OFFICE OF GENERAL COUNSEL MEMORANDUM

CONSIDERATIONS IN LEASING OR LICENSING UNIVERSITY FACILITIES FOR NON-UNIVERSITY (THIRD PARTY) USE

As a general matter, facilities owned by the University are available to be used by University departments or groups for activities related to the University’s educational purposes, subject only to internal University-imposed guidelines and schedules. However, when a third party, including an individual, a business entity or another tax-exempt organization (an “Outside User”) seeks to use a University facility for a private event such as a corporate function, conference or wedding (“Outside Use”), whether for a fair-market fee, a below-market fee or no fee at all, there are complex issues that must be considered before permitting such Outside Use. This memorandum is intended to provide only a general overview of the issues that are involved in analyzing Outside Use of the University’s facilities in order to highlight the importance of having such use pre-approved, monitored and carefully tracked on an annual basis to avoid the negative consequences that can result from Outside Use. A more comprehensive set of guidelines related to the use of the University’s facilities is expected to be published in the near future.

As a tax-exempt entity, the University receives a number of favorable tax treatments with respect to activities related to the University’s educational and charitable purposes and in some other limited situations. It is imperative that Outside Users and Outside Use be analyzed to avoid or minimize jeopardizing or diminishing the benefits afforded by such status and to allow for tracking non-exempt use for government reporting purposes. In order to assess whether the Outside Use is permissible and/or advisable, we need to consider the type of Outside User and the type of use intended to be conducted in the University facility by the Outside User. For example, is the proposed Outside User a for-profit entity, a tax-exempt entity or a private person. Is the Outside User’s proposed use related to the University’s educational mission and, if the Outside User is a tax-exempt entity, is the proposed use related to the Outside User’s exempt purpose or is it an unrelated use. Is the “user fee” a fair market value fee. Does the “user fee” reflect the University’s “costs”
associated with the facility proposed to be used. The answers to these matters may be critical in determining whether there are potential tax ramifications associated with the Outside Use.

The categories of legal issues and considerations that are involved in analyzing Outside Use of University facilities include the following:

- Can the use jeopardize the University’s federal tax exemption, as, for example, can be the case with:
  - electioneering activities by candidates for public office;
  - use by for-profit businesses and individuals that does not involve arm's length terms (such as charging below-market use fees); and
  - use that may be deemed to be conferring a private benefit or investment of institutional assets.

- Can the use jeopardize all or a portion of the University's real estate tax exemption for the particular facility (which requires considering the proposed unrelated use in light of other Outside Uses that may be occurring in the facility during the year).

- Can the use cause the University to exceed the permissible level of private business use allowed when a particular facility is financed with tax-exempt bonds (again, which requires considering the proposed use in light of other private business use that may be occurring in the facility during the year).

- Does the use comply with applicable zoning laws.

- Are there insurance or risk issues associated with the proposed use (e.g., will alcohol be served and is the appropriate insurance in place. Does the use require an increased level of security).

- If the University facility is a “leased” facility and not an “owned” facility, does the lease permit other users and/or the proposed use.

In addition, there also are business, operational and reputational issues to consider when reviewing the proposed Outside Use. For example, can the specific use damage the University’s reputation or does it interfere with University use.

In order to facilitate the thorough and timely review of a proposed Outside Use, both the Outside User and the Outside Use must be vetted by the relevant University departments including the Finance Department and the Office of General Counsel. Any party requesting a proposed Outside Use should be prepared to provide the information set forth on the attached form to the Office of General Counsel for review.
of the advisability of the Outside Use. The Office of General Counsel, along with the Finance Department, can provide you with more detailed facts and explanation as to how each of these issues may affect the proposed Outside Use and we would welcome your contacting us in connection with any Outside Use application you may be completing.

**Further Resources**

If you have legal questions about leasing University facilities for third party use, you can find a member of the Office of General Counsel who practices in this area by visiting our [practice areas page](#) and scrolling to “Real Estate”.
Third Party Use Information Sheet

1. Name and address of applicant: ____________________________________

2. Type of applicant: _____ For profit corporation _____ 501(c)(3) organization
   _____ Other not-for-profit organization: Type: __________
   _____ Individual    _____ State or local government
   _____ Other: ________________________________

3. Is the applicant a foreign entity, government or individual: _____Yes _____No
   If yes, please describe: ___________________________________________

4. If applicant is a Section 501(c)(3) organization, please describe applicant’s
   mission/exempt purpose:
   _________________________________________________________________
   _________________________________________________________________
   _________________________________________________________________
   _________________________________________________________________

5. Proposed use of NYU facility: _________________________________
   _________________________________________________________________
   _________________________________________________________________
   _________________________________________________________________
   _________________________________________________________________

6. Is there an NYU sponsor for the proposed event: _____Yes _____No
   If yes, identify the NYU sponsor: _________________________________

7. Is the event sponsored by, held in conjunction with or part of other educational
   activities conducted by NYU: _____Yes _____No
   If yes, describe: _________________________________________________
   _________________________________________________________________
   _________________________________________________________________
   _________________________________________________________________

8. Is the proposed use related to NYU’s educational purposes: _____Yes _____No
   If yes, describe:
   _________________________________________________________________
   _________________________________________________________________
   _________________________________________________________________

9. Name and address of NYU facility: _________________________________

10. Space within NYU facility: _________________________________
11. Date(s), time of proposed use of NYU facility: _________________________
12. Amount to be paid by applicant for use of NYU facility: ___________________
13. Expected number of attendees: ____________________________________
14. Load-In Required: ____Yes ____No
15. Catering: ____Yes ____No.
   If yes, is the caterer other than NYU: ____Yes ____No
   If yes, name of caterer: ___________________________________________
16. Will alcohol be served at this event: ____Yes ____No
17. List all other vendors that will be providing services or equipment at the event
   and type of service to be provided by such vendor and whether vendor is
   external or NYU.
   ________________________________________________________________
   ________________________________________________________________
   ________________________________________________________________
18. Describe non-space related requirements (e.g., video, media, ticketing
    services):
   ________________________________________________________________
   ________________________________________________________________
   ________________________________________________________________
19. Has the applicant previously used any NYU facility during this calendar year:
    ____Yes ____No
    If yes, please list dates of prior uses and indicate NYU facility used (attach
    additional sheets if necessary):
    ________________________________________________________________
    ________________________________________________________________
    ________________________________________________________________