

# **REQUEST FOR PROPOSALS**

## **FOR**

### **Exclusive Cannabis Retail in New Brunswick**

**Department of Finance and Treasury Board**

**Request for Proposal Number: [3100027-20](#)**

**Contents**

PART 1 – INVITATION AND SUBMISSION INSTRUCTIONS ..... 4

- 1.1 Invitation to Proponents ..... 4
- 1.2 RFP Contact..... 4
- 1.3 Type of Agreement for Deliverables..... 4
- 1.4 RFP Timetable..... 4
- 1.5 Submission of Proposals ..... 5

PART 2 – EVALUATION AND NEGOTIATION ..... 7

- 2.1 Stages of Evaluation and Negotiation ..... 7
- 2.2 Mandatory Submission Requirements ..... 7
- 2.3 Stage 1 – Proposal Evaluation..... 7
- 2.4 Stage 2 – Due Diligence, Dialogue and BAFO ..... 8
- 2.5 Stage 3 – Final Negotiations and Agreement Execution ..... 9

PART 3 – TERMS AND CONDITIONS OF THE RFP PROCESS ..... 10

- 3.1 General Information and Instructions ..... 10
- 3.2 Business Registration ..... 11
- 3.3 Communication after Issuance of RFP..... 11
- 3.4 Notification and Debriefing ..... 11
- 3.5 Conflict of Interest and Prohibited Conduct..... 12
- 3.6 Confidential Information ..... 13
- 3.7 Non-binding Process..... 13
- 3.8 Governing Law and Interpretation ..... 14

APPENDIX A – FORM OF AGREEMENT ..... 15

APPENDIX B – SUBMISSION FORM ..... 19

APPENDIX C – FINANCIAL OFFER FORM..... 22

APPENDIX D – RFP PARTICULARS..... 23

APPENDIX E – IRREVOCABLE STANDBY LETTER of CREDIT..... 31

## DEFINITIONS

<b>AGREEMENT</b>	Legally binding and enforceable written agreement entered between the Successful Proponent and the Province.
<b>BAFO</b>	Best and final offer.
<b>BUSINESS DAY</b>	Any day other than Saturday, Sunday or statutory holiday in the Province of New Brunswick.
<b>DAY(S)</b>	Calendar day.
<b>DELIVERABLES</b>	The Deliverables as described in Appendix D.
<b>DEPARTMENT</b>	The Department of Finance and Treasury Board Province of New Brunswick.
<b>MUST/REQUIRED/SHALL/WILL</b>	A requirement which <b>must</b> be met in order for the Proposal to receive consideration.
<b>PROPONENT</b>	An individual or a company that submits, or intends to submit, a proposal in response to this “Request for Proposal”
<b>PROVINCE</b>	Her Majesty the Queen in Right of the Province of New Brunswick.
<b>RFP</b>	Request for Proposals.
<b>SHOULD/DESIRABLE/MAY</b>	A requirement having a significant degree of importance to the objectives of the Request for Proposal.
<b>SUCCESSFUL PROPONENT</b>	The successful Proponent to this RFP who enters into a written Agreement with the Province.

## PART 1 – INVITATION AND SUBMISSION INSTRUCTIONS

### 1.1 Invitation to Proponents

This Request for Proposals (the “RFP”) is an invitation by the Province of New Brunswick (the “Province”) to prospective Proponents to submit proposals for the award of exclusive retail cannabis rights as further described in the [RFP Particulars \(Appendix D\)](#) (the “Deliverables”). This RFP is not subject to the Procurement Act and Regulation 2014-93.

This is not a sale of the existing business, Cannabis NB, but rather the sale of the rights to operate recreational cannabis retail, wholesale/distribution and e-commerce in the Province of New Brunswick on an exclusive basis over a period of 10 years with two (2) five-year renewal periods subject to meeting certain criteria and at the option of the Province.

### 1.2 RFP Contact

For the purposes of this process, the “RFP Contact” shall be:

Erin Seymour  
Strategic Procurement Division  
Fredericton Regional Centre  
Suite 2300, 2nd Floor,  
300 St. Mary’s Street,  
Fredericton, N.B.  
E3A 2S4  
Tel: (506) 453-2663 Fax: (506) 444-4200  
Email: [BidQuestionsSoumissions@SNB.ca](mailto:BidQuestionsSoumissions@SNB.ca)

Proponents and their representatives are not permitted to contact any employees, officers, agents, elected or appointed officials or other representatives of the Province, other than the RFP Contact or their designate, concerning this RFP. Failure to adhere to this rule may result in the disqualification of the Proponent and the rejection of the Proponent’s proposal.

### 1.3 Type of Agreement for Deliverables

The selected Proponent will be requested to enter into negotiations to finalize an Agreement with the Province for the provision of the Deliverables. The terms and conditions found in the [Form of Agreement \(Appendix A\)](#) are to form the basis for commencing negotiations between the Province and the selected Proponent. The final Agreement will generally include the terms of Appendix A subject to negotiation within the framework of this RFP. The selected Proponent may elect which official language will be used for the final Agreement and all related documents. The initial term of the Agreement will be for a period of **ten (10) years**. The Province reserves the right to extend the Agreement for **two (2) five-year** extension(s) beyond the initial term, for an overall potential maximum of **20** years in total. The extension(s) may be exercised in any part not exceeding the maximum number of years.

### 1.4 RFP Timetable

Issue Date of RFP	14 November 2019
Deadline for Proponent Questions	13 December 2019
Deadline for Issuing RFP Amendment(s)	20 December 2019

Submission Deadline – Original Proposal	10 January 2020 at 1:30pm Atlantic Standard Time
Rectification Period	13-17 January 2020
Anticipated Initial Ranking	14 February 2020
Due Diligence, Dialogue and BAFO Request	17 February - 13 March 2020
Submission Deadline – BAFO Proposal	27 March 2020 at 1:30pm Atlantic Standard Time
Anticipated Final Ranking	10 April 2020
Agreement Negotiation Period	80 Days
Anticipated Execution of Agreement	3 July 2020

The RFP timetable is tentative only, and may be changed by the Province at any time.

## **1.5 Submission of Proposals**

### **1.5.1 Proposals to be Submitted at the Prescribed Location**

Proposals must be submitted at the address below; hand deliveries can be made between 8:15 a.m. and 4:30 p.m., Monday to Friday inclusive to:

Central Tendering Branch  
 Fredericton Regional Centre  
 Suite 2300, 2nd Floor  
 300 St. Mary’s Street,  
 Fredericton, N.B.  
 E3A 2S4

### **1.5.2 Proposals to be Submitted on Time**

Proposals must be submitted at the location set out above on or before each Submission Deadline as indicated in section 1.4. The Proponent is solely responsible for the delivery of its submission to the exact location (including floor, if applicable) indicated in this RFP on or before each Submission Deadline. The Province does not accept any responsibility for submissions delivered to any other location by the Proponent or its delivery agents. Proposals submitted after the Submission Deadline(s) will be rejected. The Province’s time clock will be deemed to be correct.

### **1.5.3 Proposals to be Submitted in Prescribed Format**

In a sealed package, Proponents should submit their proposal containing **eight (8)** hard copies and one (1) electronic copy saved as a searchable Portable Document Format (PDF) on a USB flash drive, unless otherwise indicated. The file name on the electronic copy should include an abbreviated form of the Proponent’s name and RFP#. If there is a conflict or inconsistency between the hard copy and the electronic copy of the proposal, the hard copy of the proposal shall prevail. In the interest of environmental sustainability, please refrain from using binders, binding, plastic covers, or similar fastening or presentation materials when submitting the proposal. Similarly, unless specifically requested in this solicitation document, Proponents should not submit product catalogues, swatches, or other marketing materials with their bid. Sealed packages should be prominently marked with:

- the RFP title and number (see RFP cover page)
- the full legal name and return address of the Proponent

The Province will not accept proposals submitted by **facsimile transfer, email, or any other electronic means.**

#### **1.5.4 Amendment of Proposals Prior to Submission Deadline(s)**

Proponents may amend their proposals prior to the Submission Deadline(s) by submitting the amendment in a sealed package prominently marked with the RFP title and number and the full legal name and return address of the Proponent to the location set out in section 1.5.1. 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(s) 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.

#### **1.5.5 Withdrawal of Proposals**

At any time throughout the RFP process until the execution of a written Agreement for provision of the Deliverables, a Proponent may withdraw a submission. To withdraw a submission, a notice of withdrawal must be sent to the **RFP Contact** and must be signed by an authorized representative of the Proponent. The Province is under no obligation to return withdrawn submissions.

[End of Part 1]

## **PART 2 – EVALUATION AND NEGOTIATION**

### **2.1 Stages of Evaluation and Negotiation**

The Province will conduct the evaluation of proposals and negotiations in the following four stages:

Stage 1a: Mandatory Requirements Check

Stage 1b: Evaluation of Rated Criteria (Pricing and Technical)

Stage 2: Due Diligence, Dialogue and BAFO

Stage 3: Final Negotiation and Agreement Execution

### **2.2 Mandatory Submission Requirements**

The process will consist of a review to determine which proposals comply with all of the mandatory submission requirements. If a proposal fails to satisfy all of the mandatory submission requirements, the Province will issue the Proponent a rectification notice identifying the deficiencies and providing the Proponent an opportunity to rectify the deficiencies. If the Proponent fails to satisfy the mandatory submission requirements within the Rectification Period as defined in 1.4 RFP Timetable, its proposal will be excluded from further consideration. The mandatory submission requirements are as follows:

#### **2.2.1 Submission Form (Appendix B)**

Each proposal must include a completed [Submission Form \(Appendix B\)](#) signed by an authorized representative of the Proponent.

#### **2.2.2 Submission of Financial Offer (Appendix C)**

Each proposal must include a [Financial Offer Form \(Appendix C\)](#) completed according to the instructions contained in the form.

#### **2.2.3 Submission of Irrevocable Standby Letter of Credit (Appendix E)**

Each proposal must include an [Irrevocable Standby Letter of Credit \(Appendix E\)](#) completed according to the instructions contained in the form.

### **2.3 Stage 1 – Proposal Evaluation**

Stage 1 will consist of the following sub-stages:

#### **2.3.1 Stage 1a – Mandatory Requirements Check**

The Province will review the proposals to determine whether the mandatory requirements as set out in Section C, Stage 1a – Mandatory Requirements Check, of the [RFP Particulars \(Appendix D\)](#) have been met. Questions or queries on the part of the Province as to whether a proposal has met the mandatory requirements will be subject to the verification and clarification process set out in Section 3.3.4. If the Proponent fails to satisfy the mandatory requirements, its proposal will be excluded from further consideration.

#### **2.3.2 Stage 1b - Rated Criteria Evaluation**

The Province will evaluate each qualified proposal on the basis of the rated criteria as set out in Section C, Stage 1b – Rated Criteria, of the [RFP Particulars \(Appendix D\)](#).

The following is an overview of the categories and weighting for the rated criteria of the RFP. Proponents who do not meet a minimum threshold score for a category will not proceed further in the evaluation process.

<b>Rated Criteria Category</b>	<b>Weighting</b>	<b>Minimum Threshold</b>
1.1 - Financial Offer	40 points	24 points
1.2 - Experience and Qualifications	30 points	18 points
1.3 - Market Pricing	30 points	18 points
<b>Total Points for Stage 1b</b>	<b>100 points</b>	

### **2.3.3 Initial Ranking of Proponents**

After the completion of Stage 1b, all scores will be added together and each Proponent will be ranked based on its total score. The Province reserves the right to eliminate the minimum threshold for the Financial Offer category should less than five Proponents meet the minimum threshold. In the event of tie score under the rated criteria, the score for individual components will be used as tie breaker in the same sequence above.

## **2.4 Stage 2 – Due Diligence, Dialogue and BAFO**

### **2.4.1 Invitation to Top Ranked Proponents**

The Province intends to invite the top five (5) ranked Proponents to enter into concurrent dialogue (if less than five Proponents meet 1b requirements then the lesser number will apply). All information related to Financial Validation and Business Plan Validation as set out in Section C, Stage 2, of the [RFP Particulars \(Appendix D\)](#) will be reviewed prior to Proponents’ invites. Proponents invited to participate in Stage 2 will be asked to produce further documentation, deliver a presentation, and engage in a concurrent dialogue with representatives of the Province. During these discussions, the Province will provide each Proponent with any additional information and will seek further information and clarifications on any assumptions made in the development of the Proposal from each Proponent; and enhancements to the submitted Proposals.

### **2.4.2 BAFO Request**

After the expiration of the concurrent dialogue period and following the receipt of a BAFO request, Proponent(s) will be invited to review its initial proposal and submit its BAFO proposal to the Province based on instructions in the BAFO request.

### **2.4.3 BAFO Proposal Evaluation**

Each BAFO Proposal will be evaluated against the Financial Validation and Business Plan Validation information set out in Section C, Stage 2, of the [RFP Particulars \(Appendix D\)](#) through a pass/fail process; furthermore, it will be evaluated against the Financial Offer components (annual fixed payment and percentage of sales) set out in Section C, Stage 1b, of the [RFP Particulars \(Appendix D\)](#) and will be assigned a final ranking using the process outlined in the [Financial Offer Form \(Appendix C\)](#). The top-ranked Proponent based on the evaluation of the BAFO Proposals will receive a written invitation to enter into a final round of negotiations to finalize the Agreement with the Province. In the event of tie in the BAFO final score, the annual fixed payment score followed by percentage of sales score will be used as a tie breaker. Subsequent tie breakers will include Experience and Qualifications followed by Market Pricing from stage 1b rated criteria.



## **2.5 Stage 3 – Final Negotiations and Agreement Execution**

### **2.5.1 Agreement Negotiation Process**

Any negotiations will be subject to the process rules contained in the [Terms and Conditions of the RFP Process \(Part 3\)](#) and will not constitute a legally binding offer to enter into an Agreement on the part of the Province or the Proponent and there will be no legally binding relationship created with any Proponent prior to the execution of a written Agreement. The terms and conditions found in the [Form of Agreement \(Appendix A\)](#) are to form the basis for commencing negotiations between the Province and the Successful Proponent. Negotiations may include requests by the Province for supporting information from the Proponent to verify or clarify the information provided in its proposal or to confirm the conclusions reached in the evaluation, and may include requests by the Province for improved pricing or performance terms from the Proponent.

### **2.5.2 Time Period for Negotiations**

The Province intends to conclude negotiations and finalize an Agreement with the top-ranked Proponent during the [Agreement Negotiation Period](#), commencing from the date the Province invites the top-ranked Proponent to enter negotiations. A Proponent invited to enter into negotiations should therefore be prepared to provide requested information in a timely fashion and to conduct its negotiations expeditiously.

### **2.5.3 Failure to Enter into Agreement**

If the top ranked Proponent and the Province cannot conclude negotiations and finalize the Agreement for the Deliverables within the Agreement Negotiation Period, the Province may, upon notice, discontinue negotiations with the top ranked Proponent and invite next ranked Proponent(s) to enter into negotiations. If the next ranked Proponent(s) and the Province cannot conclude negotiations and finalize the Agreement for the Deliverables within the Agreement Negotiation Period, the Province, upon notice, may discontinue negotiations with the next ranked Proponent and re-enter negotiations with the subsequent Proponent(s). This process shall continue until an Agreement is finalized or until the Province elects to cancel the RFP. The Province reserves the right to re-invite and continue negotiations with any ranked Proponent(s) despite the order of ranking of that Proponent(s).

### **2.5.4 Notification to Other Proponents**

Once an Agreement is finalized and executed by the Province with a Proponent, the other Proponents will be notified in accordance with the [Terms and Conditions of the RFP Process \(Part 3\)](#).

[End of Part 2]

## **PART 3 – TERMS AND CONDITIONS OF THE RFP PROCESS**

### **3.1 General Information and Instructions**

#### **3.1.1 Proponents not to change terminology**

Changes to the terminology of this RFP are prohibited.

#### **3.1.2 Proponents to Follow Instructions**

Proponents should structure their proposals in accordance with the instructions in this RFP. Where information is requested in this RFP, any response made in a proposal should reference the applicable section numbers of this RFP.

#### **3.1.3 Language**

Proponents may submit their proposal in either of the Province of New Brunswick's two official languages; English or French. Proponents are advised that the Province may translate their proposals for evaluation purposes. The Proponent agrees that it will accept the Province's translations as being equivalent to their original proposal. Should a Proponent choose to submit both an English and French copy it must clearly indicate which copy is to be considered the "Original". If there is a circumstance where there is a substantive difference between the English and French versions of the proposal, the "Original" will be considered the official copy for evaluation purposes. All suppliers engaged to deliver services on behalf of the Province 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](#).

#### **3.1.4 No Incorporation by Reference**

The entire content of the Proponent's proposal should be submitted in a fixed form, and the content of websites or other external documents referred to in the Proponent's proposal but not attached will not be considered to form part of its proposal.

#### **3.1.5 References and Past Performance**

In the evaluation process, the Province may include information provided by the Proponent's references and may also consider the Proponent's past performance or conduct on previous contracts with the Province.

#### **3.1.6 Information in RFP Only an Estimate**

The Province makes no representation, warranty or guarantee as to the accuracy of the information contained in this RFP, received from the RFP contact or issued by way of amendment. Any quantities shown or data, or opinion contained in this RFP or provided by way of amendment are estimates only and are for the sole purpose of indicating to Proponents the general scale and scope of the Deliverables. It is the Proponent's responsibility to obtain all the information necessary to prepare a proposal in response to this RFP.

#### **3.1.7 Proponents to Bear Their Own Costs**

The Proponent shall bear all costs associated with or incurred in the preparation and presentation of its proposal, including, if applicable, costs incurred for interviews, presentations or demonstrations.

#### **3.1.8 Proposal to be retained by the Province**

The Province will not return the proposal or any accompanying documentation submitted by a Proponent.

### **3.2 Business Registration**

Proponents may be required to be registered to carry on business in accordance with applicable laws. For information on the business registration requirements of the **Corporate Registry of Service New Brunswick**, please consult:

<https://www.pxw1.snb.ca/snb7001/e/2000/2500e.asp>

The status of a Proponent's business registration does not preclude the submission of a proposal in response to this RFP. A proposal can be accepted for evaluation, regardless of (i) whether the company is registered, or (ii) whether its business registration is in good standing.

### **3.3 Communication after Issuance of RFP**

#### **3.3.1 Proponents to Review RFP**

Proponents shall promptly examine all of the documents comprising this RFP, and

- a) report any errors, omissions, or ambiguities; and
- b) direct questions or seek additional information

in writing by email to the RFP Contact on or before the Deadline for Questions. No such communications are to be directed to anyone other than the RFP Contact. The Province is under no obligation to provide additional information, and the Province will not be responsible for any information provided by or obtained from any source other than the RFP Contact. It is the responsibility of the Proponent to seek clarification from the RFP Contact on any matter it considers to be unclear. The Province will not be responsible for any misunderstanding on the part of the Proponent concerning this RFP or its process.

#### **3.3.2 All New Information to Proponents by Way of Amendment**

This RFP may be amended only by addendum in accordance with this section. If the Province, for any reason, determines that it is necessary to provide additional information relating to this RFP, such information will be communicated by addendum on the [New Brunswick Opportunities Network \(NBON\)](#). Each addendum forms an integral part of this RFP and may contain important information, including significant changes to this RFP. Proponents are responsible for obtaining all amendments issued by the Province and will be deemed to have read all posted amendments.

#### **3.3.3 Post-Deadline Amendment and Extension of Submission Deadline(s)**

If the Province determines that it is necessary to issue an addendum after the Deadline for Issuing Amendments, the Province may extend the Submission Deadline(s) for a reasonable period of time.

#### **3.3.4 Verify and Clarify**

During the evaluation process, the Province may request further information from the Proponent or third parties in order to verify or clarify the information provided in the Proponent's proposal, including but not limited to clarification with respect to whether a proposal meets the mandatory technical requirements set out in Section C of the [RFP Particulars \(Appendix D\)](#). The Province may revisit and re-evaluate the Proponent's response or ranking on the basis of any such information.

### **3.4 Notification and Debriefing**

### **3.4.1 Notification of Outcome of Process**

Once an Agreement is executed by the Province with a Proponent, notification of the outcome of the process will be posted on the [New Brunswick Opportunities Network \(NBON\)](#).

### **3.4.2 Debriefing**

Proponents may request a debriefing after notification of the outcome of the process. All requests must be in writing to the RFP Contact and must be made within sixty (60) Days of notification of the outcome of the process. The intent of the debriefing information session is to aid the Proponent in presenting a better proposal in subsequent opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the process or its outcome.

## **3.5 Conflict of Interest and Prohibited Conduct**

### **3.5.1 Conflict of Interest**

The Province may disqualify a Proponent for any conduct, situation or circumstance, determined by the Province, in its sole and absolute discretion, to constitute a Conflict of Interest. For the purposes of this Section, "Conflict of Interest" has the meaning ascribed to it in the [Submission Form \(Appendix B\)](#).

### **3.5.2 Disqualification for Prohibited Conduct**

The Province may disqualify a Proponent, rescind an invitation to negotiate or terminate an Agreement entered into if the Province, in its sole and absolute discretion, determines that the Proponent has engaged in any conduct prohibited by this RFP.

### **3.5.3 Prohibited Proponent Communications**

A Proponent shall not engage in any communications that could constitute a Conflict of Interest and must take note of the Conflict of Interest declaration set out in the [Submission Form \(Appendix B\)](#).

### **3.5.4 Proponent not to Communicate with Media**

A Proponent may not at any time directly, or indirectly, communicate with the media in relation to this RFP or any Agreement entered into pursuant to this RFP without consent of the Province, and then only in coordination with the Province.

### **3.5.5 No Lobbying**

A Proponent shall not, in relation to this RFP or the evaluation and selection process, engage directly or indirectly in any form of political or other lobbying whatsoever to influence the selection of the Successful Proponent.

### **3.5.6 Illegal or Unethical Conduct**

Proponents shall not engage in any illegal business practices, including activities such as bid-rigging, price-fixing, bribery, fraud, coercion or collusion. Proponents shall not engage in any unethical conduct, including lobbying, as described above, or other inappropriate communications; offering gifts to any employees, officers, agents, elected or appointed officials or other representatives of the Province; submitting proposals containing misrepresentations or other misleading or inaccurate information; or any other conduct that compromises or may be seen to compromise the competitive process provided for in this RFP.

### **3.6 Confidential Information**

#### **3.6.1 Confidential Information of the Province**

All information provided by or obtained from the Province in any form in connection with this RFP either before or after the issuance of this RFP

- (a) is the sole property of the Province and must be treated as confidential;
- (b) is not to be used for any purpose other than replying to this RFP and the performance of the Agreement for the Deliverables;
- (c) must not be disclosed without prior written authorization from the Province; and
- (d) must be returned by the Proponent to the Province immediately upon request of the Province.

Proponents must 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.

#### **3.6.2 Confidential Information of Proponent**

A Proponent should identify any information in its proposal or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by the Province. The confidentiality of such information will be maintained by the Province, except as otherwise required by law or by order of a court or tribunal. Proponents are advised that their proposals will, as necessary, be disclosed, on a confidential basis, to advisers retained by the Province to advise or assist with the RFP process, including the evaluation of proposals.

#### **3.6.3 Personal Information**

Both the *Right to Information and Protection of Privacy Act* and the *Personal Health Information Privacy and Access Act* create obligations for the Province and its services providers when personal information or personal health information is collected, used, or disclosed. Requirements include limited collections, use, disclosure, and retention of any personal information or personal health information. The Proponent must comply with the requirements of the *Personal Health Information Privacy and Access Act* and the *Right to Information and Protection of Privacy Act* of the Province of New Brunswick during the contractual term. For more information regarding these Acts, please consult:

<http://laws.gnb.ca/en/showfulldoc/cs/P-7.05//20170216>

<http://laws.gnb.ca/en/showfulldoc/cs/R-10.6//20130627>

### **3.7 Non-binding Process**

#### **3.7.1 No Contract A and No Claims**

This process is not intended to create or be deemed to create a formal, legally binding bidding process and shall instead be governed by the law applicable to direct commercial negotiations. For greater certainty and without limitation, this RFP shall not give rise to any Contract A-based tendering law duties or any other legal obligations arising out of any process contract or collateral contract.

#### **3.7.2 No Contract until Execution of Written Agreement**

This RFP process is intended to identify prospective suppliers for the purposes of negotiating a potential Agreement for the Deliverables. No legal relationship or obligation shall be created between a Proponent and the Province by this RFP process until the successful negotiation and execution of a written Agreement between a Proponent and the Province for the acquisition of such goods and/or services.

### **3.7.3 Non-binding Price Estimates**

While the pricing information provided in proposals will be non-binding prior to the execution of a written Agreement, such information will be assessed during the evaluation of the proposals and the ranking of the Proponents. Any inaccurate, misleading or incomplete information, including withdrawn or altered pricing, could adversely impact any such evaluation or ranking or the decision of the Province to enter into an Agreement with a Proponent for the Deliverables.

### **3.7.4 Cancellation**

The Province may cancel the RFP process without liability at any time prior to the execution of a written Agreement between the Province and a Proponent.

### **3.8 Governing Law and Interpretation**

These terms and conditions of the [RFP Process \(Part 3\)](#):

- (a) are intended to be interpreted broadly and independently (with no particular provision intended to limit the scope of any other provision);
- (b) are non-exhaustive and shall not be construed as intending to limit the pre-existing rights of the parties to engage in pre-contractual discussions in accordance with the common law governing direct commercial negotiations; and
- (c) are to be governed by and construed in accordance with the laws of the Province of New Brunswick and the federal laws of Canada applicable therein.

[End of Part 3]

## APPENDIX A – FORM OF AGREEMENT

The parties will act reasonably and negotiate the Agreement in good faith. The Agreement will include the following non-exhaustive terms (subject to any additions or amendments as proposed by the Province):

A. Initial term	<ul style="list-style-type: none"> <li>• 10 years initial term unless terminated earlier pursuant to the termination conditions.</li> </ul>
B. Option to renew	<ul style="list-style-type: none"> <li>• At the option of the Province, the term may be renewed for two subsequent terms of five years all subject to meeting Agreement performance criteria and mutual agreement on renewal terms.</li> </ul>
C. Renewal Performance Criteria	<ul style="list-style-type: none"> <li>• Criteria will include: Proponent conduct, revenue to the Province, product pricing and diversity requirements; geographical coverage; meeting language requirements; public safety and security and others.</li> </ul>
D. Fee to the Province based on selected fee structure	<ul style="list-style-type: none"> <li>• The higher of (a) annual fixed payment; and (b) percentage of sales net of HST.</li> <li>• The annual fixed payment will be paid annually in advance; percentage of sales to be calculated at year end with adjustment payment, if applicable, to be paid 90 Days after the year end.</li> </ul>
E. Deliverables (services to be provided by the Proponent)	<ul style="list-style-type: none"> <li>• Retail and online sale and distribution of recreational use cannabis subject to the terms of the Agreement including applicable laws.</li> </ul>
F. Proponent Conduct	<ul style="list-style-type: none"> <li>• The Proponent to: (i) use only approved promotional material and display signage as permitted under federal and provincial laws and regulations; (ii) prevent and not knowingly permit, any person who does not meet the minimum age requirements as required by law or as prescribed by the Province from entering retail space or purchasing products in retail space or on-line (iii) adhere to reporting requirements as required by federal and provincial authorities.</li> <li>• The Proponent will not: (i) engage in illegal activities or undertake actions not permitted pursuant to this Agreement; and (ii) engage in any conduct (and take steps to ensure that its employees do not engage in any conduct) that in the sole discretion of the Province is contrary to the public interest or prejudicial to the integrity or reputation of the Cannabis industry or the Province.</li> </ul>

<p>G. Business Plan</p>	<ul style="list-style-type: none"> <li>• The Proponent will provide the Deliverables in accordance to the business plan it submitted to the Province under the RFP proposal.</li> </ul>
<p>H. Financial and Reporting Matters</p>	<ul style="list-style-type: none"> <li>• The Proponent will be subject to and must comply with all Federal and Provincial Government reporting requirements.</li> <li>• Required reports will include: management reports; submission of annual financial statements and submission of audited financial statements to be provided within 90 Days of the Proponent's fiscal year end; and quarterly management accounts.</li> <li>• Other reports might include but will not be limited to: monthly or quarterly reports of incidents; monthly or quarterly product listings; monthly or quarterly pricing reports; monthly or quarterly purchasing reports by licensed producers and by geography.</li> </ul>
<p>I. Records (including retention requirement and audit rights)</p>	<ul style="list-style-type: none"> <li>• The Proponent will make Books and Records that relate to Deliverables available for inspection and audit by the Province at all times and will retain for a period of no less than 7 years after termination or expiry of the Agreement.</li> <li>• At all times the Proponent must maintain books of account and records including with respect to all transactions, in accordance to GAAP and as may be prescribed by the Province</li> <li>• The Proponent will allow the Province to examine at all times any material agreements between partners, shareholders, unit holders, investors, affiliates or associates of the Proponent with respect to the Deliverables.</li> </ul>
<p>J. Representations and Warranties</p>	<ul style="list-style-type: none"> <li>• Pertaining to capacity and power to enter in to the Agreement, authority of signatories; accurate disclosure etc.</li> <li>• Other customary representations and warranties for an Agreement of this nature.</li> </ul>
<p>K. Language Requirements</p>	<ul style="list-style-type: none"> <li>• The Proponent must ensure compliance with the <i>Official Languages Act</i> (NB) in providing the Deliverables as they relate to in-store or on-line customers. For more information refer to the <i>Official Languages Act</i> at <a href="http://laws.gnb.ca/en/ShowPdf/cs/O-0.5.pdf">http://laws.gnb.ca/en/ShowPdf/cs/O-0.5.pdf</a></li> </ul>
<p>L. Proponent Personnel</p>	<ul style="list-style-type: none"> <li>• Proponent will be required to conduct background checks of every existing and potential employee as per federal and provincial requirements.</li> </ul>



<p>M. Confidentiality Requirements</p>	<ul style="list-style-type: none"> <li>• Including personal information storage and privacy requirements (RTIPPA and PHIPAA (NB) and PIPED (Can)).</li> <li>• The Proponent will not use or disclose any Confidential Information except as agreed to in writing by the Province or as required by Applicable Law.</li> </ul>
<p>N. Subcontracting, Partnerships and Agency Agreements</p>	<ul style="list-style-type: none"> <li>• Permitted subject to meeting the federal and provincial requirements and subject to the written consent of the Province.</li> <li>• Despite subcontracting, the Proponent will not be relieved of its liabilities under the Agreement.</li> </ul>
<p>O. Liability and indemnity</p>	<ul style="list-style-type: none"> <li>• The Proponent will indemnify the Province from all Claims arising from the acts or omissions of the Proponent.</li> <li>• The indemnity will survive the termination or expiry of the Agreement.</li> </ul>
<p>P. Insurance</p>	<ul style="list-style-type: none"> <li>• The Proponent will obtain adequate insurance coverage as determined by the Province.</li> <li>• Insurance policies will include the Province as additional insured; provide notice period before cancellation or material changes to policies; and be endorsed to receive revised certificates.</li> </ul>
<p>Q. Dispute Resolution</p>	<ul style="list-style-type: none"> <li>• The parties will first attempt to resolve any Dispute through good faith negotiations.</li> <li>• Additional dispute resolution mechanisms to be negotiated.</li> </ul>
<p>R. Intellectual Property</p>	<ul style="list-style-type: none"> <li>• All Intellectual Property generated under the Agreement will belong to the Proponent.</li> </ul>
<p>S. Uncontrollable Circumstances (or Force Majeure)</p>	<ul style="list-style-type: none"> <li>• If, due to an Uncontrollable Circumstance, either party is prevented from fulfilling its obligations under the Agreement, it will be relieved of the obligations to the extent, and for the duration, of the Uncontrollable Circumstance.</li> </ul>
<p>T. Conflict of Interests</p>	<ul style="list-style-type: none"> <li>• The Proponent will notify the Province in writing immediately upon becoming aware of the existence or possibility of a Conflict of Interest and will comply with any reasonable directions of the Province to appropriately manage the Conflict of Interest.</li> </ul>

<p>U. Termination For Cause</p>	<ul style="list-style-type: none"> <li>• Termination immediately upon the occurrence of certain defaults that are not cured within 15 Days such as criminal convictions that could, in the Province's opinion, prejudice the integrity or reputation of the cannabis industry or the Province. Such termination will require a fee payment by the Proponent to the Province to the date of termination.</li> <li>• Other defaults will require the Proponent to provide a plan and schedule for diligent remedial of a breach within 5 Days of receiving a breach notice from the Province. Failure to do so could led to termination by the Province. Such termination will require a fee payment by the Proponent to the Province to the date of termination.</li> </ul>
<p>V. Termination Without Cause</p>	<ul style="list-style-type: none"> <li>• Termination without cause to be negotiated.</li> </ul>
<p>W. Obligations of Proponent on Termination</p>	<ul style="list-style-type: none"> <li>• Costs under certain termination scenarios to be borne by the Proponent.</li> </ul>
<p>X. Inventory and other Asset at Transition Date</p>	<ul style="list-style-type: none"> <li>• Acquisition of outstanding inventory at the transition date will be considered by the Proponent and will be subject to negotiations.</li> <li>• The Proponent may consider acquisition of other assets subject to negotiations.</li> </ul>
<p>Y. Proponent Covenants</p>	<ul style="list-style-type: none"> <li>• Customary covenants for an Agreement of this nature.</li> </ul>
<p>Z. Agreement Amendments During Term</p>	<ul style="list-style-type: none"> <li>• Mechanism for amendments to be negotiated.</li> </ul>
<p>AA. Irrevocable Standby Letter of Credit Drawdown Conditions</p>	<ul style="list-style-type: none"> <li>• The letter of credit will be held as security with drawdowns taking place for: (1) failing to meet pre-agreed operational milestones per the business plan proposed by the Proponent, (2) failing to meet fees payable as it becomes due to the Province, and (3) other conditions to be negotiated.</li> </ul>
<p>BB. All other general provisions typically found in such commercial agreements</p>	<ul style="list-style-type: none"> <li>• Including but not limited to: notice, interpretation, waiver, assignments; change of control; survival, severability, counterparts, governing law, contra proferentem exclusion; independent legal advice; applicable laws etc.</li> </ul>

## APPENDIX B – SUBMISSION FORM

### 1. Proponent Information

Please fill out the following form, naming one person to be the Proponent's contact for the RFP process and for any clarifications or communication that might be necessary.	
Full Legal Name of Proponent:	
Any Other Relevant Name under which Proponent Carries on Business:	
Street Address:	
City, Province/State:	
Postal Code:	
Phone Number:	
Fax Number (if any):	
Company Website (if any):	
Proponent Contact Name and Title:	
Proponent Contact Phone:	
Proponent Contact Fax (if any):	
Proponent Contact Email:	

### 2. Acknowledgment of Non-binding Process

The Proponent acknowledges that the RFP process will be governed by the terms and conditions of the RFP, and that, among other things, such terms and conditions confirm that this process does not constitute a formal legally binding bidding process (and for greater certainty, does not give rise to a Contract A bidding process contract), and that no legal relationship or obligation shall be created between the Province and the Proponent unless and until the Province and the Proponent execute a written Agreement

### 3. Ability to Provide Deliverables

The Proponent has carefully examined the RFP documents and has a clear and comprehensive knowledge of the Deliverables. The Proponent represents and warrants its ability to provide the Deliverables in accordance with the requirements of the RFP for the rates set out in the completed [Financial Offer Form \(Appendix C\)](#).

### 4. Mandatory Forms

The Proponent encloses as part of the proposal the mandatory forms set out below:

FORM	INITIAL TO ACKNOWLEDGE
Submission Form (Appendix B)	
Financial Offer Form (Appendix C)	
Letter of Credit (Appendix E)	
Evidence of Experience (Appendix D – Stage 1a – Mandatory Requirements Check)	

**5. Non-binding Pricing**

The Proponent has submitted its pricing in accordance with the instructions in the RFP and in the [Financial Offer Form \(Appendix C\)](#). The Proponent confirms that the pricing information provided is accurate. The Proponent acknowledges that any inaccurate, misleading or incomplete information, including withdrawn or altered pricing, could adversely impact the acceptance of its proposal or its eligibility for future work with the Province.

**6. Amendment**

The Proponent is deemed to have read and taken into account all amendments issued by the Province.

**7. No Prohibited Conduct**

The Proponent declares that it has not engaged in any conduct prohibited by this RFP.

**8. Conflict of Interest**

For the purposes of this RFP, the term “Conflict of Interest” includes, but is not limited to, any situation or circumstance where:

- (a) in relation to the RFP process, the Proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of the Province in the preparation of its proposal that is not available to other Proponents, (ii) communicating with any person with a view to influencing preferred treatment in the RFP process (including but not limited to the lobbying of decision makers involved in the RFP process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of the open and competitive RFP process or render that process non-competitive or unfair; or
- (b) in relation to the performance of its contractual obligations under an Agreement for the Deliverables, the Proponent’s other commitments, relationships or financial interests (i) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement, or (ii) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

Proponents must disclose the names and all pertinent details of all individuals (employees, advisers, or individuals acting in any other capacity) who participated in the preparation of the proposal; **AND** were employees of the Province within twelve (12) months prior to the Proposal Submission Deadline.

If the box below is left blank, the Proponent will be deemed to declare that (a) there was no Conflict of Interest in preparing its proposal; and (b) there is no foreseeable Conflict of Interest in performing the contractual obligations contemplated in the RFP.

Otherwise, if the statement below applies, check the box.

The Proponent declares that there is an actual or potential Conflict of Interest relating to the preparation of its proposal, and/or the Proponent foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the RFP.

If the Proponent declares an actual or potential Conflict of Interest by marking the box above, the Proponent must set out below details of the actual or potential Conflict of Interest:


**9. Disclosure of Information**

The Proponent hereby agrees that any information provided in this proposal, even if it is identified as being supplied in confidence, may be disclosed where required by law or by order of a court or tribunal. The Proponent hereby consents to the disclosure, on a confidential basis, of this proposal by the Province to the advisers retained by the Province to advise or assist with the RFP process, including with respect to the evaluation of this proposal.

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Proponent Representative

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Name of Proponent Representative

\_\_\_\_\_  
Title of Proponent Representative

\_\_\_\_\_  
Date

I have the authority to bind the Proponent.

## APPENDIX C – FINANCIAL OFFER FORM

### 1. Instructions on How to Complete the Financial Offer Form

- (a) Rates shall be provided in Canadian funds, inclusive of all applicable duties and taxes.
- (b) The offer shall be structured as an annual fee payable to the Province. The fee will be calculated as the higher of: (a) annual fixed payment (i.e. minimum guaranteed payment), and (b) percentage of sales net of HST. For clarity, both fee components will apply whereby the annual fixed payment will be paid annually in advance and the percentage of sales will be calculated at year end (i.e. resulting in additional top-up payment or no payment).
- (c) The two fee components of the Financial Offer as indicated above must be provided by the Proponent. No component shall be left blank or having a zero value.

### 2. Evaluation of Financial Offer

Financial Offer (Pricing) is worth 40 points of the total score.

Annual fixed payment will be evaluated in the Original Proposal and BAFO Proposal; and scored based on a relative pricing formula using the rates set out in the Financial Offer Form. The total net present value (NPV) of annual payments suggested by each Proponent will be calculated using a discount rate of 5%. Each Proponent will receive a percentage of the total possible points allocated to Financial offer category, which will be calculated by dividing that Proponent’s annual fixed payment into the highest annual fixed payment proposed by a Proponent that meets the minimum thresholds of all category. For example, if a Proponent meets all the minimum thresholds and bids \$100.00 and that is the highest bid price in that category, that Proponent receives 100% of the possible points for that category (100/100 = 100%). A Proponent who bids \$80.00 receives 80% of the possible points for that category (80/100 = 80%), and a Proponent who bids \$50.00 receives 50% of the possible points for that category (50/100 = 50%).

$$\frac{\text{Proposed rate}}{\text{Highest rate}} \times \text{Total available points} = \text{Score for the proposed annual fixed payment}$$

And so on, for each proposal.

Percentage of sales component will be evaluated in the BAFO Proposal; and scored based on a relative pricing formula using the rates set out in the Financial Offer Form. The proposed percentages will be multiplied by the projected sales figures provided by the respective Proponent (as validated in the due diligence and dialogue). The total net present value (NPV) of the percentage of sales payments suggested by each Proponent will be calculated using a discount rate of 5%. Each Proponent will receive a percentage of the total possible points allocated as per the methodology outlined above for the annual fixed payment.

### 3. Form

<u>Component</u>	<u>Value</u>
Annual fixed payment	\$
Percentage of sales	%

## **APPENDIX D – RFP PARTICULARS**

### **A. The Deliverables**

The Province of New Brunswick (the “Province”), as represented by the Minister of Finance and Treasury Board, requests Proposals from qualified Proponents meeting the requirements contained in this document, to obtain recreational cannabis exclusive rights in New Brunswick. This is not a sale of the existing business, Cannabis NB, but rather the sale of the rights to operate recreational cannabis retail, wholesale/distribution and e-commerce in the Province of New Brunswick on an exclusive basis over a period of 10 years plus two five-year renewal options subject to meeting certain criteria and at the option of the Province. The Province’s objective is to seamlessly transition the public model to a private sector model through this RFP.

The intention of this RFP is to establish an Agreement with the Successful Proponent who meets all of the Mandatory Requirements, demonstrates experience and proven qualified resource expertise, proposes a viable business plan and approach to success in New Brunswick, and submits an attractive financial offer. The Successful Proponent must comply with all federal and provincial regulations and reporting requirements, including bilingual services, as required.

### **B. Material Disclosures**

There are several variables that could affect the Proponent’s decision to bid and/or the Proponent’s submitted pricing. These include, but may not be limited to, the following:

#### **Current Model**

The Province of New Brunswick is currently served through a public sector crown corporation cannabis model, under Cannabis NB. Cannabis NB is responsible for cannabis retail, wholesale/distribution and e-commerce. At present, it holds 20 retail outlets that are strategically located in the Province under long-term lease agreements. It also has a complement of +250 non-unionized, competent employees who collectively comply with language requirements.

#### **Renewal Options**

The initial period of the Agreement is 10 years. At the option of the Province, two five-year renewal options may be granted to the Successful Proponent subject to meeting Agreement performance criteria and mutual agreement on renewal terms. The performance criteria will be highlighted in the Agreement, and will include, but are not limited to, the following: revenue to the Province, product pricing and diversity, geographical coverage, language of service, public safety and security amongst other criteria.

#### **Illegal Market**

As with retailers in other Canadian provinces and territories, Cannabis NB is experiencing competition from unlicensed, illegal cannabis operations. It is the opinion of the Province that having pricing competitive with the illegal market and a retail network with proper geographic coverage are effective countermeasures to protect the public and the Successful Proponent’s interest.

### **Pricing and Product Diversity**

The Province will evaluate the Proponent's approaches to deliver competitive product pricing relative to other jurisdictions and the illegal market, product and supply chain diversity (e.g. number of SKUs, licensed producers, local content, etc.) and quality client service. Furthermore, vertically integrated companies participating in the process should demonstrate their approach to ensuring other licensed producers have fair access to the New Brunswick market.

### **Regulatory Framework and General Business Parameters**

It is expressly noted that at the time this RFP is issued, the provincial legislation and regulations that will apply to the private sector cannabis model in New Brunswick have not been passed and proclaimed into law. The amended legal framework for the operation of private sector cannabis operations has not been determined with certainty; however, it is expected to be finalized prior to final negotiations with the selected Proponent.

### **Language Services**

The Successful Proponent must be able to communicate and provide services in both English and French to New Brunswick citizens in accordance with the *Official Languages Act* of New Brunswick. This includes but is not limited to:

- Communication material
- Customer service
- E-commerce bilingual functionality

### **Criminal Checks**

The Successful Proponent must be able to produce background information and criminal record checks for their team members, including, any affiliates or interested parties in the Deliverable.

The Province reserves the right to request and evaluate background checks and investigations on Proponents, their team members, and any affiliated or interested parties in the Deliverable as part of its review of all Proposals. In evaluating criminal history, factors considered will include but are not limited to the nature of the violation, the length of time since the offence was committed, whether the criminal history reflects an ongoing pattern of criminal behaviour and whether it materially prejudices the integrity or the reputation of the Proponent.

Additionally, the Successful Proponent will have the ongoing obligation to conduct periodic background checks and investigations, and report findings to the Province.



## C. Evaluation Process

Proponents in the RFP process will participate in a phase-gate evaluation process, as outlined in this section and summarized in the chart below:

	Proponents' Submissions	Province Evaluation		Joint Process	Proponents' Submissions	Province Evaluation	Joint Process
Stage	Original Proposals	Stage 1a Mandatory Requirements Check	Stage 1b Rated Criteria	Stage 2 Due Diligence, Dialogue and BAFO	BAFO Proposals	Assessment of BAFO Proposals	Stage 3 Final Negotiation and Agreement Execution
Participants	Open	All Proponents who submitted proposals	Any Proponent meeting 1a requirements	The top five ranked Proponents meeting 1b requirements (if less than five Proponents meet 1b requirements then the lesser number will apply)	Acceptable Proponents from the due diligence and dialogue stage	All Proponents who submitted BAFO Proposal	Top ranked Proponent followed by additional ranked Proponent(s)
Process	Proposals containing information to cover Stage 1 and Stage 2 requirements should be submitted by the due date	Pass-Fail on financial capacity and experience	Assessment and scoring of Rated Criteria for financial offer; experience and qualifications; and market pricing	Evaluation of the financial and business plan information submitted in the Proposal. Clarify and refine assumptions with Proponent-Province objectives. Proponent presentations. Request for BAFO	BAFO proposals reflecting enhanced requirements should be submitted by the due date	Assessment and scoring of final proposals and financial offer	Negotiations with top ranked followed by additional ranked Proponent(s); until either an Agreement is finalized, no more Proponents remain or the Province elects to cancel the RFP process
Timing (subject to change)	November 14, 2019 to January 10, 2020	January 13 – February 14, 2020		February 17 – March 13, 2020	March 13 – 27, 2020	March 30 – April 10, 2020	April 13 – July 3, 2020

## Stage 1a – Mandatory Requirements Check

The requirements below are considered mandatory, and the Province will not evaluate or score submissions that fail to provide evidence of the Proponent meeting the following:

### Financial Capacity

Proponents must provide evidence demonstrating their ability to secure a letter of credit of at least \$5 million to finance, open and operate a cannabis retail network, and respond to challenges that may arise during the set-up phase and in the initial operating phase. A letter of credit using the form provided in Appendix E of this RFP (Form "Letter of Credit"), must be submitted by the Proponent.

### Experience

Proponents must provide evidence from an official and recognized authority confirming they (or an affiliate that will be involved in providing the Deliverables) have experience operating licensed retail and e-commerce businesses in the cannabis industry; such as an official and valid license to operate a recreational and/or medical retail outlet and an official and valid license to operate a recreational and/or medical e-commerce business.

## Stage 1b – Rated Criteria

The Province will evaluate each proposal meeting the Mandatory Requirements, and on the basis of the Rated Criteria as set out in the table below and detailed in the subsequent section. In order to move forward in the evaluation process, Proponents must meet the minimum threshold score for each category.

<b>Rated Criteria Category</b>	<b>Weighting</b>	<b>Minimum Threshold</b>
1.1 - Financial Offer	40 points	24 points
1.2 - Experience and Qualifications	30 points	18 points
1.3 - Market Pricing	30 points	18 points
<b>Total Points for Stage 1b</b>	<b>100 points</b>	

The top five ranked Proponents who achieve the minimum score in each category in Stage 1, having met all minimum category requirements, will be invited to participate in Stage 2. If less than five Proponents achieve the minimum score set above, then the lesser number will apply. The Province reserves the right to eliminate the minimum threshold for the Financial Offer category should less than five Proponents meet the minimum threshold.

### 1.1 - Financial Offer – Total Points = 40 (minimum of 24)

Proponents should provide their Financial Offer for obtaining the cannabis retail rights in New Brunswick for 10 years. An Offer Letter using the form provided in Appendix C of this RFP, must be fully completed and signed by a representative of the Proponent with the authority to bind the Proponent. The form may be put on a Proponent's letterhead and a different font may be used but must not otherwise be modified. The offer shall be structured as an annual fee payable to the Province, the fee will be calculated as the higher of: (a) annual fixed payment (i.e. minimum guaranteed payment), and (b) percentage of sales net of HST. Higher points during Stage 1b will be awarded to Proponents who propose the highest annual fixed payment payable to the Province although percentage of sales will be considered at a later stage of this RFP (Stage 2 – Due Diligence, Dialogue and BAFO).

### 1.2 - Experience and Qualifications – Total Points = 30 (minimum of 18)

Each Proponent should provide detailed information, and supporting evidence where applicable, for each of the items listed below in its proposal, including information about experience on projects that are comparable in size, scope and nature as the opportunity:

- (a) A brief description of the Proponent, affiliations with other cannabis businesses (retailers, producers, distributors, etc.), the business area the Proponent has previously delivered and/or is currently operating in.
- (b) Proponents (or an affiliate that will be involved in providing the Deliverables) knowledge, skills and expertise within the past 5 years in the following areas:
  - the Cannabis industry (recreational and medical), including consumer preferences, service expectations and the black market for Cannabis;
  - owning and operating a retail store or network of stores (including number of stores);
  - owning and operating a distribution business;
  - owning and operating e-commerce business; and
  - operating in a highly-regulated environment (administration of compliance programs).
- (c) The roles and responsibilities of the Proponent and any of its agents, sub-contractors and joint venture arrangements that will be involved in providing the Deliverables, including identifying any relationships with federally licensed producers.
- (d) Preference to Proponents with retail exposure only; Proponent should disclose its ties to any licensed producer (investor, parent, shareholder, subsidiary, affiliate, etc.).

Higher points will be given to Proponents that provide clear and relevant description, including supporting evidence, to demonstrate their comprehensive experience and qualifications with respect to the Deliverables.

### 1.3 - Market Pricing – Total Points = 30 (minimum of 18)

Demonstrated competencies as well as appropriate, reliable and innovative ideas will be of particular interest.

- (a) Demonstrate ability to deliver low cost/competitively priced products to customers and measures to ensure this criterion will be met on an ongoing basis (e.g. pricing monitored against a basket of products from across Canada, basket composition for current and future products, price comparison for same product in other jurisdictions, suggested markup over purchase price from licensed producers, etc.); and
- (b) Description of how the Proponent intends to operate the proposed retail, distribution and e-commerce cannabis network; including measures to ensure market competitiveness and depth will be met on an ongoing basis (i.e. product variety, number of SKUs, supply channels, limit on product concentration from single and/or affiliated supplier, etc.).

Higher points will be awarded to Proponents who demonstrate the above competencies and propose measures to ensure it can be met on an ongoing basis.

## **Stage 2 – Due Diligence, Dialogue and BAFO**

Information requested below under “2.1 – Financial Validation” and “2.2 – Business Plan Validation” should be submitted in the Original Proposal and will be reviewed prior to Proponents’ invites. Proponents invited to participate in Stage 2 will be asked to produce further documentation, deliver a presentation, and engage in a concurrent dialogue with representatives of the Province. During these discussions, the

Province will provide each Proponent with any additional information and will seek further information and clarifications on any assumptions made in the development of the Proposal from each Proponent; and enhancements to the submitted Proposals.

The objective of this exercise is to validate the viability of the proposed business plan and the associated financial means to support it. After the expiration of the concurrent dialogue period, the top five Proponents will be invited to review their initial proposal and submit a BAFO proposal.

### 2.1 – Financial Validation

During the Financial Validation, information submitted by Proponents will be reviewed to confirm Proponent(s) capability to deliver the financial offer submitted in their response to the RFP Stage 1 and create a stable financial foundation for the proposed approach. Documentation and evidence to be reviewed includes, but may not be limited to:

- (a) Audited annual financial statements for the past three (3) years, or reviewed statements if audited statements are not available, and copies of quarterly financial statements for each quarter since the most recent annual financial statements or equivalent financial information if quarterly statements are not available. Financial statements are to be provided for the Proponent; however, provision of parent company financial statements on behalf of a named subsidiary organization will be acceptable on the basis that this is supported by a letter from the parent company which confirms that it will guarantee the contractual obligations of the subsidiary;
- (b) Confirmation that there is no material adverse change that is not disclosed in the information provided, signed by the entity's chief financial officer or controller or by a director, agent, or employee of the entity who is authorized to sign such confirmation;
- (c) Annual reports, including management reports, if available, or comparable information if annual and management reports are not available which is to be certified as accurate and complete by the entity's chief financial officer or controller or by a director, agent, or employee of the entity who is authorized to sign such confirmation;
- (d) Disclosure of any financing instruments that might impact or change the Proponent's financial position (options, warrants, grants, swaps, convertible instruments, etc.);
- (e) For entities debt-rated by a credit rating agency, a copy of the most recent credit rating report (including credit warnings produced since the publication of said report) from each agency that rates the entity's debt, or confirmation that no such ratings exist;
- (f) Disclosure of any past or pending litigation arising from any services rendered in the past five (5) year period. The Province reserves the right to determine whether the litigation could impact the Proponent's ability to deliver the requisite financing for the Deliverables;
- (g) References from a financial institution, credit agency, insurance company, and / or bonding company demonstrating the Proponent's ability to finance the on-going development and operational costs and payroll burdens for a project of this size and scope; and
- (h) A clear statement identifying the source of funds along with a confirmation that funds are lawfully obtained.

### 2.2 – Business Plan Validation

Business Plan Validation will include a review of information submitted by Proponents and further scrutiny and evidence gathering to confirm the Proponents have a sound business plan and a compelling

case for viability supported by detailed analysis. Documentation and evidence to be reviewed includes, but may not be limited to:

- (a) Demonstration of the Proponent's understanding of the New Brunswick market considerations;
- (b) Key variables, sensitivities and risks affecting the Proponent's ability to achieve success, along with the Proponent's proposed risk mitigation strategies;
- (c) Proforma financial statements for the 10 year period under consideration including detailed sales figures (value and volume of each major category such as flowers, oils, edibles, accessories, etc.), pricing assumptions (per gram/unit and associated sensitivities) anticipated margins, cost structure, anticipated start-up and operating costs per retail outlet;
- (d) Detailed store rollout strategy showing geographical coverage, including:
  - A map and listing of store locations, other distribution points and associated implementation timeframes;
  - Implementation approach and strategies for the retail network showing the proposed store formats and types (standalone stores, flagship stores, limited stores, store in store, agency stores, etc.) and plans to partner with local entrepreneurs/businesses including First Nations (subcontract, affiliate, strategic alliance, etc.);
  - Implementation approach and strategies for e-commerce; and
  - Implementation approach and strategies for the distribution operation.
- (e) Demonstration of how the Proponent plans to effectively serve consumers in all areas of the Province. The Proposal should explain the Proponent's ability to provide appropriate and consistent service in a retail and online setting;
- (f) Key timelines and activities with respect to the implementation and oversight of the reporting system, security, public health, education and social responsibility among other work to provide the Deliverables;
- (g) Approach to transition existing employees, where applicable;
- (h) Corporate chart detailing the legal entities that will be involved in the proposed operations with ownership details up to individual shareholders level (the requirement for publicly traded companies will be up to individual shareholders owning 5% or more of outstanding shares); and
- (i) Approach to delivering services to New Brunswick citizens in both official languages (English and French). The Proponent will be required to have the capacity to satisfy the linguistic needs of the Province in providing the services requested in this RFP. While it is not mandatory for all resources to be bilingual, in accordance with the Official Languages Act of New Brunswick, and with respect to province-wide online services materials and customer service where both will require bilingual capacity.

The proposal should provide a detailed explanation about how the Proponent will satisfy the language needs described above, including percentage breakdown and allocation of proposed bilingual resources by geography and business area. This information will be used to validate the strategy.

Following the conclusion of the Due Diligence and Dialogue period, Proponent(s) will receive a BAFO request from the Province to submit a BAFO proposal.

Each BAFO Proposal will be evaluated against the Financial Validation and Business Plan Validation information set out above through a pass/fail process; furthermore, it will be evaluated against the

Financial Offer components (annual fixed payment and percentage of sales) using the process outlined in [Financial Offer Form \(Appendix C\)](#) and will be assigned a final ranking.

### **Stage 3 – Final Negotiations and Agreement Execution**

The top ranked Proponent based on the evaluation of the BAFOs will receive a written invitation to enter into a final round of negotiations to finalize the Agreement with the Province. During these Final Negotiations, the Province will provide the Proponent with any additional information and may seek further information and proposal enhancements from each invited Proponent. The Proponents invited to enter into direct negotiations should therefore be prepared to provide requested information in a timely fashion and to conduct its negotiations expeditiously.

Agreement details within a pro forma agreement will be developed with consideration of the pricing, approach and performance terms presented during earlier stages, and will be in alignment with the Form of Agreement essential provisions outlined in Appendix A.

Final negotiations may include requests by the Province for improved pricing or performance terms from the Proponent(s).

If the top ranked Proponent and the Province cannot conclude negotiations and finalize the Agreement for the Deliverables within the Agreement Negotiation Period, the Province may, upon notice, discontinue negotiations and invite next ranked Proponent(s) to enter into negotiations. This process shall continue until an Agreement is finalized, until there are no more Proponents remaining that are eligible for negotiations or until the Province elects to cancel the RFP process. The Province reserves the right to re-invite a ranked Proponent despite its original order of ranking, to re-enter into negotiations and finalize the Agreement for the Deliverables.

## APPENDIX E – IRREVOCABLE STANDBY LETTER OF CREDIT

***[Note to Applicants: The Standby Letter of Credit must be issued by a bank found in Schedule I or Schedule II of the Bank Act (S.C. 1991, c.46), and must be callable at the bank’s counters in Fredericton, New Brunswick.]***

Letter of Credit: #[Letter of Credit Number]

Date: [Select date]

Cannabis Management Corporation  
675 King Street  
4<sup>th</sup> Floor, Chancery Place  
P.O. Box 6000  
Fredericton, NB E3B 1E9

Attn: Deputy Minister of Finance and Treasury Board

Dear Sir or Madam:

RE: Letter of Credit in respect of the Request for Proposal to obtain an exclusive Agreement to legally operate a cannabis retail business in New Brunswick commencing second half of 2020, in accordance with *Cannabis Management Corporation Act, 2018*, New Brunswick Regulation 2018-59, including subsequent amendments to the Act and Regulations, and related Request for Proposal documents.

At the request of our client [insert name of client] (“Applicant”), we [insert name and address of issuing bank], hereby issue in favour of the Cannabis Management Corporation in New Brunswick (“Beneficiary”), an irrevocable standby letter of credit (the “Letter of Credit”) in the amount of five million dollars (\$5,000,000) Canadian.

The amount available under this Letter of Credit is payable at such time as the Applicant has received a Notification Letter from the Deputy Minister of Finance and Treasury Board, (“Notification Letter”), that the Agreement negotiations have been finalized and the Applicant has been selected to execute the Agreement pursuant to the *Cannabis Management Corporation Act, 2018*, New Brunswick Regulation 2018-59, including subsequent amendments to the ACT and Regulations, and related Request for Proposal documents.

The Request for Proposal documents may be found at [New Brunswick Opportunities Network \(NBON\)](#).

A request for payment shall be initiated upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by two officers of the Cannabis Management Corporation in New Brunswick certifying that the Cannabis Management Corporation is entitled to draw on this Letter of Credit pursuant to the Request for Proposal documents and (b) presentation of this Letter of Credit.

The above documents may be presented to the [bank name] at [insert bank’s Fredericton address].

This Letter of Credit will expire at 5:00 PM Atlantic Standard Time on [insert date – one year from issue date], and the Cannabis Management Corporation may call for payment of any amount outstanding under

this Letter of Credit at any time up to 5:00 PM Atlantic Standard Time on that date should this Letter of Credit not be extended.

It is a condition of this Letter of Credit that it shall be deemed to be automatically extended, without amendments, for additional period(s) of one (1) year from the present or any future expiry date, unless at least ninety (90) Days prior to any expiration date, we notify you in writing, by registered mail or courier, that we elect not to extend this Letter of Credit for any such additional period.

We hereby agree that demands delivered under this Letter of Credit will be duly honoured upon presentation provided that all terms and conditions herein have been complied with.

Written demands drawn under this Letter of Credit shall state on their face that they are drawn under this Letter of Credit #[insert Letter of Credit number] .

It is understood that [insert name of issuing bank] is obligated under this Letter of Credit for payments of monies only.

The Request for Proposal documents are referred to herein for reference purposes only and do not form part of the terms of this Letter of Credit. The Letter of Credit shall not be deemed modified, amended or amplified by references to any document instrument or agreement except for the UCP as defined below.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) the ("UCP") with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit. Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in Article 36, we shall honour any demand made under this Letter of Credit prior to the expiration date, within 30 Days after the date in which such interruption of business ends and we shall notify you promptly when it does so end. For matters not covered by such publication, it shall be governed by and construed in accordance with the laws of the Province of New Brunswick.

Yours very truly,

[NAME OF ISSUING BANK]

By: \_\_\_\_\_

Name:[print name]

Title:[print title]

By: \_\_\_\_\_

Name: [print name]

Title: [print title]