

REQUEST FOR PROPOSAL

FOR

Activity Services and York Centennial Park Lodge

PROVINCE OF NEW BRUNSWICK

Tourism, Heritage & Culture

SUMMARY OF KEY INFORMATION

ISSUE DATE: December 12, 2024

CLOSING DATE FOR VENDOR RESPONSE: January 31st, 2025 at 1:30 p.m. Fredericton time.

SITE VISIT & VENDOR MEETING: A site visit will take place on January 6, 2025. at 9:00 a.m.

Location: 1439 NB-105, Bright Parish, NB

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PLEASE READ THE RFP VERY CAREFULLY TO ENSURE ALL REQUIREMENTS ARE MET.

2.0 ADMINISTRATIVE REQUIREMENTS

The following terms will apply to this Request for Proposal and to any subsequent contract.

2.1 REQUEST FOR PROPOSAL TERMINOLOGY

BUSINESS DAY	Any day other than Saturday, Sunday or statutory holiday in the Province of New Brunswick.
CONTRACTOR/SUPPLIER	The successful proponent to this RFP who enters into a written contract with the Province.
STRATEGIC PROCUREMENT	Parks New Brunswick Procurement
PROVINCE	His Majesty the King in Right of the Province of New Brunswick as well as the Department of Tourism Heritage and Culture (THC).
RFP	Request for Proposal.
DEPARTMENT	The Department of Tourism, Heritage & Culture Province of New Brunswick
PROPONENT/VENDOR	An individual or a company that submits, or intends to submit, a proposal in response to this "Request for Proposal"
MUST/REQUIRED/SHALL/WILL	A requirement which must be met in order for the Proposal to receive consideration.
SHOULD/DESIRABLE/MAY	A requirement having a significant degree of importance to the objectives of the Request for Proposal.

3.0 GENERAL CONDITIONS

3.1 STANDARD TERMS AND CONDITIONS

This Request for Proposals is subject to the Standard Terms and Conditions for goods and services tenders for Province of New Brunswick, Tourism Heritage and Culture, Provincial Parks Division.

This RFP will be conducted in accordance with the *Procurement Act* and its Regulations.

3.2 MANDATORY REQUIREMENTS

This Request for Proposal may contain mandatory requirements. **Proposals not meeting all mandatory requirements will be rejected without further consideration.**

3.3 CONDITIONS RIGHT TO AMEND

The government reserves the right to amend or supplement the RFP, giving equal information and cooperation by way of issued addendum to all proponents as a result of any such amendment.

3.4 PROPOSAL INFORMATION

Material, data and information accessed or provided by the government and used in the preparation of the proposals is confidential and the property of the government.

3.5 CHANGES TO PROPOSAL WORDING

There will be no changes in the wording of the proposal after submission and no words or comments shall be added to the general conditions or detailed specifications unless requested by the Provincial Parks Division for purposes of clarification.

3.6 VENDOR INCURRED COSTS

All costs incurred in the preparation and presentation of proposals in any way whatsoever shall be wholly absorbed by the Vendor.

3.7 INDEMNITY

Unless otherwise expressly negotiated by the parties, the vendor will indemnify and save harmless the Province from and against all claims, demands, losses, damages, costs and expenses made against or incurred, suffered or sustained by the Province at any time or times (either before or after the expiration or sooner termination of this agreement) where the same or any of them are based upon or arise out of or from anything done or omitted to be done by the vendor or by any servant, employee, officer, director or sub-contractor of the vendor pursuant to the contract.

3.8 EVALUATION OF PROPOSALS

A Committee formed for that purpose will evaluate all acceptable proposals. The right is reserved to make an award based directly on the proposals submitted or to negotiate further with the preferred proponent.

The province of New Brunswick reserves the right to negotiate pricing, value added and other savings opportunities with the successful proponent at time of award and throughout the duration of the contract.

3.9 ACCEPTANCE OF PROPOSALS

The Provincial Parks Division is not bound to accept the lowest price or any proposal of those submitted. Proposals will be assessed in light of the evaluation criteria.

Subsequent to the submission of Proposals, interviews and negotiations may be conducted with some of the proponents, but there shall be no obligation to receive further information, whether in writing or oral, from any proponent. The Province shall not be obligated in any manner to any proponent whatsoever until a written agreement has been duly executed relating to an approved proposal.

3.10 FINANCIAL INFORMATION

Proponents may be requested to demonstrate financial stability during the evaluation process.

3.11 OFFICIAL LANGUAGES

All suppliers engaged to deliver services on behalf of the Government of New Brunswick must ensure compliance with the *Official Languages Act* in the delivery of those services. For more information, please refer to the [Official Languages Act](#).

3.12 ADDITIONAL INFORMATION

Proposals may contain additional information. If alternative solutions are offered, submit the information in the same format as a separate proposal.

3.13 ACCEPTANCE OF TERMS AND CONDITIONS

Unless otherwise stated by the proponent, all terms and conditions of this RFP document are assumed to be accepted and incorporated in the proponent's submission.

3.14 PROPOSAL SELECTION

Once a decision has been made, the successful Vendor will be notified by Tourism Heritage and Culture. The committee will treat all proposals with strict confidentiality and comparative information on proposals will not be divulged except where required under the *Right to Information and Protection of Privacy Act*. A Purchase of Service Contract may be signed with the Vendor once final approval of the proposal is determined.

3.15 NEWS RELEASES

Vendors shall not make news releases concerning the RFP or the awarding of the same without the written consent of the Province of New Brunswick and then only in coordination with the Province of New Brunswick.

3.16 PRIVACY AND SECURITY

This document, or any portion thereof, may not be used for any purpose other than the submission of proposals.

The vendor must agree to maintain security standards consistent with security policies of the Province. These include strict control of access to data and maintaining confidentiality of information gained while carrying out their duties.

Information pertaining to any department obtained by the vendor as a result of participation in this project is confidential and must not be disclosed without written authorization from the department.

The vendor must comply with the Protection of Privacy requirements as set out in Part 3 of the *Right to Information and Protection of Privacy Act* ("Act"). The Act creates obligations for the Province of New Brunswick and its services providers when personal information is collected, used or disclosed. Requirements include limiting collection, use, disclosure and retention of any personal information. For more information regarding this Act, please consult: <http://laws.gnb.ca/en/showfulldoc/cs/R-10.6//20130627>

3.17 CONTRACT CANCELLATION

The contract may be cancelled for, but not limited to, the following reasons.

If the contractor:

- Defaults in the observance of any of the conditions contained in the contract or specifications
- Has become insolvent
- Has committed an act of bankruptcy

If the Province:

- Cancels the annual budget allocation for this particular project.

3.18 NEGOTIATION DELAY

If a written contract cannot be negotiated within thirty (30) days of notification to the designated vendor, the Provincial Parks Division may, in its sole discretion, with not less than two (2) business days' notice, terminate negotiations with that vendor and either negotiate a contract with another vendor of its choice or choose to terminate the RFP process and not enter into a contract with any of the vendors.

3.19 CONTRACT FOR SERVICES

Written notice of acceptance of a proposal by the Province, and the subsequent full execution of a written contract will constitute a contract for the services. No proponent will acquire any legal or equitable rights or privileges relative to the services until the occurrence of both such events.

3.20 COMPLIANCE WITH LAWS

The vendor shall give all the notices and obtain all the licenses and permits required to perform the work. The vendor shall comply with all the laws applicable to the work or the performance of the contract.

3.21 PROPRIETARY RIGHTS

All proposals, plans, drawings, specifications, technical data, designs, computer program reports or other information (hereinafter referred to as “data”) produced by the proponent in tangible form in the performance of the work to be provided under this contract, shall be the property of the Government of New Brunswick. The proponent shall be provided with copies of such data for its own use as may be required for the purposes of this contract. Proposals prepared by the proponent at its expense shall remain the property of the Government of New Brunswick.

3.22 NO LOBBYING

Vendors should not initiate any communication or contact with elected or appointed officials of the government or their staff, staff of the Province of New Brunswick, or any other persons connected in any way with this Request for Proposals who have not been named as designated contacts, with the intent of influencing the RFP process. The Province reserves the right, in its absolute discretion, to disqualify any vendor that fails to comply with this procedure.

3.23 DEBRIEFING

Unsuccessful proponents may request a debriefing with members of the evaluation committee following execution of a contract with the successful proponent.

4.0 SUBMISSION OF PROPOSALS

4.2 SUBMISSION OF PROPOSALS

4.2.1 PROPOSALS TO BE SUBMITTED BY ELECTRONIC TRANSMISSION

Proposals for this RFP will only be accepted in **one** of the following manners:

- By email to: parksproposals@gnb.ca
(do not submit proposals to any other email)

4.2.2 PROPOSALS TO BE SUBMITTED ON TIME

Proposals must be submitted by electronic submission as set out in the previous section and must be received on or before the Submission Deadline as indicated below:

On or before January / 31 / 2024 / 1:30p.m. (Fredericton time)
mo. day yr. time

Proposals must be signed by an official of the company who has the authority to bind the company to the statements in the submission.

Proposals submitted after the Submission Deadline will be rejected. The Province's time clock will be deemed to be correct.

4.2.3 PROPOSALS TO BE SUBMITTED IN PRESCRIBED FORMAT

The entire proposal should be submitted in one electronic file.

1) One electronic file for the technical proposal, saved as a Portable Document Format (PDF) and prominently marked as "Technical Proposal" with the RFP title and number (see RFP cover) and the full legal name and return address of the proponent.

The electronic file name of the technical proposal should include "Technical" and an abbreviated version of the proponent's name.

4.2.4 AMENDMENT OF PROPOSALS PRIOR TO SUBMISSION DEADLINE

Proponents may amend their proposals prior to the Submission Deadline by submitting the amendment prominently marked as an "Amendment" with the RFP title and number and the full legal name and return address by electronic transmission in accordance with section 4.2.1. The electronic file name should include "Amendment" and an abbreviated form of the proponent's name. Any amendment must clearly indicate which part of the proposal the amendment is intended to amend or replace. Any amendments received after the Submission Deadline will not be accepted. Amendment must be signed by the person who signed the original bid submission or by a person authorized to sign on his or her behalf.

The proponent will not change the wording of its proposal after closing and no words or comments will be added unless requested by the Province for purposes of clarification.

4.2.5 WITHDRAWAL OF PROPOSALS

Proponents may withdraw their proposals prior to the Submission Deadline. To withdraw a proposal, a notice of withdrawal must be received by the RFP Contact prior to the Submission Deadline and must be signed by an authorized representative of the proponent. The Province is under no obligation to return withdrawn proposals.

4.2.6 PROPOSALS IRREVOCABLE AFTER SUBMISSION DEADLINE

Proposals shall be irrevocable for a period of **Ninety (90)** days from the Submission Deadline.

5.0 QUESTIONS AND INQUIRIES

All inquiries related to this RFP are to be directed in writing to the department of Tourism, Heritage & Culture – ParksNB by email:

Email: parksproposals@gnb.ca

Proponent should include a contact name, a mailing address and an Email address on all correspondence.

All questions and responses will be made available to all proponents 1 (one) week before the closing date, through the issuance of an amendment/addendum. Further questions may not be accepted after this date.

All other information obtained from alternate sources cannot be considered official and/or accurate.

6.0 BACKGROUND INFORMATION

6.1 INVITATION TO PROPOSE

The Department of Tourism, Heritage and Culture is pleased to offer an exciting opportunity for a well-qualified business entity to operate the York Centennial lodge as a business offering a variety of activities and services to the public as part of Mactaquac Provincial Park. These services may include but not limited to, equipment rentals, guided tours, aerial adventure, food and beverage. The Department of Tourism, Heritage and Culture is requesting proposals for the operations of the York Centennial lodge at Mactaquac Provincial Park and services hosted within located at 1439 NB-105, Bright Parish, NB

Mactaquac Provincial Park is a 525-ha (1,300 acre) year-round park that operates 3 campgrounds (300 campsites), 2 marinas, hundreds of kilometers of trails, beach and day use area as well as an 18-hole championship golf course.

Mactaquac Provincial Parks welcomes over 125,000 visitors annually.

The objective of this Request for Proposal is to award an operating agreement and long-term lease to an operation who will accomplish the following:

- Provide a service to customers that enhances the Mactaquac Provincial Park experience and destination.
- Works in partnership with Parks NB to develop and deliver on programs, events and packages.
- Products and services that fit within the Parks New Brunswick mandate.
- Assess, provide, and install all necessary furnishings and equipment over and above the existing to create an attractive and inviting destination.
- Implement quality marketing and an effective advertising campaign.

6.2 ***SERVICES REQUIRED BY THE DEPARTMENT OF TOURISM, HERITAGE & CULTURE:***

The Lessee shall bear sole responsibility for the operation of the said services and space during hours of operation.

The Lessee agrees to operate a service in the agreed locations at Mactaquac Provincial Park with the following terms and conditions:

- a. Hours of operation to be set by mutual agreement between the Park Manager, Mactaquac Provincial Park and the Lessee commencing November 1st, of each year.

- b. The Lessee shall decorate the indoor and deck area with proposed organization of these spaces being accepted by the Park Manager. All changes to organization of these spaces must first be accepted by Park Manager.
- c. Maintenance and repair of the equipment will be the responsibility of the lessee.
- d. The Lessee is responsible for routine maintenance and any other equipment supplied by Mactaquac Provincial Park.
- e. The Lessee shall provide credit card and Interac payment services.
- f. Communications from Mactaquac Provincial Park are to be coordinated by the Park Manager to the Lessee, and any communications to the Lessee’s staff will be coordinated with the Lessee.
- g. Proof of liability insurance or the ability to obtain sufficient insurance including liquor liability if applicable shall form an attachment to the lease. Coverage shall be a minimum of Two Million Dollars (\$2,000,000.00) liability for non adventure based activities or a minimum of Five Million Dollars (\$5,000,000.00) for adventure related activities and must be in force throughout the agreement and a copy of the policy given to Park Manager (Mactaquac Provincial Park) by November 1st of each year.
- h. The lessee is to provide an inventory report of all Mactaquac Provincial Park equipment at end of season. Malfunctioning equipment is to be identified to the Park Manager so corrective actions can be determined in the event of annual budgetary impacts.
- i. Administration of the liquor license (if applicable) is the responsibility of the Lessee. Any issues or concerns that may develop for the license administration will be addressed with the Park Manager.

The proponent will provide financial compensation to THC at the rates below to a maximum of 10% of gross revenue:

Year	Percentage of gross revenue
2025	5%
2026	7%
2027	9%
2028	10%
2029	10%

7.0 PROPOSAL CONTENT & REQUIREMENTS

Proposals should include a table of contents, be presented in the following format and include a response to each question in the order in which it is asked. It is helpful to the evaluation committee if the corresponding section headings are utilized in your submission.

7.1 MANDATORY REQUIREMENTS

- a) Submissions must be received in their entirety by the time and date indicated.

- b) Submissions must be signed by an official of the company who is authorized to sign on behalf of/and bind the company to statements made in their submission.

7.2 GENERAL REQUIREMENTS

7.2.1 COMPANY BACKGROUND

Provide a brief summary of the history of your company including years in business, number of staff, location, etc.

7.2.2 COMPANY REFERENCES

Provide three references of clients, suppliers, property owners, for whom you have completed a project of similar scope and nature as this project. Include a description of the project, Company name, address, telephone numbers, and contact person. Preference will be given to companies who provide relevant references and who have experience in Public/Private agreements.

7.2.3 PROJECT TEAM

Name employees who will be assigned to this project and provide relevant information including resumes and experience of each team member that particularly relates to their expertise that makes them suitable for this project.

7.2.4 Operating Plan

Provide an operating plan for the duration of the requested contract period. This plan must include:

- Activity(ies) being offered
- Areas of the park beyond the York Centennial Lodge that you wish to develop/ utilize.
- Detailed revenue generation strategies
- Plan for complementing parks events and activities
- Environmental best practices that will be incorporated
- DRAFT menu for, canteen, beverage service, if applicable
- Plan to incorporate local partners
- Anticipated operating hours and schedule for the entire year
- Bilingual Service Plan

7.3 Intentionally omitted.

7.4 APPENDICES / ATTACHMENTS

All materials submitted as appendices / attachments to the proposal should be clearly indicated in the Table of Contents. Material not so documented by the Vendor will be considered as extraneous information. This list of attachments should also contain a brief description of the attached material, including what information can be gained by the evaluation team from its examination of the material.

8.0 EVALUATION PROCEDURE

A Committee made up of representatives from THC will evaluate all proposals. The accepted proposals will be used as the basis for selecting the successful proponent(s).

The process will include a review and check of the information contained in the proposals and interviewing references familiar with the work of the Vendor.

8.1 EVALUATION CRITERIA

The evaluation of proposals will be conducted based solely on the Technical Evaluation.

Proposals must meet the minimum score of 70 points in Stage One to be considered for evaluation.

STAGE ONE EVALUATION		
CRITERION	Weight / Points	Minimum Score Required
Company Background (7.2.1)	15%	
Company References (7.2.2)	15%	
Project Team (7.2.3)	10%	
Operation Plan (7.2.4)	60%	50%
TOTAL	100%	70%

- Minimum score must be achieved in each category to continue.
- Total Minimum score must be achieved in Stage One in order to be considered.

The Province of New Brunswick reserves the right to negotiate pricing, value added and other savings opportunities with the successful proponent at time of award and throughout the duration of the contract.

APPENDIX A

AGREEMENT FOR THE OPERATION AND MANAGEMENT OF

BETWEEN:

**HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK
as represented by
THE MINISTER OF TOURISM, HERITAGE & CULTURE**

AND:



2024-2029

PROVINCIAL PARK

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Schedule A – Premises

Schedule B – Services

Schedule C –

THIS AGREEMENT made as of the _____ day of _____, 2022.

BETWEEN: **HIS MAJESTY THE KING in right of the PROVINCE OF NEW BRUNSWICK as represented by the MINISTER OF TOURISM, HERITAGE AND CULTURE.** (the “Minister” or the “Province”)

- and -

....., a company duly incorporated under the laws of the province of New Brunswick, having its head office in the city of Campbellton, county of Restigouche (the “Licensee”).

RECITALS:

- (A) The Minister has administration and control of the ... located in ... Provincial Park, County of and Province of New Brunswick.
- (B) The Licensee has agreed with the Minister to operate and manage the Business as an establishment that provides services in accordance with the terms of this Agreement.

THIS AGREEMENT WITNESSES that in consideration of the mutual covenants contained in this agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Definitions:** In this Agreement, unless the context otherwise requires:

Agreement means this operation and management agreement together with all attached Schedules.

Applicable Laws means all federal, provincial and local laws, statutes, regulations, orders, ordinances, by-laws, rules, plans, policies and decrees, including those concerning pollution or protection of the natural environment or otherwise relating to the environment, safety or health of humans or other living organisms.

Authorized Officer means any person designated by the Province for the purpose of this Agreement.

Business means the at Provincial Park.

Equipment means all equipment purchased by the Minister or by Licensee required to operate the Business.

Excluded Repairs means repairs and replacements to the Premises that are necessitated by, arise out of, or result from: (i) an event of Force Majeure; (ii) conditions in existence prior to the occupation or use of the Premises by Licensee; or (iii) environmental damage (including any remedial action required to be done during the course of this Agreement), in each case except to the extent that such repairs or replacements are necessitated by, arise out of, or result from

the negligence or misconduct of the Licensee, its employees, agents, representatives or contractors.

Force Majeure means any and all acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, acts of the Queen's enemies, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, explosions, fires, civil disturbances and any other causes, whether of the kind herein enumerated or otherwise, not within the reasonable control of the Party claiming relief and which by the exercise of reasonable diligence and at a reasonable cost such Party is unable to prevent or overcome; but shall not include a lack of funds or insolvency of either Party.

Gross Revenue means the total revenue from all sources from the operations the Licensee is authorized to carry on under this Agreement, including but not limited to revenue derived from the provision of services listed in Schedule B.

Minister means the Minister of Tourism, Heritage and Culture of the Province and includes anyone authorized to act on the Minister's behalf.

Operating Season means the period of time each year during which the Park is open to the public, as amended from time to time by the Minister.

Park means Provincial Park, in the Province of New Brunswick.

Party means either the Minister or Licensee, as the case may be, and "**Parties**" means both of them.

Premises means the portion of the Provincial Park, including any buildings and structures, outlined in red on the plan attached as Schedule A.

Province means Her Majesty the Queen in Right of the Province of New Brunswick as represented by the Minister of Tourism, Heritage and Culture.

Services means the services provided for in Schedule B and any other services the Licensee is authorized to provide by the Minister.

Term means the period set out in Section 7 or any renewal or extension of that period.

Waste Material means any debris, rubbish, scrap, refuse, effluent, discard or garbage of any kind, including, but not limited to, discarded or disused substances, material or things, broken or dismantled things, and substances, materials or deteriorating or decaying due to exposure to the weather.

2. **Construction:**

- (a) The insertion of headings in this Agreement is for convenience of reference only and shall not affect the interpretation of this Agreement. In this Agreement, words denoting the singular include the plural and vice versa and words denoting any gender include all genders.
- (b) The attached Schedules form part of this Agreement shall be read and construed as if the said Schedules had been contained in this Agreement.

3. **Grant of License:**
(a) The Minister grants the Licensee:
- (i) permission to provide on the Premises the Services listed in Schedule B attached;
 - (ii) the right to manage and operate the Business; and
 - (iii) permission to occupy and use the Premises, and, with the written authorization of the Minister, such other areas of the Park as specified in the authorization, for the sole purpose of providing the Services.
- (b) Nothing in this Agreement shall be construed as limiting in any way the right of the Minister to permit persons other than the Licensee to carry on commercial activities in the Park, including but not limited to the sale or free distribution of products and the distribution of marketing materials.
4. **Prohibitions:** The Licensee shall not use, occupy or permit to be used or occupied, the Premises, or any part of the Premises:
- (a) For illegal or unlawful purpose, or in any manner which would result in the cancellation of any insurance policy required under this Agreement.
 - (b) For any purpose not contemplated in this Agreement, except with the prior written consent of the Minister, which consent may be arbitrarily withheld.
5. **No Interest in Land:** Nothing in this Agreement shall be construed as in any way whatsoever granting or conveying to the Licensee any easement, profit à prendre, lease, fee simple or any other interest in the Park or any portion of the Park.
6. **Disclaimer:** The Minister does not warrant, and makes no representation as to, the profitability or sustainability of the Business, and shall not be liable to compensate the Licensee or any other person for any losses sustained by the Licensee or any other person in the operation of the Business or the delivery of the Services.
7. **Term:** The term of this Agreement shall be for a period of The Licensee will have use of the Premises for that period of time and will be required to
8. **Option To Renew:** This Agreement may be renewed at the sole and absolute discretion of the Minister, provided the Licensee is not in default under this Agreement, and provided the Licensee makes a written request to the Minister at least 90 days prior to the expiry of the Term.
9. **Days and Hours:** The Licensee shall provide the Services on the Premises, or for such other hours as may be established from time to time with the written consent of the Minister.
10. **Extension of Operating Season:** The Licensee's right to use the Premises may commence prior to, and/or extend beyond the Operating Season upon the written consent of the Minister, which consent may be arbitrarily withheld, upon such terms and conditions as the Minister may set out in such consent.
11. **Minister's Discretion:** Nothing in this Agreement shall be construed so as to restrict or otherwise govern the months, days and hours of operation of the Park or any within the Park, including the Premises, which shall remain at the sole discretion of the Minister.

12. Confidential Information:

- (a) For the purposes of this agreement, "Confidential Information" means all information relating to the Park, the Minister and the Province which is supplied directly or indirectly by or on behalf of the Minister (whether before or after the date of this Agreement), either in writing, orally or in any other form, or which is obtained through observations made by the Licensee, and, without limiting the foregoing, includes all information pertaining to the operation and management of the Park.
- (b) The Licensee will hold in strict confidence any Confidential Information, provided that the Licensee may, subject to obtaining confidentiality restrictions similar to those set out in this Agreement, provide to its contractors documents and other information which is necessary for the Licensee's performance of this Agreement. The obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:
 - i) which the Minister confirms in writing is not required to be treated as Confidential Information;
 - ii) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;
 - iii) to the extent any person is required to disclose such Confidential Information by Applicable Laws, provided that such person shall take all reasonable steps to limit such disclosure and any subsequent disclosure of such Confidential Information.
- (c) If the Licensee is in breach of this Section 12, the Minister may terminate this agreement immediately upon written notice to the Licensee.

This Section 12 shall survive the termination or expiration of this Agreement and shall remain in force and effect until such time as the parties may mutually agree to the release of the obligations contained therein.

13. License Fee:

- (a) The Licensee shall pay a monthly license fee during the operating season. All License Fees shall be due and payable within fifteen (15) days of the end of each month of each Operating Season during the Term. All payments are to be made to The Minister of Finance.
- (b) The monthly license fee for the operating season is of, plus HST.
- (c) An annual amount of in publicity (Radio, Television and/or Printed) and /or promotional items.
- (d) If any amounts are not paid in full when due and payable, Licensee shall pay interest on the balance due at a rate of ... percent ([0....] %) per month compounded monthly or such other rate as may be established by the Board of Management for the Province of New Brunswick, from time to time, with respect to the monies owing to the Province of New Brunswick.

14. Licensee's Obligations:

- (a) The Licensee shall provide the Services and manage and operate the Business in a diligent and professional manner.

- (b) The Licensee shall exercise its rights and carry out its obligations under this Agreement, including the delivery of the Services and the operation of the Business, in accordance with Applicable Laws.
- (c) The Licensee shall provide the Services to the public at prices that are, in the opinion of the Minister, fair and reasonable in regard to similar services provided by other private enterprises or facilities within close proximity to the Premises.
- (d) The Licensee shall, unless otherwise notified, arrange for as needed, and pay the full cost of, all utilities and municipal services required for the Business and the Premises, including without limitation, electricity, natural gas, water and sewer, waste removal and telecommunications (including cable, satellite, internet and telephone).
- (e) The Licensee shall pay all taxes, rates, duties and assessments, imposed, charged or levied by any government or authority whether municipally, provincially or federally, charged with respect to the Services, the Premises, or any chattels on the Premises.
- (f) The Licensee shall procure and maintain at its sole cost and expense all permits, licenses and approvals required under Applicable Laws as may be necessary to enable the Licensee to provide the Services and operate the Business.
- (g) All charges, costs and expenses in connection with the Business, the Premises or the Services not expressly stated in this Agreement to be the responsibility of the Minister shall be the responsibility of the Licensee.
- (h) The Licensee shall offer a fair exchange for of American currency in accordance with the exchange rate established from time to time by the Bank of Canada. The Licensee shall post the exchange rate in a prominent location on the premises.
- (i) The Licensee shall ensure that proper supervision is provided for all activities on the Premises and shall ensure that the Business is operated, and the Services are performed in a manner conducive to the safety and well-being of the public.
- (j) The Licensee shall at its cost and expense, perform all post-Operating Season shutdown and winterization of the Premises in a manner satisfactory to the Minister.
- (k) The Licensee shall, in conjunction with the Department, promote the Business within the local area. The Licensee's marketing strategies shall be consistent with existing strategies employed by the Department in marketing for the Park and surrounding area. The Licensee shall, on an annual basis, advise the Minister of its marketing strategy for the next year.
- (l) Advertising of the Business and/or the Services through the media shall be at the discretion, and the sole cost and expense, of the Licensee, provided that no such advertisement shall be issued or published without the prior written approval of the Minister.
- (m) The Licensee shall observe such other and further rules and regulations as the Minister may make for the operation, regulation, safety, care or cleanliness of the Premises.

15. Staffing Policy: The Licensee shall adhere to the following staffing policies, as amended by the Minister from time to time:

- (a) The hiring of personnel for the operation and management of the Business shall be the exclusive responsibility of the Licensee.

- (b) The Licensee shall ensure that all Licensee staff wear distinctive uniforms as a means of identifying the staff to the public should they require information or assistance.
- (c) The Licensee shall provide bilingual service (French & English) both written and spoken to all clients of the Business as well as bilingual personnel for the management and operation of the Business and any expanded facilities.
- (d) The Licensee shall ensure that all personnel are qualified to perform the jobs and responsibilities to which they are assigned.
- (e) The Licensee shall ensure that its staff members are accessible to visitors and knowledgeable about the Business and other Park facilities.
- (f) During the hours of operation, the Licensee shall ensure that there is sufficient staff on hand to ensure the safe, clean and efficient operation of the Business.

16. Insurance: The Licensee shall procure and maintain at its sole cost and expense, at a minimum, the following types and amounts of insurance:

- (a) The Licensee shall obtain and maintain comprehensive general liability insurance in an amount not less than two million dollars (\$2 million).
- (b) The Licensee shall insure the buildings on the Premises, their content, and all Equipment against all risk of loss or damage caused by or resulting from fire, lightning, explosion, malfunction or non-function of boilers, pipes or accessories in or about the building and all perils defined in a standard fire insurance additional-perils supplementary contract normally in use from time to time during the term of this License or any extension thereof for similar structures in the Province of New Brunswick.
- (c) The Licensee's policies of insurance, as aforesaid (the "Policies"), shall include His Majesty the King in Right of the Province of New Brunswick as an additional insured.
- (d) The Policies shall provide that thirty (30) days' written notice will be given to the Minister prior to any material change adversely affecting the Minister, or cancellation of any Policy.
- (e) The Policies shall be endorsed to provide to the Minister revised certificates of insurance immediately upon renewal of or any amendment to the Policies.
- (f) The Licensee shall provide to the Minister copies of the Policies and certificates of insurance evidencing compliance with the provisions of this Schedule. If such copies and certificates of insurance have not been received by the Minister within 48 hours of the commencement of the Operating Season, the Minister may, by notice in writing, immediately terminate this Agreement.

17. Indemnification: The Licensee shall at all times indemnify and save harmless the Province and the Minister from and against all actions, suits, proceedings, costs, charges, expenses, claims, demands, matters and things whatsoever and by whomsoever made, sustained, brought or prosecuted which are in any manner based upon, occasioned by, attributable to or arising from anything done or suffered or omitted to be done by the Licensee, his servants, agents, contractors, invitees, or any, some or all of them, in connection with the Licensee's use and occupation of the Premises or with any of the Licensee's operations at the Premises and whether

caused by the negligence of the Licensee, his servants, agents, contractors, invitees or sub-Licensees or any of them.

18. **Waiver**: The Licensee shall make no claim or demand against the Province and/or the Minister for any injury, including injury resulting in death, loss or damage to property, suffered or sustained by Licensee or by any other person which is based upon, arises out of, or is connected with this Agreement or anything done or maintained or anything not done or maintained as required under this agreement and waives as against the Province and the Minister all such claims or demands.
19. **Survival of Protection**: The provisions of Sections 17 and 18 shall survive any termination or expiry of this Agreement and shall remain in full force and effect until fully discharged.
20. **Financial Reporting**: The Licensee shall comply with the financial reporting requirements set out below, as amended by the Minister from time to time:

(a) *Intentionally deleted.*

(b) During the Term, the Licensee shall submit annually to the Minister on or before the 30th day of June, a complete statement of the Licensee's Gross Revenue and expenditures relating to the operation of the Business during the immediately preceding Operating Season.

(c) The statement to be submitted pursuant to Section 20(b) shall be: an unaudited financial statement satisfactory to the Minister if Gross Revenues are equal to or in excess of \$300,000.

(d) The Licensee shall prepare and maintain adequate financial records (the "Records"), including, but not limited to, sales invoices, cash receipts, daily cash register tapes, bank deposits, bank statements and daily sales reports.

(e) The Licensee shall at all times during the Agreement keep and maintain in accordance with General Accepted Accounting Principles consistently applied, full, true and accurate books of accounts (the "Books") fully reflecting on matters relating to the management and operation of the Business, including all income, expenditures, assets and liabilities.

(f) The Licensee shall make the Books and Records available for inspection by the Minister following prior notice that such an inspection shall take place.

(g) If the Licensee does not submit an annual statement of Gross Revenue on or before October 31, the Minister may estimate the Gross Revenue and such estimated amount (the "Revenue Estimate") shall be used in order to determine the License Fee. A Revenue Estimate shall be final and binding.

(h) The Records, Books and other documents and materials relating to the management and operation of the Business shall be the property of the Licensee and shall be retained for a period of not less than three (3) years after termination of this Agreement. The Minister shall have the right to make copies, at the Minister's expense, of such documents in Licensee's possession that the Minister deems pertinent.

21. **Quality Control**: The Licensee shall adhere to the quality control policies and procedures set out below, as amended by the Minister from time to time.

- (a) The Licensee shall ensure that all notices and printed materials used for the purpose of informing the public are written in both official languages, and shall obtain the approval of the Minister prior to their being displayed or distributed, in regard to content, specifications, location and method of installation.
- (b) The Licensee shall ensure that lighting levels throughout the Premises are maintained at a safe and comfortable level of illumination for visitors and staff.
- (c) The Licensee shall ensure that a standard of cleanliness acceptable to the Minister is maintained at all times throughout the Premises.
- (d) The Licensee shall provide a service level consistent with the level of service provided at comparable provincial facilities. Front line personnel as well as other operational staff may be asked to attend customer service training.
- (e) The Licensee may be subject to an evaluation conducted by the Minister's representatives to test the Services being provided from the perspective of a visitor, or tourist so as to identify strengths, weaknesses and deficiencies in the delivery of the Services.
- (f) The Licensee shall respond and act upon, as appropriate, all complaints received in a prompt, courteous and efficient manner.
- (g) The Licensee shall conduct periodic surveys of visitors in order to assess their opinion of the Services. The results of these surveys shall be made available to the Minister upon request. The Licensee will meet with a representative of the Minister at least once a year, or more frequently at the discretion of the Minister, for the purpose of assessing the results of surveys and visitor responses, observations and comments.

22. Sanitation and Environmental Protection: The Licensee shall comply with the following provisions, as amended from time to time by the Minister:

- (a) The Licensee shall, at its sole cost and expense, provide the day to day maintenance and housekeeping of the Premises and shall keep the Premises in a clean, sanitary, attractive condition that is satisfactory to the Minister.
- (b) The Licensee shall, at its sole cost and expense, arrange for the proper disposal of all Waste Material from all parts of the Premises.
- (c) The Licensee shall, at its sole cost and expense, ensure that all Waste Material is stored, while awaiting collection, in containers approved by the Minister. The volume of any Waste Material on the Premises shall not exceed the capacity of the storage containers provided. No Waste Material shall be stored or accumulated around or about the storage containers.
- (d) Except as necessary for the operation of the Services, subject to Section 21(c), no hazardous or toxic materials, substances, pollutants, contaminants, inflammable or explosive materials such as oil, grease, gasoline, kerosene, paraffin or naphta ("Pollutants") or Waste Materials shall be discharged, placed or disposed of at, on or in the Premises.
- (e) The Licensee shall, at its sole cost and expense, remove, or take remedial action with regard to, any Pollutants existing at, on or in the Premises or elsewhere as a result of any act or omission of the Licensee or its employees, agents or contractors. Any such removal or remedial action shall be:

- (i) approved in writing by the Minister prior to commencement upon such terms and conditions and within such time period as the Minister may deem warranted; and
 - (ii) undertaken in a manner so as to minimize any impact on the Premises, the Park and such other locations as may be specified by the Minister.
- (f) The Minister may, upon notice in writing, compel the Licensee to remove or to take remedial action with regard to any Pollutants or Waste Material at, on or in the Premises or elsewhere as a result of any act or omission of the Licensee or its employees, agents or contractors, upon such terms and conditions and within such time period as the Minister may deem warranted.
- (g) The Licensee shall allow the Minister to take any necessary and reasonable action on the Premises in order to protect the ecological integrity of the Park, or to protect the flora or fauna from immediate threat or to protect human health.

23. Repairs:

- (a) The Licensee shall, at its sole cost and expense, make or cause to be made all repairs and replacements, except for the Excluded Repairs, necessary to keep the Premises in a condition at least equivalent to the condition of the Premises as of the commencement of the Term, subject to reasonable wear and tear.
- (b) The Minister may from time to time give the Licensee notice in writing of those repairs which are reasonably required in the opinion of the Minister and the Licensee shall make such repairs at its sole expense, according to such notice.
- (c) The Licensee shall not make any structural alteration to the Premises without the written approval of the Minister.
- (d) Any physical alterations, additions, enhancements and permanent fixtures, constructed or placed in or about the Premises shall become the property of the Minister at no cost to the Minister.

24. Asset Renewal & Capital Improvements: The License Fee may be waived in whole or in part by the Minister, in his sole discretion, in consideration for expenditures made by the Licensee for equipment purchases and construction, repairs or alterations carried out in order to improve, upgrade and maintain the Premises, subject to the following conditions:

- (a) A written submission (the "Fee Waiver Request") detailing the Licensee's planned purchase of equipment or construction, repair or alteration must be submitted to the Minister prior to June 1st of each year.
- (b) The Fee Waiver Request shall include a written estimate and a total cost.
- (c) The fee waived may be on a cost-shared basis with the Licensee, in the sole discretion of the Minister.
- (d) The License Fee portion to be waived shall be for the Operating Season immediately following the submission of the Fee Waiver Request, and shall not exceed: (i) the fee payable for the previous Operating Season; or (ii) where a Fee Waiver Request is submitted prior to the first Operating Season, the Minister's estimate of the License Fee payable for that Operating Season.

(e) The Licensee acknowledges that the *Crown Construction Contracts Act* (the “CCCA”) applies to every contract for the construction, repair or alteration of land or structures owned or administered by the Crown, including the Premises. The Licensee shall comply with the requirements of the CCCA, including but not limited to any requirements for tendering, in carrying out all construction, repair and alterations to the Premises under this agreement.

25. **Department Equipment:** *Intentionally deleted – does not apply to this agreement*

26. **New and Replacement Equipment:** *Intentionally deleted – does not apply to this agreement*

27. **Licensee Equipment:** Equipment supplied by the Licensee at its own expense shall not form part of the Department Equipment and shall remain the property of the Licensee. Any and all property belonging to the Licensee shall be kept at the Licensee’s own risk and the Minister shall not be responsible for any loss or damage to such property by any cause whatsoever.

28. **Maintenance and Repair of Equipment:** *Intentionally deleted – does not apply to this agreement*

29. **Right of Entry:**

(a) The Minister shall have the right at all reasonable times to enter the Premises for inspection purposes, to ensure that the terms of this Agreement are being observed and performed by the Licensee, or to otherwise carry out the Minister’s obligations under this Agreement. The right of entry under this Section 28 shall not be exercised so as to cause unreasonable disruption of the Services.

(b) The Minister and employees or agents of any public utility shall have the right upon reasonable notice to the Licensee at all times to enter upon the Premises for the purpose of inspecting, repairing, maintaining or constructing any public utility.

30. **Force Majeure:**

(a) Neither party shall be liable to be in default or in breach of this Agreement for its delay, failure or inability to meet any of its obligations under this Agreement caused by or arising from any event of Force Majeure.

(b) If an event of Force Majeure has occurred and continues for a period of ninety (90) continuous days, the Licensee shall have the right to terminate this Agreement upon thirty (30) days written notice to the Minister. If an event of Force Majeure prevents access to the Premises by the public for a period of thirty (30) days during the Operating Season, the Minister shall have the right to terminate this Agreement upon ten (10) days written notice to the Licensee.

31. **Termination for Cause:** This Agreement may be immediately terminated by the Minister upon written notice to the Licensee:

(a) If any portion of the License Fee remains unpaid for more than thirty (30) days after it becomes due whether formally demanded or not and payment of such amount is not received by the Minister within five (5) Business Days after delivery of written notice by the Minister to the Licensee that such amount has not been paid.

- (b) If Licensee is in breach of any of its obligations under this agreement, which breach is not cured within ten (10) days after delivery of written notice by the Minister to the Licensee specifying such breach.
- (c) Where the Licensee's management of the Services is deficient in the opinion of the Minister, and the Licensee has not, within ten (10) days following receipt of written notice from the Minister of the particular items of deficiency, corrected such deficiencies to the satisfaction of the Minister;
- (d) in accordance with Section 16 (Insurance);
- (e) in accordance with Section 30 (Force Majeure);
- (f) upon the occurrence of any of the following events:
 - (i) The Licensee makes an assignment for the benefit of its creditors or makes a proposal to its creditors under any bankruptcy or insolvency legislation.
 - (ii) A petition in bankruptcy is filed and presented against the Licensee, or a receiver, receiver and manager, trustee custodian or similar agent is appointed or takes possession of any property or business of The Licensee.
 - (iii) The Licensee ceases or threatens to cease to carry on its business.
 - (iv) The Licensee abandons the operation of the Business.
 - (v) The Licensee is convicted of any violation of Applicable Laws affecting the operation of the Business.

32. Termination for Convenience: This Agreement may be terminated by either party at any time upon giving the other party sixty (60) days written notice.

33. Expiry: This Agreement shall automatically terminate without notice upon expiry of the Term unless renewed pursuant to Section 8.

34. Remedies: No termination shall affect any liability of either party under this Agreement that arises out of such termination.

35. Surrender:

(a) Upon termination or expiry of this Agreement and unless the Minister otherwise directs, the Licensee shall remove from the Premises and the Park, within forty-eight (48) hours of termination, all of the Licensee's belongings and supplies, including Licensee Equipment, and shall leave the Premises in a condition satisfactory to the Minister.

(b) If the Licensee fails to comply with Section 34(a), the Minister may have the Licensee's equipment and belongings, supplies removed and stored or sold and the Premises cleaned and repaired, the total cost of which shall be due and payable by the Licensee to the Minister upon receipt by the Licensee of an invoice from the Minister.

36. General Provisions:

(a) Any notice or demand (in each case, "Notice") to be given to any party to this Agreement shall be in writing and shall be either personally delivered or sent by facsimile. Any Notice given shall be sent to the intended recipient at its address or facsimile number as follows:

In the case of the Licensee:

In the case of the Minister:

Department of Tourism, Heritage and Culture
Attention:
PO Box 6000
Fredericton, NB
E3B 5H1

Or to such other address or facsimile number as either party may from time to time notify the other in accordance with this Section.

- (b) This Agreement, including any Schedules attached, constitutes the entire Agreement between the parties and supersedes all prior agreements, communications, understandings, negotiations and discussions, whether oral or written, express or implied, of the Parties with respect to the subject matter of this Agreement. There are no covenants, representations, warranties, agreements or conditions expressed or implied collateral or otherwise forming part of or in any way affecting or relating to this Agreement except as expressed in this Agreement. The Parties agree that in entering into this Agreement they have not relied upon any oral or written agreements, representations, warranties, promises, information, or understandings, express or implied, not specifically set forth in this Agreement.
- (c) The Licensee shall not assign this Agreement or any rights or obligations under this Agreement without prior written consent of the Minister.
- (d) All media releases, public announcements, promotional or marketing material shall be approved by the Minister prior to such release.
- (e) This Agreement shall not be amended except by written instrument duly executed by the Parties.
- (f) The Licensee represents and warrants that it has full power and authority to enter into and perform this Agreement and that the person signing this Agreement on behalf of the Licensee has been properly authorized and empowered to enter into this Agreement.
- (g) No condonation, forgiveness, waiver or forbearance by the Province of any non-observance or non-performance by the Licensee of any of the terms or conditions of this Agreement shall operate as a waiver or estoppel by or against the Province in respect of any term or condition or any subsequent non-observance or non-performance by the Licensee of any term or condition of this Agreement.
- (h) The Licensee is an independent contractor and neither the Licensee, nor any officer, employee, servant, agent or volunteer of the Licensee, shall be deemed to be an employee, agent, servant, or joint venturer of or with the Province. The Licensee shall not represent, or do anything to induce any person to believe, that the Licensee is an employee, agent, servant, or joint venturer of or with the Province for any purpose. Nothing in this Agreement shall be deemed to constitute the Licensee an employee, agent, servant, or joint venturer of or with the Province, nor provide any authority for Licensee to bind the Province.
- (i) Time shall be of the essence of this Agreement.
- (j) If any provision of this Agreement is held by any court of competent jurisdiction to be illegal, void or unenforceable, such provision shall not impair the enforceability of any other provision of this Agreement.

(k) This Agreement shall enure to the benefit of, and shall be binding on, the Parties and their respective successors, heirs, administrators and permitted assigns.

IN WITNESS WHEREOF the parties have hereunto set their hands and seal by their proper officers in that behalf on the day and year first above written.

SIGNED, SEALED AND DELIVERED
in the presence of

) **HIS MAJESTY THE KING IN RIGHT OF**
) **THE PROVINCE OF NEW BRUNSWICK as**
) **represented by the MINISTER OF**
) **TOURISM, HERITAGE AND CULTURE**

Witness

) _____
) Honorable

Witness

) _____
)

Witness

) _____
), Park Manager

SCHEDULE A – PREMISES

SCHEDULE B
Services atProvincial Park

1. The Licensee shall provide the following services at the Premises: