

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made by and between The City University of New York by and on behalf of Hostos Community College located at 500 Grand Concourse, Bronx, NY 10451 (“College”) and Hostos Community College Auxiliary Enterprises Corporation, Inc., 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 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. N/A - the Corporation has no Affiliates.

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 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, if any, 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, if any, 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 July 1, 2018 and ending June 30, 2019 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  
Hostos Community College  
500 Grand Concourse  
Bronx, NY 10451

TO THE CORPORATION:

Hostos Community College Auxiliary Enterprises Corporation, Inc.  
500 Grand Concourse  
Bronx, NY 10451

With a copy to

CUNY Related Entities Group  
Office of Counsel  
205 E. 42nd Street, 11th Floor  
New York, NY 10017

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

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
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  
HOSTOS COMMUNITY COLLEGE

HOSTOS COMMUNITY  
COLLEGE AUXILIARY  
ENTERPRISES CORPORATION,  
INC.

By: \_\_\_\_\_  
David Gómez  
President

By: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
The City University of New York  
Office of the General Counsel

Date: \_\_\_\_\_

**Exhibit A**  
**CUNY Auxiliary Enterprise Corporation Guidelines**



**Exhibit B**  
**Corporation Services**

**List of Services to be provided by the Corporation:**

<b>Service</b>	<b>Currently Providing (CP) or Authorized to Provide at College's Request (AP)</b>	<b>Method</b>	<b>Premises</b>
<b>Advertising</b> - contracts related to placement of third-party ads on campus	AP	Either subcontract with vendor or as fiscal agent for a CUNY contract	Campus-wide
<b>Art Gallery Operations</b>	AP	Fiscal agent for College – Campus employees operate and control the facility, but AEC enters into agreements with artists, art lenders and consignors, and licensees for use of the facility	Hostos Center for the Arts & Culture
<b>Automatic Teller Machines</b>	CP	Currently providing as a subcontract with vendor but also authorized to act as fiscal agent for a CUNY contract, if any	A Building lobby, C Building lobby
<b>Bookstore Operations</b>	CP	Fiscal agent for CUNY contract	On-line
<b>Dining Services</b>	CP	Either subcontract with vendor or as fiscal agent for a CUNY contract	Dining locations campus-wide
<b>Facility Use/Location Agreements</b>	CP	Short term licensing of various College facilities, including the college pool	Campus-wide
<b>Intellectual Property Licensing</b>	CP	Fiscal agent for CUNY contract with CUNY's trademark licensing agent. AEC also 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	N/A
<b>Parking</b>	CP	Fiscal agent to College – Campus Public Safety Office operates and controls the parking lots 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	All parking lots on campus
<b>Performing Arts Center Operations</b>	CP	Fiscal agent for College – College employees (primarily) operate and control the facility, but AEC enters	Hostos Center for the Arts & Culture

		into agreements with third-party performers or licensees for use of the facility and employs ushers and some other theater personnel	
<b>Pouring Rights</b>	CP	Fiscal agent for CUNY contract	N/A
<b>Vending Machine Operations</b>	CP	Either subcontract with vendor or as fiscal agent for a CUNY contract	Campus-wide

Consistent with Section 1.3 of the MOU, the Corporation uses its net income remaining after payment of expenses related to the Services to support the College community. Examples of support have included providing funds for faculty and student functions, special College projects and academic divisions of the College.

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

Personnel. The Corporation employs personnel to handle some of its activities, including ushers, conference facilitators, and stage management personnel.

The Corporation also relies on some College employees to carry out its work. The College will make available to the Corporation the services of certain of its employees, as listed on **Exhibit C-1**, to the extent they are not otherwise occupied in providing services for the College, to perform a variety of administrative, program, financial, and other similar functions for Corporation on an as needed basis.

Equipment and Facilities. To the extent that the activities of the Corporation are and remain consistent with the overall purposes and goals of the College, employees of the College who are made available to the Corporation and employees and contractors hired directly by Corporation, if any, may use office space, office supplies, office equipment and furniture, and similar items of the College when carrying out the work of the Corporation.

In addition, the College will make available such College equipment and furnishings to be used by bookstore, food service vendors and other contracted service operators, as listed in the contracts between the Corporation, the College and/or CUNY and the vendor.

Support and Services. The College will provide to the Corporation:

- 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.
- 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.

Payment of Direct Costs. The Corporation shall reimburse the College for salaries and fringe benefits of College employees who perform services for or otherwise assist Corporation in carrying out its purposes as set forth on **Exhibit C-1**. The Corporation shall also reimburse the College for postage, long-distance telephone charges, printing, and other actual expenses; provided, however, that the Corporation shall contract directly with vendors for the provision of such goods and services to the extent practical.

**EXHIBIT C-1**

<b>College Title - Position/Department</b>	<b>Duties/AEC Service</b>	<b>Percentage of time allocated to AEC</b>	<b>AEC Reimbursement</b>
Vice President of Administration & Finance	Finance/AEC President	5%	N
Budget Director	Finance/AEC Secretary	5%	N
Executive Director of Budget & Finance	Finance/AEC Treasurer	5%	N
Financial Accounting Assistant	Finance/AEC Accountant	50%	Y
Financial Manager	Finance	5%	N
Purchasing Director	Purchasing	5%	N
Purchasing Agent	Purchasing	5%	N