

# Memorandum

**Office of the Deputy Provost (SLL)**  
James Administration Building, Suite 621  
845 Sherbrooke St. West  
Tel: 514-398-3109

**TO:** Board of Governors

**FROM:** Ollivier Dyens, Deputy Provost (Student Life and Learning)

**SUBJECT:** Renewal of

- a) Agreement of Lease with the Centre Garderie SSMU Inc. / SSMU Daycare Inc.
- b) Memorandum of Agreement with the Macdonald Campus Students' Society (MCSS)

**DATE:** May 16, 2016

**DOCUMENT #:** GD15-59

**ACTION REQUIRED:**  INFORMATION  APPROVAL/DECISION

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**ISSUE & EXPECTED OUTCOME:** Board approval is required for the renewal of the Agreement of Lease between McGill and Centre Garderie SSMU Inc. / SSMU Daycare Inc.

In addition, Board approval is required for the renewal of the Memorandum of Agreement between McGill and the Macdonald Campus Students' Society (MCSS).

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**BACKGROUND & RATIONALE:** SSMU Daycare Lease

The Lease will expire on May 31, 2016, and requires renewal for a further 5 year term to allow the two licenses to be renewed. While the proposed Lease is essentially the same as the previous one, it contains the following changes:

- i. The renewal is for 5 years ending on May 31 2021.
- ii. The rent is increased in YR1. In future, the rent increases by a fixed amount (rather than a percentage) for each subsequent year.
- iii. The payment of applicable taxes will be added, and shown as a separate item on the invoices.

### MCSS MOA

The MOA with the MCSS expired on May 31, 2015. The proposed MOA is consistent with those established with other student associations and special interest groups. Discussions on the renewal of the MOA centered primarily on the future of the bookstore on the Macdonald campus that is currently operated by the MCSS under the terms of the MOA. In the end, no changes were brought to the terms of the operation of the Bookstore.

While the proposed MOA is essentially the same as the previous one, it contains the following changes:

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- i. The renewal is for 5 years ending on May 31 2020.
- ii. The annual administrative fee will increase yearly according to a payment schedule appearing in appendix B.
- iii. The fee per square footage for space designated for revenue-generating activities is increased in YR1. However, as it was agreed to establish a Macdonald campus rate (see appendix E), the annual rate of increase is lower than under the previous agreement. As well, the amount of space subject to the fee is reduced.
- iv. The MCSS clubs and services appear in appendix G appear sorted by the nature of their activity, as set out in the recitals.

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**ALIGNMENT WITH MISSION AND STRATEGIC PRIORITIES:**

The terms of the Lease and MOA have been developed to provide the framework for a relationship that supports the goals and objectives of both the Student Associations and the University, especially as they relate to enabling a vibrant and diversified environment for student life.

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**COMPLIANCE WITH UNIVERSITY POLICY:**

The proposed Lease and MOA establish the official working relationship between the University and the Student Association.

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**COMPLIANCE WITH LEGISLATION/ EXTERNAL REGULATIONS:**

There is no legislative requirement necessitating the establishment of such agreements, but having formal agreements between the University and student-related bodies is considered to be best practice.

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**RISK FACTORS:**

The MOA establishes the manner in which both parties will manage transactions and activities related to these agreements.

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**SUSTAINABILITY CONSIDERATIONS**

The agreements provide for a sustainable framework for the University's relationship with both associations.

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**IMPACT OF DECISION AND NEXT STEPS:**

Execution of the Agreement of Lease and Memorandum of Agreement, as noted in the resolution below.

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**MOTION OR RESOLUTION FOR APPROVAL:**

*Be it resolved that Board of Governors, on the recommendation of the Deputy Provost (Student Life and Learning), approve the Agreement of Lease with the Garderie SSMU Inc. / SSMU Daycare Inc. and the Memorandum of Agreement with the Macdonald Campus Students' Society (MCSS).*

*Be it further resolved that the Board of Governors authorize the Deputy Provost (Student Life & Learning) to sign the said Agreement of Lease and Memorandum of Agreement.*

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**APPENDICES:**

Appendix A: The Agreement of Lease between the Centre Garderie SSMU Inc. and SSMU Daycare Inc.

Appendix B: The Memorandum of Agreement between McGill University and the Macdonald Campus Students' Society (MCSS)

*Note:* Appendices referenced in the agreements have not been included but are available upon request to the Secretariat.

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FINAL Feb 2016

## AGREEMENT OF LEASE

**Made and entered into at the City and District of Montreal, Province of Quebec.**

**BETWEEN THE ROYAL INSTITUTION FOR THE ADVANCEMENT OF LEARNING / MCGILL UNIVERSITY**, a corporation duly constituted by charter, having its principal office at 845 Sherbrooke Street West, in the City and District of Montreal, Province of Quebec,

(hereinafter referred to as “**RIAL**” or “**McGill**” or “**the University**”)

**AND CENTRE GARDERIE SSMU INC. / SSMU DAYCARE INC.**, an incorporated entity duly incorporated under Part III of the Quebec Companies Act and having its principal office at 3480 McTavish Street in the City and District of Montreal, Province of Quebec,

(hereinafter referred to as “**CENTRE**”)

**WHEREAS** the **STUDENTS’ SOCIETY OF MCGILL UNIVERSITY (“SSMU”)** was incorporated on April 22, 1999 by Letters Patent issued pursuant to Part III of the Companies Act (Quebec); and

**WHEREAS** the **CENTRE GARDERIE SSMU INC. /SSMU DAYCARE INC. (“the CENTRE”)**, was incorporated on August 19, 1999; and

**WHEREAS** on the basis of a referendum held between November 10 and 13, 1997 (as appearing in **Appendix D**), the **SSMU** approved the collection of fees from regularly registered undergraduate McGill students to establish and operate a daycare centre to meet the needs of student parents at McGill University; and

**WHEREAS** following a resolution of the Legislative Council dated October 7, 2004 (the whole as appearing in **Appendix D**), the **SSMU** approved the termination of the collection of the above fees, effective May 1, 2005; and

**WHEREAS** on the basis of a referendum held in March 2006 (as appearing in **Appendix D**), the **SSMU** approved the collection of fees from regularly registered undergraduate McGill students to operate a daycare centre to meet the needs of student parents at McGill University;

**WHEREAS** on the basis of a motion dated October 2<sup>nd</sup>, 2008 (as appearing in **Appendix D**), the **SSMU** approved the creation of a nursery for 8 children aged 4- 18 months;

**WHEREAS** the University and the **SSMU** have entered into a Memorandum of Agreement for a term beginning on **June 1, 2016** and ending on **May 31, 2021**, respecting various matters including the assessment and collection of fees from students and the operation of University accounts for such fees and wish to enter into a new agreement, in replacement of the previous agreement;

**WHEREAS** the parties wish to enter into an agreement of lease (“the Lease”) for leasing a portion of the building known as the William and Mary Brown Student Services Building (“the Building”) on the conditions set forth in this lease agreement;

**NOW THEREFORE THE PRESENT AGREEMENT WITNESSES:**

1. **PREAMBLE**

The preamble shall form an integral part of this Lease.

2. **PREMISES**

2.1 In recognition of the contribution by the undergraduate students of McGill University to the construction of the William and Mary Brown Student Services Building, and subject to conditions set forth herein, RIAL agrees to lease space in the William and Mary Brown Student Services Building solely for the operation of a licensed daycare centre for children of undergraduate students registered at McGill University.

As appearing in **Appendix A** hereto (“the Premises”) the Premises, totaling **2800.22 square feet (260.8 square meters)** of space, shall be made up of space for:

- i. On the 1<sup>st</sup> floor, a Nursery for eight (8) children aged 4 to 18 months:
- ii. On the 2nd floor, a Daycare for children aged 18 months and over:

2.2 Nothing in the present agreement shall constitute the grant or possession, or a transfer of real rights or a real right of ownership, or part thereof, susceptible of registration, acquisition or prescription against RIAL. The CENTRE shall not register the present lease. It is understood and agreed that should the CENTRE cease to operate the daycare and/or nursery, in whole or in part, the space so leased shall revert to the RIAL without condition or compensation or any kind to the CENTRE or the SSMU.

3. **TERM**

3.1 The term of this Lease is for five (5) years beginning on **June 1, 2016** and ending on **May 31, 2021**.

3.2 Nine (9) months prior to the expiration of the term, the parties shall review in good faith the terms with a view to renew on a mutually agreeable basis, subject to the limitation contained in section 3.3.

3.3 Within the term of this LEASE, should RIAL deem it necessary and advisable to use the Premises for other RIAL purposes, RIAL will provide the CENTRE with alternative equivalent space such space shall meet the legal requirements of the CENTRE under its license. All relocation costs shall be borne by the CENTRE.

4. **RENT**

4.1 The CENTRE shall make an annual payment of rent in advance to RIAL on the first day of June in accordance with the schedule appearing as **Appendix B** hereto. McGill shall invoice the CENTRE, showing separately the rent and applicable taxes.

- 4.2 Payment shall be made to The Royal Institution for the Advancement of Learning / McGill University and sent to:

McGill Accounts Receivables  
3465 Durocher Street  
Montreal Quebec H2X 2C6

## 5. OBLIGATION OF THE CENTRE

The CENTRE shall:

- 5.1 pay all operating expenses of the CENTRE, which shall include but not be limited to, licenses, fees, salaries of staff of the Daycare Centre;
- 5.2 be responsible for the costs of all routine maintenance and repairs, redecoration, furnishings, and the cost of all renovations and alterations to the Premises;
- 5.3 not make any alterations or major repairs to the Premises without the prior written consent of the RIAL which shall not be unreasonably withheld;
- 5.4 pay for all municipal and business taxes, and any other fees which may become due as a result of the CENTRE's occupation of the Premises;
- 5.5 pay for janitorial and other routine cleaning and maintenance services for the Premises;
- 5.6 reimburse RIAL for any extraordinary cleaning or repair necessitated in the Building as a result of a CENTRE activity;
- 5.7 respect all University and building regulations including but not limited to those appearing in **Appendix E**.
- 5.8 have a special medical kit for nurseries available, ensure that CENTRE staff is fully trained to respond to injuries;
- 5.9 have an evacuation procedure, and deliver a copy to RIAL within 60 days of any changes (**Appendix E**).

## 6. CONFORMITY

The CENTRE shall conform to all:

- (i) federal and provincial laws and regulations;
- (ii) municipal rules and regulations;
- (iii) its charter documents, by-laws and constitution;
- (iv) all applicable McGill University and RIAL regulations, guidelines and duly approved policies which apply to the use of all RIAL buildings, as modified from time to time, such as, without restriction, building codes, fire regulations, security standards, building use, health and safety rules and other similar requirements. These policies may be found at [www.mcgill.ca](http://www.mcgill.ca) with particular emphasis on <http://www.mcgill.ca/adminhandbook/>

With respect to the third paragraph of Section 1 of **Appendix E**, the CENTRE notes that the yearly schedule of Summer Friday and statutory holidays which affects the Building closure can be found at: <http://www.mcgill.ca/hr/>.

## **7. RIAL'S OBLIGATIONS**

RIAL shall:

- 7.1 through its Department of Facilities Management regularly inspect the premises and all heating, air conditioning, plumbing and electrical services therein and will carry out at the expense of RIAL, and with reasonable haste, all necessary maintenance and repairs to said services upon notification to the CENTRE;
- 7.2 include the exterior of the Premises in its security surveillance of RIAL buildings at night and on weekends and holidays;
- 7.3 be responsible for the costs of repairs or replacement related to the structure and exterior of the building and its appendages, including walls, windows, doors, parking lots and alterations made necessary by changes in fire and safety codes as may be necessary in its judgment from time to time;
- 7.4 insure the Building for fire and extended coverage and public liability;
- 7.5 be responsible for the full cost of replacing the property damaged by causes covered by the insurance policies held by RIAL.

## **8. CONTRACTS AND LEGAL PROCEEDINGS**

- 8.1 Any acts, contracts, and legal proceedings involving the CENTRE shall be the exclusive responsibility of the CENTRE.
- 8.2 Neither party shall enter into nor execute any cheques, contracts, documents, instruments, receipts, leases or other agreements in the name of the other party or in any way engage the liability of the other party thereon by any other means.
- 8.3 Should any legal proceedings or claims be taken or made against one party as a result of an act of the other, the said legal proceeding or claims shall be immediately referred to the other party which shall deal with it in a timely manner and at its own expense. Any costs or expenses incurred by the party for such legal proceedings or claim including, inter alia, any legal fees, condemnation, order, settlement, interest, judicial and extra judicial fees and costs, shall be entirely at the charge of the other party.
- 8.4 Either party shall have the option of engaging its own legal counsel to intervene in any legal proceedings in respect of the other party where its interests are involved. In such a case, all expenses, extra judicial fees and disbursements shall be borne exclusively by the party which has invoked this option.

## 9. REPRESENTATION OF THE CENTRE

The CENTRE represents warrants and covenants that:

- 9.1 the CENTRE shall obtain and maintain its status as a licensed daycare center, for children of undergraduate students registered at McGill University as well as children of other members of the McGill community, in accordance with the license appearing in **Appendix C**. For the period of this Lease, and its renewal, the CENTRE shall not request, or implement any changes to the license without the prior knowledge and express agreement of RIAL.
- 9.2 the charter documents, constitution and by-laws of the CENTRE consist entirely of the documents remitted to RIAL concurrently with the execution of the present Agreement and which appear as **Appendix C**. The CENTRE shall immediately inform RIAL, through the **Deputy Provost (Student Life and Learning)** with a copy to the **Vice-Principal (Administration and Finance)**, of any change to these or to the license the CENTRE intends to make and RIAL reserves the right to terminate the lease as a consequence of these changes;
- 9.3 the CENTRE has policies and procedures to provide for conflict of interest provisions respecting the hiring of employees, contracts with related parties and the administration of its affairs;
- 9.4 the CENTRE has and shall maintain its status as a corporation under Part III of the Quebec Companies Act.

## 10. EVENT OF DEFAULT

- 10.1 Each of the following shall be considered an event of default:
  - 10.1.1 when either the CENTRE or RIAL breaches a term or condition of the present agreement between the CENTRE and RIAL;
  - 10.1.2 when the CENTRE violates its charter, constitution, or by-laws;
  - 10.1.3 when the ASSOCIATION violates any applicable McGill University and RIAL regulations, guidelines and duly approved policies which apply to the use of all RIAL buildings, as modified from time to time, such as, without restriction, building codes, fire regulations, security standards, building use, health and safety rules and other similar requirements. These policies will be found at [www.mcgill.ca](http://www.mcgill.ca) with particular emphasis on <http://www.mcgill.ca/adminhandbook/>
  - 10.1.4 when in the course of or subsequent to an audit, the CENTRE'S auditor reports on material fraud, error or misstatement of the books or financial records of the CENTRE;
  - 10.1.5 when the CENTRE ceases to operate, dissolves, modifies its status as a not-for profit organization, makes any general assignment for the benefit of the creditors, takes the benefit of any insolvency or bankruptcy act or if a receiver or trustee be appointed for the property of the CENTRE or any part thereof.

- 10.2 Notwithstanding the provisions of 10.1, an event of default shall not be deemed to have occurred until the completion of a mandatory investigation by the Dean of Students and submission of the report to the Deputy Provost (Student Life and Learning) with a copy to the President of the CENTRE in sufficient detail as to allow the default to be identified.
- 10.3 In the event of default, the defaulting party shall be entitled to written notice of default and upon receipt of such notice, shall have 30 working days (or 60 calendar days between period May 1 and August 31) within which to remedy such default.
- 10.4 In the event of a dispute over the existence of a default, the defaulting party shall have 30 days from the receipt of such notice referred to in section 10.3, to notify the other party of its submissions to arbitration. The sending of the notice of submission to arbitration suspends the delay granted to remedy the default referred to in Section 9.3.
- 10.5 Submission to arbitration will be made in accordance with the provisions of the *Quebec Code of Civil Procedures* (Sections 940 and following) to one arbitrator, chosen by the parties. The fees and expenses of the arbitrator shall be shared equally between the parties.
- 10.6 Any action taken by either party or in progress under sections 10.1 to 10.5 will not extend the right of occupancy of the Premises by the CENTRE after the date of expiry of this Lease.

## **11. SUB-LEASING**

The CENTRE shall not be entitled to sub-lease nor assign any part of the Premises.

## **12. STAFF STATUS**

All staff hired by the CENTRE shall have exclusive CENTRE employment status and all conditions of employment shall be determined solely by the CENTRE. Neither RIAL nor McGill University shall be responsible in any way for the employment status, working conditions or acts of individuals so hired.

## **13. USE OF THE MCGILL NAME OR EMBLEM**

- 13.1 The CENTRE recognizes that RIAL and McGill University is the owner of the word "McGill", "McGill University" and McGill trademarks which are duly protected by the *Trademarks Act*.
- 13.2 The CENTRE may not use the name "McGill", "McGill University" or any of the crests owned by McGill University in connection with the CENTRE or its activities.

**14. SIGNAGE**

- 14.1 The CENTRE shall not permanently affix any signs, commercial or otherwise, within or outside the Building without the prior written consent of RIAL, which shall not be unreasonably withheld.
- 14.2 The CENTRE shall obtain prior written consent of the Building Director of the Brown Student Services Building for any signs within the Building. The content, size, design, and location of such signs shall be approved by the appropriate McGill department (currently the Facilities Design Office of Facilities Operations and Development). The CENTRE shall pay for all costs associated with any signs pertaining to it or its activities. The CENTRE shall be entitled to be listed on two general directories posted in the Building.

**15. TELEPHONE, MAIL, E-MAIL AND INTERNET**

The CENTRE shall be entitled to integrate:

- 15.1 its telephone system with the general University system including the same general area number, internal switching, and University directory listing;
- 15.2 its mailing system with that of the University's, including internal delivery. The CENTRE shall pay for all costs associated with the use, including but not limited to, the cost of external mail sent through the University mailing system;
- 15.3 its e-mail system with that of the University's and internet access with the McGill backbone only, and shall be permitted to use the McGill name in its address as follows: [daycare@ssmu.mcgill.ca](mailto:daycare@ssmu.mcgill.ca).

The CENTRE shall be billed separately by the responsible department, and it shall pay for all costs associated with the integration and the use of these systems as set from time to time.

Integration in these University systems is a privilege which may be revoked should the University reasonably believe that the CENTRE has used any system in a manner contravening University policy.

**16. INSURANCE**

The CENTRE shall be solely responsible for obtaining and maintaining, appropriate insurance necessary to conduct its activities, including and without limitation, comprehensive general liability insurance, employee dishonesty, loss of property damages and personal damages.

The Centre shall:

- 16.1 insure the contents of the Premises including leasehold improvements and will carry such other insurance as it deems necessary, including theft, fire, vandalism and comprehensive general liability insurance in the minimum amount of \$2,000,000 and include RIAL and McGill University as a name insured on the policy;

- 16.2 ensure that its officers and employees are covered under the terms of an Employee Dishonesty Policy with a reputable licensed insurer, to maintain such policy in force at all times during the term of the present Lease and to provide the University each year with a copy of such policy;
- 16.3 provide evidence of coverage upon execution of the lease and annually thereafter to the Office of the Deputy Provost Student Life and Learning. Evidence shall take the form of true copies of the relevant insurance policy or renewal certificate, as the case may be;
- 16.4 hold harmless and indemnify RIAL and McGill University, its officers, employees and agents of and from any and all suits, claims or demands, and reasonable costs and expenses that may arise by reason of the operation of the activities of the CENTRE, or by any act, or omission of the CENTRE, its directors, officers, employees, agents or persons engaged or retained by it.

**17. NOTICE**

Any notice to be given by the present Lease shall be given as follows:

- to the RIAL at its above-mentioned address to the attention of the Deputy Provost (Student Life and Learning) with a copy to the Vice-Principal (Administration and Finance)
- to the CENTRE at its above-mentioned address to the attention of its President or any available officer should the President not be available, with a copy to the attention of the Director of the Daycare.

**18. ENTIRE AGREEMENT**

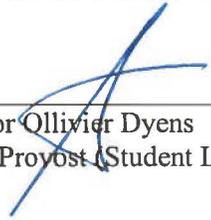
This present Lease constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes and replaces all prior agreements, undertakings, negotiations and discussions of the parties.

**19. LANGUAGE**

The parties to the present Agreement have requested that the present Agreement be drafted in the English language. *Les parties à la présente ont demandé que la présente convention soit rédigée dans la langue anglaise exclusivement.*

**IN WITNESS WHEREOF THE PARTIES HAVE SIGNED:**

**THE ROYAL INSTITUTION FOR THE ADVANCEMENT OF LEARNING / MCGILL UNIVERSITY:**

  
\_\_\_\_\_  
Professor Ollivier Dyens  
Deputy Provost (Student Life and Learning)

7 March 2016  
date

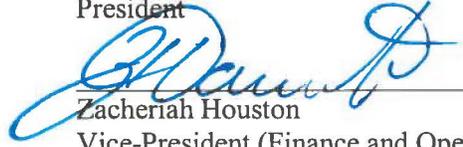
  
\_\_\_\_\_  
Mr. Michael Di Grappa  
Vice-Principal (Administration and Finance)

8 MARCH 2016  
date

**CENTRE GARDERIE SSMU INC. / SSMU DAYCARE INC.:**

  
\_\_\_\_\_  
Mr. Kareem Ibrahim  
President

25/02/16  
date

  
\_\_\_\_\_  
Zacheriah Houston  
Vice-President (Finance and Operations)

25 Feb 2016  
date

**INTERVENTION**

**STUDENTS' SOCIETY OF MCGILL UNIVERSITY**, an incorporated entity having its principal office at 3480 McTavish Street, city of Montreal, intervenes to bind itself jointly and severally with the **CENTRE** in the present lease agreement.

**STUDENTS' SOCIETY OF MCGILL UNIVERSITY:**

  
\_\_\_\_\_  
Mr. Kareem Ibrahim  
President

25/02/16  
date

  
\_\_\_\_\_  
Mr. Zacheriah Houston  
Vice-President (Finance and Operations)

25 Feb 2016  
date



Final Jan 25 2016

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**McGILL UNIVERSITY**

**AND**

**MACDONALD CAMPUS STUDENTS' SOCIETY/  
ASSOCIATION DES ÉTUDIANTS DU CAMPUS MACDONALD**

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**MEMORANDUM OF AGREEMENT** made and entered into at the City and District of Montreal, Province of Quebec.

**BETWEEN** **McGILL UNIVERSITY**, a University duly constituted by charter, having its principal office at 845 Sherbrooke Street West, in the City and District of Montreal, Province of Quebec,

(hereinafter referred to as the "University")

**AND** **MACDONALD CAMPUS STUDENTS' SOCIETY**, an incorporated society having its office in the Centennial Centre at the Macdonald campus of the McGill University,

(hereinafter referred to as the "Association")

**WHEREAS**, MCSS was incorporated on February 20, 1976 by Letters Patent issued pursuant to Part III of the *Companies Act (Québec)* **NEQ: 1143644434**;

**WHEREAS** the purpose of the Association is to unite and represent all undergraduate and diploma students of the Macdonald campus, to promote their welfare and interest and to provide activities to enhance the educational, cultural life of its members;

**WHEREAS** a referendum of members of the Association approved the collection of fees for its operating expenses and the support of its activities;

**WHEREAS**, on the basis of said referendum, the Board of Governors of McGill University approved the collection of fees from the members of the Association for said purposes;

**WHEREAS** the University and the Association, entered into an agreement respecting various matters including the assessment and collection of fees from students and the operation of University accounts for such fees;

**WHEREAS** the University and the Association wish to enter into a new agreement, in replacement of the previous agreement

**NOW THEREFORE, THE PRESENT AGREEMENT WITNESSES:**

## 1. COLLECTION OF ASSOCIATION FEES

- 1.1 Subject to the approval of the Board of Governors of the University, the University shall collect in each of the fall, winter, spring and summer sessions during the term of the present Agreement all Association fees from undergraduate and diploma students at its Macdonald campus students duly registered at the University and assessed by the Association, such fees (the "Association Fees") to be used by the Association for its operating expenses and in support of the Association's student-related activities. The current Association Fee Schedule appears as Appendix A hereto.
- 1.2 The Association Fees shall be included in the total student fee assessed by the University and all existing University regulations pertaining to the assessment and collection of fees shall apply thereto.
- 1.3 The Association Fees shall be distributed yearly as follows:
- The **first distribution** of the Association Fees shall be paid to the Association on September 15 and shall reflect fee assessments from June 1 to August 31st.
  - The **second distribution** of the Association Fees shall be paid on November 15th and shall reflect the balance of the Fall Term assessments as at October 31st. There shall be no holdback of fees for either of these remittances.
  - The **third distribution** of the Association Fees shall be paid on February 15th and shall reflect the Winter Term fee assessments as at January 31st. An amount equal to 10% of the amount to be paid as the third distribution shall be held back by the University to account for changes in student registration occurring from February 1st to May 31st.
  - The **final distribution** of Association Fees shall be paid on June 15 and shall reflect assessment as at May 31st, less the 1% fee for bad debt charges (in accordance with section 1.4), the Annual Administrative Fee (in accordance with section 2.1) and any other amounts owed to the University as at May 31st.
- 1.4 No charges shall be levied by the University for the collection of the Association Fees; however, the University shall be entitled to receive 1% of the total fees assessed in each term as relief for the collection of bad debts. Upon request, the University shall provide the Association with information on the number of students carrying bad debts.
- 1.5 At the option of the Association, and with the consent of the University, the Association Fees may be credited to an internal account of the University with the prior written approval of the University for the exclusive use of the Association.
- 1.6 No adjustments to the Association's fees shall be applied or collected by the University unless the Deputy Provost (Student Life and Learning) has confirmed in writing that the formalities required by the Association's Constitution for fee adjustments, and applicable law, have been followed.
- 1.7 All requests for new fees or fee changes must be sent in writing to the Deputy Provost (Student Life and Learning) Office by April 1 for implementation in the Fall term and by November 20 for implementation in the Winter term.

2. **ACCOUNTING SERVICES**

2.1 The University shall provide certain accounting services to the Association for an Annual Administrative Fee in accordance with the schedule contained in **Appendix B**. This fee is subject to an annual review by the University. The services to be provided will include the following:

2.1.1 Monthly trust fund statements indicating fee revenues, distributions and expenses resulting in year to date totals.

2.1.2 Provision of regular lists on the Association's membership on a scheduled basis; weekly in August/September and monthly the remaining months.

The Association shall request security access at the beginning of their mandate to access Minerva reports. The President of the Association must authorize all requests for access, and should the President require access, then two vice-presidents of the Association must authorize his/her request. Security authorization to Minerva reports shall terminate each year on June 15<sup>th</sup>. Employees of the Association who have been given access may keep their access upon confirmation by the current year's President.

2.2 Should the Association require any other lists, data sets or any other type of information on its membership or financial records not already provided for in article 2.1 above or elsewhere in this Memorandum of Agreement, the University shall give effect to the request upon reasonable prior notice, to the extent allowed by law and subject to the payment of an appropriate fee. This fee shall be identified prior to fulfilling the request.

The University is subject to the provisions of the **Quebec Act Respecting Access to Documents held by Public Bodies and the Protection of Personal Information** and therefore reserves the right to refuse to give effect to a request.

2.3 Notwithstanding article 2.1, should any programming changes be required to be performed by University's Network Communications Services ("NCS") at the request of the Association, the University reserves the right to charge the Association the hourly rate for the work to be performed.

2.4 The University shall not draw any funds from the account maintained by the University for the use of the Association or from the fees collected by the University for the Association without the Association's prior written approval, unless exercised as a remedy pursuant to article 9 hereto.

3. **LOANS AND GRANTS**

The Association may apply to the University from time to time for loans and grants in aid of activities or projects, the granting of which shall be in the sole discretion of the University.

4. **STAFF STATUS**

All staff hired by the Association shall have exclusive MCSS employment status. The working conditions, including payroll, of all Association staff shall be determined solely by the Association and shall be the sole responsibility of the MCSS.

## 5. INSURANCE

- 5.1 The Association shall ensure that its officers and employees are covered under the terms of an Employee Dishonesty Policy with a reputable licensed insurer, to maintain such policy in force at all times during the term of the present Agreement and to provide the University each year with a copy of such policy.
- 5.2 The Association shall be solely responsible for obtaining appropriate insurance necessary to conduct its activities, including and without limitation, comprehensive general liability insurance including but not limited to libel slander, defamation of character, loss of property damages and personal damages and shall name the University as co-insured. To the extent that such insurance is obtained by arrangement with the McGill Risk Management and Insurance Office such costs shall be debited to the Associations.
- 5.3 The Association shall provide evidence of such coverage upon execution of the Agreement and annually thereafter to the McGill Risk Management and Insurance Office. Evidence shall take the form of true copies of the relevant insurance policy or renewal certificate, as the case may be.
- 5.4 The Association shall hold harmless the University, its officers, employees and agents of and from any and all suits, claims or demands, and reasonable costs and expenses that may arise by reason of the operation of activities of the Association, or any act, neglect, omission of the Association, its directors, officers, employees, agents or persons engaged or retained by it.

## 6. MAINTENANCE AND AUDITING OF ACCOUNTS

- 6.1 All financial records, books and accounts of the Association shall be maintained in accordance with generally accepted accounting principles consistently applied.
- 6.2 The Association shall provide the Deputy Provost (Student Life and Learning) with a copy of its annual audited financial statements within 120 calendar days of each financial year-end. The Association's financial year-end is May 31.
- 6.3 Upon reasonable notice from the University and upon reasonable cause, the Association shall make available for audit all documents relating to:
- (a) current contracts and expenditures;
  - (b) projected contracts and expenditures; and
  - (c) books, records and accounts.
- 6.4 The Association shall engage the services of a reputable auditing firm or chartered accountant in good standing with the **Order of Chartered Accountants of Québec** to prepare the Association's annual financial statement. The Association shall advise the University of the name of the auditing firm or chartered accountant. In the event the University does not find that firm or the chartered accountant acceptable the Association shall appoint another firm or chartered accountant acceptable to the University.

## 7. USE OF THE MCGILL NAME OR EMBLEM

- 7.1 The Association recognizes the University is the owner of the intellectual property in the names "McGill", "Macdonald College" and "Macdonald Campus" and the associated trademarks and crest which are duly protected by the *Trademarks Act*.
- 7.2 On a non-exclusive basis and solely in connection with its activities related to its role as a student association and in accordance with this Agreement, the University hereby grants the Association the right to use the name "Macdonald Campus" in its name "**MACDONALD CAMPUS STUDENTS' SOCIETY**". The present grant is not assignable.
- 7.3 The University's trademarks and emblems may not be used in connection with the Association's name or logo, or that of the names or groups of the Association, which shall be distinct from that of the University's. A copy of the Association's approved logo appears in **Appendix C**.

Any change to the Association's approved logo or trademark shall be submitted in advance for confirmation by the Deputy Provost (Student Life and Learning) that the proposed new logo or trademark conforms to the terms and conditions set out in this section. The Deputy Provost (Student Life and Learning) shall provide a written response within one week of the Associations' submission. Approval shall form an amendment to this agreement.

- 7.4 On a non-exclusive basis, and for the term of this Agreement and in accordance with its conditions, the University hereby grants those Association's groups, clubs or services ("the Groups") whose Group names have been approved with the McGill name permission to use "McGill" in their names as they appear in **Appendix G**:
- (i) The present grant is not assignable.
  - (ii) McGill reserves the right to withdraw such permission at any time and for whatever reason, subject to notice and discussion with the Association.
  - (iii) The Groups shall not use the name, emblems or trademarks of the University in connection, or in any way integrated, with the name, logos or emblems of the Group, which shall be distinct from those of the University.
  - (iv) Any changes to **List of Groups** appearing in **Appendix G** (including any additions or deletions, or changes to a Group's name or to its activity) shall be brought to the attention of the Office of the Deputy Provost (Student Life and Learning) and the change shall be confirmed by the Deputy Provost (Student Life and Learning) within two weeks of receiving of the notice of change.
  - (v) The Association acknowledges and accepts that going forward (effective June 1, 2015) any new Group of the Association wishing to adopt the name "McGill" as

part of its name shall be permitted to do so by adopting one of the **Approved Forms for Group Names** approved by the University and as set out in the category of activity in accordance with the **Recitals in Appendix G.**

- 7.5 For all Groups, and for all their activities, services, offerings, advertisements and websites, the Association shall respect the rights of the University as owner of the trade name "McGill" and shall adhere to the conditions set out in **Section 7** and the **Recitals of Appendix G.**

Each Association Group shall identify themselves as a group of the Association using the form of:

*"A [e.g. sports club, service...] of the MCSS, a students' association at McGill University"*

- 7.6. Neither the Association, nor any of its Groups, shall use the name of the University for any other purpose without the prior written consent of the Deputy Provost (Student Life and Learning).
- 7.7. For **event-specific permission** to use the name, emblems or trademarks of the University for the Association's use, or for the use of any of its Groups, the Association shall obtain express prior written consent from the Secretary-General of the University. Permission shall be granted at the University's discretion and, where granted, is time-limited and not assignable. McGill reserves the right to withdraw such permission at any time and for whatever reason.

## **8. CONTRACTS AND LEGAL PROCEEDINGS**

- 8.1 Any acts, contracts, and legal proceedings involving either party shall be the exclusive responsibility of that party.
- 8.2 Neither party shall enter into or execute any cheques, contracts, documents, instruments, receipts, leases or other agreements in the name of the other party or in any way engage the liability of the other party thereon by any other means.
- 8.3 The parties shall not solicit or receive any gift, grant or bequest in the name of the other without prior written consent.
- 8.4 Should any legal proceedings or claims be taken or made against either party as a result of an act of the other, the legal proceedings or claims shall be immediately referred to the other party, which shall deal with it in a timely manner and at its own expense. Any costs or expenses incurred by such litigation or claim including, *inter alia*, any legal fees, condemnation, order, settlement, interest, judicial and extra judicial fees and costs, shall be entirely at the charge of the other party.
- 8.5 Either party shall have the option to engage its own legal counsel to intervene in or direct any legal proceedings in respect of the other party where its interests are involved. In such a case, all expenses, extra judicial fees and disbursements shall be borne exclusively by the party, which has invoked this option.

## 9. RIGHT TO SET OFF

- 9.1 Should the University, following due notice to the Association, be required to pay any of the charges, costs, expenses, debts and claims which are by these presents to be borne exclusively by the Association, or should the Association be in any way indebted to the University, the University is authorized to collect or set off the said amount against the funds paid or payable to the Association pursuant to this Agreement, and which shall be subject to the following:
- 9.2 In accordance with the present Agreement:
- a) The University must provide the Association with a written notice of the charges, costs, expenses, debts and claims providing complete details and documents relating thereto.
  - b) The Association shall have a delay of thirty working (30) days (or sixty (60) calendar days between period May 1 and August 31) after the receipt of such notice in which to resolve and/or remedy the matter.
  - c) The University shall exercise its best effort to inform the Association as soon as possible within the same financial year of any charges, costs, expenses, debts and claims on the part of the Association under this clause.
- 9.3 Notwithstanding the foregoing, the Association may submit any disagreement under this section to an Arbitrator in accordance with article 12.3.

## 10. LIQUOR PERMITS

The Association shall apply for and maintain in its name necessary liquor permits for any event, it, and any of its clubs or groups, may hold from time to time for its own purposes.

- 10.1 Except for one bar permit held for the for The Ceilidh, the Association recognizes and reaffirms its commitment to respect article 39 of the *Quebec Act Respecting Liquor Permits (chapter P-9.1)* that specifies the Association may only hold a **reunion class liquor permit**, as defined in article 33 of the Quebec Act Respecting Liquor Permits (chapter P-9.1), for events held within University buildings or anywhere on University property. The hosting of such events is subject to prior express approval of the University and such other conditions as set from time to time.
- 10.2 The Association shall exercise its permits in accordance with all laws, municipal and government regulations as well as all internal requirements and policies of the University and appropriate standards of conduct, that include, but are not limited to those relating to:
- (a) hosting on campus events only in approved University locations;
  - (b) advertising these campus events, and the cost of alcohol, in accordance with the law;
  - (c) purchasing, storing (as applicable) and serving the alcoholic beverages at these events in accordance with the law;
  - (d) adhering to all requirements with respect to building, fire, security and room capacity.

- 10.3 The Association shall hold harmless the University for any and all claims, fees or fines arising from its exercise or omission to exercise its rights and duties under such permits and as host of these events.

## 11. REPRESENTATIONS OF THE ASSOCIATION

- 11.1 The Association represents, warrants and covenants that:
- 11.1.1 the charter documents, constitution and by-laws of the Association consist entirely of the documents remitted to the University concurrently with the execution of the present Agreement and which appear as **Appendix C**. The Constitution and by-laws of the Corporation are provided for reference purposes. The Parties agree that no clause in the Constitution or By-laws shall modify or supersede this Agreement;
  - 11.1.2 a referendum of the Association members has been duly held in accordance with its constitution approving the existing Association Fees and such referendum continues to bind the Association and its members;
  - 11.1.3 it has amended its policies and procedures to provide for conflict of interest provisions respecting the hiring of employees, contracts with related parties and the administration of its affairs;
  - 11.1.4 it is and shall maintain its status as a corporation under Part III of the *Quebec Companies Act* whose membership is limited to regularly registered undergraduate and diploma students at Macdonald Campus of the University; and
  - 11.1.5 no member shall act as Director or Officer of the Association while subject to a non-academic disciplinary measure under the **Handbook of Students Rights and Responsibilities** that has the effect of removing either temporarily or permanently the Director or Officer's student status.
- 11.2 The Association shall provide the Deputy Provost (Student Life and Learning) with a copy of:
- i. the Association's **annual Declaration of Incorporation** as proof that the Association has maintained its incorporated status;
  - ii. a copy of the Association's **annual audited Financial Statements** prepared in accordance with Article 5 herein;
  - iii. a copy of the **annual Certificate of Insurance** obtained in accordance with Article 4 herein;
  - iv. a copy of a complete **up-to date Appendix E** as at September 30th, listing all Association, clubs and services for the following academic year in accordance with Article 6 herein and the Recitals appearing in **Appendix E** by Sept 30<sup>th</sup>; and
  - v. any changes to the documents remitted to the University concurrently with the execution of the present Agreement, within 30 days of the change.

## 12. EVENT OF DEFAULT

- 12.1 Each of the following shall be considered an event of default:
- 12.1.1 when either the Association or the University breaches a term or condition of the present agreement or of any other agreement between the Association and the University;
  - 12.1.2 when the Association violates its charter, constitution or by-laws (some of which are appended hereto and appear as Appendix C) or any duly approved regulations, rules or policies of the University some of which appear at [www.mcgill.ca](http://www.mcgill.ca) and in particular those in the University Administrative Handbook located at <http://www.mcgill.ca/adminhandbook/>;
  - 12.1.3 when in the course of or subsequent to an audit, the Association's auditor reports on material fraud, error or misstatement of the books or financial records of the Association;
  - 12.1.4 when the Association ceases to operate, dissolves, modifies its status, makes any general assignment for the benefit of the creditors, takes the benefit of any insolvency or bankruptcy act or if a receiver or trustee be appointed for the property of the Association or any part thereof.
- 12.2 In the event of default, the defaulting party shall be entitled to written notice of default and upon receipt of such notice, shall have 30 working days (or 60 calendar days between period May 1 and August 31) within which to remedy such default.
- 12.3 In the event of a dispute over the existence of a default, either party shall be entitled to submit the dispute to arbitration by giving the other party written notice no later than 90 calendar days from the date of the notice referred to in Section 12.2. Such notice shall suspend the delay granted to remedy the default referred to in Section 12.2.
- 12.4 Submission to arbitration shall be made in accordance with the provisions of the Quebec Code of Civil Procedure (Sections 940 and following) to one arbitrator chosen by the parties. The fees and expenses of the arbitrator shall be shared equally between the parties.
- 12.5 Notwithstanding section 12.3, the parties agree that it is in their best interest to resolve any dispute amicably. The parties agree to engage in an open and respectful dialogue between the Deputy Provost (Student Life and Learning) and the President of the Association with the aim of arriving at an amicable resolution of the dispute.
- 12.6 Any condition of default shall be subject to a prescription period of three (3) years.

### 13. REMEDIES

- 13.1 Upon the confirmation of the occurrence of a default by either party, in accordance with section 12, the present Agreement may be terminated forthwith upon written notice to the defaulting party.
- 13.2 Upon the confirmation of the occurrence of an event of default by the Association, in accordance with section 12, all funds for the Association shall be allocated to an interim trust fund ("Trust Fund") administered by the University and overseen by a committee of five (5) individuals comprising of two University representatives, two Association representatives and chaired by a person selected by agreement of the parties. The Committee shall oversee the administration of the Trust Fund until such time as the Association has been restructured and reinstated.
- 13.3 Upon dissolution or cessation of operation of the Association, all funds for the account of the Association shall be allocated to an interim trust account for a period of not to exceed two (2) years. An amount of up to 50% of the interim trust fund shall be made available to the officers designated under the Association's Constitution, to help them in their efforts to restructure and reinstate. After two years, if the Association has not been restructured and reinstated, the balance of the trust fund shall be deposited into a MCSS Endowment Fund, the revenue of which shall be used to provide undergraduate and diploma students of Macdonald campus with student services and student aid, under the guidance of a committee of equal representation of Macdonald campus students and McGill administration until such time as the Association is able to restructure and reinstate itself according to its constitution.
- 13.4 The Association shall be responsible for the reasonable costs incurred by the University, including reasonable legal costs, as a result of defaults by the Association under the present agreement. The University shall be responsible for the reasonable costs incurred by the Association, including reasonable legal costs, as a result of defaults by the University under the present agreement.
- 13.5 It is expressly agreed that such termination shall be in addition and without prejudice to all other rights as provided by law or herein.

### 14. STUDENT PUBLICATIONS

- 14.1 The University recognizes that the Association's role as a representative body of students may necessitate the publication of newspapers, newsletters and periodicals directed towards its members and distributed on the Macdonald campus. Thus, the Association may distribute, at no cost, a newspaper entitled "*Afterthought*", and a newsletter entitled "*Mouthpiece*" ("the Publications") oriented toward the general interest of the Association's student membership.
- 14.1.1 The editorial, reporting and advertising content of the Publications shall be the sole and exclusive responsibility of the Association. For greater certainty, the University shall not be responsible or liable for the editorial, reporting or advertising content of the Publications.

14.1.2 The Association shall display on the title page, the Association's logo and the name of the Publication with the following notice appearing immediately below the Publication's name in at least 9-point font:

*"Published by the Macdonald Campus Students' Society (MCSS), a student society of McGill University. The content of this publication is the sole responsibility of MCSS and does not necessarily represent the views of McGill University."*

14.1.3 The Publications shall not display the McGill name, crest or logo in its masthead.

14.2 The Association may distribute the Publications at no cost by leaving copies at defined locations in the buildings designated by the University:

14.2.1 The list of **Approved Campus Locations** and the list of **Approved Off-Campus Locations** appears in **Appendix D**.

14.2.2 Off-campus distribution of the Publication is permitted under the following conditions:

- (a) no off-campus distribution is permitted without the prior written permission of the manager of those off-campus locations and the authorization from the Deputy Provost (Student Life and Learning);
- (b) no off-campus distribution shall be permitted in public places including sidewalk boxes;
- (c) authorization of the Deputy Provost (Student Life and Learning) is revocable upon demand.

14.2.3 No changes shall be made to this list appearing as **Appendix D** without the prior approval and authorization of the Deputy Provost (Student Life and Learning).

14.3 Notwithstanding the generality of the foregoing, the permission granted to the Association under this Agreement does not extend to the distribution of commercial flyers and advertisements for third parties; either placed loosely within the Publication or distributed with the Publication (whether or not placed on the newsstands), which is strictly prohibited.

14.4 It is understood that subject to the provisions in this Agreement, the Association is permitted to produce and distribute to its members at no cost, Association brochures and agendas.

## **15. BUSINESS ACTIVITIES**

The following are the general principles governing the business activities of the Association:

15.1 With respect to business activities in the Centennial Centre, the Association shall discuss with the University changes in those business activities.

- 15.2 With respect to business activities in the Centennial Centre, the Association may engage in the revenue-generating activities on the University premises listed in **Appendix E**. The Association must receive the University's prior written approval for changes in the use of University space listed in **Appendix E**. Revenue Generating Activities (RGA's) are defined as all operations that produce income or recover costs by providing goods or services to the University community or, in some cases, to the general public.
- 15.3 The Association must have the University's prior written agreement in signing any contracts or agreements with external third parties for Association's business purposes that lead to the use of University space and/or facilities by such external third parties.
- 15.4 When University space and/or facilities are used for business activities, the University must be reimbursed appropriately for the costs associated with the use of such space and/or facilities; these may include, but are not be limited to, the payment of electricity, air conditioning, janitorial and maintenance charges. The University shall provide the Association details and document such charges, upon request.
- 15.5 Any University space or facilities used for business activities may be subject to a lease arrangement which may include the payment of rent.
- 15.6 The University and the Associations shall undertake to discuss contracts or agreements with external third parties regarding certain business activities which may lead to the recovery of costs for the University as well as generate sufficient income to the benefit of both the University and the Association.

## 16. **LOCATION**

- 16.1 In accordance with its status as a student association, the University shall provide the Association with a room at no charge which shall constitute an office from which to conduct its activities. The location of this room shall be on or around the Macdonald campus of the University and shall constitute the Association's principal premises.
- 16.2 The University further grants to the Association the use of the University space and/or facilities which appears in **Appendix F** at no charge for the term of this Agreement and for the stated purpose.
- 16.3 Any request for additional space shall be subject to availability and may be evidenced by a separate lease agreement between the parties.
- 16.4 The University reserves the right to bill the Association for any extraordinary cleaning or repair necessitated as a result of an Association-sponsored activity in University premises listed in either **Appendix E** or **F**.

## **17. TELEPHONE, E-MAIL AND MAIL SYSTEMS**

As long as the Association is located in a University building, the Association shall be entitled

- 17.1 to purchase telephone services from the University, including the "398" exchange number, long distance services, internal switching and University directory listings. No equipment other than that provided by McGill Network and Communications services may be attached to lines provided by McGill.
- 17.2 to purchase backbone connectivity and Internet access for their computers. This does not include a right to web casting which may be subject to a separate agreement.
- 17.3 to use the University's e-mail system subject to the Association, its employees, officers and volunteers, respecting University policies including but not limited to the **Policy on the Responsible Use of McGill Information Technology Resources**.
- 17.4 to use the University's mailing system, including internal delivery. The Association shall pay for all costs associated with the use, including but not limited to, the cost of external mail sent through the University mailing system.
- 17.5 subject to the conditions set out in Articles 7 and 12, the University grants the Association the right to use "McGill" within its domain name <http://www.mcass.mcgill.ca/> (redirected to <http://www.macstudents.ca>) within the Association' own independent interactive website.

The Association shall pay for all costs associated with the integration and the use of these systems as set from time to time. Integration in these University systems is a privilege, which may be revoked, should the University reasonably believe that the Association has used any system in a manner contravening McGill policy. The University shall provide the Association with such reasonable notice, as deemed to be appropriate, prior to revoking of any of these systems

## **18. TERM AND REVIEW**

The term of the present agreement shall begin on **June 1, 2015** and end on **May 31, 2020**. Nine (9) months prior to the expiration of the term, the parties shall review in good faith the terms and conditions with a view to renew on a mutually agreeable basis. In the event the parties are unable to agree on the terms of renewal, the term of the present agreement shall be extended for a maximum of six months.

## **19. NOTICE**

Any notice to be given by the present Agreement shall be given to the University at its above-mentioned address to the attention of the Deputy-Provost (Student Life and Learning) and to the Association at its above-mentioned address to the attention of its President or any available officer should the President not be available.

**20. ENTIRE AGREEMENT**

This present Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes and replaces all prior agreements, undertakings, negotiations and discussions of the parties.

**21. LANGUAGE**

The parties to the present Agreement have requested that the present Agreement be drafted in the English language. *Les parties à la présente ont demandé que la présente convention soit rédigée dans la langue anglaise exclusivement.*

**AND THE PARTIES HAVE SIGNED:**

**MACDONALD CAMPUS STUDENTS' SOCIETY INC.**

Per:   
Mathieu Rouleau  
President

9<sup>th</sup> Feb 2016  
Date

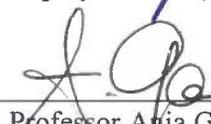
Per:   
Nihal Mandanna CP  
Vice-President, Finance

09/02/2016  
Date

**McGILL UNIVERSITY**

Per:   
Professor Ollivier Dyens  
Deputy Provost (Student Life and Learning)

3 Feb 2016  
Date

Per:   
Professor Anja Geitmann  
Dean and Associate Vice-Principal (Macdonald Campus)  
Faculty of Agricultural and Environmental Sciences

4-2-2016  
Date