

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

State-operated campuses are authorized to contract with campus-related Auxiliary Services Corporations (ASCs).

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

An ASC may provide the following services:

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

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

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

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## Policy

### I. Structure and Governance

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

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

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

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

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

### II. Accountability, Compliance and Reporting

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

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

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

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

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

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

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

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

### III. Linkage to Campus

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

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

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

### IV. Amendments

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

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

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## Definitions

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

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

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

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

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## Other Related Information

[New York Non-profit Revitalization Act of 2013](#) amending the Not-For-Profit Corporation Law

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## Procedures

There are no procedures relevant to this policy.

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### Related Policies

[SUNY Policy Doc. No. 9600 Foundations Guidelines](#)  
[SUNY Policy Doc. No. 9300 Alumni Associations Guidelines](#)  
[SUNY Policy Doc. No. 9500 Other Related Entities Guidelines](#)

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## Forms

There are no forms relevant to this policy.

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## Authority

[Internal Revenue Code §501\(c\)\(3\)](#) (Exemption from tax on corporations).

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## History

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

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

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

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

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On June 22, 2016, the guidelines were amended, [BOT Resolution 2016-46, Campus-Related Entities Policies](#).

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## **Appendices**

[Standard Contract Clauses State University of New York - Exhibit A](#)

[Standard Contract Clauses - Affirmative Action Clauses - Exhibit A-1](#)

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

[Appendix B](#) - Auxiliary Services Corporation Guidelines - Exhibit B

[Appendix C](#) - Auxiliary Services Corporations Administrative Requirements - Exhibit B-1