

**ASSOCIATE MEMBERSHIP AGREEMENT** dated the \_\_\_\_ day of \_\_\_\_\_, 2015,

(the “**Agreement**”).

**BY AND BETWEEN:**

**STUDENTS’ ADMINISTRATIVE COUNCIL  
OF THE UNIVERSITY OF TORONTO,**  
a corporation incorporated under the  
Canada Not-for-profit Corporations Act

(“**UTSU**”)

- and -

**UNIVERSITY OF TORONTO  
ENGINEERING SOCIETY,**  
a corporation incorporated under the  
Corporations Act (Ontario)

(“**ENGSOC**”)

**WHEREAS** UTSU operates as the central students’ union for undergraduate students enrolled at the University of Toronto (“**UofT**”), including undergraduate students that are enrolled at the Faculty of Applied Science and Engineering of the University of Toronto (“**FASE**”);

**AND WHEREAS** ENGSOC is the primary representative and service-provider for undergraduate students at FASE;

**AND WHEREAS** UTSU collects fees from undergraduate students enrolled at UofT, including from undergraduate students enrolled at FASE, and provides various services to FASE undergraduate students, such as academic representation, funding for student groups, and health and dental insurance;

**AND WHEREAS** ENGSOC operates as the student government body for all undergraduate students enrolled at FASE and provides various services to FASE undergraduate students, such as academic representation and funding for student groups;

**AND WHEREAS** UTSU and ENGSOC are committed to assisting each other in ensuring the strength, viability and solidarity of the student movement at UofT;

**AND WHEREAS** the parties wish to confirm respect for each other’s autonomy and membership;

**AND WHEREAS** the parties wish to co-ordinate and streamline resources for the betterment of both organizations and memberships;

**AND WHEREAS** the parties wish to ensure that the students at the University of Toronto are as united as possible in matters of advocacy.

**NOW THEREFORE FOR VALUE RECEIVED** the parties hereby agree as follows:

**Article 1. RELATIONSHIP**

**1.1 Autonomy**

Each party hereto acknowledges that UTSU and ENGSOC shall continue to operate as independent and autonomous organizations. UTSU shall continue to represent the interests of all UofT undergraduate students, including FASE undergraduate students in the manner described herein, and ENGSOC shall continue to represent the interests of FASE undergraduate students.

**1.2 UTSU Board of Directors**

For as long as this Agreement remains in effect, ENGSOC shall be entitled to have at least three (3) representatives on the UTSU Board of Directors (the “**UTSU Board**”), elected by the membership of ENGSOC as part of the regular UTSU elections. For greater certainty, each representative of ENGSOC shall receive notice of, be entitled to attend and be entitled to vote, on all matters before the UTSU Board in the same manner as any other director of the UTSU Board.

**1.3 ENGSOC Board of Directors**

- (a) For as long as this Agreement remains in effect, UTSU shall be entitled to have one (1) representative appointed to the ENGSOC Board. The representative shall be a duly elected member of the UTSU Executive Committee, chosen by the Executive Committee. For greater certainty, the representative of UTSU shall receive notice of, be entitled to attend and be entitled to vote, on all matters before the ENGSOC Board in the same manner as any other director of the ENGSOC Board.
- (b) UTSU and ENGSOC agree that the UTSU representative will be in conflict any time a matter comes before the board of directors of ENGSOC in which UTSU and ENGSOC have diverging interests. Despite anything set forth in the by-laws and governance policies of ENGSOC, the UTSU representative shall be entitled to participate and vote on any conflicted matter.
- (c) Despite anything in the by-laws and governance policies of ENGSOC to the contrary, the UTSU representative shall not be bound by the automatic recall requirements applicable to other ENGSOC directors.
- (d) For certainty, all directors and officers of ENGSOC Board, including the UTSU representative, shall at all times be fiduciaries of ENGSOC and accordingly must keep in full confidence all information obtained confidentially, and all matters discussed by the ENGSOC Board confidentially. The UTSU representative shall not, without the express prior written consent of the president of ENGSOC, disclose any information or details of deliberations to any third party, including, the UTSU;

provided ENGSOc shall act promptly and reasonably in exercising its discretion in this regard.

## **Article 2. MEMBERSHIP**

### **2.1 Status of Membership**

UTSU acknowledges that the category of students registered at FASE that are defined as members of ENGSOc by the by-laws of ENGSOc, now and in the future, shall remain the members of ENGSOc for the purpose of calculating fees hereunder and otherwise. ENGSOc acknowledges that the category of students registered at FASE that are defined as members of UTSU by the Governing Council of UofT, now and in the future, shall remain members of UTSU.

## **Article 3. PROGRAMS AND SERVICES FOR FASE STUDENTS**

### **3.1 Recognition**

Each of UTSU and ENGSOc shall use its best efforts to avoid providing duplicate or overlapping services, advocacy or representation to their members registered at FASE. As between UTSU and ENGSOc, UTSU acknowledges that ENGSOc is the primary representative and service-provider for those individuals with membership in both organizations.

### **3.2 Services to be provided by UTSU.**

- (a) UTSU shall continue to represent the interests of, and provide services to, FASE undergraduate students in situations where broader, campus-wide advocacy is appropriate. In particular, UTSU may continue to represent FASE undergraduate students in the following contexts:
  - (i) at meetings of the Governing Council of the University of Toronto, as the sole representative of FASE undergraduate students;
  - (ii) at meetings of the Hart House Board of Stewards, as the sole representative of FASE undergraduate students; and
  - (iii) at the Council on Students Services (COSS), as the sole representative of FASE undergraduate students.
  - (iv) at all other university-wide representative bodies, where agreed upon by both UTSU and ENGSOc.
- (b) UTSU shall also be able to provide services in any other contexts where ENGSOc is not providing a particular program or service to FASE undergraduate students, but where, in the opinion of UTSU, such a program or service should exist. In particular, UTSU shall continue to provide the following services to FASE undergraduate students:



#### **4.4 Funding for Programs and Services Provided by UTSU**

For greater certainty, except expressly provided in section 4.1 of the Agreement, UTSU shall retain all student membership fees and/or levies collected by UTSU from all FASE undergraduate students, and may use said monies to provide the services and programs identified in section 3.2 of this Agreement.

#### **4.5 Audit re ENGSOC Fees**

ENGSOC shall have the right at any time to conduct an audit of the accounts, books and records of UTSU (but only such accounts, books and records related to the ENGSOC Fees) for the purposes of verifying UTSU collection and use and remittance of of ENGSOC Fees. Any audit shall be conducted in a commercially reasonable manner, as expeditiously as possible, and shall be as ENGSOC's sole cost UNLESS the audit determines a shortfall with respect to ENGSOC Fees in which case UTSU shall forthwith reimburse ENGSOC immediately for the total costs of the audit in addition to the forthwith payment to ENGSOC of the ENGSOC Fees.

#### **4.6 NO MARKUP, FEE, SETOFF OR DEDUCTION**

UTSU agrees it shall not be entitled to withhold from, set off against or deduct any amount against the ENGSOC Fees. Without limiting the foregoing but for certainty, UTSU shall not be entitled to directly or indirectly charge any amount to ENGSOC in connection with the collection and remittance function.

### **Article 5. RE-NEGOTIATION AND TERMINATION**

#### **5.1 Initial Term and Automatic Renewal**

This Agreement shall remain in effect for an initial one (1) year period from the date of execution (the "Term"). Thereafter, the Agreement shall automatically renew for successive one (1) year periods unless otherwise terminated in accordance with this Agreement.

#### **5.2 Re-Negotiation**

A simple majority of the members of the Executive Committee of each of UTSU and ENGSOC, respectively, shall meet as they together deem necessary, but not less than twice per academic year, and not less than once per semester, to:

- (a) discuss the priorities of each organization;
- (b) review and determine the coordination of resources, services and advocacy; and
- (c) discuss the contents of this Agreement and negotiate amendments to this Agreement, as necessary.

### 5.3 Termination

This Agreement shall be effective upon execution, and shall continue for a sixty day period following the affirmative vote of either party taken in accordance with the following procedure:

- (a) By a vote with a two-thirds (2/3) majority of directors in favour of terminating this Agreement at a duly called and regularly constituted meeting of either the UTSU Board or the ENGSOC Board, as the case may be, followed by an affirmative vote of at least two-thirds (2/3) majority in favour of terminating this Agreement at a duly called and regularly constituted general meeting of the membership of either UTSU or ENGSOC, as the case may be.

### 5.4 Default

Any valid or binding decision of ENGSOC, whether by ENGSOC's general membership (AGM), Board of Directors, or Executive Committee, which an objectively reasonable person would conclude contravenes the terms of this Agreement, shall give UTSU the right, upon sixty (60) days written notice of the same by UTSU to ENGSOC, if not cured/or if ENGSOC has not taken reasonable steps or measures to cure said default within fifteen (15) business days of having received said notice, to suspend the transfer of fees/levies as described in Article 4. For certainty, UTSU shall only be entitled to exercise its rights under this section if it is acting in good faith and is itself not in default under this Agreement.

## Article 6. DISPUTE RESOLUTION

### 6.1 Negotiation

In the event of a dispute, the party alleging the dispute shall provide written notice of the dispute giving particulars of the dispute to the other party (the "**Notice of Dispute**"). The parties each agree to appoint a representative and to cause their respective representatives to meet as soon as possible in an effort to resolve the dispute, prior to seeking a resolution by either mediation or arbitration.

### 6.2 Mediation

If the dispute is not resolved by informal negotiation within thirty (30) days of delivery of the Notice of the Dispute, the dispute shall be referred to mediation, under the terms and conditions described below, that is an informal, non-binding, conference or conferences between the parties in which a mediator will assist the parties in the resolution of their dispute:

- (a) The parties are free to select any mutually acceptable mediator. If the parties cannot agree or have no particular choice of mediator, they may request a list of mediators from the ADR Institute of Canada and choose a mutually acceptable mediator from the list provided using a standard rating system with the assistance of a neutral third-party. If the parties have not co-operated in choosing a mediator within ten (10) days of the referral to mediation, any party shall be entitled on notice to the other parties to commence an application to have a mediator appointed on

application to a judge of the Ontario Superior Court. The costs of retaining any external mediator will be borne by both parties, equally;

- (b) The mediation process shall continue until the earlier of (1) the case is resolved, (2) one of the parties wishes to terminate the mediation, or (3) the mediator makes a finding that there is no possibility of resolution;
- (c) The discussions had throughout the mediation process are confidential and without prejudice to future proceedings;
- (d) The parties agree not to take any further steps in any legal proceedings regarding the issues being mediated while the mediation is in progress, unless the same are necessary to preserve rights; and
- (e) The costs of retaining the mediator will be borne by all parties.

### 6.3 **Arbitration**

If the mediation is terminated and no resolution is found, the dispute shall be facilitated by and finally resolved by a mutually acceptable arbitrator, in accordance with the Arbitrations Act (Ontario), and under the terms and conditions described below:

- (a) The parties shall select a mutually acceptable arbitrator who will have qualifications relevant and suitable to the issue in dispute, and will be disinterested in the dispute and will be impartial with respect to all parties thereto;
- (b) If the parties cannot agree or have no particular choice of arbitrator, they may request a list of arbitrators from the ADR Institute of Canada and choose a mutually acceptable arbitrator from the list provided using a standard rating system with the assistance of a neutral third-party. If the parties have not co-operated in choosing an arbitrator within ten (10) days of the referral to arbitration, either party shall be entitled on notice to the other party to commence an application to have an arbitrator appointed on application to a judge of the Ontario Superior Court. The costs of retaining any external arbitrator will be borne by both parties, equally;
- (c) The determination of the arbitrator will be final and binding upon the parties;
- (d) Each party will bear its own costs in connection with the arbitration, provided that, if the arbitrator finds that any party has acted unreasonably, the arbitrator may, in his discretion, award costs against such party;
- (e) The arbitrator will have the discretionary authority to grant specific performance, rectification, injunctions and other equitable relief as may be requested by a party including interim preservation orders and any party may, before or after an arbitration has commenced, apply for interim relief, including injunctive relief;
- (f) Any order of an arbitrator may be entered with a court of competent jurisdiction for the purposes of enforcement;

- (g) The place of arbitration will be Toronto, Ontario.
- (h) The arbitrator will resolve the dispute in accordance with the laws of Ontario and laws of Canada applicable therein;
- (i) The parties will act in good faith and use commercially reasonable efforts to resolve disputes in a timely manner; and
- (j) All aspects of the arbitration will be kept confidential, unless otherwise required by law.

## **Article 7. GENERAL PROVISIONS**

### **7.1 Further Assurances**

The parties agree that each of them shall, upon reasonable request of the other, do or cause to be done all further lawful acts, deeds and assurances whatever for the better performance of the terms and conditions of this agreement. For greater certainty, each of UTSU and ENGSOC covenants to have changes made to each of their respective letters patent, constitution, by-laws, policies, or other governing documents (collectively, “**Governing Documents**”), wherever necessary, in order to ensure that all Governing Documents comply with, and where applicable, refer to, the terms set out in the Agreement

### **7.2 Indemnities**

Each party will indemnify and save harmless the other party, its directors, officers, employees and other representatives from and against all damages, liabilities, costs and expenses incurred in relation to the carrying out the terms of agreement.

### **7.3 Waiver**

Failure by either party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other rights, power or remedy.

### **7.4 Applicable Law**

This Agreement shall be governed and interpreted under the laws of the Province of Ontario. Subject to Article 6 of this Agreement, 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 this agreement.

### **7.5 Successors and Assigns**

Except as otherwise provided herein, this Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective legal successors and assigns. No party shall assign this Agreement without the prior written consent of the other party hereto.

## 7.6 **Amendment**

If at any time during the continuance of this agreement the parties shall deem it necessary or expedient to make any alteration or addition to this agreement they may do so by means of a written agreement between them which shall be supplemental and form a part of this Agreement.

## 7.7 **Entirety of Agreement**

The terms and conditions of this agreement and its exhibits supersede all prior oral and written agreements between the parties with respect to the subject matter of this agreement and shall constitute the entire agreement between the parties with respect to the matters contain herein.

## 7.8 **Notices**

All notices and consents required to be given or made by the parties will be in writing and will be deemed validly given if delivered by hand, or sent by registered mail or traceable courier. Delivery of a notice or consent via e-mail will only be acceptable if immediately followed or accompanied by delivery in another medium specifically identified in this section. All notices and consents will be delivered to the postal addresses, and/or e-mail addresses, as the case may be, as set out below:

if to UTSU:

Students' Administrative Council of the University of Toronto  
12 Hart House Circle  
Toronto, ON, M5S 3J9

Attention: President of the Students' Administrative Council of the University of Toronto  
E-mail: [president@utsu.ca](mailto:president@utsu.ca)

if to ENGSOC:

University of Toronto Engineering Society  
B740 Sanford Fleming Building  
10 King's College Road  
Toronto, ON, M5S 3G4

Attention: President of the Engineering Society  
E-mail: [president@g.skule.ca](mailto:president@g.skule.ca)

Notices delivered by hand will be deemed to have been received by the addressee on the date delivered. A signed notice of receipt is required to prove date of delivery. Notices given by registered mail return receipt requested will be deemed to have been received by the addressee on the business day following reception. Notices given by e-mail will be deemed to have been received by the addressee on the business day following the day on which it was sent.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first written above.

**STUDENTS' ADMINISTRATIVE  
COUNCIL OF THE UNIVERSITY OF  
TORONTO**

**UNIVERSITY OF TORONTO  
ENGINEERING SOCIETY**

Per: \_\_\_\_\_  
We have the authority to bind the corporation

Per: \_\_\_\_\_  
We have the authority to bind the corporation

Title: Ben Coleman  
President  
\_\_\_\_\_

Title: Ernesto Díaz Lozano Patiño  
President  
\_\_\_\_\_

Per: \_\_\_\_\_  
We have the authority to bind the corporation

Per: \_\_\_\_\_  
We have the authority to bind the corporation

Title: Ryan Gomes  
Vice-President Internal  
\_\_\_\_\_

Title: Rachel Reding  
Vice-President Finance  
\_\_\_\_\_