OPERATIONS AGREEMENT

THIS AGREEMENT made as of the ______ day of ____________, 201__.

BETWEEN:

McMASTER UNIVERSITY, a corporation
incorporated by Private Act of the
Legislative Assembly of Ontario
(hereinafter referred to as “McMaster”)

OF THE FIRST PART,

-and-

THE McMASTER STUDENTS UNION,
a corporation incorporated
under the laws of the Province of Ontario,
(hereinafter referred to as “MSU”)

OF THE SECOND PART,

-and-

THE McMASTER ASSOCIATION OF PART-TIME STUDENTS
a corporation incorporated
under the laws of the Province of Ontario,
(hereinafter referred to as “MAPS”)

OF THE THIRD PART,

-and-

THE McMASTER UNIVERSITY CENTRE
incorporated pursuant to the Corporations Act of Ontario
(hereinafter referred to as the “Corporation”)

OF THE FOURTH PART.
WHEREAS McMaster, MSU and MAPS have collaborated in the construction and operation of McMaster University Student Centre, which is to support the educational goals of the University through programming, community building and service. The Centre centralizes university and student services and activities in a location accessible to the McMaster community and surrounding residents and fosters effective interaction within the University among students, staff, faculty, alumni and guests.

WHEREAS McMaster has recognized the MSU as the representative of full-time undergraduate students and MAPS as the representative of part-time undergraduates and of certificated and diploma students, and has entered into legal agreements with both parties; and

WHEREAS McMaster has provided lands, Gilmour Hall, and approximately $10 Million in funds raised from donors for the construction of the building; and

WHEREAS MSU has provided approximately $25 Million in funds from a student levy over a number of years between 1988 and 2010 for the construction of the building; and

WHEREAS MAPS has provided $500,000 in funds from a student levy over a number of years between 1997 and 2002; and

WHEREAS the parties agree that this Agreement shall operate under a series of principles as enunciated in the Preamble below:

1. This Agreement shall be administered in such a way as to ensure the continuing viability of McMaster University Student Centre in both financial matters and programming objectives, while respecting the contributions of the parties hereto.

2. The operation of McMaster University Student Centre shall not undermine existing services operated by the parties that serve the greater good of the McMaster community.

3. The parties recognize that the needs of students served by McMaster University Student Centre will change, and so the operation of McMaster University Student Centre must recognize and adapt to those changing needs.

4. The interests of the parties hereto shall be respected and protected from oppression by a majority.

5. Simplicity of administration shall be a guiding principle of this Agreement and of McMaster University Student Centre.

6. Within their designated spaces the parties shall enjoy reasonable freedom of action, subject to the constraints as set out below.

7. Although the University is the legal owner of the building, this Agreement shall be administered in manner that recognizes and benefits the parties that have signed this Agreement.
NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of other good and valuable consideration and sum of Ten Dollars ($10.00) now paid by each party hereto (the receipt of which is hereby acknowledged), the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

1.1 In this Agreement:

a) “Agreement” means this Operations Agreement among the signatories hereto.

b) “Allocations of Facilities” means the allocation of space within the Facilities determined by the Board of Management, whereby the Board of Management shall determine the Common Facilities, MUSC Facilities, Third Party Facilities, McMaster Facilities, MSU Facilities and MAPS Facilities from time to time.

c) “Board of Management” shall mean the Board of Directors of the Corporation.

d) “Capital Renewal Expenditures” shall mean those expenses, costs and charges of McMaster University Student Centre required to be expended for the purpose of major capital renewal of the Premises, its fabric, systems and structure, including the replacement of roofing, cladding, masonry, floor-coverings, HVAC systems and furnishings.

e) “Commercial Operations” shall mean businesses and services whose prime purpose is to offer goods or services in exchange for payment, whether or not the business or service generates a profit.

f) “Common Facilities” shall mean those areas in the Premises shared by McMaster, MSU and MAPS which shall include: corridors, washrooms, janitorial rooms, stairs, elevators; and otherwise as determined by the Board of Management.

g) “Contributing Party” has the meaning attributed to it pursuant to Article 10;

h) “Corporation” means The McMaster University Centre created for the purposes of carrying out the business of McMaster University Student Centre.

i) “Defaulting Party” has the meaning attributed to it pursuant to Article 10.

j) “Facilities” means all of the Common Facilities, the Third Party Facilities, the MUSC Facilities, the McMaster Facilities, MSU Facilities and the MAPS Facilities located at the Premises.

k) “Fiscal Year” shall mean that twelve (12) month period each year from May 1st to April 30th.
1) "Licence Agreement" means the exclusive use licence entered into between the Corporation, as Licensee, and McMaster University, as Licensor, dated the 22nd day of April, 1999.

m) "MAPS Facilities" shall mean that area in the Premises used solely for MAPS or its sub-licensees.

n) "McMaster Facilities" shall mean that area in the Premises used solely for McMaster or its sub-licensees.

o) "Member" or "Members" shall mean each of and collectively, as the case may be, McMaster University, The McMaster Students Union, and The McMaster Association of Part-time Students.

p) "MSU Facilities" shall mean that area in the Premises used solely for MSU or its sub-licensees.

q) "MUSC Facilities" shall mean those areas in the Premises controlled by the Board of Management, including storage areas, lounges, meeting rooms and banquet rooms.

r) "Premises" herein means the area to be used by the Corporation within certain buildings located on the McMaster University Campus, such area being defined as the "Building" in the Licence Agreement.

s) "Third Party Facilities" shall mean that area, if any, within the Premises leased, licensed or otherwise allocated to a party other than McMaster, MSU, and MAPS, but shall not include sub-licenses granted by McMaster, MSU or MAPS.

t) "McMaster University Student Centre" means that structure constructed and maintained upon University lands, including those parts of the basement of Togo Salmon Hall that house the MSU restaurant, all of which is to be known as McMaster University Student Centre.

u) "Operating Expenses" means all costs to be paid, accrued or reserved, as determined by the Board of Management, in connection with McMaster University Student Centre, and shall include, without limitation:

   a. the cost of utilities, which shall, where possible, be individually metered;

   b. the costs of cleaning, repairs and maintenance, pest control, and waste disposal, all of which shall be negotiated with service providers, but always meeting the minimum standards of McMaster University;

   c. administration costs associated with the management and programming of McMaster University Student Centre;
d. a reserve fee to be assessed annually by the Board of Management, sufficient to fund the needs of ongoing Capital Renewal Expenditures.

v) "Operating Revenue" shall mean all moneys or other receipts, in cash or in kind, accruing to McMaster University Student Centre from third parties in respect of space, services or other products provided by McMaster University Student Centre, other than revenue allocable entirely to one Member under this Agreement.

ARTICLE 2
THE CORPORATION

2.1 **Formation.** The Members have incorporated the Corporation for the purposes of managing and maintaining the Facilities.

2.2 **Termination.** The Corporation shall continue and not be dissolved or terminated, except in accordance with the terms hereof, the By-Laws of the corporation or by operation of law.

2.3 **Payment of Expense.** The parties agree that the Board of Management shall determine the appropriate allocation of Operating Expenses in accordance with the provisions of Article 5 of this Agreement.

2.4 **Banking.** The Corporation shall maintain its own bank account.

2.5 **Admission of members.** No additional persons shall be admitted to the Corporation, as members, save and except in accordance with the By-Laws of the Corporation.

2.6 **Time and Attention.** Each Member shall commit the time and attention necessary to McMaster University Student Centre in order that it functions as a first class university centre.

2.7 **No Restrictions on Activities.** In view of the exclusive and limited purposes of the Agreement and the Corporation, nothing herein shall be deemed to restrict in any way the freedom of any Member to conduct any other activity whatsoever, without any accountability to the other Member, or in some other written agreement, provided that such activity shall not involve the use of the Facilities, other Corporation property or be otherwise expressly prohibited by this Agreement.

2.8 **Execution of Documents.** The Members agree that except as provided to the contrary in this Agreement, no lease, agreement, contract, expenditure, purchase order, or commitment relating to McMaster University Student Centre shall be entered into on behalf of the Corporation without the prior approval of the Board of Management.

ARTICLE 3
BOARD OF MANAGEMENT

3.1 **Committee.** A Board of Management, which shall function at law as the directors of the Corporation, consisting of three (3) persons named by the President of McMaster, three (3) persons named by MSU, and one (1) person named by MAPS shall be constituted hereby, consistent with the Letter Patent and By-Laws of the Corporation. Each Member may from time to time replace its nominees. All removals and appointments of members or alternates shall only be effective upon prior written notice being given to the other Members. No member may be removed unless a successor is concurrently appointed.

3.2 **Election of Chair.** The Chair shall be elected by and from the members of the Board at the first business meeting of each fiscal year. The Chair shall have only one vote.

3.3 **Appointment of Secretary.** The Board of Management shall have a Secretary who need not be a member, who shall keep copies of all correspondence and documents delivered or sent by the Board of Management and minutes of all meetings and these shall be made available for inspection by all Members.

3.4 **Quorum.** A quorum for any meeting of the Board of Management shall be five (5) members. Where a majority of directors have consented thereto, any director may participate in a meeting of the Board of Management by telephone or other communication equipment by means of which all persons participating in the meeting may hear each other and a director participating in a meeting pursuant to this provision shall be deemed to be present in person at the meeting. A written resolution signed by all directors shall be effective as if passed as a meeting.

3.5 **Time of Meetings.** Meetings of the Board of Management shall be held at such intervals as the Board of Management may decide and, in any event, not less than quarterly in each Fiscal Year.

3.6 **Powers of Committee.** Except as otherwise provided in this Agreement, the Board of Management may from time to time determine arrangements for the conduct of its meetings, business and affairs.

3.7 **Decisions Binding.** Except as otherwise provided in this Agreement, the Board of Management shall make all decisions in respect of those matters described herein, and same shall be binding upon the Corporation and the members.

3.8 **Duties of the Board of Management.** The Board of Management shall generally supervise and direct the development and operations of McMaster University Student Centre and without limiting the generality of the foregoing, shall be responsible for:

   a) appointment of staff and arrangement of contracts for the management and operation of the facility;

   b) establishment and approval of budgets, and maintenance of financial and other records;
c) protection of the asset and limitation of risk, including making provision for capital renewal;

d) allocation of space within the limits of the Agreement;

e) management, allocation and scheduling of MUSC and Common Facilities;

f) setting and enforcing standards for the exterior of designated space;

g) setting and enforcing policies with respect to the management of financial and material resources;

h) negotiation and administration of contracts regarding the leasing of Third Party Facilities;

i) appointment of auditors and professional advisers;

j) reporting annually to the Members.

Provided always that any duties exercised by the Board of Management shall otherwise be in compliance with any relevant policies of McMaster, unless, in the opinion of the Board of Management, same have a significant impact on the viability of the McMaster University Student Centre or its members within McMaster University Student Centre, whereupon the provisions of Article 14 shall be invoked to resolve the application of any policy provided that, until the resolution thereof, the policy in question shall be complied with.

3.9 **Nominee of Delinquent Party.** Notwithstanding any other provision of the Agreement, the nominee of a delinquent party, a defaulting indemnifier or a defaulting party, shall be entitled to attend meetings of the Board of Management and directors or member meetings of the Corporation, and shall be entitled to vote thereat until removal from the Board of Management.

3.10 **McMaster University Student Centre Manager.** The Board of Management may hire a manager of the McMaster University Student Centre who shall be responsible for those day to day operations of McMaster University Student Centre delegated to him/her by the Board of Management.

3.11 **Minutes of Meetings.** A copy of the minutes of each meeting of the Board of Management shall be sent together with notice of the next scheduled meeting to each of the Vice-President Administration of McMaster, the Business Manager of MSU and the Executive Director of MAPS.

3.12 **MUSC Employees and Subcontractors.** MUSC is an independent organization and its employees are not the agents or employees of McMaster, MSU or MAPS. As such:
a) MUSC has the right to hire, discipline, terminate and set the employment and/or contract terms for all personnel and subcontractors providing services to the building and/or the organization and shall not be subject to any agreements between the any of McMaster, MSU and MAPS and their respective employees;

b) MUSC accepts responsibility and liability for payment of federal and provincial payroll taxes and for contributions for employment insurance, Canada Pension Plan, WSIB, Employer’s Health Tax, health plans and other benefits expressed under any provision of any law, measured by wages, salaries, or other remuneration paid or payable by MUSC to or on behalf of MUSC personnel engaged in work hereunder or in any operation incidental thereto; and

c) MUSC shall cause each subcontractor who performs any part of the work hereunder to accept the same responsibility and liability with respect to employees of such subcontractor.

ARTICLE 4
ALLOCATE OF FACILITIES AND PREMISES

4.1 Board of Management Role. The Board of Management shall assess from time to time, and in no event no less than every five (5) years, the requirements of the Members, based on the Members’ requests for the use of facilities and conduct a review of the Allocation of Facilities. The Allocation of Facilities shall recognize the past practices of the parties regarding the allocation of space, and such past practices shall guide the Allocation of Facilities. Any reallocation by the Board of Management shall be subject to the following:

a) amendments to the total space or the location thereof allocated to any one party shall require consent among the Members so affected provided any incremental costs arising from such re-allocation shall be borne by the party allocated the additional space hereunder;

b) space allocated to Members shall be designated as either commercial or non-commercial space in Schedule A, in accordance with Article 1.1 d). Any changes to the designation (from commercial to non-commercial or from non-commercial to commercial) shall require the express consent of the Board of Management;

c) the reallocation of Common Facilities or MUSC Facilities to the exclusive use of any party shall require unanimous consent of all Members.

d) the ownership of the furniture and chattels in the Common Facilities and MUSC Facilities shall vest in McMaster University Student Centre.

e) any changes in allocation will be reflected in an updated Schedule A;

f) Schedule A will be reviewed and updated annually, where necessary, in conjunction with the financial review.
4.2 Sub-Licensing. Within each Member’s respective Facilities, and subject to the provisions of Article 12 hereof, the Member may enter into sub-licensing arrangements with its affiliated, constituent or other groups regarding the reallocation of space within its exclusive facilities.

4.3 Withdrawal of Hospitality Services from McMaster University Student Centre. Should Hospitality Services of McMaster withdraw from the McMaster University Student Centre, the space occupied by Hospitality Services shall revert to McMaster University Student Centre and such space may be made available for Third Party Facilities.

4.4 Building Name. Any change in the name of the building shall require the consent of both McMaster Students Union and McMaster University, in consultation with the Board of Management.

ARTICLE 5
SHARE OF EXPENSES

5.1 The payment of McMaster University Student Centre Expenses should reflect the following stated principles:

a) The McMaster University Student Centre operating budget shall be for the Premises only.

b) McMaster agrees to contribute on account of operating costs (exclusive of such costs for any Facilities occupied by Hospitality Services or other Third Party Facilities occupied by McMaster University) the pro rata share of Operating Expenses based on the ratio of space occupied by McMaster, MSU and MAPS non-commercial operations (as shown in Schedule A) to the entire Premises. Neither MSU nor MAPS shall be responsible for the payment of occupancy costs on non-commercial spaces, unless the gross amount of non-commercial space allocated to either MSU or MAPS increases from the amount shown in Schedule A.

c) All third party commercial operations and all McMaster commercial operations (including Hospitality Services) shall be let at market rent which should, at a minimum, cover the pro rata portion of the Operating Expenses related to those commercial operations;

d) MSU commercial operations shall pay their pro rata share of Operating Expenses based on the ratio of space occupied by MSU commercial operations (as shown in Schedule A) to the entire Premises.

e) MAPS shall make an annual, lump sum contribution to the Operating Expenses, as follows:
   (i) $20,000 on or before April 30, 2012;
   (ii) $30,000 on or before April 30, 2013;
   (iii)$40,000 on or before April 30, 2014; and
(iv) Annual contributions beyond April 30, 2014 will be confirmed by MAPS no later than August 31, 2013.

5.2 Third Party Tenants. The Board of Management will negotiate contracts with tenants

5.3 MUSC Facilities.

With respect to the MUSC Facilities:

a) the Board of Management shall schedule the use of same, including rental rates;

b) the meeting rooms shall be Rent-free for student clubs and McMaster groups;

c) Conferences will pay rent for the MUSC Facilities;

c) Any commercial activity shall require payment of rent; and

d) Academic activity shall require payment of rent.

5.4 Vending and Advertising

With respect to Vending and Advertising for McMaster University Student Centre:

a) All revenue from ATM’s, vending machines, transient vendors, displays and advertising in McMaster University Student Centre shall accrue to McMaster University Student Centre;

b) With respect to future exclusive supply agreements, McMaster University Student Centre shall participate therein upon approval by the Board of Management.

ARTICLE 6
CALCULATION AND PAYMENT OF NET OPERATING EXPENSES

6.1 Allocation of Operating Expenses. The Members agree that all Operating Expenses shall be calculated and allocated between the Members in each Fiscal Year on the basis of the Allocation of Facilities in Schedule A and as derived from the utilization of the formula and guidelines provided for in Article 5.

a) Wherever possible, actual costs for services provided to individual Members will be attributed to that Member’s share of Operating Expenses;
b) Where actual costs are not available, multipliers based on known data from other buildings on the McMaster campus will be applied. Multipliers will be reviewed by the Board of Management on a regular basis, at least bi-annually.

6.2 Allocation of Operating Revenue. The parties acknowledge that McMaster University Student Centre shall endeavour to attract certain commercial entities to McMaster University Student Centre as participants (whether as sub-licensees, affiliates or other third party participants) in consideration of Operating Revenue. The Members agree that all Operating Revenue shall be calculated, allocated and applied against Operating Expenses.

6.3 Calculation of Net McMaster University Student Centre Expenses. For each Fiscal Year, the Board of Management shall calculate the net McMaster University Student Centre Expenses by subtracting such Operating Revenue from Operating Expenses.

6.4 Fiscal Year End. At the conclusion of each Fiscal Year the Members shall receive a year end statement which shall disclose for the Fiscal Year the share of each Member’s Net McMaster University Student Centre Expenses calculated using the allocations determined by the Board of Management pursuant to Article 5 hereof.

ARTICLE 7
CAPITAL RENEWAL

7.1 Capital Renewal Assessment. The Board of Management shall assess from time to time, and in no event not less than every five (5) years, the requirements of the Reserve fund for Capital Renewal expenses, based on a professional assessment of the useful life of major building equipment, fabrics, furnishings and components.

7.2 Ongoing Capital Contributions. The Annual Operating Budget shall include an allocation to a reserve fund for Capital Renewal Expenditures (the “Capital Renewal Reserve Fund”), which shall include both the interest earned on the Capital Renewal Reserve Fund and any additional funds required, if any, as determined by the Capital Renewal Assessment.

7.3 Maintenance and Repairs. McMaster University Student Centre Board of Management is responsible for maintenance and repair of McMaster University Student Centre, and this should, at least, conform to minimum University standards. Maintenance and repair of allocated space (per Schedule A) is the responsibility of the occupant unless it is the consequence of a failure of a building component, as long as such failure is not the result of misuse or negligence on the part of the occupant, nor by wear and tear that would typically result in such failure due to the nature of the business or service provided by the occupant.

7.4 Major Expansion. Major expansion projects shall not be funded through the Capital Renewal Reserve Fund.
ARTICLE 8
FINANCING

8.1 Operating Costs. Should the MSU fail to pay for its share of Operating Expenses as referred to in Section 5.1 (d), then the University shall be nominated and constituted the lawful agent and attorney-in-fact for the purpose of setting and collecting a sufficient annual levy to pay for the MSU share of Operating Expenses (the “Annual MSU Levy”).

8.2 Right of McMaster to Collect Annual Levies. The parties further covenant and agree that should the MSU fail to mandate, implement or collect Annual MSU Levy, or fail to mandate, implement or collect a sufficient Annual MSU Levy for any reason or cause whatsoever, including, without limitation, by virtue of a breach of any term under the Agreement, then the MSU does hereby constitute, nominate and appoint the University as their lawful agent and attorney-in-fact for such purpose, and the University shall thereafter be lawfully, and notwithstanding any other interim step or remedy, entitled to unilaterally mandate, implement and collect the the Annual MSU Levy.

ARTICLE 9
COVENANTS OF MEMBERS

9.1 Representations and Warrantees. Each Member represents and warrants to each other Member that it:

a) will at all times that the Corporation is in existence and it is a Member, be resident in Canada, within the meaning of the Income Tax Act; and

b) has the capacity and competence to enter into and be bound by this Agreement.

9.2 Indemnification. Each Member (the “Indemnifier”) agrees to indemnify and save harmless the other Member (an “Indemnified Party”) to the extent of that portion of all monies which an Indemnified Party may be required to pay or liability to which it may become subject by reason of any such joint and several liability of the Members or by reason of any actions, proceedings, liability, claims, damages, costs and expenses in relation to the Corporation or arising therefrom, which is in excess of an Indemnified Party’s proportionate share of such monies or liability and which has been paid by such Indemnified Party.

9.3 Indemnification for Unauthorized Actions. If, as a result of the actions of any other Member, any Member becomes subject to any obligation or liability which was required by this Agreement to be approved by the Corporation, but has not been so approved, the Member whose actions caused such obligations or liability (also the “Indemnifier”) shall indemnify such other Member (also the “Indemnified Party”) against such obligations or liability in their entirety, unless the incurring of such liability is approved by the Corporation.
9.4 Payment to Indemnified Party. If an Indemnifier (the “Defaulting Indemnifier”) fails to pay an Indemnified Party (the “Paying Party”) an amount required to be paid when due, then the Defaulting Indemnifier shall pay the Paying Party upon demand the amount due together with interest thereon at the rate of three percent (3%) per annum in excess of the prime rate from time to time established by the Paying Party’s bank.

ARTICLE 10
EVENTS OF DEFAULT

10.1 Events of Default of Members. Each of the following events shall constitute an “Event of Default” hereunder with respect to the Member in question (the “Defaulting Party”):

a) if the Defaulting Party files a petition in bankruptcy pursuant to any applicable bankruptcy law or under any similar law, now or hereafter in effect, or shall be adjudicated a bankrupt or makes an assignment for the benefit of its creditors or commits any act of bankruptcy which has not been rectified within ten (10) business days after notice thereof or is dissolved;

b) if a receiver, trustee or liquidator (or other similar official) is appointed to take charge of a Defaulting Party or of all or substantially all of the business or assets of the Defaulting Party or of the interest of the Defaulting Party in the McMaster University Student Centre, and is not discharged within ten (10) days thereafter, or disputed in good faith, or if the Defaulting Party consents to or acquiesces in such appointment;

c) if the Defaulting Party fails to pay its share of the Operating Expenses when due;

d) if none of the nominee(s) of the Defaulting Party attends two (2) consecutive meetings of the Board of Management and the Defaulting Party fails to appoint new nominee(s) within sixty (60) days of the default provided notice has been given to the Member whose nominee did not attend after the first meeting not attended;

e) if the Defaulting Party fails in any other material respect, to observe perform or comply with any agreement, condition or obligation required by the Agreement to be observed, performed or complied with by the Defaulting party and if such failure continues for a period of ten (10) days after notice of such failure and a demand for performance, observance or compliance has been given by the other Member; provided, however, that if the nature of such failure is such that it cannot be cured by a payment of money and cannot be cured within a period of ten (10) days, the Defaulting Party shall have such additional time as may be necessary as long as the curing or such default is begun promptly and is prosecuted with due diligence to completion.

10.2 Performance on Behalf of Defaulting Member. Any Member that has not committed an Event of Default (the “Non-Defaulting Member”) shall have the right, but shall not be obligated to provide the observance, performance or compliance in question on behalf of the Defaulting Member.
The Non-Defaulting Member ("Contributing Party") shall be entitled to treat the amount of any cost of expense incurred in connection therewith as a contribution made to the McMaster University Student Centre Expenses. No such performance, observance or compliance shall be deemed to have cured the default with respect to the Defaulting Member. Each Member hereby irrevocably constitutes and appoints the other Member as its agent and attorney-in-fact to act on its behalf so as to effectuate the provisions of this paragraph 10.2 and agrees to any and all actions taken for and on behalf of such Member as provided in this paragraph 10.2.

10.3 Redress. Sanction for default shall be appropriate to the nature of the Event of Default.

10.4 Process. The Board of Management shall encourage prompt discussion including prescribed time limits for resolution of the Event of Default with steps which shall include:

a) notification of the Event of Default and proposed sanction by the Non-Defaulting Member or the Corporation, as the case may be;

b) discussion among designated administrative officers of the Members, including conciliation at the request of a party;

c) discussion among the presidents of the Members, including conciliation at request of a party;

d) with respect to an Event of Default other than those contained in Section 10.1 (d), (f), (g) or (h) (i)(ii) or (iii), arbitration pursuant to Article 14 hereof, during which the arbitrator shall have the ultimate power to appoint a receiver-manager of the McMaster University Student Centre for a designated period, if warranted.

10.5 Remedies Not Exclusive. The provision in this Agreement of certain remedies which are available after the occurrence of and Event of Default is not intended to be exclusive and the remedies contained in this Agreement are intended to be cumulative and in addition to any other remedies which may at the time be available. Without limiting the generality of the foregoing, in the event that a Member commits an Event of Default then the Contributing Party shall be entitled to specific performance or an order restraining and enjoining such Event of Default, as the case may be, and the Defaulting Party shall not plead in defense thereto that there would an adequate remedy at law, it being recognized and agreed that the injury and damage resulting from such Event of Default would be impossible to measure monetarily.

10.6 Right to Terminate. This Agreement is co-extensive with the Licence Agreement and therefore, shall be terminated ipso facto upon the expiration of the Licence Agreement or sooner termination by McMaster in accordance with the terms thereof.

ARTICLE 11
TERMINATION

11.1 Within three (3) years prior the expiry date of the Licence Agreement, the parties shall meet regularly with the express purpose of:
a) negotiating the renewal of the Licence Agreement with appropriate modification or by an appropriate substitute; and

b) assessing the experience gained through the operation of the McMaster University Student Centre.

11.2 **Termination by Mutual Consent.** In the event that the Members hereto mutually agree to terminate their respective obligations hereunder all mutual rights and obligations hereunder shall be terminated.

11.3 In general, co-operation and a continuing relationship should be encouraged amongst the parties, and accordingly, the termination provisions in Sections 11.4, 11.5 and 11.6 are intended to be a disincentive to termination and, in any ensuing arbitration that arises under Article 14 hereof the Arbitrator(s) shall be governed by the aforesaid principles having regard to the following directives:

a) a significant penalty should be imposed on the party who wishes to terminate, as a disincentive;

b) i) the Arbitrator should take into account the existing student and university activities of each Member;

ii) the Arbitrator should take into account the existing student and university activities undertaken in the Common Facilities;

c) the Arbitrator should take into account impact on any Third Parties in the building;

d) the Arbitrator should take into account the financial impact (both revenue and expenditures) on all parties;

e) the Arbitrator should take into account the impact on students, employees and university patrons.

11.4 **Termination by McMaster, not accepted by MAPS or MSU.** Should McMaster propose in writing that the Licence Agreement and this Agreement be terminated, but MAPS or MSU should oppose same then:

a) the issue of reasonable costs to be paid by McMaster to MSU or MAPS for such termination shall proceed to arbitration pursuant to Article 14 hereof;

b) the arbitration tribunal pursuant to Article 14 shall make a finding of reasonable compensation to be paid by McMaster to MSU or MAPS and relay that finding to both parties.

c) McMaster, at its sole option, shall within thirty (30) days of the finding made by the arbitration tribunal elect to:
(v) proceed with its termination proposal and pay the awarded compensation; or

(vi) rescind its request for termination, whereupon it shall bear the entire costs of the arbitration and this Agreement shall continue in full force and effect.

11.5 **Termination by MSU, not accepted by McMaster or MAPS.** Should MSU propose in writing that the Licence Agreement and this Agreement be terminated, but McMaster or MAPS should oppose same then:

a) the issue of reasonable costs to be paid by MSU to McMaster or MAPS for such termination shall proceed to arbitration pursuant to Article 14 hereof;

b) the arbitration tribunal pursuant to Article 14 shall make a finding of reasonable compensation to be paid by MSU to McMaster or MAPS and relay that finding to both parties.

c) MSU, at its sole option, shall within thirty (30) days of the finding made by the arbitration tribunal elect to:

   (i) proceed with its termination proposal and pay the awarded compensation; or

   (ii) rescind its request for termination, whereupon it shall bear the entire costs of the arbitration and this Agreement shall continue in full force and effect.

11.6 **Termination by MAPS, not accepted by McMaster or MSU.** Should MAPS propose in writing that the Licence Agreement and this Agreement be terminated, but McMaster or MSU should oppose same then:

a) the issue of reasonable costs to be paid by MAPS to McMaster or MSU for such termination shall proceed to arbitration pursuant to Article 14 hereof;

b) the arbitration tribunal pursuant to Article 14 shall make a finding of reasonable compensation to be paid by MAPS to McMaster or MSU and relay that finding to both parties.

c) MAPS, at its sole option, shall within thirty (30) days of the finding made by the arbitration tribunal elect to:

   (i) proceed with its termination proposal and pay the awarded compensation; or

   (ii) rescind its request for termination, whereupon it shall bear the entire costs of the arbitration and this Agreement shall continue in full force and effect.
11.8 **Effective Period of Termination Provisions.** The termination provisions contained in the Sections 11.4, 11.5 and 11.6, shall not be effective or enforceable until the 30th day of April, 2049.

**ARTICLE 12**
**USE OF BUILDING BY SUB-LICENSEES**

12.1 **Agreement Regarding Third Parties.** The parties hereby agree that any Member may enter into sub-licences with respect to a Member’s exclusive facilities within the McMaster University Student Centre; provided:

a) the form of such sub-licence agreement is acceptable to the Board of Management;

b) the Member shall remain liable for all expenses, actions, omissions, negligence and other acts of its sub-licensee in respect of the McMaster University Student Centre;

c) the sub-licensee shall comply with all provisions, covenants, and obligations of the applicable member in respect of its exclusive facilities;

d) the approval of the Board of Management of such sub-licence by the Board of Management shall not in any way release any Member from its obligations under this Agreement;

e) any major structural change will require the consent of the Board of Management, which shall be subject to policies and procedures of McMaster applied to such affiliated and constituent groups, including, without limitation, policies concerning the Building Code, liquor regulation and security issues; and

f) any costs arising from the structural changes shall be paid for exclusively by the Member requesting the same.

**ARTICLE 13**
**CONSENTS**

13.1 **Consents.** Whenever a provision of this Agreement requires that an approval, consent, waiver or agreement be obtained from a party hereto, such approval, consent, waiver or agreement may be given by an instrument in writing executed by two signing officers of such party under its corporate seal, which instrument shall be binding upon such party without the other parties having to determine the sufficiency or authority thereof.

**ARTICLE 14**
**ARBITRATION**
14.1 **Resort to Arbitration.** If any dispute occurs or any question arises between the Members hereto as to the interpretation of any of the provisions hereof, including a dispute as to whether a matter is arbitrable, which cannot be resolved by their agreement, or by the mechanisms otherwise provided for herein, then the determination of such dispute shall be resolved by arbitration pursuant to the *Arbitration Act* (Ontario) and as provided in this Article and the decision shall be final and binding as between the Members and shall not be subject to appeal.

14.2 **Procedure.** Any arbitration to be carried out under this Article shall be subject to the following provisions:

a) The Member desiring arbitration shall nominate an arbitrator and shall notify the other Members of such nomination. The notice shall set forth a brief description of the matter submitted for arbitration and if appropriate, the Article, paragraph or subparagraph hereof pursuant to which such matter is so submitted. The other Member(s) shall, within fifteen (15) days after receiving such notice, nominate an arbitrator and the two (2) arbitrators shall select a Chairman of the Arbitral Tribunal to act jointly with them. If said arbitrators are unable to agree on the selection of such Chairman, the Chairman shall be designated by a judge of the Ontario Court (General Division) upon an application by any Member. The arbitration shall take place in the Municipality of the City of Hamilton, and the Chairman shall fix the time and place within the City of Hamilton, for the purpose of hearing such evidence and representations as the Members may present and subject to the provisions hereof, the decision of the arbitrators and Chairman or of any two of them in writing shall be binding upon the Members both in respect of procedure and the conduct of the Members during the procedure and the final determination of the issues therein. The arbitrators and Chairman shall, after hearing any evidence and representations that the Members may submit, make the decision and reduce the same to writing and deliver one copy thereof to each of the Members. The majority of the Chairman and the arbitrators may determine any matters of procedure for the arbitration not specified herein.

b) If the Member receiving notice of the nomination of an arbitrator by the Member desiring arbitration fails, within thirty (30) days to nominate an arbitrator, the arbitrator nominated by the Member desiring arbitration may proceed alone to determine the dispute in such a manner and at such time as he shall think fit and his decision shall, subject to the provisions hereof, be binding upon the Members. Notwithstanding the foregoing, the arbitration may be carried out by a single arbitrator if the parties so agree, in which event the provisions of this paragraph 14.2 shall apply mutatis mutandis.

c) The cost of the arbitration shall be borne as specified in such determination and the fees of the arbitrator shall not be limited by the *Arbitrations Act* (Ontario).
d) Submission to Arbitration and the obtaining of a decision from the arbitrator shall be a condition precedent to the commencement of any action at law.

ARTICLE 15
PROHIBITION ON DISPOSITION

15.1 Prohibition. No sale, transfer, assignment, mortgage, charge or disposition of part or all of a Member’s interest in the Corporation shall be made, except with the express prior written consent of the Members, which consent may be unreasonable withheld. No Member shall make or permit to be made any application to a court for partition, sale or other disposition of part or all of the assets of the Corporation of any interest therein without the express written consent of all Members.

15.2 Reversion of MSU or MAPS’s interest upon Termination. Subject only to any rights of compensation provided for herein, upon expiration or sooner termination of this Agreement or the Licence Agreement, the Corporation’s right, title and interest in the Premises shall be transferred, assigned and conveyed ipso facto to McMaster.

ARTICLE 16
INSURANCE

16.1 Coverage. The Board of Management shall take appropriate steps to ensure adequate insurance coverage for the Premises, both during and after construction which shall reflect the right, title and interest of the Corporation and be in compliance with the requirements of the Licence Agreement. All premiums therefor shall constitute a McMaster University Student Centre Expense, and adequate and reasonable insurance coverage shall include:

a) general liability coverage with limits not less than those specified by the Board of Management; and

b) any other insurance as may be determined from time to time by the Board of Management.

ARTICLE 17
GENERAL PROVISIONS

17.1 Further Assurances. Each party shall execute such deeds, assignments, endorsements, instruments and evidences as shall be necessary or appropriate in connection with the performance of its obligations herein.

17.2 Time. Time is of the essence of this Agreement.

17.3 Non-Waiver. The failure of any party to seek redress for violation of or to insist upon the strict performance of any provision of this Agreement shall not prevent a
subsequent act which would have originally constituted a violation from having the effect of an original violation.

17.4 Rights cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by party hereto shall not preclude or waive its rights to use any or all other remedies available to it and the rights and remedies provided by this Agreement are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

17.5 Headings. The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provisions hereof.

17.6 Notice. Any notice required or permitted to be given hereunder by any party shall be given in writing and shall be served personally or mailed by prepaid registered mail:

a) Vice President, Administration
McMaster University
1280 Main Street West
Hamilton, ON L8S 4L8

Phone: (905) 525-9140 ext. 24330
Fax: (905) 522-3391

b) MAPS
McMaster Association of Part-time Students
McMaster University
MUSC-234
1280 Main Street West
Hamilton, ON L8S 4S4

Phone: (905) 525-9140 ext. 22021
Fax: (905) 524-1111

c) MSU
McMaster Students Union
McMaster University
MUSC-201
1280 Main Street West
Hamilton, ON L8S 4S4

Phone: (905) 525-9140 ext. 22003
Fax: (905) 529-3208
Such notice, if given by personal service, shall be deemed to be received the date it is delivered or if given by prepaid registered mail, shall be deemed to be received on the day that is five (5) days following the date of mailing of the notice, except in the event of any strike, walk-out or similar event which would make it unlikely it would be delivered within such time, in which event any notice shall be personally delivered. Either party may change its address for service as hereinbefore set forth by delivering notice of such change of address in accordance with the foregoing provision.

17.7 **Entire Agreement.** There are no covenants, conditions, representations or agreements in any way relating to the subject matter of this Agreement, express or implied, collateral or otherwise, except as expressly set forth herein.

17.8 **Amendment.** This Agreement may be amended or modified only by an instrument in writing executed by the parties hereto.

17.9 **Provisions Severable.** Any paragraph or provision of this Agreement which for any reason is or becomes unenforceable or void or invalid or outdated, shall be severed from the Agreement and shall not alter or terminate the validity or enforceability of any other provision hereof and the remainder of this Agreement or the application of that paragraph or provision to parties or circumstances other than those where the same is unenforceable or void or invalid or outdated, shall not be affected thereby and each covenant, obligation or provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

17.10 **Applicable Law.** This Agreement shall be governed and interpreted under the laws of the Province of Ontario. The courts of the Province of Ontario shall have exclusive jurisdiction with respect to all suits, actions, issues or other matters whatsoever arising out of or affecting the Agreement.

17.11 **Successors and Assigns.** Except as otherwise provided herein, this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective legal successors and assigns.
IN WITNESS WHEREOF the parties hereto have executed this Agreement.

McMASTER UNIVERSITY

THE McMASTER UNIVERSITY CENTRE

THE McMASTER STUDENTS UNION

THE McMASTER ASSOCIATION OF PART-TIME STUDENTS
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</table>

Total Space Allocated: 93,644

Total Member-Occupied Spaces: 40,394
SCHEDULE “B”: ALLOCATION OF EXPENSES

MUSC Sources of Revenue:
  McMaster Commercial Operations rent surcharge
  Third Party Retail Rents
  Third Party Revenue Sharing
  Conference revenue
  Transient Vendor program revenue
  Grants and subsidies
  Interest on Reserves
  Advertising

MUSC Expenses:
  Custodial
  Utilities
  Pest Control
  Garbage
  Repairs and Maintenance
  Administration Expense
  Capital Reserve Contribution

Basic Financial Formula:

\[
\text{MUSC Expenses} - \text{MUSC Revenue} \\
\text{Occupancy Costs to be apportioned to Members}
\]
Schedule "B": Framework for Cost Flow Through Model
(for illustration purposes only)

<table>
<thead>
<tr>
<th>Square feet for calculation</th>
<th>Amount to Allocate</th>
<th>MSU Commercial</th>
<th>MSU Non-Commercial</th>
<th>MAPS</th>
<th>McMaster Commercial</th>
<th>McMaster non-commercial</th>
<th>Total Allocation</th>
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<td>28,962</td>
<td>20,482</td>
<td>949</td>
<td>15,649</td>
<td>3,811</td>
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**MUSC Expenses**

- Custodial*: 416,478
  - Commercial: 200,879
  - Non-Commercial: 79,061
  - MAPS: 3,665
  - McMaster Commercial: 122,694
  - McMaster non-commercial: 11,623
  - Total: 417,922

- Custodial Paper*: 34,872
  - Commercial: 16,820
  - Non-Commercial: 6,620
  - MAPS: 307
  - McMaster Commercial: 10,273
  - McMaster non-commercial: 973
  - Total: 34,993

- Utilities*: 540,430
  - Commercial: 260,665
  - Non-Commercial: 102,591
  - MAPS: 4,756
  - McMaster Commercial: 159,210
  - McMaster non-commercial: 15,083
  - Total: 542,305

- Pest Control*: 4,210
  - Commercial: 4,210

- Garbage*: 15,046
  - Commercial: 7,257
  - Non-Commercial: 2,856
  - MAPS: 132
  - McMaster Commercial: 4,433
  - McMaster non-commercial: 420
  - Total: 15,098

- Repairs & Maintenance: 113,997
  - Commercial: 47,812
  - Non-Commercial: 33,813
  - MAPS: 1,567
  - McMaster Commercial: 25,833
  - McMaster non-commercial: 4,971
  - Total: 113,997

- Administration: 281,686
  - Commercial: 118,143
  - Non-Commercial: 83,551
  - MAPS: 3,673
  - McMaster Commercial: 83,834
  - McMaster non-commercial: 12,284
  - Total: 281,686

- Reserve Contribution: 82,196
  - Commercial: 34,474
  - Non-Commercial: 24,380
  - MAPS: 1,130
  - McMaster Commercial: 18,627
  - McMaster non-commercial: 3,584
  - Total: 82,196

**Gross Occupancy Costs**: 1,488,916
  - Commercial: 686,051
  - Non-Commercial: 332,872
  - MAPS: 15,431
  - McMaster Commercial: 409,115
  - McMaster non-commercial: 48,939
  - Total: 1,492,407

**MUSC Revenue**

- Hospitality Rent: 134,760
- Third Party Rent: 111,499
- Conference/Vendor Program: 255,836
- MAPS Contribution: 40,000
- Interest and Other: 38,970

**Total Revenue**: 581,065
**Total MUSC Expenses Recovered**: 1,492,407
**Credits to Occupancy Costs**: 584,557
  - 245,172
  - 173,366
  - 8,038
  - 132,469
  - 25,491
  - Total: 584,557

**Net Occupancy Costs**: 440,879
  - 159,485
  - 7,393
  - 27,646
  - 23,448
  - Total: 907,851

*Paid by:* MSU McMaster McMaster McMaster McMaster

**Member Occupancy Costs**

- MSU: 440,879
- MAPS: 466,972
- McMaster: 907,851

*These expense categories have been apportioned using multipliers to reflect increased/decreased use of the expense item, based on the type of service. The multipliers here have been arbitrarily set for illustrative purposes only.*
McMaster University Policy on Accessibility (Mar. 4, 2010)
Policy Statement on Inclusive Communications (April 26, 2990)
McMaster University Policy on Violence in the Workplace (June 17, 2010)
Guidelines on Acceptance of Advertising (Dec. 10, 1993)
Sustainable Building Policy (June 19, 2008)
Insurance & Protection of Movable Assets
Policy on Fraternities, Sororities and Honour Societies (Oct. 11, 2000)
Student Event Risk Management Policy (May 1, 2009)
McMaster University Student Code of Conduct (May 1, 2009)
Anti-Discrimination Policy (Oct. 25, 2001)
Policies and Procedures on Sexual Harassment (Oct. 25, 2001)
Policy Statement on Research Involving Human Participants (Sept. 2002)
Policy on the Recognition of Student Campus Groups (July 1, 2006)
Regulations Governing Welcome Week (May 1, 2009)
McMaster University Alcohol Policy (May 11, 1998)