COST SHARING AGREEMENT

THIS COST SHARING AGREEMENT (this “Agreement”) is entered into by and between the following parties, and is effective as of the date on which all three entities have executed the Agreement (the “Effective Date”):

1) American Association of University Professors (“AAUP”), a non-profit professional association, incorporated under Delaware law, and which has its principal place of business located at 1133 Nineteenth Street, NW, Suite 200, Washington, D.C. 20036;

2) American Association of University Professors Collective Bargaining Congress (“AAUP-CBC”), an unincorporated, non-profit labor organization, organized in the District of Columbia, and which has its principal place of business at 1133 Nineteenth Street, NW, Suite 200, Washington, D.C. 20036; and

3) AAUP Foundation (“AAUP Foundation”), a Delaware non-profit corporation which has its principal place of business at 1133 Nineteenth Street, NW, Suite 200, Washington, D.C. 20036.

(Sometimes collectively referred to as the “organizations’ or the “AAUP Enterprise”).

BACKGROUND

I. Parties:

1) The AAUP has been recognized by the IRS as tax-exempt under section 501(c)(6) of the Internal Revenue Code. The AAUP’s purpose is to facilitate more effective cooperation among teachers and research scholars in universities and colleges, and in professional schools of similar grade, for the promotion of the interests of higher education and research, and in general to increase the usefulness and advance the standards, ideals, and welfare of the profession.

2) The AAUP-CBC has been recognized by the IRS as tax-exempt under section 501(c)(5) of the Internal Revenue Code. The AAUP-CBC’s purpose is to promote organizing and collective bargaining among tenured, tenure-track, and contingent faculty, academic professionals, and graduate student employees.

3) The AAUP Foundation has been recognized by the IRS as tax-exempt under section 501(c)(3) of the Internal Revenue Code and classified as a public charity pursuant to section 509(a)(1) of the Code. The AAUP Foundation’s purpose is to operate for charitable and educational purposes, including establishing and supporting principles of academic freedom and the quality of higher education in a free and democratic society.

II. Purposes:

The parties to this Agreement share a common commitment to academic freedom, shared governance in academic institutions, and related goals.
As set forth in Section II of the Memorandum of Understanding dated November 17, 2012, AAUP has certain office space, equipment, and personnel services that it wishes to make available to AAUP Foundation and AAUP-CBC on a cost-sharing basis. The Parties acknowledge and agree that the staff providing services to AAUP, AAUP-CBC, and AAUP Foundation shall be retained by AAUP which shall serve as a common paymaster for all three entities.

AAUP-CBC and AAUP Foundation have each determined that it is in their best interest to share use of office space, equipment, and personnel services with AAUP.

NOW, THEREFORE, the parties agree as follows:

**TERMS**

**SECTION 1. Initial Term**

1. **Term.** The term of this Agreement is one year, commencing from the date the Agreement is a fully executed Agreement.

2. **Review.** This Agreement shall be reviewed annually by the Parties to this Agreement, unless it is terminated in accordance with the provisions of Section 10 or amended in accordance with the provisions of Section 13.2.

**SECTION 2. Allocation of Costs**

1. AAUP, AAUP-CBC, and AAUP Foundation may use a combination of methodologies to allocate expenses between the organizations and within the categories of program, fundraising, and administrative expenses. The allocation methodology will be reviewed by outside auditors during the annual audit. At the end of each month, AAUP, AAUP-CBC, and AAUP Foundation may apply the following methodologies in order to allocate expenses for purposes of monthly reimbursement invoicing to AAUP-CBC and AAUP Foundation.

2. **Direct Costs.** The direct cost/program methodology is used where expenses specifically related to a project can be identified and charged to that project.

3. **Indirect Costs.** The indirect or overhead costs methodology identifies expenses incurred for common or joint objectives and are not easily identified with a particular functional category. These expenses are allocated between the organizations and between the functional categories’ programs using a base that results in an equitable distribution.
SECTION 3. Cost Sharing

1. Personnel Services Costs.

(A) AAUP-CBC shall reimburse AAUP for AAUP-CBC’s share of personnel services costs, including, but not limited to, salaries and fringe benefits of AAUP personnel who perform services for or otherwise assist AAUP-CBC in carrying out its purposes, fees to independent contractors, the costs of travel conducted by employees and contractors, postage, long-distance telephone charges, mileage, printing, storage, insurance, computer hardware and software, taxes, internet access costs, legal, subscriptions and other publications, and other actual expenses.

(B) AAUP Foundation shall reimburse AAUP for AAUP Foundation’s share of personnel services costs, including, but not limited to, salaries and fringe benefits of AAUP personnel who perform services for or otherwise assist AAUP Foundation in carrying out its purposes, fees to independent contractors, the costs of travel conducted by employees and contractors, postage, long-distance telephone charges, mileage, printing, storage, insurance, computer hardware and software, taxes, internet access costs, legal, subscriptions and other publications, and other actual expenses.

(C) AAUP shall provide and pay for personnel to perform services for AAUP Foundation and AAUP-CBC. The costs of such personnel shall be allocated by AAUP to AAUP Foundation and AAUP-CBC, who shall reimburse AAUP for same in accordance with the terms of this Agreement.

2. Office Space and Equipment Costs. AAUP Foundation and AAUP-CBC shall reimburse AAUP for their respective shares of the costs of office space and equipment, including without limitation, rent, utilities, janitorial services, office equipment utilization, equipment rental and maintenance, furniture and fixtures, insurance, taxes, staff development, general supplies, and communications.

SECTION 4. Method of Allocation

1. Calculation of Payment for Services. AAUP staff shall document the staff hours dedicated to AAUP-CBC and AAUP Foundation activities in accordance with time sheet procedures or other documentation methods agreed to by AAUP-CBC and AAUP Foundation. On a monthly basis AAUP-CBC and AAUP Foundation shall remit payment to AAUP for the services of AAUP personnel based on the following allocation: On actual hours worked plus any share of personnel costs allocated to indirect costs. Indirect costs will be allocated based on the percentage ratios of actual hours worked for AAUP-CBC and AAUP Foundation to the total AAUP’s personnel cost. A different allocation will be utilized for certain unfunded liabilities, such as post-retirement health care coverage for employees who transfer from the Association to AAUP as a result of the Restructuring. In this case, AAUP Foundation will
reimburse AAUP for the Association’s share of an employee’s post-retirement health benefits based on a calculation provided by an actuary, using years of service and other demographical data and assumption, and AAUP’s share shall be further allocated among AAUP, AAUP-CBC, and AAUP Foundation based on the allocation of that employee’s time during the period after the Restructuring, or on a different basis if mutually agreed by the organizations. For example, if an employee retires after 10 years with the Association and another 10 years with AAUP, the cost of the employee’s post-retirement health benefits will be borne 50/50 by AAUP Foundation and AAUP. Thus, AAUP will pay all the relevant expenses in the first instance, with AAUP Foundation reimbursing AAUP for its 50% share.

2. Allocation of Costs Related to the AAUP Foundation and AAUP-CBC.

(A) Any costs associated with work that is consistent with AAUP Foundation’s tax-exempt status and furthers its charitable and educational purposes are to be allocated to AAUP Foundation. Similarly, any costs associated with work that is consistent with AAUP-CBC’s tax-exempt status and furthers its purposes are to be allocated to AAUP-CBC. See Memorandum of Understanding, Section II E.

(B) Any costs associated with work that does not further AAUP Foundation’s charitable and educational purposes or that is otherwise an expenditure not permitted by an organization exempt from tax under section 501(c)(3) of the Code must be allocated to AAUP or AAUP-CBC.

SECTION 5. Timekeeping

All employees and independent contractors shall keep careful records of their working hours; all records shall indicate for each such time entry the organization to which such time is allocable, according to the standards set out in Section 4 above.

SECTION 6. Reimbursement and Reports

1. AAUP shall provide AAUP Foundation with a statement of AAUP Foundation’s allocated share of office and personnel costs on a monthly basis. AAUP Foundation shall pay its allocated share of such costs to AAUP no later than 30 days after the statement is provided. Amounts in arrears for more than thirty (30) days shall earn interest at the rate of one percent (1%) per month.

2. AAUP shall provide AAUP-CBC with a statement of AAUP-CBC’s allocated share of office and personnel costs on a monthly basis. AAUP-CBC shall pay its allocated share of such costs to AAUP no later than 30 days after the statement is provided. Amounts in arrears for more than thirty (30) days shall earn interest at the rate of one percent (1%) per month.

SECTION 7. Change in IRS Requirements

AAUP, AAUP-CBC, and AAUP Foundation
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It is the intention of AAUP, AAUP-CBC, and AAUP Foundation that the method of calculating AAUP-CBC’s and AAUP Foundation’s share of the expenses incurred by AAUP on their behalf shall conform in all material respects with the requirements imposed by the IRS with respect to similarly situated organizations. In the event that AAUP is advised by counsel or other tax advisor that the method of calculating AAUP-CBC’s and AAUP Foundation’s share of expenses set forth in this Agreement no longer conforms with such requirements, the Agreement shall be amended in writing to conform to all IRS requirements.

SECTION 8. Intellectual Property Rights

   (A) Each party shall own any intellectual property or material that is created in connection with the Agreement in proportion to such party’s investment in such intellectual property or material (either through direct funding or reimbursement to the AAUP for allocable costs). For example, if all three parties were to collaborate to produce a report in connection with an educational conference, and such report were funded equally, then each would own a one-third share of the resulting intellectual property.

   (B) For purposes of this section, “material” includes without limitation books, records, and documents.

2. Right to Inspect or Remove.
   (A) AAUP Foundation may inspect or remove from shared office space any property that belongs solely to AAUP Foundation at any time upon reasonable notice.

   (B) AAUP-CBC may inspect or remove from shared office space any property that belongs solely to AAUP-CBC at any time upon reasonable notice.

   (C) AAUP may inspect or remove from shared office space any property that belongs solely to the AAUP at any time upon reasonable notice.

SECTION 9. Reports and Documents

1. Reports. AAUP shall, upon request from either of the other parties and within a reasonable amount of time, provide such party with a detailed report of services performed on its behalf.

2. Copies of Documents. AAUP shall, upon request from either of the other parties and within a reasonable amount of time, provide such party with copies of documents relevant to this Agreement, including without limitation books, records, and accounts.
SECTION 10. Termination

1. Events of Termination.
   (A) Subject to the provisions of Section 10.2 below, this Agreement may be terminated upon the occurrence of any of the following events:

   (i.) at any time by the mutual consent of all parties, reflected in a written agreement among the parties but only after the Parties have exercised their best efforts to resolve any dispute through informal discussion within ten (10) ten days of receiving written notice of such dispute; or

   (ii.) immediately upon notice of the bankruptcy or dissolution of a party.

   (B) This Agreement may also be terminated upon the occurrence of either of the following events, provided that the parties have first followed the procedures prescribed for dispute resolution in Part XII of the Memorandum of Understanding:

   (i.) the material breach of this Agreement by a party; or

   (ii.) fraudulent or criminal acts by a party.

2. Post Termination. Upon termination of this Agreement, AAUP must promptly:

   (A) deliver all records, files, materials, correspondence, other property, and related items belonging to either of the other parties to such person or place as such party designates; and

   (B) deliver to each of the other parties a final statement of its allocated share of office and personnel costs incurred through the date of termination, for reimbursement pursuant to the terms of section 4 above.

SECTION 11. Bank Accounts

AAUP, AAUP-CBC, and AAUP Foundation shall maintain separate operating (checking) accounts. AAUP shall maintain the payroll account.

SECTION 12. Deposits

All membership dues received through AAUP dues collection process shall be deposited into AAUP’s bank account. AAUP-CBC and AAUP Foundation will each be credited for the funds collected on its behalf through monthly entries. All funds received outside the dues collection process will generally be deposited directly into the owning organization’s bank account.

1. **Entire Agreement.** This Agreement, together with the Memorandum of Understanding signed by the parties, contains all of the terms agreed upon by the parties with respect to its subject matter. This Agreement and the Memorandum of Understanding collectively supersede all prior agreements, arrangements, and communications between the parties, whether oral or written, concerning their subject matter.

2. **Amendment.** This Agreement may be amended at any time, only by the written agreement of the parties.

3. **Severability.** The provisions of this Agreement are severable, and if any provisions are held to be illegal, invalid, or unenforceable, such holding does not affect the legality, validity, or enforceability of any other provision.

4. **Waiver.** Waiver by any party of any term or condition of this Agreement or any breach hereof does not constitute a waiver of any other term or condition.

5. **Headings and Sections.**
   
   (A) The subject headings used in this Agreement are included for purposes of reference and convenience only and may not affect the construction or interpretation of any of its provisions.

   (B) References in this Agreement to “Section” without elaboration are references to the numbered sections of this Agreement.

6. **Governing Law.** This Agreement is governed by the laws of the State of Delaware, subject to conflict of law rules.

7. **Scope and Effect of Agreement.** This Agreement governs only the sharing of expenses among the parties. No general agency, partnership, or joint venture arrangement among the parties is intended. This Agreement is binding upon and inures to the benefit of the parties and their respective successors and assigns.

8. **Assignment.** This Agreement may be assigned only to a successor AAUP, firm, or subsidiary of a party upon the prior written approval of the other parties.

9. **Notices.** All notices or communications required or permitted to be given under this Agreement shall be in writing and shall be considered given and delivered when personally delivered with a signed acknowledgment, delivered by courier with proof of delivery or deposited in the United States mail, postage prepaid, return receipt requested, properly addressed to the other party at the address set forth below, or at such other address as the party shall specify by notice given in accordance with this section:
If to AAUP: 1133 19th Street, NW, Suite 200, Washington DC 20036
If to AAUP-CBC: 1133 19th Street, NW, Suite 200, Washington DC 20036
If to AAUP Foundation: 1133 19th Street, Suite 200, Washington DC 20036

10. **Counterparts and Facsimile Transmission.** The parties may execute this Agreement in any number of counterparts, including counterparts transmitted by facsimile of this Agreement, each of which so executed is deemed to be an original, and such counterparts together, upon delivery, constitute one and the same instrument.

The Parties have caused this Cost Sharing Agreement to be executed by their duly authorized officers as of the Effective Date.

**AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS**

By: [Signature]

Name: Rudy Fichtenbaum
Title: President
Date: 11/18/12

**AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS COLLECTIVE BARGAINING CONGRESS**

By: [Signature]

Name: Howard Boo's
Title: Chairperson
Date: 11/25/12

**AAUP FOUNDATION**

By: [Signature]

Name: Susan A. Michalsky
Title: Chairperson
Date: 11-15-12

AAUP, AAUP-CBC, and AAUP Foundation
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