

AGREEMENT

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

BETWEEN: **HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR** as represented by the Minister Responsible for the Office of Public Engagement. (**"the Client"**)

AND: **Clyde Wells QC** of St. John's, Province of Newfoundland and Labrador (**"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 Terms and Conditions attached as Schedules hereto, 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 (Terms of Reference) attached as Schedule "A";
 - iii. The Special Terms and Conditions attached as Schedule "B";
 - iv. Protocols for Security of Government Information on Information Technology assets of Contractors attached as Schedule "C"; and
 - v. Executive Travel Policy attached as Schedule "D".
- b. "Representatives" means directors, officers, employees, consultants, sub-consultants, agents, advisors or partners.

2. The Engagement

1.1 The client acknowledges that the Consultant is counsel with the law firm of Cox and Palmer and, as such, bills for the Consultant's fees and expenses will be billed by and paid to Cox and Palmer. The client also acknowledges that the Consultant may, on occasion, be using the information technology assets of Cox and Palmer, as well as his own personal technology assets, from time to time in connection with the Work.

1.2 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. The Consultant further agrees, confirms and acknowledges that, subject to the redaction of any personal

information, the Contract Documents may be disclosed publicly by the Client, including, for further clarity but without limitation of the foregoing, rates of remuneration established in this Head Agreement.

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 as follows:

Subject to Article 3.1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to Cox and Palmer, for the satisfactory performance of the Work, the following time rate schedule for activities the Consultant actually expended in performance of the Work (plus HST):

- (i) **\$2,000 per 7 hour day**

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 travel expenses 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 reimbursement 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.
- (b) All claims submitted for reimbursable expenses in accordance with Clause 1.2(a) shall be reimbursed at rates not to exceed those established by Treasury Board applicable to Executive (Deputy Ministers) **as set out in Schedule D** and pursuant to the guidelines and policies of the Client even if such rates are lower than the actual costs incurred by the Consultant.
- (c) All claims submitted for reimbursable expenses in accordance with Clause 3.2 of the Scope of Work (Terms of Reference) shall be reimbursed at the actual costs incurred by the Consultant, provided that documentation, satisfactory to the Client, is provided in support of the reimbursement 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.

1.3 **Payment General**

- (a) The Parties agree and confirm that Client may withhold payment for any outstanding invoice(s), excepting reimbursable claims approved in

accordance with Article 3.1.2 herein, up to a maximum of ten percent (10%) of the total amount payable for the Work approved in accordance with this Article if the Client deems the project has not been reasonably completed to its satisfaction.

- (b) 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.
- (c) Payment will be made within 60 calendar days of receipt of a properly documented invoice.
- (d) All invoices shall clearly show the amount of HST billed by the Consultant as a separate item.
- (e) The Consultant shall ensure that Cox and Palmer conforms to any request that may be made by the Client to alter the form of invoice customarily used by Cox and Palmer 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.
- (f) 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.
- (g) The Consultant shall submit invoices to:
Ms. Marilyn Field
Deputy Minister
Office of Public Engagement
P.O. Box 8700
St. John's, NL
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:

Ms. Marilyn Field
Deputy Minister
Office of Public Engagement
P.O. Box 8700, St. John's, NL A1B 4J6
Phone: 709 729-1125
Fax: 709 729-2226

Email: marilynfield@gov.nl.ca

For the Consultant:

Mr. Clyde Wells QC
c/o Cox and Palmer
Suite 1000, Scotia Center
235 Water Street
St. John's, NL A1C 6N8

Phone: 709-570-5526 (w) / [REDACTED] (h)
Fax: 709-738-5484 (w) / [REDACTED] (h)
Email: [REDACTED]

s.30(1)

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 agrees to comply with the provisions of the *Access to Information and Protection of Privacy Act*, SNL 2002, c. A-1.1 in respect of "personal information", as defined in subsection 2(o) of same, obtained through performing the Work.

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 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 upon the execution of this Head Agreement and complete the Work within that period of time the Consultant deems reasonably necessary. The Client may, however, from time to time request updates from the Consultant as to the progress of the Work.

9. Effective Date

The effective date of this Agreement shall be the date of execution of this Head Agreement.

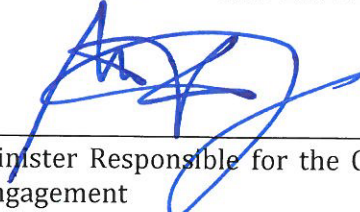
10. Paragraph Numbering

In the event that the Terms and Conditions of any appended schedules are modified, the numbering references in the Terms and Conditions of same 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**



Minister Responsible for the Office of Public
Engagement

Clyde Wells, QC

s.30(1)

Authorized Signature

Date: 7 April 14

SCHEDULE "A"

SCOPE OF WORK- Terms of Reference

Statutory Review Committee for the Access to Information and Protection of Privacy Act

Terms of Reference

The *Access to Information and Protection of Privacy Act*, SNL2002, c. A-1.1 (ATIPPA) came into force on January 17, 2005, with the exception of Part IV (Protection of Privacy) which was subsequently proclaimed on January 16, 2008. Pursuant to section 74 of the ATIPPA, the Minister Responsible for the Office of Public Engagement is required to refer the legislation to a committee for a review after the expiration of not more than five years after its coming into force and every five years thereafter. The first legislative review of ATIPPA commenced in 2010 and resulted in amendments that came into force on June 27, 2012. The current review constitutes the second statutory review of this legislation.

1. Overview

The Committee will complete an independent, comprehensive review of the *Access to Information and Protection of Privacy Act*, including amendments made as a result of Bill 29, and provide recommendations arising from the review to the Minister Responsible for the Office of Public Engagement (the Minister), Government of Newfoundland and Labrador. This review will be conducted in an open, transparent and respectful manner and will engage citizens and stakeholders in a meaningful way. Protection of personal privacy will be assured.

2. Scope of the Work

2.1 The Committee will conduct a comprehensive review of the provisions and operations of the Act which will include, but not be limited to, the following:

- Identification of ways to make the Act more user friendly so that it is well understood by those who use it and can be interpreted and applied consistently;
- Assessment of the "Right of Access" (Part II) and "Exceptions to Access" provisions (Part III) to determine whether these provisions support the purpose and intent of the legislation or whether changes to these provisions should be considered;
- Examination of the provisions regarding "Reviews and Complaints" (Part V) including the powers and duties of the Information and Privacy Commissioner, to assess whether adequate measures exist for review of decisions and complaints independent of heads of public bodies;
- Time limits for responses to access to information requests and whether current requirements are appropriate;
- Whether there are any additional uses or disclosures of personal information that should be permitted under the Act or issues related to protection of privacy (Part IV); and
- Whether the current ATIPPA Fee Schedule is appropriate.

2.2 Consideration of standards and leading practices in other jurisdictions:

- The Committee will conduct an examination of leading international and Canadian practices, legislation and academic literature related to access to information and protection of privacy legislative frameworks and identify opportunities and challenges experienced by other jurisdictions;
- The Committee will specifically consult with the Information and Privacy Commissioner for Newfoundland and Labrador regarding any concerns of the Commissioner with existing legislative provisions, and the Commissioner's views as to key issues and leading practices in access to information and protection of privacy laws.

3. Committee processes

- 3.1 For the purpose of receiving representations from individuals and stakeholders, the Committee may hold such hearings in such places and at such times as the Committee deems necessary to hear representations from those persons or entities who, in response to invitations published by the Committee, indicate in writing a desire to make a representation to the Committee, and make such other arrangements as the Committee deems necessary to ensure that it will have all of the information necessary for it to fully respond to the requirements of these terms of reference.
- 3.2 The Committee may arrange for such accommodation, administrative assistance, legal and other assistance as the Committee deems necessary for the proper conduct of the review.

4. Final Committee Report and Recommendations

The Committee will prepare a final report for submission to the Minister. The report will include:

- An executive summary;
- A summary of the research and analysis of the legislative provisions and leading practices in other jurisdictions;
- A detailed summary of the public consultation process including aggregate information regarding types and numbers of participants, issues and concerns, emerging themes, and recommendations brought forward by citizens and stakeholders; and
- Detailed findings and recommendations, including proposed legislative amendments, for the Minister's consideration.

END OF SCHEDULE A

SCHEDULE "B"

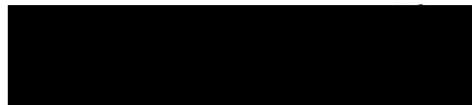
SPECIAL TERMS AND CONDITIONS (as necessary)

Statutory Review Committee for the Access to Information and Protection of Privacy Act

All Special Terms and Conditions must be reviewed by both the departmental solicitor, and the Deputy Minister of the Office of Public Engagement requesting the Work (the "Deputy Minister"). These Special Terms and Conditions shall not be of any effect unless initialed by the Deputy Minister.

1. No Special Terms and Conditions


Deputy Minister

 s.30(1)

Consultant

Clyde Wells

END OF SCHEDULE B

SCHEDULE "C"

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 (ie., 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*, and *Management of Information Act*, SNL2005, cM-1.01, 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 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 C

SCHEDULE "D"
Executive Travel Policy

An overview of the Government of Newfoundland and Labrador's travel policy is available at:
http://www.exec.gov.nl.ca/exec/hrs/working_with_us/policies.html#4h

Provincial Government executive meal rates effective for this contract are:

Meals	Island	Labrador	Canada	USA	International
Breakfast	\$8.80	\$8.80	\$9.80	\$9.80	\$11.00
Lunch	\$13.20	\$13.20	\$14.70	\$14.70	\$16.50
Dinner:	\$22.00	\$22.00	\$24.50	\$24.50	\$27.50
Total:	<u>\$44.00</u>	<u>\$44.00</u>	<u>\$49.00</u>	<u>\$49.00</u>	<u>\$55.00</u>

END OF SCHEDULE D