

ASC Model Contract

AGREEMENT made this ____ day of _____, 20__, 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 _____, located at _____, New York _____, hereinafter referred to as "Campus" and _____, 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 _____, New York _____, hereinafter referred to as "Corporation".

WITNESSETH:

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

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

WHEREAS, 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.

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

1. The term of this agreement will commence on _____, 20__, and shall continue for a term of five years through _____, 20__. 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 and any supplementary or administrative guidelines issued thereunder, which Guidelines and supplementary guidelines are attached hereto and made a part hereof as Exhibits B and B-1 respectively. 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. Any additions to Exhibit C must be approved in writing as an amendment to this agreement.

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 State University (e.g., rent and utilities), for amounts sufficient to maintain adequate reserve levels as required under State University policy set forth in Exhibit B-1, and for a reasonable percentage of the net revenue, after payment of all expenses, from the Corporation's operations to be paid to the State University, either in cash and/or in-kind, to support the programs of the State University.

4. State University shall make available to the Corporation in accordance with the terms and conditions of this agreement, the facilities 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. Any alteration or improvement to the premises that may be paid for by the Corporation shall become the property of the State University.

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, 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.

8. 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, judgment, 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, if any 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, 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.

9. 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. The Campus Business Office will initiate the associated "Abstract of Voucher" form to the Office of the State Comptroller for prior review and approval for disbursing said receipts to the Corporation no later than 15 days from receipt. Subsequent disbursements to the Corporation will be made no later than 15 days from receipt of approval of "Abstract of Voucher" from the State Comptroller's Office. It is understood by the parties that student's 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.

10. 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.

11. 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) insure 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.

12. 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, including the provisions contained in the New York State Standard Contract Clauses and Affirmative Action Clauses, Exhibits A and A-1, attached hereto, and made a part hereof.

13. This agreement consists of the following documents:

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

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

1. Exhibits A and A-1
2. Guidelines and Administrative Guidelines for Auxiliary Service Corporations
3. This agreement
4. Corporation Activities (Exhibit C)
5. Facilities, Equipment and Personnel Provided by Campus—Exhibit D
6. Description of Affiliated Organizations and Campus-provided Resources (Exhibit E)

15. 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.

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

17. 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:

TO THE STATE UNIVERSITY:

TO THE CORPORATION:

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.

CAMPUS

AGENCY CERTIFICATION:

By: _____

By: _____

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.

CORPORATION

By: _____

STATE UNIVERSITY

By: _____
University Controller

Approved as to form

Approved and filed

Date _____

Date _____

ANDREW M. CUOMO
Attorney General

THOMAS P. DI NAPOLI
NYS Office of the State Comptroller

By: _____
Assistant Attorney General

By: _____
For the Comptroller