

**OPERATING AGREEMENT AND LEASE
BETWEEN TRUSTEES AND
STUDENT UNIONS**

This agreement is made and entered into by and between the State of California through its Trustees of the California State University by their duly qualified and acting Chancellor (hereinafter called State) and ** (hereinafter called Auxiliary). The term of this agreement shall be ** *date* through ** *date* unless sooner terminated as herein provided.

1. PURPOSE

The purpose of this agreement and lease is to set forth the terms and conditions under which Auxiliary may operate as an auxiliary organization and lease campus facilities pursuant to Chapter 7, Part 55, Division 8, Title 3 (Sections 89900 et seq.) and Section 89046 of the Education Code and Subchapter 6, Article 1, Part V (Sections 42400 et seq.) and Section 42601 of Title 5 of the California Code of Regulations (CCR). In entering this agreement, Trustees find that certain functions important to the mission of the California State University are more effectively accomplished by the use of an auxiliary organization rather than the usual state procedures.

2. FUNCTION

In consideration of receiving recognition as an official auxiliary organization of the California State University, Auxiliary hereby agrees, for the period covered by this agreement, to perform the following functions specified in Section 42500, Title 5, CCR:
**

(Note to document authors:

Select functions only from the following list specifically defined in Section 42500, Title 5, CCR. Greater specificity of any function may be included. Example:

“1. Student Body Organization Programs, which includes the operation of a physical fitness facility.”)

- 1. Student Body Organization Programs*
- 2. Bookstores, Food Services, and Campus Services*
- 3. Housing*
- 4. Student Union Programs*
- 5. Supplementary Health Services*
- 6. Loans, Scholarships, Grants-in-Aids, Stipends, and Related Financial Assistance*
- 7. Externally Funded Projects Including Research, Workshops, Conferences, and Institutes*
- 8. Instructionally related Programs and activities, including Agriculture, Athletics, Radio and Television Stations, Newspaper, Films, Transportation, Printing and other Instructionally Related Programs and*

Activities

9. *Alumni Programs*
10. *Gifts, bequests, devises, endowments, trusts and similar funds*
11. *Public relations, fundraising, fund management, and similar development programs*
12. *Acquisition, development, sale, and transfer of real and personal property including financing transactions related to these activities*

Auxiliary further agrees to receive and apply exclusively the funds and properties coming into its possession toward furthering these purposes. Prior to initiating any additional functions, Auxiliary agrees to obtain written approval of Trustees.

Operations of Auxiliary under this Agreement shall be integrated with campus operations and shall be supervised by campus officials so as to assure compliance with the objectives stated in Title 5, CCR, 42401.

3. ADDITIONAL CONDITIONS

A. Auxiliary agrees to maintain its organization and to operate in accordance with all applicable regulations and policies of State, Chancellor, and the ***(campus name)*.

B. With respect to expenditures for public relations or other purposes which would serve to augment appropriations for CSU operations, Auxiliary may expend funds in such amount and for such purposes as are approved by Auxiliary's governing body. Auxiliary shall file with State a statement of Auxiliary's policy on accumulation and use of public relations funds. The statement shall include the policy and procedures for solicitation of funds, purposes for which the funds will be used, allowable expenditures, and procedures of control.

C. No officer or employee of the California State University shall be appointed or employed by Auxiliary if such appointment or employment would be incompatible, inconsistent, or in conflict with his or her duties as a State officer or employee.

4. RECORDS

Auxiliary shall maintain adequate records and shall submit periodic reports as required by State showing the operation and financial status of Auxiliary. The records and reports shall cover all activities of Auxiliary whether pursuant to this agreement or otherwise.

5. INTERNAL COMPLIANCE AND OPERATIONAL REVIEW

Auxiliary agrees to assist the President and his or her designee in carrying out the compliance and operational reviews required by Executive Order 698 and related policies.

6. FISCAL AUDITS

Auxiliary is subject to the provisions of Section 89900 of the Education Code and Section 42408 of Title 5, CCR. In accordance with these provisions, Auxiliary agrees to:

- A. Contract with a certified public accountant for an annual audit at Auxiliary's expense. The report on such examinations shall be furnished to the State
- B. Permit examination of all Auxiliary records by State or their designee.

7. REMEDIES ON TERMINATION OR BREACH

A. Failure of Auxiliary to comply with any term of this agreement may result in the removal, suspension, or placing on probation of Auxiliary as an auxiliary organization in good standing. Such action by State may involve the limitation or removal of Auxiliary's right to utilize the resources, facilities, and name of State and (campus) .

B. Upon termination or breach of this agreement, State, at its sole discretion, may require Auxiliary to transfer all assets in its possession by reason of its status as a CSU auxiliary organization to a successor nonprofit corporation qualifying as an auxiliary organization. This remedy shall be in addition to any other remedies available to State upon termination or breach of this agreement.

C. In addition to any other remedies, State may, upon breach or termination of this agreement, withhold from Auxiliary all funds or fees collected by State for benefit of Auxiliary.

8. FAIR EMPLOYMENT PRACTICES

In the performance of this agreement, Auxiliary shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sex, sexual orientation, marital status, pregnancy, age, physical or mental disability, medical condition, or veteran's status. Auxiliary shall adopt employment procedures consistent with the policy statement on nondiscrimination and affirmative action in employment adopted by State.

9. DISPOSITION OF ASSETS

Attached hereto as Attachment 1 is a copy of Auxiliary's ** (*Constitution or Articles of Incorporation*), which establishes that upon dissolution of Auxiliary, the net assets other than trust funds shall be distributed in accord with Section 42600, Title 5, California Code of Regulations. For the period covered by this agreement, Auxiliary agrees to maintain this provision as part of its (Constitution or Articles of Incorporation). In the event Auxiliary should change this provision to make other disposition of the net assets, this agreement shall terminate as of the date immediately preceding the date such change becomes effective, and all net assets shall become the property of State.

10. USE OF CAMPUS FACILITIES

Auxiliary may use those facilities identified for its use in this agreement. In addition to the facilities covered by this agreement, **** (campus name)** may permit Auxiliary to utilize other campus facilities. Permission shall be granted by the execution of a license agreement with ****(campus name)**. Such a license must be set forth in the format provided by State.

11. DISPOSITION OF NET EARNINGS

Auxiliary agrees to comply with Trustee's and ****(campus name)** policy on expenditure of funds, including but not limited to State guidelines for the disposition of revenues in excess of expenses and State policies on maintaining appropriate reserves.

12. INDEMNIFICATION

Auxiliary agrees to indemnify, defend, and save harmless the State, the Trustees of the California State University, Chancellor, and ****(campus name)**, their officers, agents and employees of each of them (all of which are hereinafter referred to as "State") from any and all loss, damage, or liability that may be suffered or incurred by State, caused by, arising out of, or in any way connected with the operation of Auxiliary as an auxiliary organization.

13. CHARGES FOR FACILITIES & SERVICES PROVIDED BY THE STATE

Auxiliary agrees to reimburse State for expenses incurred by State as the result of Auxiliary's activities under the terms of this agreement. Reimbursement shall include but not be limited to utility costs, custodial services, maintenance cost, and supplies and shall be computed on a simple but equitable basis and in accordance with the policies for reimbursement of costs as established by State. Auxiliary agrees to make reimbursement within 30 days from receipt of notice of such determination.

14. MAINTENANCE AND OPERATING EXPENSE

Auxiliary shall be responsible for the payment of organizational maintenance and operating expense during the term of this agreement.

(Campuses may add greater specificity if required)

15. INSURANCE

A. Auxiliary shall maintain in force during the term of this Agreement and all extensions thereof liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Auxiliary, its agents, representatives, employees or subcontractors.

B. Minimum Scope of Insurance Coverage shall be at least as broad as:

- 1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- 2) Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto).
- 3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- 4) "All Risk" Property Insurance with applicable limits for all property that the Campus has an insurable interest in.

C. Minimum Limits of Insurance

Auxiliary shall maintain limits no less than:

- 1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- 2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- 3) Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
- 4) Property Insurance: Full replacement of insured property.

D. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Campus. At the option of the Campus, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Campus, its trustees, officers, employees and volunteers; or the Auxiliary shall provide a financial guarantee satisfactory to the Campus guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- 1) The Campus, its trustees, officers, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Auxiliary; and with respect to

liability arising out of work or operations performed by or on behalf of the Auxiliary including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Auxiliary's insurance, or as a separate owner's policy.

2) For any claims related to a project, the Auxiliary's insurance coverage shall be primary insurance as respects the Campus, its trustees, officers, employees, and volunteers. Any insurance or self-insurance maintained by the Campus, its trustees, officers, employees, or volunteers shall be excess of the Auxiliary's insurance and shall not contribute with it.

3) All insurance required under this agreement shall contain an endorsement naming the State of California, the Trustees of the California State University, the (campus name), and the officers, agents and employees of each of them as additional insureds. It shall also contain requiring thirty (30) days written notice from the insurance company to both parties before cancellation or change in Coverage, scope or amount of any policy. Each policy, or a certificate of the policy, shall be deposited with the Campus within thirty (30) days after execution of this agreement and, on renewal of the policy, not less than thirty (30) days before the expiration of the term of the policy."

F. Acceptability of Insurers

Insurance is to be placed with insurers with a current AM. Best's rating of no less than A:VII.

G. Verification of Coverage

Auxiliary shall furnish the Campus with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the Campus or on other than the Campus' forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the Campus before work commences. The Campus reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

H. Subcontractors

Auxiliary shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

I. Insurance Payments to Trustees

Auxiliary is required to make payment to Trustees for Insurance provided in accordance with applicable Trustee bond resolution(s) issued on behalf of the Student Union Program.

16. CONFORMANCE WITH STATE LAW

During the term of this Agreement, Auxiliary shall operate the described premises in conformance with all applicable policies of State and of the campus which are currently in effect or which may be adopted hereafter. Further, Auxiliary agrees to operate as an auxiliary organization in good standing.

Violation of this section shall subject Auxiliary to termination of this lease unless the violation is corrected within 30 days of written notice from the Chancellor.

17. LEASE OF PREMISES

(Describe premises, including footage, or incorporate exhibit by reference.) Subject to:

- A. The use of the property for civil defense purposes or in the event of a State or national emergency.
- B. Unanticipated need of State to meet the demands of the educational objectives of the University. The right to the use of any property included in this lease shall cease upon written notice by the President to Auxiliary that the property is needed for the exclusive use of State.

18. USE OF PREMISES

- A. Auxiliary may occupy, operate, and use the leased property only in connection with the following functions and activities in accordance with the terms of this agreement:
 - 1) Operating and maintaining a student union facility for the students, faculty, staff, alumni, and guests of the campus.
 - 2) (Include other uses, if appropriate.)
- B. Auxiliary shall use the leased property only for functions and activities that are consistent with the guidelines and policies that have been or may hereafter be adopted by State.

19. CONSIDERATION

- A. Auxiliary shall operate as an auxiliary organization as set forth in this agreement.

B. Auxiliary shall manage and operate the student union facilities in accordance with the bond indenture, the policies of the Trustees of the California State University and ** (*campus name*), this agreement, and for the benefit of **(*campus name*).

20. APPLICATION OF STUDENT UNION FEES

A. Pursuant to either the Student Union Bond Resolution or the CSU Systemwide Revenue Bond program, retirement of the debt incurred by State for the construction of the student union is to come from a mandatory student union fee to be paid by all enrolled students. After required funds have been set aside for debt service and all reserves, Trustees agrees to make available to Auxiliary a portion of any remaining funds, as authorized by Education Code, Section 90076. State agrees to transfer such funds, if any, in the Student Union Net Revenue Fund account, in the following circumstances:

- 1) Auxiliary shall be entitled to a transfer of funds as required for operating purposes. The transfer for operating purposes will be based on needs as shown in the operating budget and approved by the campus and Office of the Chancellor, subject to the availability of such funds.
- 2) Additional transfers of revenue may be made for extraordinary expenses as requested by Auxiliary and approved by the Office of the Chancellor, subject to the availability of funds.

B. This Section shall be subject to and construed in conformity with the Resolution of the State adopted ** (*date*) authorizing the issuance of California State University Student Union Revenue Bonds attached as Exhibit A hereto and made a part of this agreement by reference thereto or the CSU Systemwide Revenue Bond Program, as applicable.

21. BUILDINGS, SIGNS, FIXTURES, AND EQUIPMENT

During the term of this Agreement, Auxiliary shall have the right to erect, place, and attach buildings, fixtures, signs, and equipment in and upon the leased property. Plans and working drawings for buildings to be placed on the leased land shall have prior approval of State. The number, size, and location of signs are subject to prior written approval of the campus president. Fixtures, signs, and equipment so erected, placed, or attached by the Auxiliary shall be and remain the property of the Auxiliary and may be removed there from by the Auxiliary prior to the termination of this lease.

22. ALTERATIONS

The leased premises shall not be altered or changed in any manner or respect without the written consent of the campus President, and changes that may be authorized shall be made under the direction of the president and at the expense of Auxiliary. Permanent alterations shall have prior approval of State.

23. RIGHT OF ENTRY

It is understood and agreed that at any time State and its agents shall have the right to enter the leased premises or any part thereof for the purpose of examination or supervision.

Care, maintenance, and repair of the leased property shall be provided as follows:

- A. Care and Maintenance: Auxiliary agrees to keep and maintain the leased property in a clean and orderly condition and shall at its own expense, at reasonably frequent intervals, and in a lawful manner dispose of all waste from the leased property.
- B. Repairs: Auxiliary agrees to keep the leased premises in good repair.

24. RESTORATION OF PREMISES

Upon termination of this lease, State shall have the option to require Auxiliary, at its own expense and risk, to restore the demised premises as nearly as possible to the condition existing prior to the execution of the lease, with the exception of normal wear and tear.

But, if Auxiliary shall fail to do so within 90 days after State's option, State may restore the property at the risk of the Auxiliary and all costs and expenses of such removal or restoration shall be paid by Auxiliary upon demand of State. State shall have the right to exercise this option within 30 days after the expiration of this lease, but not thereafter.

25. MORTGAGES

Auxiliary shall not have the right to subject this lease to any mortgage, trust deed, or other security device without the written consent of State.

26. POSSESSORY INTEREST

The insert the (** *appropriate county name*) County Assessor may value the possessory interest created by this lease, or any subleases. Under California Revenue and Taxation Code section 107, a property interest tax may be levied on that possessory interest. The lessee is obligated to pay this property tax, and failure to do so may be considered a material breach of the lease."

27. ASSIGNMENTS OR SUBLEASE

Auxiliary shall not assign or sublease any part of the premises covered by this lease without the written permission of State.

State agrees, however, that Auxiliary may sublease any portion of the premises with the approval of the campus President. Substantial deviation from State's policy and model sub-leases requires the approval of the **** (campus name)**.

Subleases may be written with terms in excess of this agreement: however, the continuation of the sublease past the term of this Agreement is contingent on this Agreement's renewal.

28. AMERICANS WITH DISABILITIES ACT (ADA) Rev. 9/03

Auxiliary assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, if that act is otherwise applicable. The ADA prohibits discrimination on the basis of disability. (42 U.S.C. 12101 et seq.)

29. NOTICES

All notices herein required to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid and addressed as herein provided.

Notice to Auxiliary shall be addressed as follows:

*** (Insert Organization Name & Address)*

Notice to the State shall be addressed to:

Trustees of the California State University
401 Golden Shore
Long Beach, California 90802
Attention: Contract Services & Procurement

Notice to the President shall be addressed as follows:

*** (Insert Campus Name & Address)*

