

# HALIFAX

P.O. Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**Item No. 11.1.9**  
**Halifax Regional Council**  
**August 18, 2020**

**TO:** Mayor Savage and Members of Halifax Regional Council

Original Signed by \_\_\_\_\_



**SUBMITTED BY:** Dave Reage, Acting Chief Administrative Officer

**DATE:** June 26, 2020

**SUBJECT:** Facility Operating Agreement – Musquodoboit Valley Bicentennial Theatre and Cultural Centre

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## **ORIGIN**

This report originates with a staff review of the Lease agreement for the Musquodoboit Valley Bicentennial Theatre and Cultural Centre.

## **LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality Charter:*

*Section 61 (3):* “The property vested in the Municipality, absolutely, or in trust, is under the exclusive management and control of the Council, unless an Act of the Legislature provides otherwise.”

*Section 75 (1):* “The Municipality may agree with any person for the provision of a service or a capital facility that the Municipality is authorized to provide.”

(2): “An agreement made pursuant to subsection (1) may allow for the lease, operation or maintenance of the facility or provision of the service by a person...”

*Section 79A (1)* Subject to subsections (2) to (4), the Municipality may only spend money for municipal purposes if

(a) the expenditure is included in the Municipality's operating budget or capital budget or is otherwise authorized by the Municipality.

## **RECOMMENDATION**

It is recommended that Halifax Regional Council:

**Recommendation continued on next page**

Authorize the Chief Administrative Officer to negotiate and execute a Facility Operating Agreement with the Musquodoboit Valley Bicentennial Theatre and Cultural Centre substantially in the same form as set out in Attachment 1 of this report.

### **BACKGROUND**

The Musquodoboit Valley Bicentennial Theatre was constructed in 1928 as a meeting hall for the Odd Fellow's Lodge. The top floor houses a 350-seat theatre with a graduated floor, stage, and a dressing room built between the two upper levels. The basement housed two long, narrow rooms; one sported a bowling alley (still being used in the 1980's) and in the other was a long dining room which provided space to serve community suppers. In 1981 the Odd Fellow's sold the building to the Middle Musquodoboit Community Hall Association.

The County of Halifax took ownership of the building in 1983 and with the help of grants and the surrounding communities, plans were made to complete necessary renovations and upgrades. The newly named Musquodoboit Valley Bicentennial Theatre had a grand re-opening on February 16, 1985. In 1988 the Middle Musquodoboit Community Hall Association became the Musquodoboit Valley Bicentennial Theatre and Cultural Centre (MVBTC). The MVBTC has been operating the building under a lease agreement signed in 1985, which contains an automatic annual renewal clause. Halifax Regional Municipality (HRM) has been working with the Board to meet all the requirements to enter into a Facility Operating Agreement.

### **DISCUSSION**

This volunteer board governance approach is consistent with the Halifax Regional Council approved Community Facility Master Plan which identifies community-based service delivery as the preferred management model for neighborhood community centres. The governance model recognizes ongoing responsibility of the municipality as the owner of the facility but provides occupation and operation of the community facility to the volunteer community board. The volunteer board operated facility model allows for enhanced services at the local level reflective of each community's needs. HRM enters into agreements with each group to allow them to operate effectively and to ensure alignment with HRM Parks and Recreation's mandate.

It is the intention of the agreement to provide an opportunity for community organizations to collaborate and deliver approved services through an alternative service delivery approach.

HRM has been providing a contribution amount to assist with operations and the delivery of programs under the governance model. HRM will continue to provide the current level of contribution amount while a review of the provision of services and funding levels is completed. Staff continue to negotiate updated agreements for other facilities and will return to Regional Council for approval of those agreements when completed.

The Facility Operating Agreement has been agreed to by the MVBTC and is included as Attachment 1. An overview of the key terms and conditions is outlined in Table 1:

Table 1: Facility Operating Agreement Key Terms and Conditions

<b>Properties</b>	12390 Highway 224, Middle Musquodoboit
<b>Commencement Date</b>	Date Agreement is executed by CAO
<b>Notice</b>	Either party shall have the option to terminate the agreement upon providing six (6) months written notice to the other party at any time or for any reason.
<b>Term</b>	Initial ten (10) year term with a One (1) year renewal term

<b><i>Operating Subsidy</i></b>	HRM shall pay an annual Operating Subsidy. The amount of the Operating Subsidy will be evaluated annually and shall be included in the Annual Operating Budget approved by Halifax Regional Council.
<b><i>Key Conditions</i></b>	<ul style="list-style-type: none"> <li>- All revenues and expenses from the operation of the facilities are the responsibility of the Society.</li> <li>- All personnel are employed by MVBTC (the Society). The employees shall under no circumstances or at any time be considered employees of HRM</li> <li>- Any surplus realized in any fiscal year shall be set aside to underwrite the continued operation of the Facility or any Operating Reserve Funds</li> <li>- HRM will insure all real and personal property owned by HRM or for which HRM is responsible.</li> <li>- The Society is required to provide general liability insurance coverage outlined in the agreement</li> </ul>

**FINANCIAL IMPLICATIONS**

The 2020/21 approved operating budget included an operating subsidy of \$23,500 (C705). Any maintenance or repair costs related to HRM’s responsibilities under the agreement will go through HRM Facility Management and Operations account (W213).

**RISK CONSIDERATION**

There are no significant risks associated with the recommendations in this report. The risks considered rate Low. To reach this conclusion, consideration was given to operational and financial risks for both HRM and the volunteer community boards. The updated and modernized terms in the new agreement mitigate risks for both HRM and the volunteer community board.

**COMMUNITY ENGAGEMENT**

The MVBTC Board of Directors is made up of members of the community.

**ENVIRONMENTAL IMPLICATIONS**

No environmental implications.

**ALTERNATIVES**

Alternative 1: Regional Council could choose to not direct the CAO to enter into a facility operating agreement with the MVBTC and direct staff to assume operation and management of the facility.

Alternative 2: Regional Council could direct staff to negotiate a Less than Market Value lease with the MVBTC. This would not provide operating subsidy from HRM nor would the operation of the facility be required to align with HRM’s mandate. It would also require a subsequent report to Council.

Alternative 3: Regional Council could direct staff to negotiate alternative terms. This would require

additional negotiation with the Board and subsequent report to Council.

**ATTACHMENTS**

Attachment 1: Musquodoboit Valley Bicentennial Theatre and Cultural Centre Facility Operating Agreement

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A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Scott Ingram, Facility Service Delivery Coordinator, Parks and Recreation, 902.221.1319  
Andy Conrad, Facility Service Delivery Coordinator, Parks and Recreation, 902.490.8443

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Attachment 1

# Facility Operating Agreement

**Between:**

**Musquodoboit Valley Bicentennial Theatre and Cultural Centre**

**and**

**Halifax Regional Municipality**

**FOR**

**Musquodoboit Valley Bicentennial Theatre  
12390 Highway 224  
Middle Musquodoboit, NS  
B0N 1X0**

**Prepared by:**

Halifax Regional Municipality  
Parks, Recreation & Community Services  
Program Support Services  
PO Box 1749  
Halifax, Nova Scotia, B3J 3A5

[www.halifax.ca](http://www.halifax.ca)

**THIS AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

**BETWEEN:**

**Halifax Regional Municipality** (hereinafter referred to as “HRM”)  
**OF THE FIRST PART**

**- and -**

**Musquodoboit Valley Bicentennial Theatre and Cultural Centre** (hereinafter referred to as  
the “Society”)  
**OF THE SECOND PART**

**WHEREAS** HRM is the owner of the Musquodoboit Valley Bicentennial Theatre located at  
12390 Highway 224 (the “Facility”);

**AND WHEREAS** HRM wishes to encourage and facilitate a community-based delivery of  
service to the public, while maximizing efficiencies and opportunities for economies of scale;

**AND WHEREAS** the Society is a community based non-profit organization incorporated under  
the *Societies Act* of Nova Scotia, whose members and directors receive no financial benefit  
from their participation;

**AND WHEREAS** the Society has demonstrated the organizational capacity to operate the  
Facility, including the delivery of programming;

**AND WHEREAS** the Society wishes to oversee the operation of the Facility and to promote  
public use and general access to the Facility;

**AND WHEREAS** HRM wishes for the Society to oversee the operation of the Facility and to  
promote public use and general access to the Facility;

**AND WHEREAS** this Agreement replaces the parties’ previous agreement dated 1st of January,  
1985 and this Agreement reflects the current working relationship of the parties;

**IN CONSIDERATION of the mutual conditions and covenants contained herein and the  
provision of other valuable consideration, receipt of which is acknowledged, the parties  
hereto agree as follows:**

**1. DEFINITIONS**

**1.1** When used in this Agreement, the following terms shall have the following meanings:

**“Agreement”** means this agreement and all instruments in writing executed by the Parties that  
by their terms expressly amend, waive or vary the provisions of this agreement and the  
Schedules;

**“Applicable Laws”** means all laws, regulations and governmental policies of any Governmental  
Authority, including all by-laws, policies, procedures, guidelines and rules of HRM, as they may  
be amended or replaced from time to time, and which are applicable to the Services and the  
roles and responsibilities of each party under this Agreement;

**“Board”** means the Board of Directors of the Society;

**“Capital Work”** means work done on the Facility as directed by HRM’s department of Facility Design and Construction and approved in the HRM capital budget;

**“Claims”** means any and all claims, liabilities, demands, losses, damages, actions and causes of action of any kind or nature including, without limitation, expenses, costs and legal fees;

**“Commencement Date”** means the date this Agreement is executed by the Chief Administrative Officer of HRM, which is the date that this Agreement comes into effect;

**“Council”** means the Regional Council of HRM;

**“Expiry Date”** means the date ten (10) years after the Commencement Date;

**“Facility”** means the property owned by HRM known as Musquodoboit Valley Bicentennial Theatre, 12390 Highway 224, Middle Musquodoboit, NS, PID 00538652.

**“Fiscal Year”** means the annual (12 month) period ending on March 31<sup>st</sup>, or such other period as HRM may establish upon notice to the Society;

**“Governmental Authority”** means any federal, provincial or local government or any governmental, quasi-governmental, judicial, public or statutory administrative agency, authority, body or entity, including any such authority that has jurisdiction in relation to any aspect of the Services or this Agreement;

**“Hazardous Substances”** means any chemicals, biological substance, pollutant, contaminant, toxic substance, hazardous material or substance, radioactive material, waste, oil or petroleum product as such term or any similar terms are used under any Applicable Law or any other substance which may cause an adverse effect respecting the health of humans or the reasonable enjoyment of life or property, and includes any soil containing such substance in amounts exceeding permissible limits for such substance in such location by any Applicable Law;

**“HRM”** means the Halifax Regional Municipality;

**“HRM Representative”** means the HRM Manager of Community Partnerships, or his or her designate, acting as HRM’s representative with the Society;

**“HRM Property”** means all property, including, but not limited to, real property, equipment and infrastructure, that is owned by HRM and used by the Society to deliver the Services, and includes the Facility and the property set out in Schedule ‘A’;

**“Operating Subsidy”** means the operating subsidy payable to the Society by HRM for each Fiscal Year, or part thereof, that this Agreement is in effect;

**“Operations Contract”** means an agreement, contract or purchase order entered into between the Society and a Supplier to furnish services, equipment, supplies or other things required to deliver the Services, and includes sponsorship contracts as set out in Article 7.6 of this Agreement;

**“Permits”** means all permits, permissions, licenses and approvals required, or as the context requires, granted by Governmental Authorities for the delivery of the Services;

**“Renewal Term”** has the meaning set out in Article 4.1 of this Agreement;

**“Rental Contract”** means a contract entered into between the Society and a person for the short-term (i.e. hourly) use of the Facility, or any part thereof;

**“Revenue”** means all monies, proceeds, funds and revenues of every nature and kind received by the Society in delivering the Services, whether by way of fees paid for services provided in or from the Facility, or any part thereof, or by way of grants, gifts, sponsorships, bequests, donations; or any monies or proceeds derived by the Society under any valid license of the Society to operate any form of lottery scheme; or from any fund raising program or through any third party fee-for-service agreements;

**“Schedules”** means the schedules attached hereto which form part of this Agreement;

**“Services”** has the meaning set out in Article 5.1;

**“Society”** means the Musquodoboit Valley Bicentennial Theatre and Cultural Centre a society incorporated under the Societies Act;

**“Societies Act”** means the Societies Act, RSNS 1989, c. 435, as may be amended and replaced from time to time;

**“Society Programming”** means the programs, events, activities and fundraisers that the Society plans and delivers to the community at the Facility, including those set out in Article 8.1 of this Agreement;

**“Society Property”** means all property owned by the Society, including all property owned by the Society that is used by the Society to deliver the Services. Society Property excludes HRM Property;

**“Supplier”** means any person, other than the Society and employees of the Society, entering into an Operations Contract to furnish services, equipment, supplies or other things in connection with the Services;

**“Term”** has the meaning set out in Article 3.1 of this Agreement; and

**“Termination Date”** means the Expiry Date, or the date on which this Agreement otherwise terminates in accordance with the terms and conditions herein.



## **2. PURPOSE**

**2.1** The purpose of this Agreement is to formalize the terms and conditions by which the Society will deliver the Services to the Community.

## **3. TERM**

**3.1** Subject to earlier termination of this Agreement in accordance with the terms herein, the term of this Agreement shall commence on the Commencement Date and end on the Expiry Date. The term of this Agreement may be terminated earlier in accordance with Article 22 of this Agreement.

## **4. RENEWAL TERM**

**4.1** This Agreement may be renewed by HRM on the same terms for one (1) additional one-year Renewal Term by HRM advising the Society in writing of its intent to exercise the renewal option no later than ninety (90) days prior to the Expiry Date. The Society must notify HRM within thirty (30) days of receipt of the renewal notice whether it wishes to accept the Renewal Term. If the Society declines the Renewal Term, this Agreement will terminate on the Expiry Date.

## **5. SERVICES**

**5.1** From and after the Commencement Date, the Society agrees to deliver the Services. Services means:

- a) the provision of all labour and materials required to operate the Facility;
- b) the employment of all personnel and coordination of all volunteers at the Facility;
- c) the furnishing of all equipment, supplies, tools, storage, transportation and other things and services of every kind whatsoever necessary for the proper, safe, effective and cost-efficient operation of the Facility;
- d) the delivery of Society Programming;
- e) all administrative, accounting, record-keeping, and similar responsibilities of every kind whatsoever incidental to the Services; and
- f) any other obligation, responsibility or requirement of the Society under this Agreement.

A reference to "Services" shall mean "any part and all of the Services" unless the context otherwise requires.

**5.2** The Society shall ensure that the Services are performed in a good and workmanlike manner to the full satisfaction of HRM in compliance with the terms and conditions of this Agreement and all Applicable Laws.

## **6. OPERATING SUBSIDY**

**6.1 Operating Subsidy.** HRM shall pay to the Society an annual Operating Subsidy in consideration of the Services provided by the Society.

**6.2 Operating Subsidy Amount.** The amount of the Operating Subsidy shall be the amount approved by Council annually as part of HRM's Annual Operating Budget.

**6.3 Installments.** Subject to Council's approval of HRM's Annual Operating Budget, the Operating Subsidy will be disbursed by HRM to the Society in two payments. The first payment will be 80% of the Operating Subsidy, payable by HRM upon receipt of an invoice from the Society. The second payment will be the remaining 20% of the Operating Subsidy, payable by HRM upon receipt of an invoice from the Society. Invoices shall be provided by the Society to HRM by May 31<sup>st</sup> and by November 30<sup>th</sup> of each Fiscal Year. Disbursement of the Operating Subsidy payments is contingent on all required reports in accordance with Section 14 being received and approved by HRM. HRM may adjust the Operating Subsidy payment installment percentages or payment schedule from time to time with written notice to the Society.

**6.4 Pro-rated Operating Subsidy.** The disbursements of the Operating Subsidy payable by HRM to the Society during the final year of the Term or during the Renewal Term, as applicable, shall be pro-rated to align with the expiration of this Agreement.

## **7. AUTHORITY TO CONTRACT**

**7.1 Operations Contracts.** The Society may enter into Operations Contracts; provided, however, that the Society shall not be thereby relieved of any of its obligations to HRM as set forth in this Agreement. All Operations Contracts shall be in writing and include terms and conditions consistent with the reasonably prudent operation of a facility of a similar nature to the Facility. If the Operations Contract is for an expenditure, it shall be for an expenditure that is within the limits of the Annual Budget and Business Plan of the Society. The parties hereby agree that the Society is not acting as an agent of HRM when it enters into a Operations Contract.

**7.2 Rental Contracts.** The Society may enter into Rental Contracts. All Rental Contracts shall be in writing and include terms and conditions consistent with the reasonably prudent operation of a facility of a similar nature to the Facility. Without limiting the generality of the foregoing, all Rental Contracts must include a clause which provides that (i) the Rental Contract shall automatically terminate in the event that the Society is dissolved; and (ii) the Society may terminate the Rental Contract, without notice, in the event that this Agreement is terminated. The parties hereby agree that the Society is not acting as an agent of HRM when it enters into a Rental Contract.

**7.3 Limitation of Authority.** Unless expressly authorized by prior written direction or approval of HRM, the Society shall not have the authority to do any of the following:

- a) Obtain loans for the Facility or HRM, whether secured or unsecured, or grant options, rights of first refusal, deeds of trust, mortgages, pledges, security interests, or otherwise encumber the Facility or any portion thereof or any interest of the HRM therein, or obtain replacements of any mortgage or mortgages;
- b) Prepay in whole or in part, refinance, increase, modify, consolidate or extend any obligation affecting the Facility or any portion thereof, except to the extent contemplated and approved in writing by HRM;
- c) Cause HRM to extend credit or to make any loans or become a surety, guarantor, endorser or accommodation endorser for any person;
- d) Cause HRM to enter into any contracts with respect to the Facility;
- e) Release, compromise, assign or transfer any claim, right, or benefit of the HRM, except with the written authorization of HRM;
- f) Allow a default judgement to be entered against the Facility or any assets associated with the Facility;
- g) Modify, change or amend, in any material way, any drawings, maps, plans or specifications prepared for or in connection with the Facility;
- h) Grant easements or other property rights in the Facility;

- i) Purchase, exchange, convey or sell any HRM Property or any part thereof, on behalf of HRM;
- j) Install or modify closed circuit television without consulting with HRM Corporate Security; or
- k) Initiate litigation of any kind against a third party without the prior written consent of HRM.

**7.4 Confirmation of Authority.** HRM shall execute and provide to the Society any document or other evidence which may be reasonably required by the Society to demonstrate to third parties the authority of the Society as set out in this Agreement.

**7.5 Naming Rights Agreements.** The Society is not permitted to enter into an agreement, or otherwise provide, naming rights at the Facility. Any proposed naming of the Facility or any part thereof must be approved by HRM in compliance with applicable HRM policies, including Administrative Order 56, the HRM Sale of Naming Rights Administrative Order.

**7.6 Sponsorship Agreements.** The Society may seek sponsorship for Society Programming, and enter into sponsorship agreements for this purpose. No sponsorship opportunity shall be considered by the Society that seeks to promote or enhance the image of an illegal activity (in the determination of HRM), that is designed to promote a specific political or social perspective or agenda (outside of the accepted municipal values or norms, solely as communicated by HRM) or is otherwise determined by HRM to be inappropriate or not suitable for the Facility or its users.

**7.7 Other Agreements (Including Leases).** With respect to any lease, license or other agreements related to the Facility, HRM and the Society hereby agree:

- a) The Society is not authorized to enter into any lease, license or other agreement related to the Facility, except for Rental Contracts and Operations Contracts in accordance with this Agreement;
- b) Any lease, license or other agreement related to the Facility (excluding Rental Contracts and Operations Contracts) shall be reviewed, approved and executed by HRM, in its sole discretion;
- c) In delivering the Services under this Agreement, the Society shall, when requested by HRM, provide tenant and/or contractor support services to HRM for lease, license or other agreements entered into by HRM and related to the Facility, including, but not limited to, day to day management and administration of lease, license or other agreements entered into by HRM and related to the Facility; and
- d) The Society shall immediately notify the HRM Representative in the event of any issues, concerns or breaches related to any lease, license or other agreements entered into by HRM and related to the Facility.

## **8. SOCIETY PROGRAMMING**

**8.1 Society Programming.** Society Programming is the responsibility of the Society, including scheduling, fees, quality control and evaluation. The Society may use HRM Property for the purposes of Society Programming. The Society's responsibilities for Society Programming include, without limitation:

- a) development of the Society Programming list and schedule;
- b) production and circulation of promotional materials;
- c) management of registration process and records for Society Programming;
- d) hiring and contracting with instructors/contractors to deliver Society Programming
- e) oversight and management of instructors/contractors who are delivering Society Programming;

- f) providing and being responsible for adequate supplies to operate Society Programming;
- g) oversight, screening and management of any volunteers involved with delivery of Society Programming;
- h) assessment of credentials and compliance with Applicable Laws when recruiting instructors, contractors or volunteers;
- i) ensuring Society Programming is offered safely with proper risk-management and in a safe, inclusive environment;
- j) management of programming-related risks and issues; and
- k) the purchase, maintenance, repair and replacement of any Society Property used or required for Society Programming

**8.2 Community Facility Master Plan (CFMP).** The Society agrees to work cooperatively with HRM to implement any policies, initiatives, directives or other requirements resulting from the current CFMP version 2, and any future versions of the CFMP, that are applicable to the Facility and/or Services.

### **8.3 Recreation Software**

The Society acknowledges and agrees that Legend Recreation System Software Inc., a common recreation and registration management system that is used by HRM, or any other alternative software solution supplied by HRM, will be exclusively used by the Society at such time that the system is provided to the Society by HRM. The implementation costs for the software will be subject to future HRM Budget approval.

## **9. FACILITY USE BY HRM**

**9.1 HRM Recreation Programming.** In the event that the Society requests HRM recreation programming in the Facility, the parties agree that HRM will not be charged a user fee for the use of the Facility required to deliver the requested HRM recreation programming.

**9.2 Emergency Management Operations.** The Society hereby acknowledges and agrees that, in the event of an emergency, including a national emergency, a local emergency or a Facility-specific emergency (i.e. flood, fire, or other emergency in the Facility), HRM retains the right, which it may exercise at any time without notice to the Society, to assume operational control of the Facility. HRM shall be responsible for any extraordinary costs and expenses incurred by the facility or the Society during an emergency.

**9.3 HRM Operation of Facility.** If at any time HRM wishes to resume operating a portion of the Facility that is operated by the Society, the parties agree to enter into good faith negotiations to amend this Agreement accordingly.

## **10. HRM REPRESENTATIVE**

**10.1 HRM Representative.** HRM shall designate the HRM Representative to be HRM's contact with the Society with respect to this Agreement. The Society hereby agrees that the HRM Representative shall be entitled to attend all meetings of the Board, and to receive meeting minutes of the Board and committee meetings.

**10.2 HRM Representative Responsibilities.** The HRM Representative shall:

- a) review annual and bi-annual reports, provide recommendations and financial feedback to the Society and follow-up with the Society concerning financial variances;

- b) review the business plans and all other reports submitted by the Society;
- c) review and respond to issues related to the Services and Facility which require the approval of HRM;
- d) consult with the Society before Capital Work is commenced;
- e) consult with the Society before policies specifically impacting the Services are implemented;
- f) meet with the Society, or designate, at minimum at least two (2) times per year, either in person, via conference call or other means of electronic communication to share information and discuss issues related to the Services and this Agreement; and
- g) respond to requests from the Society in a timely manner.

## 11. RESPONSIBILITY FOR COSTS

**11.1 Society.** Except where otherwise stated in this Agreement, the Society shall own, be responsible for and agrees to pay all costs associated with the delivery of the Services in accordance with and subject to the terms and conditions of this Agreement, including, but not limited to, the following costs:

- a) staffing (employees and volunteers);
- b) programming costs (in accordance with Article 8);
- c) on site supplies;
- d) utilities;
- e) Permits;
- f) general maintenance of the Facility (snow removal, garbage removal, cleaning, etc.);
- g) Landscaping and groundskeeping; and
- h) Society Property required to deliver the Services.

**11.2 Municipality.** The Municipality shall own, be responsible for and agrees to pay all costs associated with:

- a) Capital Work;
- b) fire safety systems (alarms systems, emergency lighting, extinguishers, etc.);
- c) lift devices (inspections, servicing, licensing);
- d) heating and cooling systems (Inspections, servicing, replacements, oil tanks);
- e) water testing, treatment;
- f) major facility repairs; and
- g) HRM Property.

## 12. FINANCES

**12.1 Revenues.** Any Revenues derived from the activities of the Society are the property of the Society, and shall be used exclusively by the Society to deliver the Services.

**12.2 Expenses.** Any expenses incurred from the activities of the Society are the property of the Society and shall be paid exclusively by the Society.

**12.3 Surplus.** HRM and the Society agree that the Services shall be delivered in a prudent and fiscally responsible manner. The Society agrees that any surplus realized in delivering the Services, which shall be defined as the excess of actual Revenues over actual expenses, shall be set aside to subsidize or underwrite the continued delivery of the Services, or to fund operating reserve accounts.

**12.4 Deficit.** If, in any Fiscal Year, a deficit is realized from the operating budget, the Society shall prepare and submit a written report (the deficit report) at the time it submits its operating budget to the HRM Representative for the Fiscal Year, outlining the magnitude of the deficit, the reasons for the deficit, and the recommendation to rectify the deficit in the next Fiscal Year.

### **13. GOVERNANCE**

**13.1 Governance Covenants.** The Society covenants and agrees that:

- a) it will conduct itself at all times in accordance with its constitution and by-laws and the requirements of the Societies Act; and
- b) the Society will adopt and adhere to appropriate good governance policies.

**13.2 Governance Defaults.** To ensure that the delivery of the Services under this Agreement continue to be carried out in the best interests of the public, the parties agree that, if:

- a) the purpose of the Society is amended so that, at any time, it includes the carrying on of a business for profit or gain;
- b) the purpose of the Society is amended so that it is no longer consistent with benefiting the local and municipal community and members of the public through the provision of programming and other recreation services within the Facility; or
- c) the Society adopts bylaws and governance procedures that conflict with the terms of this Agreement or do not permit the Society to carry out its roles and responsibilities under this Agreement,

then it shall be considered a default of the Society under this Agreement and the Dispute Resolution Process set out in Article 23 of this Agreement shall apply.

### **14. REPORTING AND INSPECTIONS**

**14.1 Annual Reports.** The Society shall provide an annual report to the HRM Representative no later than 45 days after Fiscal Year end, which report shall include the following components:

- a) Financial Reporting
  - i. Endorsed financial statements
    1. Income statement
    2. Balance sheet
  - ii. Bank reconciliation report
- b) Management Reporting
  - i. Discussion and analysis of Fiscal Year-end results highlighting significant variances and, if applicable, a report explaining any deficit realized.
  - ii. Current list of Board and Society staff, including contact information
  - iii. Other reports as HRM may reasonably require

#### **14.2 Annual Budget and Business Plan**

**14.2.1** The Society shall prepare and furnish to the HRM Representative a draft Facility Annual Budget and Business Plan each Fiscal Year (date is subject to change in response to HRM's budget and business planning process).

**14.2.2** The Annual Budget will include anticipated operating Revenues and expenses.

**14.2.3** The Business Plan shall include the following components:

- a) Vision and Mission Statements;
- b) Strategic Priorities;
- c) Goals; and
- d) Annual Budget.

This plan is to be submitted as per timelines set out in this Agreement or as otherwise determined by the HRM Representative.

**14.3 Bi-Annual Reports.** The Society shall provide a Bi-Annual Report to the HRM Representative no later than 45 days following the mid-point of the Fiscal Year, which report shall include the following components:

- a) Financial Reporting
  - i. Income statement compared to Proposed Annual Budget
- b) Management Reporting
  - i. Monthly facility inspection sheets
  - ii. Program and Facility usage reports
  - iii. Other reports as HRM may reasonably require

**14.4 Complaint Reporting and Action.** The Society shall report to HRM and immediately investigate all written complaints upon receipt and shall take appropriate action it deems reasonably necessary.

**14.5 Other Reports.** The Society shall, when requested from time to time by HRM, prepare and furnish to HRM, such other reports or statements as HRM may reasonably require including, without limitation, status reports on any material aspects of the Services.

## **15. PURCHASING POLICY**

**15.1 Procurement.** The Society shall follow the purchasing policy adopted by its Board for the purchase of all goods, services, construction or facilities it requires to deliver the Services. The parties hereby acknowledge and agree that the Society is not an agent of HRM for the purposes of procurement. The Society's purchases are its own and the Society shall not purchase goods, services, construction or facilities on behalf of HRM.

## **16. FACILITY ALTERATIONS**

**16.1** HRM shall be solely responsible for any Capital Work required in the Facility.

**16.2** Notwithstanding Article 16.1, the Society shall be permitted to carry out minor alterations, enhancements and improvements to the Facility at their sole cost, provided that HRM has granted written approval prior to the work commencing. HRM may, in its sole and absolute discretion, refuse to approve any minor alterations, enhancements or improvements to the Facility proposed by the Society.

**16.3** All work undertaken by the Society in accordance with Article 16.2 herein shall conform to Applicable Laws, including applicable building and fire codes. Before commencing the work, the Society shall obtain all necessary Permits required for the approved scope of work. The Society is responsible to ensure all required inspections are completed for the work.

## **17. HEALTH, SAFETY AND ENVIRONMENT**

**17.1 Compliance with Occupational Health and Safety Laws and Environmental Laws.** With respect to Applicable Laws respecting health and safety of the workplace, the environment and Hazardous Substances or any Applicable Law related thereto:

- a) The Society covenants to operate the Facility (and to cause its employees, sub-tenants, licensees, occupants and invitees to use the Facility), in compliance with all

- Applicable Laws, related to the protection of the environment, health and safety. The Society warrants and represents that no Hazardous Substances shall be used, generated, released, manufactured, refined, produced, processed, stored, disposed of or allowed anywhere on, under or about the Facility, other than in accordance with Applicable Law. Without limiting the generality of the foregoing, the Society warrants and represents that it shall comply with all Applicable Laws regulating the use, generation, storage, transportation and disposal of Hazardous Substances on, under or about the Facility;
- b) The Society acknowledges that
- (i) it will be the occupier of and employer at the Facility and will have far greater control over the Facility than HRM on a day-by-day basis,
  - (ii) it has the authority and the obligation under this Agreement to assume the primary responsibility for creating and maintaining a safe and healthy workplace at the Facility, and
  - (iii) as part of the provision of Services, the Society shall undertake all necessary and prudent actions in respect of occupational health and safety at the Facility, including but not limited to the following:
    - 1) its obligations under Article 17.2 of this Agreement;
    - 2) take every precaution that is reasonable in the circumstances to operate and maintain the Facility and deliver the Services in a manner that ensures the health and safety of persons thereupon;
    - 3) exercise the precautions and duties of an “occupier of lands or premises used as a workplace” and “employer”, as those terms are used in the Occupational Health and Safety Act and the regulations;
    - 4) adopt internal policies and programs relative to workplace health and safety that are substantially similar to HRM’s policies and programs, but which may differ to the extent required to adapt the Society’s policies and programs to operate the Facility in accordance with the Occupational Health and Safety Act and the regulations;
    - 5) produce such reports from time to time as HRM may reasonably require to audit and verify the Society’s efforts in respect of health and safety and the Facility;
    - 6) comply with the Occupational Health and Safety Act and the regulations; and
    - 7) immediately disclose to the relevant Governmental Authority and to HRM the occurrence of an event whereby the Society failed to comply with the Occupational Health and Safety Act or the regulations.
- c) All of the Society’s obligations set out in this Article 17.1 of this Agreement shall survive the expiration or other termination of this Agreement.

**17.2 Hazardous Substances.** The Society shall not allow any Hazardous Substances to be brought upon, placed or stored in or on the Facility except in accordance with the requirements of Article 17. If the Society:

- a) encounters Hazardous Substances at the Facility; or
- b) has reasonable grounds to believe that Hazardous Substances are present at the Facility the Society shall:
  - (i) take all reasonable steps including if necessary cessation of operations in the Facility, to ensure that no individual suffers an injury, sickness or death and that no property is injured or destroyed as a result of exposure to the presence of the Hazardous Substances;
  - (ii) immediately report the circumstances to HRM in writing; and
  - (iii) comply with any provisions of this Agreement.



## **18. FACILITY INSPECTIONS.**

HRM or HRM's Contractor, shall have access to the Facility at all reasonable times by providing not less than twenty-four (24) hour written notice to the Society for the purpose of completing an independent facility inspection report. These inspections will provide valuable information for recapitalization planning, insurance compliance issues, and operational planning. HRM may enter the Premises immediately and without prior written notice if, in HRM's sole but reasonable discretion, an emergency event or potential emergency event is occurring.

## **19. PERMITS**

**19.1** The Society shall obtain and renew as necessary all Permits which may be required in connection with the delivery of the Services. The Society shall at all times comply with the conditions of such Permits and shall comply with and observe all Applicable Laws in delivering the Services.

## **20. EMPLOYEES**

**20.1 Personnel of the Society.** All personnel employed by the Society in delivering the Services are selected for employment by, and will be employees of, the Society, and shall under no circumstances or at any time be deemed or implied to be employees of HRM. The Society shall be solely responsible for the hire, dismissal, control, direction, supervision, instruction, and training of its employees. The wages, salaries and benefits of such employees are the responsibility of the Society and shall be paid directly by the Society. The entirety of the foregoing shall be a term of employment for anyone employed by the Society.

**20.2** The Society shall continue to be responsible for the development of employment policies, and will ensure appropriate coverage for Workers' Compensation purposes, statutory payroll deductions and remittance to appropriate taxing authorities.

**20.3** The Society shall be responsible for all volunteers engaged to support the Society, and will be responsible for all related liabilities and obligations, including appropriate oversight and screening.

**20.4** The Society shall ensure that fidelity bonds, criminal records checks and sex-abuse registry records have been obtained and are in place in respect of all its employees and volunteers where required by law or otherwise prudent or applicable, such as when employees are dealing with cash or working with vulnerable populations.

**20.5** The Society will take all measures required to remain in compliance with the *Occupational Health and Safety Act* and ensure the safety of employees, volunteers and contractors.

**20.6 Meetings and Access to Personnel.** Employee or Board representatives of the Society shall agree to meet with HRM's Representative upon HRM's request, to discuss and review the delivery of the Services, provided the Society is given two (2) weeks' notice except in the event that the requirement for a meeting is time sensitive in which the meeting may be immediate. The Society Board and/or employees shall inform the HRM Representative in a timely manner of all emergencies, the occurrence of all uncontrollable events, and any other significant information as would be expected under customary and prudent business practices.

## **21. BOOKS AND RECORDS**

**21.1 Books and Records.** The Society shall maintain or cause to be maintained complete and accurate books and records about the Facility and Services in accordance with generally accepted accounting principles. HRM shall have the right at its own expense and upon reasonable notice and at all reasonable times during normal business hours to audit, examine, make copies and take extracts from the books of account and records maintained by the Society pursuant to this Agreement. Such right may be exercised through any agent or employee designated by HRM.

**21.2** Upon termination or expiration of this Agreement, all records related to the Facility and Services shall be turned over forthwith to HRM at no cost to ensure the orderly continuance of the operation of the Facility. All other books and records of the Society will thereafter be available to HRM, at all reasonable times, for inspection, audit, examination and copying.

## **22. TERMINATION**

**22.1 Termination for Any Reason.** This Agreement may be terminated by either party for any reason whatsoever upon six months (6) written notice to the other party.

**22.2 Termination for Material Breach.** This Agreement may be terminated in writing by either party for a material breach of any of its terms, provided that the party that is in material breach is first given written notice of the breach. The party alleging breach shall give a written notice of the breach to the party in breach, and that party shall remedy the default to the satisfaction the other party within ten (10) business days of receipt of such written notice, or if such default cannot reasonably be remedied within such ten (10) business day period, the party shall promptly begin to remedy the default within the ten (10) business day period and thereafter diligently prosecute to conclusion all acts necessary to remedy the default, then such default shall be deemed to be remedied.

If the Society fails to remedy a default in accordance with this Article 22, HRM shall have the right, at its election, to exercise any or all of the following remedies:

- b) terminate in whole or in part, the rights or obligations of the Society under this Agreement;
- c) take possession of the Facility; and
- d) remedy or cause to be remedied the default and the Society shall reimburse HRM for any costs or expenses associated with HRM's remediation of the default.

**22.3 Right to Dispute Breach Notice.** In the event that either party delivers written notice of a material breach to the other party pursuant to Article 22.2, the receiving party may within seven (7) days of such notice being delivered to it, deliver a dispute notice to the delivering party and the matter shall be referred for resolution pursuant to the Dispute Resolution Procedures.

**22.4 Termination Notice on Failure of Board to Remedy.** On the occurrence of a default which HRM in its sole discretion considers may cause irreparable harm to any person or to the Facility then HRM shall have the right to terminate this Agreement and exercise all of the other rights and remedies described in Article 22.2 and if HRM elects to terminate this Agreement, the Board shall have no right to dispute the matter.

**22.5 Remedies are Cumulative.** This Agreement shall not be construed as limiting HRM's rights or remedies at law or in equity and any such rights or remedies of HRM whether at law or in equity or under this Agreement:

- a) may be exercised individually or together with any one or more of its other rights or remedies and as often or in such order as HRM deems expedient; and
- b) are cumulative and are in addition to and not in substitution for any other rights and remedies.

**22.6 Emergencies.** Notwithstanding anything to the contrary contained in this Agreement, if in the reasonable opinion of HRM there is a real or apprehended emergency or imminent damage or danger to persons, property or the environment arising out of or in connection with any matter, state, condition or thing relating to this Agreement, as a result of a breach by the Society of this Agreement, HRM may, without notice and without prejudice to other remedies, (but without obligation to do so) rectify any such matter, state, or condition.

**22.7 Obligations of the Society on Termination.** Where HRM or the Society has terminated this Agreement in accordance with the terms hereof, the Society shall on the effective date of the termination:

- a) stop the performance of all Services hereunder;
- b) terminate all Rental Contracts and Operations Contracts as HRM may specify in writing;
- c) provide to HRM a detailed list of all licensed users and customers of the Facility;
- d) be deemed to have licensed to HRM a royalty and license to use any and all patented and proprietary information, designs or processes contemplated to be used by HRM in the operation, management and maintenance of the Facility, and shall forthwith execute and deliver to HRM a paid-up royalty and license, in form and substance satisfactory to HRM, to use any and all such patented and proprietary information, designs or processes contemplated to be used in the operation of the Facility;
- e) assign and transfer to HRM the Society's right, title and interest in and to all liquor and other licenses and permits, if any, used by the Board in the operation of the Facility;
- f) deliver all applicable records in accordance with section 21;
- g) remove from the Facility all Society Property, debris and any other materials that are designated in writing by HRM to be so removed;
- h) do all such acts, execute and deliver to HRM all such documents, conveyances, deeds, assignments, transfers, bills of sale, assurances and certificates and take all actions as may be required by HRM to exercise its rights hereunder;
- i) indemnify HRM with respect to any and all liabilities relating to the Facility and/or Services and arising out of anything done or omitted by the Society contrary to this Agreement, including an indemnification for any outstanding actions, suits or proceedings; and
- j) take any other action towards termination of the Services which HRM acting reasonably shall request in writing.

**22.8 Further Assurances.** The Society agrees that, upon the reasonable request of HRM, it will do all such acts and execute all such further documents, assurances, certificates and the like as may be necessary or desirable in HRM's opinion, acting reasonably, to effect the purpose of Article 22.7, whether before or after this Agreement is terminated.

**22.9** Termination of this Agreement does not release either of the Parties from any obligations that accrued while the Agreement was in force.

## **23. DISPUTE RESOLUTION**

**23.1 Commencement of Process.** If HRM and the Society are unable to agree on any aspect of the Agreement that is subject to arbitration, either the Society or HRM may give notice of a dispute to the other, which is to contain the particulars of the matter in dispute and the relevant provisions of this Agreement. The other party shall reply in writing within 10 business days after receiving it, setting out in such reply the details of its response and any other relevant provisions of this Agreement.

**23.2 Amicable Negotiations.** HRM and the Society shall use best efforts to resolve any dispute. If the dispute is not resolved within 15 business days following receipt of the reply, the dispute shall be resolved in accordance with Article 23.3.

**23.3 Arbitration Proceedings.** All differences between the parties arising out of this Agreement that cannot be resolved through amicable negotiations and are subject to arbitration shall be submitted to arbitration as follows:

- a) If the parties are unable to agree, either HRM or the Society (the initiating party) may appoint an arbitrator by notice in writing to the second party. The second party will have 10 business days after receipt of the notice to appoint its arbitrator, or to agree to have the matter heard by the arbitrator named by the initiating party, written notice of which will be given to the initiating party. Where two arbitrators are chosen, they shall, within 10 business days after the appointment of the second arbitrator, appoint a third arbitrator who shall be the sole determiner of the matter.
- b) The single arbitrator shall provide a decision in writing within ten (10) business days of his or her appointment.
- c) The parties shall each be responsible for their own costs of arbitration and shall be jointly and equally responsible for the cost of the single arbitrator who determines the matter.
- d) The decision of the single arbitrator shall be final and binding. No one shall be appointed or act as arbitrator who is in any way interested, financially or otherwise, in the conduct of the work or in the business or other affairs of either party.

**23.4 Governance of Arbitration.** The following provisions shall govern the arbitration: each of HRM and the Society shall be treated fairly and shall be given full opportunity to present a case; arbitration hearings shall be held in the Halifax Regional Municipality; all arbitration hearings shall be in private unless the parties otherwise agree; and any party may be represented at any arbitration hearing by legal counsel.

**23.5 Matters not Subject to Arbitration.** The following matters are not subject to arbitration: policies and standards established by HRM, provided that such policies and standards do not directly contradict the express terms of this Agreement; allocation of HRM budget and resources; compliance with Applicable Laws and corporate policies; and the ownership of the Facility.

**23.6 Applicable Law.** The Parties agree that any arbitration pursuant to this Agreement shall be governed by the terms of this Article 23 and to the extent not inconsistent therewith, the Commercial Arbitration Act (Nova Scotia).

**23.7 Continuation of Work During Dispute.** Notwithstanding that a matter or matters have been referred to the Dispute Resolution Procedures set forth in this Article 23, each of the Society and HRM shall, to the extent reasonably possible, continue to perform their obligations under this Agreement without interruption or delay.

## **24. INSURANCE**

**24.1 HRM Insurance.** HRM shall obtain and maintain during the Term, and any Renewal Term, of this Agreement the following insurances:

- a) Property Insurance on a broad form basis, for direct physical loss or damage to HRM Property, or other property for which HRM is legally responsible.
- b) Commercial General Liability Insurance coverage relating to legal liability imposed by law upon HRM for its negligent act that causes bodily injury and/or property damage to a third party arising from entering onto, leaving or while in the Facility, any products sold by HRM or other HRM operations at the Facility, including programs.
- c) Boiler & Machinery insurance coverage against the sudden and accidental damage of pressure vessels, mechanical and electrical equipment owned and maintained by HRM.

**24.2 Society Insurance.** The Society shall obtain and maintain at their sole expense during the Term, and any Renewal Term, of this Agreement, as a minimum, the following insurances:

- a) Commercial General Liability insurance, including Tenants Legal Liability coverage in such amounts and coverages as may be required however, in any event, in an amount of not less than Two Million Dollars (\$2,000,000.) inclusive or, in the event alcohol is served or provided at the Facility, in an amount of not less than Five Million Dollars (\$5,000,000.) and with liquor liability not excluded. Such coverage shall be for and against all claims arising for personal injury, death, property damage, contractual liability or incidents and including solicitor fees (and costs) occurring in, on or about the Facility (including any liquor-licensed area). The policies will carry all standard endorsements. The Society shall ensure that such insurance coverage remains in effect and that nothing is done by the Society, their employees, volunteers, agents, licensees or invitees to affect the validity of that insurance. The insurance coverage will also extend to all improvements made to or installed at the Facility, by or on behalf of the Society including all contents, equipment and property of every description of the Facility whether owned by the Society or for which the Society is responsible or contractually responsible, in an amount equal to the full replacement value.
- b) Director's and Officer's Insurance. The Society is required to insure against claims related to the wrongful acts or omissions committed or omitted by its Directors and Board members.

**24.3** The Society shall be responsible for all risks, liabilities, exposures including costs, related to their operation of the Facility and provision of the Services during the Term, and any Renewal Term.

**24.4** Insurance coverages required to be provided by the Society shall meet or exceed the requirements set forth in this section. While the Society is not required to maintain property insurance or business interruption insurance, HRM nonetheless recommends that the Society investigate such insurance coverages for its own protection.

**24.5** In the event that the Society fails to obtain or allows the required insurance coverage to lapse, then HRM may, at its sole discretion, obtain the required insurance coverage with such costs being charged back to the Society.

**24.6** The Society shall be responsible for any deductible amounts under any policies purchased with respect to this Agreement to the extent the Society's act or omission is responsible for the covered loss.

- 24.7** All insurance policies obtained by the Society shall:
- a) be issued by insurers licensed to carry on business in Nova Scotia;
  - b) contain a cross liability clause and include a waiver of subrogation rights which the Society's insurer may have against HRM and those for whom HRM is at law responsible. It shall be non-contributing and apply only as primary and not as excess to any other insurance available to HRM; and
  - c) contain a clause or endorsement stating that the insurer(s) shall provide HRM with at least 30 days' notice of cancellation or termination.

**24.8** HRM shall have the right, but not the obligation to review required insurance policies. However, any such review by or on behalf of HRM shall in no way relieve the Society of its obligations to provide the insurance required by this Agreement, nor shall it imply that HRM agrees that the Society has fulfilled the obligations imposed under this Agreement.

**24.9** At the time of signing this Agreement on an annual basis, and as requested by HRM from time to time, a Certificate of Insurance shall be provided evidencing proof of coverages and with the **Halifax Regional Municipality** named as Additional Named Insured on the policy.

## **25. INDEMNIFICATION, LIMITATION OF LIABILITY AND CLAIMS**

**25.1 Indemnification.** The Society agrees to indemnify and save harmless HRM, its Mayor, Council members, authorized officials, employees, officers, agents and volunteers from and against any and all Claims for which HRM, its Mayor, Council members, authorized officials, employees, officers, agents or volunteers shall or may become liable or suffer by reason of any breach, violation or non-performance by the Society of any covenant, term or provision hereof or by reason of any death or injury of any person or any damage or destruction of any property resulting from any act, neglect or default on the part of the Society, or any of its volunteers, employees, agents, licensees or invitees whatsoever occurring in, on or around the Facility, including any liquor-licensed areas.

**25.2 Limitation of Liability.** The Society agrees that neither HRM, its Mayor, Council members, authorized officials, employees, officers, agents or volunteers shall be liable for any injury or damage to persons or property, including damage resulting from steam, gas, fire, electricity, water, rain or snow, or from any other cause whatsoever, other than for such injury or damage which shall result from the wilful action or negligence of HRM. In no event will HRM, its Mayor, Council members, authorized officials, employees, officers, agents or volunteers be liable for any consequential, indirect damages or economic loss suffered by the Society, their employees, volunteers or agents.

### **25.3 Claims.**

- a) The Society shall notify HRM in writing as soon as possible after the Society becomes aware of any Claim or possible Claim against the Society and/or HRM that involves the Services and/or Facility.
- b) The Society shall notify HRM in writing as soon as possible after it becomes aware of any injury occurring in, on or about the Facility, which could reasonably be expected to result in a Claim being made against HRM or the Society.
- c) The Society shall take no steps (such as the admission of liability) that would operate to bar HRM from obtaining any protection afforded by any policies of insurance it may hold or which will operate to prejudice the defense in any legal proceeding involving HRM or the Facility, or otherwise prevent HRM from protecting itself against any such Claim.
- d) The Society shall cooperate fully with HRM in the defense of any Claim.
- e) The handling, denial or settlement of any Claim by the Society or their insurer must be reported to the HRM Manager of Risk and Insurance Services.

- f) If HRM, its Mayor, Council members, authorized officials, employees, officers, agents or volunteers are, without fault on their part, made a party to any litigation commenced by or against the Society, then the Society shall promptly indemnify and hold free and harmless HRM and shall pay HRM all costs and expenses, including, without limitation, all expenses and legal fees (on a solicitor and his own client basis) that may be incurred or paid by or on behalf of HRM or such other parties in connection with the litigation.
- g) HRM may at its option, and Society's expense, participate in or assume carriage of any litigation or settlement discussions relating to the foregoing or any other matter for which the Society is required to indemnify HRM under this Agreement. Alternatively, Society agrees that HRM may require Society at Society's expense to assume carriage of and responsibility for all or any part of such litigation of discussions, subject to Society at all times keeping HRM up to date in writing as to the status thereof.

**25.4** This Article shall survive the expiration or earlier termination of this Agreement.

## **26. COVENANTS, REPRESENTATIONS AND WARRANTIES**

26.1 Without limiting any other terms or conditions contained herein, the Society hereby covenants, represents and warrants:

- a) that the Facility will only be used throughout the Term or Renewal Term for activities and events that are appropriate and desirable for municipal purposes and the Society covenants and agrees that it will only use, and permit the use by others of, the Facility as contemplated by this Agreement or as otherwise permitted in writing by HRM from time to time;
- b) the Society shall operate the Facility in compliance with all Applicable Laws to ensure the safety of all individuals present in the Facility and to preserve the Facility, ensuring its value does not diminish, and take all reasonable steps to safeguard the Facility and any assets associated with the Facility;
- c) the Society is and shall remain during the Term of this Agreement and during any Renewal Term, organized and operated solely for a purpose other than profit, with no compensation to be paid to the directors and officers of the Society; and
- d) employees, contractors, or any other person acting on behalf of the Society shall comply with and meet the requirements of this Agreement at all times.

## **27. TAXES**

**27.1 Taxes.** The Society agrees to remit when due all taxes, rates and charges that are charged, assessed or levied in respect of the Services provided at, and the operation of, the Facility under this Agreement, including any GST/HST obligations of the Society as stipulated under the Government of Canada's Excise Tax Act. The Society agrees to indemnify and reimburse HRM upon demand for any such taxes, rate or charges which may be assessed to HRM.

## **28. PAYMENT CARD INDUSTRY DATA SECURITY STANDARDS**

**28.1 PCI Compliance.** The Society shall maintain best practices with respect to Payment Card Industry Data Security Standards, and recognizes that HRM has resources to assist and provide guidance with respect to Payment Card Industry Compliance.

## **29. ADDITIONAL TERMS AND CONDITIONS**

29.1 The parties hereby agree to the additional terms and conditions set out in Schedule B.

### 30. GENERAL TERMS AND CONDITIONS

**30.1 Amendment.** No amendment, variation or waiver of the provisions of this Agreement shall be effective unless made in writing and signed by each of the parties, either individually by counterpart or collectively. Any amendment, variation or waiver shall take effect on the date specified in the amendment, variation or waiver or, if not so specified, on the date on which the last party executes and delivers the amendment, variation or waiver.

**30.2 Notice.** All notices, demands, requests, approvals or other communication of any kind which the parties may be required or may desire to serve on each other in connection with this Agreement shall be delivered by Electronic Mail or Registered Mail to:

Halifax Regional Municipality

Attention: Manager of Community Partnerships  
P.O. Box 1749  
Halifax, NS B3J 3A5

Or in person to:

Manager of Community Partnerships  
88 Alderney Drive, 3<sup>rd</sup> floor  
Dartmouth, NS

Society

Attention: Chair of  
[Address]

Or in person to:

[Name and Address]

**30.3 Force Majeure.** Notwithstanding anything to the contrary in this Agreement, if HRM or the Society is bona fide delayed in or prevented from performing any obligation arising under this Agreement by reason of strikes or other labour disturbances, civil disturbance, restrictive government laws, regulations or directives, acts of public enemy, war, riots, sabotage, crime, lightning, earthquake, fire, hurricane, tornado, flood, explosion or other act of God, and not caused by its default and not avoidable by exercise of reasonable effort or foresight, then performance of such obligation is excused for so long as such cause exists, and the party so delayed shall and is entitled, without being in breach of this Agreement, to carry out such obligation within the appropriate time period after the cessation of such cause.

**30.4 Waiver.**

- a) Any waiver by any party of all or any part of any provision, or the breach of any provision of this Agreement shall affect only the matter specifically identified in the instrument granting the waiver and shall not extend to any other matter, provision or breach.
- b) Any waiver by any party of all or any part of any provision, or the breach of any



- provision of this Agreement shall extend only to the party to whom such waiver is expressly granted and shall not be construed as a waiver in favour of any other party in respect of such provision or breach and shall not prejudice the rights of any other party from insisting upon performance of such provision.
- c) The failure of any party to give notice to the other party, or to take any other steps in exercising any right in respect of the breach or non-fulfillment of any provision of this Agreement, shall not operate as a release or waiver of that right or as a release of the other party from its obligations and liabilities nor shall any single or partial exercise of any right preclude any other or future exercise of that right or the exercise of any other right, whether in law or in equity or otherwise.
  - d) The acceptance by any party of payment or performance of any obligation after the breach or non-fulfillment by the other party of any provision of this Agreement shall not constitute a waiver of the provisions of this Agreement.

**30.5 Assignment and Enurement.** Neither party may assign their rights or obligations under this Agreement without the prior written consent of the other party. This Agreement enures to the benefit of and binds the parties and their respective successors and permitted assigns.

**30.6 Severability.** If any portion of this Agreement or the application thereof to any circumstance shall be held invalid or unenforceable, unless such invalid provision is fundamental to the efficacy of this Agreement, the remainder of the provision in question, or its application to any circumstance other than that to which it has been held invalid or unenforceable, and the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by Applicable Laws.

**30.7 Governing Law.** This Agreement is made in the Province of Nova Scotia and shall be governed by and construed in accordance with the laws in force in the Province of Nova Scotia. The parties submit to the jurisdiction of the Supreme Court of Nova Scotia, subject to any restrictions relating to access to such court under Applicable Laws, with respect to all claims and proceedings arising out of or related to this Agreement.

**30.8 Schedule.** The following Schedules are attached to and form part of this Agreement:

Schedule "A" – HRM Property

Schedule "B" – Additional Terms and Conditions

**30.9 Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, negotiations, discussions, undertakings, representations, warranties, and understandings, whether written or verbal.

**30.10 Further Assurances.** Each party shall from time to time promptly execute and deliver all further documents and take all further action reasonably necessary to give effect to the provisions and intent of this Agreement.

**30.11 Parties.** References in this Agreement to the "Parties" shall mean the parties to this Agreement and a reference to a "Party" shall mean one (1) of the parties to this Agreement.

**30.12 Accounting Terms and Principles.** Unless otherwise expressly stated, all accounting terms and principles applicable to this Agreement shall be interpreted and applied in accordance with generally accepted accounting principles which are in effect in Canada, including those published in the handbook of the Canadian Institute of Chartered Accountants, or any successor, as at the date on which such calculation is made or is required to be made;

**30.13 Legal Relationship.** HRM and the Society are independent contracting bodies, not legal partners nor joint employers, nor are they in an agent-principal relationship or a landlord-tenant relationship.

**30.14 Time of Essence.** For every provision of this Agreement, time is of the essence.

**30.15 Headings.** Headings and recitals are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**30.16 References.** Unless otherwise expressly stated, reference herein to a Schedule or to an Article, Section, subsection, clause, sub clause or other subdivision is a reference to such Schedule, Article, Section, subsection, clause, sub clause or other subdivision of this Agreement. The terms "hereof", "hereto", "herein", "hereby" and "hereunder", and similar expressions mean and refer to this Agreement and, unless the context otherwise requires, not to any particular Article.

**30.17 Number and Gender.** Words importing the singular only shall include the plural and vice versa, words importing any gender shall include other genders and references to persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations. Any capitalized word which is a derivative of any word defined in Article 1 shall have a meaning corresponding to the defined word.

**30.18 Statutes and Regulations.** Any reference in this Agreement to all or any part of any statute, regulation, by-law or other legislative enactment shall, unless otherwise expressly stated, be a reference to that statute, regulation, by-law or legislative enactment or relevant part thereof as amended, substituted, replaced or re-enacted from time to time.

**IN WITNESS WHEREOF** the parties hereto have executed this agreement on the day and year first above written.

**SIGNED AND DELIVERED:**

**HALIFAX REGIONAL MUNICIPALITY**

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
I/we have authority to bind the Municipality

**Musquodoboit Valley Bicentennial Theatre and  
Cultural Centre**

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
I/we have authority to bind the Society

## **Schedule "A" – HRM PROPERTY**

[List of HRM Property]

HRM Property shall also include any property, or improvements to property, purchased, installed or otherwise provided by HRM for the Facility during the Term, or any Renewal Term, of this Agreement.

- 1. HRM owns the William Gill backdrop. Any repairs, restoration and care will be the responsibility of HRM. The Musquodoboit Valley Bicentennial Theatre and Cultural Centre will be responsible for the daily care and any viewings.**
- 2. HRM does not own any other property at the facility other than building fixtures and equipment.**

**Schedule “B” – ADDITIONAL TERMS AND CONDITIONS**

- 1. HRM will replace the theatre curtains as well as applicable hardware, track and riggings.**