

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

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

2. Prohibition against Assignment. Except with the assignment of its right to receive payment subject to Article 5-A of the State Finance Law, the vendors(s) selected to perform the services herein will be prohibited from assigning, transferring, conveying or disposing its rights, title or interest in the contract to be awarded without the prior written consent of SUNY. Provided however that SUNY may with the concurrence of the New York Office of State Comptroller, waive prior written consent of the assignment, transfer, conveyance, sublease or other disposition of the contract if the vendor verifies to SUNY that the assignment, transfer, conveyance, sublease or other disposition is due to but not necessarily limited to, a reorganization, merger or consolidation of its business or enterprise. SUNY retain the right, as provided in Section 138 of the State Finance Law to accept or reject an assignment, transfer, conveyance, sublease or other disposition of the contract by the vendor. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law, Section 355 of the State Education Law, and 8 NYCRR 316, (a) for a State University campus or health care facility certified by the Vice Chancellor and Chief Financial Officer, if this contract exceeds \$250,000 for commodities, services, printing or construction, or (b) for a State University campus not certified by the Vice Chancellor and Chief Financial Officer, if this is a contract for commodities, services, printing or construction which exceeds \$50,000 or which exceeds \$75,000 by a State University health care facility not certified by the Vice Chancellor and Chief Financial Officer, or (c) if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amounts, or (d) if, by this contract, the State agrees to give something other than money, when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in the Comptroller's office.

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law), and all other State and Federal statutory and constitutional non-discrimination provisions, Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined Section 230 of

the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

7. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based on the submission of competitive bids: (a) by submission of its bid, Contractor (Bidder) certifies, and each person signing on behalf of the Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief: (1) the prices in this bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices, with any other bidder or with any competitor; (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not be knowingly disclosed by the Bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(b) A bid shall not be considered for award nor shall any award be made where (a) (1), (2) and (3) above have not been complied with; provided however, that if in any case the Bidder cannot make the foregoing certification, the Bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor.

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

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) **Federal Employer Identification Number and/or Federal Social Security Number.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) **Privacy Notification.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, AESOB,

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. (a) In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

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

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

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

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

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any

and all attachments thereto and amendments thereof) and the terms of this Exhibit A, the terms of this Exhibit A shall control.

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

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

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

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

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

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

20. OMNIBUS PROCUREMENT ACT OF 1992.

(a) In accordance with the Omnibus Procurement Act of 1992, it is the policy of NYS to encourage the use of NYS contractors and suppliers, and to promote the participation of minority- and women-owned businesses where possible, in the procurement of goods and services. Information concerning the availability of NYS subcontractors and suppliers is available from the NYS Dept. of Economic Development, which shall also include the Directory of Certified Minority- and Women-owned Businesses.

(b) Subsequent to award of procurement contracts in an amount estimated to be \$1,000,000 or more, contractors will be required to document their efforts to encourage the participation of NYS business enterprises as suppliers and subcontractors by showing that they have (i) solicited bids in a timely and adequate manner from NYS business enterprises including certified minority- or women-owned businesses, or (ii) contacted the NYS Dept. of Economic Development to obtain listings of NYS business enterprises, or (iii) placed notices for subcontractors or suppliers in newspapers, journals or other trade publications distributed in NYS, or (iv) participated in bidder outreach conferences. If a contractor determines that NY business enterprises are not available to participate in such contract, the contractor shall provide a statement indicating the method by which such determination was made. If a contractor does not intend to use sub-contractors, the contractor shall provide a statement verifying such intent. Contractors shall also attest to compliance with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended, and document efforts to provide notification to NYS residents of employment opportunities through listing any positions with the Community Services Division of the NYS Dept. of Labor, or provide for such notification in such manner as is consistent with existing collective bargaining agreements.

(c) Bidders located in foreign countries are notified that SUNY may assign or otherwise transfer offset credits created by any procurement contract of \$1,000,000 or more to third parties located in New York State.

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

22. PURCHASES OF APPAREL. In accordance with State Finance Law Section 162(4-a), the State shall not purchase any apparel from any vendor unable or unwilling to provide documentation as part of its bid (i) attesting that such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) stating, if known, the names and addresses of each subcontractor and all manufacturing plants to be utilized by the bidder.

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

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

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

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

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

I. **DEFINITIONS.** The following terms shall be defined in accordance with Section 312 of the Executive Law:

STATE CONTRACT herein referred to as "State Contract", shall mean (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project. For purposes of this agreement, the term "services" shall not include banking relationships, the issuance of insurance policies and contracts, or contracts with a contracting agency for the sale of bonds, notes or other securities.

SUBCONTRACT herein referred to as "Subcontract", shall mean any agreement providing for a total expenditure in excess of \$25,000 for construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon between a contractor and any individual, partnership, corporation, or not-for-profit corporation, in which a portion of a contractor's obligation under a State Contract is undertaken or assumed, but shall not include any construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon for the beneficial use of contractor.

WOMEN-OWNED BUSINESS ENTERPRISE herein referred to as "WBE", shall mean a business enterprise, including a sole proprietorship, partnership, or corporation that is: (a) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women; (b) an enterprise in which the ownership interest of such women is real, substantial and continuing; (c) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and (d) an enterprise authorized to do business in this State and independently owned and operated.

MINORITY-OWNED BUSINESS ENTERPRISE herein referred to as "MBE", shall mean a business enterprise, including a sole proprietorship, partnership, or corporation that is: (a) at least fifty-one percent owned by one or more minority group members; (b) an enterprise in which such minority ownership interest is real, substantial and continuing; (c) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and (d) an enterprise authorized to do business in this State and independently owned and operated.

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

CERTIFIED BUSINESS shall mean a business verified as a minority or women-owned business enterprise pursuant to section 314 of the Executive Law.

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

1. As a pre-condition for the award of any State Contract, contractor agrees to submit an Equal Employment Opportunity (EEO) Policy Statement which conforms with the following provisions:

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

(b) At the request of State University, contractor shall request each employment agency, labor union, or authorized repre-

sentative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of contractor's obligations therein.

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

(d) Contractor will include the provisions of "a", "b" and "c", above, in every Subcontract over \$25,000.00.

2. Contractor shall indicate whether it is able to separate out from its entire work force that portion of its work force which will be utilized in the performance of this State Contract.

3. For State Contracts which provide labor, services, supplies, equipment or materials, as defined above, contractor must provide a Staffing Plan of the anticipated work force to be utilized on the State Contract broken down by specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories which the agency may specify.

4. For contractors who are unable to separate the portion of their work force which will be utilized for the performance of this State Contract, contractor shall provide reports describing its entire work force by the specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories which the agency may specify.

5. If contractor fails to provide a staffing plan, or in the alternative, a description of its entire work force, State University may reject contractor's bid, unless contractor either commits to provide such information at a later date or provides a reasonable justification in writing for its failure to provide the same.

6. After the State Contract has been awarded, contractor shall provide a Utilization Report which breaks down and describes contractor's and every subcontractor's work force by specified ethnic background, gender, and Federal Occupational Categories. The prime contractor shall be responsible for collecting reports from its subcontractors and

providing such reports to State University. For State Contracts for construction, the Utilization Report shall be completed using the number of hours worked for each relevant job title within the Federal Occupational Categories. During the term of State Contract: construction contractors must provide a Utilization Report on a monthly basis; contractors providing labor, services, supplies, equipment or materials, who are unable to separate out their work force must provide Utilization reports on a semi-annual basis; all other contractors must provide Utilization Reports every three months.

7. Contractor shall provide State University reports of its compliance with the terms of Article 15-A of the Executive Law as may be required by State University.

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

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

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

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

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

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

(f) Whether contractor encourages and utilizes minority group members and

women employees to assist in recruiting other employees.

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

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

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

(a) Whether contractor has actively solicited bids for Subcontracts from qualified M/WBES, including those firms listed on the Directory of Certified Minority and Women-Owned Business Enterprises, and has documented its efforts, including names and addresses of firms contacted, and the reasons why any such firm was not selected to participate on the project.

(b) Whether contractor has attempted to make project plans and specifications available to firms who are not members of associations with plan rooms and reduce fees for firms who are disadvantaged.

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

(d) Whether prime contractor has structured its subcontracts so that opportunities exist to complete smaller portions of work.

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

(f) Whether contractor has requested the services of the Department of Economic Development (DED) and Job Development Authority (JDA) to assist subcontractors' efforts to satisfy bonding requirement.

(g) Whether contractor has made progress payments promptly to its subcontractors.

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

contractor.

It shall be the responsibility of prime contractor to ensure compliance by every subcontractor with these provisions.

10. GOALS. (a) GOALS FOR MINORITY AND WOMEN WORK FORCE PARTICIPATION. (i) State University shall include relevant work force availability data, which is provided by the N.Y.S. Department of Economic Development the Division of Minority and Women's Business Development, in all documents which solicit bids for State Contracts and shall make efforts to assist contractors in utilizing such data to determine expected levels of participation for minority group members and women on State Contracts.

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

(b) GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION. For all State Contracts in excess of \$100,000.00 whereby State University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of three-percent (3%) for Certified Minority-Owned Business Enterprises and three-percent (3%) for Certified Women-Owned Business Enterprises.

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

The State University of New York Guidelines for Auxiliary Services Corporations

I. Authority

On April 29, 2003, the State University Board of Trustees adopted the following Guidelines for Auxiliary Services Corporations (ASCs) (Trustees' Resolution No. 2003-39). These Guidelines supersede Guidelines originally established by Trustees' Resolution 75-330, dated December 17, 1975 and amended by Trustees' Resolution 92-104, dated May 27, 1992. These Guidelines were developed as a result of the work of a Task Force established by the Chancellor to clarify the role of campus-related organizations (Foundations, ASCs, and Alumni Associations) operating in support of the overall campus mission.

These Guidelines are effective July 1, 2003. The Chancellor is also authorized by Trustees' Resolution 2003-39 to develop supplementary administrative guidelines, not inconsistent herewith, in the implementation of these Guidelines.

II. Transitional Provisions

It is understood that as of the date of implementation of the Guidelines, an (ASC) may currently be structured or engaged in activities that would be inconsistent with the letter of the Guidelines. In such cases, it may be possible for these entities to maintain their current structure or continue providing such services, following a case-by-case review by and approval of the campus President and the Chancellor or designee. If such variances to these University-wide Guidelines are to continue, appropriate provisions must be included in the contract executed between the campus and the ASC.

III. Mission

ASCs are generally authorized to operate a defined set of auxiliary services where students and faculty/staff have a significant interest in the quality and price of the services provided (excluding residence halls). An ASC may also provide services to campus entities, University hospitals, clinics, long-term care facilities (e.g., Long Island Veterans Home), and members of the public at events that have an educational purpose or that are social events whose purpose will directly benefit the campus.

IV. Responsibilities

The ASC is authorized to provide the campus with a defined set of services, as follows:

- Food service including concessions and pouring and similar rights.
- Bookstores, campus stores, and computer stores.
- Amusements, vending, and laundry operations.
- Other student/faculty-related services as defined by the ASC contract. Some examples are: ID card operations, cable television, banking services, telecommunication services, hair salon.
- Administrative support (payroll, purchasing, etc.) provided to independent third-parties related to the campus, including, but not limited to student government organizations, and alumni associations, but not including campus-based foundations.
- Except in concert with and under the direct supervision of the campus development office, the ASC would be prohibited from active solicitation of gifts or bequests.

The use by the ASC of the campus name and marks for fundraising purposes would be permitted pursuant to provisions contained in its contract with the campus.

V. Structure

The ASC (the primary corporation) must be a non-profit corporation organized and existing under the laws of the State of New York, tax-exempt under §501(c) (3) of the Internal Revenue Code (IRC), and classified as a "supporting

Guidelines for Auxiliary Services Corporations - Exhibit B

organization" to the campus under §509(a) (3) of the IRC, unless a different §509 classification would be more appropriate under the circumstances particular to the purpose of the corporation. The primary corporation would be authorized to establish one or more affiliates or, under special circumstances, single member limited liability corporations (the single member must be a tax-exempt entity) to the extent that it is involved in auxiliary enterprises of a nature other than as defined above. Any affiliate or single member limited liability corporation would also be a 501(c)(3) corporation and classified as a "supporting organization" to the campus under §509(a)(3) of the IRC, unless a different §509 classification would be more appropriate under the circumstances particular to the purpose of the corporation. The majority of the members of the board of directors of any affiliate or single member limited liability corporation would be comprised of and supervised by members of the board of the primary corporation. The campus will oversee the activities of the ASC through a contract with the campus and representation on the board of directors of the ASC. Any exceptions to this structure would require the campus President's written approval in consultation with the Chancellor, or designee.

The ASC will continue to be the main campus entity representing students and faculty in the management of services where these constituencies have the dominant interest. As such, the Board of Directors of the ASC would consist of faculty, students, and officers of the administration of the campus, and may further include alumni and local business leaders. No members of the campus council, other than the student representative, may serve on the board of the ASC. The student constituency shall have not less than 1/3, but no more than 1/2 of the voting membership on the Board, including any student serving in the capacity of a campus council representative. Any faculty members shall be appointed by the campus faculty governance organization. The campus President may appoint no more than two voting members from the local business community who have management expertise in areas related to the services provided by the ASC.

VI. Linkage to Campus

The campus President or designee is an *ex officio*, voting member of the Board of Directors of the primary corporation. A formal contract, terminable in whole or part with 180 days written notice given by either party, extending for a period of not more than 10 years and subject to the review and approval of the Chancellor or designee (and external State agencies when required), must be executed between the campus and the primary ASC, authorizing it to operate on campus, and enumerating its activities and those of each affiliate or single member limited liability corporation it establishes, and providing that each such organization is bound by the same guidelines governing the primary ASC. Each activity category authorized to the corporation would be identified in the contract, with written contract amendments required for new activities.

VII. Accountability and Reporting

Each ASC must prepare an annual financial statement in conformity with generally accepted accounting principles and have an audit conducted by an independent certified public accounting firm or sole practitioner (independent auditor) in accordance with generally accepted auditing standards. To enable the State University to include pertinent information in its annual financial statements, the audit must be completed within 90 days after the close of the ASC's fiscal year. The independent auditor may be appointed for no more than a five-year term, after which the ASC must resolicit these services through a competitive procurement process. No certified public accounting firm or sole practitioner can serve as the independent auditor for more than two consecutive five-year terms, after which the firm or sole practitioner is not eligible to serve again as the independent auditor until not less than a three-year intervening period has elapsed. The books and records, financial condition, operating results, and program activities of the ASC would also be subject to periodic audit by the Office of the University Auditor. The primary ASC (and any affiliate(s) and single member limited liability corporation(s)) may also be subject to audits of outside regulatory bodies to the extent allowed by law. All audit reports from whatever source, including the certified (consolidated) financial statements and management letter of the primary ASC (and any affiliate(s) and single member limited liability corporation(s)) must be transmitted to the offices of the campus President and the Vice Chancellor for Finance and Business and University Auditor for review and acceptance.

Provisions in the articles of incorporation and other organizing documents of the ASC (and any affiliate(s) or single member Limited Liability Corporation(s)) must provide that the net assets of the organization shall be distributed to the campus or other campus approved entity organized for similar purposes in the event that the ASC (or affiliate or single member Limited Liability Corporation) is dissolved. Dissolutions and dispositions of related net assets are subject to all applicable laws, regulations, and restrictions, and unless otherwise stated, the net assets revert to the campus or campus-approved organization.


 <p>Category: Financial Related Entities</p> <p>Responsible Office: <u>University Controller</u></p>	<p>Policy Title: Auxiliary Services Corporations' Administrative Guidelines</p> <p>Document Number: 9401</p> <p>Effective Date: July 01, 2004</p> <p>This policy item applies to: State-Operated Campuses</p>
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Summary

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

Policy

I. Officers

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

II. Organization

A. Board of Directors – The board of directors shall be constituted as provided in the University Board of Trustees Guidelines for Auxiliary Services Corporations. Further, the student directors shall be selected from and by the students or the representative student governing body. Directors representing the campus administration shall be appointed by the campus president.

B. Campus Communication – The management of the corporation is vested in the board of directors as provided by not-for-profit law. However, the continuance of contractual relations between the corporation and the campus depends upon a close harmony of practice and purpose between both parties. The campus president shall receive minutes of all board meetings, have access to all corporate books and papers and be informed about significant matters of corporate business.

C. Employment of State Employees – The corporation shall engage state employees to the extent necessary to

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conduct its business. State employees may be employed by the corporation provided time worked is either outside the employee's normal work hours, or is charged as time off to leave credits.

D. Charter/By-Law Changes – If the charter or by-laws of the corporation are to be changed in any respect during the term of the agreement, sixty (60) days prior written notice of such proposed change(s) shall be reported to the campus president and the vice chancellor for finance and business. No such change will take effect without the written approval of the campus president and the vice chancellor for finance and business.

III. Financial

A. General Budget – The corporation shall prepare each year a general budget as well as budgets for each auxiliary service under its control or supervision.

1. Budget Approval – The budget shall be submitted to the campus president for review and approval at least sixty (60) days prior to the commencing date of the corporation's fiscal year for which the budget is prepared. The review and approval or disapproval by the campus president must be made at least fifteen (15) days prior to the commencing date of the corporation's fiscal year. A copy of the approved budget shall be forwarded promptly to the vice chancellor for finance and business by the campus president. In the event the vice chancellor for finance and business identifies a material weakness as revealed by the audit of the financial statements, or identified by other audit agencies, or other fiscal circumstances that come to light, the vice chancellor for finance and business shall notify the campus president that the budget for the corporation's next fiscal year shall require additional approval by the vice chancellor for finance and business.

2. Availability and Expenditures of Income – No income shall be available to the corporation for any purpose until the budget shall have been approved as herein provided by the campus president, and by the vice chancellor for finance and business when additional approval is required.

B. Accounting Records – The corporation shall keep books of account and records of all its operations. It shall maintain systems of bookkeeping and accounting acceptable to the vice chancellor for finance and business and to the New York State comptroller and shall permit inspection of said books, records and papers of any kind by the vice chancellor for finance and business and the state comptroller.

C. Corporate Fiscal Stability – The corporation should have a sufficient level of current assets to: (1) provide adequate amounts to meet current liabilities; (2) meet inflationary increases in operating expenses and unexpected emergencies; and (3) provide reserves to replace equipment. In this regard, the following unrestricted net asset classifications are required and will be measured annually at the end of the corporation's fiscal year. They are:

1. Capital assets, net of related debt – Equal to the original cost of fixed assets, including land, buildings, building/leasehold improvements and equipment less accumulated depreciation and any related debt. Capital assets net of related debt clearly identifies the corporation's ownership share and related equity/net asset balance related to plant and equipment.

2. Unrestricted, designated for working capital – This designated net asset class is determined as the greater of:

- five (5) percent of the previous fiscal year operating expenses, or;
- the amount necessary (increase in current assets) to achieve a working capital ratio of at least 2:1. The working capital ratio is defined as current assets divided by current liabilities. Working capital will be calculated on current assets and current liabilities excluding any amounts held for others (i.e., agency funds).

3. Unrestricted, designated for equipment replacement – Unrestricted net assets, designated for equipment replacement should equal or exceed the equipment replacement reserve. The equipment replacement reserve, in the form of unrestricted cash and investments, is to be maintained to ensure adequate reserves for the replacement of equipment. The equipment replacement reserve is equal to 50% of the reported accumulated depreciation/amortization on the gross (historical cost) equipment

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balance as of the end of the fiscal year. For example, gross equipment = \$10,000, accumulated depreciation = \$6,000, the equipment reserve = 50% of \$6,000 or \$3,000.

4. Unrestricted, undesignated – Represents the remaining unrestricted net asset determined as the total unrestricted net assets less the designated unrestricted net assets in items 1, 2, and 3 above.

Corporations that do not meet these corporate fiscal stability guidelines shall establish a plan to satisfy these requirements within a three-year timeframe. Total unrestricted undesignated net assets should not accumulate an excessive amount.

IV. Public Information

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

V. Standard Contract Clauses

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

VI. Inappropriate Activities

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

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

VII. Agency Funds

A. The campus president may, upon request, authorize the corporation to act as agent for the receipt, custody and disbursement of monies for campus organizations or informal associations of students, faculty or staff members. For example, the corporation is authorized to act as the independent fiscal agent of the student government.

B. Administration of Agency Funds

1. A reasonable management fee may be collected by the corporation.
2. Agency funds may not be commingled with funds of the corporation. Separate agency accounts may be combined or commingled for efficiency and income improvement.
3. In the event that agency funds are combined, detailed accounting must be made, indicating debits and credits to each and all accounts so combined.
4. The corporation shall maintain an agreement specifying any limitation upon the types of investments allowed. Also, based on this agreement the corporation may credit interest earned on the investment of

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agency funds to the agency account, or retain the interest so earned in lieu of a management fee or charge a management fee and retain the interest.

5. Agency fund accounts should not be used for monies belonging to New York State either as general revenues or as revenues accountable through an income fund reimbursable account, nor should such monies be used for corporation purposes.

Definitions

There are no definitions relevant to this policy.

Other Related Information

Auxiliary Services Corporations Guidelines

Procedures

There are no procedures relevant to this policy.

Forms

There are no forms relevant to this policy.

Authority

State University of New York Board of Trustees Resolution 03-39 adopted April 29, 2003.

History

Amended – July 1, 2004:

- authorized by University Board of Trustees Resolution 03-39, the chancellor's designee issued supplementary administrative guidelines and established new corporate fiscal stability requirements.

Amended – May 27, 1992:

- Board of Trustees Resolution 92-104, revised funded reserves for state-owned equipment, corporate equity requirements and defined inappropriate ASC activities.

Established – December 17, 1975:

- Board of Trustees Resolution 75-330 established contract and guidelines for auxiliary services corporations, including reserves for state-owned equipment replacement and appropriated corporate equity requirements.
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Appendices

Standard Contract Clauses State University of New York - Exhibit A

Appendix A - Auxiliary Services Corporation (ASC) Model Contract

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

**(Auxiliary Services Corporation)
Services and Activities**

A. Services to be provided by the Corporation (list all distinct services/activities – i.e., each dining hall; RA Meals; Athlete's Meals, etc.)

B. Services to be provided by sub-contractor to the Corporation (list all distinct services/activities)

**(Auxiliary Services Corporation)
Facilities, Utilities, and Other Campus Services Provided**

A. Description of campus space provided

Building Name

Square Footage

Space Description

B. Description of utilities provided

C. Description of other campus services provided

**(Auxiliary Services Corporation)
Description of Affiliated Organizations and Campus-provided Resources**

- A. Name and address of affiliates

- B. Description of services and activities

- C. Description of space utilized for each service provided
 - Building Name

 - Square Footage

 - Space Description

- D. Personnel assigned

- E. Description of equipment provided