

LIFEGUARD SERVICES CONTRACT

THIS CONTRACT (the “**Contract**”) made in triplicate effective as of the [day] day of [month], 2019 (the “**Effective Date**”).

B E T W E E N :

THE CITY OF SAINT JOHN, having its offices at the City Hall Building at 15 Market Square, Saint John, New Brunswick, a body corporate by Royal Charter, confirmed and amended by Acts of the Legislative Assembly of the Province of New Brunswick, hereinafter referred to as the “**City**”

OF THE FIRST PART

- AND –

SAINT JOHN AQUATIC CENTRE COMMISSION, a public body corporate and politic, incorporated pursuant to an Act of the Legislative Assembly of the Province of New Brunswick, hereinafter called the “**Aquatic Centre**”

OF THE SECOND PART

The purpose of this Contract is for the lifeguard services to provide safety supervision to the public who attend the Dominion Park, Little River Reservoir, Lily Lake (Rockwood Park) and Fisher Lake (Rockwood Park) beaches.

Common Council on [date] unanimously adopted the following resolution:

[resolution]

NOW THEREFORE THIS CONTRACT WITNESSETH that in consideration of the mutual covenants and agreements herein and subject to the terms and conditions set out in this Contract, the Parties agree as follows:

ARTICLE 1

INTERPRETATION AND GENERAL PROVISIONS

1.1 No Indemnities from the City

- (1) Notwithstanding anything else in this Contract, any express or implied reference to the City providing an indemnity or incurring any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the City, whether at the time of execution of this Contract or at any time during the Term or any extensions thereof, shall be void and of no legal effect.

1.2 Entire Contract

- (1) This Contract embodies the entire agreement between the Parties and supersedes any prior understanding or agreement between the Parties relating to the subject matter hereof and in existence at the Effective Date.
- (2) The Parties agree that in entering into this Contract 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 Contract.

1.3 Severability

- (1) If any term or condition of this Contract, or the application thereof to the Parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of this Contract, and the application of such term or condition to the Parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

1.4 Priority of Documents

- (1) In the event of a conflict or inconsistency between any provisions in this Contract and the Schedules, the main body of this Contract shall govern over the Schedules.
- (2) In the event of a conflict or inconsistency between any provisions in the Request for Proposals and the Proposals, the main body of the Request for Proposals shall govern over the Proposals.
- (3) In the event of any other conflict or inconsistency not contemplated in this section 1.4, the matter shall be referred to Dispute Resolution.

1.5 Conflict with Laws

- (1) For greater certainty, in the event of a conflict or inconsistency between any provisions of this Contract and any Applicable Laws, the Applicable Laws shall govern and prevail to the extent of such conflict or inconsistency.

1.6 Headings and Grammatical Variations

- (1) The division of this Contract into articles, sections, subsections, and paragraphs, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Contract.
- (2) In this Contract, grammatical variations of any defined terms shall, unless the context otherwise requires, have similar meanings to such defined terms, words denoting the singular include the plural and vice versa, and words denoting any gender include all genders.

1.7 Notices

- (1) Notices shall be in writing and shall be delivered by courier or personal delivery and shall be addressed to, in the case of service upon the City, the City Address to the attention of the Common Clerk or, in the case of service upon the Aquatic Centre, to the Aquatic Centre Address to the attention of the Aquatic Centre Representative.
- (2) Notices shall be deemed to have been given in the case of courier or personal delivery one calendar day after such notice is received by the other Party. In the event of a courier disruption, notices must be given by personal delivery or by facsimile. Unless the Parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this section.

1.8 Governing Law

- (1) This Contract shall be governed by and construed in accordance with the laws of the Province of New Brunswick and the federal laws of Canada applicable therein.

1.9 Modifications and Amendments

- (1) This Contract may not be modified or amended except by an instrument in writing signed by the Parties hereto or by their successors or permitted assigns.

1.10 Enurement

- (1) This Contract shall extend to, be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

1.11 Approval

- (1) Wherever the provisions of this Contract require or provide for an approval by the other Party or to any action or any Person, this Contract shall be deemed to provide that:
 - (a) Such request for approval shall be sent to the other Party or Person from whom such approval is requested in writing and shall:
 - (i) contain or be accompanied by any documentation or information required for such approval in reasonably sufficient detail, as determined by the party receiving the request, acting reasonably;
 - (ii) clearly set forth the matter or matters in respect of which such approval is being sought;
 - (iii) form the sole subject matter of the correspondence containing such request for approval; and
 - (iv) clearly state that such approval is being sought;
 - (b) Such approval shall be in writing;
 - (c) Such approval shall not be unreasonably or arbitrarily withheld or delayed (unless the text hereof expressly states that such approval may be unreasonably or arbitrarily withheld or shall be subject to the sole and/or absolute discretion of a Party); and
 - (d) Any Dispute as to whether or not such approval has been unreasonably withheld or delayed shall be referred to Dispute Resolution.

ARTICLE 2 TERM

2.1 Term

- (1) The Term of this Contract for the 2019 season will commence on the 22nd day of June, 2019 until 5:45 p.m. (Saint John time) on the 2nd day of September, 2019 (the “**Expiry Date**”), to all Beaches, unless terminated sooner by the City as provided under Article 9 of this Contract.
- (2) This Contract shall be extended on an annual basis for three consecutive seasons (2020 – 2022) conditional upon Common Council approving the budget for lifeguard services in the City’s operating budget for the corresponding year.
- (3) Subject to subsection (2), the Term of this Contract for the 2020 season will commence on the 20th day of June, 2020 until 5:45 p.m. (Saint John time) on the 7th day of

September, 2020 (the “**Expiry Date**”), to all Beaches, unless terminated sooner by the City as provided under Article 9 of this Contract.

- (4) Subject to subsection (2), the Term of this Contract for the 2021 season will commence on the day after the last day of school in June, 2021 until 5:45 p.m. (Saint John time) on the 6th day of September, 2021 (the “**Expiry Date**”), to all Beaches, unless terminated sooner by the City as provided under Article 9 of this Contract.
- (5) Subject to subsection (2), the Term of this Contract for the 2022 season will commence on the day after the last day of school in June, 2022 until 5:45 p.m. (Saint John time) on the 5th day of September, 2022 (the “**Expiry Date**”), to all Beaches, unless terminated sooner by the City as provided under Article 9 of this Contract.
- (6) The occurrence of a Force Majeure Event will not extend the Term beyond the Expiry Date.

ARTICLE 3 STATUS OF AQUATIC CENTRE

3.1 Capacity of Aquatic Centre

- (1) The Parties represents and warrants that it has the full right, power, and authority to enter into this Contract and there is no contract with any other Person which would in any way interfere with the rights of the Parties under this Contract.

3.2 Authority of Representatives

- (1) The Parties represent that their respective representatives have the authority to legally bind them to the extent permitted by Applicable Law.

3.3 No Partnership, Agency etc.

- (1) The Aquatic Centre shall have no power or authority to bind the City or to assume or create any obligation or responsibility, express or implied, on behalf of the City. The Aquatic Centre shall not hold itself out as an agent, partner or employee of the City.
- (2) Nothing in this Contract shall have the effect of creating an employment, partnership or agency relationship between the City and the Aquatic Centre (or any of the Aquatic Centre’s directors, officers, employees, agents, partners, associates, affiliates or Subcontractors).

3.4 Acts and Omissions

- (1) The Aquatic Centre acknowledges and agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, associates, affiliates and

Subcontractors. This paragraph is in addition to and not in derogation of any and all of the Aquatic Centre's liabilities under this Contract and under the general application of Applicable Law.

- (2) The Aquatic Centre shall advise those individuals and entities, for whom it is responsible of its obligations under this Contract and, without limiting the generality of the foregoing, shall take all appropriate action to ensure compliance with this Contract, including, without limitation, section 3.7 of this Contract.
- (3) In addition to any other liabilities of the Aquatic Centre pursuant to this Contract or otherwise at law or in equity, the Aquatic Centre shall be liable for all Claims arising from any breach of this Contract resulting from the actions of the individuals and entities, as provided in subsection 3.4(1).

3.5 No Subcontracting or Assignment

- (1) The Aquatic Centre shall not subcontract or assign the whole or any part of this Contract or any monies due under it without the prior Approval of the City (which approval may be arbitrarily withheld). Such consent shall be in the sole discretion of the City and subject to the terms and conditions that may be imposed by the City.
- (2) Without limiting the generality of the conditions which the City may require in its sole and absolute discretion prior to consenting to the Aquatic Centre's use of a Subcontractor, every contract entered into by the Aquatic Centre with a Subcontractor shall adopt all of the terms and conditions of this Contract as far as applicable to those parts of the Services provided by the Subcontractor. For greater clarity, the Aquatic Centre agrees that prior to using a Subcontractor, the Aquatic Centre shall request the Approval of the City Representative.
- (3) Nothing contained in this Contract shall create a contractual relationship between any Subcontractor or its directors, officers, employees, agents, partners, associates, affiliates or Subcontractor and the City.

3.6 Change of Control

- (1) In the event that there is a change of control in the Aquatic Centre, the Aquatic Centre shall immediately disclose such change in control to the City and shall comply with any terms and conditions subsequently prescribed by the City resulting from the disclosure.

3.7 Non-Exclusive Contract, Work Volumes

- (1) The Aquatic Centre acknowledges that it is providing the Services to the City on a non-exclusive basis and the City makes no representation regarding the volume of goods and services required (if any) under this Contract.

- (2) The City reserves the right at any time to contract with other parties for the same or similar goods and services as those provided by the Aquatic Centre and reserves the right to obtain the same or similar goods and services internally.

3.8 Remedies Cumulative

- (1) No reference to or exercise of any specific right or remedy by a Party shall prejudice or preclude such Party from exercising or invoking any other remedy, whether allowed under this Contract or generally at law or in equity, and the express provisions of this Contract as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the City or the Aquatic Centre under this Contract or Applicable Law, or otherwise, at law or in equity.

3.9 Conflicts of Interest

- (1) The Aquatic Centre acknowledges the provisions of section 4.4 of the Request for Proposals and covenants and agrees that it shall comply with the provisions thereof as such provisions relate to the performance of the Services under this Contract.
- (2) Notwithstanding and in addition to the foregoing, the Aquatic Centre shall:
 - (a) Avoid any Conflict of Interest in the performance of its contractual obligations under this Contract;
 - (b) Disclose without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations with the City, including work done for any other party other than the City during the course of this Contract; and
 - (c) Comply with any requirements prescribed by the City to resolve any Conflict of Interest.
- (3) In addition to all other contractual rights or rights available at law or in equity, the City may, in its sole and absolute discretion, immediately terminate this Contract upon giving notice to the Aquatic Centre where:
 - (a) The Aquatic Centre fails to disclose an actual or potential Conflict of Interest;
 - (b) The Aquatic Centre fails to comply with any requirements prescribed by the City to resolve a Conflict of Interest; or
 - (c) The Aquatic Centre's Conflict of Interest cannot be resolved. This paragraph shall survive any termination or expiry of this Contract.

ARTICLE 4 PERFORMANCE BY THE AQUATIC CENTRE

4.1 Commencement of Performance

- (1) The Aquatic Centre shall commence the Services on the dates and times as follows:
 - (a) Starting June 22nd, 2019 at 10:45am (Saint John time) at Dominion Park and Little River Reservoir; and
 - (b) Starting June 22nd, 2019 at 11am (Saint John time) at Lily Lake (Rockwood Park) and Fisher Lake (Rockwood Park).

4.2 Performance Warranty

- (1) The Aquatic Centre hereby represents and warrants that the Services shall be provided fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations and furthermore that all Services will be provided in accordance with:
 - (a) This Contract;
 - (b) Good Industry Practice; and
 - (c) Applicable Laws.

If any of the Services, in the opinion of the City, are inadequately provided or require corrections, the Aquatic Centre shall forthwith make the necessary rectification or corrections, at its own expense, as specified by the City in a rectification notice.

4.3 No Waiver

- (1) Any failure by the City to insist in one or more instances upon strict performance by the Aquatic Centre of any of the terms or conditions of this Contract shall not be construed as a waiver by the City of its right to require strict performance of any such terms or conditions or any other terms or conditions, and the obligations of the Aquatic Centre with respect to such performance shall continue in full force and effect.

ARTICLE 5 SERVICES BY AQUATIC CENTRE

5.1 Responsibilities and Obligations of Aquatic Centre

- (1) The Aquatic Centre shall perform the Services, at all Beaches, as set out in this Contract, the RFP and Proposals, and shall ensure that Lifeguards, without limitation, shall:
 - (a) Intervene to prevent injuries in and around the aquatic environment;

- (b) Foster a good public image and adhere to professional standards;
 - (c) Meet responsibilities of varying importance in their role as Lifeguards which include to themselves, to those they protect, to fellow beach staff, to the City, and to all Beaches;
 - (d) Meet or exceed their responsibility to the City by promoting a positive and professional attitude, appearance, and behaviour, at all times;
 - (e) Meet or exceed their responsibility to those under their protection by giving them the diligent and constant supervision expected both morally and legally. As well, they must create a friendly and positive beach experience through public relations skills; and
 - (f) Meet or exceed their responsibility towards all Beaches environments by upholding Applicable Laws as far as possible within their role as Lifeguards.
- (2) The Aquatic Centre shall perform the Services under the general direction and control of Park and City Landscape Division and will be responsible for the following:
- (a) All uniforms of the Lifeguards;
 - (b) Safety and rescue equipment including
 - (i) four automatic external defibrillators with current and valid inspection sticker dates, one per each beach;
 - (ii) four thermometers for air and water, one per each beach;
 - (iii) four pocket masks, one per each beach; and
 - (iv) telecommunication and radio communication devices for all beaches.

All appropriate equipment is to be placed in a ready function and checked to ensure proper working order on a daily basis, at all Beaches.

- (3) The Aquatic Centre shall be responsible to provide a written report on any hazardous conditions, injury, accident or illness related to the Beaches, beach users, or the general public, as soon as possible to Park and City Landscape Division and will ensure that all Lifeguards are positioned in a place that allows effective surveillance of the entire swimming area.
- (4) The Aquatic Centre shall ensure the appropriate safety supervision staffing levels are chosen depending on the number of daily swimmers which will include a minimum of

three full-time lifeguards on duty, at all times, for each Beach, Monday to Sunday, for the duration of the Term of this Contract, and at least one person on staff, daily, at one of the Beach location, will be fluently bilingual in the English and French languages, and may be contacted in case of an emergency, by telecommunication and radio communication devices.

ARTICLE 6 SERVICES BY THE CITY

6.1 Responsibilities and Obligations of the City

- (1) The City, at its own expense, through Parks and City Landscape Division, shall provide the following items, on all Beaches, on the 22nd day of June, 2019, and will pick up the said items, on or after the 2nd day of September, 2019 as follows:
 - (a) Lifeguard(s) chair(s) [number to be determined by Parks and City Landscape Division];
 - (b) Signage which include beach hours, lifeguard on/off duty and beach rules;
 - (c) Access to locked storage area of equipment;
 - (d) Shelter and toilet facilities for Lifeguards and the general public;
 - (e) Keys for various Beaches;
 - (f) Shovels [number to be determined by Parks and City Landscape Division];
 - (g) Four first aid kits and contents;
 - (h) Eight rescue cans;
 - (i) Four rescue paddleboards;
 - (j) Four paddleboard stands;
 - (k) Four sets of buoys lines;
 - (l) Four binoculars;
 - (m) Four megaphones;

- (n) Four spinal boards with head immobilization units;
 - (o) Four cervical collars; and
 - (p) Splints.
- (2) The City, at its own expense, through Parks and City Landscape Division, will be responsible to arrange physical maintenance of the Beaches including grass cutting, sand quality, and garbage pickup, and ensuring with the supplier, the cleanness of portable toilets, or any other additional maintenance and upkeep of the Beaches as agreed between the Parties.

ARTICLE 7 PAYMENT FOR SERVICES

7.1 Payment According to Contract

- (1) The City shall be required to pay the Aquatic Centre for the Services provided in accordance with the provisions of this Contract at the Fees established under this Contract.
- (2) For the 2019 season, the City shall pay the Aquatic Centre the amount of \$166,776.00 plus HST as per the following payment schedule:

| Anticipated Payment Date | Amount |
|--------------------------|----------------------|
| June 11, 2019 | \$41,694.00 plus HST |
| July 1, 2019 | \$41,694.00 plus HST |
| August 1, 2019 | \$41,694.00 plus HST |
| September 1, 2019 | \$41,694.00 plus HST |

- (3) In the event this Contract is extended as provided under subsection 2.1(2) for the 2020 season, the City shall pay the Aquatic Centre the amount of \$170,111.52 plus HST as per the following payment schedule:

| Anticipated Payment Date | Amount |
|--------------------------|--------|
|--------------------------|--------|

| | |
|-------------------|----------------------|
| June 11, 2020 | \$42,527.88 plus HST |
| July 1, 2020 | \$42,527.88 plus HST |
| August 1, 2020 | \$42,527.88 plus HST |
| September 1, 2020 | \$42,527.88 plus HST |

- (4) In the event this Contract is extended as provided under subsection 2.1(2) for the 2021 season, the City shall pay the Aquatic Centre the amount of \$173,513.75 plus HST as per the following payment schedule:

| Anticipated Payment Date | Amount |
|---------------------------------|----------------------|
| June 11, 2021 | \$43,378.44 plus HST |
| July 1, 2021 | \$43,378.44 plus HST |
| August 1, 2021 | \$43,378.44 plus HST |
| September 1, 2021 | \$43,378.44 plus HST |

- (5) In the event this Contract is extended as provided under subsection 2.1(2) for the 2022 season, the City shall pay the Aquatic Centre the amount of \$176,984.00 plus HST as per the following payment schedule:

| Anticipated Payment Date | Amount |
|---------------------------------|----------------------|
| June 11, 2022 | \$44,246.00 plus HST |
| July 1, 2022 | \$44,246.00 plus HST |
| August 1, 2022 | \$44,246.00 plus HST |
| September 1, 2022 | \$44,246.00 plus HST |

- (6) No payment hereunder shall be construed as an acceptance or approval of incomplete, defective or improper performance by the Aquatic Centre of any of its obligations under this Contract, nor shall it operate to relieve the Aquatic Centre from the performance of any of its obligations under this Contract which have not been performed.

7.2 Hold Back and Set-Off

- (1) The City may hold back payment or set-off against any payment to the Aquatic Centre hereunder if, in the opinion of the City, acting reasonably, the Aquatic Centre has failed to comply with any requirements of this Contract, and the Aquatic Centre shall not suspend or terminate the provision of any Services or the performance of its obligations hereunder in respect of any such hold back or set-off of payment.

7.3 No Other Expenses

- (1) There shall be no other charges payable by the City under this Contract to the Aquatic Centre other than the Fees established under this Contract unless such charges and/or rates are first Approved by the City.

7.4 Taxes and Duties

- (1) Unless otherwise stated, the Aquatic Centre shall pay all applicable taxes, including sales and excise taxes incurred by or on the Aquatic Centre's behalf with respect to this Contract.

7.5 HST Status

- (1) The City is subject to the Harmonized Sales Tax. If the City becomes exempt from payment of Harmonized Sales Tax, the City will provide the Aquatic Centre with a certification that the Services are required for the use of the City and are therefore not subject to the Harmonized Sales Tax.

7.6 Withholding Tax

- (1) The City shall withhold any applicable withholding tax from amounts due and owing to the Aquatic Centre under this Contract and shall remit it to the appropriate government in accordance with applicable tax laws.

7.7 No Late Payment Charges

- (1) The City will endeavour to pay invoices when due to the Aquatic Centre, but shall not be required to pay interest on any late payments.

7.8 Document Retention and Audit

- (1) For seven years following the expiration of the Term, the Aquatic Centre shall maintain all necessary records to substantiate:
 - (a) All charges and payments under this Contract;
 - (b) That the Services were provided in accordance with this Contract and with Applicable Law. During the Term, and for seven years following the Expiry Date, the Aquatic Centre shall permit and assist the City in conducting audits of the operations of the Aquatic Centre to verify paragraphs (a) and (b) hereof; and
 - (c) The City shall provide the Aquatic Centre with at least ten Business Days prior notice of its requirement for such audit. The Aquatic Centre's obligations under this section shall survive any termination or expiry of this Contract.

ARTICLE 8 INSURANCE AND INDEMNITY

8.1 Aquatic Centre Liability Insurance

- (1) The Aquatic Centre shall obtain and maintain, at its own cost and expense, at all times during the Term of the Contract or any extension or prolongation thereof, the following insurance policies:
 - (a) Commercial General Liability Insurance against claims arising out of operations and activities in connection with Services or other work performed by the Aquatic Centre or any of its controlled affiliates under this Contract, covering bodily injury (including death), property damage, including loss of use of property without physical damage, and personal injury. This insurance shall cover injury, loss or damage arising out of all Services or any other work under this Contract, performed by the Aquatic Centre and any of its controlled affiliates involved in performing services or other work under this Contract and shall include 12 months completed operations coverage after completion of the Services or other work performed under this Contract. This insurance shall be written on an occurrence basis and shall provide coverage for premises, operations, broad form property damage, contractual liability, employer's liability and non-owned automobile insurance and shall include cross liability and severability of interests provisions with respect to insureds under the policy or policies. The policy or policies will include the City and the City's agencies and their respective councillors, commissioners, board members, officers and employees as insureds or additional insureds with respect to liabilities arising out of the Services and other work of the Aquatic Centre, its controlled affiliates performing services or other work on its behalf and other persons performing services or other work under this Contract

for whom the Aquatic Centre or any of its controlled affiliates is responsible at law. This insurance may be organized as any combination of primary, umbrella and/or excess liability insurance and shall be subject to a limit of not less than five million dollars any one accident or occurrence subject to a general aggregate limit of not less than five million dollars any one annual period.

- (b) Automobile Liability Insurance covering owned, leased or operated licensed motor vehicles used in connection with the Services and any other work of the Aquatic Centre and any of its controlled affiliates involved in performing services or other work under this Contract on behalf of the Aquatic Centre. This insurance may be organized as any combination of primary, umbrella and excess liability insurance policies and shall be subject to a limit not less than two million dollars combined single limit for injury, death or property damage resulting from each accident or occurrence.
- (2) The insurance policies placed or caused to be placed by the Aquatic Centre pursuant to Article 8 will operate as primary insurance with respect to the Services or any other work under this Contract by the Aquatic Centre and its controlled affiliates involved in performing services or other work under this Contract on behalf of the Aquatic Centre or, at the sole and unfettered discretion of the Aquatic Centre, any Subcontractors or other Persons performing services or any other work under this Contract on behalf of the Aquatic Centre.

8.2 Aquatic Centre Indemnity

- (1) The Aquatic Centre shall indemnify and save harmless the City from all Claims, or other Proceedings by whomsoever claimed, made, brought or prosecuted in any manner and whether in respect of property owned by others or in respect of damage sustained by others based upon or arising out of or in connection with the performance of this Contract or anything done or purported to be done in any manner hereunder, but only to the extent that such Claims, or other Proceedings are attributable to and caused by the Aquatic Centre's negligence, errors or omissions or that of its controlled affiliates or other Persons for whom it is responsible at law.
- (2) In no event will the Aquatic Centre be obligated to indemnify the City in any manner whatsoever in respect of any Claims caused by the negligence, errors or omissions of the City, or any Person for whom the City is responsible.

8.3 Participation in Proceedings

- (1) The Aquatic Centre shall, at its expense, to the extent requested by the City, participate in or conduct the defence of any Proceeding against any Indemnified Parties referred to in this Article 8 and any negotiations for their settlement.

- (a) The City may elect to participate in or conduct the defence of any such Proceeding by notifying the Aquatic Centre in writing of such election without prejudice to any other rights or remedies of the City under this Contract, at law or in equity.
- (b) Each Party participating in the defence shall do so by actively participating with the other's legal counsel. No settlement shall be entered into by the Aquatic Centre unless it has obtained the prior Approval of the City. If the Aquatic Centre is requested by the City to participate in or conduct the defence of any such Proceeding, the City agrees to co-operate with and assist the Aquatic Centre to the fullest extent possible in the Proceedings and any related settlement negotiations. If the City conducts the defence of any such Proceedings, the Aquatic Centre agrees to co-operate with and assist the City to the fullest extent possible in the Proceedings and any related settlement negotiations.

8.4 Extent of this Section

- (1) Nothing in this Article 8 shall be construed as limiting in any way, the indemnification provision contained in this Contract, or the extent to which the Aquatic Centre may be held responsible for payments of damages to Persons or property.

ARTICLE 9 TERMINATION AND DEFAULT

9.1 Termination for Default

- (1) The City will have the right to immediately terminate this Contract upon giving notice to the Aquatic Centre where:
 - (a) The Aquatic Centre makes an assignment for the benefit of its creditors, is declared bankrupt or commits an act of bankruptcy, becomes insolvent, makes a proposal or otherwise takes advantage of provisions for relief under the Bankruptcy and Insolvency Act (Canada) or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Aquatic Centre under the Bankruptcy and Insolvency Act (Canada) or similar legislation.
 - (b) The Aquatic Centre's default in performing and observing any of the terms, covenants, warranties or conditions of this Contract.
 - (c) The Aquatic Centre breaches the Conflict of Interest provision in this Contract.

- (d) In the City's reasonable opinion, the Aquatic Centre prior to or after executing this Contract makes a material misrepresentation or omission or provides materially inaccurate or misleading information to the City.
- (e) The Aquatic Centre undergoes a change of control which, in the reasonable opinion of the City, adversely affects the Aquatic Centre's ability to satisfy some or all of its obligations under this Contract.
- (f) The Aquatic Centre subcontracts for the provision of part or all of the Services or assigns this Contract without first obtaining the Approval of the City.
- (g) In the City's reasonable opinion, the Aquatic Centre's acts or omissions constitute a substantial breach of the Aquatic Centre's obligations under this Contract.

9.2 Rectification

- (1) Where the Aquatic Centre fails to comply with any of its obligations under this Contract, the City may issue a rectification notice to the Aquatic Centre setting out the manner and time-frame for rectification. Within seven calendar days of receipt of that notice, the Aquatic Centre shall either:
 - (a) Comply with that rectification notice; or
 - (b) Provide a rectification plan satisfactory to the City.

If the Aquatic Centre fails to either comply with that rectification notice or provide a satisfactory rectification plan, the City may immediately terminate this Contract. Where the Aquatic Centre has been given a prior rectification notice, any subsequent non-compliance by the Aquatic Centre in respect of such obligations shall allow the City to immediately terminate this Contract.

9.3 Termination on Notice

- (1) The City reserves the right to terminate this Contract, without cause, upon five calendar days' prior written notice to the Aquatic Centre.

9.4 Obligations on Termination

- (1) The Aquatic Centre shall, following the giving of a notice of termination by the City hereunder or upon expiry of the terms, in addition to its other obligations under this Contract and at law:
 - (a) Provide the City with a report detailing:
 - (i) The current state of the provision of Services by the Aquatic Centre at the date of termination; and

- (ii) Any other information requested by the City pertaining to the provision of the Services and performance of this Contract;
 - (b) Execute such documentation as may be required by the City to give effect to the termination of this Contract; and
 - (c) Comply with any other instructions provided by the City, including but not limited to, instructions for facilitating the transfer of its obligations to another Person.
- (2) Upon early termination of this Contract and settlement of accounts, or upon completion of the Aquatic Centre's obligations under this Contract, all items listed in subsection 6.1(1) or any other item belonging to the City and under the control of the Aquatic Centre, or Persons, or their agents, or Subcontractors, shall forthwith be delivered to the Parks and City Landscape Division by the Aquatic Centre.

9.5 Payment upon Termination

- (1) The City shall only be responsible for the payment of the Services provided under this Contract up to and including the effective date of any termination. Termination shall not relieve the Aquatic Centre of its warranties and other responsibilities relating to the Services performed or money paid.
- (2) In addition to its other rights of hold back or set-off, the City may hold back payment or set-off against any payments owed if the Aquatic Centre fails to comply with its obligations on termination. For greater certainty, under no circumstances shall the Aquatic Centre be entitled to payment from the City for or in respect of any foregone or projected profits, revenue, or income or other indirect or consequential losses or damages resulting or arising directly or indirectly from any termination of this Contract.
- (3) Without limiting the generality of this Article 9, the Aquatic Centre shall indemnify the City for, and hold it harmless against, all additional costs, charges and expenses incurred by the City as a consequence of a breach by the Aquatic Centre of its obligations hereunder, including without limitation, all costs incurred by the City in connection with the operation and maintenance of the Beaches relating to the Services.

9.6 Rights and Remedies

- (1) The express rights of termination in this Contract are in addition to and shall in no way limit any rights or remedies of the City under this Contract or Applicable Laws or otherwise, at law or in equity.

ARTICLE 10 DISPUTE RESOLUTION

10.1 Dispute Resolution Procedure

- (1) The Parties shall attempt to negotiate all Disputes in good faith.
- (2) In the event the Parties are unable through good faith negotiations to mutually resolve any Dispute, controversy or Claim arising out of, in connection with, or in relation to the interpretation, performance or breach of this Contract, such Dispute, controversy or Claim shall be referred to Dispute Resolution in accordance with **Schedule 2**.

10.2 Retention of Rights

- (1) It is agreed that no act by either Party shall be construed as a renunciation or waiver of any rights or recourses provided either Party has given the notices required under this Article 10 and has carried out with the instructions as provided in **Schedule 2 – Section A – Referral to Senior Management**.
- (2) Nothing in this Article 10 shall be construed in any way to limit a Party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of Saint John and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that either Party may have under **Schedule 2 – Section B – Mediation**, to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.

ARTICLE 11 MISCELLANEOUS PROVISIONS

11.1 Survival of Obligations

- (1) All of the obligations, representations, and warranties of a Party accruing hereunder during the existence of this Contract, or any renewal, or extension thereof, shall survive the termination or expiration of the Term.

11.2 Time

- (1) This Contract shall not be enforced or bind any of the Parties, until executed by all the Parties named in it.

11.3 Further Acts

- (1) The Parties shall at all times and from time to time hereafter and upon every reasonably written request to do so, make, do, execute, deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be required to more effectively implement and carry out the true intent and meaning of this Contract.

11.4 Counterparts

- (1) This Contract may be executed in any number of counterparts. Any Party may send a copy of its executed counterpart to the other Party hereto by facsimile transmission or by electronic mail instead of delivering a signed original copy of such counterpart. Each executed counterpart (including each copy sent by facsimile transmission or electronic mail) shall be deemed to be an original and all such executed counterparts taken together shall constitute one and the same agreement, and notwithstanding the date of execution shall be deemed to bear the same date as written above on this Contract.

ARTICLE 12 DEFINED TERMS

12.1 Definitions

When used in this Contract, the following words or expressions have the following meanings:

- (1) **Applicable Law** means all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licences, authorisations, directions, and agreements with all Governmental Authorities that now or at any time hereafter may be applicable to either this Contract or the Services or any part of them; and **Applicable Laws** shall have a corresponding meaning.
- (2) **Approval** or **Approved** and similar expressions means approval or consent in accordance with the procedures set out in section 1.11 unless otherwise provided herein.
- (3) **Aquatic Centre Address** means 50 Union Street, Saint John, New Brunswick, E2L 1A1, Telephone: 506.658.2991, Fax: 506.658.4730.
- (4) **Aquatic Centre Representative** means a person designated by the Aquatic Centre with duly vested authority to act on behalf of the Aquatic Centre.
- (5) **Beaches** means, collectively, the beaches at Dominion Park, Little River Reservoir, Fisher Lake (Rockwood Park), and Lily Lake (Rockwood Park); and **Beach** means any one of them.
- (6) **Business Day** means a day other than a Saturday, Sunday, or statutory holiday under the laws of Canada or the Province of New Brunswick or a civic holiday proclaimed by the City.
- (7) **Change in Law** means the coming into effect or repeal (without re-enactment or consolidation) in New Brunswick of any Applicable Laws, or any amendment or variation of any Applicable Laws, including any judgment of a relevant court of law, board, arbitrator or administrative tribunal, which changes binding precedent in New Brunswick in each case after the date of this Contract.
- (8) **City** means The City of Saint John, New Brunswick.
- (9) **City Address** means 15 Market Square, City Hall Building, 8th Floor, Saint John, New Brunswick, E2L 4L1, Attention: Common Clerk, Telephone: 506.658.2862, Facsimile: 506.674.4214.

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- (10) **City Manager** means the city manager of the City appointed by resolution by Common Council, or his designate.
- (11) **Claim** means any actual or threatened loss, liability, cost, charge, interest, claim, demand, allegation, action, cause of action, proceeding, suit, assessment, reassessment, proposed assessment or reassessment, damage, demand, expense, levy, tax, duty, judgment, award, fine, charge, deficiency, penalty, court proceeding or hearing cost, amount paid in settlement, Encumbrance, and/or tangible and intangible property right (including all costs and expenses relating to the foregoing, including legal and other professional adviser and expert fees and expenses), and whether arising by contract, at common or statute law, in tort (including negligence and strict liability), in equity, in property or otherwise of any kind or character howsoever, and howsoever arising; and **Claims** means any one of them.
- (12) **Common Clerk** means the common clerk or the assistant common clerk of the City appointed by resolution by Common Council.
- (13) **Common Council** means the elected municipal council of the City.
- (14) **Conflict of Interest** includes, but is not limited to, any situation or circumstance where in relation to the performance of its contractual obligations in this Contract, the Aquatic Centre's other commitments, relationships or financial interests:
- (a) Could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or
 - (b) Could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.
- (15) **Contract** means this contract, including all Schedules and any other schedule attached at the time of execution and any amendments executed in accordance with the terms and conditions of this Contract.
- (16) **Dispute** means any dispute, controversy, Claim(s), disagreement or failure to agree arising out of, in connection with, or relating to the interpretation, performance or application of the Contract; and **Disputes** means any one of the foregoing.
- (17) **Dispute Resolution** has the meaning ascribed thereto in the Dispute Resolution Procedure.
- (18) **Dispute Resolution Procedure** means those dispute resolution procedures ascribed thereto in **Schedule 2**.
- (19) **Encumbrance** means any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, claim or encumbrance of any nature whatsoever.

- (20) **Expiry Date** has the meaning ascribed thereto in subsections 2.1(1), 2.1(3), 2.1(4) and 2.1(5).
- (21) **Fees** means the firm price, in Canadian funds, to be charged for the applicable Services, as set out in **Article 7**, representing the amounts chargeable by the Aquatic Centre for the provisions of the Services, including but not limited to:
- (a) All applicable duties and taxes, excluding Harmonized Sales Tax;
 - (b) All labour and material costs;
 - (c) All insurance costs; and
 - (d) All other overhead including any fees or other charges required by law.
- (22) **Good Industry Practice** means the exercise by those Persons performing the Services of that degree of skill, diligence, prudence, operating practice, and foresight which would reasonably and ordinarily be expected from a Person seeking in good faith to comply with their contractual obligations under this Contract who is experienced in carrying out services and works comparable in size, scope, and complexity to the Services within Canada.
- (23) **Governmental Authority** means each national, federal, provincial, municipal, local or other government, each governmental, regulatory, administrative, judicial, quasi-judicial or other agency, body, department, corporation, authority, commission, instrumentality, regulatory body, board, panel, court, arbitrator or other entity and any successor thereto, exercising executive, legislative, judicial, quasi-judicial, taxing, regulatory or administrative powers or functions of or pertaining to government or judiciary, and each private regulatory entity, self-regulatory organization or other similar Person having jurisdiction or purporting to have jurisdiction (in whole or in part), in Canada and in any other relevant jurisdiction, in respect of the Parties, the Contract, and the Services; **Governmental Authorities** has a corresponding meaning.
- (24) **Harmonized Sales Tax** means the harmonized sales tax or the tax imposed under Part IX of the Excise Tax Act (Canada) or any other federal sales tax, consumption tax, excise tax, value added tax, business transfer tax or other tax that can reasonably be regarded as a substitute or replacement for the harmonized sales tax or the tax imposed under the Excise Tax Act (Canada) (the “**HST/GST**”) properly exigible in respect of the Services pursuant to this Contract.
- (25) **Indemnified Parties** means the City, its officers, directors, employees, agents, boards, commissions or independent contractors.
- (26) **Lifeguards** mean those persons who are 16 years old or older, holding a current lifeguard training waterfront certificate, a current standard First Aid and CPR/AED

certificate(s) and are designated by the Aquatic Centre to safeguard swimmers, and in addition, they must be Physically Fit.

- (27) **Party** individually means the City or the Aquatic Centre; and **Parties** means the City and the Aquatic Centre, respectively.
- (28) **Person** means any individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, commission, board, Governmental Authority, unincorporated body of Persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a Person in such capacity; and **Persons** means any one of them.
- (29) **Physically Fit** means a person who has met the requirements of a physical fitness screening test prior to the season, approved by the Aquatic Centre.
- (30) **Proceeding** means any Claim; and **Proceedings** shall have a corresponding meaning.
- (31) **Proposals** means the Technical Proposal and the Financial Proposal, respectively.
- (32) **Schedules** means the following schedules attached to and forming an integral part of this Contract:
 - a. Schedule 1 (Schedule of Terms of Reference and Supplementary Provisions);
 - b. Schedule 2 (Dispute Resolution Procedure).
- (33) **Services** means those lifeguard services as set forth in this Contract and include the responsibility to continuously observe the activities of patrons to ensure their safety, at all Beaches, during the business hours as set out in **Schedule 1**, including without limitation the deliverables as set forth in the RFP, Part 2 – The Deliverables.
- (34) **Subcontractor** is a Person or entity, other than the Aquatic Centre, having direct agreement with the Aquatic Centre to perform any part or parts under this Contract on behalf of the Aquatic Centre; and **Subcontractors** shall have a corresponding meaning.
- (35) **Term** has the meaning ascribed thereto in Article 2 of this Contract.

IN WITNESS WHEREOF the Parties hereto have caused these presents to be executed by the City of Saint John has caused this Contract to be executed in its corporate name in the manner prescribed by the Municipalities Act (New Brunswick), and amendments thereto, and Saint John Aquatic Centre Commission, have caused their corporate seals to be affixed as of the day and year first above written.

SIGNED, SEALED & DELIVERED

in the presence of:

The City of Saint John

Mayor

Common Clerk

Common Council Resolution:

June 4th, 2018

Saint John Aquatic Centre Commission

Per:

Witness

President

I have authority to bind the Aquatic Centre

PROVINCE OF NEW BRUNSWICK

COUNTY OF SAINT JOHN

I, **JONATHAN TAYLOR**, of the Town of Quispamsis, in the County of Kings, and Province of New Brunswick, **MAKE OATH AND SAY:**

1. THAT I am the Common Clerk of the City of Saint John and have custody of the Common Seal hereof.
2. THAT the Seal to the foregoing instrument affixed is the Common Seal of the said The City of Saint John and that it was affixed by resolution of the Common Council of the said City.
3. THAT the signature "Don Darling" to the said instrument is the signature of W. Donald Darling, Mayor of the said City, and the signature "Jonathan Taylor" thereto is my own signature.
4. THAT we are the proper officers to sign the foregoing instrument on behalf of The City of Saint John.

SWORN TO before me at Saint John,)
 in the County of Saint John and)
 Province of New Brunswick the ____)
 day of June, 2018.)

 Jonathan Taylor

 Commissioner of Oaths
 Being a Solicitor

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PROVINCE OF NEW BRUNSWICK

COUNTY OF SAINT JOHN

I, _____, of the _____ of _____, in the County of _____, and Province of New Brunswick, **MAKE OATH AND SAY:**

- (1) That I am the _____ of the Saint John Aquatic Centre Commission, the service provider named in the foregoing instrument and am duly authorized to make this affidavit and have personal knowledge of the matters hereinafter deposed to.
- (2) That the attached contract was executed by me as the officer duly authorized to execute the contract on behalf of the Saint John Aquatic Centre Commission.
- (3) That the Saint John Aquatic Centre Commission has no seal.
- (4) That the said document was executed as aforesaid at Saint John in the Province of New Brunswick on the _____ day of June, 2018.

SWORN TO before me at Saint John,)
in the County of Saint John and)
Province of New Brunswick the _____)
day of June, 2018.)

[Name]

Commissioner of Oaths
Being a Solicitor

SCHEDULE 1**SCHEDULE OF TERMS OF REFERENCE
AND SUPPLEMENTARY PROVISIONS**

The Aquatic Centre agrees to deliver the following lifeguard services as follows:

- (1) The Aquatic Centre shall be responsible for lifeguard services and to provide safety supervision to the public who attend the Dominion Park, Little River Reservoir, Lily Lake (Rockwood Park) and Fisher Lake (Rockwood Park) beaches.
- (2) The Aquatic Centre shall ensure that a minimum of three full-time Lifeguards are on duty, at all times, for each Beach, Monday to Sunday, for the Term of this Contract, at the following hours (Saint John time):
 - (a) Dominion Park from 10:45 a.m. to 5:45 p.m.;
 - (b) Little River Reservoir from 10:45 a.m. to 5:45 p.m.;
 - (c) Lily Lake (Rockwood Park) from 11:00 a.m. to 5:30 p.m.; and
 - (d) Fisher Lake (Rockwood Park) from 11:00 a.m. to 5:30 p.m.
- (3) The Aquatic Centre shall ensure that all Lifeguards have the following certifications:
 - (a) Current lifeguard training NLS or Red Cross lifeguard waterfront certificate;
 - (b) Current standard First Aid certificate;
 - (c) Current standard CPR/AED certificates.
- (4) The Aquatic Centre shall ensure that all Lifeguards have been designated by the Aquatic Centre to safeguard swimmers; be 16 years of age or older; and be Physically Fit to the extent required by the nature of the duties of the positions.
- (5) The Aquatic Centre shall perform the deliverables under the general direction and control of Parks and City Landscape Division and shall be responsible for all uniforms of the Lifeguards; safety and rescue equipment including four automatic external defibrillators with current and valid inspection sticker dates, one per each Beach; four thermometers for air and water, one per each Beach; four pocket masks, one per Beach; and telecommunication and radio communication devices for all Beaches.

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- (6) The Aquatic Centre shall be responsible to provide a written report on any hazardous conditions, injury, accident or illness related to the Beaches, beach users, or the general public, as soon as possible to Parks and City Landscape Division and shall ensure that all Lifeguards are positioned in a place that allows effective surveillance of the entire swimming area.
 - (7) The Aquatic Centre shall ensure that at least one person on staff, Monday to Sunday, at one of the Beach location, will be fluently bilingual in the English and French languages, and may be contacted in case of an emergency, by telecommunication and radio communication devices.
 - (8) It is expected that the scope of services to be provided will include, but not be limited to:
 - (a) Intervene to prevent injuries in and around the aquatic environment;
 - (b) Foster a good public image and adhere to professional standards;
 - (c) Meet responsibilities of varying importance in their role as lifeguards which include to themselves, to those they protect, to fellow beach staff, to the City, and to all Beaches;
 - (d) Meet or exceed their responsibility to the City by promoting a positive and professional attitude, appearance, and behaviour, at all times;
 - (e) Meet or exceed their responsibility to those under their protection by giving them the diligent and constant supervision expected both morally and legally. As well, they must create a friendly and positive beach experience through public relations skills; and
 - (f) Meet or exceed their responsibility towards the beach environment by upholding applicable laws as far as possible within their role as lifeguards.
 - (9) The Aquatic Centre shall ensure that all Lifeguards services provided throughout the Term of this Contract are consistent with current Canadian and New Brunswick standards and practices.
 - (10) The above description of the deliverables is not an exhaustive list and is to be used as a guide, in combination with good legal judgment and standards in lifeguard services.

SCHEDULE 2**DISPUTE RESOLUTION PROCEDURE****A. Referral to Senior Management**

- (1) All Disputes arising out of, or in connection with this Contract, or in respect of any legal relationship associated with or derived from this Contract, shall within two calendar days of notice from one Party to the other be referred for resolution to the City Manager and the Aquatic Centre Representative.
- (2) If the City Manager and Aquatic Centre Representative are not able to resolve the Dispute referred to them under this section A within seven calendar days following such referral, the matter shall be referred for resolution by way of mediation upon the willingness of the Parties.

B. Mediation

- (1) Either Party may apply to a court of competent jurisdiction or other competent authority for interim measures of protection at any time.
- (2) If the Parties resolve to mediate the Dispute referred to them under subsection A.(2) of this Contract, the Parties shall invoke the following mediation process:
 - (a) Either Party shall immediately declare an impasse and provide written notice to the other within seven calendar days thereof (or such other period as the Parties mutually prescribe) declaring that such Party wishes to proceed to mediation and setting out in reasonable detail the issue(s) to be resolved, the proposed time and a list of at least three and not more than five proposed mediators. Each of the proposed mediators shall be an individual:
 - (i) with at least ten years' experience working in an executive capacity or representing clients in the area of public disputes and/or the related field of the Dispute; and
 - (ii) unless otherwise agreed by the Parties, with no prior connection, affiliation or other formal relationship with either Party.
 - (b) Upon receipt of such notice, the notified Party shall have two calendar days to select one of the proposed mediators as the mediator, failing which the Party

providing notice shall select one of its proposed mediators as the mediator. Within ten calendar days following selection of the mediator the matter shall be heard by the mediator; and

- (c) The mediator shall be entitled to establish his or her own practices and procedures. Each Party shall co-operate fully with the mediator and shall present its case to the mediator orally and/or in writing within ten calendar days following the mediator's appointment. The mediation shall not be in the nature of arbitration as contemplated by the Arbitration Act (New Brunswick), and the mediator's decision shall not be binding upon the Parties, but shall be considered as a bona fide attempt by the mediator to judiciously resolve the Dispute. The decision of the mediator shall be rendered in a written report, not to exceed two pages in length, delivered to the Parties within ten calendar days following the last of such presentations. The fees of the mediator shall be shared equally by the Parties.
- (3) The mediation shall be terminated:
- (a) By the execution of a settlement agreement by the Parties; or
 - (b) By a written declaration of one or more of the Parties that the mediation is terminated; or
 - (c) By a written declaration by the mediator that further efforts at mediation would not be useful.
- (1) The place of mediation shall be the City of Saint John and Province of New Brunswick.

C. Arbitration

- (1) In the event that the Parties are unwilling to mediate their Dispute or that the Dispute between the Parties remains unresolved after mediation has been attempted in good faith, then either the City or the Aquatic Centre, upon written notice to the other, shall refer the Dispute for determination to a Board of Arbitration (the "**Tribunal**") consisting of three persons, one chosen by and on behalf of the City, one chosen by and on behalf of the Aquatic Centre, and the third chosen by these two.
- (2) In case of failure of the two arbitrators appointed by the Parties hereto to agree upon a third arbitrator, such third arbitrator shall be appointed by a Judge of the Court of Queen's Bench of New Brunswick. The arbitrators shall have at least ten years' experience working in an executive capacity or representing clients in the area of public disputes and/or the related field of the Dispute.
- (3) No one shall be appointed or act as arbitrator who is in any way interested, financially or otherwise, in the conduct of the work or in the business or other affairs of either Party.

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- (4) Notwithstanding the provisions of the Arbitration Act (New Brunswick), the Tribunal, upon such terms as are deemed by it to be appropriate, may allow either Party to amend or supplement its claim, defence or reply at any time prior to the date at which the Parties have been notified of the arbitration hearing date, unless the Tribunal considers the delay in amending or supplementing such statements to be prejudicial to a Party. The Tribunal will not permit a Party to amend or supplement its claim, defence or reply once the arbitration hearing has been scheduled.
 - (5) The Tribunal may encourage settlement of the Dispute and, with the written agreement of the Parties, may order that mediation, conciliation or other procedures be used by the Parties at any time during the arbitration proceedings to encourage settlement.
 - (6) If, during the arbitration proceedings, the Parties settle the Dispute, the Tribunal shall, upon receiving confirmation of the settlement or determining that there is settlement, terminate the proceedings and, if requested by the Parties, record the settlement in the form of an arbitration award on agreed terms.
 - (7) Subject to subsection C.(8), any determination made by the Tribunal shall be final and binding upon the Parties and the cost of such determination shall be apportioned as the Tribunal may decide.
 - (8) Either Party may appeal an arbitration decision to The Court of Queen's Bench of New Brunswick: (i) on a question of law; or (ii) on a question of fact; or (iii) on a question of mixed fact and law.
 - (9) The place of arbitration shall be the City of Saint John and Province of New Brunswick and the provisions of the Arbitration Act (New Brunswick), shall apply to the arbitration.