

**Office of the Chancellor
Pennsylvania State System of Higher Education
Procedures and Standards for University Operations**

**Procedure/Standard Number 2013-15
Relationships with Affiliated Entities**

Approved by: 
Chancellor

Date: December 1, 2014

History: [Board of Governors' Policy 1985-04-A: University External Financial Support](#), as amended October 11, 2012, requires the chancellor to establish procedures, standards and guidelines concerning the relationships between and among universities and their affiliated entities.

Revised: November 26, 2014

Additional History: Original on file dated June 14, 2013.

Related Policies, Procedures or Standards:

[Board of Governors' Policy 1985-04-A: University External Financial Support](#)
[Board of Governors' Policy 1986-02-A: Investment](#)
[Board of Governors' Policy 1997-03: Naming of State System of Higher Education Facilities](#)
[Board of Governors' Policy 2010-01-A: Expenditures of Public Funds](#)
[PASSHE Procedure/Standard Number 2011-07, Expenditure of Public Funds Guidelines, Standards, and Limits](#)
[PASSHE Procedure/Standard Number 2012-12, Fiduciary Agreements](#)

Additional References: Commonwealth of Pennsylvania Higher Education Modernization Act (HEMA), 24 P.S. §§ 2511.101 et seq.; State Public Official and Employee Ethics Act (Ethics Act) at 65 Pa. C.S. §§ 1101 et seq.

I. Introduction

Board of Governors' Policy 1985-04-A: *University External Financial Support* provides the basis for the Pennsylvania State System of Higher Education (PASSHE) to affiliate with private organizations that exist solely for the benefit of the university, including but not limited to foundations, alumni associations and student associations. It also provides for universities to enter into fiduciary agreements, upon the chancellor's approval, with any qualified affiliated entity to administer university gifts and grants and/or manage the investment of certain limited long-term funds, in accordance with Board of Governors' Policy 1986-02-A: *Investment*. PASSHE Procedure/Standard Number 2011-07, *Expenditure of Public Funds Guidelines, Standards and Limits*, outlines some of the rules by which universities and affiliated entities interrelate. Legal guidance on these relationships also has been provided to universities periodically. This document provides the parameters within which universities must manage relationships with affiliated entities.

II. Definitions

Affiliated Entity: A private organization (typically classified as a 501(c)(3) nonprofit organization for federal tax purposes) that exists solely for the benefit of the university, including but not limited to foundations, alumni associations and student associations. To be affiliated, the organization must: (1) be recognized as an affiliate through a council of trustees' resolution; (2) make financial contributions to the university or provide similar benefits on a regular basis, satisfactory to the president and council of trustees; and, (3) provide an annual external audit report to the university on a timely basis.

Fiduciary: A party that accepts the custody or responsibility of caring for the property of another party for the benefit of that party.

Fiduciary Agreement: A contract between two parties whereby one party (the principal or the "fiduciant") assigns the other party (the "fiduciary") the management or administration of certain assets owned by the fiduciant.

Long-Term Investment Funds or Long-Term Funds: Those funds that comprise the endowment, quasi-endowment and life-income groups, as defined by the National Association of College and University Business Officers (NACUBO); further, this shall mean those funds that are not current in nature, i.e., the principal of which is not needed to finance current operations. For the purpose of this standard, long-term funds are defined as the principal amount of gift assets, including both unrestricted and restricted true or quasi endowments given directly to the university that originate only from external sources; and/or net resources from public/private partnerships.

Memorandum of Understanding (MOU): A written, legal document that defines the mutually beneficial relationship between the university and its affiliate, specifying the responsibilities and expectations of each regarding services, staffing, facilities usage, financial and nonfinancial obligations, etc. All MOUs are subject to form and legality review by the Office of Chief Counsel, pursuant to the Commonwealth Attorneys Act.

PASSHE Entity: A university of the Pennsylvania State System of Higher Education or the Office of the Chancellor.

Public Funds: All monies received by a PASSHE entity are public funds, including but not limited to state appropriations; tuition, room, board and other student fees; restricted and unrestricted gifts and gifts-in-kind; restricted and unrestricted grants; ticket sales from athletic, cultural or other events; revenue from athletic camps and conferences; corporate sponsorships; and investment income.

Public/Private Partnerships: Joint endeavors between a university and a third party that are intended to result in financial contributions to the university or provide similar benefits for the university. The partnerships must be defined in an MOU, contract for services or other written agreement that has the requisite legal

approval. Examples include but are not limited to student housing agreements with affiliated entities and corporate sponsorships.

III. Universities shall develop sources of independent support at levels sufficient to enhance the university through external fundraising. The development of independent support may be conducted by the university and/or through affiliated entities.

- A. Under the provisions of the Higher Education Modernization Act (HEMA), universities may coordinate and jointly engage in fundraising activities with an affiliated entity in order to raise nonpublic monies for the affiliated entity so long as the monies are used to directly benefit the university or PASSHE.
- B. Organizations are affiliated with the university through action by the council of trustees. Affiliated entities must make financial contributions to the university on a regular basis, in accordance with the goals and expectations of the university, which typically may be set forth in an MOU or other agreement with the affiliated entity. An affiliated entity may be disaffiliated by university action, as set forth in section V.A.(3) of this document.
- C. While HEMA authorizes the universities to jointly raise nonpublic monies for affiliated entities, it does not mandate such activity be undertaken by the university, and the establishment of such joint fundraising relationships is at the discretion of the president, based on what he or she believes is in the best interest of the institution. If a joint fundraising activity is undertaken, the university may request that contributions be directed to the affiliated entity. However, expressed donor intent will control whether funds are titled to the affiliated entity or the university. HEMA specifies that if a university conducts fundraising on behalf of affiliated entities, the fundraising must be conducted jointly or via coordinated actions; thus, fundraising for affiliated entities shall not be conducted solely through the efforts or resources of the university and university employees.
- D. When a university engages in joint fundraising, its efforts must be conducted within the procedures outlined in this document, all applicable statutes and all applicable Board of Governors' policies.

IV. Presidents must ensure proper delineation between university and affiliated entities' roles, responsibilities, funds, personnel and services.

- A. Under the provisions of HEMA, PASSHE employees or officers may voluntarily provide services, which may include fundraising, to an affiliated entity as an ex-officio, nonvoting member of the board of such affiliated entity as part of the mission of the university. PASSHE employees or officers may also engage in coordinated fundraising for an affiliated entity under HEMA.

- B. Funds given to the university are titled to the university and are public funds. As such all university funds must be managed in adherence to PASSHE Procedure/Standard Number 2011-07, *Expenditure of Public Funds Guidelines, Standards and Limits*. Funds titled to an affiliated entity are not public funds.
- C. A university cannot transfer title of its funds to a third party, including an affiliated entity, unless there is specific statutory authority. In limited circumstances, an affiliated entity may be given custody of certain university funds for administration or investment management purposes through a fiduciary agreement. (See Section V.B.) If university monies are deposited with an affiliated entity, the title to the monies remains with the university and the funds either must be transferred to the university or the administration of the funds must be addressed through an MOU and fiduciary agreement.
- D. If university financial and/or nonfinancial resources are used to raise funds outside of joint fundraising activities, the net proceeds derived from such expenditures (gifts, gifts-in-kind, net revenue, etc.) must be titled to the university. For example, if a university conducts a conference (including athletic camps and conferences), provides training or sponsors a show or similar event, then the net proceeds from such activities are university monies, must be treated as such and cannot be given to third parties, including affiliated entities.
- E. If a university receives funds as a result of joint fundraising activities with an affiliated entity, as specified in HEMA, the funds are titled to the university and are public funds. If an affiliated entity receives funds as a result of joint fundraising activities with a university, the funds are titled to the affiliated entity and are not public funds.

In limited circumstances, an agreement between an affiliated entity and a university may require the university to provide services to the affiliate, such as fee collections. Funds collected by the university on behalf of the affiliate, as specified in the agreement, may be titled to the affiliated entity. The agreement must provide for remuneration to the university for services provided.

- F. In the specific circumstances in which funds are received in return for naming rights of university assets, including but not limited to facilities space, then the proceeds will be titled to the university, based upon the actions of the council of trustees, compliance with university policy, and restrictions associated with the gift.
 - 1. If the gift requires a corresponding direct expenditure by the university, then the funds must be titled to the university. For example, if funds are raised to support a university facility project for which the university will incur the capital project costs, then the funds must be titled to the university.

2. If the council of trustees is recognizing services and philanthropy towards the university, the trustees can authorize naming of university assets in response to such activity even if the university does not directly receive the philanthropic gifts.
- G. Universities may pay an affiliated entity only for services actually rendered; payment for such services cannot exceed reasonable and customary rates. Payment by the university to an affiliated entity for services must be authorized through an agreement for services, or other approved written agreement that has the requisite legal approval. When the unique nature of the university/affiliate relationship is integral to the services provided, the affiliate may be justified as a sole source.
 - H. Universities cannot provide services to a third party, including an affiliated entity, without receiving consideration for such services. Universities cannot pay for services provided to a third party or affiliated entity. Universities may not loan money to any individual or entity, including affiliated entities.
 - I. Affiliated entities shall not undertake credit-bearing instruction. Affiliated entities may offer other programs or activities associated with the university's academic mission, only if expressly authorized by the university president.
 - J. An affiliated entity may enter into transactions or agreements on behalf of itself, but such agreements shall not be the responsibility of the university or System. Similarly, neither the university nor PASSHE shall be responsible for the payment of any debts or satisfaction of any obligations incurred by an affiliated entity.
 - K. University officials and employees are bound by the provisions of the Ethics Act. Except as otherwise permitted by HEMA (and defined in this document), the Ethics Act prohibits the use of Commonwealth resources, including personnel, supplies and equipment, for the pecuniary benefit of affiliated entities. In addition, the Ethics Act prohibits university officials from serving in other than an ex-officio capacity (as a nonvoting board member) with affiliated entities or comingling duties between the official Commonwealth position and a position with an affiliated entity.

V. Universities must have an approved MOU with each affiliated entity.

- A. The relationship between a university and its affiliated entity(s) must be documented in a written, executed MOU, which must have signatures from all required parties.
 1. The MOU must address the roles, responsibilities and financial obligations of each party, as well as outline the nature of joint fundraising expectations.

2. The term of the MOU may be for up to five years. If less than five years, the term may be renewable for up to five years.
 3. In most circumstances, the MOU must provide the university the right to revoke the agreement immediately for cause with a 30-day transition period; or for convenience with a six-month transition period. Other agreements may require longer revocation clauses, such as those involving housing or other facilities, based on reasonable operating procedures.
- B. If the affiliate is given responsibility for the administration of university gifts, university gifts-in-kind and/or university grant funds, or management of the investment of certain limited long-term university funds, that responsibility must be outlined in the MOU and governed by a separate, written fiduciary agreement. (See PASSHE Procedure/Standard Number 2012-12, *Fiduciary Agreement*, for guidance on fiduciary agreements.)
1. Gifts and/or grants, including sponsored research grants and contracts, that are assigned to or administered by an affiliate on behalf of the university must be governed by an MOU that delineates the responsibilities of each party and the relationship between the parties regarding the administration of the funds. When gifts or grants are provided by a governmental or other external entity, their administration must be performed in compliance with all applicable contractual, accounting, regulatory requirements and restrictions specified by the external party and applicable to such gifts or grants. Frequently, these agreements are specified as terms and conditions of the external funding agent.
- Gifts and/or grants received directly by an affiliated entity, not through the university, pursuant to its own agreements are not public funds and do not require an administration agreement.
2. If university funds are assigned to an affiliated entity under the limited conditions described above, the MOU shall specify all of the duties of the affiliate in administering the grants/gifts or investing long-term funds. The affiliate will administer the funds in accordance with the authority and responsibility vested within the agreement. However, title to the funds remains with the university; as such, control over the expenditure of the funds rests with the university president or his/her designee.
- C. If certain services are to be exchanged between the university and an affiliated entity, additional legal documents may be required, such as management agreements, lease agreements, facilities use agreements and agreements for services. Universities should work with their respective legal counsel to ensure all required documentation has been completed.
- D. All agreements between universities and affiliated entities are subject to the form and legality review provisions of the Commonwealth Attorneys Act and, as such, require the proper approval by chief counsel, the Office of Attorney

General and the Office of General Counsel, where applicable, in addition to approval by the university and the affiliate.

- E. MOUs and fiduciary agreements must satisfy the requirements set forth in Board of Governors' Policy 1985-04-A: *University External Financial Support*, and all other related statutes, policies, procedures, standards and guidelines.
- F. MOUs are to be substantially consistent with the Sample MOU with Affiliated entities, as provided in Appendix 1.

VI. Universities annually certify that all relationships with affiliated entities are fully and appropriately authorized, as required by Board of Governors' Policy 1985-04-A: *University External Financial Support*.

- A. Annually, by January 30, each university shall provide the following documents to chief counsel.
 - 1. Council of trustees' resolution certifying compliance of all affiliated entities. Each council of trustees is required to recertify annually all affiliated entities. This can be done in one resolution; a sample resolution is provided in Appendix 2.
 - 2. All current MOUs with affiliates.
 - 3. All current fiduciary agreements with affiliates.
 - 4. New or revised articles of incorporation and bylaws for all affiliates.
 - 5. List of board of directors and executive employees of all affiliated entities.
- B. Also annually, by January 30, the university's chief financial officer will provide chief counsel and the vice chancellor for administration and finance a summary of the prior fiscal year's direct university support provided to the affiliated entities and the contributions, financial and nonfinancial, made by the affiliated entities to the university. The same shall be reported annually to the council of trustees.
- C. Annually, by March 1, chief counsel will provide copies of all MOUs and fiduciary agreements to the vice chancellor for administration and finance.
- D. All affiliated entities must comply with the annual external audit and reporting requirements specified in Board of Governors' Policy 1985-04-A: *University External Financial Support*. Copies of affiliate audit reports must be submitted to the university fiscal vice president and to the vice chancellor for administration and finance at the Office of the Chancellor on or before the predetermined date necessary to meet the Commonwealth's reporting timeline. As part of the fiscal year-end financial reporting process, the vice chancellor for administration and finance will notify the universities and affiliated entities of the deadline (typically in mid-August) for submission of the PASSHE component unit financial reporting template, comprising the audited Balance Sheet and audited Statement of Activities. The complete audited

financial statements, comprising the auditor's opinion, financial statements, and required disclosures are typically due in early September.

VII. Implementation

Universities shall review relationships with all affiliated entities and, as necessary, provide revised agreements and annual documentation to ensure compliance within six months of the approval date of this document. The Office of the Chancellor will conduct biennial training sessions.

APPENDIX 1
Pennsylvania State System of Higher Education

Sample Memorandum of Understanding
Between
_____ **University of Pennsylvania**
and
[Affiliated Entity]

[Items in red text present examples that may be appropriate depending upon the purpose of each MOU.]

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into this ____day of _____, 20__, by and between _____UNIVERSITY OF PENNSYLVANIA, part of the Pennsylvania State System of Higher Education (PASSHE), a body corporate and politic constituting a public corporation and government instrumentality of the Commonwealth of Pennsylvania, created by Act 188 of 1982, 24 P.S. §20-2001-A et seq., hereinafter referred to as "UNIVERSITY" and [name of affiliated entity], hereinafter referred to as "[AFFILIATED ENTITY]" a [description of type of entity, e.g., nonprofit tax-exempt entity organized under the laws of the Commonwealth of Pennsylvania and Section 501(c)(3) of the Internal Revenue Code of 1986, as amended].

WITNESSETH:

WHEREAS, [background on the AFFILIATED ENTITY, including the year of formation and relationship with the UNIVERSITY]; and

WHEREAS, the purpose of the AFFILIATED ENTITY, as stated in its _____, is

[insert relevant language from articles of incorporation, charter, or other document];

WHEREAS, PASSHE Board of Governors' Policy 1985-04-A: *University External Financial Support*, stipulates that the UNIVERSITY must utilize an MOU to outline the respective roles between universities and affiliated entities.

NOW, THEREFORE, based upon the mutual promises, covenants and conditions set forth herein and intending to be legally bound, the UNIVERSITY and the AFFILIATED ENTITY agree as follows.

A. In terms of role, scope and mission, some of the major contributions of the AFFILIATED ENTITY to the UNIVERSITY have been and will continue to be:

[Below is a sample list of roles that may apply to various relationships with affiliated entities to serve as examples.]

1. HOUSING: Conducting activities associated with acquiring, constructing or otherwise providing buildings, grounds or other suitable facilities, improvements or equipment for the UNIVERSITY.
2. STUDENT PROGRAMS: Managing and coordinating selected student programs and services of the UNIVERSITY and the officially recognized student government association as set forth in Section 20-2010-A(3) of Act 188 of 1982, 24 P.S. Section 20-2010-A(3).
3. STUDENT FEES: Administering all monies received as fees and revenues subject to the provisions set forth in Section 20-2010-A(6) of Act 188 of 1982, 24 P.S. Section 20-2010-A(6), and Board of Governors' Policy 1983-03-A: *Student Activity Fees*.
4. BOOKSTORE: Managing the UNIVERSITY's bookstore, commercially known as [insert name], which is located in [insert location].
5. ALUMNI: Carrying out resource development activities related to alumni and other prospective donors.
6. FUNDRAISING: Serving as the repository for private financial support given directly to the AFFILIATED ENTITY in order to support the mission of the UNIVERSITY.
7. FUNDRAISING: Serving as the coordinating organization for restricted and unrestricted fundraising.
8. FUNDRAISING: Providing fundraising and development services that promote the educational purposes of the UNIVERSITY, such as the purchase of equipment and supplies for the UNIVERSITY; support for travel and in the hiring of faculty; support of research by selected faculty, staff and students; support for funding faculty chairs, student scholarships and other educational, research, cultural, scientific, public service and charitable activities; and other lawful purposes of the UNIVERSITY.
9. JOINT FUNDRAISING: In accordance with applicable statutes and Board of Governors' policies and procedures/standards, engaging either jointly or in coordination with the UNIVERSITY fundraising activities to benefit the AFFILIATED ENTITY. Such fundraising shall not be done solely through the efforts and resources of the UNIVERSITY and UNIVERSITY employees.
10. CAPITAL CAMPAIGN: Conducting a capital campaign to raise external funds to support the mission and activities of the UNIVERSITY, with the use of campaign proceeds and the campaign fundraising target to be determined by the UNIVERSITY, subject to provisions agreed to by the UNIVERSITY and AFFILIATED ENTITY in a separate agreement.
11. FISCAL MANAGEMENT: Serving as the managing organization for private funds given directly to the UNIVERSITY (e.g., fund management, investments and interest earnings), with such management activity to be under the terms of a properly

executed Fiduciary Agreement and in accordance with all applicable contractual, accounting and regulatory requirements, and restrictions specified by the external party and applicable to such gifts. Title to such gifts shall remain with the UNIVERSITY, and control over the expenditure of the funds shall rest with the UNIVERSITY president or his/her designee.

12. FISCAL MANAGEMENT: Serving as the managing organization for UNIVERSITY funds; these funds must be titled to the UNIVERSITY and are public funds. As such, all UNIVERSITY funds must be managed in adherence to PASSHE Procedure/Standard Number 2011-07: *Expenditure of Public Funds Guidelines, Standards, and Limits*.
 13. GRANT MANAGEMENT: Serving as the managing organization for grants made to the UNIVERSITY; with such management activity to be under the terms of a properly executed Fiduciary Agreement and in accordance with all applicable contractual, accounting and regulatory requirements, and restrictions specified by the external party and applicable to such grants.
 14. REPOSITORY FOR DONATIONS: Acting as the recipient organization for the donation of properties to the UNIVERSITY when appropriate.
 15. CAMPS AND CONFERENCES: Supporting the UNIVERSITY's summer camps program, including administrative and accounting services.
 16. FUNDING: Reviewing funding requests and recommendations from the UNIVERSITY president and making regular allocations of available unrestricted funds to support UNIVERSITY programs and institutional advancement efforts. These activities shall be conducted by the Board of Directors of the AFFILIATED ENTITY.
 17. Conducting activities to promote the educational purposes of the UNIVERSITY.
 18. Conducting activities in accordance with the AFFILIATED ENTITY's charter and by-laws.
- B. In order to assist the AFFILIATED ENTITY in serving as a vehicle for volunteer involvement in the life of the UNIVERSITY, the following coordination and review mechanisms will be implemented.
1. The UNIVERSITY may, if desired, have a nonvoting liaison to the AFFILIATED ENTITY's Board of Directors.
 2. In addition to the functions previously outlined, the AFFILIATED ENTITY may operate programs and serve in matters of [development, planned deferred giving, gift processing and recording, gift stewardship, donor/development records and other fundraising function] as appropriate, in consultation with the UNIVERSITY's president.

3. The UNIVERSITY's president or designee may serve as a liaison to the governing board and/or committees of AFFILIATED ENTITY. [If no services are provided pursuant to section C below, UNIVERSITY employees or officers may voluntarily provide services to an affiliated entity as an ex-officio, nonvoting member of the board of such affiliated entity as part of the mission of the university.]

4. To ensure that efficient coordination is maintained, the UNIVERSITY and the AFFILIATED ENTITY will consult on matters pertaining to [the activities outlined in this MOU, development activities, etc.]. To ensure proper coordination is maintained, the UNIVERSITY president or designee will meet periodically with a designee of the AFFILIATED ENTITY.

C. In compliance with PASSHE Board of Governors' Policy 1985-04-A regarding fundraising and affiliated entities, it is the UNIVERSITY's desire to enhance the ability of the AFFILIATED ENTITY to function by providing to the AFFILIATED ENTITY certain staff, facilities and services as described below, at a cost to be agreed to by the parties in separate agreements, such as service purchase agreements, in accordance with applicable procurement law and regulations and requisite legal approval.

[Below is a sample list to serve as examples of what may be incorporated in an MOU with an affiliated entity.]

1. Clerical assistance to include typing, filing, administrative and other clerical functions. Communication services to include telecommunications, postage, printing, public relations and similar services.

2. Facilities to include, but not be limited to, office space, utilities, maintenance and other UNIVERSITY physical facilities for conducting AFFILIATED ENTITY functions and activities.

3. Operational services to include purchasing services, network connectivity, ongoing maintenance and support of computer systems, mail and delivery services and maintenance agreements to which the UNIVERSITY is party.

D. No UNIVERSITY employee who provides support or staff services to the AFFILIATED ENTITY may serve as a voting member of the board of the AFFILIATED ENTITY, or otherwise risk adverse interest through such service. UNIVERSITY officials and employees are bound by the provisions of the Ethics Act.

E. The parties to this MOU agree and acknowledge that the name "[UNIVERSITY]" or any facsimile or approximation thereof is the property of the UNIVERSITY and shall remain so under all circumstances and conditions. The AFFILIATED ENTITY shall not use or permit any other party to use the name "[UNIVERSITY]" or any facsimile or approximation thereof without the express prior written approval of the UNIVERSITY and the chancellor of PASSHE.

[Below is an example of what may be incorporated in an MOU with an affiliated entity.]

1. The UNIVERSITY provides authorization for the AFFILIATED ENTITY to enter into licensing agreements or similar arrangements to generate royalty revenues or other agreed-upon benefits from the use of the UNIVERSITY name and logo.
- F. The UNIVERSITY's council of trustees will review this MOU annually, in conjunction with its certification of External University Financial Support.
- G. As part of this MOU, the AFFILIATED ENTITY agrees to comply with the following requirements.
1. The AFFILIATED ENTITY shall be responsible for and agrees to indemnify and hold harmless the UNIVERSITY, PASSHE and the Commonwealth and its officers, employees, representatives and agents, from any and all liability, claims, demands and actions based upon and arising out of any activities performed by the AFFILIATED ENTITY under this MOU. Upon receipt of written notice of any matter for which indemnification might be claimed by the UNIVERSITY or its officers, employees, representatives and agents, the AFFILIATED ENTITY shall promptly defend, contest or otherwise protect against any such suit, action, investigation, claim or proceeding, at its own cost and expense. The UNIVERSITY may, but will not be obligated to, participate at its own expense in the proceeding, with counsel of its own choosing. Representation of the UNIVERSITY shall be in compliance with the *Commonwealth Attorneys Act*.
 2. The AFFILIATED ENTITY will carry Comprehensive, Commercial/General Liability, Property Damage Insurance and Automobile Liability Insurance in such amounts that meet the prescribed minimums of [INSERT RELEVANT LIMITS, e.g., \$1,000,000 for injury or death of one person in a single occurrence, \$3,000,000 for injury or death of more than one person in a single occurrence and \$500,000 for a single occurrence of property damage. The UNIVERSITY must be listed as "additionally insured." This must all appear in the description of operational/locations/vehicles/special items section at the bottom of the Certificate of Insurance. "Additionally Insured Endorsements" must also be provided along with the Certificates of Insurance. It must be stated on the Certificate of Insurance Form that the issuing company must notify the UNIVERSITY in writing (a minimum of thirty (30) days in advance) if the insurance coverage is canceled or the indicated coverage limits are reduced prior to the expiration date].
 3. The AFFILIATED ENTITY will carry sufficient Workers' Compensation Insurance to cover all employees of its organization.
 4. A designee of the AFFILIATED ENTITY shall meet with the UNIVERSITY council of trustees' designee and UNIVERSITY president on at least an annual basis to review the performance of the AFFILIATED ENTITY's obligations under this MOU.

5. The AFFILIATED ENTITY will provide the UNIVERSITY with an annual report summarizing the contributions and include the following items.

- a. A reconciliation of the AFFILIATED ENTITY's revenues, expenses and financial contributions made by the AFFILIATED ENTITY to the UNIVERSITY.
- b. An annual external financial audit performed by PASSHE's independent auditing firm or another independent external certified public accounting firm that meets minimum criteria established by the UNIVERSITY. As part of the fiscal year-end financial reporting process, the vice chancellor for administration and finance will notify the UNIVERSITY and the AFFILIATED ENTITY of the deadlines for submission of the PASSHE component unit financial reporting template (typically in mid-August), comprising the audited Balance Sheet and audited Statement of Activities; and the complete audited financial statements (typically in early September), comprising the auditor's opinion, financial statements, and required disclosures.

[Alternative: The UNIVERSITY makes a determination that the AFFILIATED ENTITY is not a component unit of the UNIVERSITY under Governmental Accounting Standards Board (GASB) Statement No. 14, The Financial Reporting Entity, as amended by GASB Statement No. 39. This determination must be approved by the vice chancellor for administration and finance.]

- c. Certificates of Liability Insurance and Workers' Compensation Insurance.
- d. A listing of the board of directors including indication of the officers.
- e. Certification that the AFFILIATED ENTITY did not undertake any credit-bearing instruction; or other programs or activities that are properly part of the UNIVERSITY's academic mission, unless expressly authorized by the university president.

H. The UNIVERSITY has the right to terminate this MOU as follows:

- a. TERMINATION FOR CAUSE: The UNIVERSITY shall have the right to terminate the MOU for cause, including but not limited to malfeasance. Such termination for cause shall be effective 30 days from the date notice is provided in writing to the AFFILIATED ENTITY.
- b. TERMINATION FOR CONVENIENCE: The UNIVERSITY shall have the right to terminate the MOU for its convenience if the UNIVERSITY determines termination to be in its best interest. Such termination for convenience shall be effective within six months from the date notice is provided in writing to the AFFILIATED ENTITY.

I. This MOU documents the relationship between the UNIVERSITY and the AFFILIATED ENTITY and represents the complete agreement between the parties, superseding any other prior or contemporaneous written or oral agreements. Any changes,

corrections or additions to this MOU shall be in writing in the form of a supplemental agreement signed by all necessary parties, including approval by PASSHE's University Legal Counsel and the Commonwealth's Office of Attorney General.

- J. The parties to this MOU are independent contractors. The AFFILIATED ENTITY shall not enter into any transactions or agreements on behalf of the UNIVERISTY or PASSHE. Similarly, neither the UNIVERISTY nor PASSHE shall be responsible for the payment of any debts or satisfaction of any obligations incurred by the AFFILIATED ENTITY.
- K. Any notice required to be given hereunder shall be made by United States Registered Mail, return receipt requested, postage prepaid, and shall be deemed to have been received on the date noted on the receipt returned to sender. Such notice shall be addressed as follows.

UNIVERSITY: [insert address]

AFFILIATED ENTITY: [insert address]

- L. This MOU is executed pursuant to, and shall be construed under, the laws of the Commonwealth of Pennsylvania. Should any term of this MOU be rendered unlawful by a court of competent jurisdiction or any legislative act, then the parties shall give effect to the balance of the agreement to the extent possible.
- M. This MOU will commence on ____, 20__, and will expire on ____, and is subject to renewal for successive terms, subject to mutual agreement of the parties with the same formalities as required to execute this Memorandum. [Original and successive terms are not to exceed a combined period of five years.]

IN WITNESS WHEREOF, this MOU has been executed and delivered as of the date set forth in the caption above.

FOR THE [AFFILIATED ENTITY]:

President/Vice President of Affiliated Entity (*circle title*)

Printed Name

Secretary/Treasurer of Affiliated Entity (*circle title*)

Printed Name

FOR THE UNIVERSITY:

President or Designee

Printed Name

**APPROVED FOR FISCAL RESPONSIBILITY
AND AVAILABILITY OF FUNDS:**

Controller

APPROVED FOR FORM AND LEGALITY:

University Legal Counsel

Deputy Attorney General

APPENDIX 2
Pennsylvania State System of Higher Education

**Sample Council of Trustees Resolution
for Annual Certification of Compliance
with Board of Governors' Policy 1985-04-A: *University External Financial Support***

**Resolution of _____ University of Pennsylvania
Certification of Compliance with Board of Governors' Policy 1985-04-A:
*University External Financial Support***

The Council of Trustees of _____ University of Pennsylvania, upon recommendation of the president, hereby certifies, as per Board of Governors' Policy 1985-04-A, that the following affiliated entities make a financial contribution to the University or provide similar benefits on a regular basis, satisfactory to this Council of Trustees and to the president.

[LIST ALL AFFILIATED ENTITIES.]

The Council of Trustees also certifies that, to the best of its knowledge, information and belief, the affiliated entities are in compliance with Board of Governors' Policy 1985-04-A in that they exist solely for the benefit of the University; the expectations of the relationship between the University and the affiliated entity are memorialized in current, executed Memoranda of Understanding; and the affiliated entities require an annual external audit of their funds and provide copies of their audit reports to the University and the Office of the Chancellor.

The Council of Trustees also certifies that, to the best of its knowledge, information and belief, no University employee serves as a voting member of the Board of these affiliated entities, nor does any employee of the University risk adverse interest through service to or relationship with an affiliated entity.

A copy of a statement by the University's chief financial officer summarizing both the direct University support provided to the affiliated entities and the contributions made by the affiliated entities to the University covered in this certification is attached hereto and made a part hereof.

As approved by action of the Council of Trustees during the quarterly meeting held on [INSERT DATE], at _____, Pennsylvania.

**Chairperson
Council of Trustees**

**Secretary
Council of Trustees**