

From: [David Steele](#)
To: [Julie Mallowney](#)
Subject: FW: Contract for Advisory Services
Date: Friday, November 7, 2014 10:18:34 AM
Attachments: [Contract for Advisory Services 2014-2015.doc](#)
[Schedule C.pdf](#)

Hi can you print 2 copies.for me?

From: Martin, Craig
Sent: Friday, November 07, 2014 9:57:06 AM
To: David Steele
Subject: Contract for Advisory Services

David,

Attached please find the contract for execution for Advisory Services to the Muskrat Falls Oversight Committee.

There are two minor changes to the draft you had earlier seen.

1. Execution Page – typo in the signature block for EY - Ernst Young was spelled incorrectly
2. Scope of Work - #2 term “related risks” has been changed to “risk management”.

Please execute and return a signed copy to my attention so I can have executed on Wednesday on our side.

Thanks

Craig

Craig Martin, CMA
Executive Director,
Muskrat Falls Oversight Committee

(709) 729-0966

“This email and any attached files are intended for the sole use of the primary and copied addressee(s) and may contain privileged and/or confidential information. Any distribution, use or copying by any means of this information is strictly prohibited. If you received this email in error, please delete it immediately and notify the sender.”

AGREEMENT

THIS AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador, on this 7th day of November, 2014.

BETWEEN: **HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR** as
represented by the Executive Council
(“the Client”)

AND: **Ernst & Young LLP**

(“the Consultant”)

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants expressed, and as amended, the Parties agree as follows:

1. Definitions

In addition to the terms defined in the General Terms and Conditions attached as Schedule “C”, the following words and phrases shall have the following meanings:

- a. “Contract Documents” shall mean and include:
 - i. This head agreement (the “Head Agreement”);
 - ii. The Scope of Work attached as Schedule “A”;
 - iii. The Special Terms and Conditions attached as Schedule “B”;
 - iv. The General Terms and Conditions attached as Schedule “C”; and
 - v. Protocols for Security of Government Information on Information Technology assets of Contractors attached as Schedule “D”.

- b. “Representatives” means directors, officers, employees, consultants, sub-consultants, agents, advisors or partners.

2. 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.

3. 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 the following:

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):

	Name	Position	Hourly Rate
Core Team	Richard Noble	Associate Partner	\$390
	David Steele	Partner	\$341
	Mike Haycox	Associate Partner	\$293
	Aman Gill	Senior Manager	\$268
	Emiliano Mancini	Manager	\$219
	Arun Ghosh	Senior Analyst	\$175
	Staff Level Analysts	Staff Analyst	\$100

Advisory Panel	Tim Phillpotts	Partner	\$390
	Charles-Antoine St-Jean	Partner	\$390
	Hanna Green	Senior Manager	\$268
	Andy Patterson	Associate Partner	\$390
	Steven Carroll	Senior Manager	\$268

Generic Rates - additional resources	Atlantic Based Partner	\$341
	Atlantic Based Senior Manager	\$244
	Atlantic Based Manager	\$200
	Atlantic Based Senior	\$150
	Atlantic Based Staff	\$100
	National (non-Atlantic) Based Partner	\$390
	National (non-Atlantic) Based Senior Manager	\$268
	National (non-Atlantic) Based Manager	\$219
	National (non-Atlantic) Based Senior	\$175
	National (non-Atlantic) Based Staff	\$125

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 the following:

- (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) Travel and other reasonable disbursements
- (b) All claims submitted for reimbursable expenses in accordance with this Article 1.2 shall be reimbursed at rates not to exceed those established by Treasury Board pursuant to the guidelines and policies of the Client even if such rates are lower than the actual costs incurred by the Consultant.

1.3 Payment General

- (a) Regardless of the payment claimed pursuant to Article 1.1 and/or 1.2, the Parties agree and confirm that total amounts payable for the Work shall not exceed a monetary ceiling of \$250,000 plus HST. Further, the Client shall request and the Consultant shall provide a time estimate relating to each scope of Work requested by the Client under the terms of this contract.
- (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), unless such additional costs or professional fees relates to i) a delay or failure of the Client to provide for the obligations under this Agreement; or ii) a breach of this Agreement by the Client.
- (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 commercially reasonable 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:

Mr. Craig Martin
Executive Director, Muskrat Falls Project Oversight Committee
Executive Council
Cabinet Secretariat
P.O. Box 8700
St. John's, NL, Canada
A1B 4J6

4. 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:

Mr. Craig Martin
Executive Director, Muskrat Falls Project Oversight Committee
Executive Council
Cabinet Secretariat
P.O. Box 8700
St. John's, NL
A1B 4J6

Phone: (709) 729-0966
Fax: (709) 729-3374
Email: cmartin@gov.nl.ca

For the Consultant:

Mr. David Steele
Partner
Fortis Building
139 Water St., Suite 700
St. John's, NL
A1C 1B2

Phone: (709) 570-8264
Email: david.steele@ca.ey.com

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.

5. 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, 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.

6. 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.

7. 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.

8. 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: October 31, 2014
Completion Date: March 31, 2015

9. **Effective Date**

The effective date of this Agreement shall be the earlier of the start date referred to in Clause 8 or the date on the first page of this Head Agreement.

10. **Paragraph Numbering**

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

11. **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**

Clerk of the Executive Council
Chair of the Muskrat Falls Project Oversight
Committee

ERNST & YOUNG LLP

David Steele
Partner, Ernst & Young LLP

SCHEDULE “A”
SCOPE OF WORK

The Consultant is expected to provide Advisory services to the Muskrat Project Oversight Committee (the ‘Committee’). Key activities included in the scope of work are:

1. Support the Committee in the development of the report templates;
2. Support the Committee in the analysis of the cost and schedule reporting, and risk management;
3. Support the Committee in the assessment of project processes and controls;
4. Accompany Provincial officials at meetings and construction site walkthroughs where required;
5. Assist with the preparation and review of the Oversight Reports; and
6. Continue to provide advice regarding the established accountability/ project oversight protocol.

The Consultant will be expected to perform other activities falling within the scope of the Committee as required.

Under this Agreement, individual Scope Statements will be developed and agreed to by the Consultant and Committee prior to the commencement of any work. Included in the Scope Statements would be: scope, expected outputs (reports, if applicable), level of effort, timing and fee considerations.

The Consultant will not render an attestation or assurance report or opinion under these Contract Documents, nor will the Work constitute (1) an audit, review or examination of financial statements in accordance with generally accepted auditing standards, (2) an examination of prospective financial statements in accordance with applicable professional standards or (3) a review to detect fraud or illegal acts. The Work will not include any procedures to test compliance with the laws or regulations of any jurisdiction. None of the Work or any reports will constitute any legal opinion or legal advice.

The Consultant will not identify, address or correct any errors or defects in the Client's computer systems, other devices or components thereof (“Systems”), whether or not due to imprecise or ambiguous entry, storage, interpretation or processing or reporting of data. The Consultant shall have no responsibility or liability for any defect or problem arising out of or related to data processing in any Systems. However, during the performance of its procedures, the Consultant may become aware of issues with respect to the Client's “Systems”. These findings will be promptly communicated to the Client by the Consultant.

Schedule “B”**Special Terms and Conditions**

1. Notwithstanding any other terms and conditions of the Contract Documents,
 - (a) Consultant is a member of the global network of Ernst & Young firms (“EY Firms”), each of which is a separate legal entity. Consultant alone will be responsible to client for the performance of the Work and Consultant's other obligations under this agreement. Consultant may provide Client's information (including Confidential Information and personal information) to other EY Firms and their and Consultant's respective service providers in order to facilitate performance of the Work, to comply with regulatory requirements, to check conflicts, to provide technology or administrative services, or for quality, risk management or financial accounting purposes. Consultant, other EY Firms and the service providers may process, transfer and store the Client's information (including Confidential Information and personal information) outside of Canada. Client is responsible for obtaining any required privacy consents. Client may not make a claim or bring proceedings relating to the Work or otherwise under this agreement against any other EY Firm or the subcontractors, members, shareholders, directors, officers, partners, principals, or employees of Consultant or of any other EY Firm ("EY Persons"). Client shall make any claim or bring proceedings only against Consultant. The other EY Firms and all EY Persons shall be entitled to rely on and enforce this paragraph.
 - (b) Consultant's total aggregate liability for any loss or damage arising out of or relating to this agreement or the Work, whether in contract or tort (including negligence), under statute or otherwise, shall be limited to the total fees paid to Consultant for the Work directly giving rise to such loss or damage. Consultant shall have no liability for any consequential, incidental, indirect, punitive or special damages, whether or not the likelihood of such damages was contemplated. The preceding limitations will not apply to fraud, wilful misconduct or to the extent prohibited by applicable law or professional regulations.
 - (c) Consultant shall retain all rights in any templates, precedents, utilities, tools, models, systems, software, methodologies, know-how, practices and other intellectual property which have been created, developed or licensed by Consultant prior to or in connection with the performance of the Work.
 - (d) Consultant shall be entitled to retain a copy of Confidential Information as is necessary in order to comply with its professional obligations which require the retention of working paper files. Consultant may immediately upon written notice to the Client terminate this Agreement where Consultant reasonably determines that it can no longer provide the Work in accordance with applicable law or professional obligations.
2. Article 1.1 of Schedule “C” is hereby deleted in its entirety and replaced with the following:

1.1 The Client will furnish to the Consultant all available information necessary for the performance of the Work. To the best of Client's knowledge, all information provided by it or on its behalf will be accurate and complete in all material respects. Consultant will rely on Client information made available to it and, unless it expressly agrees otherwise, will have no responsibility to evaluate or verify it.

3. Article 2.7(d) of Schedule "C" is hereby deleted in its entirety.

4. Article 5.1 of Schedule "C" is hereby deleted in its entirety and replaced with the following:

5.1 The Consultant shall keep records, books of account and supporting documents in accordance with accepted accounting procedures and practices. The Consultant's records which pertain specifically to fees and expenses charged by Consultant under this Agreement 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.

The fourth bullet point of Schedule "D" is hereby deleted in its entirety.

SCHEDULE "C"

(See attached PDF 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 Agreement. 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, 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 Agreement 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 the 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 with them.

END OF SCHEDULE D

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, or the *Personal Health Information Act*, SNL2008 cP-7.01, 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 a 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 this jurisdiction, including but not limited to the *Access to Information and Protection of Privacy Act*, the *Management of Information Act*, SNL2005, cM-1.01, the *Privacy Act*, RSNL1990 cP-22, and *Personal Health Information Act*, SNL2008 cP-7.01, 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. The client may be compelled to disclose financial information pursuant to the first cited Act.
- 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 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 The Client shall not be liable for, and the Consultant shall indemnify and save harmless the Client and the Client's Representatives against all losses, costs, charges, or expenses incurred by the Client and its agents as a result of actions, claims or awards for compensation at law, equity or under any applicable legislation, made or brought by, against, suffered by or imposed upon the Client, or its Representatives by a third party, as a result of or related to the performance of this Agreement by the Consultant or the Consultant's Representatives.
- 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.

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. 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 9.1), 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*, RSNL1990 cA-14, including such provisions for the appointment of arbitrators.

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 public employee or 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 except in accordance with the *Conflict of Interest Act* or the *House of Assembly Act*.
- 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 2 and 7 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