

# HALIFAX

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

**Item No. 14.1.9**  
**Halifax Regional Council**  
**November 8, 2016**

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

Original Signed by 

**SUBMITTED BY:**

\_\_\_\_\_  
Jacques Dubé, Chief Administrative Officer

Original Signed by 

\_\_\_\_\_  
Jane Fraser, Acting Deputy Chief Administrative Officer

**DATE:** October 19, 2016

**SUBJECT:** Scotiabank Centre Interim Management Agreement

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## **ORIGIN**

September 24, 2013 Regional Council motion:

MOVED by Councillor Karsten, seconded by Councillor McCluskey, that Halifax Regional Council authorize the Mayor and Municipal Clerk to execute the Interim Management Agreement (Attachment 1 of the September 18, 2013 report) with Trade Centre Limited for the management of the Halifax Metro Centre. **MOTION PUT AND PASSED UNANIMOUSLY.**

## **LEGISLATIVE AUTHORITY**

- *HRM Charter*, Section 61 (3): The property vested in Municipality, absolutely or in trust, is under the exclusive management and control of the Council, unless an Act of the Legislature provides otherwise.
- *HRM Charter*, Section 10(3): The Mayor and Clerk or the persons designated by the Council by policy may sign a deed or other document to which the Municipality is a party on behalf of the Municipality.
- *HRM Charter*, 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.
- *HRM Charter*, Section 75(2): An agreement made pursuant to subsection 75(1) may allow for the lease, operation or maintenance of the facility or provision of the service by a person, including the sale or disposition to that person of property of the Municipality that continues to be required for the purposes of the Municipality.

## **RECOMMENDATION**

It is recommended that Halifax Regional Council:

1. Authorize the Mayor and Municipal Clerk to execute the Interim Agreement (Attachment 1) with Trade Centre Limited for the continued management of the Scotiabank Centre; and
2. Authorize the Chief Administrative Officer to execute any renewal(s) of the Interim Agreement (Attachment 1).

## **BACKGROUND**

In June 2011, HRM's Auditor General presented a report on concerns which outlined concerns with various processes undertaken by both HRM and Trade Centre Limited (TCL). The report also outlined a variety of recommendations to address deficiencies in processes, as well as the relationship between HRM and TCL. Several of those recommendations related to the requirement for an updated management agreement between HRM and TCL for the operation of the Halifax Metro Centre (Scotiabank Centre).

Subsequent to that report, Regional Council approved an Interim Management Agreement for the operation of the facility on September 24, 2013.

In addition, in November 2013, Regional Council directed staff to work with Trade Centre Limited to secure the sale of naming rights for the facility. Subsequently, on June 24, 2014, Regional Council approved the sale of naming rights and the facility was changed to Scotiabank Centre (SBC) in September 2014.

The SBC is a HRM owned facility but is joined to the provincially owned World Trade and Convention Centre. Both facilities are managed by TCL, which is a Provincial Crown Corporation. A tri-partite agreement establishing the rights and obligations of the City and the Province with respect to the SBC and the Convention Centre, including financial contributions, ownership, operation, and the role of TCL, was signed in May 1982. Under that agreement, SBC is managed and operated by TCL, with the City (now HRM) financing the operation of SBC. All profits are to accrue to the account of the City, and all financial records and accounts of SBC are to be kept separate from those of the Convention Centre.

As a result of the changes due to the construction of the new Halifax Convention Centre (HCC), the 2013 agreement was interim in nature with an initial term of 2 years with the option for a one-year extension. The term of the agreement was intentioned to provide time for HRM to increase knowledge of the operation of SBC through additional oversight and to enable an appropriate agreement be put in place once the impacts of the HCC were known. The interim agreement expires on November 7, 2016 and does not include any further extensions.

## **DISCUSSION**

The initial interim agreement was thought to have provided sufficient time for HRM to obtain increased knowledge on the operation of SBC, as well adjustments required due to the creation of the HCC and subsequent sale of the existing World Trade and Convention Centre (WTCC). The additional oversight by HRM on the operation of SBC as well as the close working relationship between HRM and TCL on several initiatives, such as sale of naming rights and capital improvements, has provided HRM with increased knowledge of the facility operation.

While the new board for the operation of the HCC has been initiated, the operation of SBC continues to be overseen by the TCL Board. This relationship is expected to continue for a period of time while the operation of HCC is finalized. Part of that finalization is expected to include the transition of employees from TCL to HCC. With the current interim agreement expiring on November 7, 2016, it is in the best interest of all parties for a subsequent interim agreement to be put in place between TCL and HRM for the continued operation of SBC, until such time as the new HCC operation is finalized.

As noted above, the SBC facility is joined with the WTCC with several of the operating systems interconnected. As a result, in order to facilitate the sale of the WTCC, agreements for the future operation of the two buildings and related systems need to be put in place. Work on those agreements is underway to enable the sale of WTCC.

As a result, while work on the sale of the WTCC facility continues and the transition of staff from TCL to HCC progresses, a new interim agreement is required to ensure seamless operation of SBC continues. Therefore, it is recommended that Regional Council approve a new interim agreement for the operation of SBC with the same terms from the existing interim agreement with four changes. The existing terms have provided sufficient oversight for HRM on the operation of the facility and have ensured that the operation of SBC continues in a safe and effective manner. The four proposed changes are the result of the current state of the facilities, including the transition to HCC and the potential sale of WTCC. Therefore, the interim agreement (Attachment 1) has been updated to include the following:

1. A new one year term, with the option for up to two one-year extensions. The new interim agreement outlines that the term is for one year or until a new agreement with HCC is in place. It is not expected that the extensions would be required but it provides protection for the operation of SBC should any delays occur related to the negotiation with HCC for a new agreement;
2. The ability to transfer the agreement from TCL to HCC. After the transition of the employees and facility operation to HCC, Trade Centre Limited will be wrapped up and eventually cease to exist. Therefore, the new interim agreement will ensure that the operation of SBC is not impacted by the transition;
3. The ability for the agreement to be terminated upon mutual agreement of both parties. Should a new agreement for the operation of SBC be signed prior to the expiration of the new interim agreement, the new interim agreement could be terminated.
4. Reference to the "shared facilities". HRM is currently finalizing agreements that outline access and the use of the systems for the operation of both SBC and WTCC. With the sale of WTCC to a third party, TCL will no longer operate the joint facility as one building. Therefore, it is necessary to reference the shared facilities in the interim operating agreement for SBC to ensure clear responsibilities are outlined. The interim agreement does not authorize TCL to approve or execute the Shared Facilities Agreement as agent of HRM.

### **FINANCIAL IMPLICATIONS**

There are no financial implications to this report. SBC's budget will continue to be presented to Regional Council as part of the annual budget process and financial reporting for SBC will continue to be included in HRM's annual financial reporting.

### **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, financial, and strategic risks.

Since TCL has been the operator of the SBC since its inception, it has in depth knowledge of the operation. Therefore there would be greater risk in not implementing a new agreement for the operation of the facility by TCL.

### **COMMUNITY ENGAGEMENT**

Not applicable.

**ENVIRONMENTAL IMPLICATIONS**

None identified.

**ALTERNATIVES**

Alternative 1: Regional Council could choose to not authorize the Mayor and Municipal Clerk to execute the Interim Management Agreement. This is not recommended as it would require HRM to assume operation of Scotiabank Centre on short notice.

Alternative 2: Regional Council could choose to amend any of the terms outlined in the Interim Management Agreement. This is not recommended as it would require additional negotiation with Trade Centre Limited.

**ATTACHMENTS**

Attachment 1: Interim Agreement

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A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

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Report Approved by: \_\_\_\_\_  
John Traves, Q.C. Director, Legal, Insurance & Risk Management Services, 902.490.4226

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# INTERIM AGREEMENT

**Between:**

**Halifax Regional Municipality**

**and**

**Trade Centre Limited**

Halifax Regional Municipality  
Regional Recreation and Culture  
PO Box 1749  
Halifax, Nova Scotia B3J 3A5

tel: 902.490.6252  
fax: 902.490.5950  
[www.halifax.ca](http://www.halifax.ca)



**HALIFAX**

This **Interim Agreement (“Agreement”)** made this            day of            , 2016

BETWEEN:

**Halifax Regional Municipality**

(hereinafter called “HRM”)  
OF THE ONE PART

- and -

**Trade Centre Limited**

(hereinafter called “TCL”)  
OF THE OTHER PART

**WHEREAS** HRM is the owner of the Scotiabank Centre, located at 5284 Duke Street, Halifax, Nova Scotia, with property identification number or PID 00002915 (the “Facility”);

**AND WHEREAS** the Facility is a premier venue for major entertainment and sporting events;

**AND WHEREAS** TCL is a Nova Scotia Provincial Crown Corporation and the registered owner of lands located at 1800 Argyle Street, Halifax, Nova Scotia, with property identification number or PID 00002808, on which location TCL manages and operates a convention centre and office complex known as the World Trade & Convention Centre (“WTCC”);

**AND WHEREAS** by a tripartite agreement between HRM, TCL and the Province of Nova Scotia dated May 14, 1982 (the “1982 Agreement”), the parties to the 1982 Agreement agreed that the Facility would be managed and operated by TCL and that HRM would finance the operation of the Facility and accrue the profits therefrom;

**AND WHEREAS** the Facility and WTCC are part of an integrated development that includes common elements and related service facilities in and across PID 00002808 and PID 00002915, which benefit and are integral to the use, enjoyment and operation of the Facility and the WTCC. These common elements and related service facilities (collectively the “Shared Facilities”) include (i) shared public spaces in the Facility and WTCC, (ii) shared electrical service, shared fire suppression system and shared domestic water supply equipment (all located in the Facility), and (iii) a shared HVAC system with components located both in the Facility and in the WTCC;

**AND WHEREAS** TCL and HRM are currently negotiating a separate agreement between the two parties in respect of the Shared Facilities (the “Shared Facilities Agreement”);

**AND WHEREAS** the Parties entered into an interim agreement dated the 7<sup>th</sup> day of November, 2013 for the management of the Facility, that expired on November 7, 2015 (the “Original Agreement”);

**AND WHEREAS** the Parties entered into a renewal agreement dated November 13, 2015 that renewed the Original Agreement for a period of one year from November 7, 2015 to November 7, 2016 (the “Renewal Agreement”), such that at the date of this Agreement TCL is the sole manager and operator of the Facility and the WTCC;

**AND WHEREAS** HRM and TCL (collectively “the Parties”) wish to continue TCL’s role in the management and operation of the Facility;

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT 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:**

**Term**

1. This Agreement shall come into effect when signed by the Parties hereto and will terminate one (1) year from the date of its execution, or on its earlier termination by either party pursuant to the terms of this Agreement. This Agreement may be renewed on the same terms for two additional one year terms upon mutual agreement of the Parties. At the end of this renewal term, this Agreement will terminate.

**Confirmation of TCL as Manager of the Facility**

2. HRM hereby confirms TCL’s appointment to manage, promote, develop, operate and administer the Facility as an independent contractor, on the terms and conditions set out in this Agreement and TCL hereby accepts such confirmation.

**Duties and Responsibilities of HRM**

3. The Manager of Regional Recreation and Culture, or his/her successor or designate, is designated by HRM to be the HRM Liaison for the purposes of this Agreement.
4. The HRM Liaison shall meet with the Senior Director Scotiabank Centre (“Sr Director”) or his/her successor or designate, for the Facility at least once each quarter. The purpose of said meetings is to share information associated with the management of the Facility.
5. Any meeting requested by the HRM Liaison or the Sr Director for the Facility shall occur within five (5) calendar days after notice is given, or at such other time as is mutually agreeable to the parties.
6. To assist TCL in fulfilling its mandate, the HRM Liaison shall:
  - a) Submit the Annual Budget and Business Plan received from TCL to Halifax

Regional Council, within time frames consistent with HRM's annual budgeting process;

- b) Review information as required by this Agreement as reported by TCL and follow-up with TCL as required;
- c) Review and respond to issues identified by TCL or HRM relating to the management of the Facility or to this Agreement that may require approval by Halifax Regional Council; and
- d) Notify TCL in writing at least 60 days before HRM adopts policies that will have an impact on the operation of the Facility.

### **Duties and Responsibilities of TCL**

- 7. TCL shall manage, promote, develop, operate, maintain and improve the Facility in accordance with, and subject to the Agreement and the budget approved from time to time by TCL Board and Halifax Regional Council.
- 8. TCL shall perform its duties and exercise the powers and authority set out in this Agreement in a timely, diligent, competent, professional and workmanlike manner and in accordance with any applicable directives, instructions, guidelines, policies and procedures provided to it by the HRM Liaison that are not inconsistent with the terms of this Agreement.
- 9. As manager of the Facility, TCL shall:
  - a) Submit an Annual Budget and Business Plan, approved by the Board of TCL, to HRM;
  - b) TCL shall provide the HRM Liaison with a Monthly Report as per sections 41-43. The monthly report corresponding to the quarter-end date shall be received one week prior to the quarterly meeting scheduled between TCL and HRM.
  - c) Ensure independent oversight of management of the Facility;
  - d) Notify the HRM Liaison if aspects of operations are expected to have an unforeseen material impact on financial performance; and
  - e) Keep the HRM Liaison apprised of any issues or events which cause concern and of which HRM would reasonably expect to be notified (lawsuits, legal letters, injuries, system failures, etc.) in writing within 5 business days of TCL becoming aware of the incident.



10. TCL through its affiliate Ticket Atlantic is hereby authorized to act as the exclusive ticketing service provider for the Facility for the term of the Agreement. The Parties acknowledge that the Ticket Atlantic box office is required to pay to SBC a 40 cent per ticket commission fee for tickets issued on all SBC events.. The Parties agree to maintain payment of this fee within the existing parameters.

**Authority as Agent**

11. TCL is hereby authorized to act as agent for HRM solely for the purpose of carrying out the authority and responsibilities set forth in this Agreement, subject, however, to any limitations set forth in this Agreement or in any notice in writing at any time delivered to TCL by the HRM Liaison. HRM shall execute and provide to TCL any document or other evidence which may be reasonably required by TCL to demonstrate to third parties the authority of TCL set out in this Agreement.
12. Subject to the provisions of this Agreement, HRM authorizes TCL to enter into such contracts and agreements as agent of HRM as may be necessary in the performance of the duties, responsibilities and obligations of TCL as described in this Agreement and, more particularly, HRM appoints TCL as its agent for the following purposes:
  - a) to rent out the Facility or parts thereof to user groups, in compliance with this Agreement;
  - b) to charge and collect on behalf of HRM from users of the Facility, certain fees, rates, rents and other items of revenue, plus applicable taxes, including HST, relating to the operation and maintenance of the Facility, and to deposit immediately all amounts so collected into the operating account established pursuant to this Agreement;
  - c) to retain suppliers as independent contractors in furtherance of TCL's execution of its responsibilities under this Agreement, subject to the Annual Budget and Business Plan approved by TCL Board and HRM for the Facility, and the terms of this Agreement;
  - d) to enter into premium product, advertising, sponsorship and marketing contracts;
  - e) to enter into leases and other tenancy agreements, contracts, licenses or other arrangements in forms approved by HRM with tenants, occupants, licensees, concession grantees or other uses consistent with such a facility;
  - f) in the event of an emergency requiring immediate remedial action to be taken, and if TCL is unable to contact the HRM Liaison for instructions, TCL shall be authorized to act as agent for HRM for the purpose of taking any remedial action immediately necessary in the circumstances; and
  - g) as otherwise authorized from time to time by the HRM Liaison in writing.

13. Where TCL is expending funds in accordance with section 12 and the total value of the contract or agreement will exceed \$500,000, the expenditure must first be approved by Halifax Regional Council. TCL shall contact the HRM Liaison prior to entering into such an agreement, and the HRM Liaison will facilitate its consideration by Halifax Regional Council.

**Limitation of Authority**

14. Unless expressly authorized in this Agreement, or by prior written approval of HRM, TCL shall not have the authority to do any of the following:
  - a) obtain loans for HRM, whether secured or unsecured, or give 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 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 by the Annual Budget and Business Plan approved by HRM or in the ordinary course of operating the Facility;
  - c) cause HRM to extend credit or to make any loans or become a surety, guarantor, endorser or accommodation endorser for any person, firm or corporation;
  - d) cause HRM to enter into any contracts with respect to the Facility other than contracts in the ordinary course of managing the Facility which are in accordance with the provisions of this Agreement;
  - e) sell, exchange or convey the Facility or any portion thereof;
  - f) release, compromise, assign or transfer any claim, right or benefit of HRM, except in the ordinary course of managing the Facility pursuant to this Agreement;
  - g) allow a default judgment to be entered against HRM;
  - h) modify, change or amend, in any material way, any drawings, maps, plans or specifications prepared for or in connection with the Facility;
  - i) grant easements or other property rights in the Facility;
  - j) lease, purchase or sell any real property, including the Facility or any part thereof, on behalf of HRM;
  - k) undertake purchases where TCL has not complied with the Procurement practices set out in sections 22-24 hereof;

- l) utilize Facility funds for any purposes other than the operation of the Facility;
- m) permit or undertake cash advances from the Facility bank account; or
- n) utilize inter-corporate accounts for the operation of the Facility.

### **Shared Facilities**

- 15. TCL shall, as part of carrying out its authority and responsibilities under this Agreement, manage and operate those Shared Facilities as may be identified from time to time by HRM, for the benefit of the Facility and the WTCC and in accordance with and under the direction of HRM. TCL does not have the authority to approve or execute the Shared Facilities Agreement as agent of HRM.

### **Contracts**

- 16. TCL shall have the right, subject to the terms of this Agreement and to the limits of the Annual Budget and Business Plan approved by TCL Board and HRM pursuant to this Agreement, to contract on behalf of HRM for cleaning, maintenance, repairs, security or any necessary service required for the proper operation of the Facility.
- 17. Contracts will be in place for all events hosted in the Facility and for all major tenants, and these contracts will be negotiated in a timely basis, including provisions that limit TCL and HRM's financial and other risks.
- 18. TCL shall provide HRM with copies of all contracts executed by TCL in its capacity as manager of the Facility upon request, and a list thereof to the HRM Liaison with each Monthly Report, except that TCL shall provide HRM the opportunity to view all contracts executed by TCL in its capacity as manager of the Facility for events hosted in the Facility upon request, and a list thereof to the HRM Liaison with each Monthly Report.
- 19. With respect to licensing, retail space leasing, and advertising and sponsorship contracts, TCL shall provide the following services:
  - a) provide tenant and user coordination services including the review of rental applications, offers to lease, and advertising and sponsorship contracts and consult with the HRM Liaison regarding the terms thereof;
  - b) prepare leases or user license agreements as applicable;
  - c) negotiate with tenants and/or users regarding any modification to the terms of such leases or user license agreements arrange for their execution; and
  - d) receive plans and specifications for any tenant changes, leasehold improvements, signage or other agreement and arrange for any approvals required in connection with them.

20. TCL shall work collaboratively with the HRM Liaison to develop HRM endorsed templates for leases, contracts, licenses and other arrangements.
21. All contracts for the Facility entered into subsequent to the execution of this Agreement shall:
  - a) be of a term that is subject to cancellation with not more than twelve (12) months' notice, or such longer period as may be advised by the HRM Liaison;
  - b) if for an expenditure, be for an expenditure that is within the limits of the Annual Budget and Business Plan approved by the Municipality pursuant to this Agreement;
  - c) only be with groups and organizations that do not conflict with HRM's corporate policies; and
  - d) if resulting in an expenditure, not have a term in excess of one year or, if resulting in a revenue, not have a term in excess of five years, unless HRM, through the HRM Liaison, has provided prior written approval of such term.

### **Purchasing Policy**

22. When making purchases of goods or services relating to operational requirements for the Facility, TCL shall utilize the process provided for in the TCL Procurement Policy, so that it is in compliance with the *Public Procurement Act*, S.N.S. 2011, c. 12, and following the principles and objectives of public procurement as described in the Province of Nova Scotia Sustainable Procurement Policy.

Where it is economically advantageous, TCL will endeavour to partner with HRM on the strategic procurement of common goods and services.

23. When making purchases with respect to capital items for the Facility, TCL shall utilize HRM's Procurement Office, which will apply the HRM Procurement Policy as set out in Administrative Order #35.
24. With respect to sponsorship and advertising within the Facility, TCL shall follow any applicable HRM policies approved by Regional Council.

### **Licenses and Permits**

25. TCL shall obtain and renew as necessary all licenses, permits and approvals which may be required in connection with the operation and maintenance of the Facility. TCL shall at all times comply with the conditions of such licenses, permits and approvals and shall comply with and observe all laws, by-laws and regulations applicable to the Facility and the operation thereof.

## **Finance, Records and Information Services**

### **Revenues & Expenses**

26. All revenues generated, and operating expenses and capital expenses made, by TCL in their capacity as manager of the Facility and in accordance with this Agreement, are the property of HRM.
27. All revenues generated with respect to any activities associated with the operation or management of the Facility are the property of HRM, and TCL agrees that any revenues received or held by it shall be deemed to be received and held by TCL in trust for HRM.
28. Further to TCL's Allocation of Shared Services Policy, certain expenses have been identified to be shared or 'allocated' between the Facility and the WTCC. TCL is required to maintain compliance with this policy including review of its approach to allocated expenses and allocation ratio's for salaried staff, and to obtain approval of the HRM Liaison annually as part of the Annual Budgeting process.

### **Accounts**

29. TCL shall maintain a bank account (the "Facility Operating Account"), which is separate from the accounts of TCL, at a chartered bank authorized by HRM and used exclusively for the purpose of conducting the Facility's operations.
30. The bank account signing officers shall only be those persons who are approved by the TCL Board. Two signatures will be required on each cheque or withdrawal from the account.
31. Any money deposited into, withdrawn or paid from the Facility bank account will be specifically related to the operations of the Facility.
32. Revenues shall be deposited to the Facility Operating Account and shall be used to pay operating and capital related expenses.
33. TCL shall maintain all of the books and records for the Facility on behalf of HRM in accordance with the practices and procedures established by PSAS. All such books and records shall be maintained by TCL at the Facility and reproduced for HRM upon request by the HRM Liaison.
34. Advance ticket sales related to Ticket Atlantic shall not be represented in the Facility accounting records.

### **Property of the Municipality**

35. All equipment located in or purchased for the Facility at any time, and all records, reports, books of account and other documents and materials relating to the management, operation, capital and maintenance of the Facility shall be and remain the property of HRM and, upon termination of this Agreement, TCL shall return or turn over possession of the same to HRM.
36. HRM retains the right, through its designated agents or employees to be entitled with 24 hours' notice from the HRM Liaison to inspect or audit the books and records of TCL that relate to the Facility.

### **Management Fee**

37. No management fee shall be paid by HRM to TCL for the activities carried out pursuant to this Agreement.

### **Collection of Fees**

38. TCL shall collect the fees and charges (including all applicable taxes) for the use of the Facility and the services offered therein. All such fees and charges collected by TCL shall be deposited in the Facility Operating Account. HST and any other taxes collected in respect of the Facility's operations will be accounted for separate and apart from other fees and charges collected, and maintained in separate general ledger account. Any amounts payable will be forwarded on a monthly basis to HRM for remittance.

### **Operating Surplus, Deficit, and Subsidy**

39. In accordance with Section 4 of the 1982 Agreement, all profits (revenues less operating and capital expenditures) from the Facility shall accrue to HRM.
40. If, in any fiscal year, a deficit is realized from the operating budget, TCL shall prepare and submit a written report (the Deficit Report) at the time it submits its annual reports to HRM for the fiscal year-end, outlining the magnitude of the deficit, the reasons, and the recommendation for dealing with it in the coming year.

### **Monthly Reports**

41. TCL shall provide to the HRM Liaison, on a monthly basis, such information and supporting documentation as may be required for HRM to enable it to compute the amount of HST or other taxes collected by TCL on HRM's behalf during the preceding month.
42. TCL shall also provide to the HRM Liaison a Monthly Report, including the following components in relation to the Facility:

Financial & Management Reporting

- a) No later than 15 days after each month end:
  - i. Financial Reporting Templates as provided by the HRM Liaison, subject to change from time-to-time;
- b) Within 30 days of each month end:
  - i. Comparison of budget to actual operating and capital costs and financial projections to year end;
  - ii. Cash flow projections for the remainder of the year;
  - iii. Reconciled bank balance account and transactions;
  - iv. Summary analysis of the profitability of Facility events;
  - v. The calculations supporting the commission by Ticket Atlantic;
  - vi. List of all contracts executed by TCL in its management of the Facility including the names of the parties, the general subject matter and the term; and
  - vii. List of upcoming contract negotiations.

### **Annual Reports**

43. TCL shall provide a draft Annual Report on the Facility to the HRM Liaison no later than 45 days after year-end, and a final Annual Report no later than 90 days after year-end, including the following components:
- a) Financial Reporting
    - i. Audited Financial Statements
    - ii. Banking resolutions
  - b) Management Reporting
    - i. Facility's detailed Operations Budget reporting outlining any significant variances or concerns;
    - ii. Discussion and analysis of fiscal year-end results highlighting significant variances compared to the budget and latest monthly forecast and, if applicable, a report explaining any deficit realized; and
    - iii. Other reports as HRM may reasonably require.
  - c) Facility Condition Assessment
 

Condition meetings between TCL and the HRM Liaison will occur to review results of regular inspections of the entire Facility conducted by TCL for the purpose of determining repairs, maintenance or renovations that may be required to maintain the asset condition through adherence to the asset maintenance schedule and inspection reports.

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

44. TCL shall prepare and furnish to the HRM Liaison a Facility Annual Budget and Business Plan by February 28th each fiscal year (which date is subject to change by the HRM Liaison in the event of a change to the HRM budget and business planning process).

45. The Business Plan shall include the following components: i) Vision and Mission Statements, ii) Strategic Priorities, iii) Goals, iv) Annual Budget, v) Performance Measures, and vi) Risk Analysis. This plan is to be submitted as per timelines set out in this Agreement or determined by the HRM Liaison.
46. The Annual Budget will include: 1) an operating component consisting of operating expenses and anticipated revenues, 2) a detailed schedule of the allocation of shared services, and 3) a project component consisting of project costs (which includes capital expenditures).
47. TCL and HRM staff shall jointly review the Budget to agree upon the priorities for operations and discuss potential alternatives available with respect to capital projects and ensure alignment with the Municipality's priorities. Final Budget will subsequently be included with HRM's annual budget for approval by Regional Council.
48. Where TCL proposes changes to the Facility's operation outside of the approved Annual Budget and Business Planning process, a business plan to support the proposed operational change shall be provided to the HRM Liaison, and may require approval by Regional Council.

### **Long Term Plan**

49. TCL shall, as part of the Municipality's Budget Process, provide to HRM Liaison, a 5 year plan for financing service level improvements and alterations to the Facility as a planning guide for future required improvements or alterations to the Facility. This will be updated annually.

### **Insurance and Indemnification**

50. HRM shall provide property and liability insurance coverage for the Facility.
51. TCL shall obtain and keep in effect such insurance policies TCL deems reasonable and prudent for its operation and management of the Facility. Such insurance will include a Commercial General Liability policy with limits of not less than Five Million Dollars (\$5,000,000) with liquor liability not excluded and with Halifax Regional Municipality named as Additional Named Insured.
52. TCL 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 and/or TCL which involves the Facility.
53. TCL and HRM shall fully cooperate with each other in the defense of any claim, or legal proceeding where a claim is made against either of them relating to the Facility.
54. Any third party contracts awarded by TCL in accordance with this Agreement shall require



contractors to provide TCL will a Certificate of Insurance evidencing a Commercial General Liability policy with limits of not less than Two Million Dollars (\$2,000,000.00) or, for those situations involving a higher risk (including, but not limited to, those involving welding, boiler and machinery, chemical, pyro techniques, or sale of alcohol) not less than Five Million Dollars (\$5,000,000.00), with HRM named as Additional Named Insured on the policy. Third party contractors will also provide evidence of WCB coverage for their employees. It will be the responsibility of the contractor to obtain same from any sub-contractors they may employ.

### **Employees**

55. All personnel employed by TCL in the management, administration and operations of the Facility, continue to be selected for employment by, and will be employees of, TCL, and shall under no circumstances or at any time be deemed or implied to be employees of HRM. TCL 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 TCL and shall be paid directly by TCL.
56. TCL 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. TCL shall ensure that fidelity bonds, criminal records checks and sex-abuse registry records have been obtained and are in place in respect of all employees of the Facility where required by law or otherwise prudent or applicable, such as when employees are dealing with cash or working with vulnerable populations. TCL will take all measures required in compliance with the *Occupational Health and Safety Act* to ensure the safety of employees and onsite contract workers.

### **Termination**

57. This Agreement may be terminated at any time by either of the parties hereto for any reason whatsoever on nine (9) months written notice to the other party or by mutual agreement.
58. This Agreement may be terminated with written notice in the event that TCL ceases to carry on business, merges with another corporation, or becomes bankrupt or insolvent or makes an assignment for the benefit of its creditors.
59. 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 given written notice of the breach and does not cure the breach within four (4) months of being provided with such notice.
60. Where this Agreement is terminated in accordance with the terms herein, TCL shall on the effective date of termination:

- a) vacate and surrender the Facility to HRM and no longer provide management services as contemplated under this Agreement;
  - b) no longer hold itself out to be the agent of HRM in respect of the Facility;
  - c) provide HRM with an updated list of the names and addresses of all tenants and current user groups of the Facility, as well as all suppliers;
  - d) provide to HRM a detailed list of all entities to which TCL held itself out as an agent of HRM in respect of the Facility;
  - e) provide to HRM a detailed list of all tangible and intangible property relating in any way to the management, operation and maintenance of the Facility, and assign, transfer and deliver to HRM TCL's right, title, interest in and possession of same;
  - f) deliver to HRM all of TCL's books and records respecting the Facility;
  - g) take any other action that HRM, acting reasonably, shall request in writing.
61. Termination of this Agreement does not release either of the Parties from any obligations which accrued while the Agreement was in force.

### **General**

62. This Agreement is governed by the laws of the Province of Nova Scotia.
63. The invalidity or unenforceability of any provision or covenant contained in this Agreement shall not affect the validity or enforceability of any other provision or covenant in this Agreement and any such invalid provision or covenant shall be deemed to be severable.
64. Each covenant contained in this Agreement is a separate and independent covenant and a breach of covenant by any party will not relieve the other party from its obligation to perform each of its covenants, except as otherwise expressly provided in this Agreement.
65. No supplement, modification, amendment, waiver or termination of this Agreement shall be binding unless mutually agreed to in writing by the parties.
66. With respect to maintaining confidential information:
- a) Each of the Parties acknowledge that in respect of the management of the Facility and/or during the Term, each may come into contact with confidential information pertaining to the business or operations of the other that is unrelated to the covenants and obligations of that Party hereunder (collectively, "Confidential Information"). Each of the Parties agrees to maintain the strict confidentiality of such Confidential Information of the other party and shall not use any Confidential Information for

purposes other than performing its obligations pursuant to this Agreement. Without limiting the generality of the foregoing, each Party shall make reasonable efforts to (i) not disclose the Confidential Information or permit the same to be disclosed, (ii) to ensure that its employees or agents that are exposed to such Confidential Information maintain the confidentiality of such information, and (iii) to protect the Confidential Information in a manner consistent with the standard of care such party uses with respect to its own Confidential Information.

- b) Notwithstanding the foregoing, a Party may disclose the Confidential Information if required by any applicable law or any rule or regulation of any governmental entity or court having jurisdiction over that Party; provided, however, that the Party making the disclosure shall promptly notify the other Party and only make the disclosure to the extent legally required based on the advice of legal counsel.
  - c) Notwithstanding any provision contained herein, the Parties acknowledge that each is subject to freedom of information and protection of privacy legislation.
67. This Agreement and the rights and obligations arising hereunder may not be assigned by either Party hereto without the consent in writing of the other first hand and obtained, which consent will not be unreasonably withheld, with the exception of an assignment from TCL to Halifax Convention Centre Corporation, in which case consent by HRM will not be required.
68. 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 Registered Mail to:

Halifax Regional Municipality

Manager of Regional Recreation and Culture  
Halifax Regional Municipality  
PO Box 1749  
Halifax, NS B3J 3A5

Trade Centre Limited

President and Chief Executive Officer  
Trade Centre Limited  
PO Box 955  
Halifax, NS B3J 2V9

69. This Agreement shall bind the parties, and their successors, heirs, executors and administrators.

IN WITNESS WHEREOF the parties hereto have properly executed this Indenture, to come into force and effect on the date first above written.

**Trade Centre Limited**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Carrie Cussons, Acting President & CEO

\_\_\_\_\_  
Witness

\_\_\_\_\_

**Halifax Regional Municipality**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mike Savage, Mayor

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Kevin Arjoon, Municipal Clerk