

**COMMERCIAL ACTIVITIES AND STUDENT SERVICES AGREEMENT
2014 REVISION**

THIS AGREEMENT, dated 5/16, 2014 ("Effective Date"), is by and between **THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**, a California corporation ("University"), on behalf of the University of California Berkeley ("UCB"), and the **ASSOCIATED STUDENTS OF THE UNIVERSITY OF CALIFORNIA**, a nonprofit unincorporated association ("ASUC").

RECITALS

- A.** The University constitutes a public trust to be administered by the existing corporation known as "The Regents of the University of California," with full powers and organization, and owns and operates the UCB campus.
- B.** The ASUC is a non-profit, unincorporated association that has been recognized by the University since 1887 as the official student government for all students on the UCB campus. The ASUC includes the Graduate Assembly ("GA").
- C.** The Student Union Administration ("SU Admin") is a campus unit. The SU Admin is the successor campus unit to the ASUC Auxiliary. The ASUC Auxiliary assumed administrative control of functions formerly performed by the ASUC and retained the employees of the ASUC pursuant to the ASUC Commercial Activities Agreement dated March 19, 1998.
- D.** The ASUC has previously directly owned, operated, or participated in the UCB's operation of certain commercial services on the UCB campus referred to herein as "ASUC Commercial Activities," including the student bookstore ("Bookstore"), and has contracted or participated in the oversight of UCB's contracting with private vendors for the provision of other commercial services, including food and retail services in the Martin Luther King, Jr. Student Union, and Eshleman Hall.
- E.** The ASUC has most recently participated in UCB's management of the ASUC Commercial Activities in the locations and spaces in the Lower Sproul Plaza and Student Union, including the Martin Luther King Jr. Student Union, Eshleman, and the Lower Sproul Mall.
- F.** The University, the ASUC, and the GA each believes (i) that the ASUC Commercial Activities provide important services to all members of the UCB community and (ii) that a primary purpose of ASUC Commercial Activities is to provide financial support for on-campus student activities, services, and programs authorized by the ASUC and GA ("SU Admin Student Services").
- G.** Each party intends that, as restructured, ASUC Commercial Activities will be conducted to provide the maximum feasible amount of funding to SU Admin Student Services and to the ASUC and GA for their student government programs and activities, including without limitation their distribution of funds to registered student organizations.

H. The ASUC originally controlled and operated the student store, prior to the creation of the ASUC Student Union Board, formerly known as the Student Operations Board. The parties intend that this Agreement will continue this tradition of service to the campus.

I. With respect to their role as the student government, the ASUC and GA have maximum operating and decision-making discretion constrained only by the Chancellor's responsibility under the "University of California Policies Applying to Campus Activities, Organizations, and Students," and his/her obligation to ensure overall fiscal soundness, a safe and healthy environment, and fulfillment of all conditions outlined in specific agreements between the University and the ASUC/GA on the UCB campus.

J. The ASUC Senate and the Graduate Assembly approved a Memorandum of Understanding recommending amendments to the prior ASUC Commercial Activities Agreement, which created a greater stake for the GA in the success of ASUC commercial activities. Both parties agreed that increasing the GA's stake is fair and creates incentive for the GA to work with the ASUC toward successful commercial activities.

K. This Agreement supersedes both the existing ASUC Commercial Activities Agreement, dated March 19, 1998, as amended and the 2012 version of the ASUC Commercial Activities Agreement.

WHEREFORE, INTENDING TO BE LEGALLY BOUND HEREBY, the parties agree as follows:

1. ASUC STUDENT UNION ADMINISTRATION. The SU Admin shall administer the activities governed by this agreement as outlined below. The Executive Director of the SU Admin shall be a University employee who shall report to UCB's Chancellor or his/her designee, and who shall be appointed following the advice and consent of the Board (See Section 2.2).

1.1 The SU Admin shall only undertake functions and activities directly related to SU Admin Student Services or ASUC Commercial Activities, unless otherwise authorized by the Board.

1.2 The SU Admin shall negotiate and manage leases and other contracts with third party providers of ASUC Commercial Activities and pursuant to the direction of the ASUC Student Union Board of Directors (the "Board" described in Section 2.2, below); provide landlord services to such providers; and carry out such other functions, including those described in Section 7, below, as directed by the Board.

1.3 The Executive Director of the SU Admin ("Executive Director") shall meet regularly with the Board, and shall review, consider in good faith, and respond in writing to each recommendation, report, or direction of that Board.

2. ASUC STUDENT UNION BOARD OF DIRECTORS. The Board shall establish policy and standards for, and provide oversight over, all ASUC Commercial Activities in a manner consistent with all applicable University policies, as further described in Section 3 below. The ASUC and the University shall appoint the members of the Board in the following manner:

2.1 The Chancellor shall appoint two members of the UCB faculty, nominated by the UCB Academic Senate, and three at-large representatives. All five shall be voting members appointed to a two-year term. Nothing in this Agreement shall be construed as prohibiting the re-appointment of members upon the expiration of their terms.

2.2 The ASUC Senate shall appoint two undergraduate voting members each of whom shall serve two-year terms.

2.3 The Graduate Assembly shall appoint one graduate student, who shall serve a one-year term.

2.4 The President and the Executive Vice President of the ASUC and the President and Internal Vice President of the Graduate Assembly.

2.5 The Charter of the Board (attached hereto as Exhibit A and made a part hereof) shall set procedures of the Board, and shall specify attendance requirements for members of the Board. The Charter of the Board shall not be amended except by agreement of the Chancellor (or his/her designee), ASUC Senate, and GA Executive Board.

2.6 The Chancellor and the ASUC have delegated to the Board the authority necessary for it to carry out its functions as described in this Agreement.

3. FUNCTIONS AND RESPONSIBILITIES OF ASUC STUDENT UNION BOARD OF DIRECTORS. The Board, in addition to the duties described in Section 4, below, shall do the following:

3.1 Establish Standards for ASUC Commercial Activities. The Board shall from time to time establish standards for the conduct of ASUC Commercial Activities.

3.2 Review of Performance. The Board or the Executive Director shall at least annually prepare and submit to the ASUC, the GA, and the Chancellor a written report examining the quality of service and the financial performance of each provider of ASUC Commercial Activities.

3.3 Budget Responsibility. The Board shall, prior to University adoption of each annual budget of the SU Admin and in accordance with the overall campus budget process, review the proposed budget, and approve or reject it, and shall, as necessary, during each fiscal year, approve variances to the SU Admin's budget. If the budget is rejected, the SU Admin must produce a revised budget with the recommendation of the Board. The Board can then approve, reject, or modify the revised budget, prior to its adoption. The annual budget shall include an appropriation for a Reserve Fund, which may be utilized upon approval of the Board and only for purposes explicitly approved by the Board. In addition to other regular reviews, the Board shall review the year-end accounting of the SU Admin to ensure that budgets are met, variances explained, and key activities tracked for performance to marketing and financial objectives.

3.4 Personnel Responsibility. The Board may give advice to the Executive Director as to the performance review of SU Admin personnel. The Board may, in consultation

with the Chancellor, terminate the Executive Director of the SU Admin. Additional rights and responsibilities regarding personnel are granted to the Board Organizational and Governance Committee as advisory to the Executive Director specified in the Board Charter.

4. ASUC COMMERCIAL ACTIVITIES CONTRACTS, LEASES, AND OPERATIONS.

4.1 Third Party Lessee/Vendors. For the purposes of this Agreement, the ASUC Student Union refers to Eshleman Hall, Martin Luther King, Jr. Student Union, Anthony Hall, Anna Head Alumnae Hall, Lower Sproul Plaza, and parts of Cesar Chavez or their successor facilities. At all times during the term of this Agreement, the parties, through the procedures stated herein (Sections 4.2 and 4.3), and in conformance with (a) all applicable University policies and procedures and (b) the policies and standards approved by the Board, shall seek to contract, obtain, and maintain leases, licenses, or operating agreements with third parties, pursuant to which such parties will (i) occupy space within the ASUC Student Union to sell books, school spirit gear, and related student merchandise; (ii) conduct food service and retail activities at the ASUC Student Union; and (iii) conduct such other ASUC Commercial Activities in the ASUC Student Union as deemed appropriate by the Board. The ASUC Commercial Activities are conducted pursuant to agreements with the University and/or third parties, as approved by the Board. If such activities are conducted by the SU Admin at campus locations other than the ASUC Student Union or in Student Activity Space, the ASUC (or GA where appropriate) shall assign its rights under such agreements to the SU Admin, and the SU Admin shall conduct, at the direction of the Board, such ASUC Commercial Activities through the date on which such contracts would terminate. In addition, the SU Admin may, with the approval and direction of the Board, conduct such other commercial activities, either directly or through agreements with third parties, that are of benefit to the UCB campus and students.

4.2 Use of RFPs or RFIs. The parties acknowledge that it is appropriate to prepare and circulate requests for proposals ("RFPs") or requests for information ("RFIs") from would-be third party commercial vendors. All RFPs or RFIs will be issued by the SU Admin at the direction of the Board, only after such RFPs or RFIs are approved by the Board. The Board (i) shall evaluate the proposals submitted in response to an RFP or RFI and (ii) shall select the party whose proposal resulted in the highest score to be offered a leasehold interest, substantially on the terms set forth in the RFP, for operation of an ASUC Commercial Activity in Commercial Activity Space. After such selection, the SU Admin, at the direction of the Board, shall negotiate a lease, license, or operating agreement with the selected party, which upon approval of the Board, shall be signed by the Chancellor (or his/her designee) and the ASUC President, and such other officers as may be necessary.

4.3 Non-RFP Contracts. The Board may authorize the SU Admin to negotiate and, upon approval of the Board, execute certain minor leases, licenses, or operating agreements which may be necessary for the normal conduct of business, where permissible under applicable University policy.

4.4 Promotion of ASUC Commercial Activities. In the spirit of collaboration between the ASUC and the University exemplified in the Lower Sproul Project, and recognizing the great value ASUC Commercial Activities and their revenues bring to the campus community at-large, the University shall strongly encourage all campus units to

purchase goods and services that are provided through SU Admin operations. Where otherwise consistent with applicable law and University policy, all campus units will work to make the SU Admin aware of opportunities prior to awarding commercial contracts for an RFP or on a non-bid or non-RFP basis, in order to determine whether the SU Admin is in a position to secure a vendor or supplier of such goods or services.

4.5 ASUC Property. All personal property including, without limitation, cash, cash equivalents accounts receivable, inventory in Commercial Activity Space or the ASUC Student Union, which are owned by the ASUC shall remain the property of the ASUC.

5. ASUC FINANCIAL ACCOUNTING.

5.1 ASUC Accounts. Four separate bank accounts are in existence: the ASUC Commercial Revenues Account, ASUC Non-Commercial Monies Account, the GA Commercial Revenues Account, and the GA Non-Commercial Monies Account. Revenue from ASUC Commercial Activities shall be deposited into each account in accordance with Section 6.2.

5.2 Fair Share Percentage. The ASUC fair share percentage is the number of enrolled undergraduate students as a percentage of all enrolled students for the previous academic year (September through May). The Graduate Assembly fair share percentage is one hundred percent (100%) less the ASUC fair share percentage.

5.3 Accounting. The SU Admin shall provide accounting services for the ASUC/GA and ASUC Commercial Activities. All the Non-Commercial Monies Accounts and the Commercial Revenue Accounts shall be established and maintained with two groups of signatories. The signatories of Group "A" shall be the ASUC President, ASUC Executive Vice President, the GA President, and the GA Internal Vice President. The signatories of Group "B" shall be the Executive Director. Checks drawn in the amount of \$2,000 or more shall require two hand signatures, at least one of which shall be from Group "A". A stop payment order with respect to checks of \$2,000 or more shall require two hand signatures, at least one of which shall be from Group "A". The bank(s) at which these accounts are maintained shall issue duplicate monthly statements to the ASUC President, the GA President, and the SU Admin.

5.4 Access to Information/Retention of Record.

5.4.1 Any Executive Officer of the ASUC or GA and any member of the Board may, during regular business hours, inspect the books and records of the SU Admin, make copies and extracts, and may discuss the affairs, accounts, and finances of the SU Admin with its directors and employees. The SU Admin will provide to the ASUC, GA, and the Board statements that are accurate in all material respects regarding the operations of the SU Admin, its rental income, its Operating Expenses (see Section 6.1), and, to the extent known to the University, the operations of third-party providers of ASUC Commercial Activities, as requested.

5.4.2 Copies of all public proceedings of the Board shall be distributed to the ASUC, GA, and the University as soon as reasonably possible after they become available.

5.4.3 The Board, the SU Admin, the GA, and the ASUC shall maintain their respective business, administrative, and financial records and reports in electronic form, in accordance with the record retention policies of the University, but in no event for less than five years.

6. INCOME FROM ASUC COMMERCIAL ACTIVITIES.

6.1 Operating Expenses/Control of Operating Expenses. “Operating Expenses” shall mean all charges or expenses incurred by the SU Admin and all disbursements which the SU Admin or the University shall pay as a result of (a) the ownership, operation, maintenance, repair, and replacement of the premises, facilities, or equipment occupied or used in connection with the provision of ASUC Commercial Activities or SU Admin Student Services and (b) conducting or outsourcing the services described in Section 7, below including, but not limited to, providing heating, electrical, water, sewer, janitorial services, security services, materials, supplies and equipment, and the annual amortized cost of expenditures required for safety purposes plus (i) the allocated cost of all SU Admin personnel, providing services reasonably required to carry out the oversight and management responsibilities related to ASUC Commercial Activities or managing the ASUC Student Union, and (ii) the allocated cost of all ASUC facilities and equipment used in providing such services. After the ASUC Student Union reopens, currently projected to be in Fall 2015, fiscal prudence should be exercised in matching recurring revenues to recurring expenses. This allows for the use of one time capital and other investments from reserves.

6.2 Distributions to the ASUC and GA.

6.2.1 The ASUC and GA shall receive a distribution of gross commercial revenues received by the Student Union from third-party service providers including such commercial activities, but not limited to, the student store, food vendors, online merchandising sales, affiliation and/or co-branding agreements, and vending machines. The distribution amount shall be established by the terms agreed upon by both parties in Addendum A. Addendum A may be revised on agreement in writing by both parties.

6.2.2 These distributions may only be used by the ASUC and GA for functions, activities, and operations related to their roles as student government (including stipends), costs related to delivering direct programming to students, and re-distributions to registered student organizations and registered students, and in a manner consistent with the third-party financing of the ASUC Student Union (and other construction activity in spaces managed pursuant to this Agreement).

6.2.3 The distributions to the ASUC and GA shall be divided according to the fair share percentage specified in Section 5.2 above. This clause supersedes the

revenue split specified in the 2010 Memorandum of Understanding between the ASUC and GA.

6.2.4 The exact distribution amount shall be determined within sixty (60) days after the close of the University's fiscal year and shall be calculated on the aggregate gross commercial revenues received by the SU Administration from all third-party service providers. The SU Administration shall provide the ASUC and GA an itemized schedule of gross commercial revenues received from each provider.

6.2.5 The terms of the distribution shall only apply as of the date of this agreement and not applied retroactively.

6.2.6 This Agreement may be amended by future Addendum to provide for the ASUC and GA to receive a distribution of revenue generated through the SU Admin revenue-generating programs and services (e.g., Event Services and Art Studio).

7. USE OF BUILDINGS: BUILDING OPERATIONS.

7.1 Building Ownership. The University owns the ASUC Student Union. However,

7.1.1 The ASUC Student Union was financed in part by bonds, which were paid in full by students attending UCB through mandatory student activity fees and through a student-initiated referendum fee.

7.1.2 Anthony Hall was designated as a graduate student space to be overseen and governed by the GA and shall be used only in accordance with applicable law and University policy.

7.1.3 The Eshleman Hall torn down in 2013 was constructed with private and state funds as a building for student government and services on the UCB campus.

7.1.4 The Eshleman Hall built between 2013 and 2015, and renovations to the remainder of the ASUC Student Union are being funded as specified by the B.E.A.R.S. Initiative referendum language, the Lower Sproul MOUs and the addenda to those MOUs.

7.2 Building Use. As a result of the sources of funding for such buildings, the University has granted the ASUC and GA, as the UCB student government, the right to occupy and use the ASUC Student Union, subject to all applicable University policies and regulations. Other than the Commercial Activity Space, those buildings are to be occupied and used for purposes of the official student government on the UCB campus and for SU Admin Student Services. The ASUC (or GA for Anthony Hall) has the right to determine the usage policies and procedures, and allocation for student government and student activities of space in those buildings (referred to herein as "Student Activity Space"), excluding space devoted to ASUC Commercial Activities (referred to herein as "Commercial Activity Space") and the services referred to in Section 7.5 subject to applicable University policies. The ASUC and GA

may not directly charge rent for the use of Student Activity Space, but may work with the SU Admin to provide for student organizations and others to pay fees to the SU Admin for the use of such spaces.

7.3 Term of Occupancy. Occupancy and use of space in the ASUC Student Union allocated to ASUC or GA shall continue until the parties hereto agree to the contrary or until the University shall provide, at least one year's prior notice, substitute space which is equal to or superior to the space in Eshleman Hall, Martin Luther King, Caesar Chavez, Anna Head Alumnae Hall, Lower Sproul Plaza, and Anthony Hall in terms of size, quality, proximity to the central campus, student life and services.

7.4 Repair, Renovation, Replacement of Space. The University may undertake major repair, renovation, or replacement of the Student and/or Commercial Activity Space at any time during the term of the agreement. Prior to such action a proposal shall be presented to the Board and to the ASUC/GA not less than two years prior to the proposed date of initiation of the project. However, the ASUC, GA, and the Board can waive the two-year notification period in situations which require urgent repairs. Any such proposal shall include the proposed financial impact on Operating Expenses and Commercial Activities Revenue, the duration of the project, proposed temporary or permanent replacement space for SU Admin Student Services and ASUC Commercial Activities, in conformance with Section 7.3 above, and proposed replacement revenue, and shall be developed in consultation with the ASUC and GA. The University shall meet and confer with the Board and representatives of the ASUC and GA and shall in good faith consider and respond to their respective comments prior to commencing any such project. The University shall not undertake any such project, which materially adversely affects ASUC Commercial Activities revenues or Operating Expenses, without the prior written consent of the ASUC and GA.

7.5 Leases and Assignment of Space. Each lease for Commercial Activity Space must, before it is executed, be approved by the Board and be in accordance with the Bylaws, Standing Orders, and generally applicable policy of the University. Any re-classification of ASUC Student Activity Space into Commercial Activity Space is only valid for the terms agreed to by the Board. When Commercial Activity Space ceases to be used as Commercial Activity Space, the space shall be assigned by the campus as ASUC Student Activity Space. The ASUC and GA shall have the full authority to assign this Student Activity Space to registered student organizations or other University entities, or to use the space for student government purposes, but shall not use or assign Student Activity Space for any other purpose. During the term of this Agreement, the ASUC and GA represent and warrant that all Student Activity Space and Commercial Activity Space shall be used for a "public purpose" as such term is defined in any bond financing agreement used to finance the construction of the ASUC Student Union.

7.6 Safety. The SU Admin, after consultation with the Board and the ASUC and GA, shall take appropriate steps to ensure a safe working, recreational, and study environment in all facilities occupied by the ASUC, GA or registered student organizations. The annual amortized cost of expenditures required for safety purposes shall be an Operating Expense.

7.7 Building Modifications. The ASUC shall not itself modify, nor shall it enter into any contract or other arrangements to modify, the physical structure, operating systems, or utility infrastructure of any campus building without prior written consent of the Chancellor or his/her designee.

7.8 Building Use Policy. The ASUC shall establish building use policies for Student Activity Space, in conformance with applicable University policies. The GA shall do the same for Anthony Hall and other graduate specific spaces in the ASUC Student Union spaces. The Board shall establish building use policies for the ASUC Student Union, ASUC Commercial Activity Space, and SU Admin Student Services spaces, except any spaces controlled by the ASUC or GA, in conformance with applicable University policies. These policies shall be included in leases with third parties.

8. USE OF UNIVERSITY TRADEMARKS AND SERVICE MARKS. The ASUC/GA shall use the trademarks and service marks of the University only in conformance with applicable University policies.

8.1 The ASUC and GA may use the Cal logo and the UCB name and seal without paying any royalties for noncommercial ASUC and GA promotional materials such as flyers. This use must be consistent with applicable University policies in the same manner as other departments on campus.

9. ASUC EMPLOYEES.

9.1 Employment. The ASUC may retain persons providing legal, accounting, or other professional services as independent contractors. The ASUC may pay its elected and appointed officials and their contracted or stipended staff.

9.2 Vendor Employment. Any RFP(s) and/or RFI(s) to be issued for operation of ASUC Commercial Activities shall request that the third-party vendor prioritize student employment opportunities. The Board must also ensure third-party vendor contracts comply with ethical employment practices for all employees hired and/or managed by the third-party vendor.

9.3 Employment Level Reports. The SU Admin shall report to the Board when additional employee positions are necessary for the maintenance of appropriate service levels, and shall create such positions upon approval of the Board and the University. Critical for approval will be identifying funding for new positions. The SU Admin shall report to the Board when position eliminations are necessary in response to budgetary changes or service changes. Service changes and position eliminations require Board and University approval.

9.4 Additional SU Admin Student Services Programs. The SU Admin shall provide additional services to the ASUC or GA at their request, provided that funding sources can be identified either as an Operating Expense or from other sources controlled by or available to the ASUC or GA.

10. INSURANCE AND INDEMNIFICATION.

10.1 Liability Coverage. The University shall include the SU Admin, the Board, and the facilities, including University-owned inventory within, subject to this Agreement under its public liability, products liability, property damage insurance, Workers' Compensation insurance, comprehensive dishonesty, disappearance and destruction insurance, buildings and contents insurance, unemployment insurance, automobile insurance, and any other necessary form of insurance.

10.2 Indemnification. The University shall defend, indemnify and hold harmless the members of the Board for all actions taken in good faith within the course and scope of the activities of the Board.

10.3 Vendor Insurance. All third-party vendors conducting ASUC Commercial Activities shall carry reasonable amounts of liability insurance, which shall name the University and the ASUC (and GA) student government, and their respective officers, agents, employees and members as additional insured.

11. CHANCELLOR'S AUTHORITY. The Chancellor of UCB shall have the authority to ensure that ASUC Commercial Activities are conducted in a fiscally sound manner and that they contribute to a functional, attractive, safe and healthy campus environment. The Chancellor shall have the right to act to take such actions as are reasonably appropriate to correct any of the following with respect to ASUC Commercial Activities:

11.1 Financial insolvency of any provider of ASUC Commercial Activities;

11.2 Intentional use of University premises for unauthorized purposes;

11.3 Willful breach of any University policy, rule or regulation in the conduct of ASUC Commercial Activities; or

11.4 The existence of any nuisance, unsafe condition, or physically or educationally detrimental condition.

Any such action by the Chancellor shall be communicated in written format to the ASUC Senate, ASUC President, ASUC Executive Vice President, GA President, GA Internal Vice President, Executive Director, and the Board thirty (30) days prior to any action being taken. Any of the aforementioned people/groups will be given a chance to respond within fourteen (14) days of the Chancellor's notice. The Chancellor shall review and respond to these notices within five (5) business days before taking any final action.

The Chancellor shall have the authority to reverse any action or decision of the Board. Prior to reversing any such action or decision, the Chancellor shall within ten (10) business days of that action or decision, deliver in writing to each member of the Board a written statement setting forth the basis for the intended reversal. The Board, or any member thereof, may, within five (5) business days following receipt of such statement, deliver to the Chancellor a written response. If the Board issues a written response within the allotted time, the Chancellor must issue his/her intended decision within five (5) business days. This provision specifically may be

modified by the future written agreement of the parties as reflected in future Addenda to this Agreement without the need to restate this entire Agreement.

12. DISPUTE RESOLUTION. Any dispute or controversy between the parties, arising out of or related to this Agreement, shall be resolved as follows:

12.1 Initial Procedures. All concerns, complaints, or disagreements by the ASUC or GA concerning the operation of ASUC Commercial Activities and SU Admin Student Services or any action or inaction of the SU Admin shall be originally directed in writing to the Executive Director. The Executive Director shall attempt to resolve such matters informally as promptly as possible. If the matter cannot be resolved informally, the ASUC or GA may request a meeting to confer with the Executive Director, and then the SU Administrator to whom the Executive Director reports. Such request shall be in writing, and the meeting shall take place within ten (10) business days after delivery of the request.

12.2 Appeal to the Chancellor. If resolution of a dispute cannot be achieved through the measures described in Section 12.1, above, the ASUC President, ASUC Executive Vice President, GA President, or GA Internal Vice Presidents may appeal directly to the Chancellor whose decision shall be final. Any such appeal shall be in writing, setting forth the basis for the appeal. The Chancellor will meet and confer with the ASUC President and GA President regarding such appeal. Any decision of the Chancellor hereunder shall be in writing, shall be delivered to the ASUC President, ASUC Executive Vice President, GA President, GA Internal Vice President, and to the Board, and shall be accompanied by a written statement of the basis for such decision.

13. TERM AND TERMINATION OF AGREEMENT. This Agreement shall remain in effect until (i) the parties hereto mutually agree to terminate it, or (ii) the University shall elect to terminate this Agreement upon the dissolution of the ASUC or its termination under the University's "Policy on Student Governments" or the ASUC's abandonment of its function as the student government of UCB; provided, however, that nothing herein shall be deemed to affect, in any way, any existing agreement between the parties on that matter. Any termination by mutual agreement shall be in a writing mutually executed by the parties.

14. SEVERABILITY. If any part, term or provision of this Agreement is held by a court to be invalid, illegal or unenforceable in any jurisdiction, such part, term or provision shall, as to such jurisdiction, be inoperative and void to the extent of such invalidity, illegality or unenforceability; but the remaining parts, terms in full force and effect, and any such invalidity, illegality or unenforceability in one jurisdiction shall not invalidate or render unenforceable such part, term or provision in any other jurisdiction. The parties shall use their best efforts to replace the provision that is contrary to law with a legal one approximating to the extent possible, the original intent of the parties.

15. ENTIRE AGREEMENT. This Agreement embodies the entire agreement and understanding between the parties hereto relating to the subject matter contained herein. This Agreement supersedes all prior agreements and understandings, whether oral or written, between them with respect hereto. Provisions of the following agreements that are not inconsistent with this agreement shall remain in effect:

15.1 Lower Sproul Memoranda of Understanding (LS MOUs) one (1), two (2), three (3), the amendment to LS MOUs 1 and 2, signed on April 1, 2010, June 29, 2010, May 24, 2012, and March 12, 2012, respectively which are attached as Exhibits B, C, D, and E.

15.2 Memorandum of Understanding between the ASUC and GA signed in 2010, attached as Exhibit F.

15.3 Spring 2004 Procedures for the Appointment of Student Representatives to Administrative Committees Appointed by the Central Campus Administration, attached as Exhibit G.

There are no agreements, representations, warranties, or statement, whether oral or in writing, with respect to the subject matter of this Agreement, except as expressly set forth or referred to above.

16. AMENDMENTS. This Agreement may be amended or modified only by writing, signed by the party against whom enforcement is sought. No modification, amendment or waiver of any of the terms and conditions of this Agreement, and no future representation, warranty, promise, or condition in connection with the subject matter of this Agreement shall be binding or effective for any purpose unless in writing and signed by the party to be bound by the modification or waiver, and any such modification, amendment or waiver shall be effective only in the specific instance and for the specific purpose given.

17. ASSIGNMENT. Neither party shall assign any of its rights or privileges under this Agreement without the prior written consent of the other party. Such consent shall not be unreasonably withheld.

18. BINDING EFFECT AND PERSONAL LIABILITY. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

18.1 No Personal Liability. Notwithstanding anything to the contrary in this Agreement, or in any agreements or documents referenced in any of the foregoing, from and after the Effective Date, no person signing this Agreement on behalf of a party to such agreement(s) shall be personally liable in any way for the breach of any covenant or failure of any condition pertaining to such party under the foregoing agreements, and the parties hereby waive and release such persons individually from all claims on account of any such breach or failure.

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

UNIVERSITY:

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation, on behalf of the University of California, Berkeley

By: _____

Nicholas Dirks
Chancellor

ASUC:

ASSOCIATED STUDENTS OF THE UNIVERSITY OF CALIFORNIA, a California nonprofit unincorporated association

By: _____

Donna-Jo Pepito
President

ADDENDUM A
TO COMMERCIAL ACTIVITIES AND STUDENT SERVICES AGREEMENT 2014 REVISION

Pursuant to Section 6.2.1 of the Agreement, the University agrees to distribute to the ASUC a portion of gross commercial revenues received by the SU Admin from third party service providers as follows:

The annual amount to be distributed to the ASUC for 2014-15 and every year thereafter, until and unless the parties come to a new agreement, shall be a flat amount of \$250,000, which in no such case shall be greater than the total gross commercial revenues received by the SU Admin from third party service providers.

As part of its annual review of ASUC Commercial Activities described in Section 3.2 of the Agreement, the Board shall make a recommendation to the ASUC, the GA and the Chancellor on whether the distribution amount should be adjusted or calculated in another manner. Furthermore, during Academic Year 2019-20, the Board shall review the total gross commercial revenues received by the SU Admin and its revenue-generating activities described in Section 6.2.6 of the Agreement and make a recommendation on whether the distribution amount should be adjusted based on the financial performance of those activities.

Until and unless agreed to by both parties, the above amount shall be the sole amount distributed to the ASUC and GA from revenues generated by ASUC Commercial Activities, the 1988 Student Services Building Initiative, and the 2010 B.E.A.R.S Initiative, except that the above amount is in addition to and does not include allocations for and payments to the ASUC and GA authorized by the Lower Sproul Fee Committee pursuant to the terms of the 2010 B.E.A.R.S. initiative and/or LSP MOUs.

IN WITNESS WHEREOF, the parties have executed this Addendum to the Agreement as of the date indicated below.

UNIVERSITY:

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation, on behalf of the University of California, Berkeley

By: _____

Nicholas Dirks
Chancellor

5/16/14
date

ASUC:

ASSOCIATED STUDENTS OF THE UNIVERSITY OF CALIFORNIA, a California nonprofit unincorporated association

By: _____

Donna-Jo Pepito
President

5/16/14
date

ARTICLE 1: NAME AND PURPOSE

Section 1.1 NAME

The name of this Board shall be the ASUC Student Union Board (the "Board").

Section 1.2 PURPOSE

The Board shall establish policy and standards for, and provide oversight over, all ASUC Commercial Activities and ASUC Student Union Administration (the "Admin") Student Services in a manner consistent with all applicable University policies, as set forth in the ASUC Commercial Activities and Student Services Agreement ("CASSA") between the ASUC and the University of California, Berkeley.

Section 1.3 DELEGATION

As of the date on which the 2014 CASSA is signed by both the ASUC and the Chancellor, the Board shall be delegated the authority necessary for it to carry out its functions as described in the ASUC Commercial Activities and Student Services Agreement.

Section 1.4 DEFINED TERMS

Capitalized terms used in the Charter shall have the definitions used in the ASUC Commercial Activities and Student Services Agreement by and between The Regents of the University of California ("University") and the Associated Students of the University of California.

ARTICLE 2: MEMBERS - APPOINTMENT AND REMOVAL

Section 2.1 MEMBERSHIP

The Board shall consist of twelve (12) voting members, who shall be appointed as follows:

- A. The ASUC President, ASUC Executive Vice President, GA President, and GA Internal Vice President who shall become members of the Board upon their respective election to office and who shall remain members until their successors shall have been elected.
- B. Two Undergraduate Members, who at all times during their terms shall be enrolled at the University of California, Berkeley as undergraduate students. Undergraduate Members shall be appointed for a term of two years commencing on the first day of July in the year of their appointment.
- C. One Graduate Member, who at all times during his/her term shall be enrolled at the University of California, Berkeley as graduate level student.

He/she shall serve a one-year term commencing on the first day of July in the year of their appointment.

- D. Three at-large representatives of the University who shall be appointed by the Chancellor to a term commencing on July 1, and which expires on June 30, two years later.
- E. Two Faculty Members who at the time of their appointment are members of the Academic Senate of the University of California, Berkeley, and who have been nominated by the Academic Senate and appointed by the Chancellor to a term of two years, commencing on July 1, and which expires on June 30, two years later. Upon a vacancy in either of these faculty seats, the SU Admin Executive Director shall notify the Academic Senate Chair within one (1) month of the vacancy.

Section 2.2 APPOINTMENTS OF UNDERGRADUATE MEMBERS

Undergraduate Members (Section 2.1B) shall be nominated by a committee consisting of the ASUC President, the ASUC Executive Vice President, and one current Undergraduate Member of the Board (the outgoing member, if available) and two members of the ASUC Senate, who shall be non-voting members of the committee. The committee shall forward one nominee to the ASUC Senate per open seat. Upon approval of the ASUC Senate, that person shall be appointed to the Board.

The committee shall be convened after the February Board meeting and release applications two weeks before the Spring Break in time to allow the appointment(s) to be confirmed before the last ASUC Senate meeting of the academic year. The committee shall forward its nomination(s) to the ASUC Senate no later than the last senate meeting of each spring semester, or within three weeks after a vacancy occurs.

Section 2.3 APPOINTMENTS OF GRADUATE MEMBERS

The Graduate Member (Section 2.1C) shall be nominated by the President of the Graduate Assembly and confirmed by the GA Executive Board.

Section 2.4 NON-VOTING MEMBER

The Executive Director of the SU Admin shall be a non-voting, *ex-officio* member of the Board.

Section 2.5 ATTENDANCE REQUIREMENTS

Any member of the Board (except those enumerated in Section 2.1A) shall be removed by the Board if s/he is absent from three (3) consecutive monthly meetings, or absent from more than one-third (1/3) of the Regular Meetings of the Board in a given Semester, without a valid excuse. Any person that is removed from the Board under

this Section shall be ineligible for re-appointment to the Board for a period of one year. All members are allowed to send proxies with prior notice, at the discretion of the Chair of the Board.

Section 2.6 REMOVAL OF MEMBERS

An Undergraduate Member may be removed from the Board with or without cause consistent with the policies and bylaws of the ASUC. A Graduate Member may be removed from the Board with or without cause according to the policies and bylaws of the Graduate Assembly. The Chancellor may remove, at any time, any member appointed by the Chancellor. The Academic Senate may remove, at any time, any members of the Academic Senate.

Section 2.7 RESIGNATION OF MEMBERS

Any member of the Board (except those enumerated in Section 2.1A) may resign effective upon giving written notice to the Chair of the Board, unless a later time of effectiveness is specified in the notice.

Section 2.8 FILLING VACANCIES

Vacancies on the Board shall be filled in the same manner as original appointments, by the person or entity that appointed the departed member.

Section 2.9 DUTIES OF MEMBERS

- A. Each member shall perform the duties of a member of the Board, in good faith, in a manner the member believes to be in the best interests of the University of California, Berkeley, and its students, and with the care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.
- B. In performing his or her duties each member shall be entitled, so long as he or she acts in good faith after reasonable inquiry when the need for it is indicated by the circumstances and without knowledge that would cause the reliance to be unwarranted, to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:
 - 1. One or more officers of the SU Admin whom the member believes to be reliable and competent in the matters presented.
 - 2. Counsel, independent accounts, or other persons regarding matters that the member believes to be within the person's professional or expert competence.

3. A committee of the Board on which the member does not serve, regarding matters within its designated authority, which committee the member believes merits confidence.

A person who performs the duties of a member in accordance with subsections 2.9A and 2.9B will have no liability based on any alleged failure to discharge the person's obligation as a member.

Section 2.10 REIMBURSEMENT

Members shall receive reimbursement for their expenses as approved by the SU Board.

ARTICLE 3: DUTIES OF THE BOARD

Section 3.1 ESTABLISH STANDARDS FOR ASUC COMMERCIAL OPERATIONS AND STUDENT SERVICES

The Board shall:

- A. Establish standards for and define the scope of services to be offered by third party vendors and the SU Admin;
 - a. When possible, service scope and staffing changes by SU Admin should be communicated to Board in advance of any action being taken by the SU Admin.
 - b. If a single member of the Board questions any action by the SU Admin, including staffing actions, the action will be brought forward to the entire Board for discussion and final decision.
- B. Determine the need for and approve the issuance by the SU Admin of Requests for Proposals for third party vendors of ASUC Commercial Activities;
- C. Evaluate proposals of and select third parties to operate ASUC Commercial Activities;
- D. Establish standards of social responsibility for third party vendors in line with UC Berkeley policies;
- E. Determine the manner of providing ASUC Commercial and Student Services Activities when leases and operating agreements for their provision expire;
- F. Establish and review policies for the use of Commercial Activity and Student Service Space, including appearance of facilities in relation to the campus surroundings;

- G. Establish restrictions on use of Commercial Activity and Student Services Space, including appearance of facilities in relation to the campus surroundings; and
- H. Review and approve proposed leases for Commercial or Student Services Space.

Section 3.2 BUDGET RESPONSIBILITY

- A. The Board shall, prior to adoption of each annual budget of the SU Admin, review the proposed budget, and approve or reject it, and shall, as necessary, during each fiscal year, review and approve proposed variances to the SU Admin's budget.
- B. The Board may recommend amendments or alterations to the Budget.

Section 3.3 FORWARDING ACTIONS AND DECISIONS

The Chair of the Board shall forward to the ASUC Senate and GA Executive Board and the Chancellor or his/her designee all SU Board meeting minutes, which detail each decision or action of the Board. These meeting minutes will be shared within a timely manner. The Chair shall also include any minority reports submitted to him/her during this period.

Section 3.4 OTHER FUNCTIONS

The Board may carry out any other duty delegated to it by the ASUC Commercial Activities and Student Services Agreement or any duty necessary and proper to its functioning.

ARTICLE 4: OFFICERS

Section 4.1 ELECTION AND TERM

The officers of the Board shall be a Chair and Vice Chair, who shall be elected by a majority vote. The Board shall elect its officers at its last Regular Meeting before July 1 of each year. Officers of the Board shall serve a term of one year, commencing upon election.

Section 4.2 VACANCIES

In the case of a vacancy in the Vice Chair, the Board shall elect a new officer to complete the remainder of the term. In the case of a vacancy in the Chair, the Vice Chair shall become Chair and complete the remainder of the term, and a new Vice Chair shall be elected.

Section 4.3 QUALIFICATIONS OF CHAIR AND VICE CHAIR

At all times, either the Chair or the Vice Chair of the Board shall be a student and the other shall be a University or Faculty representative.

Section 4.4 DUTIES OF THE CHAIR

- A. To preside at meetings of the Board and moderate debate on any issue.
- B. To set the agenda of Board Meetings.
- C. To call Special Meetings of the Board.
- D. To appoint to Committees of the Board.

Section 4.5 DUTIES OF THE VICE CHAIR

- A. To assist the Chair in the running of the Board.
- B. To carry out the duties of the Chair in his/her absence.

ARTICLE 5: MEETINGS

Section 5.1 REGULAR AND MONTHLY MEETINGS

The Board shall meet on a monthly basis from August through May. In addition to its monthly meetings, the Board may establish additional regular meetings at such times that it may determine.

Section 5.2 SUMMER MEETINGS

The Board shall meet at least once during the months of June or July, on a date to be established by the Board.

Section 5.3 SPECIAL MEETINGS

The Board, or the Chair or Vice Chair, may call a special meeting of the Board. If a special meeting is called during the period from August through May, each member of the Board shall be given at least forty-eight (48) hours' notice. If a special meeting is called during the months of June or July, each member shall be given at least fourteen (14) days' prior notice.

Section 5.4 NOTICE

Notices may be either in writing or delivered by telecommunications in which confirmation of receipt is affected.

Section 5.5 RULES OF ORDER AND QUORUM

Unless the Board adopts other rules, it shall use the most recent edition of Robert's Rules of Order, Newly Revised as guide for operating its meetings. Six (6) members of the Board (with at least two students present) shall constitute a quorum to conduct business, but a smaller number may convene to hear reports or consider items as a Committee of the Whole. The Board may also overrule a decision of the Chair of the Board with a two-thirds (2/3) vote.

Section 5.6 SU ADMIN DIRECTOR REPORTS

At each meeting of the Board, the Executive Director of the SU Admin shall report to the Board the status of the SU Admin Operations, the financial status of the SU Admin and of the ASUC Commercial Activities and Admin Student Services; he/ she shall report any actions taken by the SU Admin that affect ASUC Commercial Activities or Admin Student Services, and shall notify the Board of any concern of any vendor conducting ASUC Commercial Activities.

Section 5.7 COMMITTEE REPORTS

At each meeting of the Board, each committee of the Board shall report its activities to the Board, and include in writing any recommendations to the Board.

Section 5.8 OPEN MEETINGS

Meetings of the Board or its committees shall be open to the public, except when the Board (or in the case of a committee meeting, the committee) by a two-thirds (2/3) vote, shall vote to hold Executive Session. Notwithstanding such a vote, any member of the ASUC Senate or Graduate Assembly Executive Board may attend and participate as an observer in any meeting of the Board or its committees. The Board or its committees may hold Executive Session only when issues of litigation, investment, property acquisition, personnel, or final evaluation of RFP or RFI's for the operation ASUC Commercial Activities and SU Student Services are to be considered. The Board or its committees shall not take any action in Executive Session.

Section 5.9 ACTION WITHOUT MEETING

Any action or decision required or permitted to be taken by the Board or a committee of the Board may be taken without a meeting if two thirds (2/3) of the whole number of members of the Board, or two thirds (2/3) of the whole number of members of a relevant Committee, individually or collectively, consent in writing or electronically to that action, provided that all members of the Board, or the relevant Committee, are notified in writing or electronically prior to the action or decision. All actions by written or electronic consent shall have the same force and effect as a vote of the Board or the relevant Committee, and shall be entered into the minutes of the Board or relevant Committee at its next meeting. No action or decision shall be taken by written or electronic consent unless that action or decision is required to be taken prior to the next time that it is feasible for the Board or the relevant Committee to meet.

ARTICLE 6: COMMITTEES

Section 6.1 BOARD COMMITTEES

The Board shall establish the following committees: i) Organization and Governance, ii) Business Development and Finance, and (iii) Operations, Facilities, and Planning. Each committee shall consist of a minimum of five (5) persons, a majority of whom shall be students, drawn from interested members of the campus community, at least two of whom shall be a member of the Board and one of whom shall serve as Chair. Members of the committees shall be appointed by the Chair of the Board, with the advice and consent of the Board and shall serve at the pleasure of the Board. ASUC Senators and Graduate Assembly Executive Officers are encouraged to serve on committees that interest them.

Section 6.2 ORGANIZATION AND GOVERNANCE COMMITTEE

The Organization and Governance Committee shall plan annual or semester retreats/trainings for the Board, recommend updates to the CASSA and Board Charter and Bylaws as necessary, and seek and approve appointments to Admin hiring committees convened by the Executive Director or his/her designee. The Organization and Governance Committee shall also serve to advise the Board on policy, approving the addition or removal of staff positions to the SU Admin, and, when appropriate, giving advice to the Executive Director of the SU Admin as to the performance review of Admin personnel. The Organization and Governance Committee shall also provide the Campus Administrator who the Executive Director reports to with a performance review of the Executive Director of the SU Admin, including a recommendation of termination in officer or of reassignment. The Executive Director is responsible for the performance of SU Admin personnel, including but not limited to, hiring, performance management, equity adjustments, and staffing changes, with the exception of Human Resources and working title changes, which require Board approval. Additionally, this committee will advise SU Admin Student Services on strategic planning, long-term development, and program expansion.

Section 6.3 BUSINESS DEVELOPMENT AND FINANCE COMMITTEE

The Business Development and Finance Committee shall serve to advise the Board on policy in regard to contracts, operations, and promotion of ASUC businesses, including retail and food vendors, the student store, and any future businesses. This committee should continually seek new opportunities to enhance revenue generation and expansion of ASUC businesses to other parts of campus. This committee shall also work closely with the SU Admin's Financial Director, or the successor position, and her/his staff to advise on the budget, strategic planning, and the development of business plans of the ASUC Commercial Services. This committee shall also work with the Chair of the Board to train Board members of their fiduciary responsibilities as Board members at the start of each year. This committee shall also periodically review the SU Admin Financial Actuals, as well advise the SU Admin on the creation of annual Admin Budget.

Section 6.4 OPERATIONS, FACILITIES, AND PLANNING COMMITTEE

The Operations, Facilities, and Planning Committee shall advise the Board on policies and procedures pertaining to facilities usage, hours of operation, and maintenance. The committee shall also review and make recommendations to the Board on maintenance plans and facilities changes. The committee shall also review and recommend to the Board regarding policies and procedures for any Student Union spaces and Admin Student Services' spaces, excluding any ASUC or GA-controlled spaces.

Section 6.5 COMMITTEES OF THE BOARD

The Chair of the Board shall, as necessary, appoint, with the advice and consent of the Board, *ad hoc* committees of the Board to consider questions before the Board. Such committees shall dissolve on the completion of their assigned task. *Ad hoc* Committees of the Board shall consist only of members of the Board.

ARTICLE 7: AMENDMENTS

Section 7.1 AMENDMENTS

Amendments to this Charter may be proposed by a two-thirds (2/3) vote of the Board, and shall take effect upon ratification by the ASUC Senate, GA Executive Board, and the Chancellor. If any amendment to this Charter in any way conflicts with the ASUC Commercial Activities and Student Services Agreement, the ASUC Commercial Activities and Student Services Agreement shall control.

ARTICLE 8: BOARD BYLAWS

SECTION 8.1 CREATION AND BYLAWS

The Board may establish and amend Bylaws regarding its Board policies and procedures as long as such Bylaws do not contradict this Charter or the Commercial Activities and Student Services Agreement ("CASSA"). The establishment of new Bylaws or revisions to existing Bylaws requires a two-thirds (2/3) vote of the Board. The Organization and Governance Committee of the Board shall be responsible for reviewing all Bylaw creations or updates and shall engage in an annual review of any established Bylaws. The Board Bylaws may not delegate the Board's authority (as laid out in this Charter and the CASSA) to any other entities. An updated copy of any Board Bylaws must be publically available and shall be posted on the SU Admin website at all times. If the Board's Bylaws are updated, the revised copy of the Bylaws must be posted on the SU Admin website within two (2) weeks of the revision approval by the Board.