

OPERATING AGREEMENT

THIS OPERATING AGREEMENT IS DATED the ____ day of _____, 2024.

BETWEEN:

THE CITY OF FREDERICTON, a local government under the *Local Governance Act*, SNB 2017, c.18, having its municipal office located at 397 Queen Street, Fredericton, NB E3B 4Y7

(hereinafter referred to as the "**City**")

OF THE FIRST PART

And

FREDERICTON PLAYHOUSE INC., a company incorporated under the *Companies Act*, RSNB 1973, c. C-13, having registered office at 686 Queen Street, Fredericton, NB E3B 1C2

(hereinafter referred to as the "**Company**")

OF THE SECOND PART

(when used herein, "**Party**" shall mean each of the City and the Company individually and "**Parties**" shall mean both the City and the Company)

WHEREAS:

- A. The City caused the establishment of the Company, a non-profit organization, to use the Land and Building located at 686 Queen St. Fredericton known as the "**Playhouse**" to provide public cultural services and to develop the Playhouse as a community cultural asset.
- B. The City and the Company, pursuant to a Performing Arts Centre Replacement Agreement dated the ____ day of _____, 2024 (the "**PAC Replacement Agreement**") agreed to replace the Playhouse with a new performing arts centre to be located at the corner of King and Regent Streets, in the City of Fredericton, New Brunswick (the "**Theatre**").
- C. The Parties agreed in the PAC Replacement Agreement, among other things, that:
 - (i) the Theatre shall be located on land owned by the City and leased to the Company pursuant to a lease agreement between the Parties dated even date herewith (the "**Lease**"),

(ii) the City would provide a grant to the Company for the construction of the Theatre,

(iii) the Theatre will be constructed, owned, managed and operated by the Company, and

(iv) the City will have participation in the operations of the Company under terms and conditions of a replacement operating agreement between the Parties.

D. This operating agreement (hereinafter called the "**Agreement**") is intended to provide the terms of reference for the operation and management of the Theatre, and the obligations of the Company and City in that regard.

E. This Agreement is intended to provide sufficient flexibility so as to satisfy the Company's mandate and the City's interests in the Theatre.

NOW THEREFORE in consideration of the foregoing and the mutual covenants and conditions set out in this Agreement, the Parties covenant and agree as follows:

TERMINATION OF PRIOR OPERATING AGREEMENT

1. Termination: The Parties hereto agree that the Operating Agreement between the Parties dated the 12th day of March, 2012 with respect to the operations of the property located at 686 Queen Street, Fredericton, NB (the "**Existing Agreement**") shall, as of the date hereof, only apply to the operating activities of the Playhouse with respect to the existing building, and associated operations, located at 686 Queen Street, Fredericton, and shall terminate on the date which is 90 days following the commencement of occupancy of Theatre and that all other operations of the Playhouse shall, as of the date hereof, be governed by this Agreement. The Parties hereto agree that pursuant to section 12 of the Existing Agreement all real and personal property located at 686 Queen Street, Fredericton, NB (PID 01458090) shall be conveyed by the Company to the City for no consideration within 90 days of the commencement of occupancy of the Theatre.

THE COMPANY AS MANAGER AND OPERATOR

2. Company as Manager and Operator: The Parties hereby agree that the Company shall own, manage and operate the Theatre with a mandate to provide cultural services on the City's behalf. The City will designate a representative to deal on its behalf with the affairs of the Theatre (herein after called the "**City Representative**").

2.1. Rules and Regulations: The Company shall make such rules, regulations and policies as are required to provide for the proper operation and management of the Theatre, provided that such rules and regulations shall not be inconsistent with:

2.1.1. the bylaws of the Company;

2.1.2. the provisions, terms and conditions of this Agreement, the PAC Replacement Agreement and the Lease;

2.1.3. all applicable Federal and Provincial laws, by-laws and regulations, and

2.1.4. all City by-laws, regulations and policies.

To the extent that the City has obligations regarding the use and operation of the Theatre to any funding party, including but not limited to the Federal or Provincial governments, the Company shall comply with such obligations, as communicated to it by the City, at all times.

- 2.2. Access and Use: The Company shall use the Theatre to accommodate all types of performing arts, live entertainment, and public and private assembly activities, provided such activities comply with the terms of this Agreement, the PAC Replacement Agreement, the Lease and all municipal, provincial, federal or other laws which may be applicable. Access to and use of the Theatre by the Company, other organizations, and by the general public, shall be in accordance with policies developed by the Company for the operation of the Theatre.
- 2.3. Programming and Operation: The Company shall be responsible for all aspects of programming and operation of the Theatre (save those exclusively to be performed by the City as described in this Agreement).

3. CITY INVOLVEMENT IN COMPANY

- 3.1. Amend Company By-Laws: The Company shall repeal its By-Law No. 2 and replace it with the form of by-law attached hereto as Schedule "A", Fredericton Playhouse Inc., By-Law No. 2024-1 (the "**Replacement By-Law**"), which will, among other things, provide for a class of permanent membership ("Permanent member"), a class of director members and a class of regular members and fix the Company's board of directors to be no less than 3 and no more than 15 directors, one of whom shall be those nominated by the City.
- 3.2. Permanent Member of Company. The City shall be a Permanent member of the Company and the Company covenants that it shall not accept any other person or corporation as a Permanent member without the prior written consent of the City. After the enactment of the Replacement By-Law, the Company covenants that it shall not amend the Replacement By-Law without the prior written consent of the City.
- 3.3. Obligations under Agreement. Notwithstanding the powers and authority of the board of directors of the Company set out in the Replacement By-Law, the Company shall not exercise any such authority or carry on any activity that conflicts with the terms of this Agreement or require prior consent of the City under this Agreement, without the prior written approval of the City. In the case of any disagreement between the terms of this Agreement and the Replacement By-Law, the terms of this Agreement shall prevail.
- 3.4. Obligations under Lease. No term or condition of this Agreement, the PAC Replacement Agreement or the Replacement By-Law shall have any effect on or limit the rights of the City and its ability to exercise its rights under the Lease.

3.5. Donor Recognition. Should the Company desire to recognize the donation of a donor by naming the building, or any part thereof, in such a way to include the name of the donor, or should the Company have any other form of donor recognition program which references the name of the donor, the Company shall ensure that at all times it may comply with the following:

3.5.1. Morality Clause. The Company shall ensure that it complies with this requirement of the City that it only recognizes donors who conduct themselves in a manner consistent with the highest standards of morality and ethics. If, in the sole discretion of the City, a donor engages in any conduct that is deemed to be immoral, unethical, or otherwise detrimental to the reputation or public image of the Company or the City, the City shall have the right to require the Company to immediately terminate its recognition of such donor and any further association with such donor. This clause shall apply to any conduct of a donor, whether occurring before or after the execution of this Agreement, that becomes publicly known or is otherwise brought to the attention of the City during the term of this Agreement. The City's determination of whether a donor's conduct constitutes a violation of this provision shall be final and binding and neither the Company nor the donor shall have any right to challenge or dispute such determination.

3.5.2. The Company shall ensure that this provision, and the rights of the City under this Morality Clause section, is incorporated into any existing donor recognition program or agreement pertaining to the naming of the building and all other future donor recognition programs or agreements.

4. POWER AND DUTIES OF THE COMPANY

4.1. Negotiation and Signing of Agreements: The Company shall be responsible for the negotiation of all agreements with third parties for the use or occupancy of the Theatre.

4.2. Payment of Expenses and Operating Costs: The Company shall be responsible for the general administration of the Theatre and, without limiting the generality of the foregoing, this shall include all expenses incurred in the operation and management of the Theatre.

5. THEATRE POLICY

5.1. Theatre Policy: All policy governing the operations of the Theatre shall be in accordance with the provisions of this Agreement, the PAC Replacement Agreement and the Lease and shall be approved and determined by the Company, with the Company being responsible for initiating such policy. The Company shall inform the City Representative with respect to policy matters, and shall keep the council for the City of Fredericton ("**City Council**") advised as outlined section 9.1 below.

6. REPAIR AND MAINTENANCE OF THE THEATRE

6.1. Repair and Maintenance:

- 6.1.1. The Company is responsible for the maintenance, repair and replacement of furnishings, fixtures and equipment related to its operation of the Theatre as well as all maintenance, repair and replacement of roofs, exterior walls, external horticulture, outside sidewalks, foundations and plumbing, electrical, heating, ventilation and air conditioning systems of the Theatre.
- 6.1.2. Pursuant to the PAC Replacement Agreement, the Company shall establish a Capital Investment Reserve fund so as to have funds set aside to pay for capital repairs to the Theatre as they become necessary. The Company and City shall work collaboratively to establish the amount required to be set aside in such Capital Investment Reserve fund on an annual basis so as to meet the expected future capital repairs to be required for the Theatre.
- 6.1.3. Notwithstanding sections 6.1.1 and 6.1.2, the Company and City agree that following construction of the Theatre the parties shall meet to explore areas where costs savings may be achieved by the City providing repair and maintenance services for the Theater at rates to be agreed between the parties.

6.2. Entrances, Sidewalks and Snow Removal: The Company will be responsible for the cleaning of and snow removal from the Theatre property.

7. MAINTENANCE OF INSURANCE

7.1. Company's Insurance: The Company shall take out and at all times until this Agreement is terminated keep in force, at its own expense, the following insurance:

- 7.1.1. comprehensive general liability and auto liability insurance with respect to their business and the business carried on at the Theatre, including bodily injury, death, damage to property with a limit of not less than five million dollars (\$5,000,000) for any one accident or occurrence. Such minimum insurance amount shall be increased by the Company to be equivalent to the amount maintained by the City for similar liability when so notified by the City to the Company from time to time. Such policy shall be primary and non-contributing with, and not in excess of, any other insurance obtained by the City (as landlord), and shall include severability of interests and cross liability clauses;
- 7.1.2. "all risks" property insurance in respect of the Theatre and the Company's leasehold improvements situated thereon and such other property in or forming part of the Theatre for the full replacement cost thereof, with no co-insurance penalties;

- 7.1.3. comprehensive boiler and machinery insurance in respect of boilers, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus installed in, relating to or serving the Theatre or any part thereof and operated by the Company or by others on behalf of the Company, on a repair and replacement basis;
- 7.1.4. business interruption insurance including loss of profits with explicit coverage for losses attributable to an infectious disease outbreak or in the context of a pandemic (either as a specialty stand-alone policy or as an endorsement to the existing business interruption coverage);
- 7.1.5. cybersecurity insurance providing comprehensive coverage for a variety of cyber-related incidents, including data breaches, cyber theft, ransomware attacks, and business interruption with a limit of not less than two million dollars (\$2,000,000.00);
- 7.1.6. environmental impact liability insurance covering all liabilities arising out of or in connection with the environmental impact of the Company's use of the Theater, with a limit of not less than two million dollars (\$2,000,000.00);
- 7.1.7. directors and officers liability insurance to protect its board members and officers against claims made for alleged wrongful acts in their capacity as officers and directors of the Company, with a limit of not less than two million dollars (\$2,000,000.00); and
- 7.1.8. any such other insurance as the City may reasonably require.

The insurance described in paras. 7.1.2, 7.1.3, 7.1.6 and 7.1.7 above shall be procured from an insurance company licensed to do business in the Province of New Brunswick and shall provide that the insurers specifically waive subrogation rights against the City and its employees, officers and directors, with respect to loss, damage or destruction to the insured property.

The insurance described in this para. 7.1 shall name the City as an additional insured.

The Company shall from time to time, whenever reasonably requested, furnish to the City certificates of insurance to evidence the insurance to be kept in force by the Company hereunder.

- 7.2. Effects Insurance: The Company shall not knowingly permit anything to be brought into the Theatre that would invalidate its insurance or any landlord insurance policy that the City may have insuring its interest in the Theatre, or increase the premium payable for policies of insurance held by the City in relation to the Theatre, or that would injure or deface the Theatre. The Company, in its contractual arrangements, will undertake to assign culpability to contractual users of the Theatre, and ensure that adequate Effects Insurance is provided by the contractual users.
- 7.3. Indemnification of City: The Company will indemnify and save harmless the City from and against any and all liabilities, obligations, damages, penalties, claims, costs (including reasonable solicitors' fees), fines, suits, demands and causes of action to,

by or on behalf of any person, group, firm or corporation arising from the occupation or use of the Theatre by the Company or its invitees, employees, agents, members or any other person or persons for whose acts the Company is liable in law, or from any breach of the Company or its members, servants or agents or that might arise during the operation of the Theatre by the Company under this Agreement; save and except where any such matter is the cause of an act by the City or anyone for whom the City is in law responsible.

7.4. Strikes: The Company, in its contractual arrangements with users, will absolve itself of liability arising out of strikes or lockouts and thereby release the City from any responsibility or liability whatsoever that might arise out of the City failing to provide the Theatre or any services to the Theatre under the terms of this Agreement arising out of any strike or lockout between the City and its employees or as a result of any other labour dispute, provided reasonable notice of any situation that might give rise to a labour action has been provided to the Company such that the Company has had the opportunity to modify its operations to minimize its risk.

8. ACCOUNTING. FINANCES AND REPORTING

8.1. Financial Records: Proper and separate books of account and financial records of the Theatre's operation shall be kept by the Company at its expense. The City Representative or any person authorized by the City shall have free access to the Company's financial records at all reasonable times.

8.2. Budget: The Company's board of directors shall approve its annual Operating and Capital Budgets. The Company's budgets shall include reasonable amounts to be set aside for future capital replacement. The budget and annual operations plan of the Company shall be submitted to the City Treasurer/ Director of Finance before being presented to the Company's board of directors for approval. Any expected contributions from the City shall be detailed in the Company's budgets. Following approval by the Company's board of directors, the annual Operating and Capital Budgets shall be submitted for approval by City council as part of the City's annual budget approval process. Notwithstanding anything contained in this Agreement, any expected contribution from the City set out in the Company's Operating and Capital Budgets shall not become an obligation of the City until approved by City council.

8.3. Annual Audit Statement: The Company will prepare and deliver to the City on an annual basis an audited statement of expense and income with respect to all revenues from and expenses for the use and operation of the Theatre as well as an audited statement of all related assets and liabilities. The Company will cause such annual financial statements to be audited by its auditor and thereafter submitted to the City Representative for consideration no later than six months following the Company's fiscal year end.

8.4. Prohibition Against Debt: The Company shall not take on any debt, liability or obligation or grant any security interest in any of its property without the prior written approval of the City. City Council approval of the annual budget of the Company shall be deemed to be written approval of all liabilities and obligations contained therein.

9. REPORTS

9.1. Annual Report: No later than 180 days following the Company's financial year end, the Company shall submit an annual report to the City describing the previous year's operational results.

10. CITY'S FINANCIAL CONTRIBUTION

10.1. In consideration of the cultural services provided by the Company which foster the economic and social well-being of the community, the City shall include in its annual budget a grant allocation for the Company's operations and capital improvements. The amount of the annual allocation shall be at the sole and absolute discretion of the City Council.

10.2. All revenue obtained from operations of the Theatre shall become the property of the Company. The Company covenants and agrees that all revenue shall be used exclusively for the Theatre operations.

10.3. Should there be a revenue surplus in any year, the Company shall be entitled to retain the surplus for operations and reserves. The Company will not incur a deficit in excess of available accumulated surpluses unless it has the prior approval from the City council.

11. EVENTS OF DEFAULT AND REMEDIES

11.1. Termination: This Agreement may be terminated by the Company or the City upon giving to the other Party twelve months prior written notice of its intention to terminate.

11.2. Termination for Breach: The City may terminate this Agreement with fifteen (15) days written notice to the Company in the event that the Company is in default of any of its obligations under this Agreement and such default remains unremedied for a period of fifteen (15) days following delivery of written notice by the City. In the event of termination of this Agreement by the City, the City may, without limitation to other actions the City may take, retain all moneys received by the Company under this Agreement and may recover all fees, costs and damages due to the City under this Agreement by legal proceedings, application, action or otherwise.

11.3. Termination For Other Reasons: In the event that:

- 11.3.1. The Company shall make an assignment for the benefit of creditors; or
- 11.3.2. The Company, fails to hold a general meeting of members for a period of eighteen (18) months or longer; or
- 11.3.3. The Company becomes bankrupt or insolvent or takes the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors; or
- 11.3.4. A receiving order is made against the Company; or
- 11.3.5. The Company is adjudged bankrupt or insolvent; or
- 11.3.6. A liquidator or receiver of any property of the Company is appointed by reason of any actual or alleged insolvency or any default of the Company under any mortgage or other obligation; or
- 11.3.7. The interests of the Company in the Theatre shall become liable to be taken under any writ of execution or other like process which shall remain undischarged for thirty (30) days; or
- 11.3.8. The Company defaults under the provisions of the Lease; or
- 11.3.9. The Company defaults under the provisions of the PAC Replacement Agreement; or
- 11.3.10. The Company defaults under any obligations that it owes to any third parties, including donors for the construction of the Theatre, and such default remains unremedied for a period of thirty (30) days; or
- 11.3.11. The Company voluntarily elects to wind up its affairs or any order shall be made for the winding up of the Company; or
- 11.3.12. The Company is struck off the Corporate Affairs Registry Database, as published online by Service New Brunswick, by the Registrar of Corporate Affairs for the Province of New Brunswick for any just reason whatsoever;

the City may give to the Company thirty (30) days notice to rectify the matter in question after which time, if the problem is not rectified to the satisfaction of the City, the City shall have the right to immediately terminate this Operating Agreement, following which the City may, without limitation to other actions the City may take, retain all moneys received by the Company under this Agreement, may recover all fees, costs and damages due to the City under this Agreement by suit or otherwise.

- 11.4. Vesting on Termination: Upon termination of this Agreement for any reason, all interests of the Company in the Theatre and all of the Company's other assets shall be conveyed by the Company to the City for no consideration. In the event that the City terminates this Agreement in accordance with the terms and conditions contained herein then the City will assume all outstanding contractual obligations and debts of the Company.

12. MISCELLANEOUS

- 12.1. Purchasing Policy: The Company agrees that it shall adhere to a competitive system of procurement for purchased goods and services for the Theatre and the board of directors for the Company shall establish and maintain a purchasing policy which shall be designed to ensure fair practices and that no funds may be misspent.
- 12.2. Entire Agreement and waiver: This Agreement and any schedules attached, the PAC Replacement Agreement and the Lease constitutes all of the agreements between the Company and the City pertaining to the subject-matter of it and supersedes all prior agreements, undertakings, negotiations and discussions, whether oral or written, of the Parties to it and there are no warranties, representations or other agreements between the Parties to it in connection with the subject-matter of it except as specifically set forth or referred to in this Agreement. No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the Party hereto to be bound thereby. No waiver of any other provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions (whether or not similar) nor shall the waiver constitute a continuing waiver unless otherwise expressly provided.
- 12.3. Amendments: No alteration, amendment, waiver, cancellation or other change in any term or condition of this Agreement shall be valid or binding on either Party unless the same has been agreed in writing by the duly authorized representatives of all Parties. If at any time during the continuance of this Agreement the Parties shall deem it necessary or expedient to make any alterations or additions to his Agreement they may do so by means of an executed written agreement between them which shall be supplemental to and form part of this Agreement.
- 12.4. Notices:

Any notice herein provided or permitted to be given by the Company to the City shall be sufficiently given if delivered by Registered mail to the City at:

City Hall
397 Queen Street
Fredericton, NB
E3B 4Y7

Attention: City Clerk

With a copy to:

City Hall
397 Queen Street
Fredericton, NB
E3B 4Y7

Attention: City Solicitor

Any notice herein provided or permitted to be given by the City to the Company shall be sufficiently given if delivered by Registered mail to the Playhouse addressed to:

Fredericton Playhouse Inc.
686 Queen Street
Fredericton, NB
E3B 1C2

Attention: President

Either Party may at any time give notice in writing to the other of any change of address of the Party giving such notice, and from and after the giving of such notice, the address therein specified shall be deemed to be the address for such Party for the giving of notice thereunder. The word "**notice**" in this paragraph shall be deemed to include any request, statement or other writing in this Agreement provided or permitted to be given by the City to the Company, or by the Company to the City. Such notices may be given by personal delivery, mail, fax, or by email and if given by mail, shall be deemed to have been received five days after the date of mailing and if given by personal delivery, fax or email, shall be deemed to have been received on the date delivered personally or sent by fax or email.

12.5. Dispute Resolution:

If a dispute arises between the City and Company arising out of or relating to this Agreement, or the subject matter hereof, the City and Company agree that they shall each make all reasonable efforts to resolve any such dispute on a timely basis through amicable negotiations. Disputes shall promptly be referred by each Party to their respective senior management representatives who have the authority to resolve and settle any such disputes on their behalf. In the event that such representatives cannot resolve the dispute within ten (10) days or such longer period as the Parties may agree in writing, either Party may elect, upon given prior written notice to the other Party, to resolve the matter through mediation or arbitration by a mutually acceptable mediator or arbitrator in accordance with the *Arbitration Act*, SNB, 2014, c.100, as amended, or litigation proceedings in the courts of the Province of New Brunswick. Notwithstanding the foregoing, nothing in this section shall prevent the City from exercising its rights of termination set out under this Agreement in the circumstances described therein. It is further agreed by the Parties that they shall pay their own legal costs of any mediation, arbitration or litigation.

12.6. No Agency, Partnership, Joint Venture, etc.:

No provision of this Agreement and no action by the Parties will establish or be deemed to establish a partnership, joint venture, principal-agent relationship or

employer-employee relationship in any way or for any purpose whatsoever. The Company and all its agents, servants and employees will not represent itself or themselves as a partner, employee or agent of the City.

12.7. No Authority to Represent:

Nothing in this Agreement is to be construed as authorizing any person to contract for or to incur any obligation on behalf of the City or to act as an agent for the City.

12.8. Default:

“default” shall mean any material breach or failure of a Party to perform any of its obligations, duties, or covenants under this Agreement. Such breach or failure shall include, but not be limited to, the following:

- 12.8.1. Failure to make any payment due under this Agreement within the specified timeframe;
- 12.8.2. Failure to meet any performance obligations or standards as set forth herein;
- 12.8.3. Violation of any applicable laws, regulations, or contractual provisions; or
- 12.8.4. Any other event or circumstance that would reasonably be considered a default based on the nature of the obligations or the context of this Agreement.

12.9. Lease: The Parties agree that if the Lease remains in full force and effect to the end of the term set out therein, including any renewals, then the Parties shall enter into discussions for the purpose of arriving at a new lease agreement to take effect immediately upon the termination of the Lease and upon entering into such new lease agreement, all provisions under this Agreement referring to the Lease shall be deemed to be a reference to such new lease. Nothing in this paragraph shall obligate the Parties to accept any proposed new lease agreement, even a new lease agreement having the same terms and conditions as the Lease.

12.10. Headings: Headings are not to be considered part of this Agreement, are included solely for convenience and are not intended to be full or accurate descriptions of the content of the paragraphs.

12.11. Interpretation: In this Agreement, words importing the singular number include the plural and vice versa, words importing the masculine gender include the feminine and neuter genders; and words importing persons include individuals, sole proprietors, corporations, partnerships, trusts and unincorporated associations.

- 12.12. Applicable Law: This Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the Province of New Brunswick and the federal laws of Canada applicable therein. The Parties submit to the exclusive jurisdiction of the courts of the Province of New Brunswick, that is, any claim or dispute with respect to or in relation to this Agreement shall be determined by a court of competent jurisdiction within the Province of New Brunswick.
- 12.13. Invalidity of Provision: The invalidity or unenforceability of any provision of this Agreement or any covenant in it shall not affect the validity of enforceability of any other provision or covenant in it and the invalid provision or covenant shall be deemed to be severable.
- 12.14. Assignment: Neither Party shall assign this Agreement, or any of its rights or obligations hereunder, without first receiving the written consent of the other Party. In no event will a Party be liable for damages arising from withholding its consent. Where a Party is improperly withholding consent, the only remedy available to the Party seeking consent is for the requesting Party to obtain court ordered consent. Any assignment in contravention of this section will be null and void as *ab initio*.
- 12.15. Contra Proferentem Rule Not Applicable: Should any provision of this Agreement require judicial interpretation, mediation or arbitration, it is agreed by the Parties that the court, mediator or arbitrator interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent prepared the same, it is agreed that both Parties, directly or through their agents, have participated in the preparation hereof.
- 12.16. Force Majeure: The Parties shall not be liable or responsible for any failure or delay in the performance of any obligations hereunder caused by acts of God, flood, fire, war, terrorism, blockades, strikes, labour disputes, civil commotion, epidemic, pandemic, stop-work order, injunction or other causes beyond their reasonable control, each of which shall be considered a force majeure event.
- 12.17. Consent: Any consent or approval required under this Agreement shall be given freely and without any requirement of reasonableness or other standard. Neither Party shall be obligated to justify or provide reasons for granting or withholding consent.
- 12.18. Enurement: This Agreement shall enure to the benefit of and shall be binding on and enforceable by the Parties, and where the context so permits, their respective successors and permitted assigns.

12.19. Survival: Neither the expiration nor the earlier termination of this Agreement shall relieve, or be deemed to relieve, a Party from any duties, obligations or liabilities hereunder that accrued prior to such expiration or termination, or which by their nature are intended to survive the performance, expiration or termination of this Agreement.

12.20. RTIPPA: The Company acknowledges that the City is subject to the *Right to Information and Protection of Privacy Act*, SNB 2009, c. R-10.6 ("**RTIPPA**"), as amended, with respect to the Personal Information, as defined thereunder, in its custody and control and has a duty to protect Personal Information by making reasonable security arrangements against unauthorized access, use, disclosure or disposal, in accordance with RTIPPA regulations. The Company agrees that the City may disclose this Agreement or portions thereof as may be required pursuant to RTIPPA or a City Council approval process, if required, and that no such disclosure constitutes a breach of confidentiality.

The Company represents, warrants and undertakes to the City that it, and any subcontractor, shall comply with the RTIPPA, the terms and conditions contained in the Privacy Protection Schedule, attached as Schedule "B" to this Agreement, and protect Personal Information collected by the City as if it were a public body under the RTIPPA.

12.21. Appropriations: Notwithstanding the City's obligation to make any payment under the Agreement, this obligation does not arise if, at the time when a payment under the Agreement becomes due, the Parliament of Canada has not passed an appropriation that is sufficient and constitutes lawful authority for the Government of Canada making the necessary payment to the City for the project or program in relation to which the Grant is being provided. The City may reduce, delay or terminate any payment under the Agreement in response to the reduction or delay of appropriations or departmental funding levels in respect of transfer payments, the project or program in relation to which the grant is being provided, or otherwise, as evidenced by any appropriation act or the federal Crown's main or supplementary estimates expenditures. The City will not be liable for any direct, indirect, consequential, exemplary or punitive damages, regardless of the form of action, whether in contract, tort or otherwise, arising from any such reduction, delay or termination of funding.

12.22. Independent Legal Advice: The Parties acknowledge and agree that they have had the opportunity to have this Agreement reviewed by their respective legal counsel prior to execution and that they have obtained such advice or determined that they do not require such advice.

12.23. Counterparts: This Agreement may be executed by the different Parties in separate counterparts and each such counterpart shall be an original and when taken together with the other counterparts shall constitute one and the same agreement; however, this Agreement will be of no force or effect until executed by

all Parties. A counterpart of this Agreement delivered by facsimile or by electronic transmission in portable document format (PDF) is effective delivery of the Agreement and such counterpart shall be an originally executed counterpart of this Agreement for all purposes. A counterpart of this Agreement executed by an electronic signature and/or electronic imaging and transmission of a handwritten signature agreement is a reliable signature method and is binding on the Parties, will have the same force and effect as an original handwritten signature, and will be deemed an original for all purposes.

[signature page follows]

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, Craig Leonard, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the President of the Fredericton Playhouse Inc., one of the parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
2. The seal affixed to the foregoing instrument purporting to be the seal of Fredericton Playhouse Inc. is the Corporate Seal of the Fredericton Playhouse Inc. and was so affixed by order of the City Council.
3. The signature "Tim Yerxa" subscribed to the foregoing instrument is the signature of Tim Yerxa, the Executive Director of the Fredericton Playhouse Inc., and the signature "Craig Leonard" subscribed thereto is my signature.
4. The President and the Executive Director are the officers of the Fredericton Playhouse Inc. duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
 City of Fredericton, in the County)
 of York and Province of New)
 Brunswick, this ___ day of)
 _____, 2024.)
)
)
)
 _____)
)
 A Commissioner of Oaths)
 Being a Solicitor)

 Craig Leonard

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, Jennifer Lawson, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the City Clerk of the City of Fredericton, one of the parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposited to.
2. The seal affixed to the foregoing instrument purporting to be the seal of the City of Fredericton is the Corporate Seal of the City of Fredericton and was so affixed by order of the City Council.
3. The signature "Kate Rogers" subscribed to the foregoing instrument is the signature of Kate Rogers, the Mayor of the City of Fredericton, and the signature "Jennifer Lawson" subscribed thereto is my signature.
4. The Mayor and City Clerk are the officers of the City of Fredericton duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
 City of Fredericton, in the County)
 of York and Province of New)
 Brunswick, this ____ day of)
 _____, 2024.)
)
)
)
 _____)
)
 A Commissioner of Oaths)
 Being a Solicitor)

 Jennifer Lawson

Schedule "A"

Replacement By-Law

Schedule “B”**Privacy Protection Schedule****Purpose**

1. The purpose of this Schedule is to:
 - (a) enable the City to comply with the City’s statutory obligations under the RTIPPA with respect to Personal Information that is collected, retained, used, or disclosed as a result of the terms of this Agreement;
 - (b) ensure that the Company is aware of the obligations under the applicable legislation with respect to Personal Information that is collected, retained, used or disclosed as a result of this Agreement; and
 - (c) “Personal Information” means recorded information about an identifiable individual that comes into the custody or under the control of the Company as a result of this Agreement and has the meaning given in the RTIPPA (SNB 2009, c. R-10.6, as amended)

Under Section 1 of RTIPPA, definitions “Personal Information” means recorded information about an identifiable individual, including but not limited to (a) the individual’s name, (b) the individual’s home address or electronic mail address or home telephone or facsimile number, (c) information about the individual’s age, gender, sexual orientation, marital status or family status, (d) information about the individual’s ancestry, race, colour, nationality or national or ethnic origin, (e) information about the individual’s religion or creed or religious belief, association or activity, (f) personal health information about the individual, (g) the individual’s blood type, fingerprints or other hereditary characteristics, (h) information about the individual’s political belief, association or activity, (i) information about the individual’s education, employment or occupation or educational, employment or occupational history, (j) information about the individual’s source of income or financial circumstances, activities or history, (k) information about the individual’s criminal history, including regulatory offences, (l) the individual’s own personal views or opinions, except if they are about another person, (m) the views or opinions expressed about the individual by another person, and (n) an identifying number, symbol or other particular assigned to the individual.

Protection of Personal Information

2. The Company acknowledges that any Personal Information received by it from the City or an individual or exposed to it in connection with this Agreement is

done so solely for the purposes of this Agreement, and that the Company acquires no right to or interest in the Personal Information except as set out in the Agreement. The Company shall not collect, use or disclose any Personal Information other than as is necessary to carry out its obligations under this Agreement.

3. Unless this Agreement otherwise specifies, or the City otherwise directs in writing, the Company shall collect Personal Information directly from the individual the information is about.
4. Unless this Agreement otherwise specifies or the City otherwise directs in writing, the Company shall make provision to inform an individual (and obtain their consent) from whom Personal Information is collected:
 - (a) the purpose for collecting it;
 - (b) the legal authority for collecting it; and
 - (c) the title, business address and business telephone number of the person designated to answer questions about the collection of Personal Information.

No secondary use of Personal Information

5. The Company covenants and agrees that it will not use any Personal Information provided or disclosed by the City or an individual for any purpose other than that for which it was provided or disclosed to the Company, and as authorized in this Agreement.

No Disclosure without authorization

6. Except as is necessary to fulfill its obligations under this Agreement, or as required by law, the Company shall not disclose any Personal Information to any third party. In the event the Company receives any request to disclose Personal Information, the Company will immediately notify the City and the individual.

Integrity of Personal Information

7. The Company shall make every reasonable effort to ensure the integrity and completeness of any Personal Information that comes within the custody or control of the Company as a result of carrying out its obligations under this Agreement where that Personal Information is to be used by the Company or the City to make a decision that directly affects the individual the information is about.

Requests for access to Personal Information

8. If the Company receives a request for access to Personal Information from a person other than the City (or an individual who provided the Personal Information), the Company shall promptly advise the person to make the request to the City unless the Agreement expressly requires the Company to provide such access and, if the City has advised the Company of the name or title and contact information of an official of the City to whom such requests are to be made, the Company shall also promptly provide that official's name or title and contact information to the person making the request.

Correction of Personal Information

9. Within five (5) business days of receiving a written direction or request from an individual or the City to correct or annotate any Personal Information, the Company shall annotate or correct the information in accordance with the direction.
10. When issuing a written direction under Section 9 of this Schedule, the City shall advise the Company the date the correction request to which the direction relates was received by the City in order that the Company may comply with Section 12 of this Schedule.
11. Within five (5) business days of correcting or annotating any Personal Information under Section 9 of this Schedule, the Company shall provide the corrected or annotated information to any party whom, within one (1) year prior to the date the correction request was made to the City, the Company disclosed the information being corrected or annotated.
12. If the Company receives a request for correction of Personal Information from a person other than the City or the individual who provided the Personal Information, the Company shall promptly advise the person to make the request to the City and, if the City has advised the Company of the name or title and contact information of an official of the City to whom such requests are to be made, the Company shall also promptly provide that official's name or title and contact information to the person making the request.

Security safeguards

13. The Company shall protect Personal Information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in the Agreement.

Storage and access to Personal Information

14. The Company shall not store Personal Information outside Canada or permit

access to Personal Information from outside Canada without written authorization from the individual or the City. Where Personal Information will be stored or accessed from outside of Canada, the Company shall comply with all terms and conditions of such storage and/or access as outlined by the City in writing.

Retention of Personal Information

15. The Company shall only retain Personal Information for as long as reasonably necessary for the purposes for which it is disclosed to the Company. Following such time, the Company shall return or destroy any Personal Information that it has received from the City. At the City's request, the Company shall forthwith provide the City with a statutory declaration, sworn by an officer or director of the Company, certifying whether its obligations under this Section have been fulfilled. Unless the Agreement otherwise specifies or unless the City directs otherwise in writing, the Company shall retain Personal Information for at least one (1) year following the date of its use and securely dispose of Personal Information no later than three (3) years after its use.

Compelled Disclosure

16. In the event that the Company or anyone to whom it transmits the Personal Information becomes legally required to disclose any such Personal Information, the Company shall provide the City with prompt notice so that the City may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, the Company shall furnish only that portion of the Personal Information which is legally required to be furnished in the opinion of the City's counsel.

Notice of unauthorized disclosure

17. If the Company knows that there has been an unauthorized disclosure of Personal Information in the custody or under the control of the Company, the Company shall immediately notify the individual and the City and take all necessary steps to mitigate and remediate. If the Company becomes aware of a security breach or any other event that compromises the security, confidentiality or integrity of any Personal Information (an "Incident"), the Company shall take appropriate actions to contain, investigate and mitigate the Incident. The Company shall also notify the individual and the City and any individual of each and every Incident as soon as reasonably possible.

Inspection of Personal Information

18. In addition to any other rights of inspection the City may have under the Agreement or under statute, the City may, at any reasonable time during normal

business hours and on reasonable notice to the Company, enter on the Company's premises to inspect any Personal Information in the custody or control of the Company as a result of its performing its obligations under this Agreement, and any of the Company's information management policies or practices relevant to the Company's management of Personal Information in connection with this Agreement or the Company's compliance with this Schedule, and the Company must permit, and provide reasonable assistance to, any such inspection. The inspection will be conducted in a manner as not to interfere unreasonably with the Company's business operations, and is subject to the Company's reasonable confidentiality and security policies, procedures and requirements.

Compliance with the applicable legislation and directions

19. The Company will comply with the requirements of the applicable legislation, in relation to Personal Information including RTIPPA and any relevant and applicable similar legislation, including any applicable order under the applicable legislation, and any direction given by the City that is permitted or required to be given under this Agreement or pursuant to legislation.
20. The Company acknowledges that it is familiar with the requirements of the applicable legislation governing Personal Information that are applicable to it.

Irreparable Harm

21. The Company acknowledges that all Personal Information disclosed or provided to it under this Agreement by an individual or the City is held by the Company in trust for the sole benefit of the individual or the City. The Company acknowledges that any disclosure or misappropriation of any of the Personal Information in violation of this Agreement or this Schedule may cause the individual or the City irreparable harm and/or harm that is impossible to quantify, and therefore agrees that the City shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as the City shall deem appropriate. Such right of City is to be in addition to the remedies otherwise available to the City at law or in equity. The Company expressly waives the defence that a remedy in damages will be adequate and any requirement in an action for specific performance or injunction for the posting of a bond by the City.

Notice of non-compliance

22. If for any reason the Company does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Company shall promptly notify the City of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or

prevent recurrence of, the non-compliance or anticipated non-compliance.

Termination of Agreement

23. In addition to any other rights or remedies which the City may have under the Agreement or otherwise at law, the City may, upon any failure of the Company to comply with this Schedule in a material respect, declare such non-compliance to be an Event of Default and terminate the Agreement, or a component thereof, in accordance with terms of the Agreement.

Interpretation

24. In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.
25. Any reference to the "Company" in this Schedule includes any subcontractor or agent retained by the Company to perform obligations under the Agreement and the Company shall ensure that any such subcontractors and agents comply with this Schedule.
26. The obligations of the Company in this Schedule will survive the termination of the Agreement and will only expire when the Company no longer has any Personal Information generated as a result of this Agreement in its custody or control.
27. If a provision of the Agreement (including any direction given by the City under this Schedule) conflicts with a requirement of the applicable legislation or an applicable order under the applicable legislation, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict.
28. The Company shall comply with the provisions of this Schedule despite any conflicting provision of this Agreement or, subject to Section 29 of this Schedule, the law of any jurisdiction outside Canada.
29. Nothing in this Schedule requires the Company to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the applicable legislation.