August 17, 2016

Dear [Redacted]

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act [Our File #: SWSD 9 -2016]

On August 11, 2016, the Department of Seniors, Wellness and Social Development received your request for access to the following records:

"Request detailed breakdown of all consultants used by department between December 1, 2015 to August 11, 2016. Please include agreements/contracts, amount paid to date as well as scope of work and associated time frames."

I am pleased to inform you that a decision has been made by the Deputy Minister for the Department of Seniors, Wellness and Social Development to provide access to some of the requested information. In particular, access is granted to the following records:

- A table outlining consultants used by the Department
- A copy of relevant contract documents.

Access to the remaining information contained within the records, has been refused in accordance with the following exceptions to disclosure, as specified in the Access to Information and Protection of Privacy Act (the Act):

Section 40(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.

As required by 8(2) of the Act, we have severed information that is unable to be disclosed 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.

The Access to Information and Protection of Privacy Act requires us to provide an advisory response within 10 days of receiving the request. As this request has been completed prior to day 10, this letter also serves as our Advisory Response.

Please be advised that you may appeal this decision and ask the Information and Privacy Commissioner to review the decision to provide partial access to the requested information, as set out in section 42 of the Act (a copy of this section of the Act has been enclosed for your reference). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner. Your appeal should identify your concerns with the request and why you are submitting the appeal.

The appeal may be addressed to the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy Commissioner
2 Canada Drive
P. O. Box 13004, Stn. A
St. John’s, NL. A1B 3V8

Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the Act (a copy of this section of the Act has been enclosed for your reference).

Please be advised that responsive records will be published following a 72 hour period after the response is sent electronically to you or five business 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 any further questions, please contact me by telephone at (709) 729-6370 or by email at jennifertaylor@gov.nl.ca.

Sincerely,

Jennifer Taylor
ATIPP Coordinator

Enclosures
Section 42: Access or correction complaint

42. (1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16 (2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52 (1) or 53 (1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

(8) A complaint shall not be filed under this section with respect to

(a) a request that is disregarded under section 21;

(b) a decision respecting an extension of time under section 23;

(c) a variation of a procedure under section 24; or

(d) an estimate of costs or a decision not to waive a cost under section 26.

(9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.
Section 52: Direct appeal to Trial Division by an applicant

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16 (2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner’s refusal under subsection 45 (2).
AGREEMENT

THIS AGREEMENT made at St. John’s, in the Province of Newfoundland and Labrador, on this day of November 4, 2015.

BETWEEN: HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR as represented by the Minister of Seniors, Wellness and Social Development

(“the Client”)

AND: Dr. Michelle Kilborn

(“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
   
   b. “Representatives” mean 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. The Scope of the Work, with deliverables and timelines includes:
(i) Planning the workshop format and materials (e.g., goals and objectives, methodology, format, tools, supporting information) for three (3) workshops which will inform the development of the provincial wellness action plan.

(ii) Facilitating four (4) workshops:
   a. Workshop #1: Internal Government partners - This workshop will include participants from various government departments. The workshop will seek points of integration and alignment within government and identify new opportunities and approaches for working together to advance the actions for wellness. Approximately 40 participants.
   b. Workshop #2: Regional Health Authority partners - This workshop will include health promotion practitioners and other related staff in the regional health authorities. The workshop will seek points of integration and alignment within government and identify new opportunities and approaches for working together to advance the actions for wellness. Approximately 40 participants.
   c. Workshop #3: External Government partners - This workshop will include a broad range of partners from outside government. Approximately 40 – 50 participants. The workshop will build on the first to further identify opportunities for integration and alignment and seek new and innovative approaches to support wellness.
   d. Workshop #4: Provincial Wellness Advisory Council - This workshop will include the members of the Minister's Provincial Wellness Advisory Council. The workshop will share results of the first two workshops and will also provide an opportunity to seek input on any additional areas of integration and innovation. Approximately 28 participants. (*Note: this will be a shortened workshop as only half a day workshop has been planned for this group.)

Note: The Working Group will provide the required logistical support for the delivery of the workshops including such things as set up, equipment, note taking, refreshments and preparation of workshop materials (pens, paper, flipcharts)

(iii) Preparing a report summarizing the four workshops including methods used, supporting information, attendance, evaluation, common themes identified (including points of integration and alignment), and innovative actions and approaches and recommendations.

Deliverables and Timelines
(i) Delivery of four (4) workshops:
   a. Workshop #1: Monday, December 7, 2015
   b. Workshop #2: Wednesday, December 9, 2015
   c. Workshop #3: Monday, January 11, 2016
   d. Workshop #4: Wednesday, January 13, 2016

(ii) Report:
   a. 1st draft: January 27, 2016
(iii) Meetings:

a. Wellness Action Plan Steering Committee or working group meetings will be held approximately every two weeks with additional meetings as required during the course of the project (November 2015 – February 2016). The Consultant will not be required to attend all meetings. A schedule will be worked out with the Consultant.

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 payment option:

Subject to Article 3.1.3, 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, eighteen thousand dollars ($18,000)* in accordance with the following payment schedule:

(i) Half of this amount payable upon the completion of the three (3) workshops, with the balance due at the completion of the project. (First payment $9,000 and second payment at completion of project $9,000.)

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 option:

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

1.3 Payment General

(a) Regardless of the payment option selected in Article 1.1 and/or 1.2, the Parties agree and confirm that total amounts payable for the Work shall not exceed a monetary ceiling of eighteen thousand dollars ($18,000) and that a minimum of ten percent (10%) of the total fees payable for the Work will be withheld until such time as the project is completed to the satisfaction of the Client.
(b) The Consultant shall remain obligated to complete the Work notwithstanding that the actual costs of the Consultant, whether in respect of professional services or in respect of costs or expenses incurred, may exceed the total aggregate sum set out in Article 1.3(a).

(c) The Parties agree and confirm that as set out in section 25(6) of the Financial Administration Act, RSNL1990 cF-8, as amended, all fees payable in accordance with this Agreement are subject to there being an appropriation for the work for the fiscal year in which payment under this Agreement is due.

(d) Payment will be made within 60 calendar days of receipt of a properly documented invoice.

(e) The Consultant shall conform to any request that may be made by the Client to alter the form of invoice customarily used by the Consultant as may be reasonably required for the purposes of the Client’s internal accounting systems. The Consultant agrees that each invoice shall clearly show and identify the work or service which is being charged under that invoice to the Client. The invoice shall have appended thereto any documentation required by the Client.

(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. Linda Carter  
Director, Healthy Living Division  
Department of Seniors, Wellness and Social Development  
Box 8700, St. John’s, NL A1B 4J6  
Email: lindacarter@gov.nl.ca

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:

Linda Carter  
Department of Seniors, Wellness and Social Development  
Box 8700, St. John’s, NL A1B 4J6  
Phone: 709-729-3117  
Fax: 709-729-6103  
Email: lindacarter@gov.nl.ca
For the Consultant:

Dr. Michelle Kilborn  Section 40 (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 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.


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:** November 5, 2015
- **Completion Date:** February 12, 2016

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.

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HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR

Minister of Department of Seniors, Wellness and Social Development, or his/her authorized designate

Date: Nov 5, 2015

CONSULTANT
Dr. Michelle Kilborn

Authorized Signature
Date: Nov 5, 2015
SCHEDULE "A"
SCOPE OF WORK

The Consultant shall complete the work and/or perform the following services as outlined in the Scope of Work and in the Proposal submitted by the consultant: see attached
Background

Achieving Health and Wellness: A Provincial Wellness Plan for Newfoundland and Labrador was released in March 2006. The wellness plan was developed to support citizens in the province to live healthy, active and productive lives and to help prevent and reduce the burden of chronic diseases.

Four key directions and eight priorities outline the areas for action in the 2006 wellness plan:

**Key Directions:**
- Strengthen Partnerships and Collaboration
- Develop and Expand Wellness Initiatives
- Increase Public Awareness
- Enhance Capacity for Health Promotion

**Priority Areas:**
- Healthy Eating
- Physical Activity
- Living Smoke-free
- Mental Health Promotion
- Environmental Health
- Child and Youth Development

Evaluations and reviews of the wellness plan and other related areas show after nearly a decade of implementation, and through the collaboration of many departments, organizations, communities and individuals, the plan has led to the development of a solid foundation to support health promotion practice, policy and research in the province.

The strategic plan for the Department of Seniors, Wellness and Social Development (SWSD), states that SWSD will have advanced an integrated approach to wellness across government and sectors. Over the next three years, SWSD will take the leadership role in designing a robust and integrated horizontal approach to wellness through the development of a two year interim provincial wellness action plan in 2015/16 and the development of a longer term provincial wellness framework in 2017/18. The development of the action plan and framework will build on the previous work and will seek to identify fresh ideas, new approaches and partnership to support the way forward for wellness.

Health and well-being of the province’s people is determined by many factors. Environmental, social, economic and cultural conditions must be considered throughout the wellness planning. Physical and social conditions that people experience daily in the places where they live, learn, work, play and commute; healthy pregnancy and early childhood development; the availability, accessibility and quality of health care, social, educational and other services; personal characteristics and behaviour, such as lifestyle choices; and biological factors such as sex, age and genetic legacy all contribute to overall wellness.
From a health promotion and wellness perspective, emerging areas of emphasis in Canada and internationally include healthy food environments, healthy physical activity environments, strengthened efforts to reduce inequities for vulnerable populations, and targeted approaches in settings such as child care, school and primary health care, and a focus on families especially the early childhood period.

Most of the factors that impact health and wellness are beyond the reach of the health system alone and actions to change them require a wide effort from both within and outside governments. Change will require alignment of priorities and actions, multi-system along with integrated approaches. Disparities in health and well-being exist and, where they can be changed, partners in and outside governments must work together to try to reduce or remove such barriers to healthy living.

**Scope of Work**

A facilitator is required to work with the Wellness Action Plan Steering Committee and Working Group to complete the following elements:

(iv) To plan the workshop format and materials (e.g. goals and objectives, methodology, format, tools, supporting information) for three (3) workshops which will inform the development of the provincial wellness action plan.

   **Note:** the Steering Committee and Working Group will provide support to the facilitator in the preparation of background materials, workshop materials and workshop logistics.

(v) To facilitate three (3) workshops:

   a. Workshop #1: Internal Government partners - This workshop will include participants from various government departments. The workshop will seek points of integration and alignment within government and identify new opportunities and approaches for working together to advance the actions for wellness. Approximately 40 participants.

   b. Workshop #2: Regional Health Authority partners - This workshop will include health promotion practitioners and other related staff in the regional health authorities. The workshop will seek points of integration and alignment within government and identify new opportunities and approaches for working together to advance the actions for wellness. Approximately 40 participants.

   c. Workshop #3: External Government partners - This workshop will include a broad range of partners from outside government. Approximately 40 - 50 participants. The workshop will build on the first to further identify opportunities
for integration and alignment and seek new and innovative approaches to support wellness.

d. Workshop 43: Provincial Wellness Advisory Council – This workshop will include the members of the Minister’s Provincial Wellness Advisory Council. The workshop will share results of the first two workshops and will also provide an opportunity to seek input on any additional areas of integration and innovation. Approximately 28 participants. (*Note: this will be a shortened workshop as only half a day workshop has been planned for this group.)

Note: The Working Group will provide the required logistical support for the delivery of the workshops including such things as set up, equipment, note taking, refreshments and workshop materials (pens, paper, flipcharts)

(vi) To prepare a report summarizing the four workshops including methods used, supporting information, attendance, evaluation, common themes identified (including points of integration and alignment), and innovative actions and approaches and recommendations.

Deliverables and Timelines

- Delivery of four (4) workshops:
  Workshop #1: Monday, December 7, 2015
  Workshop #2: Wednesday, December 9, 2015
  Workshop #3: Monday, January 11, 2016
  Workshop #4: Wednesday, January 13, 2016
- Report:
  1st draft: January 27, 2016
  Final report: February 12, 2016
- Meetings:
  Wellness Action Plan Steering Committee or working group meetings will be held approximately every two weeks with additional meetings as required during the course of the project (November 2015 – February 2016).
Qualifications of Consultant

The consultant must have demonstrated skills in facilitation methods, adult education principles and the delivery of workshops to gather input from participants through various facilitation methods.

The consultant must have knowledge and experience in health promotion approaches and a solid understanding of healthy living and wellness.

An understanding of government processes and the development of government strategic plans would be an asset.

The consultant must be able to complete the scope of work and deliverables according to the timelines outlined above.

Proposal Requirements

The proposal must include the following components:
(i) Current curriculum vitae demonstrating relevant knowledge and experience;
(ii) Demonstrated abilities in report writing; and
(iii) References related to similar projects any other details considered relevant to the scope of work.

Fees

The proposal should outline the details and fee structure for:
(i) Professional services; and
(ii) Related expenses.

Prices quoted shall include Harmonized Sales Tax (HST) and must be in Canadian currency.

The total estimated time for the project is approximately 180 hours.
The total project cost shall not exceed $18,000.

Proposal Submission – sole source

The proposal must meet the following requirements:
(i) The facilitator is able to do the scope of the work as outlined above;
(ii) The facilitator has the required qualifications, and
(iii) The facilitator is able to complete the work within the identified cost.
The deadline for submission of proposals is Thursday, November 5, 2015.

Please submit proposals to:
   Linda Carter, Director Healthy Living Division
   Department of Seniors, Wellness and Social Development
   Healthy Living Division
   PO Box 8700
   St. John’s, NL
   A1B 4J6

Email: lindacarter@gov.nl.ca
Phone: 709-729-3117 cell: 709-727-2420
SCHEDULE “B”

SPECIAL TERMS AND CONDITIONS (as necessary)

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

The Special Terms and Conditions of this Agreement are as follows:

1. There are no Special Terms and Conditions for this Agreement

Deputy Minister
Date: Nov. 5, 2015

Consultant
Date: Nov. 5, 2015
**SCHEDULE “C”**

**GENERAL TERMS AND CONDITIONS**

<table>
<thead>
<tr>
<th>Article</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Information Supplied By The Client</td>
</tr>
<tr>
<td>2</td>
<td>Confidentiality, Materials and Copyright</td>
</tr>
<tr>
<td>3</td>
<td>Employees of the Consultant</td>
</tr>
<tr>
<td>4</td>
<td>Access to Facilities</td>
</tr>
<tr>
<td>5</td>
<td>Records and Audit</td>
</tr>
<tr>
<td>6</td>
<td>Termination</td>
</tr>
<tr>
<td>7</td>
<td>Liability</td>
</tr>
<tr>
<td>8</td>
<td>Compliance with Law</td>
</tr>
<tr>
<td>9</td>
<td>Arbitration</td>
</tr>
<tr>
<td>10</td>
<td>Laws Governing</td>
</tr>
<tr>
<td>11</td>
<td>Use of Work</td>
</tr>
<tr>
<td>12</td>
<td>Conflict of Interest</td>
</tr>
<tr>
<td>13</td>
<td>Subcontractors</td>
</tr>
<tr>
<td>14</td>
<td>General</td>
</tr>
</tbody>
</table>
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, SNL 2002 cA-1.1, or the Personal Health Information Act, SNL 2008 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 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;

(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/ftp/defaul.htm.

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 thereafter 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, RSNL 1990 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.
AMENDMENT

AMENDMENT to the AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador, on this day of

BETWEEN: HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR as represented by the
Minister of Seniors, Wellness and Social Development

(“the Client”)

AND: Dr. Michelle Kilborn

(“the Consultant”)

A. Correction to following section in the 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 in accordance with the following payment option:

Subject to Article 3.1.3 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, eighteen thousand dollars ($18,000)* in accordance with the following payment schedule:

(i) Half of this amount payable upon the completion of the four (4) workshops, with the balance due at the completion of the project. (First payment $9,000 and second payment at completion of project $9,000.)

B. Adjustment to the following section in the Agreement:

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: November 5, 2015

Completion Date: March 4, 2016
HER MAJESTY IN RIGHT OF
NEWFOUNDLAND AND LABRADOR

Minister of Department of Seniors,
Wellness and Social Development
or his/her authorized designate

Date: \(\text{Jan 19, 2016}\)

CONSULTANT
Dr. Michelle Kilborn

Authorized Signature

Date: \(\text{Jan 19, 2016}\)