

DATE:

2023

# DEED OF TRUST

MUSICAL THEATRE FOUNDATION OF AOTEAROA

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### Trustees

**Trustee #1, Trustee #2, Trustee #3, Trustee #4 and Trustee #5**

### Introduction

- A. The parties to this Deed wish to establish a charitable trust (“the Trust”) for the purposes described in clause 4 of this Deed.
- B. The parties have agreed to enter into this Deed specifying the purposes of the Trust Fund and providing for its control and governance.
- C. At the 2021 MTNZ AGM, MTNZ was granted permission by the MTNZ Members to establish the Trust and carry out all preliminary preparations, including making an initial establishment gift of \$100, with the express intention that MTNZ will donate the current balance of funds held by MTNZ as the Capital Assistance Fund once the Trust and Trustees are in place and prepared to receive funds.
- D. The Trustees intend to incorporate themselves as a Trust Board under the provisions of the Charitable Trusts Act 1957 with the name of: **Musical Theatre Foundation of Aotearoa**.

### Now this Deed Witnesses

#### 1. DEFINITIONS AND CONSTRUCTION

##### 1.1 In this Deed, unless the context otherwise requires:

“**Balance Date**” means 31 December or any other date adopted from time to time by the Trustees as the end of its Financial Year;

“**Board**” means the Board of Trustees constituted by this Deed and is made up of the Trustees for the time being of the Trust;

“**Capital Assistance Fund**” means the Initial Capital Assistance Fund and any funds transferred after formation of the Trust from MTNZ or any other person, on the proviso that the funds are applied solely to the Capital Assistance Fund;

“**Capital Assistance Fund Application Rules**” means the rules as outlined in clause 5.2;

“**Capital Expenditure**” includes, but is not limited to, buying, building or converting premises; furnishing or equipping premises for purposes conducive to producing theatre; and purchasing technical and premises equipment to help produce or run theatre. It does not include production costs, set builds or costuming;

“**Chairperson**” means the Trustee appointed as chairperson of the Trust pursuant to clause 7.2;

“**Charitable Trusts Act**” means the Charitable Trusts Act 1957; and/or any amendment, substitution or replacement of the same;

“**Charities Act**” means the Charities Act 2005; and/or any amendment, substitution or replacement of the same;

**“Deed”** means this deed as amended from time to time;

**“Early Contributor(s)”** are the following MTNZ Members:

- Act Three Productions (Palmerston North Operatic Society Incorporated formerly trading as Abbey Musical Theatre);
- Alexandra Musical Society Incorporated;
- Ashburton Operatic Society Incorporated;
- Blenheim Musical Theatre Incorporated;
- Centre Stage Taupo Incorporated;
- Coasters Musical Theatre Incorporated;
- Dannevirke Theatre Company Incorporated;
- Fiordland Players Incorporated;
- Gore Musical Theatre Incorporated;
- Hamilton Musical Theatre Incorporated (formerly Musikkmakers Hamilton);
- Harlequin Music Theatre Incorporated;
- Hokitika Dramatic Society Incorporated;
- Hutt City Musical Theatre Incorporated;
- Levin Performing Arts Society Incorporated;
- Masterton Theatre Company Incorporated (formerly Masterton Amateur Theatrical Society)
- Matamata Musical Theatre Incorporated;
- The Morrinsville Little Theatre Incorporated;
- Musical Theatre Oamaru Incorporated;
- Napier Operatic Society Incorporated;
- Nelson Musical Theatre Incorporated;
- New Plymouth Operatic Society Incorporated;
- North Shore Music Theatre Incorporated;
- On-Stage Te Kuiti Incorporated;
- Papakura Theatre Company Incorporated;
- Performing Arts Taumarunui Incorporated;
- The Porirua Little Theatre Incorporated;
- Rotorua Musical Theatre Incorporated;
- ShowBiz Queenstown Incorporated;
- South Otago Theatrical Society Incorporated;
- Taieri Musical Society Incorporated;
- Tauranga Musical Theatre Incorporated;
- Te Awamutu Light Operatic Society Incorporated;
- Theatre Hawke’s Bay Incorporated;
- Theatre Whakatane Incorporated;
- Upper Hutt Musical Theatre Incorporated;
- Waimate Theatre Company Incorporated;
- Waipawa Musical and Dramatic Club Incorporated;
- Wanganui Amateur Musical and Dramatic Society Incorporated;
- West Otago Theatrical Society Incorporated;

provided they remain a MTNZ Member.

In recognition that an Early Contributor may change their name or structure or merge with other organisations, any Early Contributor may, by notice in writing to the Trust, transfer their Early Contributor status to another organisation provided that organisation is the recipient of the majority of the assets of the Early Contributor. No organisation shall (in the event of merger) be considered to have the vote of more than one Early Contributor.

**“Financial Year”** means any year or other accounting period ending on a Balance Date;

**“General Trust Fund”** refers to any additional funds held by the Trust Fund and managed by the Trustees that do not form part of the Capital Assistance Fund;

**“High Court”** means the High Court of New Zealand;

**“Income Tax Act”** means the Income Tax Act 2007; and/or any amendment, substitution or replacement of the same;

**“Initial Capital Assistance Funds”** means any funds transferred to and held by the Board as part of the Trust Fund and all loans currently owing to MTNZ from the Capital Assistance Fund specifically identified at the time of receipt as apportioned from any General Trust Funds to be part of the Capital Assistance Fund;

**“MTNZ”** means Musical Theatre New Zealand Incorporated (21648);

**“MTNZ AGM”** means the Annual General Meeting of MTNZ;

**“MTNZ Executive”** means the Executive of MTNZ or the equivalent at the relevant time pursuant to MTNZ Constitution and Rules; or the equivalent being the currently elected board of Trustees of MTNZ from time to time;

**“MTNZ Member(s)”** means a full financial member(s) of MTNZ at the relevant time pursuant to the MTNZ Constitution and Rules;

**“Objectives”** means the objects of the Trust as set out in clause 4;

**“Persons”** includes any individual, corporation, entity, partnership, joint venture, association, trust, organisation, government department or local authorities;

**“Secretary”** means the person appointed pursuant to clause 8.4;

**“Trust AGM”** means the Annual General Meeting of the Trust;

**“Trust Fund”** means the funds referred to in clause 5 incorporating both the Capital Assistance Fund and the General Trust Fund.

**“Trustees”** means the Trustees for the time being of the Trust;

## 2. NAME

The name of the Trust shall be **“Musical Theatre Foundation of Aotearoa”** or such other name as the Board may decide from time to time.

## 3. REGISTERED OFFICE

The Trust will have a Registered Office which will be at such place as the Board from time to time decides and notice of such Registered Office is to be given to the Registrar of Charitable Trusts as and when required.

## 4. OBJECTIVES OF TRUST

### 4.1 The Objectives of the **Capital Assistance Fund** are as follows:

- (a) to support MTNZ Members financially to enable theatres and theatrical groups to improve their local theatre facilities, or invest in Capital Expenditure of other kinds;

- (b) to act as a resource for theatres in Aotearoa/New Zealand and to provide funds for Capital Expenditure of MTNZ Members;
- (c) to assist theatres and theatre groups to ensure that community theatre is physically accessible to the public;
- (d) to provide financial support to theatres in a sustainable manner for Capital Expenditure.

4.2 The Objectives of the **General Trust Fund** are as follows:

- (a) to provide financial support to MTNZ Members, or any individual applicants who hold a current membership with an MTNZ Member;
- (b) to function as and to promote itself as an endowment programme that can accept donations from all supporters of musical theatre;
- (c) to support MTNZ Members for endeavours that improve and support the resilience and sustainability of musical theatre in New Zealand;
- (d) to promote access to and participation in community theatre opportunities;
- (e) to encourage and improve physical access to theatre facilities and remove barriers to access for differently abled members of the community and all disadvantaged groups;
- (f) any other purpose agreed by the Trustees at the relevant time pursuant to the application, provided it furthers objectives of musical theatre in Aotearoa/New Zealand.

4.3 All of the above objects and activities in clauses 4.1 and 4.2 are to be within Aotearoa/New Zealand. The Trustees may reasonably carry out the above to the extent that these are recognised by the laws of New Zealand at the relevant time as charitable purposes.

## 5. TRUST FUND

5.1 The Trust Fund shall comprise the initial gift of \$100 and all other capital and income held by the Board from time to time for the benefit of the Trust, including but not limited to the Capital Assistance Fund.

5.2 The Trust Fund shall be administered by the Board who shall be appointed in accordance with the procedure in clause 7 of this Deed and shall set policies and resolve courses of action and the means and direction of implementation to attain the Objectives of the Trust.

5.3 The Board shall administer the Trust Fund in accordance with this Deed and any Operating Manual adopted by the Board from time to time and varied by majority decision, provided that at all times the Trust Fund will be apportioned into two sub funds (being the Capital Assistance Fund and the General Trust Fund).

5.4 The Capital Assistance Fund cannot be used for any purpose other than the advancement of loans to MTNZ Members for the Objectives outlined in clause 4.1 of this Deed.

5.5 Applicants to the General Trust Fund must be MTNZ Members or any individual applicants who hold a current membership with an MTNZ Member; and applications must be for the Objectives outlined in clause 4.2 of this Deed.

## 6. APPLICATION OF INCOME AND CAPITAL

6.1 The following specific rules shall apply to the sub fund known as the Capital Assistance Fund:

- (a) the Board shall maintain a separate sub fund called the Capital Assistance Fund which shall be for the specific purpose of achieving the Objectives, but only through loans to MTNZ Members in accordance with the Capital Assistance Fund Application Rules, and the Operating Manual;
- (b) at no time shall the Capital Assistance Fund be disbursed or applied in any manner other than as a loan to MTNZ Members;
- (c) at the Trustees' discretion any interest earned on money held in the Capital Assistance Fund shall be capitalised into the Capital Assistance Fund or paid into the General Trust Fund;
- (d) there is no obligation in the event of loss suffered by the Capital Assistance Fund as a result of loan repayment defaults to replace the loss out of funds in the General Trust Fund but the Board may choose to do so by resolution;
- (e) funds cannot be removed from the Capital Assistance Fund and transferred to the General Trust Fund.

6.2 The following rules shall apply to the Capital Assistance Fund, to be known as the "Capital Assistance Fund Application Rules":

- (a) until the AGM in 2029 any loan approved to an Early Contributor shall be interest free;
- (b) no security shall be required unless the Board determines;
- (c) the Board shall determine what information is required in the application for a loan and the term of any loan;
- (d) only one application should be made by each MTNZ Member in any calendar year; or at the discretion of the Board;
- (e) an MTNZ Member may have more than one outstanding loan at any time, but consideration shall be given to the need of other members before a second loan is approved;
- (f) any other criteria determined by the Board that is not contradictory to the general intention of preserving the Capital Assistance Fund for future loans.

## 7. MEMBERSHIP OF THE BOARD

7.1 **Number:** The Board shall consist of five (5) Trustees. If one (1) Trustee cannot act for any reason, the Board may continue to function without impediment until the next election with only four (4) Trustees. At any time while the number of Trustees is below three (3), the only decision the Board can legally make is to facilitate the appointment of further Trustees pursuant to clause 7.

7.2 **Appointment of Trustees:** The signatories to this Deed shall be the first Trustees and shall be deemed to have been appointed on the date of this Deed; with it being recognised that each Trustee's appointment shall be deemed as follows:

- (a) [ \_\_\_\_\_ ] appointed as the Early Contributors Appointee;
- (b) [ \_\_\_\_\_ ] appointed as the MTNZ Executive Appointee;
- (c) [ \_\_\_\_\_ , \_\_\_\_\_ and \_\_\_\_\_ ] appointed as the MTNZ Member Appointees.

- 7.3 All of the Trustees named in this Deed will be appointed for an initial term of one (1) year and then face re-election.
- 7.4 Subsequent Trustees shall be appointed as follows:
- (a) one (1) Trustee by resolution of the MTNZ Executive following their internally determined election process and notified to the Chairperson or remaining Trustees (“MTNZ Executive Appointee”) by the Chairperson of MTNZ from time to time;
  - (b) one (1) Trustee to be appointed in writing by email vote from the Early Contributors and notified to the Chairperson or remaining Trustees (“Early Contributors Appointee”) after the election process has been completed by the Early Contributors or facilitated by MTNZ at the request of the Early Contributors;
  - (c) three (3) Trustees appointed by all MTNZ Members and notified to the Chairperson or remaining Trustees (“MTNZ Members Appointees”) after the election process has been completed as set out in subclause 7.4(f) below;
  - (d) after the signatories to this Deed serve their agreed terms, the Member Appointees and the Early Contributor Appointee shall be appointed in the following manner:
    - (i) the Secretary shall call for nomination of board members from MTNZ Members for the MTNZ Member Appointees and from the Early Contributors (provided the nominee is representative of a MTNZ Member (in every second year) for the Early Contributors Appointee) no later than 14 February each year where a Trustee appointment is due. Nominations and participation in the voting process is only open to MTNZ Members and Early Contributors who remain MTNZ Members as at 14 February in the election year;
    - (ii) nominations shall be received no later than 28 February and to be signed by the nominee, nominator and seconder to be valid. The nominator and seconder must be a MTNZ Member;
    - (iii) the Secretary shall, prior to the Trust AGM, advise MTNZ Members and the Early Contributors of all valid nominations received; and the election process, which may be by electronic or postal vote as the Board determines, shall be open for no less than two (2) weeks and close no later than one (1) week before the Trust AGM;
  - (e) the Trust AGM may take place in conjunction with the MTNZ AGM, but will be a separate and distinct meeting;
  - (f) the Secretary must clearly state on the voting invitations how the process will be conducted. The intention is that all the ballots must allow MTNZ Members who are entitled to vote to send in electronic votes that can be counted in advance of the Trust AGM. The results should be announced to the members at the Trust AGM and results may be advised to the successful trustees in advance of the Trust AGM to ensure that they accept the appointment;
  - (g) each Trustee may also be suspended or removed by the group who appointed them. This shall be by ordinary resolution of the relevant group (the MTNZ Executive Appointee, Early Contributors Appointee or MTNZ Members Appointees);
  - (h) confirmation of appointment shall be by notice in writing from the Secretary and announced at the Trust AGM;
  - (i) in the event of vacancy for any reason other than a very short term unavailability of a Trustee (short term is to be in the discretion of the other Trustees):

- (i) the Secretary must notify the MTNZ Executive in the case of the MTNZ Executive Appointee vacancy and the MTNZ Executive may appoint a replacement;
- (ii) the Secretary must notify the MTNZ Members in the case of the MTNZ Members Appointees vacancy and call a special general meeting to appoint a replacement unless the MTNZ AGM is imminent;
- (iii) the Secretary must notify the Early Contributors in the case of the Early Contributors Appointee vacancy and they must vote to appoint a replacement Trustee;
- (iv) the Secretary must facilitate the voting process if requested by any of the voting groups (the MTNZ Executive Appointee, Early Contributors Appointee or MTNZ Members Appointees);
- (v) if the appointing group fails to appoint a replacement and the numbers will otherwise drop to below four (4) Trustees, then the Trustees shall be entitled to require the MTNZ Executive to call a special general meeting at MTNZ's cost to appoint a Trustee to fill the vacancy until a replacement Trustee is appointed by MTNZ if an MTNZ Executive Appointee or, if the vacancy is of an Early Contributor Appointee or MTNZ Member Appointee, then until the following Trust AGM whereby the above appointment process can be conducted and the casual vacancy shall be replaced by the duly appointed Trustee. Such replacement Trustee may be appointed for a short term so that their term ends on the same date as the Trustee they replace would have ended.

7.5 The Trustees should be elected every two (2) years and must take one (1) year sabbatical after each six (6) years (one (1) year off) before being eligible for re-election. For the avoidance of doubt, a person may be elected as a Trustee via different categories without restriction, but in total must take a break after this length of service. A person may not concurrently act as a Trustee in more than one category. If the same person is elected in more than one category, then their election will stand as the MTNZ Executive representative or Early Contributor Appointee in that order and the person with the next highest amount of votes will become an additional MTNZ Member Appointee Trustee.

7.6 Appointment of Trustees to fill casual vacancies between election years shall hold office until the end of the term that the Trustee they are replacing would have otherwise held office.

7.7 Notwithstanding any term of appointment, a Trustee shall hold office until the occurrence of any one or more of the following events:

- (a) expiration of the Trustee's term of office for MTNZ Member Appointees or Early Contributors Appointees;
- (b) notice of the Trustee's resignation in writing is given to the Chairperson or the Secretary in the manner referred to in clause 8.9;
- (c) the Trustee becomes mentally incapable (other than temporarily for an operation or similar reason);
- (d) the Trustee becomes bankrupt;
- (e) the Trustee is convicted of any criminal offence whilst a Trustee or had been convicted of a prior criminal offence which was not disclosed at the time of the appointment;
- (f) the Trustee is formally charged with a dishonesty offence. The Trustee will not be eligible to stand for re-election;



- (g) the Trustee is under investigation for a dishonesty offence. The Trustee must declare this investigation to the MTNZ Members before being allowed to stand for re-election;
- (h) the death of the Trustee.

7.8 **Recording:** On every appointment, reappointment, removal or cessation of office of any Trustee, the Trustees must cause an entry to that effect to be recorded in the Trust's minute book and, if required by any party, prepare a deed recording the same.

7.9 **Communications:** Each Trustee must supply a valid email address as a condition of acceptance of the role of Trustee and agree to keep a current email address during their term as Trustee, make themselves available online for meetings and keep the Secretary updated of changes to the Trustee's details including, but not limited to, any accusations or possible issues with their suitability or apparent suitability to remain as Trustee, changes of address and changes of name.

## 8. PROCEEDINGS OF THE BOARD

8.1 **Meetings:** The Board shall meet at such times and places as it determines, including electronic meetings. The Secretary must take steps to ensure security of the online connection and each trustee must undertake to ensure their home or office location is secure to the standards to be updated from time to time and initially to mean that there will not be other people listening to or able to easily listen to the meetings or record the meetings, other than as authorised by the Trustees.

8.2 **Chairperson:** The Board shall elect a Chairperson from amongst its members at the start of the first Board meeting following the Trust AGM or any other time the position is vacant. The Chairperson shall preside if present at all meetings of the Board.

8.3 **Vice Chairperson:** The Trustees may also elect a Vice Chairperson who will act whenever the Chairperson declares a conflict of interest and sits out a vote and when the Chairperson is late to, temporarily disconnected from or is otherwise absent from a meeting.

8.4 **Secretary:** The Board shall appoint a Secretary for the Trust on such terms and conditions and at such remuneration as the Board may think fit. In the event the Secretary is appointed from the Trustees, remuneration for the Secretary should be limited to reimbursement of expenses, including the additional time taken to conduct the Secretary's duties over and above the duties as Trustee. The Secretary may not be paid to be a Trustee or attend meetings, etc.

8.5 **Quorum:** At any meeting of the Board four (4) of the Trustees shall form a quorum and no business (other than appointment of a Trustee) shall be transacted unless a quorum is present. If a quorum is not present within 15 minutes of the scheduled commencement time for the meeting, unless those present unanimously agree to wait longer, a subsequent meeting shall be called within seven (7) days.

8.6 **Voting:** Any decisions of the Board shall be decided by a majority of votes. If the voting is tied, the motion shall be lost. Provided that, where a conflict of interest exists, the required number of Trustees necessary for approval shall be reduced by the number of conflicted Trustees, but should never be less than three (3) Trustees. Prior to any vote the Trustees may discuss whether a person's declared interest is such that they should not vote or their involvement with the society named or applicant is not such that they cannot vote impartially and the vote will not appear to be partial.

8.7 **Minutes:** The Secretary shall keep minutes of all Board meetings which shall be available for inspection by Board members at all reasonable times.

8.8 **Notice of Meetings:** The Trustees shall be given five (5) days' notice by the Secretary prior to any meeting of the Board, provided that any meeting attended by all Trustees or resolution passed in writing signed by all Trustees will be valid despite insufficient notice. As far as practicable, prior to the end of each meeting, the Secretary must discuss future meeting dates with Trustees or otherwise organise a system to ensure that meeting dates and times are practical for all Trustees to attend.

## 8.9 Notices:

- (a) Any notice required to be given to any Trustee may be given by one of the following means:
  - (i) by personal delivery; or
  - (ii) if requested by the Trustee, then by posting by ordinary mail; or
  - (iii) by email.
- (b) A notice is deemed to have been given:
  - (i) in the case of personal delivery, when received by the Trustee;
  - (ii) in the case of posting, only if that Trustee had requested notice by mail and, in that case, then by ordinary mail on the fourth day following the date of posting to the postal address last given by the Trustee to the Secretary or, if couriered to the address, then on confirmation of delivery by the courier;
  - (iii) in the case of email, when sent to the email address last given by the Trustee to the Secretary as that Trustee's address for service.
- (c) It shall be the responsibility of each Trustee to notify the Secretary of their address and other contact details and of any change to that address or details.

8.10 **Virtual Meetings:** Any meeting of the Board may be held by the contemporaneous linking together of the Trustees by telephone, video conferencing, the internet or other electronic means of communication.

8.11 **Resolution in lieu of Meeting:** A resolution in writing signed by, or confirmed in writing by, all of the Trustees is as valid as if it had been passed at a meeting of the Board. Such written confirmation may be by letter (whether hand-delivered, posted or faxed) or email.

## 9. POWERS

9.1 **General and specific powers:** In addition to the powers implied by the general law of New Zealand or contained in the Trusts Act or the Charitable Trusts Act or otherwise; and subject to express terms of this Deed, the Board shall have, in relation to the Trust Fund, all the powers of natural persons acting as beneficial owners and the powers which the Board may exercise (without limitation and by way of examples) in order to achieve the Objectives are as follows:

- (a) to seek, accept and receive koha, donations, subsidies, grants, endowments, gifts, legacies and bequests, either in money or in kind or partly in money and partly in kind, for all or any of the Objectives; and
- (b) make loan of capital, with or without interest, secured or unsecured; and
- (c) to carry on any business either directly or indirectly and whether via companies, partnerships, trading trusts or other structures; and
- (d) to invest all or any part of the Trust Fund in any way permitted by law and in such manner and upon such terms as the Board thinks fit; and
- (e) to borrow or raise money from time to time with or without security and upon such terms as to priority and otherwise as the Board thinks fit; and

- (f) to give guarantees and indemnities, alone or with third parties; and
- (g) to pay costs as required, but the Trustees are obliged to take steps to reduce costs within reason by inviting MTNZ Members to donate time and expertise or seeking quotes for proposed costs; and
- (h) to do all things as may from time to time appear necessary or desirable to enable the Board to give effect to and to achieve the Objectives; and
- (i) to employ and appoint such staff and professional advisers as the Board thinks appropriate to manage the affairs of the Trust and the Trust Fund; the cost of this to be no greater than at market rates; and
- (j) to incorporate itself into a Trust Board under the Charitable Trusts Act;

provided none of the powers are used to apply the Capital Assistance Funds in a manner inconsistent with the Capital Assistance Fund Application Rules.

9.2 **No determination of income:** Notwithstanding anything contained or implied in this Deed, where the Board carries on or engages in any business by or on behalf of or for the benefit of the Trust, no person defined in Section *CW42(5)(b)* of the Income Tax Act shall, by virtue of that capacity and within the ambit and scope of Section *CW42* and with the exceptions therein contained, in any way, whether directly or indirectly, determine or materially influence in any way the determination of:

- (a) the nature or the amount of any benefit or advantage (*as defined in section CW42(8)*) able to be received, gained, achieved, afforded or derived by that person from that business; or
- (b) the circumstances in which that benefit or advantage of income is or is to be so received, gained, achieved, afforded or derived.

9.3 **No non-exempt derivation:** Nothing in this Deed shall authorise the derivation of income to which section *CW42* of the Income Tax Act applies and which is excluded from exemption from income tax by the said section *CW42*.

## 10. INCOME, BENEFIT OR ADVANTAGE TO BE APPLIED TO THE OBJECTIVES OF THE TRUST

10.1 **Application:** Any income, benefit or advantage shall be applied to the Objectives.

10.2 **No private pecuniary profit:** Nothing expressed or implied in this Deed shall ever permit the activities of the Board or any business carried on, by or on behalf of, or for the benefit of, the Board (whether directly or indirectly) to be carried on for the private pecuniary profit of any person at any time.

10.3 **Influence:**

- (a) No Trustee or person associated with a Trustee shall derive any income, benefit or advantage from the Trust where they can materially influence the payment of the income, benefit or advantage except where that income, benefit or advantage is derived from:
  - (i) professional services to the Trust rendered in the course of business charged at no greater rate than market rates; or
  - (ii) interest on money lent at no greater rate than market rates.
- (b) No Trustee receiving any remuneration (or avoiding costs that Trustee would otherwise pay) from the Fund shall take part in any deliberations or proceedings relating to the payment or otherwise of that remuneration, nor shall that Trustee in any way determine or materially influence, directly or indirectly, the nature or amount of that payment or the circumstances in which it is to be paid.

## 11. ACCOUNTS/FILING OF DOCUMENTS

11.1 The Trustees shall ensure that:

- (a) **Keep Records and Accounts:** Full and correct records and accounts are kept of all their receipts, credits, payments, assets, liabilities, transactions and all other matters necessary for showing the true state and condition of the Trust Fund.
- (b) **Financial Statements:** Financial statements are prepared as soon as practicable after the end of each financial year; such financial statements to be reviewed annually by an independent chartered accountant, unless an Audit is required by law or by notice given by MTNZ in relation to the current or immediately previous year only.

11.2 The Trustees shall cause to be prepared and retained and/or filed with any relevant authority, all necessary tax accounts, returns, reports, declarations, notices, certificates, reconciliations, applications, forms and other information required to be prepared or filed, pursuant to any revenue legislation, the Charities Act or otherwise.

## 12. POWER TO TAKE ADVICE

12.1 The Board may take and act upon the opinion of any barrister, solicitor or other suitably qualified legal adviser practising in New Zealand, whether in relation to the interpretation of this Deed or any other document or statute or to the administration of the Trust or otherwise, without being liable in respect of any act done by them in accordance with such opinion.

12.2 Nothing in this clause prohibits the Board from applying to the High Court for directions on the resolution of any matter or otherwise. If the Board does apply to the High Court, all expenses of the application are chargeable to the Trust.

## 13. ANNUAL GENERAL MEETING

13.1 **Time and place of Meeting:** The Trust AGM shall be held in March each year at such place, date and time as the Board shall determine.

13.2 **Business of Meeting:** The Trust AGM shall carry out the following business:

- (a) receive the minutes of the previous Trust AGM and of any other special general meeting held since the last Trust AGM; and
- (b) receive the Trust's statement of accounts for the preceding year and an estimate of income and expenditure for the current year; and
- (c) receive a report from the Chairperson; and
- (d) consider and decide any other matter which may properly be brought before the meeting.

13.3 The Board Chairperson will be elected from time to time by the Board.

## 14. ALTERATION OF DEED

This Deed may be altered, added to, rescinded or otherwise amended by the unanimous resolution of the Board and written confirmation by MTNZ Members, the MTNZ Executive and Early Contributors of their approval of the alteration, provided that no such amendment shall detract from the exclusively charitable nature of the Trust and its Objectives or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable.

**15. TRUSTEES LIABILITY AND INDEMNITY**

15.1 None of the Trustees will be liable for:

- (a) a loss incurred by the Trust Fund other than as a result of that Trustee's own dishonesty, wilful misconduct or gross negligence;
- (b) the acts or omissions of anyone employed by, including in contract or in consultancy to, the Board
- (c) claims against the Board that cannot be satisfied because:
  - (i) all or part of the Trust Fund has been distributed, unless the distribution was a deliberate breach of trust by the then Board;
  - (ii) any other circumstance not the fault of that Trustee.

15.2 No Trustee is obliged to take proceedings against a co-Trustee or any former Trustee.

15.3 Each of the Trustees will be indemnified out of the Trust Fund if the Trustees incur any liability as the result of any act or omission by any of them as a Trustee, unless the liability is incurred as the result of that Trustee's own dishonesty, wilful misconduct or gross negligence and the Board shall be entitled to pay Trustee indemnity insurance premiums for same if available or the like.

15.4 The Trustees have no obligation to diversify the investments of the Trust Fund; they are not under any duty to formulate an investment strategy; and sections 29 and 30 of the Trusts Act (and any similar provision contained in any amendment or substitution for that Act) are not binding on the Trustees.

**16. CHARGING BY TRUSTEES**

Notwithstanding the provisions of clause 9, any Trustee who is engaged in a profession or business shall be entitled to be paid at reasonable market rates for services provided by that Trustee or that Trustee's firm on the same basis as if that Trustee were not a Trustee, but no Trustee is to be paid anything for acting as a Trustee and thereby taking on the responsibilities of a Trustee.

**17. DECLARATIONS OF INTEREST**

17.1 No Trustee shall vote on any matter in which that Trustee has any personal or pecuniary interest or in which any company or entity or associated person or persons with or in which the Trustee has a personal or financial interest, has any pecuniary interest.

17.2 Any Trustee shall declare any such interest as soon as the Trustee concerned becomes aware of the existence of the interest; the declaration to include all relevant detail needed to result in a full and fair disclosure. All Trustees shall act in the utmost good faith in all such matters to ensure transparency and fairness.

17.3 Subject to compliance with the above disclosure requirements, any Trustee shall be entitled in any personal capacity (or otherwise) to have an interest in any entity or business having any dealings with the Board.

**18. EXECUTION OF DOCUMENTS/Common Seal**

18.1 Subject to clause 18.2, all documents required to be executed by the Trustees will be deemed to be validly executed and binding if those documents have been signed by at least two (2) Trustees whom the Trustees from time to time authorise in writing.

18.2 If the Trustees become incorporated as a Board under the Charitable Trusts Act 1957, then:

- (a) **Provision and Use of Seal:** the Trustees will provide a common seal for the Board which will be deposited with the Secretary and affixed to any document requiring execution by the Board under common seal; and
- (b) **Affixation of Seal:** every affixing of the common seal must be performed in the presence of two (2) Trustees whom the Trustees from time to time authorise in writing.

## 19. WINDING UP THE TRUST

19.1 **Resolution:** The Trustees may wind up the Trust by a unanimous resolution of the Board, provided that:

- (a) **Resolution of Meeting:** the resolution must be passed at a Trustees' meeting called for that purpose; and
- (b) **Notice of Meeting:** the Secretary must give not less than thirty (30) days' notice of that meeting to the Trustees;
- (c) the Trustees make any wind up of the Trust conditional on obtaining 80% approval from the MTNZ Members at an MTNZ AGM or a special general meeting of MTNZ, whereby the application of surplus funds is also approved.

19.2 **Surplus Property:** If, on the winding up of the Trust or on its dissolution by the Registrar, all surplus assets after the payment of costs, debts and liabilities shall be given to charitable organisations in Aotearoa/New Zealand concerned with theatre productions as approved by MTNZ as in 19.1(c) above.

## 20. INTERPRETATION

In this Deed, unless the context otherwise requires:

- (a) references to one gender include other genders;
- (b) references to the singular include the plural and vice versa;
- (c) the headings shall not affect the construction of this Deed;
- (d) references to clauses are references to clauses of this Deed; and
- (e) references to a statute include references to regulations, orders or notices made under or pursuant to such statute. References to any statute, regulations, order or other statutory instrument or by-law shall be deemed to be references to the statute, regulation, order, instrument or by-law as from time to time amended and includes substituted provisions that substantially correspond to those referred to.

21. **COUNTERPARTS**

This Deed may be executed in any number of counterparts (including email and facsimile copies), all of which, when taken together, will constitute one and the same instrument. A party may enter into this Deed by executing any counterpart.

**Execution**

**SIGNED** by \_\_\_\_\_ as one of the \_\_\_\_\_ )  
Trustees in the presence of: \_\_\_\_\_ )

**Witness**  
Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Occupation \_\_\_\_\_  
Address \_\_\_\_\_

\_\_\_\_\_

**SIGNED** by \_\_\_\_\_ as one of the \_\_\_\_\_ )  
Trustees in the presence of: \_\_\_\_\_ )

**Witness**  
Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Occupation \_\_\_\_\_  
Address \_\_\_\_\_

\_\_\_\_\_

**SIGNED** by \_\_\_\_\_ as one of the \_\_\_\_\_ )  
Trustees in the presence of: \_\_\_\_\_ )

**Witness**  
Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Occupation \_\_\_\_\_  
Address \_\_\_\_\_

\_\_\_\_\_

**SIGNED** by \_\_\_\_\_ as one of the \_\_\_\_\_ )  
Trustees in the presence of: \_\_\_\_\_ )

**Witness**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Occupation \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

**SIGNED** by \_\_\_\_\_ as one of the \_\_\_\_\_ )  
Trustees in the presence of: \_\_\_\_\_ )

**Witness**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Occupation \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_