reimbursed by the AEC;
- At the request of the college president or his or her designee, an AEC may provide funding for all or part of the salary and related costs of the following college employees: coaches; temporary non-instructional staff such as ushers, tour guides, and musicians; such other categories of employees as set forth in the Memorandum of Understanding, but not to include faculty or senior managerial staff.
- Subject to the University's Statement of Policy on Multiple Positions and other CUNY policies related to multiple positions, an AEC may hire and pay college employees to perform work for the AEC during those hours when they are not carrying out their college duties and not related to their full-time responsibilities. For example, subject to the AEC's purchasing and conflict of interest policies, an AEC may hire an adjunct faculty member as an independent contractor to design software to assist with AEC operations. However, an AEC shall not engage as independent contractors and/or pay college employees "stipends" for carrying out activities that are part of the employee's work for the college. For example, an AEC shall not pay a college employee for designing the lighting plot for a college production if the employee is a member of the Theatre Department whose job includes working on college productions.

All such payments shall be approved by the AEC's board.

C. Tax ID

AEC employees must be paid using the AEC's own EIN.

D. Payroll Period

An AEC shall provide notification of payroll periods and timesheet requirements and deadlines to all its employees.

E. Hiring Process

AECs shall adopt policies and procedures regarding hiring of AEC employees, including regarding job postings and searches, and the items described below.

1. Classification of Employees (FLSA). AEC employees must be classified as either exempt or non-exempt, in accordance with FLSA guidelines. A non-exempt employee is subject to all provisions of the FLSA and receives overtime pay for hours worked beyond 40 hours in any workweek at one and a half times the regular hourly rate. An exempt employee, generally an executive, professional, administrator, salesperson, or certain computer professionals, is excluded from the overtime provisions of the FLSA. The executive director of the AEC and child care center teachers are examples of employees who may be exempt.

2. Job Descriptions. AECs shall develop job descriptions for all employees who work for them with correct FLSA classification (i.e., exempt or non-exempt). Employees must be advised of their FLSA designation at the time of hire.

3. Equal Employment Opportunity/Affirmative Action. AECs are required to comply with all applicable federal, New York State, and New York City laws regarding equal employment opportunity and affirmative action. All AEC job vacancy notices shall include an EEO/AA statement.

4. Verification of Worker Identity and Eligibility to Work. AECs are required to verify that each new non-tax levy employee is legally eligible to work in the United States. This includes completing the U.S. Citizenship and Immigration Services (“USCIS”) Form I-9, Employment Eligibility Verification. AECs must maintain completed Forms I-9 in their files for three years after the date of hire or one year after the date employment ends, whichever is later.

5. Employee Background Screening

(a) *Fingerprinting*. Each AEC that operates a child care center on a CUNY campus is responsible for ensuring that all individuals working in the center, including student interns, are fingerprinted. AECs are also responsible for ensuring that all other individuals they engage, including volunteers, who regularly work with minors (such as in connection with middle and high school students’ programs and camps, etc.), are fingerprinted before they commence service. Background investigation shall include a national criminal history check, including sex offender history.

(b) *Other Background Checks*. AECs must ensure that individuals who receive a conditional offer of employment to undertake significant fiscal responsibility and/or authority to commit financial resources of the AEC, including but not limited to execution or approval of financial transactions valued at \$10,000 or more, financial reporting and billing, and responsibility for accounts receivable and payable, shall be subject to a database background check that includes a national criminal history check, including sex offender history, and a credit check. Fidelity bond coverage for those persons who deal with the funds of the AEC is advised.

In compliance with Article 23-A of the New York State Corrections Law, the following factors shall be considered concerning previous criminal convictions:

- the public policy of this state, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses;

- the specific duties and responsibilities necessarily related to the license or employment sought or held by the person;
- the bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his /her fitness or ability to perform one or more such duties or responsibilities;
- the time which has elapsed since the occurrence of the criminal offense or offenses;
- the age of the person at the time of occurrence of the criminal offense or offenses;
- the seriousness of the offense or offenses;
- any information produced by the person, or produced on his behalf, in regard to his/her rehabilitation and good conduct, and
- the legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

Before any adverse action is taken, the AEC will:

- furnish a written copy of the criminal history inquiry to the candidate in the New York City Commission on Human Rights (NYCCHR) Article 23-A Evaluation Form, adapted by CUNY for use by the campuses, and titled "Fair Chance Act Notice of Criminal History Review Article 23-A Evaluation Form" (the Form).
- provide a written analysis of the Corrections Law Article 23-factors to the candidate in the Form, together with "supporting documents" which formed the basis for an adverse action and reasons for the adverse action; and
- after providing the candidate with the required documentation, allow him or her at least three business days to respond and, during that time, hold the position open for the candidate.

F. Legally-Mandated Employee Benefits

AECs are required to comply with all applicable federal, New York State, and New York City laws regarding employee benefits, including the following:

1. Tax Withholdings. AECs are required to withhold appropriate employment taxes and comply with all applicable federal (including Social Security taxes), New York State, and local tax laws.
2. State Requirements: Workers' Compensation and Unemployment Insurance. AECs are required to provide Workers' Compensation and Unemployment Insurance Benefits to its employees consistent with New York State law. As not-for-profit corporations, AECs that compensate individuals for their services are required to obtain a Workers' Compensation Insurance Policy, unless they meet an exception to the Workers' Compensation law. Detailed information is available at <http://www.wcb.ny.gov/>.
3. Affordable Care Act/Health Insurance. Applicability of the ACA depends on the related entity's revenue and the number of its employees. Small AECs, such as those with less than \$500,000 in annual revenue, are not subject to the Affordable Care Act. Detailed information is available at <http://www.hhs.gov/healthcare/rights/>.

4. Other State and City Laws

(a) *Family and Medical Leave Act (FMLA) (Federal)*. For covered AECs, FMLA entitles eligible employees to up to 12 weeks of unpaid leave to attend to certain health and medical issues, including childbirth and certain childcare, serious health conditions of the employee or certain members of the employee's family, certain circumstances relating to an employee's family member who is a covered military member on covered active duty, and care of certain family members who are a seriously injured or ill covered service members. AECs with fewer than 50 employees are not covered by FMLA. Detailed information is available at <http://www.dol.gov/whd/fmla/>.

(b) *New York City Earned Sick Time Act (City)*. AECs must provide sick time for their employees to care for an employee's own health needs or to take care of a sick member of the immediate family (limited to spouse, child, parent or domestic partner). AECs with five or more employees who are hired to work more than 80 hours a calendar year in New York City must provide paid sick leave. AECs with fewer than five employees must provide unpaid sick leave. Detailed information is available at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

(c) *Jury Duty (State)*. AECs with more than 10 employees are required by New York State statute to pay employees on jury duty the jury fee of \$40 or the employee's wage (whichever is lower) each day for the first 3 days of jury duty. AECs with 10 or fewer employees must provide leave, which may be paid as in the previous sentence or unpaid, at the employer's option.

(d) *Other Leaves (City and State)*. In accordance with New York City and New York State law, AECs must provide their employees time off to vote, for religious observance, to donate blood, and for breast cancer and prostate cancer screening.

(e) *New York City Commuter Benefits Law (City)*. AECs with 20 or more full-time non-union employees must offer their full-time employees the opportunity to use pre-tax income to purchase qualified transportation fringe benefits, other than qualified parking. Qualified transportation includes service into and within New York City by public and private mass transit, ferry and water taxi, vanpool, and paratransit. Detailed information is available at <http://www1.nyc.gov/site/dca/about/pre-tax-transit-benefits-law.page>.

G. AEC Employer Responsibilities

1. Compliance with Law. Each AEC shall follow all applicable labor, employment and tax laws, including, but not limited to, the Age Discrimination in Employment Act of 1967, as amended by the Older Workers Benefit Protection Act of 1990, the Americans with Disabilities Act, the Family and Medical Leave Act (FMLA), the Fair Labor Standards Act of 1938 (FLSA), Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act of 1974, the New York Labor Law, the New York Human Rights Law, the New York Civil Rights Law, and Title IX of the Education Amendments of 1972.

2. Compliance with applicable CUNY Policies. Each AEC shall follow applicable CUNY employee-related policies, such as Sexual Misconduct, Workplace and Domestic

Violence, and Use of Computer Resources. AEC employees are deemed “visitors” for purposes of CUNY’s Policy on Sexual Misconduct and may report incidents pursuant to the terms of that policy.

3. No Discrimination. No AEC shall discriminate in employment or in its programs and activities on the basis of race, color, creed, national origin, ethnicity, ancestry, religion, age, sex (including pregnancy, childbirth and related conditions), sexual orientation, gender, gender identity, marital status, partnership status, disability, genetic information, alienage, citizenship, military or veteran status, status as a victim of domestic violence/stalking/sex offenses, unemployment status or any other legally prohibited basis in accordance with federal, state or local laws.

H. Recordkeeping

1. Hiring Documents. Each AEC shall maintain personnel records for each AEC employee, including documents pertaining to the search, the application for employment, I-9, the background investigation report, if relevant, the job offer letter with terms and conditions of employment (for volunteers and interns, a consent form prescribing job duties and hours of work), copies of applicable AEC and CUNY policies (such as Sexual Harassment, Workplace Violence, Use of Computer Resources) signed by the employee, payroll information such as Tax Withholding Forms, Direct Deposit, the job description, and annual evaluation.

2. Personnel Action Forms. AECs are required to have Personnel Action Forms (PAFs) for all personnel transactions for full-time, part-time and hourly employees, including appointments, reappointments, and terminations. PAFs are also required for volunteers and interns, as well as detailed work descriptions and schedules.

3. Time Sheets. All AEC employees shall maintain daily records of the days and hours worked, including accrual and use of leave (sick, annual, and other), if any, on bi-weekly timesheets. These timesheets shall be reviewed and approved by the supervisor. For non-exempt employees under the FLSA, the timesheet should record time for any overtime worked. If compensatory time is provided, a record of compensatory time accrual and use must be maintained on a quarterly basis.

VIII. CONFLICT OF INTEREST

Each AEC must adopt a conflict of interest policy in compliance with the N-PCL to ensure that its directors, officers, and key persons act in the AEC’s best interest and comply with applicable legal requirements. The policy must cover related party transactions, which are defined by the N-PCL as transactions, agreements or arrangements in which a related party has a financial interest and in which the entity or an affiliate is a participant. The policy may also cover other types of conflicts that may exist even though there is no financial interest at stake or the circumstances are otherwise outside the definition of a related party transaction.

Pursuant to the N-PCL, each AEC director must submit to the AEC’s secretary or other designated officer prior to initial election to the AEC board, and annually thereafter, a written statement identifying, to the best of the director’s knowledge, any entity of which

the director is an officer, director, trustee, member, owner, or employee and with which the entity has a relationship, and any transaction in which the entity is a participant and in which the director might have a conflicting interest. Likewise, officers and key persons must submit an annual conflicts statement to the secretary or other designated officer.

IX. MEMORANDUM OF UNDERSTANDING

Each AEC shall enter into a written memorandum of understanding (“Memorandum of Understanding” or “MOU”) with its supported college, in the form set forth in Appendix A. The MOU shall authorize the AEC to operate on the campus of its supported college and shall enumerate its activities and those of each Affiliate it establishes. The MOU shall be approved by University’s Office of the General Counsel. Among other things, the MOU shall address the following:

A. Use of Facilities

An AEC may occupy, operate, and use college facilities and property separately or jointly with its supported college as identified by the MOU. The AEC shall use the facilities and property only for those services and functions that are consistent with the MOU and applicable current or future policies, rules, and regulations of the CUNY Board of Trustees and the college.

B. Provision of Space and Services

The college may provide certain services, at no cost, to the AEC, which may include office space, utilities, telephones, custodial and facilities maintenance services, equipment and information systems service and advice, personnel and related assistance and other similar services. The AEC shall record the value of these services on its financial statements as donated services.

Given that AECs are intended to be self-supporting, AECs are encouraged to reimburse their supported colleges for all or some of the expenditures incurred by the college as a result of activities of the AEC. In these situations, the college shall invoice the AEC for such expenditures, indicating items charged and the method of determining costs. Any such reimbursement by an AEC should be consistent with the approved annual budget and terms and conditions of the MOU with the college.

X. FINANCIAL MANAGEMENT

Each AEC is responsible for developing, managing and monitoring its fiscal and operational plans. An AEC is also responsible for complying with applicable federal, state, and local laws, and University and college policies applicable to its organization and activities.

Pursuant to Article XVI of the CUNY Bylaws, the college president has the authority to disapprove an AEC allocation or expenditure, which in the president’s opinion contravenes federal, state or local law or any bylaw or policy of the University or any policy, regulation, or order of the college. The college president must consult with the CUNY General Counsel and Vice Chancellor for Legal Affairs regarding any such disapproval, and communicate his or her decision to the AEC.

A. Budgeting

1. Annual Budget. Each AEC shall develop an annual operating budget that sets formal financial goals. Budgets shall include the total financial operation, including any funds restricted for use by a particular college program or department, and be prepared on the basis of historical data, projected short-range trends, and long-range financial objectives. Prices, fees, and rates should be established to fully fund the total financial obligations of the AEC. Annual budgets and plans shall be reviewed by and approved by the AEC's board in partnership with the college president or designee, and prior to expenditure or execution. Financial commitments and expenditures by the AEC shall be in accordance with the approved budgets and plans. Any substantial amendments to the budget (e.g., changes of 10% or more in any budget category) shall be approved by the AEC board prior to expenditure or execution. The AEC's chief financial officer shall monitor the status of spending to the budget, and produce regular reports that are shared with the AEC's board and management, as well as college leadership, including student and faculty governance leaders.

2. Activities to be Self-Supporting. The revenue generating activities operated by the AEC should be self-supporting, that is, the revenues generated from the auxiliary services should be at least equal to the cost incurred in running the operations. Activities providing a beneficial service to the supported college, but which are not self-supporting because of the need to keep prices, fees and rates at levels affordable to the college community, may be subsidized by other AEC funding sources, subject to approval of the AEC's board. An AEC shall evaluate its revenue generating activities annually to ensure that each activity continues to provide a beneficial service to the supported college. This review shall be initiated by the chief financial officer of the AEC and be submitted to the AEC's board as part of the annual operating budget process.

3. Use of Surplus Funds. An AEC may have funds remaining after paying its expenses related to the auxiliary services it provides ("surplus funds"). The anticipated amount of surplus funds shall be included in the annual operating budget. Surplus funds shall be used solely for the benefit of an AEC's supported college, students and faculty, as determined by the AEC board, and shall be consistent with the college's requests for specific use of the funds. The AEC board shall annually develop a plan for utilization of surplus funds that includes the categories of such expenditures (scholarships, college equipment, funding of college capital projects, etc.) as well as the relative percentage of the plan for each category. All surplus fund expenditures must comply with State law and institutional policies and guidelines of the University, as well as applicable provisions of the Internal Revenue Code pertaining to the AEC's status as a §501(c)(3) supporting organization, and be consistent with the AEC's mission. Such funds will be audited as part of AEC audits.

B. Cash and Treasury Management

1. Investment. Any cash held by an AEC that is scheduled to be used in the current year can be invested in short-term investments such as U.S. Treasury bills, money market accounts, certificates of deposits, etc., or the University's Short-term Investment Pool (STIP). The primary investment objective is to be able to meet the daily operational

needs of the AEC while protecting the safety of the principal at an appropriate investment risk. Funds that can be invested for a longer period should be invested in the University's Investment Pool, unless the University Office of Budget and Finance has approved the use of another vehicle by a particular AEC. All funds shall be managed and invested as required by NYPMIFA.

2. Transfer of Funds. Any transfer of funds by the supported college to an AEC, or by an AEC to its supported college, for management, investment or as a reimbursement, or by an AEC to the City University Construction Fund for the funding of college capital projects, shall be formalized in writing so the fiduciary requirements of the respective governing boards are complied with.

3. Cash and Other Collections. All cash and other payments should be collected in one central location at the college, which should be the Bursar's Office, unless an alternative procedure has been documented and approved by the AEC, the college's business office and the University Office of Budget and Finance. The AEC and the college should ensure that there are proper controls in place to ensure the physical safeguarding of all amounts collected, and have proper segregation of duties over the custody, recording and reconciliation of collections.

The AECs shall follow the University's Cash Accountability, Bank Account Control and Petty Cash policies issued by the University Office of Budget and Finance, to the extent that such guidelines indicate that they are applicable to AECs.

C. Purchasing

1. General. Each AEC shall follow sound purchasing practices and procedures that provide for open and free competition to the maximum extent practicable while meeting the needs of management for flexibility and minimum administrative burden. Each AEC shall take steps to ensure fairness in all contracts, including abiding by Section 715 of the N-PCL regarding related party transactions.

Under the N-PCL, the AEC board has a duty to ensure that the AEC acts prudently and uses good business judgment and fiscal responsibility. As a charitable organization, an AEC's activities must be generally in support of CUNY and particularly in support of its supported college. AECs should keep in mind that as entities closely related to CUNY and their supported colleges, which are public institutions, their activities will be subject to heightened scrutiny.

Any procurement relating to college capital projects, including design and construction to University facilities, must be reviewed and approved prior to its initiation by the University's Office of Facilities Planning, Construction and Management and must follow the University guidelines for the procurement of capital projects.

2. MWBE/SDVOB. The AECs are included in CUNY's Supplier Diversity program. This means that each AEC is required to make and document good-faith efforts to maximize the practical participation of NYS-certified Minority- and Women-owned Business Enterprises (MWBEs) and Service-Disabled Veteran-Owned Businesses (SDVOBs) in its purchases and contracts, including its efforts to meet the University's overall MWBE

and SDVOB participation goal, set annually by the University. AEC staff must endeavor to consider and engage MWBE and SDVOB vendors whenever practical, feasible, and appropriate. To the extent practicable, each AEC shall adhere to University policy regarding purchasing from MWBEs and SDVOBs.

3. Assistance of College Purchasing Office. At an AEC's request and with its supported college's permission, the college purchasing office may assist the AEC with ministerial procurement tasks, such as preparing solicitation documents and receiving and reviewing responses. Such activities shall be carried out in the name of and on behalf of the AEC, and all AEC solicitation documents and contracts shall bear the AEC's name rather than the college's name. The college purchasing office shall not have decision-making authority for the AEC. However, the AEC board may authorize the college purchasing director or other purchasing office staff to sign AEC purchase orders that have been prepared consistent with AEC instructions. Such authorization shall be in writing, updated annually, and kept with the records of the AEC.

D. Accounting

1. Financial System. Each AEC shall maintain a financial system that provides for accrual-based accounting and is used to process all financial transactions. The AEC shall follow the Governmental Accounting Standards Board (GASB) Statements and Interpretations, Accounting Principles Board Opinions, and Accounting Review Boards of the Committee of Accounting Procedures and Generally Accepted Accounting Principles (GAAP). Each AEC shall implement all new GASB accounting rules and regulations.

2. Personnel. Each AEC should have an accountant (preferably a Certified Public Accountant) to perform its accounting functions, prepare regular and ad hoc financial reports, and annual financial statements. The accountant may be an AEC employee or an employee of the supported college dedicated in whole or in part to AEC duties. Any use of college employees and the amount of any AEC reimbursement to the college shall be noted in Exhibit B of the MOU. All accounting personnel should remain current with all GASB updates and understand not-for-profit accounting requirements. Staff should attend ongoing training relevant to not-for-profit accounting and discuss new GASB rules with the AECs' auditors during the annual planning meeting.

3. Revenue Recognition. Consistent with GAAP and to ensure completeness of revenues, AECs shall recognize revenues based on "sales" in the period that the revenue was earned, and not when the cash was collected. For example, revenue for parking shall be recorded based on the number of parking decals sold, licensing revenues shall be recorded based on the license terms, and commissions for vending shall be recorded based on vendors' sales reports.

E. Capital Assets Management

Any equipment purchased with AEC funds meeting the University's capitalization threshold and any improvements or renovations funded with surplus funds shall be tagged and included as AEC property in the University's fixed assets system (CUNYfirst Asset Management, "CFAM") in a timely manner. The supported college's property manager should be responsible for the inventory of these assets on an annual basis and

work with the college Business Office to reconcile the CUNYfirst General Ledger to the CFAM, in a timeframe as outlined by the University Office of Budget and Finance. All depreciation expense will be recorded by the University Office of Budget and Finance utilizing system-generated automation within CFAM. An AEC should follow the University's capitalization policy (i.e., all equipment \$5,000 or greater should be capitalized) to ensure accurate and consistent reporting of the assets. An AEC may also decide to track items under these thresholds, if it deems them as sensitive items (i.e., they are susceptible to theft).

XI. FINANCIAL REPORTING AND AUDIT

A. Reporting to the Board/Financial Statements

The chief executive officer and/or chief financial officer of each AEC shall provide its board with periodic financial and managerial reports. Each AEC shall prepare annual financial statements in the format outlined by the University Office of Budget and Finance. These statements shall be in conformity with GAAP and be audited by a licensed, independent certified public accounting firm (CPA) in accordance with generally accepted auditing standards². The audited financial statements shall be reviewed by the AEC's audit committee and, if acceptable, recommended to the AEC board for acceptance. To enable the University to include pertinent information in its annual financial statements, the audit committee and board must accept the audited financial statements within 90 days after the close of an AEC's fiscal year.

B. Independent Auditor

The independent CPA retained by the AEC must have experience auditing tax exempt organizations and must be approved by a designee of the Chancellor. No auditor of the independent CPA shall serve as the lead or sole auditor for the AEC for more than seven years and a three-year period must elapse before such auditor may serve again as lead auditor or sole auditor. For purposes of efficiency, cost control, and to ensure consistency in reporting, the University may, at its option, require the AECs to use an auditor selected and contracted for by the University. In such event, the audit committees of the AECs shall have an opportunity to participate in the selection process.

On an annual basis the AEC's auditor must confirm its independence to the University's external auditors via a signed "independence letter."

Refer to Section XVI for additional guidance from the Charities Bureau regarding audit matters.

C. CUNY Financial Accounting and Reporting Requirements

The financial activity of the AECs are included in the University's financial statements as discretely presented component units. AECs shall follow the guidance and adhere to the requests of the University's Office Budget and Finance in relation to accounting and reporting.

² Except that AECs with annual gross revenues under \$250,000 shall not be required to have a certified audit unless otherwise required by Executive Law 7-A regarding registration and reporting to the NYS Charities Bureau.

D. CUNY Audit Rights

1. CUNY Audit. The books and records, financial condition, operating results, compliance with policies and procedures, laws, rules or regulations and program activities of an AEC are subject to periodic review by the college president and/or designee, the University, and outside firms hired by the University, and to the extent allowed by law, outside regulatory bodies.

2. Reporting to CUNY. Pursuant to Article XVI of the CUNY Bylaws, each AEC shall fully disclose all financial information with respect to auxiliary enterprises to its membership, to the supported college and to that college's student government. AECs are strongly encouraged to have a publicly accessible page on the college's website that includes financial information, current directors and officers, summaries and minutes of board meetings, governance documents, etc. Each AEC shall promptly provide to the college president and University Office of Budget and Finance all audit reports from whatever source, including the certified (consolidated) financial statements, any report indicating a significant deficiency or material weakness in the internal controls over financial reporting, and any management letter or other report, together with the associated corrective action plan of the AEC. Management's corrective action plan should include the planned timeframe for addressing the independent auditor comments. Additionally, each AEC must:

- Timely provide to the University Office of Budget and Finance such purchasing data as needed to comply with its reporting requirements to New York State in connection with MWBE/SDVOB and supplier diversity;
- Record its financial activity in the University's administrative system, CUNYfirst, in the timeframe and format established by the University Office of Budget and Finance;
- Provide the college and the University Office of Budget and Finance with a complete list of bank and investment accounts held outside of the University's short-term and long-term investment portfolio. For each account, the interest or dividend income earned and/or the realized or unrealized investment gains/losses, the investment return, and the banking and investment fees paid shall be provided;
- Require all members of the AEC's board to annually provide written acknowledgement to the AEC: (i) that they have received a copy of these Guidelines and the MOU and reviewed them and (ii) that they understand that these Guidelines and the MOU are binding on the AEC. Directors and officers may provide such acknowledgements as part of their annual conflict of interest disclosure statements. The AEC shall provide on a timely basis copies of such acknowledgements to the college president and/or the University upon their request.
- Annually certify that the AEC is in compliance with these Guidelines and the MOU.
- Concurrent with its filing with the IRS, provide a copy of the AEC's IRS Form 990 to the University's Office of Budget and Finance, and provide on a timely basis such other information on the AEC's financial status and operations as requested by the college president or the University.

XII. POLICY MANUAL

Each AEC shall develop a comprehensive manual documenting the policies, procedures, standards, and other administrative and operating criteria applicable to it. This manual shall be maintained on a current basis and be consistent with applicable University policies and guidance. The AEC shall provide copies of the current version, as well as any updates or revisions as they are adopted, to the supported college's business office and the University's Office of Budget and Finance, and to internal and external auditors on request.

In addition to these Guidelines, each AEC shall also follow all other University policies and guidance whose scope specifically identifies the AECs as being included, in whole or in part, for example, the University's Office of Budget and Finance Policies on Cash Accountability and Bank Account Control.

XIII. INTERNAL CONTROLS

Each AEC is responsible for establishing and maintaining adequate internal controls. Some of these controls include maintaining segregation of duties between the:

- cash receipts and disbursements functions;
- physical custody of assets and recordkeeping functions;
- accounting and bank reconciliations functions;
- accounts payable and purchasing functions;
- check preparation and distribution functions; and
- payroll and human resource functions.

Other key internal controls include restricting access to the vendor listing, preparing timely bank reconciliations, requiring dual signatories on checks over set amount, blank check management and safeguarding assets.

XIV. RECORDS RETENTION

Each AEC shall adopt the University's record retention policy or a policy consistent with that issued by the University.

XV. EXCEPTIONS AND AMENDMENTS

Any proposed exceptions to these Guidelines must be approved in writing by the Chancellor or designee. With the exception of amendments necessitated by changes in federal, state or local law or CUNY policy, any proposed amendments to these Guidelines must be approved by the CUNY Board of Trustees. The CUNY Offices of the General Counsel and Budget and Finance will be responsible for the periodic review of these Guidelines, as well as ensuring that all appropriate parties are informed of them. All Guideline amendments shall become effective upon a duly adopted amendment to the MOU between the college and the AEC.

XVI. RELATED INFORMATION

The following links and/or references provide additional information related to this guidance:

New York Not-for-Profit Corporation Law: <http://public.leginfo.state.ny.us>

Internal Revenue Service: www.irs.gov

New York State Charities Bureau

- www.oag.state.ny.us/charities/charities.html
- http://www.charitiesnys.com/pdfs/Charities_Conflict_of_Interest.pdf
- <http://www.charitiesnys.com/pdfs/NYPMIFA-Guidance-March-2011.pdf>
- http://www.charitiesnys.com/pdfs/Audit_Committees.pdf

New York State Office of the Inspector General: <https://ig.ny.gov/>

Payment Card Industry Data Security Standards:

<https://www.pcisecuritystandards.org>

National Association of State Charity Officials: www.nasconet.org

American Institute of Certified Public Accountants: www.aicpa.org

Governmental Accounting Standards Board: www.gasb.org

National Association of College and University Business Officers: www.nacubo.org

Council for Advancement and Support of Education: www.case.org

Association of Fundraising Professionals: <http://www.afpnet.org/>

APPENDIX A - MODEL MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made by and between The City University of New York by and on behalf of [*name of College or School*] located at [*address*] (“College”)¹ and [*name of Auxiliary*], a New York not-for-profit corporation that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (“Corporation” or “AEC”).

RECITALS

- A. The College is a constituent unit of The City University of New York, a public institution of higher education established pursuant to Article 125 of the New York Education Law (the “University”).
- B. The Corporation is an independent entity organized for the sole purpose of supporting the University and the College through the provision of non-instructional auxiliary enterprises and services to assist the College in meeting its education, research and community service mission;
- C. The College and the Corporation desire to formalize their working relationship in the form of this Memorandum of Understanding (“MOU”).

TERMS

In consideration of the mutual covenants, promises and conditions herein contained, and for good and valuable consideration the adequacy of which is hereby acknowledged, College and Corporation agree as follows:

1. Corporation Services.
 - 1.1. The College and the Corporation agree that the Corporation shall perform the activities and services described in **Exhibit B** to this MOU (“Services”), as it may be amended from time to time, exclusively for the benefit of the College.
 - 1.2. The Services may be provided by the Corporation to the College through one or more subcontractors.
 - 1.2.1. Except to the extent the College determines otherwise with respect to a particular subcontractor or category of subcontractors, all subcontractors must provide insurance satisfactory to the College. The nature and amount of insurance that a subcontractor shall be required to provide (if any) shall be determined by the University’s Auxiliary Enterprise Corporation Guidelines, attached as **Exhibit A**, as they may be amended from time to time (the “Guidelines”) or by the College on a case-by-case

¹ In the case of a CUNY School or other unit or program, changes should be made throughout the document to refer to School and Dean, etc., as appropriate.

basis. Such insurance may include commercial general liability insurance against claims for injuries to, or death of persons, or loss of or damages to property, including fire and theft, which may arise from or in connection with the performance of the Services by the subcontractor, its officers, agents, representatives, employees or sub-subcontractors. The University and the Corporation must be named as additional insureds under all liability insurance policies.

1.2.2. Except to the extent the College determines otherwise with respect to a particular subcontractor or category of subcontractors, all subcontractors must agree to indemnify, defend and hold harmless the Corporation and the University, from any and all actions, claims, demands, damages, fines, losses, liabilities, judgments, liens, and expenses of any kind (including, without limitation, court costs, attorneys' fees and related disbursements), arising out of or in connection with (a) the breach by subcontractor of any of its agreements or covenants under a subcontract to provide the Services and (b) the performance of the Services by the subcontractor and its officers, employees, agents and representatives.

1.3. In consideration of the Services, the College agrees that except as otherwise set forth in this MOU, the Corporation may retain any income earned as a result of the Services, so long as the Corporation's activities benefit the College community and income earned as a result of the Services is used to support the College community.

2. College Support of Corporation. Subject to the availability of funding and the budget process, the College, in accordance with the terms and conditions of this MOU, shall make available to the Corporation the facilities, personnel, equipment and other support, goods and services (collectively "College Support") listed in **Exhibit C**. Any changes to the College Support shall be made by written amendment to this MOU and **Exhibit C**, a copy of which shall be filed with the University Office of the General Counsel. Any reimbursement to the College by the Corporation for the College Support shall be consistent with the Corporation's annual budget and the terms indicated on **Exhibit C**.
3. Care of Premises. The Corporation shall take good care of the Premises set forth in **Exhibit B** ("Premises") and used by the Corporation to carry out the Services, and shall maintain them in a clean and orderly condition. The College shall keep the Premises in good repair and make all capital improvements necessary to comply with all applicable federal, state and municipal health and safety codes. The Corporation shall not make alterations to the Premises without the prior written consent of the College. Any alteration or improvement to the Premises and/or its fixtures that may be paid for by the Corporation shall become the property of the University.
4. Affiliates. The Corporation has established the Affiliate(s) (as defined in the Guidelines)

listed in **Exhibit D.**²

5. Use of the College Name and Trademarks.

- 5.1. Corporation may, solely in connection with the Services, use and license its subcontractors to use, the name of the College as well as College logos, seals, and other symbols and marks of the College (collectively, the “College Marks”), including without limitation use of College Marks on goods manufactured for sale through venues approved by the College. Except to the extent included as part of a College Mark, Corporation shall not use the names “The City University of New York” or “CUNY,” or any logo, seal, symbol or mark of the University without the prior approval of University’s Office of Communications and Marketing.
- 5.2. Notwithstanding the foregoing, the College President may, in his/her discretion, forbid any particular use of a College Mark or, if such use has already commenced, require that such use cease. The Corporation shall not delegate the authority to use a College Mark to any person or entity without the prior written approval of the College President.
- 5.3. Corporation agrees to stop using the College Marks in the event (i) the Corporation dissolves, (ii) the University withdraws recognition of the Corporation, (iii) the Corporation ceases to be a not-for-profit corporation or is no longer recognized by the Internal Revenue Service as an entity described in section 501(c)(3) of the Internal Revenue Code, or (iv) the Corporation is directed to stop such use by the College President.
- 5.4. For purposes of this Section 5, “College President” means the President of the College or his or her designee.

6. Data and Confidentiality.

- 6.1. The College may make available to the Corporation records and information concerning students and alumni in accordance with the requirements of the Family Educational Rights and Privacy Act of 1974 and regulations promulgated thereunder (“FERPA”) for use by the Corporation in a manner consistent with the Corporation’s rights and obligations under this MOU and with College and University policies. The Corporation shall treat such records and information as confidential in accordance with FERPA and shall not disclose any or all of them to any third party without the express prior written consent of the College and subject to a written agreement with such third party that shall: (i) be subject to the terms and conditions of this MOU, including without limitation those regarding confidentiality of information; (ii) be non-transferable; and (iii) provide for its termination or assignment to the College, at the College’s sole option, on termination of this MOU. The Corporation shall provide the College with a copy

²If the AEC has no Affiliates, delete this sentence and replace with “N/A – the Corporation has no Affiliates.”

of each such agreement.

- 6.2. If the Corporation's Services as listed on **Exhibit B** include providing loans or other financial products (not including scholarships, awards and grants) or assisting the College with the administration of such services, the Corporation will comply with the Gramm-Leach-Bliley Act (P.L. 106-102), as amended, and the Federal Trade Commission's Safeguards Rule (16 CFR Part 314) (collectively, "GLB Regulations"), regarding any nonpublic personal information that the Corporation receives, maintains, processes or otherwise has access to from students or others in connection with providing such services.
 - 6.3. The Corporation shall comply with the provisions of the New York State General Business Law Section 899-aa regarding security breaches of personal information. 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.
 - 6.4. Each party shall maintain network security that conforms to generally recognized "Industry Standards" and best practices that the party applies to its own network. Generally recognized industry standards include but are not limited to the current standards and benchmarks set forth and maintained by the Center for Internet Security (see <http://www.cisecurity.org>) or Payment Card Industry/Data Security Standards (PCI/DSS) (see <http://www.pcisecuritystandards.org>).
 - 6.5. Corporation employees and agents shall abide by all confidentiality requirements imposed by law or by College or University policy to protect the privacy of past and present College employees and students. If the Corporation subcontracts with a third party for any of the Services, the Corporation shall ensure that such third parties comply with all of the confidentiality provisions of this MOU.
7. Coordination with the College's Office of Finance. The Corporation shall provide the College's Office of Finance with any and all financial reports otherwise provided to the Corporation's Board of Directors and its Investment and Finance Committees, if any. A Corporation representative shall meet at least quarterly with the College's Chief Financial Officer to discuss matters relating to interactive financial arrangements.
8. Liability.
- 8.1. In the event any damage or injury is caused to the equipment or Premises provided by College hereunder, by the negligence or improper conduct of the Corporation, its agents, subcontractors or employees, the Corporation shall cause the said damage or injury to be repaired as speedily as possible at its own cost and expense.
 - 8.2. In no event shall anything contained in this MOU be deemed to impose liability of any nature on the Corporation for loss or damage to persons or property, to the

extent caused by the University, its officers or employees or by any third party over which the Corporation exercises no control.

9. Occupancy of Premises.

9.1. The Corporation's occupancy of the Premises is that of a licensee only. The Corporation will not maintain ownership or other similar interest in the Premises, nor is there a landlord-tenant relationship between the University or the College and the Corporation.

9.2. The College and the University and any of their agents may enter the Premises or any part of them at any time for the purpose of examination, supervision or audit.

9.3. The Corporation and its subcontractors have the right, subject to the College's rules regarding building access and security, to 24-hour access to the Premises for the purposes of conducting the Services.

10. Compliance. The Corporation shall comply[, and shall ensure that its Affiliates comply,] with all federal, state and local laws, whether now or hereinafter in force, applicable to the proper and lawful conduct of its Services, as well as the Guidelines. The Corporation shall cooperate, and shall ensure that its Affiliates cooperate, with the University and governmental authorities regarding any investigation of the Corporation and/or an Affiliate regarding the conduct of the Corporation's and/or Affiliate's Services.

11. Effect of MOU; Amendment. This MOU (and any attachments) contains all the terms between the parties and may be amended only in writing signed by an authorized representative of each party. Any amendment to this MOU (or any attachment) will not become effective until it has been approved by the University's Office of the General Counsel.

12. Confidentiality. Neither the Corporation nor the University shall disclose or use any private, confidential, proprietary, or trade secret information provided from one to the other except as required in and by the terms of this MOU.

13. Term and Termination.

13.1. This MOU shall have an initial term of one year beginning [*date*] and ending [*date*], and shall be automatically renewed for additional one-year terms unless written notice is given no later than 90 calendar days of the end of the term or renewal term by either the Corporation or the College of its desire to terminate or modify the provisions of this MOU. Any notice requesting modification shall describe the modification(s) requested. If a notice requesting modification is given, the parties shall meet within 30 calendar days to try to reach an agreement on any changes.

- 13.2. This MOU may be terminated in whole or in part by the College upon the breach by the Corporation of one or more of its terms, including without limitation failure to comply with the Auxiliary Enterprise Corporation Guidelines attached as **Exhibit A**. Prior to any such termination, the College shall provide a written notice of breach to the Corporation describing the nature of the breach(es). On receipt of the notice of breach, the Corporation shall have 30 calendar days to cure the breach(es). If the Corporation fails to do so to the satisfaction of the College, the College shall provide a written notice of termination to the Corporation, to be effective immediately. The Corporation may contest the notice of breach and/or the notice of termination by submitting a letter to the University Chancellor. The Chancellor shall review the contested notice and provide a recommendation to the CUNY Board of Trustees within 30 calendar days of submission of the Corporation's letter. The decision of the CUNY Board of Trustees shall be final.
- 13.3. This MOU may be terminated in whole or in part by the University Chancellor or the CUNY Board of Trustees upon 30 calendar days prior written notice in accordance with the notice provisions of this MOU.
14. Notice. Any notice to either party hereunder must be in writing, signed by the party giving it, and shall be delivered either personally, by overnight delivery service, or by electronic mail or fax machine, or deposited in the United States mail, postage prepaid, registered or certified mail, addressed as set forth below. Such notices will be deemed to have been given or made when so delivered or deposited.

TO UNIVERSITY AND COLLEGE:

President
[Name of College]
[Address]

With a copy to

Office of the General Counsel
The City University of New York
205 E. 42nd Street, 11th Floor
New York, NY 10017

TO THE CORPORATION:

[Insert]

or to such persons as may be hereafter designated by notice.

15. This MOU includes the following documents:
 - 15.1. Exhibit A – CUNY Auxiliary Enterprise Corporation Guidelines
 - 15.2. Exhibit B - Corporation Services
 - 15.3. Exhibit C - Personnel, Equipment and Other Support, Goods and Services Provided to Corporation by the College
 - 15.4. Exhibit D - Description of Affiliates and College-provided Resources³

16. In the event of any controversy of terms, the priority of the interpretation of documents comprising this MOU shall be in the following order:
 - 16.1. Exhibit A - CUNY Auxiliary Enterprise Corporation Guidelines
 - 16.2. This MOU
 - 16.3. Exhibit B - Corporation Services
 - 16.4. Exhibit C - Personnel, Equipment and Other Support, Goods and Services Provided to Corporation by the College
 - 16.5. Exhibit D - Description of Affiliates and College-provided Resources⁴

17. This MOU constitutes the entire agreement of the parties hereto and all previous communications between the parties, whether written or oral, with reference to the subject matter of this MOU are hereby superseded.

This Memorandum of Understanding has been executed by and on behalf of the College and the Corporation on this ____ day of _____, 20__.

THE CITY UNIVERSITY OF NEW YORK

By and on behalf of
[COLLEGE]

[CORPORATION]

By: _____
President

By: _____

Approved as to Form:

The City University of New York
Office of the General Counsel

Date: _____

³ Delete if AEC has no Affiliates.

⁴ Delete if AEC has no Affiliates.

Exhibit A
CUNY Auxiliary Enterprise Corporation Guidelines

**Exhibit B
Corporation Services**

(This language is to be modified as necessary to accurately reflect a particular Corporation's Services and relationship with its supported college.)

List of Services to be provided by the Corporation⁵:

Advertising - contracts related to placement of third-party ads on campus

- subcontract with vendor fiscal agent for CUNY contract⁶

Premises:

Art Gallery Operations

- direct operation – AEC employees (primarily) operate and control the facility
 fiscal agent for College – College employees (primarily) operate and control the facility, but AEC enters into agreements with artists, art lenders and consignors, and licensees for use of the facility

Premises:

Automatic Teller Machines

- subcontract with vendor fiscal agent for CUNY contract

Premises:

Bookstore/Campus Store Operations

- direct operation subcontract with vendor fiscal agent for CUNY contract

Premises:

Child Care Center Operations – direct operation

Premises:

Copy machines, printers, and/or related equipment and operations

- subcontract with vendor fiscal agent for CUNY contract

Premises:

Facility Use – short term licensing of various College facilities to third-parties consistent with the CUNY Facility Use Policy

⁵ Delete those Services that don't apply.

⁶ "CUNY contract" includes both CUNY-wide contracts and college contracts.

Food Service Operations

- direct operation subcontract with vendor fiscal agent for CUNY contract

Premises:

Games and amusements, laundry centers and similar operations

- subcontract with vendor fiscal agent for CUNY contract

Premises:

Housing⁷

fiscal agent for College - AEC leases facility on behalf of College, with Central Office approval, for use as student/staff housing

Premises:

Intellectual Property Licensing Agent – AEC has the non-exclusive right to represent the College with respect to the licensing of the Marks (as defined in Section 5.1 of the MOU), copyrighted works owned by the College and other intellectual property owned by the College.

Parking Operations

direct operation – AEC employees (primarily) operate and control the parking lots, garages and related facilities, including maintenance, and otherwise handle parking operations on campus.

fiscal agent for College – Campus Facilities Office operates and controls the parking lots, garages and related facilities, including maintenance and security, but AEC collects and administers fees for parking permits and may enter into agreements with third-party vendors to manage particular facilities.

Premises:

Performing Arts Center/Theater Operations

direct operation – AEC employees (primarily) operate and control the facility

fiscal agent for College – College employees (primarily) operate and control the facility, but AEC enters into agreements with third-party performers or licensees for use of the facility

Premises:

Pouring Rights – fiscal agent for CUNY contract

Sports/Recreation/Wellness Center Operations

direct operation – AEC employees (primarily) operate and control the facility, including maintenance

⁷ If handled by an Affiliate, list on Exhibit D.

fiscal agent for College – Campus Facilities Office, Athletic Department and/or other College offices or departments operate and control the facility, including maintenance and security, but AEC enters into agreements with licensees for use of the facility and/or administers alumni and/or community use or similar programs

Premises:

Transportation Services (e.g., shuttle buses)

subcontract with vendor fiscal agent for CUNY contract

Premises:

Vending Machine Operations

subcontract with vendor fiscal agent for CUNY contract

Premises:

Telecommunication services for the College community and/or related equipment and operations (not cell towers)

subcontract with vendor fiscal agent for CUNY contract

Premises:

Other:

Exhibit C
Personnel, Equipment and Other Support, Goods and Services
Provided to Corporation by the College

A. College personnel assigned:

<u>College Title</u>	<u>% of time worked for AEC</u>
----------------------	---------------------------------

The AEC has no employees.⁸

B. Description of equipment and other support, goods and services provided⁹:

- Standard office furniture and equipment used by those College personnel listed above when carrying out work for the AEC
- Equipment and furnishings in the Premises used by the food service vendor(s), as listed in the contract between the AEC and the vendor
- ordinary and necessary utilities for the Premises
- support services of the type provided to College departments including, but not limited to: access to the College's telephone system and internet; janitorial services; maintenance of the Premises from the College's physical plant; duplicating, printing and mail services.
- payroll services for Corporation employees, including the allocation of related benefits, accounting services, and other administrative services
- technology support services, as well as online access to such College files as the Corporation deems, and the College agrees, to be relevant and necessary to the activities and purpose of the Corporation.

C. Description of reimbursement for the items listed in A - B:

⁸ Delete if not accurate.

⁹ Revise as appropriate.

Exhibit D¹⁰
Description of Affiliates and College-provided Resources

A. Name and address of each Affiliate:

B. Description of Services and Premises:

C. College personnel assigned:

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

E. Description of reimbursement for the items listed in C - E:

¹⁰Delete Exhibit if the AEC has no Affiliates