
DEED ESTABLISHING
FILM NEW ZEALAND TRUST
[UPDATED TO INCLUDE AMENDMENTS AS AT
17 October 2008]

CURRENT TRUSTEES:

SUSAN ADELE THOMPSON

PETER GLYN AVERY

MURRAY FRANCIS

JULIE MARGARET ELSTONE

JULIAN THOMAS BETHAM GRIMMOND

FRANCIS KEITH MACKENZIE

CHERYLL BEATRICE SOTHERAN

SARAH MARGARET CULL

ESTABLISHING DEED dated the 10th day of November 2003

AMENDMENTS dated 31 May 2004, 28 April 2005 and 28 July 2006

PARTIES

1. **SARAH MARGARET CULL** of Wellington, Business Affairs Head [*Appointed 17 October 2008*]
2. **CHERYLL BEATRICE SOTHERAN** of Auckland, Sector Director [*Appointed 8 December 2006*]
3. **FRANCIS KEITH MACKENZIE** of Wanaka, Production Accountant [*Appointed 20 October 2006*]
4. **JULIAN THOMAS BETHAM GRIMMOND** of Queenstown, Producer [*Appointed 20 October 2006*]
5. **JULIE MARGARET ELSTONE** of Wellington, Producer [*Appointed 20 October 2006*]
6. **DAVID KENNARD MADIGAN** of Auckland, Company Director [*Retired 17 October 2008*]
7. **SUSAN ADELE THOMPSON** of Wellington, Company Director
8. **PAUL MARTIN VOIGT** of Auckland, Investment Manager [*Retired 8 December 2006*]
9. **RUTH ELIZABETH HARLEY** of Wellington, CEO [*Appointed 2003*] [*Retired 17 October 2008*]
10. **PETER GLYN AVERY** of Waikanae, Director [*Appointed 2003*]
11. **PATRICIA DOWNIE** of Gore, Line Producer [*Appointed 28 July 2004*] [*Retired 20 October 2006*]
12. **DONALD KENNETH REYNOLDS** of Sydney, Producer [*Appointed 28 July 2004*] [*Retired 20 October 2006*]
13. **CHLOE SMITH** of Auckland, Line Producer [*Appointed 28 July 2004*; *Retired 5 October 2005*]
14. **MURRAY FRANCIS** of Auckland, Producer [*Appointed 28 July 2004*]
15. **GEOFFREY FREDERICK DIXON** of Raumati, Company Director, [*Retired 28 July 2004*]
16. **ROBERT NIGEL HUTCHINSON** of Wellington, Company Director, [*Retired 28 July 2004*]

17. **ELIZABETH ANN VERBOEKET** of Waikanae, CEO, [*Retired 2003*]
18. **CHRISTOPHER JOHN WEBB** of Auckland, Company Director , [*Retired 28 July 2004*]

BACKGROUND

- A. The Trustees wish to establish, and settle \$100 on, a trust to take on and manage the activities previously carried on by Film New Zealand Limited and to promote the objects of the Trust as set out in this deed.
- B. The Trustees are willing to act as the initial trustees of the Trust.
- C. The parties are entering into this deed in order to establish the Trust and the conditions on which the Trust will operate.

THIS DEED WITNESSES

1. INTERPRETATION

- 1.1 **Definitions:** For the purposes of this deed, unless the context otherwise requires:

Act means the Charitable Trusts Act 1957;

charitable purpose includes every trust purpose or institution which in accordance with the law of New Zealand is charitable (whether relating to the relief of poverty, the advancement of education, the advancement of religion, or any other purpose beneficiary to the community) and in particular a trust purpose or institution which has a primary objective of attaining the objects set out in clause 4;

income means:

- (a) all net income being distributions, rent, interest or other income derived from the Trust Fund, as and when received; and
- (b) all net income derived from the activities of the Trust, as and when the same shall be received and finally determined for each financial year of the Trust;

after payment of all reasonable expenses relating to the Trust and the Trust Fund, including all reasonable expenses and outgoings related to the administration, working, management and maintenance of the Trust Fund and the affairs of the Trust;

Independent Trustee means any Trustee as defined in this clause except a Trustee that has been nominated by the New Zealand Film Commission, the regional film offices or Investment New Zealand; [~~*the definition “Independent Trustee” was added on 28 July 2006*~~]

Objects means the objects of the Trust set out in clause 4.2;

Trust means the Film New Zealand Trust established under this deed;

Trustees mean the Trustees for the time being of the Trust Fund (who are initially the parties to this deed);

Trust Fund includes:

- (a) all money, investments and funds, both real and personal, which may be received and accepted by the Trustees as part of the Trust Fund; and
- (b) the investments and properties from time to time represented by the investments and funds referred to in (a) above and increases in, and additions to, those investments and properties.

1.2 **Interpretation:** Any references to:

- (a) the headings, appear as a matter of convenience and are not to affect the construction of this deed;
- (b) “this deed” or “the Trust Deed” include the schedules to this deed;
- (c) clauses, parts or paragraphs, in the absence of an express indication to the contrary, are references to clauses, parts and paragraphs of this deed;
- (d) any statute, statutory regulations or other statutory instrument include the statute, statutory regulations or instrument as from time to time amended or re-enacted or substituted;
- (e) the singular includes the plural and vice versa and one gender includes the other genders;
- (f) the words “written” and “writing” include facsimile communications and any other means of communication resulting in permanent visible reproduction; and

- (g) the word “person” includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality.

2. DECLARATION OF TRUST

- 2.1 The signatories to this deed wish to establish, and settle \$100 on, the Trust. The Trustees will hold all property (both real and personal) which the Trustees may from time to time purchase, receive or otherwise acquire for the purposes of the Trust set out in this deed, upon the terms and conditions set out in this deed.

3. NAME

- 3.1 The name of the Trust is “Film New Zealand Trust”, or such other name as the Trustees shall from time to time determine.

4. ESTABLISHMENT OF TRUST AND OBJECTS

- 4.1 **Trust Fund:** The Trust Fund will be held on the trusts declared under this deed.

- 4.2 **Objects:** The objects for which the Trust is established are:

- (a) to encourage and facilitate artistic achievement in the New Zealand screen production industry, by improving and developing the skills of, and opportunities for, people within the New Zealand screen production industry, for the general benefit of the New Zealand public;
- (b) to collaborate with the regional film offices to coordinate activities;
- (c) to increase the opportunity for New Zealanders to be involved in screen production, and to be engaged in work related to screen production, and to maximise employment and enterprise opportunities for New Zealand individuals and organisations provided that this object is for the promotion of the public benefit

and any benefit to private individuals or organisations is merely incidental;

in each case, in close cooperation with the New Zealand Government, the New Zealand Film Commission, NZ On Air, or any other relevant agencies, and the New Zealand screen production industry, and for the general benefit of the New Zealand public. [*clause 4.2 was amended on 31 May 2004 and 28 April 2005*]

- 4.3 **Application of objects:** The extent to which, and the means by which, the Trust fulfils its objects, are (subject to the terms of this deed) to be entirely within the discretion of the Trustees.
- 4.4 **Restriction on activities:** The Trust may not carry on any activity other than those intended to further the advancement of the Objects, provided that the Trust may carry out all incidental activities which will further the advancement of the Objects.
- 4.5 **Activities in New Zealand:** Notwithstanding any other term of this deed, the Objects for which the Trust is established and the activities for which the Trust Fund may be applied are limited to charitable purposes within New Zealand.
5. APPOINTMENT OF TRUSTEES
- 5.1 **Number:** There shall be not less than 6 nor more than 10 Trustees (or such other limit as the Trustees may from time to time approve).
- 5.2 **Minimum number:** Where for any reason the number of Trustees holding office is reduced below 6 the remaining Trustees may continue to exercise their powers under this deed, provided that they use their best endeavours to appoint such number of new Trustees to restore the number of Trustees to at least six.
- 5.3 **Original Trustees:** The original Trustees shall be the Trustees named in this deed.
- 5.4 **Term of office:** the term of office for Trustees shall be as follows:
- (a) in the case of Independent Trustees, each Independent Trustee will hold office for a maximum term of 2 years, provided that at the expiry of every second annual meeting at least 2 of the Independent

Trustees shall retire from office, the first 2 Independent Trustees to retire at the 2006 annual meeting. The Independent Trustees to retire shall be those who volunteer. If no Independent Trustees volunteer, the Independent Trustees to retire shall be those that have been in office longest since they were first appointed as Independent Trustees. As between Independent Trustees appointed on the same day, those to retire shall be determined by lot, unless otherwise agreed. Any Independent Trustee retiring at an annual meeting shall be entitled to be reappointed provided that, unless all other Trustees unanimously agree to the contrary, no Independent Trustee shall hold office for more than 2 consecutive terms; and

- (b) in the case of the Trustee nominated by the regional film offices, the Trustee will hold office for a maximum term of 2 years. Any such Trustee retiring at an annual meeting shall be entitled to be reappointed provided that, unless all Trustees unanimously agree to the contrary, the Trustee shall not hold office for more than 2 consecutive terms; and
- (c) in the case of a Trustee nominated by Investment New Zealand or the New Zealand Film Commission, each such Trustee will hold office for a term that Investment New Zealand or the New Zealand Film Commission (as the case may be) thinks fit from time to time.
[clause 5.4 was amended on 28 July 2006]

5.5 **Constitution of Board of Trustees:** From the expiry of the first annual meeting of Trustees following establishment of the Trust, the Trust board shall be comprised of up to 10 Trustees as follows:

- (a) A Trustee nominated by the NZ Film Commission;
- (b) A Trustee nominated by the regional film offices (such offices as at the date of this deed comprising:
 - (i) Film Auckland (Auckland City Economic Development Group and Enterprise Waitakere Film Facilitation and Development);
 - (ii) Film Venture Taranaki (Venture Taranaki Trust (924354));

- (iii) Film Wellington (Wellington City Council);
 - (iv) Film South (Film South New Zealand Trust (1012291));
 - (v) Film Queenstown (Queenstown Lakes District Council); and
 - (vi) Film Dunedin (Dunedin City Council); and
- (c) A Trustee nominated by Investment New Zealand;
 - (d) Up to four Trustees who have had experience in the New Zealand screen production industry (either production or post-production experience);
 - (e) Up to three further Trustees (who shall be appointed by the remaining Trustees from time to time) who are not necessarily affiliated to the New Zealand screen production industry, but who can offer specialist skills to the Trust (including marketing, financial, legal and banking skills and knowledge and experience of the local and international feature film industry) and also who may represent the different geographic areas of New Zealand.

5.6 **Nominations:** In the event that a Trustee is required to retire at an annual meeting, the Chairperson shall call for the nomination of a replacement Trustee either from the appointing body (if the Trustee is a representative Trustee), or in such other manner as the Trustees consider appropriate, no later than 30 days before the date of the relevant annual meeting.

5.7 **Persons not eligible:** The following persons may not hold office as a Trustee:

- (a) a bankrupt who has not obtained a final order of discharge or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled;
- (b) a person who has been convicted of any offence punishable by a term of imprisonment and has been sentenced to imprisonment for that offence;
- (c) a person who has been convicted of any offence that, in the opinion of the Trustees, is an offence involving dishonesty;

- (d) a person in respect of whom an order has been made under section 383 of the Companies Act 1993 or section 189 of the Companies Act 1955; or
- (e) a person who is suffering from a mental disorder as defined in the Mental Health (Compulsory Assessment and Treatment) Act 1992;

and an existing Trustee to whom this clause applies will immediately cease to be a Trustee and will have no claim against the Trust or the Trustees for loss of office or otherwise under this clause.

- 5.8 **Removal of Trustees:** A Trustee may be removed from office at any time by a majority resolution of the other Trustees and replaced by the remaining Trustees. In the event that a person ceases to be a Trustee pursuant to this clause, that person will have no claim against the Trust for loss of office or otherwise. The replacement Trustee will hold office for as long as the Trustee being replaced would have been entitled to hold office.
- 5.9 **Vesting of Trust Fund:** The Trust Fund will be vested in the Trustees in office from time to time, notwithstanding any changes in the composition of the Trustees.
- 5.10 **Chairperson:** The Trustees may appoint (and remove) a Chairperson of the Trust from time to time. The initial Chairperson will be Susan Adele Thompson. The Chairperson will:
- (a) chair meetings of the Trustees;
 - (b) cast a deciding vote in any matter on which the votes of the Trustees are deadlocked, and
 - (c) perform such other functions as are allocated to the Chairperson in this deed or by the Trustees from time to time
- 5.11 **Secretary, Treasurer and other officers:** The Trustees may appoint (and remove) a Secretary, a Treasurer and such other officers as the Trustees think fit from time to time. Those office holders may, but need not, be Trustees.

5.12 **Committees:** The Trustees may establish such committees and appoint such officers as they think fit to achieve the objects and the charitable purposes of the Trust. Any committee so established:

- (a) will be conducted in accordance with Schedule 2;
- (b) may also include individuals who are not Trustees; and
- (c) will be delegated such powers as are consistent with the terms of this deed as the Trustees think fit.

5.13 **Retirement:** A Trustee may retire at any time by giving written notice to the other Trustees.

6. MEETINGS OF TRUSTEES

6.1 **Proceedings of Trustees:** The proceedings of the Trustees will be regulated in accordance with this clause 6 and Schedule 1 (as amended from time to time).

6.2 **Meetings generally:** The Trustees shall meet such number of times per year as the Trustees think fit from time to time. [*clause 6.2 was amended on 28 July 2006*]

6.3 **Calling of special meetings:** A special meeting of Trustees:

- (a) may be called by the Board at any time; and
- (b) is to be called by the Board following a written request by not less than 3 Trustees.

6.4 **Annual meeting:** In each calendar year, the Chairperson will convene an annual meeting of the Trustees, to be held on the following basis:

- (a) the first annual meeting will be held no later than 30 June 2004;
- (b) all subsequent annual meetings of Trustees will be held on a day determined by the Trustees, provided it is held no later than 31 October in each year. Until otherwise determined by the Trustees, the financial year for the Trust will be from 1 July until 30 June of each year;

- (c) the Trustees will be given written notice of the annual meeting of Trustees, specifying that the meeting is the annual meeting of the Trustees;
- (d) the ordinary business of the annual meeting of Trustees will be:
 - (i) to confirm the minutes of the previous annual meeting and of any general meeting held since that meeting;
 - (ii) to receive reports from the CEO concerning the activities of the Trust during the last preceding financial year, together with audited financial statements (including a statement of financial position and a statement of financial performance);
 - (iii) to appoint an auditor and determine his or her remuneration;
 - (iv) to deal with the retirement of half of the Trustees and to accept nominations for the appointment of any new Trustees; and
 - (v) to consider and vote on any amendments to this deed and any other matters of general business.

6.5 **Notice of annual meeting:** The procedure for giving notice of any annual meeting of Trustees is as follows:

- (a) at least 14 days before the date fixed for holding the annual meeting, the Chairperson will send a notice by pre-paid post, stating the place, date and time of the annual meeting and the nature of the business to be transacted at the annual meeting, to each Trustee at the Trustee's address;
- (b) no business will be transacted at the annual meeting other than the business set out in the notice; and
- (c) if a Trustee wishes to bring any business before the annual meeting, the Trustee may give written notice of that business to the Chairperson. The Chairperson will include that business in the notice calling the next annual meeting after the receipt of the notice.

- 6.6 **Chairperson:** The Chairperson will preside over each annual meeting of Trustees. If the Chairperson does not appear within half an hour of the commencement of the annual meeting, the Trustees present will elect one of their number to act as chairperson at the meeting.
- 6.7 **Quorum:** No item of business will be transacted at an annual meeting unless a quorum of Trustees is present during the time when the annual meeting is considering that item. The quorum will be four Trustees being present, in person or by proxy.
- 6.8 **Adjournment for lack of quorum:** If a quorum is not present at the annual meeting within half an hour after the appointed time for commencement of the meeting, the meeting will be adjourned to such other time and place as specified by the Chairperson. If a quorum is not present within half an hour of the commencement time of the subsequent adjourned annual meeting, not less than three Trustees present, in person or by proxy, will be a quorum.
- 6.9 **Adjournment generally:** The chairperson of the annual meeting at which a quorum is present may, with the consent of the meeting, adjourn the meeting from time to time and place to place. No business will be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.

7. POWERS OF TRUSTEES

- 7.1 **Management powers:** In managing the Trust Fund and the affairs of the Trust, the Trustees will have all the powers of absolute owners of the Trust Fund to do all lawful acts and things consistent with the charitable purposes of the Trust, including all acts and things incidental to, or conducive to the attainment of, the objects of the Trust.
- 7.2 **General powers:** Without limiting the powers set out in clause 7.1, the Trustees may:
- (a) raise or borrow money;
 - (b) accept gifts, legacies or other bequests (whether unconditional or subject to any condition acceptable to the Trustees that is consistent

with the charitable purposes set out in the objects of this deed, and whether absolute or for a period of time only);

- (c) solicit, receive or enlist financial or other aid from any source whatsoever;
- (d) set up and create sub-trusts for any charitable purposes authorised by this deed and maintain separate accounts within the Trust Fund for those sub-trusts;
- (e) use the funds of the Trust as the Trustees may consider necessary and proper in payment of the reasonable costs and expenses of the furthering of or carrying out of the charitable purposes of the Trust or any of them;
- (f) conduct fundraising campaigns;
- (g) promote and advance the objects and activities of the Trust by publishing and distributing papers, journals and other publications and by advertising in any medium or by any means;
- (h) invest the Trust Fund in whole or in part, in any fund or property whether tangible or intangible and subject to any liability;
- (i) lend money on such terms and conditions as the Trustees think fit;
- (j) make grants, whether conditional or unconditional, consistent with the charitable purposes of the Trust;
- (k) employ and remunerate any person (other than a Trustee) to do any act relating to the Trust, on terms reasonable to the Trust including a Chief Executive Officer;
- (l) (subject to clause 8) pay a reasonable market remuneration to any Trustee for services actually rendered to the Trust by the Trustee, with power for such reasonable market remuneration to vary between Trustees based on such criteria as the Trustees see fit;

- (m) delegate such of their functions, powers, or duties as they may think fit to the Chief Executive Officer or such other persons as they may determine from time to time, and
- (n) exercise such other powers and discretions as the Trustees consider incidental or conducive to attaining the charitable purposes of the Trust.

8. CONFLICT OF INTEREST OF TRUSTEES

- 8.1 **Interested Trustees:** Upon becoming aware of the fact that he or she is interested in a transaction or a proposal with the Trust, a Trustee will give written notice to each of the other Trustees, specifying the nature of the Trustee's interest.
- 8.2 **General notice:** For the purposes of clause 8.1, a general notice given to all the other Trustees from time to time that a Trustee is a shareholder, director, officer or trustee of a company, body corporate or other organisation and is to be regarded as interested in any transaction which may be considered by the Trust involving, to the knowledge of the Trust, that company, body corporate or other organisation after the date of the giving of the notice, will be sufficient disclosure.
- 8.3 **Interested Trustee's permitted acts:** A Trustee who is interested in any proposal or transaction being considered by the Trust may:
- (a) attend any meeting of the Trustees at which a matter relating to the proposal or transaction arises;
 - (b) be included among the Trustees present at the meeting for the purpose of forming a quorum;
 - (c) subject to clause 8.4, vote on any matter relating to the proposal or transaction;
 - (d) sign any document, on behalf of the Trust, relating to the proposal or the transaction where the proposal or transaction has been approved by the Trustees in accordance with this clause 8; and

- (e) do any other act or thing in his or her capacity as a Trustee in relation to the proposal or transaction;

as if the Trustee was not interested in the proposal or transaction

8.4 **Interested Trustee not to vote:** Notwithstanding clause 8.3 a Trustee who is interested in any proposal or transaction being considered by the Trust may not:

- (a) vote on any matter relating to the proposal or transaction; or
- (b) sign any written resolution of the Trustees relating to the proposal or transaction;

provided that this clause 8.4 will not apply to:

- (c) a Trustee where that Trustee's interest arises as a result of a company or firm, in which the Trustee has an interest, providing professional services to the Trust in connection with the proposal or transaction.

8.5 **No distributions to Trustees:** Notwithstanding any provisions of this deed to the contrary:

- (a) the Trust may not make any distribution to, or make property of the Trust available for use by any Trustee or person that is an associated person of a Trustee if such distribution or availability for use, would, or would be likely to, prevent any amount derived by the Trust categorised as exempt income under section CB 4(1)(h) of the Income Tax Act 1994 from being so categorised; and
- (b) the Trust may not use any of the Trust's property or make any of the Trust's property available for use to any Trustee or person that is an associated person of a Trustee for the private pecuniary profit of that Trustee or associated person.

8.6 **Services of Trustees:** The Trust may (to the extent permitted from time to time by law so as to retain the tax exempt status of the Trust for fiscal purposes) engage the services of any Trustee of the Trust or any person that is an associated person of the Trustee, and in return for such services pay to such Trustee or associated person a proper salary or wage commensurate with the class of work undertaken by that Trustee or associated person and having regard

to all other relevant factors in determining the wage or salary payable to that Trustee or associated person provided that:

- (a) any moneys, benefits, remuneration or advantage (whether or not convertible into money) or any income of any kind, received, gained, achieved or derived, is reasonable and relative to that which would be paid or received in an arms length transaction; and
- (b) no Trustee or person that is 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 than current market rates; or
 - (ii) interest on money lent at no greater rate than current market rates.

8.7 **Expenses:** A Trustee may be reimbursed for reasonable travelling, accommodation and other expenses incurred in the course of performing duties or exercising powers as a Trustee, without requiring the prior authorisation of Trustees.

8.8 **No alteration of this clause:** The provisions of this clause 8 shall not be deleted or altered and shall be included and implied into any document replacing or amending this deed.

8.9 **No effect on third parties:** Nothing in this clause 8 will affect the rights of any person dealing with the Trust.

9. RESPONSIBILITY OF TRUSTEES

9.1 **Liability:** No Trustee will be liable for any loss other than those attributable to that Trustee's own dishonesty or to the wilful commission by the Trustee of any act known by that Trustee to be a breach of trust. The Trustees are not required to demonstrate the levels of care, skill and diligence contemplated by section 13B and 13C of the Trustee Act 1956.

9.2 **Indemnity:** Each of the Trustees and every employee, delegate or agent of the Trust acting on behalf of the Trustees will be indemnified out of the Trust Fund in respect of:

- (a) the exercise or attempted exercise of the trusts, powers and discretions vested in the Trustees pursuant to this deed; and
- (b) any matter or thing done or omitted to be done in any way relating to the Trust;

and will have a lien on and may use any moneys for the time being in the hands or coming into the hands of the Trustees for this indemnity and to pay all proper legal and other costs, taxes, charges, and expenses of administering or winding up the Trust which may be permitted from time to time under this deed.

9.3 **Insurance:** The Trustees may effect insurance for the Trustees in respect of any liability which may be incurred by any Trustee in his or her capacity as a Trustee, provided that such insurance shall not apply in respect of any loss attributable to the Trustee's own dishonesty or to the wilful commission of any act by the Trustee known by the Trustee to be a breach of trust.

10. ACCOUNTS AND EXPENSES

10.1 **Accounting records:** The Board must cause accounting records to be kept that:

- (a) correctly record and explain the transactions of the Trust;
- (b) will, at any time, enable the financial position of the Trust to be determined with reasonable accuracy;
- (c) must be kept in written form and in English.

10.2 **Appointment of Auditor:** The Trust, must, at each annual meeting, appoint an auditor (who must be a member of the Institute of Chartered Accountants of New Zealand):

- (a) to hold office from the conclusion of the meeting until the conclusion of the next annual meeting; and

- (b) to audit the financial statements of the Trust for the accounting period next after the meeting.

10.3 **Establishment of bank accounts:** The Trustees will open and operate such accounts at any registered bank in New Zealand as they determine from time to time. Cheques will be drawn by such person or persons as the Trustees direct from time to time.

10.4 **Expenditure:** Expenditure will be incurred by the Trust once it has been approved by the Trustees or any committee established by the Trustees under clause 5.13 where the expenditure in question relates to a function of such committee or by such other person to whom the Trustees have delegated the necessary authority.

10.5 **Forwarding of Financial Statements:** The Board shall procure that, within 10 days of the date of the annual meeting of the Trust:

- (a) the audited financial statements of the Trust; and
- (b) a certificate signed by a Trustee to the effect that the financial statements have been submitted to and approved by the Trustees at the annual meeting

are forwarded to each person or body to whom the Trustees are required by any funding contract to forward such documents.

11. AMENDMENT OF TRUST DEED

11.1 **Amendment of Trust Deed:** Subject to clause 11.2, this deed may be amended by a resolution of Trustees if and to the extent the Trustees consider reasonably necessary:

- (a) to correct a manifest error in the Trust Deed;
- (b) for reasons of administrative efficiency; and
- (c) where legislation so requires.

11.2 **Restriction on amendment:**

- (a) No addition or alteration shall be approved if the effect of the addition or alteration is:
 - (i) to permit the Trust to carry on activities other than substantially or primarily for the Objects;
 - (ii) to permit the Trust Fund to be applied for any purpose that is not a charitable purpose; or
 - (iii) to extend the Objects of the Trust to purposes or objects out of New Zealand;
- (b) The provisions and effect of clause 8 shall not be removed from this deed and shall be included or implied into any document replacing this deed;
- (c) Clause 11.2 must not be altered or revoked.

11.3 The Board shall procure that any alteration to this deed is delivered to the Registrar of Incorporated Societies for registration in accordance with section 23 of the Act.

12. INCORPORATION

12.1 The Trustees intend to incorporate the Trust as a Trust Board under Part II of the Act under the name "Film New Zealand Trust" and upon incorporation the trust property shall vest in the Trust Board and the Trust Board shall have all the powers and obligations conferred and imposed upon the Trustees by this deed.

12.2 Upon the Trust being incorporated as a Trust Board under Part II of the Act the Trustees shall obtain a common seal in the approved name of the Trust Board and shall provide for its safe custody. Such common seal shall only be used by the authority of the Trustees acting as a Trust Board and every instrument to which the common seal is affixed shall be signed by any 2 Trustees.

13. LIQUIDATION

- 13.1 **By Trustees:** The Trust may be wound up at any time on the passing of a resolution to wind it up carried by at least 75% of the Trustees present and voting at a meeting of the Trustees called for the purpose on not less than 28 days notice.
- 13.2 **Failure of objects:** Notwithstanding clause 13.1, if the objects of the Trust fail or become frustrated or incapable of being carried out at any time, the Trustees will proceed to wind up the Trust.
- 13.3 **Distribution:** Upon a winding up for any reason, after payment of all liabilities (including any arrangements under funding agreements), the surplus assets and funds of the Trust will be applied towards:
- (a) the charitable purposes of the Trust, or
 - (b) such other charitable purposes in New Zealand consistent with the purposes of the Trust as may be determined by the Trustees; or
 - (c) in default of such determination, as may be directed by the High Court of New Zealand.

14. MISCELLANEOUS

- 14.1 **Inspection of records:** All Trustees are entitled to inspect any records, books, papers, correspondence or documents of the Trust.

14.2 **Method of contracting:**

- (a) Deeds

Any contract which, if made between private persons, must be by deed must, when made by the Trust, be in writing under the common seal of the Trust.

- (b) Other written contracts

Any contract which, if made between private persons, must be in writing signed by the parties to be charged with it may, when made by the Trust,

be in writing signed by any person acting on behalf of and under the express or implied authority of the Trust.

(c) Other obligations

Any contracts which, if made between private persons might be made without writing may, when made by the Trust, be made without writing by any person acting on behalf of and under the express or implied authority of the Trust.

EXECUTED as a deed:

SCHEDULE 1

PROCEEDINGS OF TRUSTEES

1. **Proceedings:** Subject to this deed (including the other terms of this Schedule 1), the Trustees will meet together to conduct their business, adjourn and otherwise regulate their meetings as they think fit.
2. **Notice:** Subject to a waiver of this requirement by all of the Trustees in office for the time being, no meeting of the Trustees will be held unless all Trustees have been given seven days notice of the proposed meeting (which notice may be issued by or on behalf of any one or more of the Trustees).
3. **Quorum:** No item of business will be transacted at a meeting of the Trustees unless a quorum of Trustees is present during the time when the Trustees are considering that item. The quorum will be four Trustees being present in person or by proxy [*amended from "five" Trustees to "four" Trustees on 31 May 2004*].
4. **Voting:** Subject to the terms of this deed, questions arising at any meeting will be decided by a majority of votes. In the case of equality of votes, the Chairperson shall have a second or casting vote.
5. **Minutes:** The Trustees will keep minutes of all meetings and will be approved by the Trustees at the following meeting. Any minute or extract from any such approved minutes signed by the chairperson of the meeting shall be sufficient evidence without further proof of the matters referred to in that minute.
6. **Written resolution:** A resolution in writing, signed by all the Trustees or all of those Trustees permitted to vote on the particular subject matter of the resolution, will be as valid and effectual as if it had been passed at a meeting of the Trustees. Any such resolution may consist of one or more documents (including letters, facsimiles, electronic mail, or other similar means of communication) in similar form, each signed by one or more of the Trustees permitted to vote on the resolution.
7. **Conference call meetings:** The Trustees may meet together in person or by the contemporaneous linking together by telephone or other communications of a number of the Trustees (the participants) being not less than the quorum. All the provisions in this deed as to meetings will apply to such meetings by telephone, so long as the following conditions are met:
 - (a) all the participants for the time being entitled to receive notice of a meeting will be entitled to notice of a meeting by telephone and to be linked by telephone for the purposes of such meeting. Notice of the meeting may be given by telephone;
 - (b) each of the participants taking part in the meeting by telephone must be able to hear each of the others taking part at the start of the meeting;

- (c) at the start of the meeting, each participant must acknowledge his or her presence for the purpose of such meeting to all the others taking part; and
 - (d) a participant may not leave the meeting by disconnecting his or her telephone without having previously obtained the express consent of the chairperson of the meeting and will be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone, unless the participant has obtained the express consent of the chairperson to leave the meeting.
8. **Minutes of telephone meetings:** Minutes of the proceedings at a meeting held by contemporaneous linking together by telephone will be sufficient evidence of such proceedings and of the observance of all necessary formalities, if certified as a correct minute by or on behalf of the chairperson of that meeting.
9. **Proxies permitted:** A Trustee may exercise the right to vote at a meeting of Trustees either by being present in person or by proxy. A proxy for a Trustee is to be entitled to attend, be counted for the purposes of the quorum, be heard and vote at a meeting of Trustees as if the proxy were the Trustee.
10. **Appointment of proxy:** A proxy must be appointed by a notice in writing that is signed by the Trustee, and the notice must state whether the appointment is for a particular meeting or a specified term. A proxy need not be a Trustee. No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced at least 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the notice proposes to vote. If the written notice appointing a proxy is signed under power of attorney, a copy of the power of attorney (unless already deposited with the Trust) and a signed certificate of non-revocation of the power of attorney must accompany the notice.

SCHEDULE 2

PROCEEDINGS OF COMMITTEES

1. **Proceeding:** The committee will meet together to conduct its business, adjourn and otherwise regulate its meetings as the members think fit.
2. **Notice:** Subject to a waiver of this requirement by all of the members of the committee in office for the time being, no meeting of the committee will be held unless all members have been given seven days' notice of the proposed meeting (which notice may be issued by or on behalf of any one or more of the members of the committee).
3. **Quorum:** No item of business will be transacted at a meeting of a committee unless a quorum of committee members is present during the time when the committee members are considering that item. The quorum will be a majority of the members of the committee being present.
4. **Voting:** Questions arising at any meeting shall be decided by a majority of votes. In the case of equality of votes, the chairperson shall have a second or casting vote.
5. **Chairperson:** If the chairperson is unable or fails to attend a meeting of the committee for any reason, having been given due notice of such meeting, any such meeting may proceed on the basis that the members of the committee present elect one of their number to act as replacement chairperson for that meeting.
6. **Minutes:** The committee will keep minutes of all meetings and will be approved by the committee at the following meeting. Any such approved minutes or extract from any minute signed by the chairperson of the meeting shall be sufficient evidence without further proof of the matters referred to in that minute.
7. **Written resolution:** A resolution in writing signed by all the members of the committee or all of those permitted to vote on the particular subject matter of the resolution, will be as valid and effectual as if it had been passed at a meeting of the committee. Any such resolution may consist of one or more documents (including letters, facsimiles, electronic mail, or other similar means of communication) in similar form, each signed by one or more of the members of the committee permitted to vote on the resolution.
8. **Conference call meetings:** The committee may meet together in person or by the contemporaneous linking together by telephone or other communications of a number of the members of the committee (the participants) being not less than the quorum. All the provisions in these rules as to meetings will apply to such meetings by telephone, so long as the following conditions are met:

- (a) all the participants for the time being entitled to receive notice of a meeting will be entitled to notice of a meeting by telephone and to be linked by telephone for the purposes of such meeting. Notice of the meeting may be given by telephone;
 - (b) each of the participants taking part in the meeting by telephone must be able to hear each of the others taking part at the commencement of the meeting;
 - (c) at the commencement of the meeting, each participant must acknowledge his or her presence for the purpose of such meeting to all the others taking part; and
 - (d) a participant may not leave the meeting by disconnecting his or her telephone without having previously obtained the express consent of the chairperson of the meeting and shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone unless having obtained the express consent of the chairperson to leave the meeting.
9. **Minutes of telephone meetings:** Minutes of the proceedings at a meeting held by contemporaneous linking together by telephone will be sufficient evidence of such proceedings and of the observance of all necessary formalities, if certified as a correct minute by or on behalf of the chairperson of that meeting.

HISTORICAL CLAUSES

- **Clause 4.2 - prior to 31 May 2005:**

Objects: The objects for which the Trust is established are:

- (a) to fulfil the role of New Zealand’s screen production industry locations and marketing organisation;
- (b) to develop, co-ordinate and implement, with the funder, an international marketing package and plan for the New Zealand locations sector of the screen production industry;
- (c) to collaborate with the regional film offices to coordinate activities;
- (d) to increase the opportunity for New Zealanders to be involved in the production of feature films, and to be engaged in work related to the production of feature films, and to maximise employment and enterprise opportunities for New Zealand individuals and organisations;

in each case, in close cooperation with the New Zealand Government, the New Zealand Film Commission, NZ On Air, or any other relevant agencies, and the New Zealand screen production industry, and for the general benefit of the New Zealand public.

- **Clause 4.2(d) - 31 May 2004 to 28 April 2005:**

“to increase the opportunity for New Zealanders to be involved in screen production, and to be engaged in work related to screen production, and to maximise employment and enterprise opportunities for New Zealand individuals and organisations;”

- **Clause 5.4 - prior to 28 July 2006:**

“**Term of office:** The original Trustees shall all hold office until the expiry of the first annual meeting of Trustees following establishment of the Trust, to take place no later than 30 June 2004. Thereafter, Trustees will hold office for a maximum term of 2 years, provided that at the expiry of each annual meeting at least one-half

(or such number as nearly equates to one-half) of the Trustees shall retire from office. Those to retire shall be those who have been in office longest since they were last appointed as Trustees. As between Trustees appointed on the same day, those to retire shall be determined by lot, unless otherwise agreed. Any Trustee retiring at an annual meeting shall be entitled to be reappointed provided that, unless all other Trustees unanimously agree to the contrary, no Trustee shall hold office for more than 2 consecutive terms of office.”

- **Clause 6.2 - prior to 28 July 2006:**

“Meetings generally: The Trustees shall meet not less than 5 times per year (excluding the annual meeting and any special meetings).”