August 16, 2013

Dear [Redacted],

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act [Our File #: IBRD/4/2013]

On June 18, 2013, the Department of Innovation, Business and Rural Development received your request for access to the following records/information:

A copy of the agreement signed with Icewater Harvesting Ltd. when the provincial Government provided financial support of $2 million in April 2013, for the operation of the fishing vessel the Cape Dorset.

I am pleased to inform you that your request for access to this record has been granted in part. Access to information contained within this record, has been refused in accordance with Sections 18, 24, 27 & 30 as specified in the Access to Information and Protection of Privacy Act. See attached references.

As required by subsection 7(2) of the Act, we have severed information that is exempted from disclosure and have provided you with as much information as possible. In accordance with your request for a copy of the records, the appropriate copies have been enclosed.

Section 43 of the Act provides that you may ask the Information and Privacy Commissioner to review this partial refusal of access or you may appeal the refusal to the Supreme Court Trial Division. A request to the Information and Privacy Commissioner shall be made in writing within 60 days of the date of this letter or within a longer period that may be allowed by the Commissioner.
The address and contact information of the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy Commissioner
34 Pippy Place
P. O. Box 13004, Stn. A
St. John’s, NL A1B 3V8
Telephone: (709) 729-6309
Facsimile: (709) 729-6500

In the event that you choose to appeal to the Trial Division, you must do so within 30 days of the date of this letter. Section 60 of the Act sets out the process to be followed when filing such an appeal.

Please be advised that responsive records will be published following a 72 hour period after the response is sent electronically to you or five days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Office of Public Engagement's website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.

If you have further questions, please feel free to contact Christina Harrington, ATIPP Coordinator, at 729-6137 or by e-mail at christinaharrington@gov.nl.ca.

Sincerely,

[Signature]

ALASTAIR O’RIELLY
Deputy Minister

Enclosure(s)
ATIPPA Exceptions

Cabinet confidences

18. (1) In this section

(a) "cabinet record" means

(i) advice, recommendations or policy considerations submitted or prepared for submission to the Cabinet,

(ii) draft legislation or regulations submitted or prepared for submission to the Cabinet,

(iii) a memorandum, the purpose of which is to present proposals or recommendations to the Cabinet,

(iv) a discussion paper, policy analysis, proposal, advice or briefing material, including all factual and background material prepared for the Cabinet,

(v) an agenda, minute or other record of Cabinet recording deliberations or decisions of the Cabinet,

(vi) a record used for or which reflects communications or discussions among ministers on matters relating to the making of government decisions or the formulation of government policy,

(vii) a record created for or by a minister for the purpose of briefing that minister on a matter for the Cabinet,

(viii) a record created during the process of developing or preparing a submission for the Cabinet, or

(ix) that portion of a record which contains information about the contents of a record within a class of information referred to in subparagraphs (i) to (viii);

(b) "discontinued cabinet record" means a cabinet record referred to in paragraph (a) the original intent of which was to inform the Cabinet process, but which is neither a supporting Cabinet record nor an official Cabinet record;

(c) "official cabinet record" means a cabinet record referred to in paragraph (a) which has been prepared for and considered in a meeting of the Cabinet; and

(d) "supporting cabinet record" means a Cabinet record referred to in paragraph (a) which informs the Cabinet process, but which is not an official cabinet record.

(2) The head of a public body shall refuse to disclose to an applicant a Cabinet record, including

(a) an official Cabinet record;

(b) a discontinued Cabinet record; and

(c) a supporting Cabinet record.

(3) The commissioner may review the refusal of a Cabinet record by the head of a public body under subsection (2) except where the decision relates to a Cabinet record which has been certified as an official Cabinet record by the Clerk of the Executive Council or his or her delegate.
(4) Where a question arises as to whether a Cabinet record is an official Cabinet record, the certificate of the Clerk of Executive Council or his or her delegate stating that the record is an official Cabinet record is conclusive of the question.

(5) The delegate of the Clerk of the Executive Council referred to in subsections (3) and (4) shall be limited to the Deputy Clerk of the Executive Council and the Secretary of the Treasury Board.

(6) An applicant may appeal a decision of the head of a public body respecting Cabinet records referred to subsection (2), except an official Cabinet record, to the commissioner or the Trial Division under section 43.

(7) An applicant may appeal a decision of the head of a public body respecting a Cabinet record which is an official Cabinet record directly to the Trial Division.

(8) This section does not apply to

(a) information in a record that has been in existence for 20 years or more; or

(b) information in a record of a decision made by the Cabinet on an appeal under an Act.

Disclosure harmful to the financial or economic interests of a public body

24. (1) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose

(a) trade secrets of a public body or the government of the province;

(b) financial, commercial, scientific or technical information that belongs to a public body or to the government of the province and that has, or is reasonably likely to have, monetary value;

(c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;

(d) information, the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in significant loss or gain to a third party;

(e) scientific or technical information obtained through research by an employee of a public body, the disclosure of which could reasonably be expected to deprive the employee of priority of publication;

(f) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the government of the province or a public body, or considerations which relate to those negotiations;

(g) information, the disclosure of which could reasonably be expected to prejudice the financial or economic interest of the government of the province or a public body; or

(h) information, the disclosure of which could reasonably be expected to be injurious to the ability of the government of the province to manage the economy of the province.

(2) The head of a public body shall not refuse to disclose under subsection (1) the results of product or environmental testing carried out by or for that public body, unless the testing was done

(a) for a fee as a service to a person, a group of persons or an organization other than the public body; or
(b) for the purpose of developing methods of testing.

Disclosure harmful to business interests of a third party

27. (1) The head of a public body shall refuse to disclose to an applicant information that would reveal

(a) trade secrets of a third party;

(b) commercial, financial, labour relations, scientific or technical information of a third party, that is supplied, implicitly or explicitly, in confidence and is treated consistently as confidential information by the third party; or

(c) commercial, financial, labour relations, scientific or technical information the disclosure of which could reasonably be expected to

(i) harm the competitive position of a third party or interfere with the negotiating position of the third party,

(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,

(iii) result in significant financial loss or gain to any person or organization, or

(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

(2) The head of a public body shall refuse to disclose to an applicant information that was obtained on a tax return, gathered for the purpose of determining tax liability or collecting a tax, or royalty information submitted on royalty returns, except where that information is non-identifying aggregate royalty information.

(3) Subsections (1) and (2) do not apply where

(a) the third party consents to the disclosure; or

(b) the information is in a record that is in the custody or control of the Provincial Archives of Newfoundland and Labrador or the archives of a public body and that has been in existence for 50 years or more.

Disclosure harmful to personal privacy

30. (1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.

(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy where

(a) the applicant is the individual to whom the information relates;

(b) the third party to whom the information relates has, in writing, consented to or requested the disclosure;

(c) there are compelling circumstances affecting a person's health or safety and notice of disclosure is mailed to the last known address of the third party to whom the information relates;
(d) an Act or regulation of the province or of Canada authorizes the disclosure;

(e) the disclosure is for a research or statistical purpose and is in accordance with section 41;

(f) the information is about a third party's position, functions or salary range as an officer, employee or member of a public body or as a member of a minister's staff;

(g) the disclosure reveals financial and other details of a contract to supply goods or services to a public body;

(h) the disclosure reveals the opinions or views of a third party given in the course of performing services for a public body, except where they are given in respect of another individual;

(i) public access to the information is provided under the *Financial Administration Act*;

(j) the information is about expenses incurred by a third party while travelling at the expense of a public body;

(k) the disclosure reveals details of a licence, permit or a similar discretionary benefit granted to a third party by a public body, not including personal information supplied in support of the application for the benefit;

(l) the disclosure reveals details of a discretionary benefit of a financial nature granted to a third party by a public body, not including

   (i) personal information that is supplied in support of the application for the benefit, or

   (ii) personal information that relates to eligibility for income and employment support under the *Income and Employment Support Act* or to the determination of income or employment support levels;

(m) the personal information is about an individual who has been dead for 20 years or more; or

(n) the disclosure is not contrary to the public interest as described in subsection (3) and reveals only the following personal information about a third party:

   (i) attendance at or participation in a public event or activity related to a public body, including a graduation ceremony, sporting event, cultural program or club, or field trip, or

   (ii) receipt of an honour or award granted by or through a public body.

(3) The disclosure of personal information under paragraph (2)(n) is an unreasonable invasion of personal privacy where the third party whom the information is about has requested that the information not be disclosed.

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation;

(c) the personal information relates to employment or educational history;
(d) the personal information was collected on a tax return or gathered for the purpose of collecting a tax;

(e) the personal information consists of an individual's bank account information or credit card information;

(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations;

(g) the personal information consists of the third party's name where
   (i) it appears with other personal information about the third party, or
   (ii) the disclosure of the name itself would reveal personal information about the third party; or

(h) the personal information indicates the third party's racial or ethnic origin or religious or political beliefs or associations.

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the province or a public body to public scrutiny;

(b) the disclosure is likely to promote public health and safety or the protection of the environment;

(c) the personal information is relevant to a fair determination of the applicant's rights;

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people;

(e) the third party will be exposed unfairly to financial or other harm;

(f) the personal information has been supplied in confidence;

(g) the personal information is likely to be inaccurate or unreliable;

(h) the disclosure may unfairly damage the reputation of a person referred to in the record requested by the applicant; and

(i) the personal information was originally provided to the applicant.
CONTRIBUTION AGREEMENT

THIS AGREEMENT made in duplicate at the City of St. John's, in the Province of Newfoundland and Labrador, effective this 30th day of March, 2013 (“Agreement Date”).

BETWEEN:

HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR,

as represented by the Minister of Innovation, Business and Rural Development

(hereinafter the “Minister”)

AND:

Icewater Harvesting Inc., a body corporate organized and existing pursuant to the laws of

the Province of Newfoundland and Labrador

(hereinafter “Icewater” or the “Company”)

WHEREAS:

1. Icewater has requested funding from the Minister, in the form of equity, in the Province, during 2013 and subsequent years; and

2. The Minister and Icewater have agreed to terms in support of the proposed project as set forth herein.

NOW THEREFORE THIS AGREEMENT WITNESSES that in respect of the covenants, agreements and provisions herein contained and for mutual consideration exchanged, (the sufficiency of which is hereby acknowledged and agreed) the Minister and Icewater agree together as follows:

1. DEFINITIONS

Where used in this Agreement or in any amendment of this Agreement, the following terms shall have the following meanings respectively:

“Agreement” means this Contribution Agreement and all instruments supplemental to or in amendment or confirmation of this Agreement;

“ASPE” means Canadian Accounting Standards for Private Enterprises as contained in the Canadian Institute of Chartered Accountants handbook, consistently applied;

“Available Cash Flow” means net profit plus depreciation less annual principal loan payments;

“Collateral” means the

“Confidential Information” means all information provided or disclosed in the course of the discussions or negotiations respecting this initiative whether provided directly or indirectly, tangible or intangible, orally or in writing or by any other media and despite the definition of “Confidential Information”, the term “Confidential Information” does not include information that:
a) was or becomes generally publicly available, other than as a result of a disclosure by the Minister or any of its representatives in violation of this Agreement;

b) is in the lawful possession of the Minister or any of its representatives prior to its disclosure by or on behalf of Icewater or any of its representatives; or

c) was or becomes available to the Minister or any of its representatives on a non-confidential basis prior to its disclosure by or on behalf of Icewater or its representatives from a third party that to the Minister's knowledge is not bound by a similar duty of confidentiality;

"Department" means the Department of Innovation, Business and Rural Development, Government of Newfoundland and Labrador;

"Government" means the Government of Newfoundland and Labrador;

"Icewater" or the "Company" means Icewater Harvesting Inc., a body corporate organized and existing pursuant to the laws of the Province of Newfoundland and Labrador;

"Minister" means the Minister of Innovation, Business and Rural Development, Government of Newfoundland and Labrador, or his or her designate, and their representatives, employees or agents according to law;

"Parties" means the Minister and Icewater, collectively, and "Party" means any one of them;

"Preferred Shares" means the Preferred Shares to be issued by Icewater to the Department as per terms of this Agreement;

"Prime" means the prime lending rate as it is from time to time determined by the Province's then principal lender;

"Project" or "Business Plan" refers to Icewater Harvesting Inc. business plan dated February, 2013 for the funding to enable the company to continue operating at Arnold's Cove;

"Province" means the Province of Newfoundland and Labrador, and includes where appropriate the Department, the Government and the Minister;

"Subscription Agreement" means the Subscription Agreement between Her Majesty in Right of Newfoundland and Labrador and Icewater Harvesting Inc. effective March 30, 2013; and

"Unanimous Shareholders Agreement" means the Unanimous Shareholders Agreement between Her Majesty in Right of Newfoundland and Labrador, and Icewater Harvesting Inc. effective March 30, 2013.

2. CONTRIBUTION

2.1. Funds to be contributed by the Department to the Project shall be a total maximum amount of $2,000,000.00 (the "Funds") comprised of Preferred Shares to be advanced as per Section 2.2 hereunder and redeemable as outlined in Section 7 of this Agreement.
2.2. The Department will, upon the satisfaction of all conditions precedent as set forth in Section 4 of this Agreement and any other conditions as may be applicable herein, accept a request from the Company for payment for the Preferred Shares. Subject to the Department having received a credit report to its satisfaction on the Company, payment will be made as per the terms of a Subscription Agreement dated March 30, 2013 between the Company and the Department.

2.3. It is understood and agreed by Icewater that all approved funding is subject to the necessary appropriation being made in accordance with the Financial Administration Act, RSNL 1990, c. F-8 (as amended).

2.4. The Department reserves the right to demand of Icewater an accounting of monies contributed and its dispersal in respect of the Project including but not limited to supporting documentation in respect thereof.

3. TERM

3.1. The Effective Date of this Agreement shall be the date on the first page hereof.

3.2. This Agreement will become null and void if a signed copy is not received by the Department from the Company by March 31, 2013.

3.3. The Term of this Agreement shall be from the Effective Date to March 31, 2021.

3.4. Notwithstanding Section 3.3, this Agreement will expire and will be of no force and effect on April 30, 2013 if no payment request has been made by the Company by that date;

3.5 The Department shall have the absolute discretion to extend the dates referred to in this Section 3, provided however that such extension must be in writing from the Department.

4. CONTINGENT CONDITIONS (CONDITIONS PRECEDENT)

As a condition precedent to the disbursement of Funds pursuant to Section 2, Icewater covenants and agrees that it shall provide to the Province:

4.1. in a form acceptable to the Department, a duly executed

4.1.1. Subscription Agreement for the purchase and redemption of the Preferred Shares by the Department;

4.1.2. Unanimous Shareholders Agreement;

4.1.3. written confirmation of insurance coverage for the Collateral, which is acceptable to the
Minister.

4.4. copy of the accepted term sheet covering the

4.5. confirmation of full vessel expenses for the MV Cape Dorset including vessel purchase, improvement costs and copies of all associated funding agreements;

4.6. complete description of the MV Cape Dorset

4.7. declaration of any debts, past or present owing to the Province by the Company, its affiliated companies and individual proponents, including amounts written off or forgiven by the Province;

4.8. written confirmation that the Company, its affiliated companies and individual proponents are in good financial and legal standing with the Province;

4.9. declaration by the Company, through resolution, of any outstanding lawsuits, liens and disputes;

4.10. evidence of good standing with the Registry of Companies for Newfoundland and Labrador;

4.11. written confirmation of adequate insurance coverage for the assets of Icewater;

4.12. evidence, provided by Icewater's solicitor, of clear standing with respect to any encumbrances with Department of Finance, Department of Municipal Affairs under the Labour Standards Act, Canada Revenue Agency for HST and source deductions, the appropriate municipality, the Workplace Health, Safety & Compensation Commission and under the Mechanics' Lien Act, RSNL 1990 C. M-3;

4.13. up-to-date search results and clearances, provided by Icewater's solicitor, for the Company in relation to the Personal Property Registry, the Judgment Enforcement Registry, the Superintendent of Bankruptcy, Bank Act security, as well as the Supreme Court of Newfoundland and Labrador and the Federal Court of Canada;

4.14. copies of resolutions of the Board of Directors of Icewater in a form satisfactory to the Department authorizing the borrowing and undertakings contemplated by this Agreement and the execution and delivery of this Agreement and all other Company agreements and documents listed in section 6 of this Agreement, all certified by the secretary of Icewater or another authorized officer of Icewater.

5. UNDERLYING CONDITIONS

Icewater agrees that it shall:

5.1. use the Funds exclusively towards the Project, including the repayment of intercompany advances related to the project;
5.2. at the request of the Province to the extent that it is required for verification, account monitoring and completion of business assessment report purposes, provide the Province or its designated representatives with access to Icewater’s facilities, business records and supporting documentation that relate to Icewater’s obligations under this Agreement including an accounting of monies contributed and disbursed;

5.3. provide any up-to-date search results and clearances as may be requested by the Province;

5.4. keep proper books of accounts and maintain therein true and faithful entries of all dealings and transactions in relation to its business in accordance with ASPE;

5.5. provide to the Province: (i) annual audited financial statements, including calculation of amounts as may be due to the Department, within 120 days following the Company’s fiscal year end, and (ii) annual audited financial statements of Icewater Seafoods Inc. within 120 days of its fiscal year end. The final reporting requirements, although outside the Term of this Agreement, shall be provided by the Company in accordance with this Section and these requirements shall survive any termination of this Agreement;

5.6. for the Term of this Agreement, it shall not, without the prior written consent of the Province, such consent not to be unreasonably withheld:

5.7. ensure hiring practices are inclusive for qualified women;

5.8. maintain insurance coverage over its assets and good standing with the Registry of Companies for Newfoundland and Labrador;

5.9. provide annual written confirmation of insurance coverage for the Collateral, which is acceptable to the Minister. 

5.10. in the event of an insurance claim, excluding any amount claimed for lost profits, in relation to the Collateral, pay, or cause the insurer to pay, the compensation recoverable directly to the Department to the extent of the amount then owing to the Department, even if the policies have not been issued or transferred to the Department;
5.11. cause to be affixed to each policy of insurance relating to the Collateral a clause providing for a minimum of thirty days' written notice to the Department of any change in coverage or cancellation or lapse in coverage;

5.12. give the Department prompt written notice of any material adverse change in the condition or business of Icewater, financial or otherwise, or of any material loss of, destruction of or damage to any Collateral secured;

5.13. cause this Agreement, the and any other instruments of conveyance or assignment effected pursuant to this Agreement to be and remain registered, recorded or filed from time to time in a manner and places as may in the opinion of the Department be of advantage in perfecting the security and will furnish to the Department evidence satisfactory to it of registration, recording and filing;

5.14. diligently maintain, use and operate or will cause to be maintained, used or operated, ordinary wear and tear excepted, the Collateral and will carry on and conduct its business in a proper and efficient manner so as to preserve and protect the Collateral of the business and its earnings, incomes, rents and profits;

5.15. pay or reimburse the Department for all costs, charges and expenses (including legal fees) incurred by the Department in connection with any effort of the Department to effect recovery under this Agreement or the including all costs, charges and expenses in connection with the recovery or enforcement of payment of monies advanced, enforcement of security or preservation of the Collateral, together with interest at the rate set out in Section 33.1;

5.16. give the Department written notice of the occurrence of any litigation, proceeding or dispute affecting Icewater and will provide to the Department all reasonable information requested by the Department concerning the status of the litigation, proceeding or dispute;

5.17. not, without obtaining the approval of the Department, such approval not to be unreasonably withheld:

i. sell, lease or transfer or otherwise dispose of the MV Cape Dorset;

ii. do any act which could adversely affect the ranking or validity of the security interests created, granted or intended to be created or granted to the Department; or

iii. change the general nature of the business of Icewater;

5.18. not, except as is contemplated by this Agreement, make or authorize any material changes to the Project stipulated under this Agreement or its ancillary documents without the consent of the Department;

5.19. continue to comply with all applicable enactments and obtain all required permissions, of any legislative authority that apply to the Project, including those relating to zoning, use, health, safety and environmental protection. Icewater shall conduct all Project activities in an environmentally sound manner;
5.20. permit the Department, the assigns of the Department or any person designated by the Department to test, inspect or evaluate the buildings or the lands or to conduct a site assessment in order to determine whether there has been a breach of any enactment, particularly any enactment concerning environmental protection. If there is a breach of an enactment, the Department may take such action as is necessary to ensure compliance with the enactment.

5.20.1. Icewater acknowledges that by taking action under Section 5.20, the Department assumes no responsibility for the breach of the enactment; and

5.20.2. Icewater shall reimburse the expenses that the Department incurred in taking any action under Section 5.20.

6. SECURITY

Prior to the disbursement of Funds pursuant to Section 2, as continuing collateral security for the redemption of the Preferred Shares and all other monies payable pursuant to this Agreement, Icewater shall deliver, in form and content satisfactory to the Department, the following:

6.1. the [redacted]

7. TERMS OF REPAYMENT

7.1. The Company will pay the Department an annual dividend of 3% of the value of outstanding Class A Preferred Shares as recorded in its year end financial statements. Payment will be due within 120 days of the Company's year end.

7.2. The $2,000,000 Preferred Shares referenced in Section 2.1 shall be [redacted] 27(1)(c)(i)

7.3. Redemption will commence based on the Company's March 31, 2014 year end audited financial statements and continue annually until the end of the Term of this Agreement. The Company will provide payment as calculated in the financial statements to the Department with submission of the annual financial statements.

7.4. All remaining outstanding Preferred Shares will become due and redeemable on March 31, 2021 and the Company shall arrange to make payment to the Department within 30 days of this date.

7.5. In the event the Department exercises provided in Schedule A, Section 4 of the Subscription Agreement, Interest shall accrue from the date of conversion under this Agreement and will become due and payable with scheduled quarterly repayment as per Section 7.6. At the time of exercise, the Department will as provided herein and in Schedule A, Section 4 of the Subscription Agreement.

7.6. determined based upon the remaining term [redacted] 18(1)(a)(ix), 24(1)(g), 27(1)(c)(i)
of the Agreement.

7.7. The Company shall have the privilege, on 30 days' written notice, but without

7.8. Subject to section 7.6,

8. INCORPORATION BY REFERENCE

8.1. The Business Plan dated February, 2013 is incorporated by reference into this Agreement.

8.2. In the event of any conflict between the Business Plan and a provision of this Agreement, then the provision of this Agreement shall govern to the extent of the conflict.

9. EVENTS OF DEFAULT

9.1. The whole of the balance of the Funds disbursed to the Company remaining unpaid together with interest and all other moneys shall, at the option of the Department, become immediately due and payable and the shall become enforceable in each of the following events (each event being referred to herein as an "Event of Default"): 

9.1.1. if Icewater persistently disregards the legislation of Canada or the Province;

9.1.2. if Icewater defaults in payment or performance of any of the obligations under this Agreement or in performing or complying with any covenant, undertaking, condition or obligation contained herein or in any other agreement between Icewater and the Department, or if any of the representations and warranties of Icewater contained herein or in any other agreement between Icewater and the Department are or become untrue;

9.1.3. if any order is made or a resolution passed for the winding-up of Icewater or if a petition is filed under the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended or replaced, against Icewater or an authorized assignment for the benefit of creditors is made by it or if a receiver or agent is appointed by or on behalf of a secured creditor of Icewater or if an application is made under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended or replaced, or if a proposal is made by Icewater to its creditors under the Bankruptcy and Insolvency Act;

9.1.4. if Icewater voluntarily commences proceedings for its winding up;

9.1.5. if an encumbrancer, whether permitted or otherwise, takes possession of or seizes any part of the Collateral, or if any process of a court, execution, distress, or analogous process becomes enforceable or is enforced against any of the Collateral and Icewater is not instituting proceedings to vacate or lift the said execution, distress
or court process;

9.1.6. if Icewater terminates, abandons or ceases or threatens to terminate, abandon or cease to carry on its business, commits any act of bankruptcy, becomes insolvent, proposes a compromise or arrangement to its creditors or makes an unauthorized sale in bulk of its assets;

9.1.7. if the Department in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance of Icewater's obligations under the Agreement is or is about to be impaired or that the Collateral is or is about to be placed in jeopardy;

9.1.8. the occurrence of loss, theft, damage or destruction of the Collateral not covered by adequate insurance containing a loss payable clause for the protection of the Collateral in the name of the Department;

9.1.9. if the statements of Icewater in this Agreement or in any documents provided to the Department for purposes of this Agreement are false in whole or in part;

9.1.10. if Icewater fails to continue operations in the Province for the Term of this Agreement;

9.1.11. if Icewater fails to comply with its commitments in Sections 5 and 7.

10. NOTIFICATION OF DEFAULT

10.1. The Department will not be required to give any notice to Icewater of an Event of Default.

10.2. Icewater will give the Department written notice of any Event of Default immediately on the occurrence of such an event.

11. ASSIGNS

11.1. This Agreement is binding upon Icewater, its successors, assigns, heirs, executors and administrators according to law and is granted to and for and shall enure to the benefit of the Province and its successors and its assigns according to law.

11.2. This Agreement shall not be assigned by Icewater without the prior written consent of the Minister, which shall not be unreasonably withheld.

12. ENCUMBRANCES

12.1. Icewater shall not permit any adverse claims to encumber the subject matter of this Agreement which may impact on Icewater's ability to meet its obligations pursuant to this Agreement and Icewater shall, within a reasonable time frame, cause such claims to be discharged. The Province shall be immediately provided with notice of any such claims affecting the subject matter of this Agreement.

12.2. Icewater hereby warrants that the and Icewater undertakes not to further encumber the

18(1)(a)(ix), 24(1)(g)
Collateral, without prior written consent of the Minister, as long as there are any sums still owing to the Department hereunder.

13. REPRESENTATIONS AND WARRANTIES

13.1. Icewater represents and warrants to the Province that:

13.1.1. Icewater is duly registered and validly existing in good standing under the laws of Newfoundland and Labrador.

13.1.2. Icewater has the corporate power, capacity and authority to own property and carry out transactions as contemplated in this Agreement.

13.1.3. The execution and delivery by Icewater of this Agreement and the consummation of the transactions in the Agreement will not constitute in the violation of, or constitute a default under, or conflict with or cause the acceleration of any obligation of Icewater under:

   i. any provisions of the constating documents or bylaws of Icewater; or

   ii. any applicable law, statute, ordinance, regulation or rule of Canada or of any country, state, province or territory or any municipal bylaw or ordinance or any order or decree of any court or tribunal to which Icewater is subject.

13.1.4. There are no actions, suits or proceedings pending or to the knowledge of Icewater threatened against or adversely affecting Icewater in any court or before or by any federal, provincial, municipal or other governmental department, commission, board, bureau or agency, Canadian or foreign which might materially affect the financial condition of Icewater or the title to the Collateral.

13.1.5. Icewater has good and marketable title to the Collateral free and clear of any mortgage, charge, pledge, lien or other encumbrance, except as identified prior by Icewater in writing to the Department.

13.2. The Province represents and warrants to Icewater that:

13.2.1. The Province has the legal power, capacity and authority to perform its obligations as contemplated in this Agreement.

13.2.2. The execution and delivery by, or on behalf of, the Province of this Agreement by the persons executing this Agreement, and the performance by the Province of its obligations under this Agreement have been duly authorized and does not result in the violation of any of the terms and provisions of any agreement to which it is a party or any violation of any law or regulation of Canada or of any province or territory or any municipal bylaw or ordinance or any order or decree of any court or tribunal to which the Province may be subject.
14. DISPUTE RESOLUTION

14.1. All disputes among the Minister and Icewater arising out of:

14.1.1. this Agreement; or,

14.1.2. the interpretation, application, operation or performance of this Agreement;

which cannot be resolved informally to the satisfaction of the Minister or Icewater shall be addressed in the manner set out in this Article.

14.2. All communications and documents exchanged between the Minister and Icewater during the negotiations referred to above are without prejudice.

14.3. In the event the dispute is unable to be resolved, the Minister or Icewater may refer the matter to a court of competent jurisdiction in the Province.

15. CONTACT INFORMATION

15.1. Any written notice, payment, consents or other documents required or which may be given pursuant to this Agreement (the documents shall be in writing, duly signed by the Party giving the documents and delivered or transmitted by registered mail addressed as follows, or sent by telecopier with confirmation of transmission) to a receiver at the addresses set out below:

15.2. In the case of Icewater, addressed to it at:

Icewater Harvesting Inc.
22-29 Highliner Drive & 426 Main Road
Arnold's Cove, NL
A0B 1A0
Attention: [Redacted]
Telecopier No.: 709-463-2300

15.3. In the case of the Province, addressed to it at:

Department of Innovation, Business and Rural Development
Government of Newfoundland and Labrador
Attention: Director Business Analysis
P.O. Box 8700
2nd Floor West Block, Confederation Bldg
St. John's, NL - A1B 4J6
Fax: 709-729-5124

15.4. Any document so given shall, unless couriered or hand delivered, be deemed to have been received on the second business day following the date of mailing, if sent by registered mail, or on the first business day following the date of transmission, if sent by telecopier. If the postal system is disrupted by labour strife, any payment shall be couriered or hand delivered and any other document shall be couriered or hand delivered or sent by telecopier. Any Party may from time to time by notice given as provided above change its address or contact
for service of documents.

16. AMENDMENTS, WAIVER

16.1. No provision in this Agreement may be waived, modified or amended in any respect except in writing, and signed by an authorized representative of the Parties. Waiver by a Party of any right under this Agreement in a given instance or failure to enforce any provision in a given instance shall not operate thereafter as a waiver of that right or that provision or of any other right or provision in this Agreement. Unless a waiver is executed in writing, that Party will be entitled to seek any remedy that it may have under this Agreement or at law generally.

17. GENDER AND NUMBER

17.1. The use in this Agreement of the neuter gender includes the masculine and the feminine; the use of the plural includes the singular; the use of the singular includes the plural.

18. COSTS AND EXPENSES

18.1. All costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement, the negotiation thereof and the transactions contemplated hereby shall be paid by the Party incurring such expenses.

19. FURTHER ASSURANCES

19.1. The Parties shall with reasonable diligence do all things and provide all reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide those further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and to carry out its provisions, whether before or after the commencement hereof.

20. RIGHTS

20.1. Except as specifically set forth or referred to in this Agreement, nothing herein, expressed or implied, is intended or shall be construed to confer on or give any person, other than the Parties and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

21. MONEY

21.1. All dollar amounts referred to in this Agreement are in Canadian funds unless otherwise stated.

22. GOVERNING LAW

22.1. This Agreement and its provisions shall be construed and enforced in accordance with the laws in effect in the Province of Newfoundland and Labrador and laws of Canada having application, excepting and to the extent as may be otherwise stipulated by this Agreement.

22.2. Icewater agrees to ensure adherence, during the term of this Agreement, with any federal,
provincial or municipal laws or regulations having application.

23. SEVERABILITY

23.1. In the event that any provision of this Agreement is declared to be invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such provision shall not affect the validity or enforceability of any other provision and the remainder of this Agreement shall be read as if the offending provision were severed from the whole and the Agreement given effect.

24. FACSIMILE TRANSMISSION

24.1. This Agreement may be transmitted by facsimile or such similar device and the reproduction and transmission of signatures by facsimile or such similar device shall be deemed to be a valid execution and delivery of this Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures as soon as possible after delivery of the facsimile copy.

25. EXECUTION IN COUNTERPARTS

25.1. This Agreement may be executed in one or more counterparts, each of which so executed will constitute an original and all of which together will constitute one and the same agreement.

26. NO SET OFF

26.1. The Parties agree that the entitlement of the Province to any payment under this Agreement shall not be subject to any abatement, reduction, set-off, defense, counterclaim or recoupment of any amount due or alleged to be due by reason of any past, present or future claims against the Province by Icewater, except as may be provided for in this Agreement.

27. IMPOSSIBILITY OF PERFORMANCE AND INTERRUPTIONS

27.1. No Party shall be held liable or deemed to be in default under this Agreement if the performance or observance of its obligations is prevented or delayed by any circumstances beyond its reasonable control including, but not limited to, an act of God, warlike operations, riot, other industrial or trade dispute, fire, flood, tempest, failure of telecommunications facilities, unavoidable accident or act of Government, courts or regulatory authorities, or any delay in Governmental approvals required in respect of the subject matter hereunder.

28. INDEMNITY

28.1. Icewater shall indemnify and hold the Province harmless from and against and in respect of any and all loss or damage, direct or indirect, including costs, charges and expenses, based on or arising out of:

28.1.1. any inaccuracy in or breach of any representation or warranty made by Icewater in this Agreement or in any certificate, agreement or other document specifically required to be delivered by Icewater under this Agreement; or
28.1.2. any failure to duly perform or observe any provision, covenant, agreement or condition under this Agreement required on the part of Icewater to be performed or observed; or

28.1.3. any claims, demands, or actions by any present or former director, officer or employee of Icewater in respect of any matter existing at or prior to the commencement of this Agreement.

29. RIGHTS NON-EXCLUSIVE

29.1. The rights and benefits provided to the parties in this Agreement shall be supplemental to any other rights, actions or causes of action which the party may have or obtain in or in connection with any other provision in this Agreement or otherwise.

30. HEADINGS

30.1. Headings are provided for ease of reference only and shall not be used to lend interpretation to any respective provision of this Agreement.

31. COMMUNICATIONS

31.1. Icewater shall not engage in communications related to the initiative in the nature of press releases or public announcements without prior consultation and approval of the Province.

31.2. Icewater agrees that it will make best efforts to work with the Province to facilitate any announcements related to the approved funding in a timely manner.

32. NECESSARY AUTHORIZATION

32.1. The Parties hereby represent that they have respectively obtained all necessary authorizations to conclude the transactions contemplated by this Agreement and that the Agreement has been executed by their duly authorized representatives.

33. DEBTS DUE THE PROVINCE

33.1. Any amount owed to the Province under this Agreement will constitute a debt due to the Province that Icewater agrees to reimburse to the Province forthwith on demand.

34. NO AGENCY

34.1. No provision of this Agreement and no action by the Parties will establish or be deemed to establish a partnership, joint venture, principal-agent relationship, or employer-employee relationship in any way or for any purpose whatsoever between the Province and Icewater or among the Province, Icewater and a third party.
35. NO AUTHORITY TO REPRESENT

35.1. Nothing in this Agreement is to be construed as authorizing any third party to contract for, or to incur any obligation on behalf of, a Party or to act as agent for a Party.

36. TIME OF THE ESSENCE

36.1. Time shall be and shall continue to be of the essence of this Agreement.

37. SURVIVAL

37.1. Provisions concerning the Parties' rights and obligations which by the content of the provision operate after termination or which are necessary to enforce any right after termination will survive such termination of this Agreement. Without limiting the generality of the foregoing, Sections 26, 28 and 33 shall survive this Agreement.

38. AGREEMENT CONFIDENTIAL

38.1. The Parties acknowledge that the Province is subject to access legislation. This Agreement and all Confidential Information provided hereunder therefore are subject to the provisions of the Access to Information and Protection of Privacy Act, S.N.L. 2002, c. A-1.1 (as amended) and all attendant obligations therein.

39. ENTIRE AGREEMENT

39.1. This Agreement together with the Unanimous Shareholder Agreement, Subscription Agreement and any subsequent Amendments attached hereto and hereby made a part hereof, constitute the entire and final Agreement among the Parties and rescind any other agreements, convention, representation, discussions or commitment, whether verbal or in writing, agreed upon by the Parties prior to signing this Agreement.
SIGNED, SEALED AND DELIVERED on the day and year first before written.

HER MAJESTY IN RIGHT OF
NEWFOUNDLAND AND LABRADOR

[Signature]
Witness

[Signature]
MINISTER or authorized representative

Icewater Harvesting Inc.

Witness

Name & Title
SIGNED, SEALED AND DELIVERED on the day and year first before written.

HER MAJESTY IN RIGHT OF
NEWFOUNDLAND AND LABRADOR

Witness

MINISTER or authorized representative

Witness

Icewater Harvesting Inc.

Name & Title