

June 5, 2012



Mr. Charles Bown
Associate Deputy Minister
Department of Natural Resources
Government of Newfoundland & Labrador
P.O. Box 8700
50 Elizabeth Avenue
St. John's, NL A1B 4J6

Dear Mr. Bown;

Please find the original copy of the Agreement between MHI and the Department of Natural Resources with signatures as requested.

We look forward to working with you on this interesting project.

Best regards,

Paul Wilson, P.Eng
Managing Director,
Subsidiary Operations

II. The Consultant's Work

The Consultant shall do all things necessary to fulfill all of the obligations of the Consultant as set out in the Contract Documents (the "Work"). The Work shall be performed by the Consultant to the satisfaction of the Client.

III. Payment**1.1 Consideration**

It is agreed and understood that payments made for the satisfactory performance of the Work pursuant to this Agreement shall be made in accordance with either Option 1, 2 or 3 below.

Payment Option #1 Applicable

Subject to Article 1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Consultant, for the satisfactory performance of the work [REDACTED] in accordance with the following payment schedule:

(i) Monthly payments**Payment Option #2 Not Applicable**

Subject to Article 1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Consultant, for the satisfactory performance of the Work, the following time rate schedule for activities actually expended in performance of the Work (plus HST):

Payment Option #3 Not Applicable

Subject to Article 1.3, upon the satisfactory completion of the Work and the presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Consultant (plus HST).

1.2 Reimbursement of Expenses

It is agreed and understood that reimbursements for the Consultant's expenses pursuant to this Agreement shall be made in accordance with either Option A or B below.

Reimbursement Option A Applicable

- (a) The Client shall only be responsible for the following reimbursable expenses, payable at cost, provided the Consultant can demonstrate to the Client that such expenses were incurred in relation to the Work, and



that documentation, satisfactory to the Client, is provided in support of the reimbursable expense claimed and is attached to the applicable invoice, including for example, originals of supporting receipts, invoices or statements issued by non-parties to this Agreement:

- (i) **Domestic Airfare**
- (ii) **Hotel**
- (iii) **Car Rental**
- (iv) **Per Diem**
- (v) **Airport Transfers**
- (vi) **Communication and Reproduction Costs**

- (b) All claims submitted for reimbursable expenses in accordance with this Article 1.2 shall be reimbursed at rates consistent with those identified by Manitoba Hydro International.

Reimbursement Option B **Not Applicable**

The Client shall not be responsible for any expenses incurred by the Consultant, including, without limitation, out of pocket expenses such as travel, meals, accommodations, legal advice, support staff, printing and duplicating, courier, long distance telephone and/or facsimile charges, without the prior written approval of the Client.

1.3 **Payment General**

- (a) Regardless of the payment option selected in Article 1.1 and/or 1.2, the Parties agree and confirm that total amounts payable for the Work shall not exceed a monetary [REDACTED] and that a minimum of ten percent (10 %) of the total fees payable for the Work will be withheld until such time as the project is completed to the satisfaction of the Client.
- (b) The Consultant shall remain obligated to complete the Work notwithstanding that the actual costs of the Consultant, whether in respect of professional services or in respect of costs or expenses incurred, may exceed the total aggregate sum set out in Article 1.3(a).
- (c) The Parties agree and confirm that as set out in section 25(6) of the *Financial Administration Act*, RSNL1990 cF-8, as amended, all fees payable in accordance with this Agreement are subject to there being an appropriation for the work for the fiscal year in which payment under this Agreement is due.
- (d) Payment will be made within 60 calendar days of receipt of a properly documented invoice.
- (e) All invoices shall clearly show the amount of HST billed by the Consultant as a separate item.

- (f) The Consultant shall conform to any request that may be made by the Client to alter the form of invoice customarily used by the Consultant as may be reasonably required for the purposes of the Client's internal accounting systems. The Consultant agrees that each invoice shall clearly show and identify the work or service which is being charged under that invoice to the Client. The invoice shall have appended thereto any documentation required by the Client.
- (g) The Client shall not be responsible to pay any amounts invoiced by the Consultant which may arise from work, services or expenses incurred to remedy errors or omissions in the Work for which the Consultant is responsible.
- (h) The Consultant shall submit invoices to:
Charles Bown
Associate Deputy Minister (Energy)
Department of Natural Resources
P.O. Box 8700
St. John's, NL, A1B 4J6

IV. Notices

All notices, claims, payments, reports and other communications required under this Agreement shall be in writing. The addresses for service are as follows:

For the Client:

Charles Bown
Associate Deputy Minister (Energy)
Department of Natural Resources
P.O. Box 8700
St. John's, NL, A1B 4J6
Phone: (709) 729-2315
Fax: (709) 729-2871
Email: cbown@gov.nl.ca

For the Consultant:

Manitoba Hydro International Ltd.
Attention: Paul Wilson
Managing Director Subsidiary Operations
211 Commerce Drive
Winnipeg, MB, R3P 1A3
Phone: 204-989-1271
Fax: 204-475-7745

Notices, requests or documents shall be deemed to have been received by the addressee as follows:

- (a) As of the date on which they are delivered where delivery is by a party or by messenger or special courier service;
- (b) As of the date on which they are sent where delivery is by telecopier or other means of electronic communication; and
- (c) Six (6) days after delivery to Canada Post Corporation where the postal service is used.

V. Entire Agreement

It is hereby agreed that the Contract Documents constitute the entire agreement between the parties (the "Agreement"). There are no understandings, representations or warranties of any kind except as expressly set forth herein. No changes, alterations or modifications or amendments of this Agreement shall be effective unless made in writing and signed by those persons designated for such purpose. This Agreement may be amended or otherwise modified by e-mail.

VI. Representations and Warranties

The Consultant hereby represents and warrants that every fact stated or represented by the Consultant or its Representatives to the Client in connection with any proposal made by the Consultant in respect of the Work is true and agrees that the Client shall be conclusively deemed to have relied on each such representation or statement in entering into this Agreement.

VII. Conflict Between Provisions

In the event of any conflict or inconsistency between provisions in the Contract Documents, the Contract Documents shall have precedence as follows: first the Head Agreement, second the Special Terms and Conditions, third the General Terms and Conditions, fourth the Protocols for Security of Government Information on Information Technology assets of Contractors, fifth the Scope of Work, **and last, any documents incorporated by reference in any of the foregoing.**

VIII. Start and Completion Date

The Consultant shall commence activities in relation to the Work with the start and completion dates mutually agreed upon as follows:

Start Date: **April 15, 2012**
Completion Date: **September 30, 2012**

IX. Effective Date

The effective date of this Agreement shall be the earlier of the start date referred to in Clause VIII or the date on the first page of this Head Agreement.

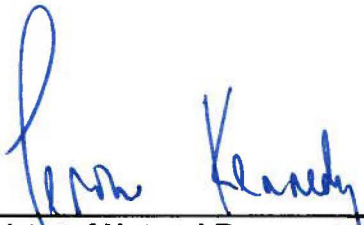
X. Paragraph Numbering

In the event that the General Terms and Conditions are modified by the Special Terms and Conditions, the numbering references in the General Terms and Conditions shall remain unchanged.

XI. Counterparts

This Agreement may be executed in any number of counterparts, each of which will be considered an original of this Agreement, and which together will constitute one and the same instrument. No Party will be bound to this Agreement unless and until all Parties have executed a counterpart. A facsimile signature or an otherwise electronically reproduced signature of either Party shall be deemed to be an original.

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND AND LABRADOR**



Minister of **Natural Resources**
or his/her authorized designate

Manitoba Hydro International Ltd.



Authorized Signature

Date: JUNE 5 / 2012

PAUL WILSON
MANAGING DIRECTOR
SUBSIDIARY OPERATIONS

SCHEDULE "A"
SCOPE OF WORK

Objective

MHI (the Consultant) shall review work completed by the Proponent (Nalcor) since Decision Gate 2 (DG2) in preparation for Decision Gate 3 (DG3). The review shall include an assessment of the Cumulative Present Worth (CPW) Analysis of the various components for each of the two Options, including a reasonableness assessment of all inputs into that analysis. The tests of reasonableness for this assessment are generally defined as the work following:

- (a) Good project management and execution practices, and
- (b) Good utility practices of the majority of electrical utilities in Canada while recognizing the unique electrical isolated system on the Island of Newfoundland and common accepted practice in Newfoundland and Labrador regarding the electrical system. Practices unique to Newfoundland and Labrador will be noted in the body of the MHI report.

The Consultant will also provide such advice and other services as may be required from time to time by the Government of Newfoundland and Labrador (Client).

Services

The Consultant acknowledges that the Client is relying on the skill and knowledge of the Consultant in performing the Services. The Consultant shall exercise the degree of skill, care and diligence required by customarily accepted practices and procedures for such a Contract.

The Consultant shall only use key personnel to perform the Services who have been named by the Consultant in the Proposal and who have been accepted by the Client. The Consultant may only substitute or replace the accepted key personnel with the prior written agreement of the Client.

The Consultant will enter into a Non-Disclosure Agreement with Nalcor Energy to ensure that MHI receives all the necessary information to complete the Services while protecting the commercial sensitivity and confidentiality of information it receives from Nalcor.

The Services which the Consultant shall perform or cause to be performed with diligence, skill and care include the following:

- a) A review of work performed by Nalcor related to the Muskrat Falls and Labrador Island HVdc Link (LIL) and the Isolated Island Option subsequent to DG2. The level of review shall be sufficient for the Consultant to report on whether Nalcor has performed work with the degree of skill, care and diligence required by customarily accepted professional practices and procedures completed in the performance of similar work. This work will be undertaken by examination of design reports, technical documentation or memos, in direct meetings with Nalcor, or with other data and information provided by Nalcor during meetings and working sessions.



The review will focus on the reasonableness of existing engineering or financial documents used in the development of the CPW analysis including design documents, design studies, material and equipment specifications, cost estimates and schedules. MHI's final report will include a summary of which documents were reviewed, a summary of meeting notes with Nalcor, identification of salient points necessary for the CPW analysis, and if the various studies were reasonable, and where applicable, prepared in accordance with good practices. The technical assessment will focus on the following areas that are generally used as inputs into the CPW analysis:

- i. Review of Load Forecast Update including:
 - An assessment of the reasonableness of the 2012 Load Forecasts for the Island Interconnected System. Two load forecasts are being prepared, the first for the Isolated Island Option, and the second for the Interconnected Island Option.

Information required :

- Updated 2012 Load Forecasts for each option

Outcomes:

- A report on the reasonableness of the 2012 load forecast as the basis for the development of the Generation Expansions Plans and the subsequent CPW analysis.

- ii. Review of the AC integration studies completed for the Muskrat Falls and LIL HVdc configuration options to establish the reasonableness of their use as DG3 cost inputs.

Information required:

- AC integration studies report

Outcome:

- A report on the reasonableness of the results of the AC integration studies as inputs required into the CPW analysis.

- iii. Review of the Muskrat Falls GS post DG2 design changes, cost estimates, and construction schedules to determine their reasonableness as inputs to the CPW analysis.

Information required:

- Muskrat Falls GS current basis of design
- Muskrat Falls GS updated design data and information including AC switchyards and transmission lines to Churchill Falls
- Muskrat Falls updated master cost estimate
- Muskrat Falls updated high level master project schedule

Outcome:

- A report on the reasonableness of the Muskrat Falls GS capital cost estimate and schedule as inputs to Nalcor's DG3 CPW analysis.

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- iv. Review of the HVdc Converter Stations and associated AC switchyards. This will include a review of the single line diagram, revised cost estimates, construction schedules, and DC project definition to determine their reasonableness as inputs to the CPW analysis.

Information required:

- Information as listed above
- HVdc updated master cost estimate
- HVdc updated master project schedule
- Shore electrode cost estimates, and construction schedules.

Outcome:

- A report on the reasonableness of the transmission capital cost estimates and schedule as inputs to Nalcor's DG3 CPW analysis.

- v. Review of the overhead HVdc transmission line and associated AC collector transmission lines including its reliability design criteria, route details and final metrology review. A review of tower and line designs, review of cost estimates, and construction schedules will be conducted to assess the reasonableness of the transmission line design parameters as inputs to the CPW analysis. MHI will work with Nalcor to obtain a common understanding of the HVdc transmission line design philosophy and its alignment to the design details provided and operating practices. This undertaking will clarify both the business and local issues implicit in the selection of reliability return period.

Information required:

- Information as listed in the above paragraph
- Transmission line design basis
- Transmission line updates to the master cost estimate
- Transmission line updates to the master project schedule

Outcomes:

- A report on the reasonableness of Nalcor's transmission line design and rationale of design criteria as inputs to Nalcor's DG3 CPW analysis.

- vi. Review of the Strait of Belle Isle (SOBI) marine crossing cost estimates and construction schedule to assess their reasonableness as inputs to the CPW analysis.

Information required:

- Marine crossing capital cost estimates
- Marine crossing master project schedule

Outcomes:

- A report on the reasonableness of Nalcor's SOBI cost estimate schedule as input to the DG3 CPW analysis.



- vii. A review of the other changes made by Nalcor to cost inputs from DG2 to DG3 for both the Isolated Island and Interconnected Island alternatives.

Information required:

- Changes in costs between DG2 and DG3
- Supporting information to explain the changes in costs.

Outcome:

- A report on the reasonableness of Nalcor's cost inputs for the other items adjusted since DG2.

- viii. A review of the CPW input changes and results for the DG3 inputs for both the Isolated Island and Interconnected Island alternatives. The CPW analysis review will validate the results for the base case of the two options computed by Nalcor. MHI's review will include an assessment and commentary on the sensitivities on the CPW analysis:

- Revised capex cost variations
- Fuel price variations
- Interest Rate variations.

Outcome:

- A report on the reasonableness of the inputs and results of Nalcor's CPW Analysis inputs for both the Isolated Island and Interconnected Island alternatives, including its sensitivity analysis.

- b) Preparation of a final report anticipated to include, as a minimum the following:

- An executive summary;
- A description of the Consultant's review team;
- A description of the methodology used to complete the Services;
- A summary of the results of the review, including a discussion of the materiality of any observations and recommendations made as well as a discussion of the steps taken to address such matters.

- c) Provision of ongoing support to the Client.

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SCHEDULE "B"

SPECIAL TERMS AND CONDITIONS (as necessary)

All Special Terms and Conditions must be reviewed by both the Department of Justice of the Government of Newfoundland and Labrador (the "Department of Justice") and the Deputy Minister of the Department requesting the Work (the "Deputy Minister"). These Special Terms and Conditions shall not be of any effect unless initialed by both a lawyer assigned by the Department of Justice and the Deputy Minister

Insert Name of Counsel or Deputy Minister

The Special Terms and Conditions of this Agreement are follows:

OR

1. No Special Terms and Conditions

Department of Justice

Deputy Minister

SCHEDULE "C" GENERAL TERMS AND CONDITIONS

Article 1 -Information Supplied By The Client

Article 2 -Confidentiality, Materials and Copyright

Article 3 -Employees of the Consultant

Article 4 -Access to Facilities

Article 5 -Records and Audit

Article 6 -Termination

Article 7 -Liability

Article 8 -Compliance With Law

Article 9 -Arbitration

Article 10 -Laws Governing

Article 11 -Use of Work

Article 12 -Conflict Of Interest

Article 13 -Subcontractors

Article 14 -General

GENERAL TERMS AND CONDITIONS

Article - 1. INFORMATION SUPPLIED BY THE CLIENT

- 1.1 The Client will furnish to the Consultant all available information necessary for the performance of the Work. The Client makes no guarantee either expressed or implied as to the accuracy of the information supplied. The Consultant shall review the information for accuracy and applicability.
- 1.2 Where discrepancies, omissions or obscurities in the information are evident, the Consultant shall bring them to the attention of the Client and secure written instructions from the Client before proceeding with any work.

Article - 2. CONFIDENTIALITY, MATERIALS AND COPYRIGHT

- 2.1 For the purposes of this Article "Confidential Information" means:
 - (a) all communications and instructions from the Client respecting the Services, including the fact of this Agreement;
 - (b) all information acquired by the Consultant, his/her employees, servants and/or agents respecting policy consideration and development, business decisions, internal deliberations, discussions and considerations and any other aspect of the decision-making process of the Client;
 - (c) all oral, written, electronic, and machine readable information and data and any accompanying supporting materials and documentation, including without limitation, materials, documents, reports, databases, information and data of whatever nature and kind concerning the affairs of the Client, disclosed directly or indirectly to the Consultant, his/her employees, servants and/or agents during the performance of the Services or in any way related thereto;
 - (d) all personal information, as defined from time to time under the *Access to Information and Protection of Privacy Act*, SNL2002 cA-1.1, to mean recorded information about an identifiable individual, including
 - (i) the individual's name, address or telephone number,
 - (ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,
 - (iii) the individual's age, sex, sexual orientation, marital status or family status,

- (iv) an identifying number, symbol or other particular assigned to the individual,
- (v) the individual's fingerprints, blood type or inheritable characteristics,
- (vi) information about the individual's health care status or history, including a physical or mental disability,
- (vii) information about the individual's educational, financial, criminal or employment status or history,
- (viii) the opinions of a person about the individual, and
- (ix) the individual's personal views or opinions

for any individual, which is, directly or indirectly, disclosed to or collected by the Consultant, its, his/her employees, servants and/or agents during the performance of the Services or in any way related thereto;

(e) all information that is developed based upon Confidential Information including the work product of the Consultant, its, his/her employees, servants and/or agents; and

(f) Confidential Information shall not include any information which:

- (i) at the time such information was provided to the Consultant was or thereafter became part of the public domain through no act or omission of the Consultant or its, his/her Representatives; or
- (ii) is information which the Consultant can show possession of prior to the date of this Agreement and which was received or developed by the Consultant free of obligations of confidentiality to the Client.

- 2.2** The Consultant shall treat all Confidential Information acquired by the Consultant in the performance of the Services as privileged and confidential and shall not divulge the same to any person or persons at any time without the express written approval of the Client, unless required to do so by law, which may include any subpoena or other similar process or in connection with litigation, arbitration or other proceeding or by virtue of an act or regulations. In the event that such disclosure is required, the Consultant shall give the Client prompt notice of the requirement upon becoming aware that such disclosure is required. Where circumstances did not permit the Consultant to provide such notice prior to disclosure, the Consultant shall provide such notice to the Client immediately after the required disclosure.
- 2.3** The Consultant shall only use the Confidential Information acquired in the performance of the Services for the purposes specified in the Scope of Work and this Agreement, and shall not permit the use of the Confidential Information for any other purposes.
- 2.4** All materials, data, designs, plans, drawings, specifications, research, reports, notes, estimates, summaries, calculations, surveys, papers, completed work, and work in progress and such other information and materials or parts thereof as are compiled, drawn and produced by the Consultant in performing the Services, including without limitation computer printouts and computer models and all copyrights thereto and all patents, trademarks and industrial designs arising therefrom are the sole and exclusive



property of the Government of Newfoundland and Labrador and the contents thereof are privileged and confidential. Nothing in this Agreement shall give the Consultant a right, however arising, to assert any lien, claim, demand, property right, remedy or security right of any kind over the information provided to the Consultant pursuant to the terms of this Agreement. The Consultant acknowledges that the Client's right to this information shall at all times be paramount to any rights of the Consultant, at law or in equity, and that the Consultant's remedies against the Client for the Client's breaches under this Agreement do not include the right to deprive the Client of access to the Client's information in the Consultant's possession.

- 2.5** The Consultant shall provide to the Client and solely to the Client upon completion of the Services or upon earlier termination of this Agreement all Confidential Information acquired during the performance of the Services, or shall, at the request of the Client, destroy any and all copies and versions of the Confidential Information in the possession of the Consultant, his/her employees, servants and/or agents, and shall certify the destruction of same to the Client.
- 2.6** The Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Consultant, its employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the *Access to Information and Protection of Privacy Act*, the *Management of Information Act*, SNL2005, cM-1.01, and the *Privacy Act*, RSNL1990 cP-22, as well as other legislation which may apply in the jurisdiction of the Consultant's operation. The Consultant is responsible to ensure the compliance with and satisfaction of the legislative requirements of all such information relating to the treatment of Confidential Information by the Consultant, its, his/her employees, servants and/or agents.
- 2.7** The Consultant shall ensure that it, his/her employees, servants and/or agents have in place and follow the appropriate systems, processes, protocols and policies to maintain the physical and electronic security of all Confidential Information, including but not restricted to the following:
- (a) at a minimum, using the same level of physical and electronic security as the Consultant employs to avoid disclosure or dissemination of the Consultant's own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of its employees, servants or agents other than those who are required to have access to properly perform the Services under this Agreement;
 - (b) establish and maintain security policies, standards and safeguards to prevent unauthorized access, collection, use, disclosure or disposal of the Confidential Information;
 - (c) ensure all employees, servants and/or agents of the Consultant comply with all policies, standards and safeguards established under this Article;
 - (d) advise the Client of any changes in its, his/her security systems, procedures, standards and practices that may affect the Confidential Information and seek the Client's consent prior to such changes; and
 - (e) satisfaction of the foregoing commitments includes, but is not restricted to,



compliance with the requirements set out in Schedule "D", unless otherwise advised by the Client, and this includes:

- (i) complying with all alterations or updates of Schedule "D" as may be provided to the Consultant from time to time; and
- (ii) adhering to any additional instructions (including oral instructions) from the Client as they relate to the subject matter contained in Schedule "D" and this Article.

2.8 The Consultant shall only disclose confidential information to persons other than its employees, servants and/or agents with the prior written consent of the Client, and then only to those persons who need to know the information in order to carry out the duties associated with this Agreement and only after confirming that such persons agree to comply with the provisions of this Article including the requirements set out in Schedule "D".

2.9 The Consultant shall:

- (a) notify the Client promptly of any unauthorized possession, use or knowledge, or attempt thereof, of the Client's information in the possession of the Consultant, including but not limited to data processing files, transmission messages or other confidential information by any person or entity which may become known to the Consultant;
- (b) promptly furnish to the Client full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the Client in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of confidential information;
- (c) use reasonable efforts to cooperate with the Client in any litigation and investigation against third parties deemed necessary by the Client to protect its proprietary rights;
- (d) promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of confidential information; and
- (e) refer to and follow the privacy breach protocol of the Government of Newfoundland and Labrador as it exists at the time of the breach and located on the Department of Justice website at:

<http://www.justice.gov.nl.ca/just/CIVIL/atipp/default.htm>

Article - 3. EMPLOYEES OF THE CONSULTANT

3.1 The Consultant shall provide employees who are competent in their field of specialization. The Client will have the right to have the Consultant remove from the Work any person, who by misconduct or by failure to properly perform his/her duties is considered by the Client to be unfit for employment on the Work. If the Consultant fails to remove any unfit person from the Work as requested by the Client, then the Client may void this Agreement or refuse to accept subsequent Work in which the person was involved and may refuse to approve payment for such Work.

- 3.2 The Consultant shall not alter, remove or replace the employees or Representatives indicated in the Scope of Work without prior written approval by the Client.

Article - 4. ACCESS TO FACILITIES

- 4.1 The Client agrees to provide, where it is deemed by the Client, in its absolute and sole discretion, to be necessary for the reasonable performance of the Work, working space and equipment access for the Consultant to perform the Work during Client office hours.
- 4.2 When using or accessing the premises of the Client, the Consultant and all officers, employees and agents of the Consultant shall comply with all security regulations and workplace policies and procedures in effect from time to time at the Client's facilities.

Article - 5. RECORDS AND AUDIT

- 5.1 The Consultant shall keep records, books of account and supporting documents in accordance with accepted accounting procedures and practices. The records shall be made available to the Client or its authorized representative for observation or audit at mutually convenient times and up to one year after discharge of this Agreement.
- 5.2 The Consultant shall furnish reports as required by the Client for the purpose of monitoring the progress of the Work.

Article - 6. TERMINATION

- 6.1 This Agreement is deemed to be concluded once the Work has been completed to the satisfaction of the Client and the payment(s), as stipulated in the Agreement, has been issued to the Consultant.
- 6.2 Notwithstanding the provisions of this Agreement, either of the Parties may at any time by way of fourteen (14) days written notice to the other, terminate this Agreement.
- 6.3 Where this Agreement is terminated prior to the mutually agreed upon completion date, the Consultant shall thereupon be entitled to payment in accordance with this Agreement in respect of that part of the Work completed up to the date of termination, provided however, that the Consultant shall not be entitled to any other payment in respect of such termination, including, without prejudice to the generality of the foregoing, any payment for any consequential loss or damage or loss of profits arising from termination of this Agreement or in any other way related thereto.

The Client shall retain the right of set off with respect to any earned but unpaid proceeds then owing pursuant to this Agreement.

Article - 7. LIABILITY

- 7.1** The Consultant agrees that in performance of the Work neither the Consultant nor any Consultant's Representative shall be or be deemed to be an officer, servant, agent or partner of the Client.
- 7.2** Notwithstanding any other provision of this Agreement the total liability of the Consultant to the Client with respect to any and all claims arising out of the performance or non-performance of the services provided under this Agreement whether based in contract, warranty, tort, including negligence, equity, strict liability or otherwise, shall be, limited to five times the value of the total fees for the services provided for under this Agreement.

Subject to the limitations of liability in this Agreement, Consultant shall be liable for and shall indemnify and save harmless Client, its directors and officers, its employees, agents and subcontractors from and against any and all losses, costs, damages or expenses suffered or incurred by Client or payable to any third party arising from any breach of contract, negligence or willful misconduct of Consultant or its employees in relation to this Agreement, except to the extent that such loss or damage is caused by the breach of contract, negligence or willful misconduct of Client, its employees, agents or subcontractors or any third party.

Subject to the limitations of liability in this Agreement, Client shall be liable for and shall indemnify and save harmless Consultant, its directors and officers, its employees, agents and subcontractors from and against any and all losses, costs, damages or expenses suffered or incurred by Consultant or payable to any third party arising from any breach of contract, negligence or willful misconduct of Client or its employees in relation to this Agreement, except to the extent that such loss or damage is caused by the breach of contract, negligence or willful misconduct of Consultant, its employees, agents or subcontractors or any third party.

Neither party shall have any liability to the other party or any other person or entity for any indirect, incidental, special or consequential damages whatsoever, including but not limited to loss of revenue or profit, lost or damaged data, or other commercial or economic loss, even if either party has been advised of the possibility of such damages; nor shall either party's directors, officers, employees, agents or subcontractors have any such liability.

- 7.3** The Consultant shall defend any and all such actions and pay all legal charges, costs and other expenses arising therefrom. Notwithstanding the foregoing, the Client may at its own discretion retain its own solicitors to defend its interests in any such suit or claim, and the legal costs of that defense shall be paid by the Consultant.

In the event that any liability results from the joint or concurrent negligent or intentional acts or omissions of the parties, each party shall be liable under this indemnification in proportion to its relative degree of fault.



Each party shall promptly notify the other party of any liability or proceeding in respect of which it is or may be entitled to indemnification.

Such notice shall be given as soon as reasonably practicable after the relevant party becomes aware of the liability or proceeding.

Any obligation of an indemnifying party to indemnify an indemnified party shall be reduced by the proceeds of any insurance policies received by the indemnified party with respect to the relevant claim.

Legal counsel retained for the defence of a party shall be instructed by the party retaining them to estimate in good faith the proportion of all costs, fees, and expenses of such defence which relate directly to Consultant's claims and Client's claims. All fees of legal counsel shall be allocated between Consultant and Client in proportion to each party's relative degree of fault.

Article - 8. COMPLIANCE WITH LAW

- 8.1 In respect of any work within the Province of Newfoundland and Labrador connected with or arising from this Agreement, the Consultant shall provide (where requested by the Client) evidence of compliance with all requirements of the Province of Newfoundland and Labrador with respect to Worker's Compensation and or Occupational Health and Safety, including without limitation, any payments or compliance orders due or issued thereunder.
- 8.2 The Consultant shall ensure that the Consultant and its Representatives comply with all requirements of any governing federal, provincial or municipal legislation, by-laws or regulations applicable to the Consultant or the Consultant's Representatives in the performance of the Work.

Article - 9. ARBITRATION

- 9.1 In the case of a dispute arising between the Client and the Consultant as to their respective rights and obligations under this Agreement, the parties shall first attempt to resolve all matters through friendly negotiation by a meeting between their representatives upon notice per Article 8. A resolution reached in this way must be reached within 10 days of both parties having knowledge and notice of the dispute and be reduced to writing.
- 9.2 In the case of a dispute arising between the Client and the Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Article 11.1), either party may give the other notice of such dispute and to request arbitration thereof. If both parties agree, the parties shall, with respect to the particular matters then in dispute, submit the same to arbitration in accordance with the provisions of the *Arbitration Act*, RSNL990 cA-14, including such provisions for the appointment of arbitrators.

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Article - 10. LAWS GOVERNING

- 10.1** This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Newfoundland and Labrador and all actions, suits or proceedings arising out of this Agreement shall be determined in a court of competent jurisdiction in Newfoundland and Labrador subject to any right of appeal.

Article - 11. USE OF WORK

- 11.1** The Client shall have the right to use the Work or variations thereof in other operations of the Client.

Article - 12. CONFLICT OF INTEREST

- 12.1** No member of the House of Assembly of the Province of Newfoundland and Labrador shall be admitted to any part or share of the payments made pursuant to this Agreement or to any benefits arising therefrom.
- 12.2** The Consultant and the Consultant's Representatives:
- (a) shall conduct all duties related to this Agreement with impartiality;
 - (b) shall not influence, seek to influence, or otherwise take part in a decision of the Client, knowing that the decision might further their private interests;
 - (c) shall not accept any commission, discount, allowance, payment, gift, or other benefit that is connected, directly or indirectly, with the performance of any duties related to this Agreement, that causes, or would appear to cause, a conflict of interest; and
 - (d) shall have no financial interest in the business of a third party that causes, or would appear to cause, a conflict of interest in connection with the performance of any duties related to this Agreement.

Article - 13. SUBCONTRACTORS

- 13.1** The Consultant shall not subcontract all or a portion of the Work without the prior written approval of the Client.
- 13.2** The entry into any subcontract shall not relieve the Consultant of any of its obligations under the terms of this Agreement.

Article - 14. GENERAL

(a) Articles 3 and 9 of this Agreement shall survive the termination or expiration of this Agreement.

(b) Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations is delayed, hindered, or prevented by force majeure. Force majeure shall be any cause beyond the control of the parties hereto which they could not reasonably have foreseen and guarded against.

(c) Time shall be of the essence of this Agreement.

(d) The failure of the Client to insist upon or enforce in any instance strict performance by the Consultant of any of the terms of this Agreement or to exercise any rights herein conferred shall not be construed as a waiver or a relinquishment to any extent of the Client's right to assert or rely upon any such terms or rights on any future occasion.

(e) If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, such invalidity or unenforceability shall attach only to such provision, and all other provisions hereof shall continue in full force and effect.

(f) The division of this Agreement into Articles and Clauses and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.

(g) This Agreement shall inure to the benefit of and be binding upon the Parties hereto, their respective heirs, legal representatives, successors and assigns.

(h) The Consultant shall not assign this agreement in whole or in part to any third party without the prior written approval of the Client.

END OF SCHEDULE C

SCHEDULE D

Protocols for Security of Government Information on Information Technology assets of Contractors

The Consultant shall confirm with the client Department whether the Consultant will be required to use information technology resources, including computers, of the Government of Newfoundland and Labrador in the conduct of the work under the contract. The following requirements apply where the Consultant will not be using such assets, but will instead have access to confidential information (including personal information) ("Confidential Information") received from the Government of Newfoundland and Labrador ("Government") and will be storing, manipulating or accessing that Confidential Information on the Consultant's own information technology resources.

- All portable storage devices or media (e.g., flash drives, memory sticks, portable hard drives, writeable compact discs or digital video discs (DVDs), etc.) may only be used to transport and / or store Confidential Information where either the Confidential Information or the device or media is encrypted.
- Unless specifically separately authorized by the Consultant's contract or otherwise, the Consultant is not permitted to attach non-government computers or other information technology systems to any Government network.
- Consultants are expected to implement and maintain up to date versions of all ordinary business software for the reasonable protection of information on computers attached to the Internet which will have access to or store Confidential Information, including security firewall and anti-viral software.
- Consultants are not permitted to use any Peer to Peer file sharing program (e.g. Limewire, etc) or chat program (i.e., MSN, Skype) on any information technology asset which will contain Confidential Information, or which will be connected via a network to any computer which will contain Confidential Information.
- Email should not be used as a method to transmit Confidential Information across public networks such as the Internet unless the e-mail and/or its attachments are encrypted or zipped in a secure manner.
- The Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Consultant, its employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the *Access to Information and Protection of Privacy Act*, the *Management of Information Act*, SNL2005, cM-1.01, and the *Privacy Act*, RSNL1990 cP-22, as well as other legislation which may apply in the jurisdiction of the Consultant's operation. The Consultant is responsible to ensure the compliance with and satisfaction of the legislative requirements of all such information relating to the treatment of Confidential Information by the Consultant, its employees, servants and/or agents.

- Where a Consultant will be granted access to the Government computer network during the course of his/her work, in addition to the requirements noted above, the Consultant shall not:
 - Share personal computer drives or folders on a computer accessing the network; or
 - Access the network remotely, either through wired or wireless connections, except through the use of secure ID and virtual private network systems.

These requirements apply to the Consultant and all agents, employees or permitted sub-Consultants of the Consultant, and it is the responsibility of the Consultant to ensure that all such agents, employees or permitted sub-Consultants are aware of these restrictions and are in compliance herewith.

END OF SCHEDULE D