September 8, 2016

Dear Applicant:

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act (Our File #: EDU/046/2016)

On August 11, 2016, the Department of Education and Early Childhood Development received your request for access to the following records/information:

"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 timeframes".

On August 23, 2016, by telephone, your request was clarified to:

"Request detailed breakdown of all consultants hired by the department on or after December 1, 2015 to August 11, 2016. Please include agreements/contracts, amount paid to date as well as scope of work and associated timeframes".

A decision has been made by the Deputy Minister for the Department of Education and Early Childhood Development to provide access to some of the requested information and the appropriate copies have been enclosed.

Access to the remaining records, and/or 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: Disclosure harmful to personal privacy

(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 agreed upon, third party business information contained in some of the contracts (e.g. charge-out rates) has been removed. For your reference, these pages are: 16-17; 49-50; 82-83; 115-116; 149-150; 182-183; 218-219; 252-253; 298-299; 330-332; 363-365; and 398-399.
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 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 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.

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 Completed Access to Information Requests 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 feel free to contact the undersigned by telephone at 709-729-1841 or by e-mail at brianevans@gov.nl.ca.

Sincerely,

Brian Evans, CIPP/C
Director of Information Management & Special Projects
ATIPP Coordinator

Enclosure
### Department of Education and Early Childhood Development
### Summary of Consultants Hired
### December 1, 2015 - August 11, 2016

<table>
<thead>
<tr>
<th>Consultant Name</th>
<th>Description/Scope of Work</th>
<th>Total Amount of Contract</th>
<th>Amount Paid to Date</th>
<th>Timeframe</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anderson Engineering Consultants Ltd.</td>
<td>Appalachia High School - Install Vertical Lift</td>
<td>$14,866.00</td>
<td>$</td>
<td>Aug. 22, 2016 - Feb. 27, 2017</td>
<td></td>
</tr>
<tr>
<td>Anderson Engineering Consultants Ltd.</td>
<td>Holy Cross All Grade - Structural Assessment of Auditorium</td>
<td>$1,780.44</td>
<td>$</td>
<td>Aug. 15, 2016 - Sept. 1, 2016</td>
<td></td>
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<tr>
<td>Atlantic Engineering Consultants Ltd.</td>
<td>Various Schools - Water Treatment, Industrial Sink &amp; Temperature Control</td>
<td>$21,014.00</td>
<td>$19,796.70</td>
<td>May 10, 2016 - Sept. 1, 2016</td>
<td></td>
</tr>
<tr>
<td>Architecture 49</td>
<td>St. Peter’s Primary - Site Specific Design for Modular Classrooms</td>
<td>$65,200.00</td>
<td>$43,500.00</td>
<td>Feb. 5, 2016 - Mar. 31, 2016</td>
<td>Change order issued on May 26, 2016 in amount of $21,700</td>
</tr>
<tr>
<td>Cecon Ltd.</td>
<td>Botwood Collegiate - Window Replacement Assessment</td>
<td>$5,300.00</td>
<td>$</td>
<td>Aug. 22, 2016 - Sept. 12, 2016</td>
<td></td>
</tr>
<tr>
<td>Cecon Ltd.</td>
<td>Glovertown Academy - Window Assessment</td>
<td>$5,200.00</td>
<td>$</td>
<td>Aug. 22, 2016 - Sept. 12, 2016</td>
<td></td>
</tr>
<tr>
<td>Cre8iv Design Studio</td>
<td>PASS Brochure Design</td>
<td>$525.00</td>
<td>$525.00</td>
<td>March 2016</td>
<td></td>
</tr>
<tr>
<td>Crosbie Engineering Ltd.</td>
<td>Dunne Memorial Academy - Essential Electrical Upgrades</td>
<td>$31,300.00</td>
<td>$</td>
<td>Aug. 26, 2016 - March 31, 2017</td>
<td></td>
</tr>
<tr>
<td>DBA Consulting Engineers Ltd.</td>
<td>Various Schools - Light Standard Structural Inspections</td>
<td>$50,000.00</td>
<td>$49,510.50</td>
<td>Feb. 17, 2016 - Mar. 31, 2016</td>
<td></td>
</tr>
<tr>
<td>Gallant, Geoff</td>
<td>Position of School Board Elections Coordinator</td>
<td>$62,796.00</td>
<td>$6,521.12</td>
<td>July 18, 2016 - Sept. 30, 2016</td>
<td></td>
</tr>
<tr>
<td>Lundrigan, Adam</td>
<td>Professional Learning Website Updates - software development to add users to user group and operational support</td>
<td>$2,100.00</td>
<td>$2,100.00</td>
<td>Jan. 12, 2016 - Mar. 31, 2016</td>
<td></td>
</tr>
<tr>
<td>Memorial University</td>
<td>Primary Reading and Writing video series. Video will be produced in French and English.</td>
<td>$8,920.00</td>
<td>$8,920.00</td>
<td>April 2016</td>
<td></td>
</tr>
<tr>
<td>Memorial University</td>
<td>To update specific graphic elements currently existing in three videos from the Primary Reading and Writing series.</td>
<td>$1,510.00</td>
<td>$1,510.00</td>
<td>April 2016</td>
<td></td>
</tr>
<tr>
<td>NOVA Consultants Inc.</td>
<td>Bishop Field Elementary - Structural Assessment of Auditorium</td>
<td>$2,000.00</td>
<td>$</td>
<td>Aug. 4, 2016 - Aug. 11, 2016</td>
<td></td>
</tr>
<tr>
<td>Rowsell Appleby Newton Engineering Inc.</td>
<td>Lake Academy - Plumbing Retrofit Assessment</td>
<td>$4,600.00</td>
<td>$</td>
<td>July 26, 2016 - Aug. 26, 2016</td>
<td></td>
</tr>
<tr>
<td>Rowsell Appleby Newton Engineering Inc.</td>
<td>St. Lawrence Academy - Plumbing Retrofit Assessment</td>
<td>$4,600.00</td>
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<td>July 26, 2016 - Aug. 26, 2016</td>
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<tr>
<td>Schacter Consulting</td>
<td>Providing consultation services for the Performance Measurement Framework Initiative</td>
<td>n/a</td>
<td>$2,057.14</td>
<td>April 1, 2016 - March 31, 2017</td>
<td></td>
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<tr>
<td>Stantec Architecture Ltd.</td>
<td>Ecole des Grands-Vents - Masonry Replacement</td>
<td>$2,600.00</td>
<td>$</td>
<td>Aug. 29, 2016 - Sept. 12, 2016</td>
<td></td>
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<tr>
<td>Vaandering, Dorothy (Dr.)</td>
<td>Training session - Restorative Justice (Session 1)</td>
<td>$3,882.00</td>
<td>$3,880.00</td>
<td>Jan. 20, 2016</td>
<td></td>
</tr>
<tr>
<td>Consultant Name</td>
<td>Description/Scope of Work</td>
<td>Total Amount of Contract</td>
<td>Amount Paid to Date</td>
<td>Timeframe</td>
<td>Comments</td>
</tr>
<tr>
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</tr>
<tr>
<td>Vaandering, Dorothy (Dr.)</td>
<td>Training session - Restorative Justice (Sessions 2, 3 and 4)</td>
<td>$4,395.00</td>
<td>$4,080.00</td>
<td>April 12, 2016 - April 14, 2016</td>
<td></td>
</tr>
<tr>
<td>Vaandering, Dorothy (Dr.)</td>
<td>Training session - Restorative Justice (Sessions 5, 6 and 7)</td>
<td>$4,395.00</td>
<td>$4,080.00</td>
<td>June 7, 2016 - June 9, 2016</td>
<td></td>
</tr>
<tr>
<td>VIVID Communications Inc.</td>
<td>Layout and design of brochure for Full Day Kindergarten</td>
<td>$475.00</td>
<td>$475.00</td>
<td>Jan. 26, 2016 - Feb. 12, 2016</td>
<td></td>
</tr>
</tbody>
</table>
Mr. Stephen Osmond, P.Eng.
Anderson Engineering Consultants Ltd.
3 Union Street, Suite 103
Corner Brook NL A2H 5M7

Dear Mr. Osmond:

Consultant Appointment

Your firm has been selected to provide professional services for the following in accordance with the attached conditions outlined below.

**Project #200116013 – Install Vertical Lift**
**Appalachia High School, St. George’s, NL**

The scope of services will entail a site visit with Department staff and a representative of the School District, or others as designated by the Department. Once this assessment is complete, a minuted scope review meeting with the Department of Education and Early Childhood Development and school district officials will take place to discuss findings and prepare recommendations for the scope of the work. Other services include detailed design, contract documents, tendering, contract admin, and project close out, etc.

Fees for the assessment portion of your commission will be per diem rates, plus expenses at government rates and policies. A maximum upset limit will have to be agreed upon and a Prime Consultant Agreement (PCA) signed, prior to performing the assessment. A fixed fee will be required once the assessment work is completed and the PCA will be amended.

By accepting this commission, your firm acknowledges that it is willing to enter into a contract containing the terms as outlined in the Government of Newfoundland and Labrador’s Standard Form of Agreement and a negotiated fee and schedule as outlined by our Project Manager. An electronic copy of our standard Agreement is attached for your perusal.

The assessment, detailed design and contract documents must be completed within 8 weeks of the date of this letter.
If you are interested in carrying out this work, upon receipt of this letter, please contact Ms. Tracy Chen, P.Eng, Design and Construction Division, at (709) 729-5587 to arrange the assessment. Also, please forward an updated copy of your proof of insurance as well as a letter of good standing with WorkplaceNL for our records.

If you are unable to undertake this work, please advise within one week of receipt of this letter so that we can arrange to appoint another consultant.

Sincerely,

[Signature]

INGRID E. CLARKE, P.Eng., FEC
Assistant Deputy Minister
(Infrastructure)

cc: Ms. Janet Vivian-Walsh
    Mr. Jim Sinnott
    Ms. Tracy Chen
    Ms. Natalie Hallett
    Ms. Kara Connors
    Mr. Blair Medd
    Mr. Paul Lahey
STANDARD FORM OF AGREEMENT
BETWEEN CLIENT AND PRIME CONSULTANT

Install Vertical Lift
Appalachia High School, St. George's
Project # 200116013
AGREEMENT

THIS AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador, on this 18th day of August, 2016.

BETWEEN: HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR as represented by the Minister of Education & Early Childhood Development.

(“the Client”)

AND: ANDERSON ENGINEERING CONSULTANTS LTD.

(“the Prime Consultant”)

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

I. Definitions
In addition to the terms defined in the Special Terms and Conditions attached as Schedule "B", (if any), and 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” means directors, officers, employees, consultants, sub-consultants, agents, advisors or partners.

II. The Prime Consultant’s Work
The Prime Consultant shall do all things necessary to fulfill and carry out all of the obligations of the Prime Consultant as set out in the Contract Documents (the “Work”).

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

IV. **Representations and Warranties**
The Prime Consultant hereby represents and warrants that every fact stated or represented by the Prime Consultant or its Representatives to the Client in connection with any proposal made by the Prime 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.

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

VI. **Start and Completion Date**
The Prime Consultant shall commence activities in relation to the Work with the start and completion dates mutually agreed upon as follows:

- Start Date: August 22, 2016
- Completion Date: February 27, 2017

VII. **Effective Date**
The effective date of this Agreement shall be the earlier of the start date referred to in Clause VI or the date on the first page of this Head Agreement.

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

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

Minister of Education & Early Childhood Development, or his/her authorized designate

Anderson Engineering Consultants Ltd.

Name: Walter Anderson, P.Eng., President
Date: August 18, 2016

Name: Melanie Smith
Date: August 18, 2016

Recommended By (Name/Date):
PM: Zelas 2016-8-24
Manager: Vargas Aug 29/16
Director: Hallett Aug 24/16
SCHEDULE "A"

SCOPE OF WORK
BETWEEN PRIME CONSULTANT AND CLIENT

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Schedule II .............. Basic and other Additional Services Fees
Schedule III............. Additional Reimbursement Allowances
Schedule IV ............... Schedule of the Performance of Consultant Services
Schedule V ............... Other Conditions of Services
PART 1  DEFINITIONS

1.1 Project Budget Forecast: means the Client’s estimated total expenditure for the project. It includes the construction budget forecast and all other costs to the Client for the project such as, but not limited to, professional fees and acquisition costs.

1.2 Construction Budget Forecast: means the Client’s estimated Construction Cost including contingencies for cost increases.

1.3 Construction Cost: means the contract price(s) of all elements of the project designed or specified by or on behalf of the Prime Consultant including, all applicable taxes. Where there is no contract price for all or part of the project, the Construction Cost shall be the elemental cost analysis using market rates at the estimated time of construction as determined by the Prime Consultant and agreed by the Client. The Construction Cost does not include professional fees, or land acquisition costs.

1.4 Contract: means an agreement between the Client and the Contractor for the provision of labour, materials and equipment for the construction of the project or part of the project by a Contractor.

1.5 Contractor: means a person, firm, or corporation contracting with the Client to provide labour, materials and equipment for the construction of the Project or part of the Project.

1.6 Project Management Design Administration Manual (PMDA Manual): a manual developed and maintained by the Department of Transportation and Works, Works Branch, for the purpose of presenting standards, guidelines and instructions for the delivery of building projects administered by the Works Branch. Unless otherwise agreed between the parties, the version published on the date of this Contract shall be the version applicable to this Contract.

1.7 Additional Services: means Consulting Services provided that are additional to the Basic Services.

1.8 Basic Services: means Consulting Services as outlined in the PMDA Manual.

1.9 Cost Control Services: means a service to monitor and advice on Project Budget and Construction Budget Forecasts.

1.10 Partial Services: means Reduced Basic Services as negotiated by the Client with the Prime Consultant.

1.11 Program Advisory Services: means Consulting Services provided by the Prime Consultant prior to start of Basic Services.

1.12 Authorities Having Jurisdiction (AHJ): means a person or persons representing these agencies that have authority to provide plan approvals and permits for the purpose of constructing the project.
PART 2 RESPONSIBILITIES

2.1 PRIME CONSULTANT

.1 The Prime Consultant’s services consist of Basic Services and Additional Services which may be required to perform the Work. The phases of the Prime Consultant’s Basic Services, and Additional Services are listed on Schedule II, and further elaborated in the Project Management and Design Administration (PMDA) Manual of the Department of Transportation and Works.

.2 The Prime Consultant’s services as provided for under and pursuant to this Agreement and during all phases of the Work shall encompass coordination of all disciplines, quality assurance and documentation control to integrate all services and sub consultant’s work. The Prime Consultant shall prepare and submit contract documents in accordance with the Client’s requirements, as outlined in the PMDA Manual.

.3 During the tendering and contract award phase, the Prime Consultant may advise and assist the Client in obtaining bids and awarding construction contracts. The Client’s tendering and contract procedures and administrative practices will be followed in the performance of this phase, as outlined in the PMDA Manual.

.4 The Client may require the Prime Consultant to provide construction administration services. When required the Prime Consultant’s service shall be based upon either full responsibility or partial responsibility.

.1 Full Responsibility

.1 As outlined in the PMDA Manual, services provided under full responsibility include assessing construction work carried out on or in relation to the project and offering an opinion as to whether or not the construction of the project is in accordance with the contract documents prepared by the Prime Consultant.

.2 Partial Service

.1 The scope of this partial service is to be outlined in Schedule I of this agreement, as agreed between the Client and the Prime Consultant.

.5 The project completion phase represents the portion of the Basic Services to be provided at the commencement of substantial completion until expiry of the one year Project warranty period. This service includes the provision of record drawings as outlined in the PMDA Manual, and advice concerning issues arising during this period.

.6 Cost Control Services are included under the scope of Basic Services to be provided by the Prime Consultant, as outlined in the PMDA Manual.

.7 The following schedules apply:

Schedule I - Project Description
Schedule II - Basic and Other Additional Services Fees
Schedule III - Additional Reimbursable Allowances
Schedule IV - Other Conditions of Services
2.2 CLIENT'S RESPONSIBILITIES

.1 The Client shall give due consideration to documentation submitted by the Prime Consultant and, whenever action is necessary, the Client shall inform the Prime Consultant of the Client's decisions, in a reasonable and timely manner.

.2 The Client shall authorize persons to act on behalf of the Client with respect to delivery and administration of the project.

.3 If the Client observes or otherwise becomes aware of any fault or defect in the project or any nonconformity with the requirements of the Contract, the Prime Consultant shall be so notified in writing.

.4 The Client may provide information regarding the project including: a program, which shall set forth the Client's spatial and functional requirements and relationships. The Prime Consultant is responsible for requesting or providing information that is required to prepare the design and contract documents.

.5 The Client will provide the Prime Consultant with a Project Budget Forecast.

.6 The Client shall reimburse the Prime Consultant for procuring information which the Prime Consultant requires for the provision of services necessary to carry out the preparation of design and/or contract documentation when the information is not available upon request from the Client such as site surveys, hazardous material surveys.

.7 When the Client supplies the Prime Consultant with information contained within reports or equipment data sheets, the Prime Consultant will not be required to exhaustively check information supplied by the Client to verify the same unless it is requested to do so by the Client. However, if the Prime Consultant observes, or otherwise becomes aware, of any fault or defect in the information supplied to it by the Client, the Consultant shall cause the Client to be notified in writing of any such fault or defect forthwith.

.8 Where the Prime Consultant has been authorized by the Client to procure or obtain information, the Prime Consultant shall be responsible in seeing that the information provided meets the needs of the sub-consultant(s) performing the work under the direction of the Prime Consultant.

.9 The Client will reimburse the Prime Consultant for other specialist consultants that may be required to carry out quality control services during the project, subject to prior approval of scope of the work and an agreement on the fee or fees payable for the same by the Client.

PART 3 GENERAL REQUIREMENTS

3.1 STAFF

The Prime Consultant will provide the Client with a list of its employees and those of its sub-consultants who will be assigned to the project. The list will include the classification of each employee and the hourly rate to be charged for additional services rendered. The Prime Consultant will obtain written prior approval of
Client for any replacement of key employees, changes in the numbers of key employees or changes to rates of key employees assigned to the project.

3.2 SCHEDULE

.1 The Prime Consultant has developed and submitted a time schedule for the performance of consultant services on the project (which Schedule has been approved by the Client and is appended as Schedule "IV" hereto. The schedule shall incorporate all major design milestones as presented in the PMDA Manual.

.2 Unless otherwise agreed to between the parties, the failure by a party to comply with the approved schedule for those aspects of the Work that a party is responsible for may be sufficient cause for the other party to terminate this Agreement, if that failure is not rectified within seven (7) days after the defaulting party is given notice of its default.

.3 If either party believes that a change in the approved schedule is necessary the party requesting that change shall promptly give notice of that fact to the other party in writing, provide the other party with a revised schedule and the reason(s) why the change is requested for its consideration and request its written approval of the same. Should that approval be forthcoming the revised schedule will become the approved schedule for the project.

3.3 COST CONTROL

.1 The Prime Consultant shall provide Cost Control Services in accordance with PMDA Manual.

.2 If at any time the Prime Consultant considers its estimates indicate costs which exceed the Project or Construction Budget Forecast, the Prime Consultant will immediately advise the Client. If the excess is due to, discretionary design elements under the control of or reasonably foreseeable by the Prime Consultant, or the negligence or default of the Prime Consultant in the performance of this Agreement, the Client may require the Prime Consultant to redesign the project at the Prime Consultant’s expense to bring the cost estimate within the approved Project Budget Forecast.

.3 If the preferred bidder’s tender for the project for which the Prime Consultant has prepared and provided the design(s) and provided cost pricing and control services exceeds the Construction Budget Forecast as a result of the negligence or default of the Prime Consultant under this Agreement or is for reasons related to discretionary design elements which are under the Prime Consultant’s control or which the Prime Consultant should have reasonably foreseen and could have guarded against, then the Prime Consultant, at no additional cost to the Client, shall redesign to bring the cost within the Construction Budget Forecast and tender.

3.4 CHANGES AND ADJUSTMENT

.1 Changes and adjustment to the fees payable under this Agreement will be only considered if there is a material change in the level of services agreed to be provided or in the scope of the Project, or there is a material delay in the performance of the work required under the Contract.
The amounts due to the Prime Consultant arising from a material change to the Agreement will be determined by a negotiated fixed amount, or failing such negotiation, the actual cost as determined by level of effort incurred times the agreed hourly rate, plus receipted expenses.

Any increases in the fees payable caused by a material changes or other changes shall be communicated by the Prime Consultant in writing to the Client prior to incurring such costs to permit the Client to mitigate the amount of increased costs.

3.5 ERRORS AND OMISSIONS

Any costs resulting from design errors on the part of the Prime Consultant, sub-consultants chosen by the Prime Consultant, or agents, or employees of the Prime Consultant or of any sub-consultant chosen by the Prime Consultant will be the responsibility of the Prime Consultant to remedy. However, where the Client and not the Prime Consultant chooses a sub-consultant to do hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work, the Prime Consultant shall not be held responsible for design errors attributed to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, or construction testing services, done by sub-consultants chosen by the Client, unless those design errors are directly caused by the Prime Consultant. In the case of sub-consultants chosen by the Client, the Client and not the Prime Consultant shall be responsible to take such steps as the Client deems to be appropriate, to ensure that any sub-consultant chosen by the Client has appropriate and adequate policies of insurance that are acceptable to the Client in place to cover design errors attributable to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work done by any such sub-consultant.

Any costs resulting from errors in design or omissions may be paid by the Client providing the cost of such design omissions does not entail removing material or equipment that has already been constructed in accordance with the plans and specifications. The cost of the original material and equipment, as indicated on the plans and specifications, and the labour to remove such will be the responsibility of the Prime Consultant.

3.6 PRIME CONSULTANT ACTIONS AND DECISIONS

The Prime Consultant acknowledges that adequate discussion has taken place regarding the Work with the Client and that the Prime Consultant has access to sufficient information to undertake the services contracted for within the Project Budget.

The Prime Consultant and the Client agrees to act promptly and diligently on all matters within their respective direction and control requiring an action or decision affecting the design, construction or administration of the project.

Only express approval by the Client shall be deemed to relieve the Prime Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant. No acceptance or approval by the Client, that is implied shall be deemed to relieve the Prime
Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant.

If the Prime Consultant does not promptly and diligently comply with or fails to meet the requirements of the Client, the Client may without prejudice to any other right or remedy the Client may have by giving the Prime Consultant written notice, and without prejudice to the Client's rights at law or elsewhere in this Agreement, take all such action deemed necessary for the prompt and economical completion of the project, and/or terminate the contract.

3.7 INSURANCE COVERAGE

.1 The Prime Consultant shall supply written proof of:

.1 Professional liability insurance coverage equal or greater than $250,000 per claim, $500,000 in aggregate for projects under $2 million construction value or $500,000 per claim, $1,000,000 aggregate for projects over $2 million. The Prime Consultant shall be fully responsible for all amounts deducted from this value by the Prime Consultant's Insurer. This Insurance shall remain in effect until the expiry of the general contractor's one year warranty on the project.

.2 Commercial liability insurance acceptable to the Client with a minimum limit of $1,000,000.

.2 The Insurer shall be an insurance company licensed to do business in the Province of Newfoundland & Labrador.

PART 4 BASIS OF PAYMENT SCHEDULE

4.1 The Client will pay for Program Advisory Services on the basis of an agreed fixed fee or on the basis of approved level of effort at agreed per diem rates.

4.2 The Client will pay for Basic Services on the basis of the agreed fixed fee. The Client's Project Budget Forecast will be made available to the Prime Consultant to assist in the evaluation of the level of effort required.

4.3 The fee for Basic Services will be apportioned to the phases of service as outlined in Schedule II - "Basic Services and Other Additional Services' Fees".

4.4 The fee for Basic Services will also include the management and co-ordination by the Prime Consultant and specialist consulting services as may be requested by the Client. Compensation for specialist or other consulting services will be on the basis of an agreed fixed fee for the level of effort required.

4.5 The Client will pay for resident services during construction, when requested based on an agreed fixed fee amount. The fee amount is to include all payroll costs, site-related expenses and allowances as agreed.

4.6 The Client will pay for construction management services when requested on the basis of the level of effort required during project implementation based on an agreed fixed fee.

4.7 The Client will pay for commissioning services on the basis of an agreed fixed fee. The fee amount shall include level of effort; associated with the preparation.
of documents and site visits to carry out commissioning activities, as outlined in the PMDA Manual.

4.8 The Client will pay for day-to-day routine expenses such as; long distance charges, reproduction costs, client presentations and submissions, original contract documents (hardcopy), courier services, travel over 50 km from office on an agreed fixed amount. All routine expenses to be charged at cost. Meals, Private Vehicle usage, and incidental expense are to be paid on the basis of Government Rates at time of this Agreement.

4.9 The Client will pay for Additional Reimbursable Allowances as provided for in Schedule III - "Additional Reimbursable Allowances". These allowances require supporting documents to be provided for payment.
Provide engineering design and contract administration for the installation of a new vertical lift at Appalachia High School in St. George's.
SCHEDULE IV
SCHEDULE OF THE PERFORMANCE OF CONSULTANT SERVICES

Aug 26, 2016 – Complete preliminary site visit.
Aug 31, 2016 – Discuss finding s with client/Start concept design.
Sept 12, 2016 – Complete concept design/Submit to client for comments.
Sept 26, 2016 – Complete design development/Submit to client for comments.
Oct 10, 2016 – Submit contract documents/Tender project.
Oct 24, 2016 – Award contract to low bidder.
Nov 7, 2016 – Construction start/Contract administration to include pre-construction meeting, 2 intermediate site visits and final inspection.
Feb 27, 2017 – Submit as-built drawings.
SCHEDULE V
OTHER CONDITIONS OF SERVICES

(Not applicable unless text is added to this schedule)
SCHEDULE “B”

SPECIAL TERMS AND CONDITIONS (as necessary)

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

Margaret Gillies, Q.C., General Counsel  
Janet Vivian-Walsh, Deputy Minister

The Special Terms and Conditions of this Agreement are follows:

As per the Contract terms contained herein
OR

1. No Special Terms and Conditions

Department of Justice

Deputy Minister
## SCHEDULE "C"
### GENERAL TERMS AND CONDITIONS

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SCHEDULE "C"

GENERAL TERMS AND CONDITIONS

Article 1. PAYMENT

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

Payment Option #1

Subject to Article 1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, for the satisfactory performance of the Work, Fourteen Thousand, Eight Hundred and Sixty-Six Dollars ($14,866.00) (plus HST) in accordance with the following payment schedule:

(i) Periodic payments – payments paid monthly proportional with the amount of work completed to date.

Payment Option #2 Not Applicable

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

(i) Person / Professional Designation – Hourly Rate

Payment Option #3 Not Applicable

Subject to Article 1.3, upon the satisfactory completion of the Work and the presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, $Insert Absolute Limit on Cost of Services (plus HST).

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

Reimbursement Option A
(a) The Client shall only be responsible for the following reimbursable expenses, payable at cost, provided the Prime Consultant can demonstrate to the Client that such expenses were incurred in relation to the Work, and that documentation, satisfactory to the Client, is provided in support of the reimbursable expense claimed and is attached to the applicable invoice, including for example, originals of supporting receipts, invoices or statements issued by non-parties to this Agreement:

(i) Mileage – 5 trips x 190 km/trip x $0.38/km = $361
(ii) Registration Permits - $800

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

Reimbursement Option B Not Applicable

The Client shall not be responsible for any expenses incurred by the Prime 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) The Prime Consultant shall remain obligated to complete the Work notwithstanding that the actual costs of the Prime Consultant, whether in respect of professional services or in respect of costs or expenses incurred, may exceed the total aggregate sum set out in this Agreement.

(b) The Parties agree and confirm that as set out in section 25(6) of the Financial Administration Act, RSNL 1990 c. F-8, as amended, all fees payable in accordance with this Agreement are subject to there being an appropriation for the work for the fiscal year in which payment under this Agreement is due.

(c) Payment will be made within 60 calendar days of receipt of a properly documented invoice. The Client shall within thirty (30) days of the execution of this Agreement should the Prime Consultant request the same provide direction to the Prime Consultant as to what constitutes a properly documented invoice.

(d) All invoices shall clearly show the amount of HST billed by the Prime Consultant as a separate item.

(e) The Prime Consultant shall conform to any request that may be made by the Client to alter the form of invoice customarily used by the Prime Consultant as may be reasonably required for the purposes of the Client's internal accounting systems. The Prime 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 Prime Consultant which may arise from work, services or expenses incurred to remedy errors or omissions in the Work for which the Prime Consultant is responsible.

(g) The Prime Consultant shall submit invoices to:
Department of Education & Early Childhood Development
Design and Construction Division (Works)
3rd Floor, West Block, Confederation Building
St. John’s, NL A1B 4J6

Article - 2. INFORMATION SUPPLIED BY THE CLIENT

2.1 The Client will furnish to the Prime Consultant all available information necessary for the performance of the Work.

2.2 Where discrepancies, omissions or obscurities in the information are evident, the Prime Consultant shall bring them to the attention of the Client and secure written instructions from the Client before proceeding with any work.

Article - 3. CONFIDENTIALITY, MATERIALS AND COPYRIGHT

3.1 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 Prime Consultant, the Prime Consultant’s 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;

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 Prime Consultant, the Prime Consultant’s employees, servants and/or agents during the performance of the services or in any way related thereto;

(c) all personal information, as defined from time to time under the Access to Information and Protection of Privacy Act, SNL 2002 c. A-1.1, to mean recorded information about an identifiable individual, including,

(i) the individual's name, address or telephone number,
(ii) the individual’s race, national or ethnic origin, colour, or religious or political beliefs or associations,

(iii) the individual’s age, sex, sexual orientation, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual’s fingerprints, blood type or inheritable characteristics,

(vi) information about the individual’s health care status or history, including a physical or mental disability,

(vii) information about the individual’s educational, financial, criminal or employment status or history,

(viii) the opinions of a person about the individual, and

(ix) the individual’s personal views or opinions

for any individual, which is, directly or indirectly, disclosed to or collected by the Prime Consultant, the Prime Consultant’s 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 Prime Consultant, the Prime Consultant’s 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 Prime Consultant was or thereafter became part of the public domain through no act or omission of the Prime Consultant or the Prime Consultant’s Representatives; or

(ii) is information which the Prime Consultant can show possession of prior to the date of this Agreement and which was received or developed by the Prime Consultant free of obligations of confidentiality to the Client.

3.2 The Prime Consultant shall treat all Confidential Information acquired by the Prime Consultant in the performance of the Services as privileged and confidential and shall not divulge the same to any person or persons at any time without the express written approval of the Client, unless required to do so by law, which may include any subpoena or other similar process or in connection with litigation, arbitration or other proceeding or by virtue of an act or regulations. In the event that such disclosure is required, the Prime Consultant shall give the Client prompt notice of the requirement upon becoming aware that such disclosure is required. Where circumstances do not permit the Prime Consultant to provide such notice prior to disclosure, the Prime Consultant shall provide such notice to the Client immediately after the required disclosure.
3.3 The Prime 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.

3.4 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 Prime 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 Prime 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 Prime Consultant pursuant to the terms of this Agreement. The Prime Consultant acknowledges that the Client's right to this information shall at all times be paramount to any rights of the Prime Consultant, at law or in equity, and that the Prime 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 Prime Consultant's possession.

3.5 The Prime 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 Prime Consultant, the Prime Consultant's employees, servants and/or agents, and shall certify the destruction of same to the Client. However, nothing in this Agreement shall preclude the Prime Consultant's privilege to retain copies of documents provided to it or prepared by it in connection with the Work, provided such documents are kept in a secure manner, are used by the Prime Consultant solely for the purposes of defending itself against claims arising from the Work of the Contract, and that the aforesaid documentation is destroyed or returned to the Client at the end of all limitation periods for commencing any action in connection with the Work or upon the conclusion or settlement with finality of any claim or action with respect to the Work.

3.6 The Prime Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Prime Consultant, the Prime Consultant's employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the Access to Information and Protection of Privacy Act, the Management of Information Act, SNL 2005, c. M-1.01, and the Privacy Act, RSNL1990 c. P-22, as well as other legislation which may apply in the jurisdiction of the Prime Consultant's operation. The Prime 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 Prime Consultant, and the Prime Consultant's employees, servants and/or agents.

3.7 The Prime Consultant shall ensure that it, and the Prime Consultant's 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 Prime Consultant employs to avoid disclosure or dissemination of the Prime Consultant's own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of the Prime Consultant's employees, servants or agents other than those who are required to have access to the same 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 Prime Consultant comply with all policies, standards and safeguards established under this Article;

(d) advise the Client of any changes in the Prime Consultant's 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 Prime 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.

3.8 The Prime Consultant shall only disclose Confidential Information to persons other than the Prime Consultant's 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".

3.9 The Prime 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 Prime 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 Prime Consultant;

(b) promptly furnish to the Client full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the Client in
investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information;

(c) use reasonable efforts to cooperate with the Client in any litigation and investigation against third parties deemed necessary by the Client to protect its proprietary rights;

(d) promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information; and

(e) refer to and follow the privacy breach protocol of the Government of Newfoundland and Labrador as it exists at the time of the breach and located on the Department of Justice website at: http://www.justice.gov.nl.ca/just/info/privacybreach.html

Article - 4. EMPLOYEES OF THE PRIME CONSULTANT

4.1 The Prime Consultant shall provide employees who are competent in their field of specialization. The Client will have the right to have the Prime 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 Prime 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 concerned was involved and may refuse to approve payment for such Work.

4.2 The Prime 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 - 5. ACCESS TO FACILITIES

5.1 The Client agrees to provide, access to the project site for the Prime Consultant to perform the Work during Client office hours.

5.2 When using or accessing the premises of the Client, the Prime Consultant and all officers, employees and agents of the Prime Consultant shall comply with all security regulations and workplace policies and procedures in effect from time to time at the Client’s facilities.

Article - 6. RECORDS AND AUDIT

6.1 The Prime 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.
6.2 The Prime Consultant shall furnish reports as required by the Client for the purpose of monitoring the progress of the Work.

Article - 7. TERMINATION

7.1 This Agreement is deemed to be concluded once the Work has been completed to the satisfaction of the Client and the payment(s), as stipulated in the Agreement, has been issued to the Prime Consultant.

7.2 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.

7.3 Where this Agreement is terminated prior to the mutually agreed upon completion date, the Prime Consultant shall thereupon be entitled to payment in accordance with this Agreement in respect of that part of the Work completed up to the date of termination, provided however, that the Prime 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 - 8. NOTICES

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

For the Client:

Ms. Tracy Chen, P.Eng.
Education & Early Childhood Development
Design and Construction Division (Works)
3rd Floor, West Block, Confederation Building
St. John's, NL A1B 4J6
Phone: (709) 729-5587
Fax: (709) 729-0414
Email: TraceyChen@gov.nl.ca

For the Prime Consultant:

Steve Osmond, P.Eng.
Anderson Engineering Consultants Ltd.
Suite 103, 3 Union Street Corner
Corner Brook, NL A2H 5M7
Phone: (709) 634-9944
Fax: (709) 634-9945
Email: [redacted]
8.2 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.

Article - 9. LIABILITY

9.1 The Prime Consultant agrees that in performance of the Work neither the Prime Consultant nor any Prime Consultant's Representative shall be or be deemed to be an officer, servant, agent or partner of the Client.

9.2 The Client shall not be liable for, and the Prime 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 negligence or default of the Prime Consultant under this Agreement, including the negligence or default of any sub-consultant chosen by the Prime Consultant. Except to the extent that such losses, costs, charges or expenses as are referenced in this clause are caused by the negligence or default of the Client under this Agreement, the Prime Consultant shall defend any and all such actions and pay all legal charges, costs and other expenses arising therefrom. Where the Prime Consultant fails to defend such an action, 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 Prime Consultant.

Article - 10. COMPLIANCE WITH LAW

10.1 In respect of any work within the Province of Newfoundland and Labrador connected with or arising from this Agreement, the Prime 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.

10.2 The Prime Consultant shall ensure that the Prime Consultant and its Representatives comply with all requirements of any governing federal, provincial or municipal legislation, by-laws or regulations applicable to the Prime Consultant or the Prime Consultant's Representatives in the performance of the Work.
Article - 11. ARBITRATION

11.1 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, the parties shall first attempt to resolve all matters through friendly negotiation by a meeting between their representatives upon notice per Article 8. A resolution reached in this way must be reached within 10 days of both parties having knowledge and notice of the dispute and be reduced to writing.

11.2 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Article 11.1), either party may give the other notice of such dispute and request third party mediation thereof.

11.3 Should the parties not agree to third party mediation or the matter in dispute between the parties not be resolved by mediation, then in the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Articles 11.1 and 11.2), either party may give the other notice of such dispute and 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 c. A-14, including such provisions for the appointment of arbitrators.

Article - 12. LAWS GOVERNING

12.1 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 - 13. USE OF WORK

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

13.2 With respect to 13.1 the Prime Consultant’s liability to the Client for and in respect of the Work is solely limited to the project described in this Agreement.

Article - 14. CONFLICT OF INTEREST

14.1 No member of the House of Assembly of the Province of Newfoundland and Labrador shall be admitted to any part or share of the payments made pursuant to this Agreement or to any benefits arising therefrom.

14.2 The Prime Consultant and the Prime 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 - 15. SUBCONTRACTORS

15.1 The Prime Consultant shall not sub-contract all or a portion of the Work without the prior written approval of the Client, which consent will not be unreasonably withheld.

15.2 The entry into any subcontract shall not relieve the Prime Consultant of any of its obligations under the terms of this Agreement.

Article - 16. GENERAL

16.1 Articles 3 and 9 of this Agreement shall survive the termination or expiration of this Agreement.

16.2 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.

16.3 Time shall be of the essence of this Agreement.

16.4 The failure of the Client to insist upon or enforce in any instance strict performance by the Prime 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.

16.5 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.

16.6 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.

16.7 This Agreement shall enure to the benefit of and be binding upon the Parties hereto, their respective heirs, legal representatives, successors and assigns.

16.8 The Prime Consultant shall not assign this Agreement in whole or in part to any third party without the prior written approval of the Client.
SCHEDULE "D"
Protocols for Security of Government Information on Information Technology assets of Contractors

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

- All portable storage devices or media (e.g., flash drives, memory sticks, portable hard drives, writable compact discs or digital video discs, etc.) may only be used to transport and/or store Confidential Information where either the Confidential Information or the device or media is encrypted.

- Unless specifically authorized by the Prime Consultant's Contract or otherwise, the Prime Consultant is not permitted to attach non-government computers or other information technology systems to any Government network.

- The Prime Consultant is expected to implement and maintain up to date versions of all ordinary business software for the reasonable protection of information on computers attached to the Internet which will have access to or store Confidential Information, including security firewall and anti-viral software.

- The Prime Consultant is not permitted to use any Peer to Peer file sharing program (e.g., Limewire, etc) or chat program (e.g., MSN, Skype) on any information technology asset which will contain Confidential Information, or which will be connected via a network to any computer which will contain Confidential Information.

- Email should not be used as a method to transmit Confidential Information across public networks such as the Internet unless the e-mail and/or its attachments are encrypted or zipped in a secure manner.

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

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

- For the purposes of Schedule D, routine exchanges of design and construction information between the Client, the Prime Consultant and the Prime Consultant's sub-consultants that is of a non-confidential nature need not be encrypted.
Mr. Stephen Osmond, P.Eng.
Anderson Engineering Consultants Ltd.
3 Union Street, Suite 103
Corner Brook NL A2H 5M7

Dear Mr. Osmond:

Consultant Appointment

Your firm has been selected to provide professional services for the following in accordance with the attached conditions outlined below.

Project #200072007 – Structural Assessment
Holy Cross All-Grade, Daniel’s Harbour, NL

The scope of services will entail a site visit with Department staff and a representative of the School District, or others as designated by the Department. Once this assessment is complete, a minuted scope review meeting with the Department of Education and Early Childhood Development and school district officials will take place to discuss findings and prepare recommendations for the scope of the work.

Fees for this portion of your commission will be per diem rates plus expenses at government rates and policies up to a maximum upset limit that must be agreed to prior to performing the assessment and upon which a prime consultant agreement will be signed.

By accepting this commission, your firm acknowledges that it is willing to enter into a contract containing the terms as outlined in the Government of Newfoundland and Labrador’s Standard Form of Agreement and a negotiated fee and schedule as outlined by our Project Manager. An electronic copy of our standard Agreement is attached for your perusal.

The assessment and recommendations must be completed within 4 weeks of the date of this letter.

If you are interested in carrying out this work, upon receipt of this letter, please contact Mr. John Trahey, Design and Construction Division, at (709) 729-1067 to arrange the assessment. Also, please forward an updated copy of your proof of insurance as well as a letter of good standing with WorkplaceNL for our records.
If you are unable to undertake this work, please advise within one week of receipt of this letter so that we can arrange to appoint another consultant.

Sincerely,

INGRID E. CLARKE, P.Eng., FEC
Assistant Deputy Minister
(Infrastructure)

cc: Ms. Janet Vivian-Walsh
    Mr. Jim Sinnott
    Mr. John Trahey
    Ms. Natalie Hallett
    Miss. Kara Connors
    Mr. Blair Medd
    Mr. Paul Lahey
STANDARD FORM OF AGREEMENT
BETWEEN CLIENT AND PRIME CONSULTANT

Holy Cross All Grade
Structural Assessment
200072007
AGREEMENT

THIS AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador, on this 5th day of August, 2016.

BETWEEN: HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR as represented by the Minister of Education & Early Childhood Development.
(“the Client”)

AND: Anderson Engineering Consultants Ltd.
(“the Prime Consultant”)

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

I. Definitions
In addition to the terms defined in the Special Terms and Conditions attached as Schedule “B”, (if any), and 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”;

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

II. The Prime Consultant’s Work
The Prime Consultant shall do all things necessary to fulfill and carry out all of the obligations of the Prime Consultant as set out in the Contract Documents (the “Work”).

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

IV. **Representations and Warranties**
The Prime Consultant hereby represents and warrants that every fact stated or represented by the Prime Consultant or its Representatives to the Client in connection with any proposal made by the Prime 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.

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

VI. **Start and Completion Date**
The Prime Consultant shall commence activities in relation to the Work with the start and completion dates mutually agreed upon as follows:

- **Start Date:** August 15, 2016
- **Completion Date:** September 1, 2016

VII. **Effective Date**
The effective date of this Agreement shall be the earlier of the start date referred to in Clause VI or the date on the first page of this Head Agreement.

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

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

Minister of Education and Early Childhood Development,
or his/her authorized designate

Anderson Engineering Consultants Ltd.

Recommended By (Name/Date): 2016/08/12
PM:  
Manager:  
Director:  

President
Date:  August 5th, 2016
SCHEDULE “A”
SCOPE OF WORK
BETWEEN PRIME CONSULTANT AND CLIENT

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PART 1  DEFINITIONS

1.1 Project Budget Forecast: means the Client's estimated total expenditure for the project. It includes the construction budget forecast and all other costs to the Client for the project such as, but not limited to, professional fees and acquisition costs.

1.2 Construction Budget Forecast: means the Client's estimated Construction Cost including contingencies for cost increases.

1.3 Construction Cost: means the contract price(s) of all elements of the project designed or specified by or on behalf of the Prime Consultant including, all applicable taxes. Where there is no contract price for all or part of the project, the Construction Cost shall be the elemental cost analysis using market rates at the estimated time of construction as determined by the Prime Consultant and agreed by the Client. The Construction Cost does not include professional fees, or land acquisition costs.

1.4 Contract: means an agreement between the Client and the Contractor for the provision of labour, materials and equipment for the construction of the project or part of the project by a Contractor.

1.5 Contractor: means a person, firm, or corporation contracting with the Client to provide labour, materials and equipment for the construction of the Project or part of the Project.

1.6 Project Management Design Administration Manual (PMDA Manual): a manual developed and maintained by the Department of Transportation and Works, Works Branch, for the purpose of presenting standards, guidelines and instructions for the delivery of building projects administered by the Works Branch. Unless otherwise agreed between the parties, the version published on the date of this Contract shall be the version applicable to this Contract.

1.7 Additional Services: means Consulting Services provided that are additional to the Basic Services.

1.8 Basic Services: means Consulting Services as outlined in the PMDA Manual.

1.9 Cost Control Services: means a service to monitor and advice on Project Budget and Construction Budget Forecasts.

1.10 Partial Services: means Reduced Basic Services as negotiated by the Client with the Prime Consultant.

1.11 Program Advisory Services: means Consulting Services provided by the Prime Consultant prior to start of Basic Services.

1.12 Authorities Having Jurisdiction (AHJ): means a person or persons representing these agencies that have authority to provide plan approvals and permits for the purpose of constructing the project.
PART 2 RESPONSIBILITIES

2.1 PRIME CONSULTANT

.1 The Prime Consultant’s services consist of Basic Services and Additional Services which may be required to perform the Work. The phases of the Prime Consultant’s Basic Services, and Additional Services are listed on Schedule II, and further elaborated in the Project Management and Design Administration (PMDA) Manual of the Department of Transportation and Works.

.2 The Prime Consultant’s services as provided for under and pursuant to this Agreement at and during all phases of the Work shall encompass coordination of all disciplines, quality assurance and documentation control to integrate all services and sub consultant’s work. The Prime Consultant shall prepare and submit contract documents in accordance with the Client’s requirements, as outlined in the PMDA Manual.

.3 During the tendering and contract award phase, the Prime Consultant may advise and assist the Client in obtaining bids and awarding construction contracts. The Client’s tendering and contract procedures and administrative practices will be followed in the performance of this phase, as outlined in the PMDA Manual.

.4 The Client may require the Prime Consultant to provide construction administration services. When required the Prime Consultant’s service shall be based upon either full responsibility or partial responsibility.

.1 Full Responsibility

.1 As outlined in the PMDA Manual, services provided under full responsibility include assessing construction work carried out on or in relation to the project and offering an opinion as to whether or not the construction of the project is in accordance with the contract documents prepared by the Prime Consultant.

.2 Partial Service

.1 The scope of this partial service is to be outlined in Schedule I of this agreement, as agreed between the Client and the Prime Consultant.

.5 The project completion phase represents the portion of the Basic Services to be provided at the commencement of substantial completion until expiry of the one year Project warranty period. This service includes the provision of record drawings as outlined in the PMDA Manual, and advice concerning issues arising during this period.

.6 Cost Control Services are included under the scope of Basic Services to be provided by the Prime Consultant, as outlined in the PMDA Manual.

.7 The following schedules apply:

Schedule I - Project Description
Schedule II - Basic and Other Additional Services Fees
Schedule III - Additional Reimbursable Allowances
Schedule IV - Other Conditions of Services
2.2 CLIENT’S RESPONSIBILITIES

.1 The Client shall give due consideration to documentation submitted by the Prime Consultant and, whenever action is necessary, the Client shall inform the Prime Consultant of the Client’s decisions, in a reasonable and timely manner.

.2 The Client shall authorize persons to act on behalf of the Client with respect to delivery and administration of the project.

.3 If the Client observes or otherwise becomes aware of any fault or defect in the project or any nonconformity with the requirements of the Contract, the Prime Consultant shall be so notified in writing.

.4 The Client may provide information regarding the project including: a program, which shall set forth the Client’s spatial and functional requirements and relationships. The Prime Consultant is responsible for requesting or providing information that is required to prepare the design and contract documents.

.5 The Client will provide the Prime Consultant with a Project Budget Forecast.

.6 The Client shall reimburse the Prime Consultant for procuring information which the Prime Consultant requires for the provision of services necessary to carry out the preparation of design and/or contract documentation when the information is not available upon request from the Client such as site surveys, hazardous material surveys.

.7 When the Client supplies the Prime Consultant with information contained within reports or equipment data sheets, the Prime Consultant will not be required to exhaustively check information supplied by the Client to verify the same unless it is requested to do so by the Client. However, if the Prime Consultant observes, or otherwise becomes aware, of any fault or defect in the information supplied to it by the Client, the Consultant shall cause the Client to be notified in writing of any such fault or defect forthwith.

.8 Where the Prime Consultant has been authorized by the Client to procure or obtain information, the Prime Consultant shall be responsible in seeing that the information provided meets the needs of the sub-consultant(s) performing the work under the direction of the Prime Consultant.

.9 The Client will reimburse the Prime Consultant for other specialist consultants that may be required to carry out quality control services during the project, subject to prior approval of scope of the work and an agreement on the fee or fees payable for the same by the Client.

PART 3 GENERAL REQUIREMENTS

3.1 STAFF

The Prime Consultant will provide the Client with a list of its employees and those of its sub-consultants who will be assigned to the project. The list will include the classification of each employee and the hourly rate to be charged for additional services rendered. The Prime Consultant will obtain written prior approval of
Client for any replacement of key employees, changes in the numbers of key employees or changes to rates of key employees assigned to the project.

3.2 SCHEDULE

.1 The Prime Consultant has developed and submitted a time schedule for the performance of consultant services on the project (which Schedule has been approved by the Client and is appended as Schedule "IV" hereto. The schedule shall incorporate all major design milestones as presented in the PMDA Manual.

.2 Unless otherwise agreed to between the parties, the failure by a party to comply with the approved schedule for those aspects of the Work that a party is responsible for may be sufficient cause for the other party to terminate this Agreement, if that failure is not rectified within seven (7) days after the defaulting party is given notice of its default.

.3 If either party believes that a change in the approved schedule is necessary, the party requesting that change shall promptly give notice of that fact to the other party in writing, provide the other party with a revised schedule and the reason(s) why the change is requested for its consideration and request its written approval of the same. Should that approval be forthcoming the revised schedule will become the approved schedule for the project.

3.3 COST CONTROL

.1 The Prime Consultant shall provide Cost Control Services in accordance with the PMDA Manual.

.2 If at any time the Prime Consultant considers its estimates indicate costs which exceed the Project or Construction Budget Forecast, the Prime Consultant will immediately advise the Client. If the excess is due to, discretionary design elements under the control of or reasonably foreseeable by the Prime Consultant, or the negligence or default of the Prime Consultant in the performance of this Agreement, the Client may require the Prime Consultant to redesign the project at the Prime Consultant’s expense to bring the cost estimate within the approved Project Budget Forecast.

.3 If the preferred bidder’s tender for the project for which the Prime Consultant has prepared and provided the design(s) and provided cost pricing and control services exceeds the Construction Budget Forecast as a result of the negligence or default of the Prime Consultant under this Agreement or is for reasons related to discretionary design elements which are under the Prime Consultant’s control or which the Prime Consultant should have reasonably foreseen and could have guarded against, then the Prime Consultant, at no additional cost to the Client, shall redesign to bring the cost within the Construction Budget Forecast and retender.

3.4 CHANGES AND ADJUSTMENT

.1 Changes and adjustment to the fees payable under this Agreement will be only considered if there is a material change in the level of services agreed to be provided or in the scope of the Project, or there is a material delay in the performance of the work required under the Contract.
The amounts due to the Prime Consultant arising from a material change to the Agreement will be determined by a negotiated fixed amount, or failing such negotiation, the actual cost as determined by level of effort incurred times the agreed hourly rate, plus receipted expenses.

Any increases in the fees payable caused by a material changes or other changes shall be communicated by the Prime Consultant in writing to the Client prior to incurring such costs to permit the Client to mitigate the amount of increased costs.

3.5 ERRORS AND OMISSIONS

Any costs resulting from design errors on the part of the Prime Consultant, sub-consultants chosen by the Prime Consultant, or agents, or employees of the Prime Consultant or of any sub-consultant chosen by the Prime Consultant will be the responsibility of the Prime Consultant to remedy. However, where the Client and not the Prime Consultant chooses a sub-consultant to do hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work, the Prime Consultant shall not be held responsible for design errors attributed to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, or construction testing services, done by sub-consultants chosen by the Client, unless those design errors are directly caused by the Prime Consultant. In the case of sub-consultants chosen by the Client, the Client and not the Prime Consultant shall be responsible to take such steps as the Client deems to be appropriate, to ensure that any sub-consultant chosen by the Client has appropriate and adequate policies of insurance that are acceptable to the Client in place to cover design errors attributable to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work done by any such sub-consultant.

Any costs resulting from errors in design or omissions may be paid by the Client providing the cost of such design omissions does not entail removing material or equipment that has already been constructed in accordance with the plans and specifications. The cost of the original material and equipment, as indicated on the plans and specifications, and the labour to remove such will be the responsibility of the Prime Consultant.

3.6 PRIME CONSULTANT ACTIONS AND DECISIONS

The Prime Consultant acknowledges that adequate discussion has taken place regarding the Work with the Client and that the Prime Consultant has access to sufficient information to undertake the services contracted for within the Project Budget.

The Prime Consultant and the Client agrees to act promptly and diligently on all matters within their respective direction and control requiring an action or decision affecting the design, construction or administration of the project.

Only express approval by the Client shall be deemed to relieve the Prime Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant. No acceptance or approval by the Client, that is implied shall be deemed to relieve the Prime
Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant.

3.7 INSURANCE COVERAGE

.1 The Prime Consultant shall supply written proof of:

.1 Professional liability insurance coverage equal or greater than $250,000 per claim, $500,000 in aggregate for projects under $2 million construction value or $500,000 per claim, $1,000,000 aggregate for projects over $2 million. The Prime Consultant shall be fully responsible for all amounts deducted from this value by the Prime Consultant's Insurer. This insurance shall remain in effect until the expiry of the general contractor's one year warranty on the project.

.2 Commercial liability insurance acceptable to the Client with a minimum limit of $1,000,000.

.2 The Insurer shall be an insurance company licensed to do business in the Province of Newfoundland & Labrador.

PART 4 BASIS OF PAYMENT SCHEDULE

4.1 The Client will pay for Program Advisory Services on the basis of an agreed fixed fee or on the basis of approved level of effort at agreed per diem rates.

4.2 The Client will pay for Basic Services on the basis of the agreed fixed fee. The Client's Project Budget Forecast will be made available to the Prime Consultant to assist in the evaluation of the level of effort required.

4.3 The fee for Basic Services will be apportioned to the phases of service as outlined in Schedule II - "Basic Services and Other Additional Services’ Fees”.

4.4 The fee for Basic Services will also include the management and co-ordination by the Prime Consultant and specialist consulting services as may be requested by the Client. Compensation for specialist or other consulting services will be on the basis of an agreed fixed fee for the level of effort required.

4.5 The Client will pay for resident services during construction, when requested based on an agreed fixed fee amount. The fee amount is to include all payroll costs, site-related expenses and allowances as agreed.

4.6 The Client will pay for construction management services when requested on the basis of the level of effort required during project implementation based on an agreed fixed fee.

4.7 The Client will pay for commissioning services on the basis of an agreed fixed fee. The fee amount shall include level of effort; associated with the preparation
of documents and site visits to carry out commissioning activities, as outlined in the PMDA Manual.

4.8 The Client will pay for day-to-day routine expenses such as; long distance charges, reproduction costs, client presentations and submissions, original contract documents (hardcopy), courier services, travel over 50 km from office on an agreed fixed amount. All routine expenses to be charged at cost. Meals, Private Vehicle usage, and incidental expense are to be paid on the basis of Government Rates at time of this Agreement.

4.9 The Client will pay for Additional Reimbursable Allowances as provided for in Schedule III - "Additional Reimbursable Allowances". These allowances require supporting documents to be provided for payment.
SCHEDULE I
PROJECT DESCRIPTION

Complete a structural assessment of the floor and pier condition under the gymnasium floor for Holy Cross All Grade School in Daniel's Harbour.
SCHEDULE IV
SCHEDULE OF THE PERFORMANCE OF CONSULTANT SERVICES

15 August, 2016 – Initial site visit

22 August, 2016 – Review of findings with Client
SCHEDULE V
OTHER CONDITIONS OF SERVICES

(Not applicable unless text is added to this schedule)
SCHEDULE “B”
SPECIAL TERMS AND CONDITIONS (as necessary)

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

______________________________  ______________________________
Margaret Gillies, Q.C., General Counsel       Janet Vivian-Walsh, Deputy Minister

The Special Terms and Conditions of this Agreement are follows:
As per the Contract terms contained herein
OR

1. No Special Terms and Conditions

______________________________
Department of Justice

______________________________
Deputy Minister
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SCHEDULE “C”

GENERAL TERMS AND CONDITIONS

Article - 1. PAYMENT

1.1 Consideration

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

Payment Option #1

Subject to Article 1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, for the satisfactory performance of the Work, one thousand seven hundred and eighty dollars and forty four cents ($1780.44) (plus HST) in accordance with the following payment schedule:

(i) Periodic payments – payments paid monthly proportional with the amount of work completed to date.

Payment Option #2 Not Applicable

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

(i) Person / Professional Designation – Hourly Rate

Payment Option #3 Not Applicable

Subject to Article 1.3, upon the satisfactory completion of the Work and the presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, $Insert Absolute Limit on Cost of Services (plus HST).

1.2 Reimbursement of Expenses

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

Reimbursement Option A
(a) The Client shall only be responsible for the following reimbursable expenses, payable at cost, provided the Prime Consultant can demonstrate to the Client that such expenses were incurred in relation to the Work, and that documentation, satisfactory to the Client, is provided in support of the reimbursable expense claimed and is attached to the applicable invoice, including for example, originals of supporting receipts, invoices or statements issued by non-parties to this Agreement:

(i) Insert Specific Reimbursable Items

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

Reimbursement Option B Not Applicable

The Client shall not be responsible for any expenses incurred by the Prime 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) The Prime Consultant shall remain obligated to complete the Work notwithstanding that the actual costs of the Prime Consultant, whether in respect of professional services or in respect of costs or expenses incurred, may exceed the total aggregate sum set out in this Agreement.

(b) The Parties agree and confirm that as set out in section 25(6) of the Financial Administration Act, RSNL 1990 c. F-8, as amended, all fees payable in accordance with this Agreement are subject to there being an appropriation for the work for the fiscal year in which payment under this Agreement is due.

(c) Payment will be made within 60 calendar days of receipt of a properly documented invoice. The Client shall within thirty (30) days of the execution of this Agreement should the Prime Consultant request the same provide direction to the Prime Consultant as to what constitutes a properly documented invoice.

(d) All invoices shall clearly show the amount of HST billed by the Prime Consultant as a separate item.

(e) The Prime Consultant shall conform to any request that may be made by the Client to alter the form of invoice customarily used by the Prime Consultant as may be reasonably required for the purposes of the Client’s internal accounting systems. The Prime 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 Prime Consultant which may arise from work, services or expenses incurred to remedy errors or omissions in the Work for which the Prime Consultant is responsible.

(g) The Prime Consultant shall submit invoices to:
Department of Education and Early Childhood Development
Design and Construction Division
3rd Floor, West Block, Confed. Building
St. John's, NL A1B 4J6

Article - 2. INFORMATION SUPPLIED BY THE CLIENT

2.1 The Client will furnish to the Prime Consultant all available information necessary for the performance of the Work.

2.2 Where discrepancies, omissions or obscurities in the information are evident, the Prime Consultant shall bring them to the attention of the Client and secure written instructions from the Client before proceeding with any work.

Article - 3. CONFIDENTIALITY, MATERIALS AND COPYRIGHT

3.1 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 Prime Consultant, the Prime Consultant's 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;

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 Prime Consultant, the Prime Consultant's employees, servants and/or agents during the performance of the services or in any way related thereto;

(c) all personal information, as defined from time to time under the Access to Information and Protection of Privacy Act, SNL 2002 c. A-1.1, to mean recorded information about an identifiable individual, including,

(i) the individual's name, address or telephone number,
(ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,

(iii) the individual's age, sex, sexual orientation, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual's fingerprints, blood type or inheritable characteristics,

(vi) information about the individual's health care status or history, including a physical or mental disability,

(vii) information about the individual's educational, financial, criminal or employment status or history,

(viii) the opinions of a person about the individual, and

(ix) the individual's personal views or opinions

for any individual, which is, directly or indirectly, disclosed to or collected by the Prime Consultant, the Prime Consultant's 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 Prime Consultant, the Prime Consultant's 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 Prime Consultant was or thereafter became part of the public domain through no act or omission of the Prime Consultant or the Prime Consultant's Representatives; or

(ii) is information which the Prime Consultant can show possession of prior to the date of this Agreement and which was received or developed by the Prime Consultant free of obligations of confidentiality to the Client.

3.2 The Prime Consultant shall treat all Confidential Information acquired by the Prime Consultant in the performance of the Services as privileged and confidential and shall not divulge the same to any person or persons at any time without the express written approval of the Client, unless required to do so by law, which may include any subpoena or other similar process or in connection with litigation, arbitration or other proceeding or by virtue of an act or regulations. In the event that such disclosure is required, the Prime Consultant shall give the Client prompt notice of the requirement upon becoming aware that such disclosure is required. Where circumstances do not permit the Prime Consultant to provide such notice prior to disclosure, the Prime Consultant shall provide such notice to the Client immediately after the required disclosure.
3.3 The Prime 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.

3.4 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 Prime 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 Prime 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 Prime Consultant pursuant to the terms of this Agreement. The Prime Consultant acknowledges that the Client's right to this information shall at all times be paramount to any rights of the Prime Consultant, at law or in equity, and that the Prime 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 Prime Consultant's possession.

3.5 The Prime 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 Prime Consultant, the Prime Consultant's employees, servants and/or agents, and shall certify the destruction of same to the Client. However, nothing in this Agreement shall preclude the Prime Consultant's privilege to retain copies of documents provided to it or prepared by it in connection with the Work, provided such documents are kept in a secure manner, are used by the Prime Consultant solely for the purposes of defending itself against claims arising from the Work of the Contract, and that the aforesaid documentation is destroyed or returned to the Client at the end of all limitation periods for commencing any action in connection with the Work or upon the conclusion or settlement with finality of any claim or action with respect to the Work.

3.6 The Prime Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Prime Consultant, the Prime Consultant's employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the Access to Information and Protection of Privacy Act, the Management of Information Act, SNL 2005, c. M-1.01, and the Privacy Act, RSNL1990 c. P-22, as well as other legislation which may apply in the jurisdiction of the Prime Consultant's operation. The Prime 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 Prime Consultant, and the Prime Consultant's employees, servants and/or agents.

3.7 The Prime Consultant shall ensure that it, and the Prime Consultant's 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 Prime Consultant employs to avoid disclosure or dissemination of the Prime Consultant's own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of the Prime Consultant's employees, servants or agents other than those who are required to have access to the same 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 Prime Consultant comply with all policies, standards and safeguards established under this Article;

(d) advise the Client of any changes in the Prime Consultant's 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 Prime 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.

3.8 The Prime Consultant shall only disclose Confidential Information to persons other than the Prime Consultant's 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”.

3.9 The Prime 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 Prime 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 Prime Consultant;

(b) promptly furnish to the Client full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the Client in
investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information;

(c) use reasonable efforts to cooperate with the Client in any litigation and investigation against third parties deemed necessary by the Client to protect its proprietary rights;

(d) promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information; and

(e) refer to and follow the privacy breach protocol of the Government of Newfoundland and Labrador as it exists at the time of the breach and located on the Department of Justice website at: http://www.justice.gov.nl.ca/just/info/privacybreach.html

Article - 4. EMPLOYEES OF THE PRIME CONSULTANT

4.1 The Prime Consultant shall provide employees who are competent in their field of specialization. The Client will have the right to have the Prime 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 Prime 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 concerned was involved and may refuse to approve payment for such Work.

4.2 The Prime 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 - 5. ACCESS TO FACILITIES

5.1 The Client agrees to provide, access to the project site for the Prime Consultant to perform the Work during Client office hours.

5.2 When using or accessing the premises of the Client, the Prime Consultant and all officers, employees and agents of the Prime Consultant shall comply with all security regulations and workplace policies and procedures in effect from time to time at the Client’s facilities.

Article - 6. RECORDS AND AUDIT

6.1 The Prime 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.
6.2 The Prime Consultant shall furnish reports as required by the Client for the purpose of monitoring the progress of the Work.

**Article - 7. TERMINATION**

7.1 This Agreement is deemed to be concluded once the Work has been completed to the satisfaction of the Client and the payment(s), as stipulated in the Agreement, has been issued to the Prime Consultant.

7.2 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.

7.3 Where this Agreement is terminated prior to the mutually agreed upon completion date, the Prime Consultant shall thereupon be entitled to payment in accordance with this Agreement in respect of that part of the Work completed up to the date of termination, provided however, that the Prime 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 - 8. NOTICES**

8.1 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:**

Education and Early Childhood Development  
Design and Construction Division  
3rd Floor, West Block, Confederation Building  
St. John’s, NL A1B 4J6  
Phone: (709) ####-####  
Fax: (709) ####-####  
Email: Insert Email for contact

**For the Prime Consultant:**

Consultant Representative  
Consultant Address  
Consultant Mailing Address  
Phone: (709) ####-####  
Fax: (709) ####-####  
Email: Insert Email for contact

8.2 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 telex or other means of electronic communication; and
(c) Six (6) days after delivery to Canada Post Corporation where the postal service is used.

Article - 9. LIABILITY

9.1 The Prime Consultant agrees that in performance of the Work neither the Prime Consultant nor any Prime Consultant’s Representative shall be or be deemed to be an officer, servant, agent or partner of the Client.

9.2 The Client shall not be liable for, and the Prime 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 negligence or default of the Prime Consultant under this Agreement, including the negligence or default of any sub-consultant chosen by the Prime Consultant. Except to the extent that such losses, costs, charges or expenses as are referenced in this clause are caused by the negligence or default of the Client under this Agreement, the Prime Consultant shall defend any and all such actions and pay all legal charges, costs and other expenses arising therefrom. Where the Prime Consultant fails to defend such an action, 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 Prime Consultant.

Article - 10. COMPLIANCE WITH LAW

10.1 In respect of any work within the Province of Newfoundland and Labrador connected with or arising from this Agreement, the Prime 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.

10.2 The Prime Consultant shall ensure that the Prime Consultant and its Representatives comply with all requirements of any governing federal, provincial or municipal legislation, by-laws or regulations applicable to the Prime Consultant or the Prime Consultant’s Representatives in the performance of the Work.

Article - 11. ARBITRATION

11.1 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, the parties shall first attempt to resolve all matters through friendly negotiation by a meeting
between their representatives upon notice per Article 8. A resolution reached in this way must be reached within 10 days of both parties having knowledge and notice of the dispute and be reduced to writing.

11.2 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Article 11.1), either party may give the other notice of such dispute and request third party mediation thereof.

11.3 Should the parties not agree to third party mediation or the matter in dispute between the parties not be resolved by mediation, then in the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Articles 11.1 and 11.2), either party may give the other notice of such dispute and 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 c. A-14, including such provisions for the appointment of arbitrators.

Article - 12. LAWS GOVERNING

12.1 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 - 13. USE OF WORK

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

13.2 With respect to 13.1 the Prime Consultant’s liability to the Client for and in respect of the Work is solely limited to the project described in this Agreement.

Article - 14. CONFLICT OF INTEREST

14.1 No member of the House of Assembly of the Province of Newfoundland and Labrador shall be admitted to any part or share of the payments made pursuant to this Agreement or to any benefits arising therefrom.

14.2 The Prime Consultant and the Prime 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 - 15. SUBCONTRACTORS

15.1 The Prime Consultant shall not sub-contract all or a portion of the Work without the prior written approval of the Client, which consent will not be unreasonably withheld.

15.2 The entry into any subcontract shall not relieve the Prime Consultant of any of its obligations under the terms of this Agreement.

Article - 16. GENERAL

16.1 Articles 3 and 9 of this Agreement shall survive the termination or expiration of this Agreement.

16.2 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.

16.3 Time shall be of the essence of this Agreement.

16.4 The failure of the Client to insist upon or enforce in any instance strict performance by the Prime 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.

16.5 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.

16.6 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.

16.7 This Agreement shall endure to the benefit of and be binding upon the Parties hereto, their respective heirs, legal representatives, successors and assigns.

16.8 The Prime Consultant shall not assign this Agreement in whole or in part to any third party without the prior written approval of the Client.
SCHEDULE “D”
Protocols for Security of Government Information on Information Technology assets of Contractors

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

- All portable storage devices or media (e.g., flash drives, memory sticks, portable hard drives, writable compact discs or digital video discs, etc.) may only be used to transport and/or store Confidential Information where either the Confidential Information or the device or media is encrypted.

- Unless specifically authorized by the Prime Consultant’s Contract or otherwise, the Prime Consultant is not permitted to attach non-government computers or other information technology systems to any Government network.

- The Prime Consultant is expected to implement and maintain up to date versions of all ordinary business software for the reasonable protection of information on computers attached to the Internet which will have access to or store Confidential Information, including security firewall and anti-viral software.

- The Prime Consultant is not permitted to use any Peer to Peer file sharing program (e.g., Limewire, etc) or chat program (e.g., MSN, Skype) on any information technology asset which will contain Confidential Information, or which will be connected via a network to any computer which will contain Confidential Information.

- Email should not be used as a method to transmit Confidential Information across public networks such as the Internet unless the e-mail and/or its attachments are encrypted or zipped in a secure manner.

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

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

- For the purposes of Schedule D, routine exchanges of design and construction information between the Client, the Prime Consultant and the Prime Consultant’s sub-consultants that is of a non-confidential nature need not be encrypted.
Mr. Donald DiCesare, P. Eng.
Atlantic Engineering Consultants Ltd.
34 Main Street
Corner Brook NL A2H 1C3

Dear Mr. DiCesare:

Consultant Appointment

Further to your discussion with John Trahey, this is confirmation your firm has been selected to provide professional services for the following in accordance with the attached conditions outlined below.

CSFP15002 – Water Treatment System, Industrial Sink, & Server Room Controls
École Notre-Dame-du-Cap & École Ste-Anne, Various Locations, NL

1. The scope of services will entail an assessment and site visit with Department staff and a representative of the School District, or others as designated by the Department. Once this assessment is complete, a minuted scope review meeting with the Department of Education and Early Childhood Development and school district officials will take place to discuss findings and prepare recommendations for the scope of the work.

2. Fees for this portion of your commission will be per diem rates, plus expenses at government rates and policies. A maximum upset limit will have to be agreed upon prior to performing the assessment and a Prime Consultant Agreement signed.

3. By accepting this commission, your firm acknowledges that it is willing to enter into a contract containing the terms as outlined in the Government of Newfoundland and Labrador’s Standard Form of Agreement and a negotiated fee and schedule as outlined by our Project Manager. An electronic copy of our standard Agreement is attached for your perusal.

4. The assessment, detailed design and contract documents must be completed within 12 weeks of the date of this letter.
If you are interested in carrying out this work, upon receipt of this letter, please contact Mr. John Trahey, Design and Construction Division, at (709) 729-1067, to arrange the assessments. Also, please forward an updated copy of your proof of insurance as well as a letter of good standing with the Workplace Health, Safety and Compensation Commission for our records.

If you are unable to undertake this work, please advise within one week of receipt of this letter so that we can arrange to appoint another consultant.

Sincerely,

INGRID E. CLARKE, P.Eng., FEC
Assistant Deputy Minister
(Infrastructure)

cc: Ms. Janet Vivian-Walsh
Ms. Natalie Hallett
Ms. Nancy Dawe
Mr. Paul Lahey
Mr. Mark Stacey
Mr. Peter Smith
STANDARD FORM OF AGREEMENT
BETWEEN CLIENT AND PRIME CONSULTANT

WATER TREATMENT SYSTEM,
INDUSTRIAL SINK & SERVER ROOM
TEMPERATURE CONTROLS
ECOLE NOTRE DAME DU CAP & ECOLE STE- ANNE
VARIOUS LOCATIONS, NL

Project # - CSFP15002
AGREEMENT

THIS AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador, on this Tenth day of May, 2016.

BETWEEN: HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR as represented by the Minister of Education & Early Childhood Development. ("the Client")

AND: ATLANTIC ENGINEERING CONSULTANTS LIMITED ("the Prime Consultant")

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

I. Definitions

In addition to the terms defined in the Special Terms and Conditions attached as Schedule "B", (if any), and the General Terms and Conditions attached as Schedule "C", the following words and phrases shall have the following meanings:

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

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

II. The Prime Consultant's Work

The Prime Consultant shall do all things necessary to fulfill and carry out all of the obligations of the Prime Consultant as set out in the Contract Documents (the "Work").

III. Entire Agreement

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

IV. **Representations and Warranties**

The Prime Consultant hereby represents and warrants that every fact stated or represented by the Prime Consultant or its Representatives to the Client in connection with any proposal made by the Prime 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.

V. **Conflict Between Provisions**

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

VI. **Start and Completion Date**

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

- **Start Date:** May 10, 2016
- **Completion Date:** September 1, 2016

VII. **Effective Date**

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

VIII. **Paragraph Numbering**

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

IX. **Counterparts**

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

Minister of Education & Early Childhood Development,
or his/her authorized designate

ATLANTIC ENGINEERING CONSULTANTS LTD.

Name: Donald J. DiCesare, P. Eng.
Date: May 10, 2016

Recommended By (Name/Date): 2016/05/25
PM: [Signature] May 29/16
Manager: [Signature]
Director: Natalie [Signature] June 3/16
SCHEDULE "A"
SCOPE OF WORK
BETWEEN PRIME CONSULTANT AND CLIENT

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PART 1  DEFINITIONS

1.1  Project Budget Forecast: means the Client’s estimated total expenditure for the project. It includes the construction budget forecast and all other costs to the Client for the project such as, but not limited to, professional fees and acquisition costs.

1.2  Construction Budget Forecast: means the Client’s estimated Construction Cost including contingencies for cost increases.

1.3  Construction Cost: means the contract price(s) of all elements of the project designed or specified by or on behalf of the Prime Consultant including, all applicable taxes. Where there is no contract price for all or part of the project, the Construction Cost shall be the elemental cost analysis using market rates at the estimated time of construction as determined by the Prime Consultant and agreed by the Client. The Construction Cost does not include professional fees, or land acquisition costs.

1.4  Contract: means an agreement between the Client and the Contractor for the provision of labour, materials and equipment for the construction of the project or part of the project by a Contractor.

1.5  Contractor: means a person, firm, or corporation contracting with the Client to provide labour, materials and equipment for the construction of the Project or part of the Project.

1.6  Project Management Design Administration Manual (PMDA Manual): a manual developed and maintained by the Department of Transportation and Works, Works Branch, for the purpose of presenting standards, guidelines and instructions for the delivery of building projects administered by the Works Branch. Unless otherwise agreed between the parties, the version published on the date of this Contract shall be the version applicable to this Contract.

1.7  Additional Services: means Consulting Services provided that are additional to the Basic Services.

1.8  Basic Services: means Consulting Services as outlined in the PMDA Manual.

1.9  Cost Control Services: means a service to monitor and advice on Project Budget and Construction Budget Forecasts.

1.10  Partial Services: means Reduced Basic Services as negotiated by the Client with the Prime Consultant.

1.11  Program Advisory Services: means Consulting Services provided by the Prime Consultant prior to start of Basic Services.

1.12  Authorities Having Jurisdiction (AHJ): means a person or persons representing these agencies that have authority to provide plan approvals and permits for the purpose of constructing the project.
PART 2 RESPONSIBILITIES

2.1 PRIME CONSULTANT

.1 The Prime Consultant’s services consist of Basic Services and Additional Services which may be required to perform the Work. The phases of the Prime Consultant’s Basic Services, and Additional Services are listed on Schedule II, and further elaborated in the Project Management and Design Administration (PMDA) Manual of the Department of Transportation and Works.

.2 The Prime Consultant’s services as provided for under and pursuant to this Agreement at and during all phases of the Work shall encompass coordination of all disciplines, quality assurance and documentation control to integrate all services and sub consultant’s work. The Prime Consultant shall prepare and submit contract documents in accordance with the Client’s requirements, as outlined in the PMDA Manual.

.3 During the tendering and contract award phase, the Prime Consultant may advise and assist the Client in obtaining bids and awarding construction contracts. The Client’s tendering and contract procedures and administrative practices will be followed in the performance of this phase, as outlined in the PMDA Manual.

.4 The Client may require the Prime Consultant to provide construction administration services. When required the Prime Consultant’s service shall be based upon either full responsibility or partial responsibility.

.1 Full Responsibility

.1 As outlined in the PMDA Manual, services provided under full responsibility include assessing construction work carried out on or in relation to the project and offering an opinion as to whether or not the construction of the project is in accordance with the contract documents prepared by the Prime Consultant.

.2 Partial Service

.1 The scope of this partial service is to be outlined in Schedule I of this agreement, as agreed between the Client and the Prime Consultant.

.5 The project completion phase represents the portion of the Basic Services to be provided at the commencement of substantial completion until expiry of the one year Project warranty period. This service includes the provision of record drawings as outlined in the PMDA Manual, and advice concerning issues arising during this period.

.6 Cost Control Services are included under the scope of Basic Services to be provided by the Prime Consultant, as outlined in the PMDA Manual.

.7 The following schedules apply:

Schedule I - Project Description
Schedule II - Basic and Other Additional Services Fees
Schedule III - Additional Reimbursable Allowances
Schedule IV - Other Conditions of Services
2.2 CLIENT'S RESPONSIBILITIES

.1 The Client shall give due consideration to documentation submitted by the Prime Consultant and, whenever action is necessary, the Client shall inform the Prime Consultant of the Client's decisions, in a reasonable and timely manner.

.2 The Client shall authorize persons to act on behalf of the Client with respect to delivery and administration of the project.

.3 If the Client observes or otherwise becomes aware of any fault or defect in the project or any nonconformity with the requirements of the Contract, the Prime Consultant shall be so notified in writing.

.4 The Client may provide information regarding the project including: a program, which shall set forth the Client's spatial and functional requirements and relationships. The Prime Consultant is responsible for requesting or providing information that is required to prepare the design and contract documents.

.5 The Client will provide the Prime Consultant with a Project Budget Forecast.

.6 The Client shall reimburse the Prime Consultant for procuring information which the Prime Consultant requires for the provision of services necessary to carry out the preparation of design and/or contract documentation when the information is not available upon request from the Client such as site surveys, hazardous material surveys.

.7 When the Client supplies the Prime Consultant with information contained within reports or equipment data sheets, the Prime Consultant will not be required to exhaustively check information supplied by the Client to verify the same unless it is requested to do so by the Client. However, if the Prime Consultant observes, or otherwise becomes aware, of any fault or defect in the information supplied to it by the Client, the Consultant shall cause the Client to be notified in writing of any such fault or defect forthwith.

.8 Where the Prime Consultant has been authorized by the Client to procure or obtain information, the Prime Consultant shall be responsible in seeing that the information provided meets the needs of the sub-consultant(s) performing the work under the direction of the Prime Consultant.

.9 The Client will reimburse the Prime Consultant for other specialist consultants that may be required to carry out quality control services during the project, subject to prior approval of scope of the work and an agreement on the fee or fees payable for the same by the Client.

PART 3 GENERAL REQUIREMENTS

3.1 STAFF

The Prime Consultant will provide the Client with a list of its employees and those of its sub-consultants who will be assigned to the project. The list will include the classification of each employee and the hourly rate to be charged for additional services rendered. The Prime Consultant will obtain written prior approval of
Client for any replacement of key employees, changes in the numbers of key employees or changes to rates of key employees assigned to the project.

3.2  SCHEDULE

.1 The Prime Consultant has developed and submitted a time schedule for the performance of consultant services on the project (which Schedule has been approved by the Client and is appended as Schedule “IV” hereto. The schedule shall incorporate all major design milestones as presented in the PMDA Manual.

.2 Unless otherwise agreed to between the parties, the failure by a party to comply with the approved schedule for those aspects of the Work that a party is responsible for may be sufficient cause for the other party to terminate this Agreement, if that failure is not rectified within seven (7) days after the defaulting party is given notice of its default.

.3 If either party believes that a change in the approved schedule is necessary the party requesting that change shall promptly give notice of that fact to the other party in writing, provide the other party with a revised schedule and the reason(s) why the change is requested for its consideration and request its written approval of the same. Should that approval be forthcoming the revised schedule will become the approved schedule for the project.

3.3  COST CONTROL

.1 The Prime Consultant shall provide Cost Control Services in accordance with PMDA Manual.

.2 If at any time the Prime Consultant considers its estimates indicate costs which exceed the Project or Construction Budget Forecast, the Prime Consultant will immediately advise the Client. If the excess is due to, discretionary design elements under the control of or reasonably foreseeable by the Prime Consultant, or the negligence or default of the Prime Consultant in the performance of this Agreement, the Client may require the Prime Consultant to redesign the project at the Prime Consultant’s expense to bring the cost estimate within the approved Project Budget Forecast.

.3 If the preferred bidder’s tender for the project for which the Prime Consultant has prepared and provided the design(s) and provided cost pricing and control services exceeds the Construction Budget Forecast as a result of the negligence or default of the Prime Consultant under this Agreement or is for reasons related to discretionary design elements which are under the Prime Consultant’s control or which the Prime Consultant should have reasonably foreseen and could have guarded against, then the Prime Consultant, at no additional cost to the Client, shall redesign to bring the cost within the Construction Budget Forecast and retender.

3.4  CHANGES AND ADJUSTMENT

.1 Changes and adjustment to the fees payable under this Agreement will be only considered if there is a material change in the level of services agreed to be provided or in the scope of the Project, or there is a material delay in the performance of the work required under the Contract.
The amounts due to the Prime Consultant arising from a material change to the Agreement will be determined by a negotiated fixed amount, or failing such negotiation, the actual cost as determined by level of effort incurred times the agreed hourly rate, plus receipted expenses.

Any increases in the fees payable caused by a material changes or other changes shall be communicated by the Prime Consultant in writing to the Client prior to incurring such costs to permit the Client to mitigate the amount of increased costs.

3.5 ERRORS AND OMISSIONS

Any costs resulting from design errors on the part of the Prime Consultant, sub-consultants chosen by the Prime Consultant, or agents, or employees of the Prime Consultant or of any sub-consultant chosen by the Prime Consultant will be the responsibility of the Prime Consultant to remedy. However, where the Client and not the Prime Consultant chooses a sub-consultant to do hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work, the Prime Consultant shall not be held responsible for design errors attributed to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, or construction testing services, done by sub-consultants chosen by the Client, unless those design errors are directly caused by the Prime Consultant. In the case of sub-consultants chosen by the Client, the Client and not the Prime Consultant shall be responsible to takes such steps as the Client deems to be appropriate, to ensure that any sub-consultant chosen by the Client has appropriate and adequate policies of insurance that are acceptable to the Client in place to cover design errors attributable to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work done by any such sub-consultant.

Any costs resulting from errors in design or omissions may be paid by the Client providing the cost of such design omissions does not entail removing material or equipment that has already been constructed in accordance with the plans and specifications. The cost of the original material and equipment, as indicated on the plans and specifications, and the labour to remove such will be the responsibility of the Prime Consultant.

3.6 PRIME CONSULTANT ACTIONS AND DECISIONS

The Prime Consultant acknowledges that adequate discussion has taken place regarding the Work with the Client and that the Prime Consultant has access to sufficient information to undertake the services contracted for within the Project Budget.

The Prime Consultant and the Client agrees to act promptly and diligently on all matters within their respective direction and control requiring an action or decision affecting the design, construction or administration of the project.

Only express approval by the Client shall be deemed to relieve the Prime Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant. No acceptance or approval by the Client, that is implied shall be deemed to relieve the Prime Consultant.
Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant.

.4 If the Prime Consultant does not promptly and diligently comply with or fails to meet the requirements of the Client, the Client may without prejudice to any other right or remedy the Client may have by giving the Prime Consultant written notice, and without prejudice to the Client’s rights at law or elsewhere in this Agreement, take all such action deemed necessary for the prompt and economical completion of the project, and/or terminate the contract.

3.7 INSURANCE COVERAGE

.1 The Prime Consultant shall supply written proof of:

.1 Professional liability insurance coverage equal or greater than $250,000 per claim, $500,000 in aggregate for projects under $2 million construction value or $500,000 per claim, $1,000,000 aggregate for projects over $2 million. The Prime Consultant shall be fully responsible for all amounts deducted from this value by the Prime Consultant’s Insurer. This Insurance shall remain in effect until the expiry of the general contractor’s one year warranty on the project.

.2 Commercial liability insurance acceptable to the Client with a minimum limit of $1,000,000.

.2 The Insurer shall be an insurance company licensed to do business in the Province of Newfoundland & Labrador.

PART 4 BASIS OF PAYMENT SCHEDULE

4.1 The Client will pay for Program Advisory Services on the basis of an agreed fixed fee or on the basis of approved level of effort at agreed per diem rates.

4.2 The Client will pay for Basic Services on the basis of the agreed fixed fee. The Client’s Project Budget Forecast will be made available to the Prime Consultant to assist in the evaluation of the level of effort required.

4.3 The fee for Basic Services will be apportioned to the phases of service as outlined in Schedule II - “Basic Services and Other Additional Services’ Fees”.

4.4 The fee for Basic Services will also include the management and co-ordination by the Prime Consultant and specialist consulting services as may be requested by the Client. Compensation for specialist or other consulting services will be on the basis of an agreed fixed fee for the level of effort required.

4.5 The Client will pay for resident services during construction, when requested based on an agreed fixed fee amount. The fee amount is to include all payroll costs, site-related expenses and allowances as agreed.

4.6 The Client will pay for construction management services when requested on the basis of the level of effort required during project implementation based on an agreed fixed fee.

4.7 The Client will pay for commissioning services on the basis of an agreed fixed fee. The fee amount shall include level of effort; associated with the preparation
of documents and site visits to carry out commissioning activities, as outlined in the PMDA Manual.

4.8 The Client will pay for day-to-day routine expenses such as; long distance charges, reproduction costs, client presentations and submissions, original contract documents (hardcopy), courier services, travel over 50 km from office on an agreed fixed amount, All routine expenses to be charged at cost. Meals, Private Vehicle usage, and incidental expense are to be paid on the basis of Government Rates at time of this Agreement.

4.9 The Client will pay for Additional Reimbursable Allowances as provided for in Schedule III - “Additional Reimbursable Allowances”. These allowances require supporting documents to be provided for payment.
SCHEDULE I
PROJECT DESCRIPTION

The provision of design services for the Ecole Notre Dame du Cap/Ecole Ste. Anne
Miscellaneous Mechanical Upgrades: Water Treatment, Janitors Sink and Server Rooms
Temperature Control Including: Contract document production, tendering and contract award
services, and associated project expenses.
SCHEDULE IV
SCHEDULE OF THE PERFORMANCE OF CONSULTANT SERVICES

Submission of IFR: May 31, 2016
SCHEDULE V
OTHER CONDITIONS OF SERVICES

(Not applicable unless text is added to this schedule)
SCHEDULE “B”
SPECIAL TERMS AND CONDITIONS (as necessary)

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

Margaret Gillies, Q.C., General Counsel                Janet Vivian-Walsh, Deputy Minister

The Special Terms and Conditions of this Agreement are follows:

As per the Contract terms contained herein

OR

1. No Special Terms and Conditions

Department of Justice

Deputy Minister
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SCHEDULE "C"

GENERAL TERMS AND CONDITIONS

Article - 1. PAYMENT

1.1 Consideration

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

Payment Option #1

Subject to Article 1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, for the satisfactory performance of the Work, Twenty One Thousand and Fourteen Dollars ($21,014.00) (plus HST) in accordance with the following payment schedule:

(i) Periodic payments – payments paid monthly proportional with the amount of work completed to date.

Payment Option #2 Not Applicable

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

(i) Person / Professional Designation – Hourly Rate

Payment Option #3 Not Applicable

Subject to Article 1.3, upon the satisfactory completion of the Work and the presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, $Insert Absolute Limit on Cost of Services (plus HST).

1.2 Reimbursement of Expenses

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

Reimbursement Option A
(a) The Client shall only be responsible for the following reimbursable expenses, payable at cost, provided the Prime Consultant can demonstrate to the Client that such expenses were incurred in relation to the Work, and that documentation, satisfactory to the Client, is provided in support of the reimbursable expense claimed and is attached to the applicable invoice, including for example, originals of supporting receipts, invoices or statements issued by non-parties to this Agreement:

(i) Insert Specific Reimbursable Items

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

Reimbursement Option B Not Applicable

The Client shall not be responsible for any expenses incurred by the Prime 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) The Prime Consultant shall remain obligated to complete the Work notwithstanding that the actual costs of the Prime Consultant, whether in respect of professional services or in respect of costs or expenses incurred, may exceed the total aggregate sum set out in this Agreement.

(b) The Parties agree and confirm that as set out in section 25(6) of the Financial Administration Act, RSNL 1990 c. F-8, as amended, all fees payable in accordance with this Agreement are subject to there being an appropriation for the work for the fiscal year in which payment under this Agreement is due.

(c) Payment will be made within 60 calendar days of receipt of a properly documented invoice. The Client shall within thirty (30) days of the execution of this Agreement should the Prime Consultant request the same provide direction to the Prime Consultant as to what constitutes a properly documented invoice.

(d) All invoices shall clearly show the amount of HST billed by the Prime Consultant as a separate item.

(e) The Prime Consultant shall conform to any request that may be made by the Client to alter the form of invoice customarily used by the Prime Consultant as may be reasonably required for the purposes of the Client’s internal accounting systems. The Prime 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 Prime Consultant which may arise from work, services or expenses incurred to remedy errors or omissions in the Work for which the Prime Consultant is responsible.

(g) The Prime Consultant shall submit invoices to:
Department of Education & Early Childhood Developments
Design and Construction Division (Works)
3rd Floor, West Block, Confed. Building
St. John's, NL A1B 4J6

Article - 2. INFORMATION SUPPLIED BY THE CLIENT

2.1 The Client will furnish to the Prime Consultant all available information necessary for the performance of the Work.

2.2 Where discrepancies, omissions or obscurities in the information are evident, the Prime Consultant shall bring them to the attention of the Client and secure written instructions from the Client before proceeding with any work.

Article - 3. CONFIDENTIALITY, MATERIALS AND COPYRIGHT

3.1 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 Prime Consultant, the Prime Consultant's 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;

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 Prime Consultant, the Prime Consultant's employees, servants and/or agents during the performance of the services or in any way related thereto;

(c) all personal information, as defined from time to time under the Access to Information and Protection of Privacy Act, SNL 2002 c. A-1.1, to mean recorded information about an identifiable individual, including,

(i) the individual's name, address or telephone number,
(ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,

(iii) the individual's age, sex, sexual orientation, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual's fingerprints, blood type or inheritable characteristics,

(vi) information about the individual's health care status or history, including a physical or mental disability,

(vii) information about the individual's educational, financial, criminal or employment status or history,

(viii) the opinions of a person about the individual, and

(ix) the individual's personal views or opinions

for any individual, which is, directly or indirectly, disclosed to or collected by the Prime Consultant, the Prime Consultant's 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 Prime Consultant, the Prime Consultant's 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 Prime Consultant was or thereafter became part of the public domain through no act or omission of the Prime Consultant or the Prime Consultant's Representatives; or

(ii) is information which the Prime Consultant can show possession of prior to the date of this Agreement and which was received or developed by the Prime Consultant free of obligations of confidentiality to the Client.

3.2 The Prime Consultant shall treat all Confidential Information acquired by the Prime Consultant in the performance of the Services as privileged and confidential and shall not divulge the same to any person or persons at any time without the express written approval of the Client, unless required to do so by law, which may include any subpoena or other similar process or in connection with litigation, arbitration or other proceeding or by virtue of an act or regulations. In the event that such disclosure is required, the Prime Consultant shall give the Client prompt notice of the requirement upon becoming aware that such disclosure is required. Where circumstances do not permit the Prime Consultant to provide such notice prior to disclosure, the Prime Consultant shall provide such notice to the Client immediately after the required disclosure.
3.3 The Prime 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.

3.4 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 Prime 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 Prime 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 Prime Consultant pursuant to the terms of this Agreement. The Prime Consultant acknowledges that the Client’s right to this information shall at all times be paramount to any rights of the Prime Consultant, at law or in equity, and that the Prime 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 Prime Consultant’s possession.

3.5 The Prime 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 Prime Consultant, the Prime Consultant’s employees, servants and/or agents, and shall certify the destruction of same to the Client. However, nothing in this Agreement shall preclude the Prime Consultant’s privilege to retain copies of documents provided to it or prepared by it in connection with the Work, provided such documents are kept in a secure manner, are used by the Prime Consultant solely for the purposes of defending itself against claims arising from the Work of the Contract, and that the aforesaid documentation is destroyed or returned to the Client at the end of all limitation periods for commencing any action in connection with the Work or upon the conclusion or settlement with finality of any claim or action with respect to the Work.

3.6 The Prime Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Prime Consultant, the Prime Consultant’s employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the Access to Information and Protection of Privacy Act, the Management of Information Act, RSNL 2005, c. M-1.01, and the Privacy Act, RSNL 1990 c. P-22, as well as other legislation which may apply in the jurisdiction of the Prime Consultant’s operation. The Prime 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 Prime Consultant, and the Prime Consultant’s employees, servants and/or agents.

3.7 The Prime Consultant shall ensure that it, and the Prime Consultant’s 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 Prime Consultant employs to avoid disclosure or dissemination of the Prime Consultant's own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of the Prime Consultant's employees, servants or agents other than those who are required to have access to the same 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 Prime Consultant comply with all policies, standards and safeguards established under this Article;

(d) advise the Client of any changes in the Prime Consultant's 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 Prime 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.

3.8 The Prime Consultant shall only disclose Confidential Information to persons other than the Prime Consultant's 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".

3.9 The Prime 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 Prime 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 Prime Consultant;

(b) promptly furnish to the Client full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the Client in
investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information;

(c) use reasonable efforts to cooperate with the Client in any litigation and investigation against third parties deemed necessary by the Client to protect its proprietary rights;

(d) promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information; and

(e) refer to and follow the privacy breach protocol of the Government of Newfoundland and Labrador as it exists at the time of the breach and located on the Department of Justice website at: http://www.justice.gov.nl.ca/just/info/privacybreach.html

Article - 4. EMPLOYEES OF THE PRIME CONSULTANT

4.1 The Prime Consultant shall provide employees who are competent in their field of specialization. The Client will have the right to have the Prime 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 Prime 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 concerned was involved and may refuse to approve payment for such Work.

4.2 The Prime 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 - 5. ACCESS TO FACILITIES

5.1 The Client agrees to provide, access to the project site for the Prime Consultant to perform the Work during Client office hours.

5.2 When using or accessing the premises of the Client, the Prime Consultant and all officers, employees and agents of the Prime Consultant shall comply with all security regulations and workplace policies and procedures in effect from time to time at the Client's facilities.

Article - 6. RECORDS AND AUDIT

6.1 The Prime 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.
6.2 The Prime Consultant shall furnish reports as required by the Client for the purpose of monitoring the progress of the Work.

Article - 7. TERMINATION

7.1 This Agreement is deemed to be concluded once the Work has been completed to the satisfaction of the Client and the payment(s), as stipulated in the Agreement, has been issued to the Prime Consultant.

7.2 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.

7.3 Where this Agreement is terminated prior to the mutually agreed upon completion date, the Prime Consultant shall thereupon be entitled to payment in accordance with this Agreement in respect of that part of the Work completed up to the date of termination, provided however, that the Prime 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 - 8. NOTICES

8.1 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:
John Trahey
Department of Education
Design and Construction Division
3rd Floor, West Block, Confederation Building
St. John's, NL A1B 4J6
Phone: (709) 729-1067
Fax: (709) 729-1400
Email: JohnTrahey@gov.nl.ca

For the Prime Consultant:
Keith Layden
Atlantic Engineering Consultants Limited
34 Main Street, Corner Brook, NL A2H 1C3
Phone: (709) 634-3612
Fax: (709) 634-4628
Email: 

8.2 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 telex or other means of electronic communication; and

(c) Six (6) days after delivery to Canada Post Corporation where the postal service is used.

Article - 9. LIABILITY

9.1 The Prime Consultant agrees that in performance of the Work neither the Prime Consultant nor any Prime Consultant’s Representative shall be or be deemed to be an officer, servant, agent or partner of the Client.

9.2 The Client shall not be liable for, and the Prime 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 negligence or default of the Prime Consultant under this Agreement, including the negligence or default of any sub-consultant chosen by the Prime Consultant. Except to the extent that such losses, costs, charges or expenses as are referenced in this clause are caused by the negligence or default of the Client under this Agreement, the Prime Consultant shall defend any and all such actions and pay all legal charges, costs and other expenses arising therefrom. Where the Prime Consultant fails to defend such an action, 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 Prime Consultant.

Article - 10. COMPLIANCE WITH LAW

10.1 In respect of any work within the Province of Newfoundland and Labrador connected with or arising from this Agreement, the Prime 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.

10.2 The Prime Consultant shall ensure that the Prime Consultant and its Representatives comply with all requirements of any governing federal, provincial or municipal legislation, by-laws or regulations applicable to the Prime Consultant or the Prime Consultant’s Representatives in the performance of the Work.

Article - 11. ARBITRATION

11.1 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, the parties shall first attempt to resolve all matters through friendly negotiation by a meeting between their representatives upon notice per Article 8. A resolution reached in this way must be reached within 10 days of both parties having knowledge and notice of the dispute and be reduced to writing.
11.2 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Article 11.1), either party may give the other notice of such dispute and request third party mediation thereof.

11.3 Should the parties not agree to third party mediation or the matter in dispute between the parties not be resolved by mediation, then in the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Articles 11.1 and 11.2), either party may give the other notice of such dispute and 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 c. A-14, including such provisions for the appointment of arbitrators.

Article - 12. LAWS GOVERNING

12.1 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 - 13. USE OF WORK

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

13.2 With respect to 13.1 the Prime Consultant's liability to the Client for and in respect of the Work is solely limited to the project described in this Agreement.

Article - 14. CONFLICT OF INTEREST

14.1 No member of the House of Assembly of the Province of Newfoundland and Labrador shall be admitted to any part or share of the payments made pursuant to this Agreement or to any benefits arising therefrom.

14.2 The Prime Consultant and the Prime 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 - 15. SUBCONTRACTORS

15.1 The Prime Consultant shall not sub-contract all or a portion of the Work without the prior written approval of the Client, which consent will not be unreasonably withheld.

15.2 The entry into any subcontract shall not relieve the Prime Consultant of any of its obligations under the terms of this Agreement.

Article - 16. GENERAL

16.1 Articles 3 and 9 of this Agreement shall survive the termination or expiration of this Agreement.

16.2 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.

16.3 Time shall be of the essence of this Agreement.

16.4 The failure of the Client to insist upon or enforce in any instance strict performance by the Prime 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.

16.5 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.

16.6 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.

16.7 This Agreement shall enure to the benefit of and be binding upon the Parties hereto, their respective heirs, legal representatives, successors and assigns.

16.8 The Prime Consultant shall not assign this Agreement in whole or in part to any third party without the prior written approval of the Client.
SCHEDULE “D”
Protocols for Security of Government Information on Information Technology assets of Contractors

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

- All portable storage devices or media (e.g., flash drives, memory sticks, portable hard drives, writeable compact discs or digital video discs, etc.) may only be used to transport and/or store Confidential Information where either the Confidential Information or the device or media is encrypted.

- Unless specifically authorized by the Prime Consultant’s Contract or otherwise, the Prime Consultant is not permitted to attach non-government computers or other information technology systems to any Government network.

- The Prime Consultant is expected to implement and maintain up to date versions of all ordinary business software for the reasonable protection of information on computers attached to the Internet which will have access to or store Confidential Information, including security firewall and anti-viral software.

- The Prime Consultant is not permitted to use any Peer to Peer file sharing program (e.g., Limewire, etc) or chat program (e.g., MSN, Skype) on any information technology asset which will contain Confidential Information, or which will be connected via a network to any computer which will contain Confidential Information.

- Email should not be used as a method to transmit Confidential Information across public networks such as the Internet unless the e-mail and/or its attachments are encrypted or zipped in a secure manner.

- Where a Prime Consultant will be granted access to the Government computer network during the course of the work, in addition to the requirements noted above, the Prime Consultant shall not:

  o Share personal computer drives or folders on a computer accessing the network; or

  o Access the network remotely, either through wired or wireless connections, except through the use of secure ID and virtual private network systems.

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

- For the purposes of Schedule D, routine exchanges of design and construction information between the Client, the Prime Consultant and the Prime Consultant’s sub-consultants that is of a non confidential nature need not be encrypted.
Ms. Paula Pittman  
Architecture 49  
341 Freshwater Road, Suite 202  
P.O. Box 13156  
St. John’s NL A1B 4A4

Dear Ms. Pittman:

Consultant Appointment

Your firm has been selected to provide professional services for the following in accordance with the attached conditions outlined below.

Project #400316017 – Site Specific Design for Modular Classrooms  
St. Peter’s Primary, Mount Pearl, NL

1. The scope of services will entail a site visit with Department staff and a representative of the School District, or others as designated by the Department. Qualified consultant will conduct an assessment of the current site and determine the ideal locations of modulars to be added to the school. Further to this, a design package will be prepared to detail the construction of any site specific work, including a link from the existing school, which is required in order to meet occupancy requirements. Contract administration is also expected to be included in the scope of fees.

2. Fees for this portion of your commission will be per diem rates, plus expenses at government rates and policies. A maximum upset limit will have to be agreed upon prior to performing the assessment and a prime consultant agreement signed.

3. By accepting this commission, your firm acknowledges that it is willing to enter into a contract containing the terms as outlined in the Government of Newfoundland and Labrador’s Standard Form of Agreement and a negotiated fee and schedule as outlined by our Project Manager. An electronic copy of our standard Agreement is attached for your perusal.

4. The assessment, detailed design and contract documents must be completed by April 15, 2016.
If you are interested in carrying out this work, upon receipt of this letter, please contact Mr. Craig Gordon, Design and Construction Division, at (709) 729-7606, to arrange the assessments. Also, please forward an updated copy of your proof of insurance as well as a letter of good standing with the Workplace Health, Safety and Compensation Commission for our records.

If you are unable to undertake this work, please advise within one week of receipt of this letter so that we can arrange to appoint another consultant.

Sincerely,

\[Signature\]

INGRID E. CLARKE, P.Eng., FEC
Assistant Deputy Minister
(Infrastructure)

cc: Ms. Janet Vivian-Walsh
Mr. Jim Sinnott
Ms. Natalie Hallett
Ms. Kara Connors
Mr. Paul Lahey
Ms. Catherine Comerford
Mr. Mark Stacey
STANDARD FORM OF AGREEMENT
BETWEEN CLIENT AND PRIME CONSULTANT

Project #400316017 Site Specific Design for Modular Classrooms St. Peter’s Primary, Mount Pearl, NL
AGREEMENT

THIS AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador, on this 5th day of February, 2016.

BETWEEN: HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR as represented by the Minister of Education & Early Childhood Development.

("the Client")

AND: Architecture 49 Inc.

("the Prime Consultant")

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

I. Definitions

In addition to the terms defined in the Special Terms and Conditions attached as Schedule "B", (if any), and the General Terms and Conditions attached as Schedule "C", the following words and phrases shall have the following meanings:

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

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

II. The Prime Consultant's Work

The Prime Consultant shall do all things necessary to fulfill and carry out all of the obligations of the Prime Consultant as set out in the Contract Documents (the "Work").

III. Entire Agreement

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

IV. **Representations and Warranties**
The Prime Consultant hereby represents and warrants that every fact stated or represented by the Prime Consultant or its Representatives to the Client in connection with any proposal made by the Prime 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.

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

VI. **Start and Completion Date**
The Prime Consultant shall commence activities in relation to the Work with the start and completion dates mutually agreed upon as follows:

- **Start Date:** February 5th, 2016
- **Completion Date:** March 31st, 2016

VII. **Effective Date**
The effective date of this Agreement shall be the earlier of the start date referred to in Clause VI or the date on the first page of this Head Agreement.

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

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

Minister of Education & Early Childhood Development,
or his/her authorized designate

Architecture 49 Inc.

Name: Tonya Knopp, P.Eng.
Date: February 25th, 2016

Name: Paula Pittman, NLAA
Date: February 25th, 2016

Recommended by (Name/Date): Craig Gordon, March 16/16
PM: Craig Gordon
Manager: S. Maclean, March 16/16
Director: Natalie Kelland
SCHEDULE “A”

SCOPE OF WORK
BETWEEN PRIME CONSULTANT AND CLIENT

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Schedule V ............. Other Conditions of Services
PART 1  DEFINITIONS

1.1 Project Budget Forecast: means the Client's estimated total expenditure for the project. It includes the construction budget forecast and all other costs to the Client for the project such as, but not limited to, professional fees and acquisition costs.

1.2 Construction Budget Forecast: means the Client's estimated Construction Cost including contingencies for cost increases.

1.3 Construction Cost: means the contract price(s) of all elements of the project designed or specified by or on behalf of the Prime Consultant including, all applicable taxes. Where there is no contract price for all or part of the project, the Construction Cost shall be the elemental cost analysis using market rates at the estimated time of construction as determined by the Prime Consultant and agreed by the Client. The Construction Cost does not include professional fees, or land acquisition costs.

1.4 Contract: means an agreement between the Client and the Contractor for the provision of labour, materials and equipment for the construction of the project or part of the project by a Contractor.

1.5 Contractor: means a person, firm, or corporation contracting with the Client to provide labour, materials and equipment for the construction of the Project or part of the Project.

1.6 Project Management Design Administration Manual (PMDA Manual): a manual developed and maintained by the Department of Transportation and Works, Works Branch, for the purpose of presenting standards, guidelines and instructions for the delivery of building projects administered by the Works Branch. Unless otherwise agreed between the parties, the version published on the date of this Contract shall be the version applicable to this Contract.

1.7 Additional Services: means Consulting Services provided that are additional to the Basic Services.

1.8 Basic Services: means Consulting Services as outlined in the PMDA Manual.

1.9 Cost Control Services: means a service to monitor and advice on Project Budget and Construction Budget Forecasts.

1.10 Partial Services: means Reduced Basic Services as negotiated by the Client with the Prime Consultant.

1.11 Program Advisory Services: means Consulting Services provided by the Prime Consultant prior to start of Basic Services.

1.12 Authorities Having Jurisdiction (AHJ): means a person or persons representing these agencies that have authority to provide plan approvals and permits for the purpose of constructing the project.
PART 2  RESPONSIBILITIES

2.1  PRIME CONSULTANT

.1 The Prime Consultant's services consist of Basic Services and Additional Services which may be required to perform the Work. The phases of the Prime Consultant's Basic Services, and Additional Services are listed on Schedule II, and further elaborated in the Project Management and Design Administration (PMDA) Manual of the Department of Transportation and Works.

.2 The Prime Consultant's services as provided for under and pursuant to this Agreement at and during all phases of the Work shall encompass coordination of all disciplines, quality assurance and documentation control to integrate all services and sub consultant's work. The Prime Consultant shall prepare and submit contract documents in accordance with the Client's requirements, as outlined in the PMDA Manual.

.3 During the tendering and contract award phase, the Prime Consultant may advise and assist the Client in obtaining bids and awarding construction contracts. The Client's tendering and contract procedures and administrative practices will be followed in the performance of this phase, as outlined in the PMDA Manual.

.4 The Client may require the Prime Consultant to provide construction administration services. When required the Prime Consultant's service shall be based upon either full responsibility or partial responsibility.

.1 Full Responsibility

.1 As outlined in the PMDA Manual, services provided under full responsibility include assessing construction work carried out on or in relation to the project and offering an opinion as to whether or not the construction of the project is in accordance with the contract documents prepared by the Prime Consultant.

.2 Partial Service

.1 The scope of this partial service is to be outlined in Schedule I of this agreement, as agreed between the Client and the Prime Consultant.

.5 The project completion phase represents the portion of the Basic Services to be provided at the commencement of substantial completion until expiry of the one year Project warranty period. This service includes the provision of record drawings as outlined in the PMDA Manual, and advice concerning issues arising during this period.

.6 Cost Control Services are included under the scope of Basic Services to be provided by the Prime Consultant, as outlined in the PMDA Manual.

.7 The following schedules apply:

   Schedule I - Project Description
   Schedule II - Basic and Other Additional Services Fees
   Schedule III - Additional Reimbursable Allowances
   Schedule IV - Other Conditions of Services
2.2 CLIENT’S RESPONSIBILITIES

.1 The Client shall give due consideration to documentation submitted by the Prime Consultant and, whenever action is necessary, the Client shall inform the Prime Consultant of the Client’s decisions, in a reasonable and timely manner.

.2 The Client shall authorize persons to act on behalf of the Client with respect to delivery and administration of the project.

.3 If the Client observes or otherwise becomes aware of any fault or defect in the project or any nonconformity with the requirements of the Contract, the Prime Consultant shall be so notified in writing.

.4 The Client may provide information regarding the project including: a program, which shall set forth the Client’s spatial and functional requirements and relationships. The Prime Consultant is responsible for requesting or providing information that is required to prepare the design and contract documents.

.5 The Client will provide the Prime Consultant with a Project Budget Forecast.

.6 The Client shall reimburse the Prime Consultant for procuring information which the Prime Consultant requires for the provision of services necessary to carry out the preparation of design and/or contract documentation when the information is not available upon request from the Client such as site surveys, hazardous material surveys.

.7 When the Client supplies the Prime Consultant with information contained within reports or equipment data sheets, the Prime Consultant will not be required to exhaustively check information supplied by the Client to verify the same unless it is requested to do so by the Client. However, if the Prime Consultant observes, or otherwise becomes aware, of any fault or defect in the information supplied to it by the Client, the Consultant shall cause the Client to be notified in writing of any such fault or defect forthwith.

.8 Where the Prime Consultant has been authorized by the Client to procure or obtain information, the Prime Consultant shall be responsible in seeing that the information provided meets the needs of the sub-consultant(s) performing the work under the direction of the Prime Consultant.

.9 The Client will reimburse the Prime Consultant for other specialist consultants that may be required to carry out quality control services during the project, subject to prior approval of scope of the work and an agreement on the fee or fees payable for the same by the Client.

PART 3 GENERAL REQUIREMENTS

3.1 STAFF

The Prime Consultant will provide the Client with a list of its employees and those of its sub-consultants who will be assigned to the project. The list will include the classification of each employee and the hourly rate to be charged for additional services rendered. The Prime Consultant will obtain written prior approval of
Client for any replacement of key employees, changes in the numbers of key employees or changes to rates of key employees assigned to the project.

3.2 SCHEDULE

.1 The Prime Consultant has developed and submitted a time schedule for the performance of consultant services on the project (which Schedule has been approved by the Client and is appended as Schedule "IV" hereto. The schedule shall incorporate all major design milestones as presented in the PMDA Manual.

.2 Unless otherwise agreed to between the parties, the failure by a party to comply with the approved schedule for those aspects of the Work that a party is responsible for may be sufficient cause for the other party to terminate this Agreement, if that failure is not rectified within seven (7) days after the defaulting party is given notice of its default.

.3 If either party believes that a change in the approved schedule is necessary the party requesting that change shall promptly give notice of that fact to the other party in writing, provide the other party with a revised schedule and the reason(s) why the change is requested for its consideration and request its written approval of the same. Should that approval be forthcoming the revised schedule will become the approved schedule for the project.

3.3 COST CONTROL

.1 The Prime Consultant shall provide Cost Control Services in accordance with PMDA Manual.

.2 If at any time the Prime Consultant considers its estimates indicate costs which exceed the Project or Construction Budget Forecast, the Prime Consultant will immediately advise the Client. If the excess is due to, discretionary design elements under the control of or reasonably foreseeable by the Prime Consultant, or the negligence or default of the Prime Consultant in the performance of this Agreement, the Client may require the Prime Consultant to redesign the project at the Prime Consultant’s expense to bring the cost estimate within the approved Project Budget Forecast.

.3 If the preferred bidder’s tender for the project for which the Prime Consultant has prepared and provided the design(s) and provided cost pricing and control services exceeds the Construction Budget Forecast as a result of the negligence or default of the Prime Consultant under this Agreement or is for reasons related to discretionary design elements which are under the Prime Consultant’s control or which the Prime Consultant should have reasonably foreseen and could have guarded against, then the Prime Consultant, at no additional cost to the Client, shall redesign to bring the cost within the Construction Budget Forecast and retender.

3.4 CHANGES AND ADJUSTMENT

.1 Changes and adjustment to the fees payable under this Agreement will be only considered if there is a material change in the level of services agreed to be provided or in the scope of the Project, or there is a material delay in the performance of the work required under the Contract.
The amounts due to the Prime Consultant arising from a material change to the Agreement will be determined by a negotiated fixed amount, or failing such negotiation, the actual cost as determined by level of effort incurred times the agreed hourly rate, plus receipted expenses.

Any increases in the fees payable caused by a material changes or other changes shall be communicated by the Prime Consultant in writing to the Client prior to incurring such costs to permit the Client to mitigate the amount of increased costs.

3.5 ERRORS AND OMISSIONS

Any costs resulting from design errors on the part of the Prime Consultant, sub-consultants chosen by the Prime Consultant, or agents, or employees of the Prime Consultant or of any sub-consultant chosen by the Prime Consultant will be the responsibility of the Prime Consultant to remedy. However, where the Client and not the Prime Consultant chooses a sub-consultant to do hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work, the Prime Consultant shall not be held responsible for design errors attributed to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, or construction testing services, done by sub-consultants chosen by the Client, unless those design errors are directly caused by the Prime Consultant. In the case of sub-consultants chosen by the Client, the Client and not the Prime Consultant shall be responsible to takes such steps as the Client deems to be appropriate, to ensure that any sub-consultant chosen by the Client has appropriate and adequate policies of insurance that are acceptable to the Client in place to cover design errors attributable to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work done by any such sub-consultant.

Any costs resulting from errors in design or omissions may be paid by the Client providing the cost of such design omissions does not entail removing material or equipment that has already been constructed in accordance with the plans and specifications. The cost of the original material and equipment, as indicated on the plans and specifications, and the labour to remove such will be the responsibility of the Prime Consultant.

3.6 PRIME CONSULTANT ACTIONS AND DECISIONS

The Prime Consultant acknowledges that adequate discussion has taken place regarding the Work with the Client and that the Prime Consultant has access to sufficient information to undertake the services contracted for within the Project Budget.

The Prime Consultant and the Client agrees to act promptly and diligently on all matters within their respective direction and control requiring an action or decision affecting the design, construction or administration of the project.

Only express approval by the Client shall be deemed to relieve the Prime Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant. No acceptance or approval by the Client, that is implied shall be deemed to relieve the Prime Consultant of such responsibility.
Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant.

.4 If the Prime Consultant does not promptly and diligently comply with or fails to meet the requirements of the Client, the Client may without prejudice to any other right or remedy the Client may have by giving the Prime Consultant written notice, and without prejudice to the Client's rights at law or elsewhere in this Agreement, take all such action deemed necessary for the prompt and economical completion of the project, and/or terminate the contract.

3.7 INSURANCE COVERAGE

.1 The Prime Consultant shall supply written proof of:

.1 Professional liability insurance coverage equal or greater than $250,000 per claim, $500,000 in aggregate for projects under $2 million construction value or $500,000 per claim, $1,000,000 aggregate for projects over $2 million. The Prime Consultant shall be fully responsible for all amounts deducted from this value by the Prime Consultant's Insurer. This Insurance shall remain in effect until the expiry of the general contractor's one year warranty on the project.

.2 Commercial liability insurance acceptable to the Client with a minimum limit of $1,000,000.

.2 The Insurer shall be an insurance company licensed to do business in the Province of Newfoundland & Labrador.

PART 4 BASIS OF PAYMENT SCHEDULE

4.1 The Client will pay for Program Advisory Services on the basis of an agreed fixed fee or on the basis of approved level of effort at agreed per diem rates.

4.2 The Client will pay for Basic Services on the basis of the agreed fixed fee. The Client's Project Budget Forecast will be made available to the Prime Consultant to assist in the evaluation of the level of effort required.

4.3 The fee for Basic Services will be apportioned to the phases of service as outlined in Schedule II - "Basic Services and Other Additional Services' Fees".

4.4 The fee for Basic Services will also include the management and co-ordination by the Prime Consultant and specialist consulting services as may be requested by the Client. Compensation for specialist or other consulting services will be on the basis of an agreed fixed fee for the level of effort required.

4.5 The Client will pay for resident services during construction, when requested based on an agreed fixed fee amount. The fee amount is to include all payroll costs, site-related expenses and allowances as agreed.

4.6 The Client will pay for construction management services when requested on the basis of the level of effort required during project implementation based on an agreed fixed fee.

4.7 The Client will pay for commissioning services on the basis of an agreed fixed fee. The fee amount shall include level of effort; associated with the preparation
of documents and site visits to carry out commissioning activities, as outlined in the PMDA Manual.

4.8 The Client will pay for day-to-day routine expenses such as; long distance charges, reproduction costs, client presentations and submissions, original contract documents (hardcopy), courier services, travel over 50 km from office on an agreed fixed amount. All routine expenses to be charged at cost. Meals, Private Vehicle usage, and incidental expense are to be paid on the basis of Government Rates at time of this Agreement.

4.9 The Client will pay for Additional Reimbursable Allowances as provided for in Schedule III - "Additional Reimbursable Allowances". These allowances require supporting documents to be provided for payment.
The scope of services is per the attached Consultant Appointment letter dated January 29, 2016, Project #400316017 – Site Specific Design for Modular Classrooms St. Peter’s Primary, Mount Pearl, NL.

Specifically, the scope of services includes a site visit with Department staff and a representative of the School District, or others as designated by the Department. Qualified consultant will conduct an assessment of the current site and determine the ideal location of modular to be added to the school. Further to this, a design package will be prepared to detail the construction of any site specific work, including a link from the existing school, which is required in order to meet occupancy requirements.
SCHEDULE IV
SCHEDULE OF THE PERFORMANCE OF CONSULTANT SERVICES
SCHEDULE V
OTHER CONDITIONS OF SERVICES

(Not applicable unless text is added to this schedule)
SCHEDULE “B”
SPECIAL TERMS AND CONDITIONS (as necessary)

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

__________________________________________
Margaret Gillies, Q.C., General Counsel          Janet Vivian-Walsh, Deputy Minister

The Special Terms and Conditions of this Agreement are follows:
As per the Contract terms contained herein
OR

1. No Special Terms and Conditions

__________________________________________
Department of Justice

__________________________________________
Deputy Minister
### SCHEDULE "C"

**GENERAL TERMS AND CONDITIONS**

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SCHEDULE “C”

GENERAL TERMS AND CONDITIONS

Article - 1. PAYMENT

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

Payment Option #1

Subject to Article 1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, for the satisfactory performance of the Work, at per diem rates with a maximum upset limit of $50,000 plus HST, as well as completion of the lump sum additional scope items as identified in Schedule II, in accordance with the following payment schedule:

(i) Periodic payments – payments paid monthly proportional with the amount of work completed to date.

Payment Option #2 Not Applicable

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

(i) Person / Professional Designation – Hourly Rate

Payment Option #3 Not Applicable

Subject to Article 1.3, upon the satisfactory completion of the Work and the presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, $Insert Absolute Limit on Cost of Services (plus HST).

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

Reimbursement Option A
(a) The Client shall only be responsible for the following reimbursable expenses, payable at cost, provided the Prime Consultant can demonstrate to the Client that such expenses were incurred in relation to the Work, and that documentation, satisfactory to the Client, is provided in support of the reimbursable expense claimed and is attached to the applicable invoice, including for example, originals of supporting receipts, invoices or statements issued by non-parties to this Agreement:

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

Reimbursement Option B Not Applicable

The Client shall not be responsible for any expenses incurred by the Prime 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) The Prime Consultant shall remain obligated to complete the Work notwithstanding that the actual costs of the Prime Consultant, whether in respect of professional services or in respect of costs or expenses incurred, may exceed the total aggregate sum set out in this Agreement.

(b) The Parties agree and confirm that as set out in section 25(6) of the Financial Administration Act, RSNL 1990 c. F-8, as amended, all fees payable in accordance with this Agreement are subject to there being an appropriation for the work for the fiscal year in which payment under this Agreement is due.

(c) Payment will be made within 60 calendar days of receipt of a properly documented invoice. The Client shall within thirty (30) days of the execution of this Agreement should the Prime Consultant request the same provide direction to the Prime Consultant as to what constitutes a properly documented invoice.

(d) All invoices shall clearly show the amount of HST billed by the Prime Consultant as a separate item.

(e) The Prime Consultant shall conform to any request that may be made by the Client to alter the form of invoice customarily used by the Prime Consultant as may be reasonably required for the purposes of the Client’s internal accounting systems. The Prime 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.
The Client shall not be responsible to pay any amounts invoiced by the Prime Consultant which may arise from work, services or expenses incurred to remedy errors or omissions in the Work for which the Prime Consultant is responsible.

The Prime Consultant shall submit invoices to:
Attn: Mr. Craig Gordon, P.Eng.
Education & Early Childhood Development
Design & Construction Division (Works)
3rd Floor, West Block, Confederation Building
St. John's, NL A1B 4J6

Article - 2. INFORMATION SUPPLIED BY THE CLIENT

2.1 The Client will furnish to the Prime Consultant all available information necessary for the performance of the Work.

2.2 Where discrepancies, omissions or obscurities in the information are evident, the Prime Consultant shall bring them to the attention of the Client and secure written instructions from the Client before proceeding with any work.

Article - 3. CONFIDENTIALITY, MATERIALS AND COPYRIGHT

3.1 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 Prime Consultant, the Prime Consultant's 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;

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 Prime Consultant, the Prime Consultant's employees, servants and/or agents during the performance of the services or in any way related thereto;

(c) all personal information, as defined from time to time under the Access to Information and Protection of Privacy Act, SNL 2002 c. A-1.1, to mean recorded information about an identifiable individual, including,

(i) the individual's name, address or telephone number,
(ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,

(iii) the individual's age, sex, sexual orientation, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual's fingerprints, blood type or inheritable characteristics,

(vi) information about the individual's health care status or history, including a physical or mental disability,

(vii) information about the individual's educational, financial, criminal or employment status or history,

(viii) the opinions of a person about the individual, and

(ix) the individual's personal views or opinions

for any individual, which is, directly or indirectly, disclosed to or collected by the Prime Consultant, the Prime Consultant's 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 Prime Consultant, the Prime Consultant's 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 Prime Consultant was or thereafter became part of the public domain through no act or omission of the Prime Consultant or the Prime Consultant's Representatives; or

(ii) is information which the Prime Consultant can show possession of prior to the date of this Agreement and which was received or developed by the Prime Consultant free of obligations of confidentiality to the Client.

3.2 The Prime Consultant shall treat all Confidential Information acquired by the Prime Consultant in the performance of the Services as privileged and confidential and shall not divulge the same to any person or persons at any time without the express written approval of the Client, unless required to do so by law, which may include any subpoena or other similar process or in connection with litigation, arbitration or other proceeding or by virtue of an act or regulations. In the event that such disclosure is required, the Prime Consultant shall give the Client prompt notice of the requirement upon becoming aware that such disclosure is required. Where circumstances do not permit the Prime Consultant to provide such notice prior to disclosure, the Prime Consultant shall provide such notice to the Client immediately after the required disclosure.
3.3 The Prime 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.

3.4 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 Prime 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 Prime 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 Prime Consultant pursuant to the terms of this Agreement. The Prime Consultant acknowledges that the Client's right to this information shall at all times be paramount to any rights of the Prime Consultant, at law or in equity, and that the Prime 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 Prime Consultant's possession.

3.5 The Prime 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 Prime Consultant, the Prime Consultant's employees, servants and/or agents, and shall certify the destruction of same to the Client. However, nothing in this Agreement shall preclude the Prime Consultant's privilege to retain copies of documents provided to it or prepared by it in connection with the Work, provided such documents are kept in a secure manner, are used by the Prime Consultant solely for the purposes of defending itself against claims arising from the Work of the Contract, and that the aforesaid documentation is destroyed or returned to the Client at the end of all limitation periods for commencing any action in connection with the Work or upon the conclusion or settlement with finality of any claim or action with respect to the Work.

3.6 The Prime Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Prime Consultant, the Prime Consultant's employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the Access to Information and Protection of Privacy Act, the Management of Information Act, SNL 2005, c. M-1.01, and the Privacy Act, RSNL 1990 c. P-22, as well as other legislation which may apply in the jurisdiction of the Prime Consultant's operation. The Prime 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 Prime Consultant, and the Prime Consultant's employees, servants and/or agents.

3.7 The Prime Consultant shall ensure that it, and the Prime Consultant's 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 Prime Consultant employs to avoid disclosure or dissemination of the Prime Consultant’s own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of the Prime Consultant’s employees, servants or agents other than those who are required to have access to the same 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 Prime Consultant comply with all policies, standards and safeguards established under this Article;

(d) advise the Client of any changes in the Prime Consultant’s 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 Prime 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.

3.8 The Prime Consultant shall only disclose Confidential Information to persons other than the Prime Consultant’s 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”.

3.9 The Prime 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 Prime 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 Prime Consultant;

(b) promptly furnish to the Client full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the Client in
investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information;

(c) use reasonable efforts to cooperate with the Client in any litigation and investigation against third parties deemed necessary by the Client to protect its proprietary rights;

(d) promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information; and

(e) refer to and follow the privacy breach protocol of the Government of Newfoundland and Labrador as it exists at the time of the breach and located on the Department of Justice website at: http://www.justice.gov.nl.ca/just/info/privacybreach.html

Article - 4. EMPLOYEES OF THE PRIME CONSULTANT

4.1 The Prime Consultant shall provide employees who are competent in their field of specialization. The Client will have the right to have the Prime 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 Prime 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 concerned was involved and may refuse to approve payment for such Work.

4.2 The Prime 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 - 5. ACCESS TO FACILITIES

5.1 The Client agrees to provide, access to the project site for the Prime Consultant to perform the Work during Client office hours.

5.2 When using or accessing the premises of the Client, the Prime Consultant and all officers, employees and agents of the Prime Consultant shall comply with all security regulations and workplace policies and procedures in effect from time to time at the Client's facilities.

Article - 6. RECORDS AND AUDIT

6.1 The Prime 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.
6.2 The Prime Consultant shall furnish reports as required by the Client for the purpose of monitoring the progress of the Work.

Article - 7. TERMINATION

7.1 This Agreement is deemed to be concluded once the Work has been completed to the satisfaction of the Client and the payment(s), as stipulated in the Agreement, has been issued to the Prime Consultant.

7.2 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.

7.3 Where this Agreement is terminated prior to the mutually agreed upon completion date, the Prime Consultant shall thereupon be entitled to payment in accordance with this Agreement in respect of that part of the Work completed up to the date of termination, provided however, that the Prime 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 - 8. NOTICES

8.1 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:
Attn: Mr. Craig Gordon, P.Eng.
Education & Early Childhood Development
Design & Construction Division (Works)
3rd Floor, West Block, Confederation Building
St. John's, NL A1B 4J6
Phone: (709) 729-7606
Fax: (709) 729-1400
Email:craiggordon@gov.nl.ca

For the Prime Consultant:

Tonya Knopp, P.Eng.
c/o Architecture 49 Inc.
341 Freshwater Road, Suite 202
Phone: 709-726-1342
Fax: 709-726-1349
Email:  

8.2 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.

Article - 9. LIABILITY

9.1 The Prime Consultant agrees that in performance of the Work neither the Prime Consultant nor any Prime Consultant’s Representative shall be or be deemed to be an officer, servant, agent or partner of the Client.

9.2 The Client shall not be liable for, and the Prime 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 negligence or default of the Prime Consultant under this Agreement, including the negligence or default of any sub-consultant chosen by the Prime Consultant. Except to the extent that such losses, costs, charges or expenses as are referenced in this clause are caused by the negligence or default of the Client under this Agreement, the Prime Consultant shall defend any and all such actions and pay all legal charges, costs and other expenses arising therefrom. Where the Prime Consultant fails to defend such an action, 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 Prime Consultant.

Article - 10. COMPLIANCE WITH LAW

10.1 In respect of any work within the Province of Newfoundland and Labrador connected with or arising from this Agreement, the Prime 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.

10.2 The Prime Consultant shall ensure that the Prime Consultant and its Representatives comply with all requirements of any governing federal, provincial or municipal legislation, by-laws or regulations applicable to the Prime Consultant or the Prime Consultant’s Representatives in the performance of the Work.

Article - 11. ARBITRATION

11.1 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, the parties shall first attempt to resolve all matters through friendly negotiation by a meeting
between their representatives upon notice per Article 8. A resolution reached in this way must be reached within 10 days of both parties having knowledge and notice of the dispute and be reduced to writing.

11.2 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Article 11.1), either party may give the other notice of such dispute and request third party mediation thereof.

11.3 Should the parties not agree to third party mediation or the matter in dispute between the parties not be resolved by mediation, then in the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Articles 11.1 and 11.2), either party may give the other notice of such dispute and 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 c. A-14, including such provisions for the appointment of arbitrators.

Article - 12. LAWS GOVERNING

12.1 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 - 13. USE OF WORK

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

13.2 With respect to 13.1 the Prime Consultant's liability to the Client for and in respect of the Work is solely limited to the project described in this Agreement.

Article - 14. CONFLICT OF INTEREST

14.1 No member of the House of Assembly of the Province of Newfoundland and Labrador shall be admitted to any part or share of the payments made pursuant to this Agreement or to any benefits arising therefrom.

14.2 The Prime Consultant and the Prime 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;
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 - 15. SUBCONTRACTORS

15.1 The Prime Consultant shall not sub-contract all or a portion of the Work without the prior written approval of the Client, which consent will not be unreasonably withheld.

15.2 The entry into any subcontract shall not relieve the Prime Consultant of any of its obligations under the terms of this Agreement.

Article - 16. GENERAL

16.1 Articles 3 and 9 of this Agreement shall survive the termination or expiration of this Agreement.

16.2 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.

16.3 Time shall be of the essence of this Agreement.

16.4 The failure of the Client to insist upon or enforce in any instance strict performance by the Prime 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.

16.5 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.

16.6 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.

16.7 This Agreement shall enure to the benefit of and be binding upon the Parties hereto, their respective heirs, legal representatives, successors and assigns.

16.8 The Prime Consultant shall not assign this Agreement in whole or in part to any third party without the prior written approval of the Client.
SCHEDULE "D"

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

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

- All portable storage devices or media (e.g., flash drives, memory sticks, portable hard drives, writeable compact discs or digital video discs, etc.) may only be used to transport and/or store Confidential Information where either the Confidential Information or the device or media is encrypted.

- Unless specifically authorized by the Prime Consultant's Contract or otherwise, the Prime Consultant is not permitted to attach non-government computers or other information technology systems to any Government network.

- The Prime Consultant is expected to implement and maintain up to date versions of all ordinary business software for the reasonable protection of information on computers attached to the Internet which will have access to or store Confidential Information, including security firewall and anti-viral software.

- The Prime Consultant is not permitted to use any Peer to Peer file sharing program (e.g., Limewire, etc) or chat program (e.g., MSN, Skype) on any information technology asset which will contain Confidential Information, or which will be connected via a network to any computer which will contain Confidential Information.

- Email should not be used as a method to transmit Confidential Information across public networks such as the Internet unless the e-mail and/or its attachments are encrypted or zipped in a secure manner.

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

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

- For the purposes of Schedule D, routine exchanges of design and construction information between the Client, the Prime Consultant and the Prime Consultant's sub-consultants that is of a non-confidential nature need not be encrypted.
## Contract Change Order Listing - With Justification

<table>
<thead>
<tr>
<th>CO Category</th>
<th>Original Contract Amount</th>
<th>Debit Change Orders</th>
<th>Credit Change Orders</th>
<th>Revised Contract Amount</th>
</tr>
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<tbody>
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<td>CSUL15520 ARCHITECTURE49 INC (40130006)</td>
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<td>$21,700.00</td>
<td>$0.00</td>
<td>$65,200.00</td>
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St. Peter's Primary - Site Specific Design for Modular Classrooms
- FDK

<table>
<thead>
<tr>
<th>Item #</th>
<th>Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Tender results review and award recommendation. Project management and inspection services for both the two modular classrooms and modular link. Commissioning and final inspection/project sign off</td>
</tr>
</tbody>
</table>

**CO Category Legend:**
- A - Additional Requirements - Client
- B - Design Related
- C - Site Conditions
- D - Regulatory Requirements
- E - Additional Requirements - WST

Total CO: $21,700.00
Mr. Barry Thompson  
Cecon Ltd.  
93 Edinburgh Avenue  
Gander NL A1V 1C9

Dear Mr. Thompson:

Consultant Appointment

Your firm has been selected to provide professional services for the following in accordance with the attached conditions outlined below.

Window Replacement Assessment
Project #300132012 - Botwood Collegiate, Botwood, NL

The scope of services will entail a site visit with Department staff and a representative of the School District, or others as designated by the Department. Once this assessment is complete, a minuted scope review meeting with the Department of Education and Early Childhood Development and school district officials will take place to discuss findings and prepare recommendations for the scope of the work.

Fees for this portion of your commission will be per diem rates, plus expenses at government rates and policies. A maximum upset limit will have to be agreed upon prior to performing the assessment and a prime consultant agreement signed.

By accepting this commission, your firm acknowledges that it is willing to enter into a contract containing the terms as outlined in the Government of Newfoundland and Labrador’s Standard Form of Agreement and a negotiated fee and schedule as outlined by our Project Manager. An electronic copy of our standard Agreement is attached for your perusal.

The assessment and recommendations must be completed within 4 weeks of the date of this letter.

If you are interested in carrying out this work, upon receipt of this letter, please contact Mr. Claude Foley, Design and Construction Division, at (709) 729-4982, to arrange the assessment. Also, please forward an updated copy of your proof of insurance as well as a letter of good standing with WorkplaceNL for our records.
If you are unable to undertake this work, please advise within one week of receipt of this letter so that we can arrange to appoint another consultant.

Sincerely,

INGRID E. CLARKE, P.Eng., FEC
Assistant Deputy Minister
(Infrastructure)

cc: Ms. Janet Vivian-Walsh
    Mr. Jim Sinnott
    Mr. Claude Foley
    Ms. Natalie Hallett
    Ms. Kara Connors
    Mr. Blair Medd
    Mr. Paul Lahey
STANDARD FORM OF AGREEMENT
BETWEEN CLIENT AND PRIME CONSULTANT

WINDOW REPLACEMENT ASSESSMENT

BOTWOOD COLLEGIATE
BOTWOOD, NL

PROJECT NO. 300132012

CECON NO. 16302
AGREEMENT

THIS AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador, on this 4TH day of August, 2016.

BETWEEN: HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR as represented by the Minister of Education & Early Childhood Development. ("the Client")

AND: CECON Ltd. ("the Prime Consultant")

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

I. Definitions
   In addition to the terms defined in the Special Terms and Conditions attached as Schedule "B", (if any), and the General Terms and Conditions attached as Schedule "C", the following words and phrases shall have the following meanings:

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

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

II. The Prime Consultant's Work
   The Prime Consultant shall do all things necessary to fulfill and carry out all of the obligations of the Prime Consultant as set out in the Contract Documents (the "Work").

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

IV. **Representations and Warranties**
The Prime Consultant hereby represents and warrants that every fact stated or represented by the Prime Consultant or its Representatives to the Client in connection with any proposal made by the Prime 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.

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

VI. **Start and Completion Date**
The Prime Consultant shall commence activities in relation to the Work with the start and completion dates mutually agreed upon as follows:

- **Start Date:** August 22, 2016
- **Completion Date:** September 12, 2016

VII. **Effective Date**
The effective date of this Agreement shall be the earlier of the start date referred to in Clause VI or the date on the first page of this Head Agreement.

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

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

Minister of Education and Early Childhood Development,
or his/her authorized designate

CECON Ltd.

Name: Barry J. Thomson
Date: July 26, 2016

Recommended By (Name/Date): Aug. 8, 2016
PM:
Manager: G. Vardy Aug. 16, 16
Director: Natalie Hallett
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PART 1
DEFINITIONS

1.1 Project Budget Forecast: means the Client’s estimated total expenditure for the project. It includes the construction budget forecast and all other costs to the Client for the project such as, but not limited to, professional fees and acquisition costs.

1.2 Construction Budget Forecast: means the Client’s estimated Construction Cost including contingencies for cost increases.

1.3 Construction Cost: means the contract price(s) of all elements of the project designed or specified by or on behalf of the Prime Consultant including all applicable taxes. Where there is no contract price for all or part of the project, the Construction Cost shall be the elemental cost analysis using market rates at the estimated time of construction as determined by the Prime Consultant and agreed by the Client. The Construction Cost does not include professional fees, or land acquisition costs.

1.4 Contract: means an agreement between the Client and the Contractor for the provision of labour, materials and equipment for the construction of the project or part of the project by a Contractor.

1.5 Contractor: means a person, firm, or corporation contracting with the Client to provide labour, materials and equipment for the construction of the Project or part of the Project.

1.6 Project Management Design Administration Manual (PMDA Manual): a manual developed and maintained by the Department of Transportation and Works, Works Branch, for the purpose of presenting standards, guidelines and instructions for the delivery of building projects administered by the Works Branch. Unless otherwise agreed between the parties, the version published on the date of this Contract shall be the version applicable to this Contract.

1.7 Additional Services: means Consulting Services provided that are additional to the Basic Services.

1.8 Basic Services: means Consulting Services as outlined in the PMDA Manual.

1.9 Cost Control Services: means a service to monitor and advice on Project Budget and Construction Budget Forecasts.

1.10 Partial Services: means Reduced Basic Services as negotiated by the Client with the Prime Consultant.

1.11 Program Advisory Services: means Consulting Services provided by the Prime Consultant prior to start of Basic Services.

1.12 Authorities Having Jurisdiction (AHJ): means a person or persons representing these agencies that have authority to provide plan approvals and permits for the purpose of constructing the project.
PART 2

RESPONSIBILITIES

2.1 PRIME CONSULTANT

.1 The Prime Consultant’s services consist of Basic Services and Additional Services which may be required to perform the Work. The phases of the Prime Consultant’s Basic Services, and Additional Services are listed on Schedule II, and further elaborated in the Project Management and Design Administration (PMDA) Manual of the Department of Transportation and Works.

.2 The Prime Consultant’s services as provided for under and pursuant to this Agreement at and during all phases of the Work shall encompass coordination of all disciplines, quality assurance and documentation control to integrate all services and sub consultant’s work. The Prime Consultant shall prepare and submit contract documents in accordance with the Client’s requirements, as outlined in the PMDA Manual.

.3 During the tendering and contract award phase, the Prime Consultant may advise and assist the Client in obtaining bids and awarding construction contracts. The Client’s tendering and contract procedures and administrative practices will be followed in the performance of this phase, as outlined in the PMDA Manual.

.4 The Client may require the Prime Consultant to provide construction administration services. When required the Prime Consultant’s service shall be based upon either full responsibility or partial responsibility.

.1 Full Responsibility

.1 As outlined in the PMDA Manual, services provided under full responsibility include assessing construction work carried out on or in relation to the project and offering an opinion as to whether or not the construction of the project is in accordance with the contract documents prepared by the Prime Consultant.

.2 Partial Service

.1 The scope of this partial service is to be outlined in Schedule I of this agreement, as agreed between the Client and the Prime Consultant.

.5 The project completion phase represents the portion of the Basic Services to be provided at the commencement of substantial completion until expiry of the one year Project warranty period. This service includes the provision of record drawings as outlined in the PMDA Manual, and advice concerning issues arising during this period.

.6 Cost Control Services are included under the scope of Basic Services to be provided by the Prime Consultant, as outlined in the PMDA Manual.

.7 The following schedules apply:

   Schedule I - Project Description
   Schedule II - Basic and Other Additional Services Fees
   Schedule III - Additional Reimbursable Allowances
   Schedule IV - Other Conditions of Services
2.2 CLIENT'S RESPONSIBILITIES

.1 The Client shall give due consideration to documentation submitted by the Prime Consultant and, whenever action is necessary, the Client shall inform the Prime Consultant of the Client's decisions, in a reasonable and timely manner.

.2 The Client shall authorize persons to act on behalf of the Client with respect to delivery and administration of the project.

.3 If the Client observes or otherwise becomes aware of any fault or defect in the project or any nonconformity with the requirements of the Contract, the Prime Consultant shall be so notified in writing.

.4 The Client may provide information regarding the project including: a program, which shall set forth the Client's spatial and functional requirements and relationships. The Prime Consultant is responsible for requesting or providing information that is required to prepare the design and contract documents.

.5 The Client will provide the Prime Consultant with a Project Budget Forecast.

.6 The Client shall reimburse the Prime Consultant for procuring information which the Prime Consultant requires for the provision of services necessary to carry out the preparation of design and/or contract documentation when the information is not available upon request from the Client such as site surveys, hazardous material surveys.

.7 When the Client supplies the Prime Consultant with information contained within reports or equipment data sheets, the Prime Consultant will not be required to exhaustively check information supplied by the Client to verify the same unless it is requested to do so by the Client. However, if the Prime Consultant observes, or otherwise becomes aware, of any fault or defect in the information supplied to it by the Client, the Consultant shall cause the Client to be notified in writing of any such fault or defect forthwith.

.8 Where the Prime Consultant has been authorized by the Client to procure or obtain information, the Prime Consultant shall be responsible in seeing that the information provided meets the needs of the sub-consultant(s) performing the work under the direction of the Prime Consultant.

.9 The Client will reimburse the Prime Consultant for other specialist consultants that may be required to carry out quality control services during the project, subject to prior approval of scope of the work and an agreement on the fee or fees payable for the same by the Client.

PART 3 GENERAL REQUIREMENTS

3.1 STAFF

The Prime Consultant will provide the Client with a list of its employees and those of its sub-consultants who will be assigned to the project. The list will include the classification of each employee and the hourly rate to be charged for additional services rendered. The Prime Consultant will obtain written prior approval of
3.2 SCHEDULE

1 The Prime Consultant has developed and submitted a time schedule for the performance of consultant services on the project (which Schedule has been approved by the Client and is appended as Schedule "IV" hereto. The schedule shall incorporate all major design milestones as presented in the PMDA Manual.

2 Unless otherwise agreed to between the parties, the failure by a party to comply with the approved schedule for those aspects of the Work that a party is responsible for may be sufficient cause for the other party to terminate this Agreement, if that failure is not rectified within seven (7) days after the defaulting party is given notice of its default.

3 If either party believes that a change in the approved schedule is necessary the party requesting that change shall promptly give notice of that fact to the other party in writing, provide the other party with a revised schedule and the reason(s) why the change is requested for its consideration and request its written approval of the same. Should that approval be forthcoming the revised schedule will become the approved schedule for the project.

3.3 COST CONTROL

1 The Prime Consultant shall provide Cost Control Services in accordance with PMDA Manual.

2 If at any time the Prime Consultant considers its estimates indicate costs which exceed the Project or Construction Budget Forecast, the Prime Consultant will immediately advise the Client. If the excess is due to, discretionary design elements under the control of or reasonably foreseeable by the Prime Consultant, or the negligence or default of the Prime Consultant in the performance of this Agreement, the Client may require the Prime Consultant to redesign the project at the Prime Consultant's expense to bring the cost estimate within the approved Project Budget Forecast.

3 If the preferred bidder's tender for the project for which the Prime Consultant has prepared and provided the design(s) and provided cost pricing and control services exceeds the Construction Budget Forecast as a result of the negligence or default of the Prime Consultant under this Agreement or is for reasons related to discretionary design elements which are under the Prime Consultant's control or which the Prime Consultant should have reasonably foreseen and could have guarded against, then the Prime Consultant, at no additional cost to the Client, shall redesign to bring the cost within the Construction Budget Forecast and retender.

3.4 CHANGES AND ADJUSTMENT

1 Changes and adjustment to the fees payable under this Agreement will be only considered if there is a material change in the level of services agreed to be provided or in the scope of the Project, or there is a material delay in the performance of the work required under the Contract.
2 The amounts due to the Prime Consultant arising from a material change to the Agreement will be determined by a negotiated fixed amount, or failing such negotiation, the actual cost as determined by level of effort incurred times the agreed hourly rate, plus receipted expenses.

3 Any increases in the fees payable caused by a material change or other changes shall be communicated by the Prime Consultant in writing to the Client prior to incurring such costs to permit the Client to mitigate the amount of increased costs.

3.5 ERRORS AND OMISSIONS

1 Any costs resulting from design errors on the part of the Prime Consultant, sub-consultants chosen by the Prime Consultant, or agents, or employees of the Prime Consultant or of any sub-consultant chosen by the Prime Consultant will be the responsibility of the Prime Consultant to remedy. However, where the Client and not the Prime Consultant chooses a sub-consultant to do hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work, the Prime Consultant shall not be held responsible for design errors attributed to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, or construction testing services, done by sub-consultants chosen by the Client, unless those design errors are directly caused by the Prime Consultant. In the case of sub-consultants chosen by the Client, the Client and not the Prime Consultant shall be responsible to takes such steps as the Client deems to be appropriate, to ensure that any sub-consultant chosen by the Client has appropriate and adequate policies of insurance that are acceptable to the Client in place to cover design errors attributable to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work done by any such sub-consultant.

.2 Any costs resulting from errors in design or omissions may be paid by the Client providing the cost of such design omissions does not entail removing material or equipment that has already been constructed in accordance with the plans and specifications. The cost of the original material and equipment, as indicated on the plans and specifications, and the labour to remove such will be the responsibility of the Prime Consultant.

3.6 PRIME CONSULTANT ACTIONS AND DECISIONS

1 The Prime Consultant acknowledges that adequate discussion has taken place regarding the Work with the Client and that the Prime Consultant has access to sufficient information to undertake the services contracted for within the Project Budget.

2 The Prime Consultant and the Client agrees to act promptly and diligently on all matters within their respective direction and control requiring an action or decision affecting the design, construction or administration of the project.

3 Only express approval by the Client shall be deemed to relieve the Prime Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant. No acceptance or approval by the Client, that is implied shall be deemed to relieve the Prime
Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant.

4 If the Prime Consultant does not promptly and diligently comply with or fails to meet the requirements of the Client, the Client may without prejudice to any other right or remedy the Client may have by giving the Prime Consultant written notice, and without prejudice to the Client's rights at law or elsewhere in this Agreement, take all such action deemed necessary for the prompt and economical completion of the project, and/or terminate the contract.

3.7 INSURANCE COVERAGE

1 The Prime Consultant shall supply written proof of:

1 Professional liability insurance coverage equal or greater than $250,000 per claim, $500,000 in aggregate for projects under $2 million construction value or $500,000 per claim, $1,000,000 aggregate for projects over $2 million. The Prime Consultant shall be fully responsible for all amounts deducted from this value by the Prime Consultant's Insurer. This Insurance shall remain in effect until the expiry of the general contractor's one year warranty on the project.

2 Commercial liability insurance acceptable to the Client with a minimum limit of $1,000,000.

2 The Insurer shall be an insurance company licensed to do business in the Province of Newfoundland & Labrador.

PART 4 BASIS OF PAYMENT SCHEDULE

4.1 The Client will pay for Program Advisory Services on the basis of an agreed fixed fee or on the basis of approved level of effort at agreed per diem rates.

4.2 The Client will pay for Basic Services on the basis of the agreed fixed fee. The Client's Project Budget Forecast will be made available to the Prime Consultant to assist in the evaluation of the level of effort required.

4.3 The fee for Basic Services will be apportioned to the phases of service as outlined in Schedule II - "Basic Services and Other Additional Services' Fees".

4.4 The fee for Basic Services will also include the management and co-ordination by the Prime Consultant and specialist consulting services as may be requested by the Client. Compensation for specialist or other consulting services will be on the basis of an agreed fixed fee for the level of effort required.

4.5 The Client will pay for resident services during construction, when requested based on an agreed fixed fee amount. The fee amount is to include all payroll costs, site-related expenses and allowances as agreed.

4.6 The Client will pay for construction management services when requested on the basis of the level of effort required during project implementation based on an agreed fixed fee.

4.7 The Client will pay for commissioning services on the basis of an agreed fixed fee. The fee amount shall include level of effort, associated with the preparation...
of documents and site visits to carry out commissioning activities, as outlined in the PMDA Manual.

4.8 The Client will pay for day-to-day routine expenses such as; long distance charges, reproduction costs, client presentations and submissions, original contract documents (hardcopy), courier services, travel over 50 km from office on an agreed fixed amount, All routine expenses to be charged at cost. Meals, Private Vehicle usage, and incidental expense are to be paid on the basis of Government Rates at time of this Agreement.

4.9 The Client will pay for Additional Reimbursable Allowances as provided for in Schedule III - “Additional Reimbursable Allowances”. These allowances require supporting documents to be provided for payment.
SCHEDULE I
PROJECT DESCRIPTION

To undertake a detailed assessment of the exterior of the Botwood Collegiate with special attention to the windows.
SCHEDULE IV
SCHEDULE OF THE PERFORMANCE OF CONSULTANT SERVICES

Site Visit - August 2016
Assessment Report - August 2016
SCHEDULE V
OTHER CONDITIONS OF SERVICES

(Not applicable unless text is added to this schedule)
SCHEDULE “B”
SPECIAL TERMS AND CONDITIONS (as necessary)

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

Margaret Gillies, Q.C., General Counsel  Janet Vivian-Walsh, Deputy Minister

The Special Terms and Conditions of this Agreement are follows:
As per the Contract terms contained herein
OR

1. No Special Terms and Conditions

Department of Justice

Deputy Minister
SCHEDULE "C"

GENERAL TERMS AND CONDITIONS

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SCHEDULE "C"

GENERAL TERMS AND CONDITIONS

Article - 1. PAYMENT

1.1 Consideration

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

Payment Option #1

Subject to Article 1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, for the satisfactory performance of the Work, Five Thousand Three Hundred Dollars ($5,300) (plus HST) in accordance with the following payment schedule:

(i) Periodic payments – payments paid monthly proportional with the amount of work completed to date.

Payment Option #2 Not Applicable

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

(i) Person / Professional Designation – Hourly Rate

Payment Option #3 Not Applicable

Subject to Article 1.3, upon the satisfactory completion of the Work and the presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, $Insert Absolute Limit on Cost of Services (plus HST).

1.2 Reimbursement of Expenses

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

Reimbursement Option A

(a) The Client shall only be responsible for the following reimbursable expenses, payable at cost, provided the Prime Consultant can
demonstrate to the Client that such expenses were incurred in relation to the Work, and that documentation, satisfactory to the Client, is provided in support of the reimbursable expense claimed and is attached to the applicable invoice, including for example, originals of supporting receipts, invoices or statements issued by non-parties to this Agreement:

(l) **Travel, Printing, Photocopying** - $200

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

**Reimbursement Option B Not Applicable**

The Client shall not be responsible for any expenses incurred by the Prime 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) The Prime Consultant shall remain obligated to complete the Work notwithstanding that the actual costs of the Prime Consultant, whether in respect of professional services or in respect of costs or expenses incurred, may exceed the total aggregate sum set out in this Agreement.

(b) The Parties agree and confirm that as set out in section 25(6) of the *Financial Administration Act*, RSNL 1990 c. F-8, as amended, all fees payable in accordance with this Agreement are subject to there being an appropriation for the work for the fiscal year in which payment under this Agreement is due.

(c) Payment will be made within 60 calendar days of receipt of a properly documented invoice. The Client shall within thirty (30) days of the execution of this Agreement should the Prime Consultant request the same provide direction to the Prime Consultant as to what constitutes a properly documented invoice.

(d) All invoices shall clearly show the amount of HST billed by the Prime Consultant as a separate item.

(e) The Prime Consultant shall conform to any request that may be made by the Client to alter the form of invoice customarily used by the Prime Consultant as may be reasonably required for the purposes of the Client's internal accounting systems. The Prime 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 Prime Consultant which may arise from work, services or expenses incurred to remedy errors or omissions in the Work for which the Prime Consultant is responsible.

(g) The Prime Consultant shall submit invoices to:
Department of Education and Early Childhood Development
Design and Construction Division
3rd Floor, West Block, Confed. Building
St. John’s, NL A1B 4J6

Article - 2. INFORMATION SUPPLIED BY THE CLIENT

2.1 The Client will furnish to the Prime Consultant all available information necessary for the performance of the Work.

2.2 Where discrepancies, omissions or obscurities in the information are evident, the Prime Consultant shall bring them to the attention of the Client and secure written instructions from the Client before proceeding with any work.

Article - 3. CONFIDENTIALITY, MATERIALS AND COPYRIGHT

3.1 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 Prime Consultant, the Prime Consultant’s 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;

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 Prime Consultant, the Prime Consultant’s employees, servants and/or agents during the performance of the services or in any way related thereto;

(c) all personal information, as defined from time to time under the Access to Information and Protection of Privacy Act, SNSL 2002 c. A-1.1, to mean recorded information about an identifiable individual, including,

(i) the individual’s name, address or telephone number;

(ii) the individual’s race, national or ethnic origin, colour, or religious or political beliefs or associations,
(iii) the individual's age, sex, sexual orientation, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual's fingerprints, blood type or inheritable characteristics,

(vi) information about the individual's health care status or history, including a physical or mental disability,

(vii) information about the individual's educational, financial, criminal or employment status or history,

(viii) the opinions of a person about the individual, and

(ix) the individual's personal views or opinions

for any individual, which is, directly or indirectly, disclosed to or collected by the Prime Consultant, the Prime Consultant's 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 Prime Consultant, the Prime Consultant's 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 Prime Consultant was or thereafter became part of the public domain through no act or omission of the Prime Consultant or the Prime Consultant's Representatives; or

(ii) is information which the Prime Consultant can show possession of prior to the date of this Agreement and which was received or developed by the Prime Consultant free of obligations of confidentiality to the Client.

3.2 The Prime Consultant shall treat all Confidential Information acquired by the Prime Consultant in the performance of the Services as privileged and confidential and shall not divulge the same to any person or persons at any time without the express written approval of the Client, unless required to do so by law, which may include any subpoena or other similar process or in connection with litigation, arbitration or other proceeding or by virtue of an act or regulations. In the event that such disclosure is required, the Prime Consultant shall give the Client prompt notice of the requirement upon becoming aware that such disclosure is required. Where circumstances do not permit the Prime Consultant to provide such notice prior to disclosure, the Prime Consultant shall provide such notice to the Client immediately after the required disclosure.

3.3 The Prime 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.

3.4 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 Prime 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 Prime 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 Prime Consultant pursuant to the terms of this Agreement. The Prime Consultant acknowledges that the Client's right to this information shall at all times be paramount to any rights of the Prime Consultant, at law or in equity, and that the Prime 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 Prime Consultant's possession.

3.5 The Prime 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 Prime Consultant, the Prime Consultant's employees, servants and/or agents, and shall certify the destruction of same to the Client. However, nothing in this Agreement shall preclude the Prime Consultant's privilege to retain copies of documents provided to it or prepared by it in connection with the Work, provided such documents are kept in a secure manner, are used by the Prime Consultant solely for the purposes of defending itself against claims arising from the Work of the Contract, and that the aforesaid documentation is destroyed or returned to the Client at the end of all limitation periods for commencing any action in connection with the Work or upon the conclusion or settlement with finality of any claim or action with respect to the Work.

3.6 The Prime Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Prime Consultant, the Prime Consultant's employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the Access to Information and Protection of Privacy Act, the Management of Information Act, SNL 2005, c. M-1.01, and the Privacy Act, RSNL1990 c. P-22, as well as other legislation which may apply in the jurisdiction of the Prime Consultant's operation. The Prime 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 Prime Consultant, and the Prime Consultant's employees, servants and/or agents.

3.7 The Prime Consultant shall ensure that its 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 Prime Consultant employs to avoid disclosure or dissemination of the Prime Consultant's own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of the Prime Consultant's employees, servants or agents other than those who are required to have access to the same 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 Prime Consultant comply with all policies, standards and safeguards established under this Article;

(d) advise the Client of any changes in the Prime Consultant's 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 Prime 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.

3.8 The Prime Consultant shall only disclose Confidential Information to persons other than the Prime Consultant's 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".

3.9 The Prime 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 Prime 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 Prime Consultant;

(b) promptly furnish to the Client full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the Client in investigating or preventing the recurrence of any unauthorized
possession, use or knowledge, or attempt thereof, of Confidential Information;

(c) use reasonable efforts to cooperate with the Client in any litigation and investigation against third parties deemed necessary by the Client to protect its proprietary rights;

(d) promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information; and

(e) refer to and follow the privacy breach protocol of the Government of Newfoundland and Labrador as it exists at the time of the breach and located on the Department of Justice website at: http://www.justice.gov.nl.ca/just/info/privacybreach.html

Article - 4. EMPLOYEES OF THE PRIME CONSULTANT

4.1 The Prime Consultant shall provide employees who are competent in their field of specialization. The Client will have the right to have the Prime 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 Prime 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 concerned was involved and may refuse to approve payment for such Work.

4.2 The Prime 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 - 5. ACCESS TO FACILITIES

5.1 The Client agrees to provide access to the project site for the Prime Consultant to perform the Work during Client office hours.

5.2 When using or accessing the premises of the Client, the Prime Consultant and all officers, employees and agents of the Prime Consultant shall comply with all security regulations and workplace policies and procedures in effect from time to time at the Client’s facilities.

Article - 6. RECORDS AND AUDIT

6.1 The Prime 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.

6.2 The Prime Consultant shall furnish reports as required by the Client for the purpose of monitoring the progress of the Work.
Article - 7.  TERMINATION

7.1 This Agreement is deemed to be concluded once the Work has been completed to the satisfaction of the Client and the payment(s), as stipulated in the Agreement, has been issued to the Prime Consultant.

7.2 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.

7.3 Where this Agreement is terminated prior to the mutually agreed upon completion date, the Prime Consultant shall thereupon be entitled to payment in accordance with this Agreement in respect of that part of the Work completed up to the date of termination, provided however, that the Prime 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 - 8.  NOTICES

8.1 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:

Education and Early Childhood Development
Design and Construction Division
3rd Floor, West Block, Confederation Building
St. John's, NL  A1B 4J6
Phone: (709) ###-####
Fax: (709) ###-####
Email: Insert Email for contact

For the Prime Consultant:

CECON Ltd.
Barry J. Thomson
93 Edinburgh Avenue
Gander, NL  A1V 1C9
Phone: (709) 256-7112
Fax: (709) 256-8324
Email: [Redacted]

8.2 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 telex or other means of electronic communication; and

(c) Six (6) days after delivery to Canada Post Corporation where the postal service is used.

Article - 9. LIABILITY

9.1 The Prime Consultant agrees that in performance of the Work neither the Prime Consultant nor any Prime Consultant’s Representative shall be or be deemed to be an officer, servant, agent or partner of the Client.

9.2 The Client shall not be liable for, and the Prime 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 negligence or default of the Prime Consultant under this Agreement, including the negligence or default of any sub-consultant chosen by the Prime Consultant. Except to the extent that such losses, costs, charges or expenses as are referenced in this clause are caused by the negligence or default of the Client under this Agreement, the Prime Consultant shall defend any and all such actions and pay all legal charges, costs and other expenses arising therefrom. Where the Prime Consultant fails to defend such an action, 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 Prime Consultant.

Article - 10. COMPLIANCE WITH LAW

10.1 In respect of any work within the Province of Newfoundland and Labrador connected with or arising from this Agreement, the Prime 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.

10.2 The Prime Consultant shall ensure that the Prime Consultant and its Representatives comply with all requirements of any governing federal, provincial or municipal legislation, by-laws or regulations applicable to the Prime Consultant or the Prime Consultant’s Representatives in the performance of the Work.

Article - 11. ARBITRATION

11.1 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, the parties shall first attempt to resolve all matters through friendly negotiation by a meeting between their representatives upon notice per Article 8. A resolution reached in this way must be reached within 10 days of both parties having knowledge and notice of the dispute and be reduced to writing.
11.2 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Article 11.1), either party may give the other notice of such dispute and request third party mediation thereof.

11.3 Should the parties not agree to third party mediation or the matter in dispute between the parties not be resolved by mediation, then in the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Articles 11.1 and 11.2), either party may give the other notice of such dispute and 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 c. A-14, including such provisions for the appointment of arbitrators.

Article - 12. LAWS GOVERNING

12.1 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 - 13. USE OF WORK

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

13.2 With respect to 13.1 the Prime Consultant’s liability to the Client for and in respect of the Work is solely limited to the project described in this Agreement.

Article - 14. CONFLICT OF INTEREST

14.1 No member of the House of Assembly of the Province of Newfoundland and Labrador shall be admitted to any part or share of the payments made pursuant to this Agreement or to any benefits arising therefrom.

14.2 The Prime Consultant and the Prime 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
Article - 15. SUBCONTRACTORS

15.1 The Prime Consultant shall not sub-contract all or a portion of the Work without the prior written approval of the Client, which consent will not be unreasonably withheld.

15.2 The entry into any subcontract shall not relieve the Prime Consultant of any of its obligations under the terms of this Agreement.

Article - 16. GENERAL

16.1 Articles 3 and 9 of this Agreement shall survive the termination or expiration of this Agreement.

16.2 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.

16.3 Time shall be of the essence of this Agreement.

16.4 The failure of the Client to insist upon or enforce in any instance strict performance by the Prime 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.

16.5 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.

16.6 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.

16.7 This Agreement shall enure to the benefit of and be binding upon the Parties hereto, their respective heirs, legal representatives, successors and assigns.

16.8 The Prime Consultant shall not assign this Agreement in whole or in part to any third party without the prior written approval of the Client.
SCHEDULE “D”

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

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

- All portable storage devices or media (e.g., flash drives, memory sticks, portable hard drives, writeable compact discs or digital video discs, etc.) may only be used to transport and/or store Confidential Information where either the Confidential Information or the device or media is encrypted.

- Unless specifically authorized by the Prime Consultant’s Contract or otherwise, the Prime Consultant is not permitted to attach non-government computers or other information technology systems to any Government network.

- The Prime Consultant is expected to implement and maintain up to date versions of all ordinary business software for the reasonable protection of information on computers attached to the Internet which will have access to or store Confidential Information, including security firewall and anti-viral software.

- The Prime Consultant is not permitted to use any Peer to Peer file sharing program (e.g., Limewire, etc) or chat program (e.g., MSN, Skype) on any information technology asset which will contain Confidential Information, or which will be connected via a network to any computer which will contain Confidential Information.

- Email should not be used as a method to transmit Confidential Information across public networks such as the Internet unless the e-mail and/or its attachments are encrypted or zipped in a secure manner.

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

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

- For the purposes of Schedule D, routine exchanges of design and construction information between the Client, the Prime Consultant and the Prime Consultant’s sub-consultants that is of a non-confidential nature need not be encrypted.
Mr. Barry Thompson  
Cecon Ltd.  
93 Edinburgh Avenue  
Gander NL A1V 1C9

Dear Mr. Thompson:

**Consultant Appointment**

Your firm has been selected to provide professional services for the following in accordance with the attached conditions outlined below.

**Window Assessment - Project #300422013**  
**Glovertown Academy, Glovertown, NL**

The scope of services will entail a site visit with Department staff and a representative of the School District or others as designated by the Department. Once this assessment is complete, a minuted scope review meeting with the Department of Education and Early Childhood Development and school district officials will take place to discuss findings and prepare recommendations for the scope of the work.

Fees for this portion of your commission will be per diem rates plus expenses at government rates and policies. A maximum upset limit will have to be agreed upon prior to performing the assessment and a prime consultant agreement signed.

By accepting this commission, your firm acknowledges that it is willing to enter into a contract containing the terms as outlined in the Government of Newfoundland and Labrador’s Standard Form of Agreement and a negotiated fee and schedule as outlined by our Project Manager. An electronic copy of our standard Agreement is attached for your perusal.

The assessment and recommendations must be completed within 4 weeks of the date of this letter.

If you are interested in carrying out this work, upon receipt of this letter please contact Mr. Peter Parsons, Design and Construction Division, at (709) 729-6464, to arrange the assessment. Also, please forward an updated copy of your proof of insurance as well as a letter of good standing with WorkplaceNL for our records.
If you are unable to undertake this work, please advise within one week of receipt of this letter so that we can arrange to appoint another consultant.

Sincerely,

[Signature]

INGRID E. CLARKE, P.Eng., FEC
Assistant Deputy Minister
(Infrastructure)

cc: Ms. Janet Vivian-Walsh
    Mr. Jim Sinnott
    Mr. Peter Parsons
    Ms. Natalie Hallett
    Ms. Kara Connors
    Mr. Blair Medd
    Mr. Paul Lahey
STANDARD FORM OF AGREEMENT
BETWEEN CLIENT AND PRIME CONSULTANT

WINDOW ASSESSMENT
GLOVERTOWN ACADEMY
GLOVERTOWN, NL
PROJECT NO. 300422013
CECON NO. 16303
AGREEMENT

THIS AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador, on this 3rd day of August, 2016.

BETWEEN: HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR as represented by the Minister of Education & Early Childhood Development. ("the Client")

AND: CECON Ltd. ("the Prime Consultant")

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

I. Definitions
In addition to the terms defined in the Special Terms and Conditions attached as Schedule “B”, (if any), and the General Terms and Conditions attached as Schedule “C”, the following words and phrases shall have the following meanings:

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

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

II. The Prime Consultant's Work
The Prime Consultant shall do all things necessary to fulfill and carry out all of the obligations of the Prime Consultant as set out in the Contract Documents (the "Work").

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

IV. **Representations and Warranties**

The Prime Consultant hereby represents and warrants that every fact stated or represented by the Prime Consultant or its Representatives to the Client in connection with any proposal made by the Prime 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.

V. **Conflict Between Provisions**

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

VI. **Start and Completion Date**

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

- **Start Date:** August 22, 2016
- **Completion Date:** September 12, 2016

VII. **Effective Date**

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

VIII. **Paragraph Numbering**

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

IX. **Counterparts**

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

Minister of Education and Early Childhood Development, or his/her authorized designate

Recommended By (Name/Date):
PM: Peter Payette Aug 16/16
Manager: S. Varghese Aug 16/16
Director: Natalie Allcott Aug 19/16

CECON Ltd.

Name: Barry J. Thomson
Date: July 26, 2016
SCHEDULE “A”

SCOPE OF WORK
BETWEEN PRIME CONSULTANT AND CLIENT

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Schedule I. Project Description
Schedule II. Basic and other Additional Services Fees
Schedule III. Additional Reimbursement Allowances
Schedule IV. Schedule of the Performance of Consultant Services
Schedule V. Other Conditions of Services
PART 1  DEFINITIONS

1.1 Project Budget Forecast: means the Client's estimated total expenditure for the project. It includes the construction budget forecast and all other costs to the Client for the project such as, but not limited to, professional fees and acquisition costs.

1.2 Construction Budget Forecast: means the Client's estimated Construction Cost including contingencies for cost increases.

1.3 Construction Cost: means the contract price(s) of all elements of the project designed or specified by or on behalf of the Prime Consultant including, all applicable taxes. Where there is no contract price for all or part of the project, the Construction Cost shall be the elemental cost analysis using market rates at the estimated time of construction as determined by the Prime Consultant and agreed by the Client. The Construction Cost does not include professional fees, or land acquisition costs.

1.4 Contract: means an agreement between the Client and the Contractor for the provision of labour, materials and equipment for the construction of the project or part of the project by a Contractor.

1.5 Contractor: means a person, firm, or corporation contracting with the Client to provide labour, materials and equipment for the construction of the Project or part of the Project.

1.6 Project Management Design Administration Manual (PMDA Manual): a manual developed and maintained by the Department of Transportation and Works, Works Branch, for the purpose of presenting standards, guidelines and instructions for the delivery of building projects administered by the Works Branch. Unless otherwise agreed between the parties, the version published on the date of this Contract shall be the version applicable to this Contract.

1.7 Additional Services: means Consulting Services provided that are additional to the Basic Services.

1.8 Basic Services: means Consulting Services as outlined in the PMDA Manual.

1.9 Cost Control Services: means a service to monitor and advice on Project Budget and Construction Budget Forecasts.

1.10 Partial Services: means Reduced Basic Services as negotiated by the Client with the Prime Consultant.

1.11 Program Advisory Services: means Consulting Services provided by the Prime Consultant prior to start of Basic Services.

1.12 Authorities Having Jurisdiction (AHJ): means a person or persons representing these agencies that have authority to provide plan approvals and permits for the purpose of constructing the project.
PART 2 RESPONSIBILITIES

2.1 PRIME CONSULTANT

.1 The Prime Consultant's services consist of Basic Services and Additional Services which may be required to perform the Work. The phases of the Prime Consultant's Basic Services, and Additional Services are listed on Schedule II, and further elaborated in the Project Management and Design Administration (PMDA) Manual of the Department of Transportation and Works.

.2 The Prime Consultant's services as provided for under and pursuant to this Agreement at and during all phases of the Work shall encompass coordination of all disciplines, quality assurance and documentation control to integrate all services and sub consultant's work. The Prime Consultant shall prepare and submit contract documents in accordance with the Client's requirements, as outlined in the PMDA Manual.

.3 During the tendering and contract award phase, the Prime Consultant may advise and assist the Client in obtaining bids and awarding construction contracts. The Client's tendering and contract procedures and administrative practices will be followed in the performance of this phase, as outlined in the PMDA Manual.

.4 The Client may require the Prime Consultant to provide construction administration services. When required the Prime Consultant's service shall be based upon either full responsibility or partial responsibility.

.1 Full Responsibility

.1 As outlined in the PMDA Manual, services provided under full responsibility include assessing construction work carried out on or in relation to the project and offering an opinion as to whether or not the construction of the project is in accordance with the contract documents prepared by the Prime Consultant.

.2 Partial Service

.1 The scope of this partial service is to be outlined in Schedule I of this agreement, as agreed between the Client and the Prime Consultant.

.5 The project completion phase represents the portion of the Basic Services to be provided at the commencement of substantial completion until expiry of the one year Project warranty period. This service includes the provision of record drawings as outlined in the PMDA Manual, and advice concerning issues arising during this period.

.6 Cost Control Services are included under the scope of Basic Services to be provided by the Prime Consultant, as outlined in the PMDA Manual.

.7 The following schedules apply:

- Schedule I - Project Description
- Schedule II - Basic and Other Additional Services Fees
- Schedule III - Additional Reimbursable Allowances
- Schedule IV - Other Conditions of Services
2.2 CLIENT'S RESPONSIBILITIES

.1 The Client shall give due consideration to documentation submitted by the Prime Consultant and, whenever action is necessary, the Client shall inform the Prime Consultant of the Client's decisions, in a reasonable and timely manner.

.2 The Client shall authorize persons to act on behalf of the Client with respect to delivery and administration of the project.

.3 If the Client observes or otherwise becomes aware of any fault or defect in the project or any nonconformity with the requirements of the Contract, the Prime Consultant shall be so notified in writing.

.4 The Client may provide information regarding the project including: a program, which shall set forth the Client's spatial and functional requirements and relationships. The Prime Consultant is responsible for requesting or providing information that is required to prepare the design and contract documents.

.5 The Client will provide the Prime Consultant with a Project Budget Forecast.

.6 The Client shall reimburse the Prime Consultant for procuring information which the Prime Consultant requires for the provision of services necessary to carry out the preparation of design and/or contract documentation when the information is not available upon request from the Client such as site surveys, hazardous material surveys.

.7 When the Client supplies the Prime Consultant with information contained within reports or equipment data sheets, the Prime Consultant will not be required to exhaustively check information supplied by the Client to verify the same unless it is requested to do so by the Client. However, if the Prime Consultant observes, or otherwise becomes aware, of any fault or defect in the information supplied to it by the Client, the Consultant shall cause the Client to be notified in writing of any such fault or defect forthwith.

.8 Where the Prime Consultant has been authorized by the Client to procure or obtain information, the Prime Consultant shall be responsible in seeing that the information provided meets the needs of the sub-consultant(s) performing the work under the direction of the Prime Consultant.

.9 The Client will reimburse the Prime Consultant for other specialist consultants that may be required to carry out quality control services during the project, subject to prior approval of scope of the work and an agreement on the fee or fees payable for the same by the Client.

PART 3 GENERAL REQUIREMENTS

3.1 STAFF

The Prime Consultant will provide the Client with a list of its employees and those of its sub-consultants who will be assigned to the project. The list will include the classification of each employee and the hourly rate to be charged for additional services rendered. The Prime Consultant will obtain written prior approval of
Client for any replacement of key employees, changes in the numbers of key employees or changes to rates of key employees assigned to the project.

3.2 SCHEDULE

.1 The Prime Consultant has developed and submitted a time schedule for the performance of consultant services on the project (which Schedule has been approved by the Client and is appended as Schedule “IV” hereto. The schedule shall incorporate all major design milestones as presented in the PMDA Manual.

.2 Unless otherwise agreed to between the parties, the failure by a party to comply with the approved schedule for those aspects of the Work that a party is responsible for may be sufficient cause for the other party to terminate this Agreement, if that failure is not rectified within seven (7) days after the defaulting party is given notice of its default.

.3 If either party believes that a change in the approved schedule is necessary the party requesting that change shall promptly give notice of that fact to the other party in writing, provide the other party with a revised schedule and the reason(s) why the change is requested for its consideration and request its written approval of the same. Should that approval be forthcoming the revised schedule will become the approved schedule for the project.

3.3 COST CONTROL

.1 The Prime Consultant shall provide Cost Control Services in accordance with PMDA Manual.

.2 If at any time the Prime Consultant considers its estimates indicate costs which exceed the Project or Construction Budget Forecast, the Prime Consultant will immediately advise the Client. If the excess is due to, discretionary design elements under the control of or reasonably foreseeable by the Prime Consultant, or the negligence or default of the Prime Consultant in the performance of this Agreement, the Client may require the Prime Consultant to redesign the project at the Prime Consultant’s expense to bring the cost estimate within the approved Project Budget Forecast.

.3 If the preferred bidder’s tender for the project for which the Prime Consultant has prepared and provided the design(s) and provided cost pricing and control services exceeds the Construction Budget Forecast as a result of the negligence or default of the Prime Consultant under this Agreement or is for reasons related to discretionary design elements which are under the Prime Consultant’s control or which the Prime Consultant should have reasonably foreseen and could have guarded against, then the Prime Consultant, at no additional cost to the Client, shall redesign to bring the cost within the Construction Budget Forecast and retender.

3.4 CHANGES AND ADJUSTMENT

.1 Changes and adjustment to the fees payable under this Agreement will be only considered if there is a material change in the level of services agreed to be provided or in the scope of the Project, or there is a material delay in the performance of the work required under the Contract.
The amounts due to the Prime Consultant arising from a material change to the Agreement will be determined by a negotiated fixed amount, or failing such negotiation, the actual cost as determined by level of effort incurred times the agreed hourly rate, plus receipts of expenses.

Any increases in the fees payable caused by a material change or other changes shall be communicated by the Prime Consultant in writing to the Client prior to incurring such costs to permit the Client to mitigate the amount of increased costs.

3.5 ERRORS AND OMISSIONS

Any costs resulting from design errors on the part of the Prime Consultant, sub-consultants chosen by the Prime Consultant, or agents, or employees of the Prime Consultant or of any sub-consultant chosen by the Prime Consultant will be the responsibility of the Prime Consultant to remedy. However, where the Client and not the Prime Consultant chooses a sub-consultant to do hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work, the Prime Consultant shall not be held responsible for design errors attributed to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, or construction testing services, done by sub-consultants chosen by the Client, unless those design errors are directly caused by the Prime Consultant. In the case of sub-consultants chosen by the Client, the Client and not the Prime Consultant shall be responsible to take such steps as the Client deems to be appropriate, to ensure that any sub-consultant chosen by the Client has appropriate and adequate policies of insurance that are acceptable to the Client in place to cover design errors attributable to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work done by any such sub-consultant.

Any costs resulting from errors in design or omissions may be paid by the Client providing the cost of such design omissions does not entail removing material or equipment that has already been constructed in accordance with the plans and specifications. The cost of the original material and equipment as indicated on the plans and specifications, and the labour to remove such will be the responsibility of the Prime Consultant.

3.6 PRIME CONSULTANT ACTIONS AND DECISIONS

The Prime Consultant acknowledges that adequate discussion has taken place regarding the Work with the Client and that the Prime Consultant has access to sufficient information to undertake the services contracted for within the Project Budget.

The Prime Consultant and the Client agrees to act promptly and diligently on all matters within their respective direction and control requiring an action or decision affecting the design, construction or administration of the project.

Only express approval by the Client shall be deemed to relieve the Prime Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant. No acceptance or approval by the Client, that is implied shall be deemed to relieve the Prime
Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant.

3.7 INSURANCE COVERAGE

1. The Prime Consultant shall supply written proof of:

1. Professional liability insurance coverage equal or greater than $250,000 per claim, $500,000 in aggregate for projects under $2 million construction value or $500,000 per claim, $1,000,000 aggregate for projects over $2 million. The Prime Consultant shall be fully responsible for all amounts deducted from this value by the Prime Consultant’s Insurer. This Insurance shall remain in effect until the expiry of the general contractor’s one year warranty on the project.

2. Commercial liability insurance acceptable to the Client with a minimum limit of $1,000,000.

2. The Insurer shall be an insurance company licensed to do business in the Province of Newfoundland & Labrador.

PART 4 BASIS OF PAYMENT SCHEDULE

4.1 The Client will pay for Program Advisory Services on the basis of an agreed fixed fee or on the basis of approved level of effort at agreed per diem rates.

4.2 The Client will pay for Basic Services on the basis of the agreed fixed fee. The Client’s Project Budget Forecast will be made available to the Prime Consultant to assist in the evaluation of the level of effort required.

4.3 The fee for Basic Services will be apportioned to the phases of service as outlined in Schedule II - “Basic Services and Other Additional Services’ Fees”.

4.4 The fee for Basic Services will also include the management and co-ordination by the Prime Consultant and specialist consulting services as may be requested by the Client. Compensation for specialist or other consulting services will be on the basis of an agreed fixed fee for the level of effort required.

4.5 The Client will pay for resident services during construction, when requested based on an agreed fixed fee amount. The fee amount is to include all payroll costs, site-related expenses and allowances as agreed.

4.6 The Client will pay for construction management services when requested on the basis of the level of effort required during project implementation based on an agreed fixed fee.

4.7 The Client will pay for commissioning services on the basis of an agreed fixed fee. The fee amount shall include level of effort; associated with the preparation
of documents and site visits to carry out commissioning activities, as outlined in the PMDA Manual.

4.8 The Client will pay for day-to-day routine expenses such as: long distance charges, reproduction costs, client presentations and submissions, original contract documents (hardcopy), courier services, travel over 50 km from office on an agreed fixed amount. All routine expenses to be charged at cost. Meals, Private Vehicle usage, and incidental expense are to be paid on the basis of Government Rates at time of this Agreement.

4.9 The Client will pay for Additional Reimbursable Allowances as provided for in Schedule III - "Additional Reimbursable Allowances". These allowances require supporting documents to be provided for payment.
SCHEDULE I
PROJECT DESCRIPTION

To undertake a condition assessment of the exterior of Glovertown Academy with special attention to the windows.
SCHEDULE IV
SCHEDULE OF THE PERFORMANCE OF CONSULTANT SERVICES

Site Visit - August 2016
Assessment Report - August 2016
SCHEDULE V
OTHER CONDITIONS OF SERVICES

(Not applicable unless text is added to this schedule)
SCHEDULE "B"

SPECIAL TERMS AND CONDITIONS (as necessary)

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

Margaret Gillies, Q.C., General Counsel Janet Vivian-Walsh, Deputy Minister

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

As per the Contract terms contained herein

OR

1. No Special Terms and Conditions

Department of Justice

Deputy Minister
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</table>
SCHEDULE “C”

GENERAL TERMS AND CONDITIONS

Article - 1. PAYMENT

1.1 Consideration

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

Payment Option #1

Subject to Article 1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, for the satisfactory performance of the Work, Five Thousand Two Hundred Dollars ($5,200) (plus HST) in accordance with the following payment schedule:

(i) Periodic payments – payments paid monthly proportional with the amount of work completed to date.

Payment Option #2 Not Applicable

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

(i) Person / Professional Designation – Hourly Rate

Payment Option #3 Not Applicable

Subject to Article 1.3, upon the satisfactory completion of the Work and the presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, $Insert Absolute Limit on Cost of Services (plus HST).

1.2 Reimbursement of Expenses

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

Reimbursement Option A

(a) The Client shall only be responsible for the following reimbursable expenses, payable at cost, provided the Prime Consultant can
demonstrate to the Client that such expenses were incurred in relation to the Work, and that documentation, satisfactory to the Client, is provided in support of the reimbursable expense claimed and is attached to the applicable invoice, including for example, originals of supporting receipts, invoices or statements issued by non-parties to this Agreement:

(i) Travel, Printing, Photocopying - $100

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

Reimbursement Option B Not Applicable

The Client shall not be responsible for any expenses incurred by the Prime 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) The Prime Consultant shall remain obligated to complete the Work notwithstanding that the actual costs of the Prime Consultant, whether in respect of professional services or in respect of costs or expenses incurred, may exceed the total aggregate sum set out in this Agreement.

(b) The Parties agree and confirm that as set out in section 25(6) of the Financial Administration Act, RSNL 1990 c. F-8, as amended, all fees payable in accordance with this Agreement are subject to there being an appropriation for the work for the fiscal year in which payment under this Agreement is due.

(c) Payment will be made within 60 calendar days of receipt of a properly documented invoice. The Client shall within thirty (30) days of the execution of this Agreement should the Prime Consultant request the same provide direction to the Prime Consultant as to what constitutes a properly documented invoice.

(d) All invoices shall clearly show the amount of HST billed by the Prime Consultant as a separate item.

(e) The Prime Consultant shall conform to any request that may be made by the Client to alter the form of invoice customarily used by the Prime Consultant as may be reasonably required for the purposes of the Client’s internal accounting systems. The Prime 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.
The Client shall not be responsible to pay any amounts invoiced by the Prime Consultant which may arise from work, services or expenses incurred to remedy errors or omissions in the Work for which the Prime Consultant is responsible.

The Prime Consultant shall submit invoices to:

Department of Education and Early Childhood Development
Design and Construction Division
3rd Floor, West Block, Confed. Building
St. John's, NL A1B 4J6

Article - 2. INFORMATION SUPPLIED BY THE CLIENT

2.1 The Client will furnish to the Prime Consultant all available information necessary for the performance of the Work.

2.2 Where discrepancies, omissions or obscurities in the information are evident, the Prime Consultant shall bring them to the attention of the Client and secure written instructions from the Client before proceeding with any work.

Article - 3. CONFIDENTIALITY, MATERIALS AND COPYRIGHT

3.1 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 Prime Consultant, the Prime Consultant’s 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;

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 Prime Consultant, the Prime Consultant’s employees, servants and/or agents during the performance of the services or in any way related thereto;

(c) all personal information, as defined from time to time under the Access to Information and Protection of Privacy Act, SNL 2002 c. A-1.1, to mean recorded information about an identifiable individual, including,

(i) the individual’s name, address or telephone number,

(ii) the individual’s race, national or ethnic origin, colour, or religious or political beliefs or associations,
(iii) the individual's age, sex, sexual orientation, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual's fingerprints, blood type or inheritable characteristics,

(vi) information about the individual's health care status or history, including a physical or mental disability,

(vii) information about the individual's educational, financial, criminal or employment status or history,

(viii) the opinions of a person about the individual, and

(ix) the individual's personal views or opinions

for any individual, which is, directly or indirectly, disclosed to or collected by the Prime Consultant, the Prime Consultant's 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 Prime Consultant, the Prime Consultant's 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 Prime Consultant was or thereafter became part of the public domain through no act or omission of the Prime Consultant or the Prime Consultant's Representatives; or

(ii) is information which the Prime Consultant can show possession of prior to the date of this Agreement and which was received or developed by the Prime Consultant free of obligations of confidentiality to the Client.

3.2 The Prime Consultant shall treat all Confidential Information acquired by the Prime Consultant in the performance of the Services as privileged and confidential and shall not divulge the same to any person or persons at any time without the express written approval of the Client, unless required to do so by law, which may include any subpoena or other similar process or in connection with litigation, arbitration or other proceeding or by virtue of an act or regulations. In the event that such disclosure is required, the Prime Consultant shall give the Client prompt notice of the requirement upon becoming aware that such disclosure is required. Where circumstances do not permit the Prime Consultant to provide such notice prior to disclosure, the Prime Consultant shall provide such notice to the Client immediately after the required disclosure.

3.3 The Prime 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.

3.4 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 Prime 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 Prime 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 Prime Consultant pursuant to the terms of this Agreement. The Prime Consultant acknowledges that the Client’s right to this information shall at all times be paramount to any rights of the Prime Consultant, at law or in equity, and that the Prime 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 Prime Consultant’s possession.

3.5 The Prime 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 Prime Consultant, the Prime Consultant’s employees, servants and/or agents, and shall certify the destruction of same to the Client. However, nothing in this Agreement shall preclude the Prime Consultant’s privilege to retain copies of documents provided to it or prepared by it in connection with the Work, provided such documents are kept in a secure manner, are used by the Prime Consultant solely for the purpose of defending itself against claims arising from the Work of the Contract, and that the aforesaid documentation is destroyed or returned to the Client at the end of all limitation periods for commencing any action in connection with the Work or upon the conclusion or settlement with finality of any claim or action with respect to the Work.

3.6 The Prime Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Prime Consultant, the Prime Consultant’s employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the Access to Information and Protection of Privacy Act, the Management of Information Act, SNL 2005, c. M-1.01, and the Privacy Act, RSNL1990 c. P-22, as well as other legislation which may apply in the jurisdiction of the Prime Consultant’s operation. The Prime 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 Prime Consultant, and the Prime Consultant’s employees, servants and/or agents.

3.7 The Prime Consultant shall ensure that it, and the Prime Consultant’s 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 Prime Consultant employs to avoid disclosure or dissemination of the
Prime Consultant's own confidential information, to prevent the disclosure
of any of the Confidential Information to any third party, or to any of the
Prime Consultant's employees, servants or agents other than those who
are required to have access to the same 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 Prime Consultant
comply with all policies, standards and safeguards established under this
Article;

(d) advise the Client of any changes in the Prime Consultant's 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 Prime 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.

3.8 The Prime Consultant shall only disclose Confidential Information to persons
other than the Prime Consultant's 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".

3.9 The Prime 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 Prime 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 Prime
Consultant;

(b) promptly furnish to the Client full details of the unauthorized possession,
use or knowledge, or attempt thereof, and assist the Client in
investigating or preventing the recurrence of any unauthorized
possession, use or knowledge, or attempt thereof, of Confidential Information;

(c) use reasonable efforts to cooperate with the Client in any litigation and investigation against third parties deemed necessary by the Client to protect its proprietary rights;

(d) promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information; and

(e) refer to and follow the privacy breach protocol of the Government of Newfoundland and Labrador as it exists at the time of the breach and located on the Department of Justice website at http://www.justice.gov.nl.ca/just/info/privacybreach.html

Article - 4. EMPLOYEES OF THE PRIME CONSULTANT

4.1 The Prime Consultant shall provide employees who are competent in their field of specialization. The Client will have the right to have the Prime 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 Prime 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 concerned was involved and may refuse to approve payment for such Work.

4.2 The Prime 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 - 5. ACCESS TO FACILITIES

5.1 The Client agrees to provide, access to the project site for the Prime Consultant to perform the Work during Client office hours.

5.2 When using or accessing the premises of the Client, the Prime Consultant and all officers, employees and agents of the Prime Consultant shall comply with all security regulations and workplace policies and procedures in effect from time to time at the Client’s facilities.

Article - 6. RECORDS AND AUDIT

6.1 The Prime 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.

6.2 The Prime Consultant shall furnish reports as required by the Client for the purpose of monitoring the progress of the Work.
Article - 7. TERMINATION

7.1 This Agreement is deemed to be concluded once the Work has been completed to the satisfaction of the Client and the payment(s), as stipulated in the Agreement, has been issued to the Prime Consultant.

7.2 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.

7.3 Where this Agreement is terminated prior to the mutually agreed upon completion date, the Prime Consultant shall thereupon be entitled to payment in accordance with this Agreement in respect of that part of the Work completed up to the date of termination, provided however, that the Prime 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 - 8. NOTICES

8.1 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:

Education and Early Childhood Development
Design and Construction Division
3rd Floor, West Block, Confederation Building
St. John’s, NL A1B 4J6
Phone: (709) ####-####
Fax: (709) ####-####
Email: Insert Email for contact

For the Prime Consultant:

CECON Ltd.
Barry J. Thomson
93 Edinburgh Avenue
Gander, NL A1V 1C9
Phone: (709) 256-7112
Fax: (709) 256-6324
Email: [redacted]

8.2 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 telex or other means of electronic communication; and

(c) Six (6) days after delivery to Canada Post Corporation where the postal service is used.

Article - 9. LIABILITY

9.1 The Prime Consultant agrees that in performance of the Work neither the Prime Consultant nor any Prime Consultant's Representative shall be or be deemed to be an officer, servant, agent or partner of the Client.

9.2 The Client shall not be liable for, and the Prime 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 negligence or default of the Prime Consultant under this Agreement, including the negligence or default of any sub-consultant chosen by the Prime Consultant. Except to the extent that such losses, costs, charges or expenses as are referenced in this clause are caused by the negligence or default of the Client under this Agreement, the Prime Consultant shall defend any and all such actions and pay all legal charges, costs and other expenses arising therefrom. Where the Prime Consultant fails to defend such an action, 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 Prime Consultant.

Article - 10. COMPLIANCE WITH LAW

10.1 In respect of any work within the Province of Newfoundland and Labrador connected with or arising from this Agreement, the Prime 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.

10.2 The Prime Consultant shall ensure that the Prime Consultant and its Representatives comply with all requirements of any governing federal, provincial or municipal legislation, by-laws or regulations applicable to the Prime Consultant or the Prime Consultant's Representatives in the performance of the Work.

Article - 11. ARBITRATION

11.1 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, the parties shall first attempt to resolve all matters through friendly negotiation by a meeting between their representatives upon notice per Article 8. A resolution reached in this way must be reached within 10 days of both parties having knowledge and notice of the dispute and be reduced to writing.
11.2 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Article 11.1), either party may give the other notice of such dispute and request third party mediation thereof.

11.3 Should the parties not agree to third party mediation or the matter in dispute between the parties not be resolved by mediation, then in the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Articles 11.1 and 11.2), either party may give the other notice of such dispute and 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 c. A-14, including such provisions for the appointment of arbitrators.

Article - 12. LAWS GOVERNING

12.1 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 - 13. USE OF WORK

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

13.2 With respect to 13.1 the Prime Consultant's liability to the Client for and in respect of the Work is solely limited to the project described in this Agreement.

Article - 14. CONFLICT OF INTEREST

14.1 No member of the House of Assembly of the Province of Newfoundland and Labrador shall be admitted to any part or share of the payments made pursuant to this Agreement or to any benefits arising therefrom.

14.2 The Prime Consultant and the Prime 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
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 - 15. SUBCONTRACTORS**

15.1 The Prime Consultant shall not sub-contract all or a portion of the Work without the prior written approval of the Client, which consent will not be unreasonably withheld.

15.2 The entry into any subcontract shall not relieve the Prime Consultant of any of its obligations under the terms of this Agreement.

**Article - 16. GENERAL**

16.1 Articles 3 and 9 of this Agreement shall survive the termination or expiration of this Agreement.

16.2 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.

16.3 Time shall be of the essence of this Agreement.

16.4 The failure of the Client to insist upon or enforce in any instance strict performance by the Prime 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.

16.5 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.

16.6 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.

16.7 This Agreement shall enure to the benefit of and be binding upon the Parties hereto, their respective heirs, legal representatives, successors and assigns.

16.8 The Prime Consultant shall not assign this Agreement in whole or in part to any third party without the prior written approval of the Client.
SCHEDULE “D”

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

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

- All portable storage devices or media (e.g., flash drives, memory sticks, portable hard drives, writeable compact discs or digital video discs, etc.) may only be used to transport and/or store Confidential Information where either the Confidential Information or the device or media is encrypted.

- Unless specifically authorized by the Prime Consultant’s Contract or otherwise, the Prime Consultant is not permitted to attach non-government computers or other information technology systems to any Government network.

- The Prime Consultant is expected to implement and maintain up to date versions of all ordinary business software for the reasonable protection of information on computers attached to the Internet which will have access to or store Confidential Information, including security firewall and anti-viral software.

- The Prime Consultant is not permitted to use any Peer to Peer file sharing program (e.g., Limewire, etc) or chat program (e.g., MSN, Skype) on any information technology asset which will contain Confidential Information, or which will be connected via a network to any computer which will contain Confidential Information.

- Email should not be used as a method to transmit Confidential Information across public networks such as the Internet unless the e-mail and/or its attachments are encrypted or zipped in a secure manner.

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

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

- For the purposes of Schedule D, routine exchanges of design and construction information between the Client, the Prime Consultant and the Prime Consultant’s sub-consultants that is of a non-confidential nature need not be encrypted.
**To:** CRE8IV DESIGN STUDIO  
PO Box 281  
84 Clyde Avenue, Unit 2  
Mount Pearl, NL  
A1N 2C2  
Canada  

**Billed To:** Department of Finance  
Corporate Financial Services  
657 Topsail Road  
St John's, NL A1E 2E3  
Canada

**Line No.** | **Item No./Description** | **Promised Date** | **Quantity / UOM** | **Unit Price** | **Extended** | **Tax**  
--- | --- | --- | --- | --- | --- | ---  
1 | PASS Brochure Design  
Custom 9x12 brochure design,  
2 sided with bleeds 7 Design hours | | 7 EACH | 75.00 | 525.00 |  

**IMPORTANT:** Document valid ONLY if NAME and DATE are present in "Authorized By" section.

**AUTHORIZED BY:** Parsons, A  
**DATE:** 01-MAR-16  
**TOTAL:** $525.00

**PLEASE NOTE:** TO ENSURE TIMELY PAYMENT OF YOUR INVOICE, THE PURCHASE ORDER (PO) NUMBER MUST BE CLEARLY INDICATED ON THE INVOICE OR A COPY OF THE PO INCLUDED WITH THE INVOICE. COPIES OF INVOICES SHOULD NOT BE PROVIDED TO THE DEPARTMENT REQUESTING GOODS/SERVICES. FOR MORE INFORMATION PLEASE VISIT: [www.gov.nl.ca/fin/suppliers/invoiceguide.pdf](http://www.gov.nl.ca/fin/suppliers/invoiceguide.pdf)

***End of Document***
Heather, We are pleased to submit the following quotation. If you have any questions, please do not hesitate to call me at (709)-368-8888 or email me at tina@createdesign.ca.

Taxes and any shipping / delivery charges are in addition to the price quoted below. Quote is valid for 30 days.

~ Tina Thistle

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Custom 9x12 brochure design (4x9 finished size), 2 sided, with bleeds estimated between 5-9 hours ($75/hr). Price listed is for 7 design hours; if more or less time is needed, total time spent to be invoiced. Based on all text / images provided in digital format. Any stock photography (if needed), to be billed in addition (photos generally range between $20-$40/photo).
**Sold to:**
Department of Finance  
Corporate Financial Services  
657 Topsail Road  
St. John's, NL  
A1E 2E3

**Ship to:**
Dept of Education  
Curriculum Division, 3rd Floor, West Block  
Program Development  
Education and Early Childhood Learning

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**Comment:** Like us on Facebook for exclusive offers and promotions: www.facebook.com/cre8ivdesign

**PD # 215059087 **

**Total Amount:** 593.25
Mr. Dean Hopkins
Crosbie Engineering Ltd.
21 Mews Place
St. John's NL A1B 4N2

Dear Mr. Hopkins:

**Consultant Appointment**

Your firm has been selected to provide professional services for the following in accordance with the attached conditions outlined below.

**400287006 – Essential Electrical Upgrades**

Dunne Memorial Academy, St. Mary’s, NL

The scope of this appointment includes revising the existing tender package (issued in 2013) for life safety related electrical system upgrades. It also includes tendering, contract admin, project close out, etc.

Fees for this portion of your commission will be negotiated as part of the Prime Consultant Agreement. By accepting this commission, your firm acknowledges that it is willing to enter into a contract containing the terms as outlined in the Government of Newfoundland and Labrador’s Standard Form of Agreement and a negotiated fee and schedule as outlined by our Project Manager. An electronic copy of our standard Agreement is attached for your perusal.

The detailed design and contract documents must be completed by September 9, 2016, with construction being substantially complete by March 31, 2017.

If you are interested in carrying out this work, upon receipt of this letter please contact Ms. Tracy Chen, P. Eng., PMP, Design and Construction Division, at (709) 729-5587, to arrange
the re-assessment. Also, please forward an updated copy of your proof of insurance as well as a letter of good standing from the Workplace Health, Safety and Compensation Commission for our records.

If you are unable to undertake this work, please advise within one week of receipt of this letter so that we can arrange to appoint another consultant.

Sincerely,

INGRID E. CLARKE, P.Eng., FEC
Assistant Deputy Minister
(Infrastructure)

cc:  Ms. Janet Vivian-Walsh
    Mr. Jim Sinnott
    Ms. Tracy Chen
    Ms. Natalie Hallett
    Ms. Kara Connors
    Mr. Blair Medd
    Mr. Paul Lahey
STANDARD FORM OF AGREEMENT
BETWEEN CLIENT AND PRIME CONSULTANT

Essential Electrical Upgrades
Dunne Memorial Academy, St. Mary's
EECD Project #: 400287006
AGREEMENT

THIS AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador, on this day of August 25, 2016.

BETWEEN: HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR as represented by the Minister of Education and Early Childhood Development. ("the Client")

AND: Crobbie Engineering Ltd. ("the Prime Consultant")

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

I. Definitions

In addition to the terms defined in the Special Terms and Conditions attached as Schedule "B", (if any), and the General Terms and Conditions attached as Schedule "C", the following words and phrases shall have the following meanings:

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

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

II. The Prime Consultant's Work

The Prime Consultant shall do all things necessary to fulfill and carry out all of the obligations of the Prime Consultant as set out in the Contract Documents (the "Work").

III. Entire Agreement

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

IV. **Representations and Warranties**

The Prime Consultant hereby represents and warrants that every fact stated or represented by the Prime Consultant or its Representatives to the Client in connection with any proposal made by the Prime 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.

V. **Conflict Between Provisions**

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

VI. **Start and Completion Date**

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

- **Start Date:** August 26, 2016
- **Completion Date:** March 31, 2017

VII. **Effective Date**

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

VIII. **Paragraph Numbering**

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

IX. **Counterparts**

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

Minister of Education and Early Childhood Development,
or his/her authorized designate

Crosbie Engineering Ltd.

Name: Dean Hopkins, CET, Principal
Date: August 25, 2016

Name: Neil Cleary, P.Eng., Principal
Date: August 25, 2016

Please note that in order for contract to be valid, one of the following conditions must be met:

a. Two signatures from individuals who have signing authority for the company.
b. One signature from an individual with signing authority accompanied by a corporate seal.
SCHEDULE "A"
SCOPE OF WORK
BETWEEN PRIME CONSULTANT AND CLIENT

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Schedule III ............. Additional Reimbursement Allowances
Schedule IV .............. Schedule of the Performance of Consultant Services
Schedule V .............. Other Conditions of Services
PART 1 DEFINITIONS

1.1 Project Budget Forecast: means the Client’s estimated total expenditure for the project. It includes the construction budget forecast and all other costs to the Client for the project such as, but not limited to, professional fees and acquisition costs.

1.2 Construction Budget Forecast: means the Client’s estimated Construction Cost including contingencies for cost increases.

1.3 Construction Cost: means the contract price(s) of all elements of the project designed or specified by or on behalf of the Prime Consultant including, all applicable taxes. Where there is no contract price for all or part of the project, the Construction Cost shall be the elemental cost analysis using market rates at the estimated time of construction as determined by the Prime Consultant and agreed by the Client. The Construction Cost does not include professional fees, or land acquisition costs.

1.4 Contract: means an agreement between the Client and the Contractor for the provision of labour, materials and equipment for the construction of the project or part of the project by a Contractor.

1.5 Contractor: means a person, firm, or corporation contracting with the Client to provide labour, materials and equipment for the construction of the Project or part of the Project.

1.6 Project Management Design Administration Manual (PMDA Manual): a manual developed and maintained by the Department of Transportation and Works, Works Branch, for the purpose of presenting standards, guidelines and instructions for the delivery of building projects administered by the Works Branch. Unless otherwise agreed between the parties, the version published on the date of this Contract shall be the version applicable to this Contract.

1.7 Additional Services: means Consulting Services provided that are additional to the Basic Services.

1.8 Basic Services: means Consulting Services as outlined in the PMDA Manual.

1.9 Cost Control Services: means a service to monitor and advice on Project Budget and Construction Budget Forecasts.

1.10 Partial Services: means Reduced Basic Services as negotiated by the Client with the Prime Consultant.

1.11 Program Advisory Services: means Consulting Services provided by the Prime Consultant prior to start of Basic Services.

1.12 Authorities Having Jurisdiction (AHJ): means a person or persons representing these agencies that have authority to provide plan approvals and permits for the purpose of constructing the project.
PART 2 RESPONSIBILITIES

2.1 PRIME CONSULTANT

.1 The Prime Consultant’s services consist of Basic Services and Additional Services which may be required to perform the Work. The phases of the Prime Consultant’s Basic Services, and Additional Services are listed on Schedule II, and further elaborated in the Project Management and Design Administration (PMDA) Manual of the Department of Transportation and Works.

.2 The Prime Consultant’s services as provided for under and pursuant to this Agreement at and during all phases of the Work shall encompass coordination of all disciplines, quality assurance and documentation control to integrate all services and sub consultant’s work. The Prime Consultant shall prepare and submit contract documents in accordance with the Client’s requirements, as outlined in the PMDA Manual.

.3 During the tendering and contract award phase, the Prime Consultant may advise and assist the Client in obtaining bids and awarding construction contracts. The Client’s tendering and contract procedures and administrative practices will be followed in the performance of this phase, as outlined in the PMDA Manual.

.4 The Client may require the Prime Consultant to provide construction administration services. When required the Prime Consultant’s service shall be based upon either full responsibility or partial responsibility.

.1 Full Responsibility

.1 As outlined in the PMDA Manual, services provided under full responsibility include assessing construction work carried out on or in relation to the project and offering an opinion as to whether or not the construction of the project is in accordance with the contract documents prepared by the Prime Consultant.

.2 Partial Service

.1 The scope of this partial service is to be outlined in Schedule I of this agreement, as agreed between the Client and the Prime Consultant.

.5 The project completion phase represents the portion of the Basic Services to be provided at the commencement of substantial completion until expiry of the one year Project warranty period. This service includes the provision of record drawings as outlined in the PMDA Manual, and advice concerning issues arising during this period.

.6 Cost Control Services are included under the scope of Basic Services to be provided by the Prime Consultant, as outlined in the PMDA Manual.

.7 The following schedules apply:

Schedule I - Project Description
Schedule II - Basic and Other Additional Services Fees
Schedule III - Additional Reimbursable Allowances
Schedule IV - Other Conditions of Services
2.2 CLIENT'S RESPONSIBILITIES

.1 The Client shall give due consideration to documentation submitted by the Prime Consultant and, whenever action is necessary, the Client shall inform the Prime Consultant of the Client's decisions, in a reasonable and timely manner.

.2 The Client shall authorize persons to act on behalf of the Client with respect to delivery and administration of the project.

.3 If the Client observes or otherwise becomes aware of any fault or defect in the project or any nonconformity with the requirements of the Contract, the Prime Consultant shall be so notified in writing.

.4 The Client may provide information regarding the project including: a program, which shall set forth the Client's spatial and functional requirements and relationships. The Prime Consultant is responsible for requesting or providing information that is required to prepare the design and contract documents.

.5 The Client will provide the Prime Consultant with a Project Budget Forecast.

.6 The Client shall reimburse the Prime Consultant for procuring information which the Prime Consultant requires for the provision of services necessary to carry out the preparation of design and/or contract documentation when the information is not available upon request from the Client such as site surveys, hazardous material surveys.

.7 When the Client supplies the Prime Consultant with information contained within reports or equipment data sheets, the Prime Consultant will not be required to exhaustively check information supplied by the Client to verify the same unless it is requested to do so by the Client. However, if the Prime Consultant observes, or otherwise becomes aware, of any fault or defect in the information supplied to it by the Client, the Consultant shall cause the Client to be notified in writing of any such fault or defect forthwith.

.8 Where the Prime Consultant has been authorized by the Client to procure or obtain information, the Prime Consultant shall be responsible in seeing that the information provided meets the needs of the sub-consultant(s) performing the work under the direction of the Prime Consultant.

.9 The Client will reimburse the Prime Consultant for other specialist consultants that may be required to carry out quality control services during the project, subject to prior approval of scope of the work and an agreement on the fee or fees payable for the same by the Client.

PART 3 GENERAL REQUIREMENTS

3.1 STAFF

The Prime Consultant will provide the Client with a list of its employees and those of its sub-consultants who will be assigned to the project. The list will include the classification of each employee and the hourly rate to be charged for additional services rendered. The Prime Consultant will obtain written prior approval of Client for any replacement of key employees, changes in the numbers of key employees or changes to rates of key employees assigned to the project.
3.2 SCHEDULE
.1 The Prime Consultant has developed and submitted a time schedule for the performance of consultant services on the project (which Schedule has been approved by the Client and is appended as Schedule "IV" hereto. The schedule shall incorporate all major design milestones as presented in the PMDA Manual.

.2 Unless otherwise agreed to between the parties, the failure by a party to comply with the approved schedule for those aspects of the Work that a party is responsible for may be sufficient cause for the other party to terminate this Agreement, if that failure is not rectified within seven (7) days after the defaulting party is given notice of its default.

.3 If either party believes that a change in the approved schedule is necessary the party requesting that change shall promptly give notice of that fact to the other party in writing, provide the other party with a revised schedule and the reason(s) why the change is requested for its consideration and request its written approval of the same. Should that approval be forthcoming the revised schedule will become the approved schedule for the project.

3.3 COST CONTROL
.1 The Prime Consultant shall provide Cost Control Services in accordance with PMDA Manual.

.2 If at any time the Prime Consultant considers its estimates indicate costs which exceed the Project or Construction Budget Forecast, the Prime Consultant will immediately advise the Client. If the excess is due to, discretionary design elements under the control of or reasonably foreseeable by the Prime Consultant, or the negligence or default of the Prime Consultant in the performance of this Agreement, the Client may require the Prime Consultant to redesign the project at the Prime Consultant’s expense to bring the cost estimate within the approved Project Budget Forecast.

.3 If the preferred bidder’s tender for the project for which the Prime Consultant has prepared and provided the design(s) and provided cost pricing and control services exceeds the Construction Budget Forecast as a result of the negligence or default of the Prime Consultant under this Agreement or is for reasons related to discretionary design elements which are under the Prime Consultant’s control or which the Prime Consultant should have reasonably foreseen and could have guarded against, then the Prime Consultant, at no additional cost to the Client, shall redesign to bring the cost within the Construction Budget Forecast and retender.

3.4 CHANGES AND ADJUSTMENT
.1 Changes and adjustment to the fees payable under this Agreement will be only considered if there is a material change in the level of services agreed to be provided or in the scope of the Project, or there is a material delay in the performance of the work required under the Contract.

.2 The amounts due to the Prime Consultant arising from a material change to the Agreement will be determined by a negotiated fixed amount, or failing such negotiation, the actual cost as determined by level of effort incurred times the agreed hourly rate, plus receipts/ed expenses.

.3 Any increases in the fees payable caused by a material changes or other changes shall be communicated by the Prime Consultant in writing to the Client
prior to incurring such costs to permit the Client to mitigate the amount of increased costs.

3.5 ERRORS AND OMISSIONS

.1 Any costs resulting from design errors on the part of the Prime Consultant, sub-consultants chosen by the Prime Consultant, or agents, or employees of the Prime Consultant or of any sub-consultant chosen by the Prime Consultant will be the responsibility of the Prime Consultant to remedy. However, where the Client and not the Prime Consultant chooses a sub-consultant to do hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work, the Prime Consultant shall not be held responsible for design errors attributed to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, or construction testing services, done by sub-consultants chosen by the Client, unless those design errors are directly caused by the Prime Consultant. In the case of sub-consultants chosen by the Client, the Client and not the Prime Consultant shall be responsible to take such steps as the Client deems to be appropriate, to ensure that any sub-consultant chosen by the Client has appropriate and adequate policies of insurance that are acceptable to the Client in place to cover design errors attributable to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work done by any such sub-consultant.

.2 Any costs resulting from errors in design or omissions may be paid by the Client providing the cost of such design omissions does not entail removing material or equipment that has already been constructed in accordance with the plans and specifications. The cost of the original material and equipment, as indicated on the plans and specifications, and the labour to remove such will be the responsibility of the Prime Consultant.

3.6 PRIME CONSULTANT ACTIONS AND DECISIONS

.1 The Prime Consultant acknowledges that adequate discussion has taken place regarding the Work with the Client and that the Prime Consultant has access to sufficient information to undertake the services contracted for within the Project Budget.

.2 The Prime Consultant and the Client agrees to act promptly and diligently on all matters within their respective direction and control requiring an action or decision affecting the design, construction or administration of the project.

.3 Only express approval by the Client shall be deemed to relieve the Prime Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant. No acceptance or approval by the Client, that is implied shall be deemed to relieve the Prime Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant.

.4 If the Prime Consultant does not promptly and diligently comply with or fails to meet the requirements of the Client, the Client may without prejudice to any other right or remedy the Client may have by giving the Prime Consultant written notice, and without prejudice to the Client's rights at law or elsewhere in this Agreement, take all such action deemed necessary for the prompt and economical completion of the project, and/or terminate the contract.
3.7 INSURANCE COVERAGE

.1 The Prime Consultant shall supply written proof of:

.1 Professional liability insurance coverage equal or greater than $250,000 per claim, $500,000 in aggregate for projects under $2 million construction value or $500,000 per claim, $1,000,000 aggregate for projects over $2 million. The Prime Consultant shall be fully responsible for all amounts deducted from this value by the Prime Consultant's Insurer. This Insurance shall remain in effect until the expiry of the general contractor's one year warranty on the project.

.2 Commercial liability insurance acceptable to the Client with a minimum limit of $1,000,000.

.2 The Insurer shall be an insurance company licensed to do business in the Province of Newfoundland & Labrador.

PART 4 BASIS OF PAYMENT SCHEDULE

4.1 The Client will pay for Program Advisory Services on the basis of an agreed fixed fee or on the basis of approved level of effort at agreed per diem rates.

4.2 The Client will pay for Basic Services on the basis of the agreed fixed fee. The Client's Project Budget Forecast will be made available to the Prime Consultant to assist in the evaluation of the level of effort required.

4.3 The fee for Basic Services will be apportioned to the phases of service as outlined in Schedule II - "Basic Services and Other Additional Services' Fees".

4.4 The fee for Basic Services will also include the management and co-ordination by the Prime Consultant and specialist consulting services as may be requested by the Client. Compensation for specialist or other consulting services will be on the basis of an agreed fixed fee for the level of effort required.

4.5 The Client will pay for resident services during construction, when requested based on an agreed fixed fee amount. The fee amount is to include all payroll costs, site-related expenses and allowances as agreed.

4.6 The Client will pay for construction management services when requested on the basis of the level of effort required during project implementation based on an agreed fixed fee.

4.7 The Client will pay for commissioning services on the basis of an agreed fixed fee. The fee amount shall include level of effort; associated with the preparation of documents and site visits to carry out commissioning activities, as outlined in the PMDA Manual.

4.8 The Client will pay for day-to-day routine expenses such as; long distance charges, reproduction costs, client presentations and submissions, original contract documents (hardcopy), courier services, travel over 50 km from office on an agreed fixed amount. All routine expenses to be charged at cost. Meals, Private Vehicle usage, and incidental expense are to be paid on the basis of Government Rates at time of this Agreement.

4.9 The Client will pay for Additional Reimbursable Allowances as provided for in
Schedule III - “Additional Reimbursable Allowances”. These allowances require supporting documents to be provided for payment.
SCHEDULE I

PROJECT DESCRIPTION

- Replace all 40+ year old panel boards, disconnects, distribution boards with new
- Install new external ground bus in main electrical room c/w new ground conductors
- Replace all lamps in existing light fixtures with same color temperature lamps
- Install wire guards on light fixtures in service rooms, gym and stage area
- Replace all exit and emergency lighting throughout
- Clean all existing heaters
- Replace all wiring devices and cover plates throughout
- Replace receptacles in Industrial Arts room with 20 amp devices
- Provide additional receptacles in classrooms as required
- Replace all R60 and TW wiring with RW90
- Replace existing fire alarm disconnect
- Install new data receptacles to each classroom for smart board connection

SCHEDULE II

Reissued 2010/04/22

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<td>September 23/2016</td>
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OTHER CONDITIONS OF SERVICES
SCHEDULE “B”

SPECIAL TERMS AND CONDITIONS (as necessary)

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

Margaret Gillies, Q.C., General Counsel
Janet Vivian-Walsh, Deputy Minister

The Special Terms and Conditions of this Agreement are follows:
As per the Contract terms contained herein

OR

1. No Special Terms and Conditions

Department of Justice

Deputy Minister
## SCHEDULE “C”

### GENERAL TERMS AND CONDITIONS

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SCHEDULE “C”

GENERAL TERMS AND CONDITIONS

Article 1. PAYMENT

1.1 Consideration

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

Payment Option #1

Subject to Article 1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, for the satisfactory performance of the Work, Thirty-one Thousand and Three Hundred dollars ($31,300) (plus HST) in accordance with the following payment schedule:

(i) Periodic payments – payments paid monthly proportional with the amount of work completed to date.

Payment Option #2 Not Applicable

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

(l) Person / Professional Designation – Hourly Rate

Payment Option #3 Not Applicable

Subject to Article 1.3, upon the satisfactory completion of the Work and the presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, $Insert Absolute Limit on Cost of Services (plus HST).

1.2 Reimbursement of Expenses

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

Reimbursement Option A
demonstrate to the Client that such expenses were incurred in relation to the Work, and that documentation, satisfactory to the Client, is provided in support of the reimbursable expense claimed and is attached to the applicable invoice, including for example, originals of supporting receipts, invoices or statements issued by non-parties to this Agreement:

(i) Insert Specific Reimbursable Items

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

Reimbursement Option B Not Applicable

The Client shall not be responsible for any expenses incurred by the Prime 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) The Prime Consultant shall remain obligated to complete the Work notwithstanding that the actual costs of the Prime 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).

(b) The Parties agree and confirm that as set out in section 25(6) of the Financial Administration Act, RSNL 1990 c. F-8, as amended, all fees payable in accordance with this Agreement are subject to there being an appropriation for the work for the fiscal year in which payment under this Agreement is due.

(c) Payment will be made within 60 calendar days of receipt of a properly documented invoice. The Client shall within thirty (30) days of the execution of this Agreement should the Prime Consultant request the same provide direction to the Prime Consultant as to what constitutes a properly documented invoice.

(d) All invoices shall clearly show the amount of HST billed by the Prime Consultant as a separate item.

(e) The Prime Consultant shall conform to any request that may be made by the Client to alter the form of invoice customarily used by the Prime Consultant as may be reasonably required for the purposes of the Client's internal accounting systems. The Prime 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 Prime Consultant which may arise from work, services or expenses incurred to remedy errors or omissions in the Work for which the Prime Consultant is responsible.

(g) The Prime Consultant shall submit invoices to:
Department of Education and Early Childhood Development
Design and Construction Division
3rd Floor, West Block, Confed. Building
St. John's, NL A1B 4J6

Article - 2. INFORMATION SUPPLIED BY THE CLIENT

2.1 The Client will furnish to the Prime Consultant all available information necessary for the performance of the Work.

2.2 Where discrepancies, omissions or obscurities in the information are evident, the Prime Consultant shall bring them to the attention of the Client and secure written instructions from the Client before proceeding with any work.

Article - 3. CONFIDENTIALITY, MATERIALS AND COPYRIGHT

3.1 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 Prime Consultant, the Prime Consultant's 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;

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 Prime Consultant, the Prime Consultant's employees, servants and/or agents during the performance of the services or in any way related thereto;

(c) all personal information, as defined from time to time under the Access to Information and Protection of Privacy Act, SNL 2002 c. A-1.1, to mean recorded information about an identifiable individual, including,

(i) the individual's name, address or telephone number,

(ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,
(iii) the individual's age, sex, sexual orientation, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual's fingerprints, blood type or inheritable characteristics,

(vi) information about the individual's health care status or history, including a physical or mental disability,

(vii) information about the individual's educational, financial, criminal or employment status or history,

(viii) the opinions of a person about the individual, and

(ix) the individual's personal views or opinions

for any individual, which is, directly or indirectly, disclosed to or collected by the Prime Consultant, the Prime Consultant's 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 Prime Consultant, the Prime Consultant's 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 Prime Consultant was or thereafter became part of the public domain through no act or omission of the Prime Consultant or the Prime Consultant's Representatives; or

(ii) is information which the Prime Consultant can show possession of prior to the date of this Agreement and which was received or developed by the Prime Consultant free of obligations of confidentiality to the Client.

3.2 The Prime Consultant shall treat all Confidential Information acquired by the Prime Consultant in the performance of the Services as privileged and confidential and shall not divulge the same to any person or persons at any time without the express written approval of the Client, unless required to do so by law, which may include any subpoena or other similar process or in connection with litigation, arbitration or other proceeding or by virtue of an act or regulations. In the event that such disclosure is required, the Prime Consultant shall give the Client prompt notice of the requirement upon becoming aware that such disclosure is required. Where circumstances do not permit the Prime Consultant to provide such notice prior to disclosure, the Prime Consultant shall provide such notice to the Client immediately after the required disclosure.

3.3 The Prime 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.

3.4 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 Prime 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 Prime 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 Prime Consultant pursuant to the terms of this Agreement. The Prime Consultant acknowledges that the Client’s right to this information shall at all times be paramount to any rights of the Prime Consultant, at law or in equity, and that the Prime 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 Prime Consultant’s possession.

3.5 The Prime 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 Prime Consultant, the Prime Consultant’s employees, servants and/or agents, and shall certify the destruction of same to the Client. However, nothing in this Agreement shall preclude the Prime Consultant’s privilege to retain copies of documents provided to it or prepared by it in connection with the Work, provided such documents are kept in a secure manner, are used by the Prime Consultant solely for the purposes of defending itself against claims arising from the Work of the Contract, and that the aforesaid documentation is destroyed or returned to the Client at the end of all limitation periods for commencing any action in connection with the Work or upon the conclusion or settlement with finality of any claim or action with respect to the Work.

3.6 The Prime Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Prime Consultant, the Prime Consultant’s employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the Access to Information and Protection of Privacy Act, the Management of Information Act, SNL 2005, c. M-1.01, and the Privacy Act, RSNL1990 c. P-22, as well as other legislation which may apply in the jurisdiction of the Prime Consultant’s operation. The Prime 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 Prime Consultant, and the Prime Consultant’s employees, servants and/or agents.

3.7 The Prime Consultant shall ensure that it, and the Prime Consultant’s 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 Prime Consultant employs to avoid disclosure or dissemination of the Prime Consultant's own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of the Prime Consultant's employees, servants or agents other than those who are required to have access to the same 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 Prime Consultant comply with all policies, standards and safeguards established under this Article;

(d) advise the Client of any changes in the Prime Consultant's 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 Prime 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.

3.8 The Prime Consultant shall only disclose Confidential Information to persons other than the Prime Consultant's 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".

3.9 The Prime 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 Prime 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 Prime Consultant;

(b) promptly furnish to the Client full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the Client in investigating or preventing the recurrence of any unauthorized
possession, use or knowledge, or attempt thereof, of Confidential Information;

(c) use reasonable efforts to cooperate with the Client in any litigation and investigation against third parties deemed necessary by the Client to protect its proprietary rights;

(d) promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information; and

(e) refer to and follow the privacy breach protocol of the Government of Newfoundland and Labrador as it exists at the time of the breach and located on the Department of Justice website at: http://www.justice.gov.nl.ca/just/info/privacybreach.html

Article - 4. EMPLOYEES OF THE PRIME CONSULTANT

4.1 The Prime Consultant shall provide employees who are competent in their field of specialization. The Client will have the right to have the Prime 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 Prime 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 concerned was involved and may refuse to approve payment for such Work.

4.2 The Prime 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 - 5. ACCESS TO FACILITIES

5.1 The Client agrees to provide, access to the project site for the Prime Consultant to perform the Work during Client office hours.

5.2 When using or accessing the premises of the Client, the Prime Consultant and all officers, employees and agents of the Prime Consultant shall comply with all security regulations and workplace policies and procedures in effect from time to time at the Client’s facilities.

Article - 6. RECORDS AND AUDIT

6.1 The Prime 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.

6.2 The Prime Consultant shall furnish reports as required by the Client for the purpose of monitoring the progress of the Work.

Reissued 2010/04/22
Article - 7. TERMINATION

7.1 This Agreement is deemed to be concluded once the Work has been completed to the satisfaction of the Client and the payment(s), as stipulated in the Agreement, has been issued to the Prime Consultant.

7.2 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.

7.3 Where this Agreement is terminated prior to the mutually agreed upon completion date, the Prime Consultant shall thereupon be entitled to payment in accordance with this Agreement in respect of that part of the Work completed up to the date of termination, provided however, that the Prime 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 - 8. NOTICES

8.1 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:

Tracy Chen, P.Eng., PMP
Department of Education and Early Childhood Development
Design and Construction Division
3rd Floor, West Block, Confederation Building
St. John’s, NL A1B 4J6
Phone: (709) 729-5587
Fax: (709) 729-1400
Email: tracychen@gov.nl.ca

For the Prime Consultant:

Crosbe Engineering Ltd.
21 Mews Place, St. John’s, NL
Phone: (709) 754-1911
Fax: (709) 754-1960
Email: [Redacted] - s.40(1)

8.2 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 telex or other means of electronic communication; and

(c) Six (6) days after delivery to Canada Post Corporation where the postal service is used.

Article - 9. LIABILITY

9.1 The Prime Consultant agrees that in performance of the Work neither the Prime Consultant nor any Prime Consultant’s Representative shall be or be deemed to be an officer, servant, agent or partner of the Client.

9.2 The Client shall not be liable for, and the Prime 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 negligence or default of the Prime Consultant under this Agreement, including the negligence or default of any sub-consultant chosen by the Prime Consultant. Except to the extent that such losses, costs, charges or expenses as are referenced in this clause are caused by the negligence or default of the Client under this Agreement, the Prime Consultant shall defend any and all such actions and pay all legal charges, costs and other expenses arising therefrom. Where the Prime Consultant fails to defend such an action, 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 Prime Consultant.

Article - 10. COMPLIANCE WITH LAW

10.1 In respect of any work within the Province of Newfoundland and Labrador connected with or arising from this Agreement, the Prime 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.

10.2 The Prime Consultant shall ensure that the Prime Consultant and its Representatives comply with all requirements of any governing federal, provincial or municipal legislation, by-laws or regulations applicable to the Prime Consultant or the Prime Consultant’s Representatives in the performance of the Work.

Article - 11. ARBITRATION

11.1 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, the parties shall first attempt to resolve all matters through friendly negotiation by a meeting between their representatives upon notice per Article 8. A resolution reached in this way must be reached within 10 days of both parties having knowledge and notice of the dispute and be reduced to writing.
11.2 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Article 11.1), either party may give the other notice of such dispute and request third party mediation thereof.

11.3 Should the parties not agree to third party mediation or the matter in dispute between the parties not be resolved by mediation, then in the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Articles 11.1 and 11.2), either party may give the other notice of such dispute and 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 c. A-14, including such provisions for the appointment of arbitrators.

Article - 12. LAWS GOVERNING

12.1 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 - 13. USE OF WORK

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

13.2 With respect to 13.1 the Prime Consultant's liability to the Client for and in respect of the Work is solely limited to the project described in this Agreement.

Article - 14. CONFLICT OF INTEREST

14.1 No member of the House of Assembly of the Province of Newfoundland and Labrador shall be admitted to any part or share of the payments made pursuant to this Agreement or to any benefits arising therefrom.

14.2 The Prime Consultant and the Prime 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 - 15. SUBCONTRACTORS

15.1 The Prime Consultant shall not sub-contract all or a portion of the Work without the prior written approval of the Client, which consent will not be unreasonably withheld.

15.2 The entry into any subcontract shall not relieve the Prime Consultant of any of its obligations under the terms of this Agreement.

Article - 16. GENERAL

16.1 Articles 3 and 9 of this Agreement shall survive the termination or expiration of this Agreement.

16.2 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.

16.3 Time shall be of the essence of this Agreement.

16.4 The failure of the Client to insist upon or enforce in any instance strict performance by the Prime 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.

16.5 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.

16.6 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.

16.7 This Agreement shall enure to the benefit of and be binding upon the Parties hereto, their respective heirs, legal representatives, successors and assigns.

16.8 The Prime Consultant shall not assign this Agreement in whole or in part to any third party without the prior written approval of the Client.
SCHEDULE “D”
Protocols for Security of Government Information on Information Technology assets of Contractors

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

- All portable storage devices or media (e.g., flash drives, memory sticks, portable hard drives, writeable compact discs or digital video discs, etc.) may only be used to transport and/or store Confidential Information where either the Confidential Information or the device or media is encrypted.

- Unless specifically authorized by the Prime Consultant’s Contract or otherwise, the Prime Consultant is not permitted to attach non-government computers or other information technology systems to any Government network.

- The Prime Consultant is expected to implement and maintain up to date versions of all ordinary business software for the reasonable protection of information on computers attached to the Internet which will have access to or store Confidential Information, including security firewall and anti-viral software.

- The Prime Consultant is not permitted to use any Peer to Peer file sharing program (e.g., Limewire, etc) or chat program (e.g., MSN, Skype) on any information technology asset which will contain Confidential Information, or which will be connected via a network to any computer which will contain Confidential Information.

- Email should not be used as a method to transmit Confidential Information across public networks such as the Internet unless the e-mail and/or its attachments are encrypted or zipped in a secure manner.

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

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

- For the purposes of Schedule D, routine exchanges of design and construction information between the Client, the Prime Consultant and the Prime Consultant’s sub-consultants that is of a non-confidential nature need not be encrypted.
Mr. J. Art Singleton, P.Eng.
DBA Consulting Engineers Ltd.
1243 Kenmount Road, Suite 302
P.O. Box 8188
St. John’s NL A1B 3N4

Dear Mr. Singleton:

Consultant Appointment

Your firm has been selected to provide professional services for the following in accordance with the attached conditions outlined below.

Project #E15006 – Light Standard Structural Inspections
Various Schools, Various Locations, NL

1. The scope of services will entail a site visit with Department staff, a representative of the School District, or others as designated by the Department. Once this assessment is complete, and a prioritized list according to risk level is compiled, a minuted review meeting with the Department of Education and Early Childhood Development and school district officials will take place to discuss findings and the recommended measures, if needed. Please see attached school listing. These sites are proposed and subject to change.

2. Fees for this portion of your commission will be per diem rates, plus expenses at government rates and policies. A maximum upset limit will have to be agreed upon prior to performing the assessment and a prime consultant agreement signed.

3. By accepting this commission, your firm acknowledges that it is willing to enter into a contract containing the terms as outlined in the Government of Newfoundland and Labrador’s Standard Form of Agreement and a negotiated fee and schedule as outlined by our Project Manager. An electronic copy of our standard Agreement is attached for your perusal.

4. The assessment and minuted review meeting must be completed by March 31, 2016.
If you are interested in carrying out this work, upon receipt of this letter, please contact Mr. Michael Carroll, P.Eng. Design and Construction Division, at (709) 729-2892, to arrange the assessments. Also, please forward an updated copy of your proof of insurance as well as a letter of good standing with the Workplace Health, Safety and Compensation Commission for our records.

If you are unable to undertake this work, please advise within one week of receipt of this letter so that we can arrange to appoint another consultant.

Sincerely,

[Signature]

INGRID E. CLARKE, P.Eng., FEC
Assistant Deputy Minister
(Infrastructure)

cc: Ms. Janet Vivian-Walsh
  Mr. Jim Sinnott
  Ms. Natalie Hallett
  Ms. Kara Connors
  Mr. Paul Lahey
  Mr. Michael Carroll
  Mr. Mark Stacey
## Annex A: School Listing

<table>
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<tr>
<th>&lt;10 yrs old</th>
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<th>30 to 40</th>
<th>40 to 50</th>
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<tr>
<td>Mobile School - Mobile</td>
<td>Ecole des Grands-Vents - St. John's</td>
<td>Mount Pearl Intermediate (former MPSH) - Mount Pearl</td>
<td>St. George's Elementary - Manuels (CBS)</td>
<td>Hazelwood Elementary - St. John's</td>
<td>Ascension Collegiate - Bay Roberts</td>
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<td>Paradise Elementary - Paradise</td>
<td>Tricentia Academy - Arnolds Cove</td>
<td>Holy Spirit High - Manuels (CBS)</td>
<td>Newtown Elementary - Mount Pearl</td>
<td>Goulds Elementary - Goulds</td>
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<td>Laval High - Placentia</td>
<td>Villanova Junior High - Manuels (CBS)</td>
<td>St. Kevin's Senior High - Goulds</td>
<td>O'Donel High - Mount Pearl</td>
<td>Frank Roberts Junior High - Foxtrap</td>
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<td>St. Matthews Elementary - St. John's</td>
<td>St. Paul's Junior High - St. John's</td>
<td>MacDonald Drive Junior High - St. John's</td>
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<td>Holy Trinity High - Torbay</td>
<td>St. Peter's Junior High - Mount Pearl</td>
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<td>Mount Pearl Senior High - Mount Pearl</td>
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<tr>
<td>Holy Family Elementary - Paradise</td>
<td>St. Edwards Elementary - Kelligrews (CBS)</td>
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STANDARD FORM OF AGREEMENT
BETWEEN CLIENT AND PRIME CONSULTANT

Project #E15006
Light Standard Structural Inspections
AGREEMENT

THIS AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador, on this _______ day of February, 2016.

BETWEEN: HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR as represented by the Minister of Education & Early Childhood Development.

("the Client")

AND: DBA Consulting Engineers Ltd.

("the Prime Consultant")

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

I. Definitions

In addition to the terms defined in the Special Terms and Conditions attached as Schedule "B", (if any), and the General Terms and Conditions attached as Schedule "C", the following words and phrases shall have the following meanings:

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

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

II. The Prime Consultant's Work

The Prime Consultant shall do all things necessary to fulfill and carry out all of the obligations of the Prime Consultant as set out in the Contract Documents (the "Work").

III. Entire Agreement

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

IV. **Representations and Warranties**

The Prime Consultant hereby represents and warrants that every fact stated or represented by the Prime Consultant or its Representatives to the Client in connection with any proposal made by the Prime 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.

V. **Conflict Between Provisions**

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

VI. **Start and Completion Date**

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

- **Start Date:** February 17, 2016
- **Completion Date:** March 31, 2016

VII. **Effective Date**

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

VIII. **Paragraph Numbering**

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

IX. **Counterparts**

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

Minister of Education & Early Childhood Development,
or his/her authorized designate

DBA Consulting Engineers Ltd.

Name: Art Singleton
Date: 2016-02-21

Recommended by (Name/Date): M. Carroll, Feb 22, 2016
PM: M. Carroll
Manager: S. Varilie, Feb 29, 16
Director: N. Weil, Nov 11, 16
SCHEDULE "A"

SCOPE OF WORK
BETWEEN PRIME CONSULTANT AND CLIENT

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Schedule II ........ Basic and other Additional Services Fees
Schedule III .......... Additional Reimbursement Allowances
Schedule IV ........ Schedule of the Performance of Consultant Services
Schedule V .......... Other Conditions of Services
PART 1

DEFINITIONS

1.1 Project Budget Forecast: means the Client’s estimated total expenditure for the project. It includes the construction budget forecast and all other costs to the Client for the project such as, but not limited to, professional fees and acquisition costs.

1.2 Construction Budget Forecast: means the Client’s estimated Construction Cost including contingencies for cost increases.

1.3 Construction Cost: means the contract price(s) of all elements of the project designed or specified by or on behalf of the Prime Consultant including, all applicable taxes. Where there is no contract price for all or part of the project, the Construction Cost shall be the elemental cost analysis using market rates at the estimated time of construction as determined by the Prime Consultant and agreed by the Client. The Construction Cost does not include professional fees, or land acquisition costs.

1.4 Contract: means an agreement between the Client and the Contractor for the provision of labour, materials and equipment for the construction of the project or part of the project by a Contractor.

1.5 Contractor: means a person, firm, or corporation contracting with the Client to provide labour, materials and equipment for the construction of the Project or part of the Project.

1.6 Project Management Design Administration Manual (PMDA Manual): a manual developed and maintained by the Department of Transportation and Works, Works Branch, for the purpose of presenting standards, guidelines and instructions for the delivery of building projects administered by the Works Branch. Unless otherwise agreed between the parties, the version published on the date of this Contract shall be the version applicable to this Contract.

1.7 Additional Services: means Consulting Services provided that are additional to the Basic Services.

1.8 Basic Services: means Consulting Services as outlined in the PMDA Manual.

1.9 Cost Control Services: means a service to monitor and advice on Project Budget and Construction Budget Forecasts.

1.10 Partial Services: means Reduced Basic Services as negotiated by the Client with the Prime Consultant.

1.11 Program Advisory Services: means Consulting Services provided by the Prime Consultant prior to start of Basic Services.

1.12 Authorities Having Jurisdiction (AHJ): means a person or persons representing these agencies that have authority to provide plan approvals and permits for the purpose of constructing the project.
PART 2

RESPONSIBILITIES

2.1 PRIME CONSULTANT

1. The Prime Consultant's services consist of Basic Services and Additional Services which may be required to perform the Work. The phases of the Prime Consultant's Basic Services, and Additional Services are listed on Schedule II, and further elaborated in the Project Management and Design Administration (PMDA) Manual of the Department of Transportation and Works.

2. The Prime Consultant's services as provided for under and pursuant to this Agreement at and during all phases of the Work shall encompass coordination of all disciplines, quality assurance and documentation control to integrate all services and sub consultant's work. The Prime Consultant shall prepare and submit contract documents in accordance with the Client's requirements, as outlined in the PMDA Manual.

3. During the tendering and contract award phase, the Prime Consultant may advise and assist the Client in obtaining bids and awarding construction contracts. The Client's tendering and contract procedures and administrative practices will be followed in the performance of this phase, as outlined in the PMDA Manual.

4. The Client may require the Prime Consultant to provide construction administration services. When required the Prime Consultant's service shall be based upon either full responsibility or partial responsibility.

1. Full Responsibility

1. As outlined in the PMDA Manual, services provided under full responsibility include assessing construction work carried out on or in relation to the project and offering an opinion as to whether or not the construction of the project is in accordance with the contract documents prepared by the Prime Consultant.

2. Partial Service

1. The scope of this partial service is to be outlined in Schedule I of this agreement, as agreed between the Client and the Prime Consultant.

5. The project completion phase represents the portion of the Basic Services to be provided at the commencement of substantial completion until expiry of the one year Project warranty period. This service includes the provision of record drawings as outlined in the PMDA Manual, and advice concerning issues arising during this period.

6. Cost Control Services are included under the scope of Basic Services to be provided by the Prime Consultant, as outlined in the PMDA Manual.

7. The following schedules apply:

- Schedule I - Project Description
- Schedule II - Basic and Other Additional Services Fees
- Schedule III - Additional Reimbursable Allowances
- Schedule IV - Other Conditions of Services
2.2 CLIENT’S RESPONSIBILITIES

.1 The Client shall give due consideration to documentation submitted by the Prime Consultant and, whenever action is necessary, the Client shall inform the Prime Consultant of the Client’s decisions, in a reasonable and timely manner.

.2 The Client shall authorize persons to act on behalf of the Client with respect to delivery and administration of the project.

.3 If the Client observes or otherwise becomes aware of any fault or defect in the project or any nonconformity with the requirements of the Contract, the Prime Consultant shall be so notified in writing.

.4 The Client may provide information regarding the project including: a program, which shall set forth the Client’s spatial and functional requirements and relationships. The Prime Consultant is responsible for requesting or providing information that is required to prepare the design and contract documents.

.5 The Client will provide the Prime Consultant with a Project Budget Forecast.

.6 The Client shall reimburse the Prime Consultant for procuring information which the Prime Consultant requires for the provision of services necessary to carry out the preparation of design and/or contract documentation when the information is not available upon request from the Client such as site surveys, hazardous material surveys.

.7 When the Client supplies the Prime Consultant with information contained within reports or equipment data sheets, the Prime Consultant will not be required to exhaustively check information supplied by the Client to verify the same unless it is requested to do so by the Client. However, if the Prime Consultant observes, or otherwise becomes aware, of any fault or defect in the information supplied to it by the Client, the Consultant shall cause the Client to be notified in writing of any such fault or defect forthwith.

.8 Where the Prime Consultant has been authorized by the Client to procure or obtain information, the Prime Consultant shall be responsible in seeing that the information provided meets the needs of the sub-consultant(s) performing the work under the direction of the Prime Consultant.

.9 The Client will reimburse the Prime Consultant for other specialist consultants that may be required to carry out quality control services during the project, subject to prior approval of scope of the work and an agreement on the fee or fees payable for the same by the Client.

PART 3 GENERAL REQUIREMENTS

3.1 STAFF

The Prime Consultant will provide the Client with a list of its employees and those of its sub-consultants who will be assigned to the project. The list will include the classification of each employee and the hourly rate to be charged for additional services rendered. The Prime Consultant will obtain written prior approval of
Client for any replacement of key employees, changes in the numbers of key employees or changes to rates of key employees assigned to the project.

3.2 SCHEDULE

.1 The Prime Consultant has developed and submitted a time schedule for the performance of consultant services on the project (which Schedule has been approved by the Client and is appended as Schedule "IV" hereto. The schedule shall incorporate all major design milestones as presented in the PMDA Manual.

.2 Unless otherwise agreed to between the parties, the failure by a party to comply with the approved schedule for those aspects of the Work that a party is responsible for may be sufficient cause for the other party to terminate this Agreement, if that failure is not rectified within seven (7) days after the defaulting party is given notice of its default.

.3 If either party believes that a change in the approved schedule is necessary the party requesting that change shall promptly give notice of that fact to the other party in writing, provide the other party with a revised schedule and the reason(s) why the change is requested for its consideration and request its written approval of the same. Should that approval be forthcoming the revised schedule will become the approved schedule for the project.

3.3 COST CONTROL

.1 The Prime Consultant shall provide Cost Control Services in accordance with PMDA Manual.

.2 If at any time the Prime Consultant considers its estimates indicate costs which exceed the Project or Construction Budget Forecast, the Prime Consultant will immediately advise the Client. If the excess is due to, discretionary design elements under the control of or reasonably foreseeable by the Prime Consultant, or the negligence or default of the Prime Consultant in the performance of this Agreement, the Client may require the Prime Consultant to redesign the project at the Prime Consultant's expense to bring the cost estimate within the approved Project Budget Forecast.

.3 If the preferred bidder's tender for the project for which the Prime Consultant has prepared and provided the design(s) and provided cost pricing and control services exceeds the Construction Budget Forecast as a result of the negligence or default of the Prime Consultant under this Agreement or is for reasons related to discretionary design elements which are under the Prime Consultant's control or which the Prime Consultant should have reasonably foreseen and could have guarded against, then the Prime Consultant, at no additional cost to the Client, shall redesign to bring the cost within the Construction Budget Forecast and retender.

3.4 CHANGES AND ADJUSTMENT

.1 Changes and adjustment to the fees payable under this Agreement will be only considered if there is a material change in the level of services agreed to be provided or in the scope of the Project, or there is a material delay in the performance of the work required under the Contract.
The amounts due to the Prime Consultant arising from a material change to the Agreement will be determined by a negotiated fixed amount, or failing such negotiation, the actual cost as determined by level of effort incurred times the agreed hourly rate, plus receipted expenses.

Any increases in the fees payable caused by a material changes or other changes shall be communicated by the Prime Consultant in writing to the Client prior to incurring such costs to permit the Client to mitigate the amount of increased costs.

3.5 ERRORS AND OMISSIONS

1. Any costs resulting from design errors on the part of the Prime Consultant, sub-consultants chosen by the Prime Consultant, or agents, or employees of the Prime Consultant or of any sub-consultant chosen by the Prime Consultant will be the responsibility of the Prime Consultant to remedy. However, where the Client and not the Prime Consultant chooses a sub-consultant to do hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work, the Prime Consultant shall not be held responsible for design errors attributed to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, or construction testing services, done by sub-consultants chosen by the Client, unless those design errors are directly caused by the Prime Consultant. In the case of sub-consultants chosen by the Client, the Client and not the Prime Consultant shall be responsible to take such steps as the Client deems to be appropriate, to ensure that any sub-consultant chosen by the Client has appropriate and adequate policies of insurance that are acceptable to the Client in place to cover design errors attributable to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work done by any such sub-consultant.

2. Any costs resulting from errors in design or omissions may be paid by the Client providing the cost of such design omissions does not entail removing material or equipment that has already been constructed in accordance with the plans and specifications. The cost of the original material and equipment, as indicated on the plans and specifications, and the labour to remove such will be the responsibility of the Prime Consultant.

3.6 PRIME CONSULTANT ACTIONS AND DECISIONS

1. The Prime Consultant acknowledges that adequate discussion has taken place regarding the Work with the Client and that the Prime Consultant has access to sufficient information to undertake the services contracted for within the Project Budget.

2. The Prime Consultant and the Client agrees to act promptly and diligently on all matters within their respective direction and control requiring an action or decision affecting the design, construction or administration of the project.

3. Only express approval by the Client shall be deemed to relieve the Prime Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant. No acceptance or approval by the Client, that is implied shall be deemed to relieve the Prime
Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant.

.4 If the Prime Consultant does not promptly and diligently comply with or fails to meet the requirements of the Client, the Client may without prejudice to any other right or remedy the Client may have by giving the Prime Consultant written notice, and without prejudice to the Client's rights at law or elsewhere in this Agreement, take all such action deemed necessary for the prompt and economical completion of the project, and/or terminate the contract.

3.7 INSURANCE COVERAGE

.1 The Prime Consultant shall supply written proof of:

.1 Professional liability insurance coverage equal or greater than $250,000 per claim, $500,000 in aggregate for projects under $2 million construction value or $500,000 per claim, $1,000,000 aggregate for projects over $2 million. The Prime Consultant shall be fully responsible for all amounts deducted from this value by the Prime Consultant's Insurer. This Insurance shall remain in effect until the expiry of the general contractor's one year warranty on the project.

.2 Commercial liability insurance acceptable to the Client with a minimum limit of $1,000,000.

.2 The Insurer shall be an insurance company licensed to do business in the Province of Newfoundland & Labrador.

PART 4 BASIS OF PAYMENT SCHEDULE

4.1 The Client will pay for Program Advisory Services on the basis of an agreed fixed fee or on the basis of approved level of effort at agreed per diem rates.

4.2 The Client will pay for Basic Services on the basis of the agreed fixed fee. The Client's Project Budget Forecast will be made available to the Prime Consultant to assist in the evaluation of the level of effort required.

4.3 The fee for Basic Services will be apportioned to the phases of service as outlined in Schedule II - "Basic Services and Other Additional Services' Fees".

4.4 The fee for Basic Services will also include the management and co-ordination by the Prime Consultant and specialist consulting services as may be requested by the Client. Compensation for specialist or other consulting services will be on the basis of an agreed fixed fee for the level of effort required.

4.5 The Client will pay for resident services during construction, when requested based on an agreed fixed fee amount. The fee amount is to include all payroll costs, site-related expenses and allowances as agreed.

4.6 The Client will pay for construction management services when requested on the basis of the level of effort required during project implementation based on an agreed fixed fee.

4.7 The Client will pay for commissioning services on the basis of an agreed fixed fee. The fee amount shall include level of effort; associated with the preparation
of documents and site visits to carry out commissioning activities, as outlined in the PMDA Manual.

4.8 The Client will pay for day-to-day routine expenses such as; long distance charges, reproduction costs, client presentations and submissions, original contract documents (hardcopy), courier services, travel over 50 km from office on an agreed fixed amount. All routine expenses to be charged at cost. Meals, Private Vehicle usage, and incidental expense are to be paid on the basis of Government Rates at time of this Agreement.

4.9 The Client will pay for Additional Reimbursable Allowances as provided for in Schedule III - "Additional Reimbursable Allowances". These allowances require supporting documents to be provided for payment.
SCHEDULE I
PROJECT DESCRIPTION

As part of our continuous focus on safety, the below 12 schools are selected to have light standards inspected for structural integrity. These schools have been selected as the first round of inspections and consist of approximately 5% of the school fleet. They have been chosen by their proximity, age distribution, and likelihood that the light standards are as old as the school.

The consultant is responsible for inspecting light standards at the listed schools for their structural integrity using accepted methods and practices, and compiling a prioritized listing according to risk level with recommended measures, should any be required.

The consultant is required to present findings at a minuted meeting in a concise manner.

School Listing (subject to change):

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<th>20 to 30 years</th>
<th>30 to 40</th>
<th>40+</th>
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<td>St. Matthews Elementary - St. John's</td>
<td>St. George's Elementary - Manuels (CBS)</td>
<td>Hazelwood Elementary - St. John's</td>
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<tr>
<td>Newtown Elementary - Mount Pearl</td>
<td>Goulds Elementary - Goulds</td>
<td>Ascension Collegiate - Bay Roberts</td>
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<tr>
<td>O'Donel High - Mount Pearl</td>
<td>Frank Roberts Junior High - Foxtrap (CBS)</td>
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<tr>
<td>St. Edwards Elementary - Kelligrews (CBS)</td>
<td>Brother Rice Junior High - St. John's</td>
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<td></td>
<td>Mount Pearl Senior High - Mount Pearl</td>
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<tr>
<td></td>
<td>Beaconsfield Elementary - St. John's</td>
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SCHEDULE IV
SCHEDULE OF THE PERFORMANCE OF CONSULTANT SERVICES

DBA Consulting Engineers Ltd. Commits to the following schedule:

Start Date: February 17, 2016
Completion Date: March 31, 2016
SCHEDULE V

OTHER CONDITIONS OF SERVICES

(Not applicable unless text is added to this schedule)
SCHEDULE "B"
SPECIAL TERMS AND CONDITIONS (as necessary)

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

______________________________
Margaret Gillies, Q.C., General Counsel

______________________________
Janet Vivian-Walsh, Deputy Minister

The Special Terms and Conditions of this Agreement are follows:
As per the Contract terms contained herein

OR

1. No Special Terms and Conditions

______________________________
Department of Justice

______________________________
Deputy Minister
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SCHEDULE "C"

GENERAL TERMS AND CONDITIONS

Article - 1. PAYMENT

1.1 Consideration

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

Payment Option #1

Subject to Article 1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, for the satisfactory performance of the Work, Fifty Thousand Dollars ($50,000) (plus HST) in accordance with the following payment schedule:

(i) Periodic payments – payments paid monthly proportional with the amount of work completed to date.

Payment Option #2 Not Applicable

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

(i) Person / Professional Designation – Hourly Rate

Payment Option #3 Not Applicable

Subject to Article 1.3, upon the satisfactory completion of the Work and the presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, $Insert Absolute Limit on Cost of Services (plus HST).

1.2 Reimbursement of Expenses

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

Reimbursement Option A

(a) The Client shall only be responsible for the following reimbursable expenses, payable at cost, provided the Prime Consultant can
demonstrate to the Client that such expenses were incurred in relation to the Work, and that documentation, satisfactory to the Client, is provided in support of the reimbursable expense claimed and is attached to the applicable invoice, including for example, originals of supporting receipts, invoices or statements issued by non-parties to this Agreement:

(i) **Insert Specific Reimbursable Items**

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

**Reimbursement Option B Not Applicable**

The Client shall not be responsible for any expenses incurred by the Prime 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) The Prime Consultant shall remain obligated to complete the Work notwithstanding that the actual costs of the Prime Consultant, whether in respect of professional services or in respect of costs or expenses incurred, may exceed the total aggregate sum set out in this Agreement.

(b) The Parties agree and confirm that as set out in section 25(6) of the *Financial Administration Act*, RSNL 1990 c. F-8, as amended, all fees payable in accordance with this Agreement are subject to there being an appropriation for the work for the fiscal year in which payment under this Agreement is due.

(c) Payment will be made within 60 calendar days of receipt of a properly documented invoice. The Client shall within thirty (30) days of the execution of this Agreement should the Prime Consultant request the same provide direction to the Prime Consultant as to what constitutes a properly documented invoice.

(d) All invoices shall clearly show the amount of HST billed by the Prime Consultant as a separate item.

(e) The Prime Consultant shall conform to any request that may be made by the Client to alter the form of invoice customarily used by the Prime Consultant as may be reasonably required for the purposes of the Client's internal accounting systems. The Prime 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 Prime Consultant which may arise from work, services or expenses incurred to remedy errors or omissions in the Work for which the Prime Consultant is responsible.

(g) The Prime Consultant shall submit invoices to:
Department of Education & Early Childhood Developments
Design and Construction Division (Works)
3rd Floor, West Block, Confed. Building
St. John's, NL A1B 4J6

Article - 2. INFORMATION SUPPLIED BY THE CLIENT

2.1 The Client will furnish to the Prime Consultant all available information necessary for the performance of the Work.

2.2 Where discrepancies, omissions or obscurities in the information are evident, the Prime Consultant shall bring them to the attention of the Client and secure written instructions from the Client before proceeding with any work.

Article - 3. CONFIDENTIALITY, MATERIALS AND COPYRIGHT

3.1 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 Prime Consultant, the Prime Consultant's 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;

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 Prime Consultant, the Prime Consultant's employees, servants and/or agents during the performance of the services or in any way related thereto;

(c) all personal information, as defined from time to time under the Access to Information and Protection of Privacy Act, SNL 2002 c. A-1.1, to mean recorded information about an identifiable individual, including,

(i) the individual's name, address or telephone number,

(ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,
(iii) the individual's age, sex, sexual orientation, marital status or family status,
(iv) an identifying number, symbol or other particular assigned to the individual,
(v) the individual's fingerprints, blood type or inheritable characteristics,
(vi) information about the individual's health care status or history, including a physical or mental disability,
(vii) information about the individual's educational, financial, criminal or employment status or history,
(viii) the opinions of a person about the individual, and
(ix) the individual's personal views or opinions

for any individual, which is, directly or indirectly, disclosed to or collected by the Prime Consultant, the Prime Consultant's 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 Prime Consultant, the Prime Consultant's 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 Prime Consultant was or thereafter became part of the public domain through no act or omission of the Prime Consultant or the Prime Consultant's Representatives; or
(ii) is information which the Prime Consultant can show possession of prior to the date of this Agreement and which was received or developed by the Prime Consultant free of obligations of confidentiality to the Client.

3.2 The Prime Consultant shall treat all Confidential Information acquired by the Prime Consultant in the performance of the Services as privileged and confidential and shall not divulge the same to any person or persons at any time without the express written approval of the Client, unless required to do so by law, which may include any subpoena or other similar process or in connection with litigation, arbitration or other proceeding or by virtue of an act or regulations. In the event that such disclosure is required, the Prime Consultant shall give the Client prompt notice of the requirement upon becoming aware that such disclosure is required. Where circumstances do not permit the Prime Consultant to provide such notice prior to disclosure, the Prime Consultant shall provide such notice to the Client immediately after the required disclosure.

3.3 The Prime 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.

3.4 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 Prime 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 Prime 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 Prime Consultant pursuant to the terms of this Agreement. The Prime Consultant acknowledges that the Client's right to this information shall at all times be paramount to any rights of the Prime Consultant, at law or in equity, and that the Prime 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 Prime Consultant's possession.

3.5 The Prime 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 Prime Consultant, the Prime Consultant's employees, servants and/or agents, and shall certify the destruction of same to the Client. However, nothing in this Agreement shall preclude the Prime Consultant's privilege to retain copies of documents provided to it or prepared by it in connection with the Work, provided such documents are kept in a secure manner, are used by the Prime Consultant solely for the purposes of defending itself against claims arising from the Work of the Contract, and that the aforesaid documentation is destroyed or returned to the Client at the end of all limitation periods for commencing any action in connection with the Work or upon the conclusion or settlement with finality of any claim or action with respect to the Work.

3.6 The Prime Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Prime Consultant, the Prime Consultant's employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the Access to Information and Protection of Privacy Act, the Management of Information Act, SNL 2005, c. M-1.01, and the Privacy Act, RSNL1990 c. P-22, as well as other legislation which may apply in the jurisdiction of the Prime Consultant's operation. The Prime 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 Prime Consultant, and the Prime Consultant's employees, servants and/or agents.

3.7 The Prime Consultant shall ensure that it, and the Prime Consultant's 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 Prime Consultant employs to avoid disclosure or dissemination of the Prime Consultant's own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of the Prime Consultant's employees, servants or agents other than those who are required to have access to the same 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 Prime Consultant comply with all policies, standards and safeguards established under this Article;

(d) advise the Client of any changes in the Prime Consultant's 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 Prime 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.

3.8 The Prime Consultant shall only disclose Confidential Information to persons other than the Prime Consultant's 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".

3.9 The Prime 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 Prime 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 Prime Consultant;

(b) promptly furnish to the Client full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the Client in investigating or preventing the recurrence of any unauthorized
possession, use or knowledge, or attempt thereof, of Confidential Information;

(c) use reasonable efforts to cooperate with the Client in any litigation and investigation against third parties deemed necessary by the Client to protect its proprietary rights;

(d) promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information; and

(e) refer to and follow the privacy breach protocol of the Government of Newfoundland and Labrador as it exists at the time of the breach and located on the Department of Justice website at: http://www.justice.gov.nl.ca/just/info/privacybreach.html

Article - 4. EMPLOYEES OF THE PRIME CONSULTANT

4.1 The Prime Consultant shall provide employees who are competent in their field of specialization. The Client will have the right to have the Prime 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 Prime 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 concerned was involved and may refuse to approve payment for such Work.

4.2 The Prime 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 - 5. ACCESS TO FACILITIES

5.1 The Client agrees to provide, access to the project site for the Prime Consultant to perform the Work during Client office hours.

5.2 When using or accessing the premises of the Client, the Prime Consultant and all officers, employees and agents of the Prime Consultant shall comply with all security regulations and workplace policies and procedures in effect from time to time at the Client’s facilities.

Article - 6. RECORDS AND AUDIT

6.1 The Prime 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.

6.2 The Prime Consultant shall furnish reports as required by the Client for the purpose of monitoring the progress of the Work.
Article - 7. TERMINATION

7.1 This Agreement is deemed to be concluded once the Work has been completed to the satisfaction of the Client and the payment(s), as stipulated in the Agreement, has been issued to the Prime Consultant.

7.2 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.

7.3 Where this Agreement is terminated prior to the mutually agreed upon completion date, the Prime Consultant shall thereupon be entitled to payment in accordance with this Agreement in respect of that part of the Work completed up to the date of termination, provided however, that the Prime 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 - 8. NOTICES

8.1 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:

Education & Early Childhood Development
Design and Construction Division (Works)
3rd Floor, West Block, Confederation Building
St. John's, NL A1B 4J6
Phone: (709) 729-2892
Fax: (709) 729-1400
Email: michaelcarroll@gov.nl.ca

For the Prime Consultant:

Art Singleton
DBA Consulting Engineers Ltd.
1243 Kenmount Road, Suite 302
P.O. Box 8188
St. John's, NL A1B 2N4
Phone: (709) 739-5500
Fax: (709) 739-5560
Email: [redacted]

8.2 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 telex or other means of electronic communication; and

(c) Six (6) days after delivery to Canada Post Corporation where the postal service is used.

Article - 9. LIABILITY

9.1 The Prime Consultant agrees that in performance of the Work neither the Prime Consultant nor any Prime Consultant’s Representative shall be or be deemed to be an officer, servant, agent or partner of the Client.

9.2 The Client shall not be liable for, and the Prime 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 negligence or default of the Prime Consultant under this Agreement, including the negligence or default of any sub-consultant chosen by the Prime Consultant. Except to the extent that such losses, costs, charges or expenses as are referenced in this clause are caused by the negligence or default of the Client under this Agreement, the Prime Consultant shall defend any and all such actions and pay all legal charges, costs and other expenses arising therefrom. Where the Prime Consultant fails to defend such an action, 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 Prime Consultant.

Article - 10. COMPLIANCE WITH LAW

10.1 In respect of any work within the Province of Newfoundland and Labrador connected with or arising from this Agreement, the Prime 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.

10.2 The Prime Consultant shall ensure that the Prime Consultant and its Representatives comply with all requirements of any governing federal, provincial or municipal legislation, by-laws or regulations applicable to the Prime Consultant or the Prime Consultant’s Representatives in the performance of the Work.

Article - 11. ARBITRATION

11.1 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, the parties shall first attempt to resolve all matters through friendly negotiation by a meeting between their representatives upon notice per Article 8. A resolution reached in this way must be reached within 10 days of both parties having knowledge and notice of the dispute and be reduced to writing.
11.2 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Article 11.1), either party may give the other notice of such dispute and request third party mediation thereof.

11.3 Should the parties not agree to third party mediation or the matter in dispute between the parties not be resolved by mediation, then in the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Articles 11.1 and 11.2), either party may give the other notice of such dispute and 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 c. A-14, including such provisions for the appointment of arbitrators.

Article - 12. LAWS GOVERNING

12.1 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 - 13. USE OF WORK

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

13.2 With respect to 13.1 the Prime Consultant’s liability to the Client for and in respect of the Work is solely limited to the project described in this Agreement.

Article - 14. CONFLICT OF INTEREST

14.1 No member of the House of Assembly of the Province of Newfoundland and Labrador shall be admitted to any part or share of the payments made pursuant to this Agreement or to any benefits arising therefrom.

14.2 The Prime Consultant and the Prime 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
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 - 15. SUBCONTRACTORS

15.1 The Prime Consultant shall not sub-contract all or a portion of the Work without the prior written approval of the Client, which consent will not be unreasonably withheld.

15.2 The entry into any subcontract shall not relieve the Prime Consultant of any of its obligations under the terms of this Agreement.

Article - 16. GENERAL

16.1 Articles 3 and 9 of this Agreement shall survive the termination or expiration of this Agreement.

16.2 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.

16.3 Time shall be of the essence of this Agreement.

16.4 The failure of the Client to insist upon or enforce in any instance strict performance by the Prime 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.

16.5 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.

16.6 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.

16.7 This Agreement shall ensure to the benefit of and be binding upon the Parties hereto, their respective heirs, legal representatives, successors and assigns.

16.8 The Prime Consultant shall not assign this Agreement in whole or in part to any third party without the prior written approval of the Client.
SCHEDULE "D"
Protocols for Security of Government Information on Information Technology assets of Contractors

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

- All portable storage devices or media (e.g., flash drives, memory sticks, portable hard drives, writeable compact discs or digital video discs, etc.) may only be used to transport and/ or store Confidential Information where either the Confidential Information or the device or media is encrypted.

- Unless specifically authorized by the Prime Consultant's Contract or otherwise, the Prime Consultant is not permitted to attach non-government computers or other information technology systems to any Government network.

- The Prime Consultant is expected to implement and maintain up to date versions of all ordinary business software for the reasonable protection of information on computers attached to the Internet which will have access to or store Confidential Information, including security firewall and anti-viral software.

- The Prime Consultant is not permitted to use any Peer to Peer file sharing program (e.g., Limewire, etc) or chat program (e.g., MSN, Skype) on any information technology asset which will contain Confidential Information, or which will be connected via a network to any computer which will contain Confidential Information.

- Email should not be used as a method to transmit Confidential Information across public networks such as the Internet unless the e-mail and/or its attachments are encrypted or zipped in a secure manner.

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

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

- For the purposes of Schedule D, routine exchanges of design and construction information between the Client, the Prime Consultant and the Prime Consultant's sub-consultants that is of a non confidential nature need not be encrypted.
CONTRACT OF EMPLOYMENT

THIS AGREEMENT is made at St. John's in the Province of Newfoundland and Labrador, this day of July 2016.

BETWEEN HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND AND LABRADOR, herein represented by the Deputy Minister, Department of Education and Early Childhood Development (herein called the "Deputy Minister")

AND Geoff Gallant of [Redacted] (herein called the "Contractual Employee")

THIS AGREEMENT WITNESSES that, in consideration of the promises and covenants expressed herein, the parties agree as follows:

1. SERVICE

1.1 The Deputy Minister engages the Contractual Employee for and the Contractual Employee accepts the position of School Board Elections Coordinator.

1.2 The Contractual Employee shall carry out the duties and responsibilities of the School Board Elections Coordinator.

1.3 The Contractual Employee shall carry out the duties and responsibilities referred to in Clause 1.2:

1.3.1 At St. John's, Newfoundland or such other place as the Deputy Minister may designate.

1.3.2 During the period from July 18th, 2016 and September 30th, 2016 inclusive (herein called the "Term of the Agreement").

2. HOURS OF WORK

2.1 The Contractual Employee shall carry out the duties and responsibilities referred to in Clause 1.2 from 8:30 a.m. to 4:30 p.m. from Monday to Friday, inclusive, or at such other times as the Deputy Minister may require or designate.

2.2 During the Term of this Agreement, the Contractual Employee shall not be engaged or interested in any other business or undertaking except with the prior written consent of the Deputy Minister.
3. **PAYMENT**

3.1 Subject to Clause 3.2, the Deputy Minister shall pay to the Contractual Employee during the term of this Agreement, $62,796 (HL-20 Step 1) per annum. The per annum salary will be paid every two weeks, on Wednesday or such day as the Deputy Minister may designate, in equal instalments. General Salary increases to management employees as well as step progressions, as approved, shall continue to apply.

3.2 The following deductions shall be made from the payments pursuant to Clause 3.1:

(a) Income Tax

(b) Payments required to be made in respect of:

(i) Canada Pension Plan
(ii) Employment Insurance
(iii) Public Service Pension Plan
(iv) The Group Health and Life Insurance Plan applicable to employees of the Government of Newfoundland and Labrador (herein called “Provincial Government Employees”)

(c) Any other deductions required by law.

3.3 Subject to Clauses 3.4 and 4.1, the amount set out in Clause 3.1 shall constitute the entire amount payable to the Contractual Employee under this Agreement notwithstanding that the Contractual Employee may be required from time to time to work during hours other than those specified in Clause 2.1.

3.4 The Contractual Employee, if required to work outside normal hours or on Saturday or Sunday or on a day designated as a holiday for Provincial Government employees and providing the Contractual employee has obtained the prior approval of the Deputy Minister, shall be entitled to the same benefits as those provided to Management (HL) Employees.

3.5 The salary shall be adjusted from time to time in accordance with increases negotiated for employees who are remunerated in accordance with government’s Management (HL) pay plan.
4. TRAVEL EXPENSES

4.1 In addition to the amounts payable pursuant to Clauses 3.1 and 3.4, the Deputy Minister shall reimburse the Contractual Employee, at the rate established by the Treasury Board Travel Expense rules (for management employees) for travel expenses incurred by the Contractual Employee in the performance of this Agreement, provided such travel has been authorized by the Deputy Minister.

5. LEAVES

5.1 Subject to the terms and conditions regarding leaves as set out in the Personnel Administration Procedures issued by the Treasury Board under the authority of Section 7(2) of The Financial Administration Act, 1990 RSN (herein called the “Personnel Administration Procedures”), the Contractual Employee shall be entitled to:

5.1.1 Leave in accordance with Government’s Paid Leave Policy during the Term of this agreement.

5.1.2 Paid holidays on those days designated as holidays for Provincial Government Employees under the Personnel Administration Procedures.

6. MEDICAL PLAN

6.1 The Contractual Employee shall participate in and contribute to the Group Health and Life Insurance Plan applicable to Provincial Government Employees.

7. PENSION

7.1 The Contractual Employee shall participate in and contribute to the Public Service Pension Plan (PSPP).

8. INJURY ON DUTY

8.1 If the Contractual Employee is injured while carrying out the duties and responsibilities described in Clause 1.2, the terms and conditions set out in the Personnel Administration Procedures regarding “Injury on Duty” shall apply.

9. CONFIDENTIALITY

9.1 The Contractual Employee shall not at any time during or subsequent to the term or subsequent to the termination of this Agreement, either
directly or indirectly communicate or divulge, confidential information to any person, except a person employed by the Government of Newfoundland and Labrador authorized to know such information, except with the prior written consent of the Deputy Minister.

9.2 Confidential information shall include all information the Contractual Employee receives, discovers, develops or has access to involving any operations or decisions of the Government of Newfoundland and Labrador.


10. OWNERSHIP OF DOCUMENTS

10.1 All data produced by the Contractual Employee in the performance of this Agreement shall be and remain the property of the Deputy Minister.

11. DISCLOSURE STATEMENTS

11.1 The Contractual Employee shall, upon proposing to undertake an activity that may contravene with the Conflict of Interest Act, 1995, S.N.L. 1995, c. C-30-1, or upon becoming aware that an activity that he or she has already undertaken may contravene the Conflict of Interest Act, 1995, S.N.L. 1995, c. C-30. 1, disclose in writing full particulars of the activity to the Deputy Minister, or designate, in accordance with the provisions of the Conflict of Interest Act, 1995, S.N.L. 995, c. C-30.1.

12. TERMINATION

12.1 Notwithstanding Clause 12.3, the Deputy Minister may terminate this Agreement at any time, without notice, for cause. “Cause” means the Contractual Employee has wilfully refused to obey a lawful instruction of the Deputy Minister, or has committed misconduct or been so neglectful of duty that the interest of the Deputy Minister is adversely affected thereby, or has otherwise been in breach of a provision of this Agreement.

12.2 This Agreement may be terminated by either party at any time without cause upon thirty (30) calendar days notice, in writing to the other party.

12.3 Upon termination of this contract, the Employee shall be entitled to return to his permanent position, subject to any requisite notice periods, if applicable.
12.4 The address for notices of termination shall be:

For the Deputy Minister:

Deputy Minister
Department of Education and Early Childhood Development
P.O. Box 8700
St. John’s, Newfoundland
A1B 4J6

For the Contractual Employee:

Geoff Gallant

[Redacted]

13. **AMENDMENT**

13.1 This Agreement constitutes the entire agreement between the parties and supersedes all previous Agreements or arrangements, written or oral, relating to this Agreement.

13.2 If at any time during the continuance of this Agreement, the parties deem it necessary or expedient to make any alternation or addition to this Agreement, they may do so by means of a written Agreement between them which shall be supplemental to and form part of this Agreement.

14. **ASSIGNMENT**

14.1 This Agreement may not be assigned in whole or in part by the Contractual Employee.

15. **TERM OF AGREEMENT**

15.1 The term of this Agreement will extend to **September 30th, 2016**; however, it shall be renewable by mutual agreement of the parties hereto.
IN WITNESS WHEREOF the parties have signed this Agreement.

[Signature]
WITNESS

[Signature]
WITNESS

[Signature]
DEPUTY MINISTER

[Signature]
CONTRACTUAL EMPLOYEE
**Government of Newfoundland and Labrador**

**Government Purchasing Agency**

30 Strawberry Marsh Rd.
St. John's NL A1B 4R4

---

**TO:** ADAM LUNDRIGAN

---

**Purchase Order No.** 215051243

**Revision No.** 1

**Page No.** 1

---

**SHIP TO:** Department of Education

Curriculum Division, 3rd Floor
West Block
St John's, NL A1B 4J6
Canada

---

**BILL TO:** Department of Finance

Corporate Financial Services
657 Topsail Road
St John's, NL A1B 2E3
Canada

---

**Customer No.**

**Supplier No.** 40188296

**Ordered / Buyer** 12-JAN-16 Parsons, A

**Revised / Buyer** 12-JAN-16 Parsons, A

**F.O.B:**

**DESTINATION**

**Requestor:** Donnelly, Bill

**Contact:**

---

**IMPORTANT:** Document valid ONLY if NAME and DATE are present in "Authorized By" section.

**AUTHORIZED BY:** Parsons, A

**DATE:** 12-JAN-16

**TOTAL:** $2,100.00

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K12PLNLCA  
Tony Hillier  
P.O. Box 8700  
St. John's NL A1B 4J6

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HST (B1124 1637  
RT0001) 13%  
Estimate Total (CAD): $2,373.00

Notes:  
Scope of Work: Bulk Add Users to User Group  
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Scope of Work: Page Comments Moderation Enhancement  
https://drive.google.com/open?id=1halcSnoVQ1BdMHzcWNcMvOaUbiY330kF7nRWME

To view your estimate online Go to https://adamlundrigan.freshbooks.com/view/3zkpl8h6Lyf7Hxs
April 8th, 2015

Department of Education and Early Childhood Development
P.O. Box 6700
St. John's, NL A1B 4J6
Tel: 1-709-729-5097

To whom it may concern,

Please accept this letter as confirmation that I am the original author of the Professional Learning Newfoundland and Labrador (www.k12pl.nl.ca) web application. While this application is built atop a freely-available content management system (CMS), the scope and extent of customizations added to the system are such that I am the only qualified person in the province to make modifications and perform maintenance.

[Signature]

Adam Lundrigan
Quotation or Service Agreement

Date: January 15, 2016  Project Number: 2015-507

Project Details

Project Name: Department of Education – K-3 Reading and Writing Initiative
Location: Various
Contact Name: Carolyn Wheeler-Scott
Contact Information: 729-2901; carolynwheelerscott@gov.nl.ca.

Project Description
To produce a 5-10 minute video to be added to the existing Primary Reading and Writing video series. The video will be produced in both English and French.

Scope
This project requires a producer, a single camera studio production with teleprompter, and post-production editing. The client will provide a final script in advance of the scheduled production day. Any changes to the final script resulting in re-recording of material may result in additional costs to the client. The client is responsible for arranging production times with participants in consultation with the producer.

The production will take place during regular working hours. If overtime is required and approved by the client, costs will be invoiced.

The client is responsible for the English to French translation of all the material used in the original English production including script, graphics, titles, etc.

The final video will be delivered to the client in a file format suitable for upload to the client's website.

At completion of the project, the client has the right to retain all original media recorded for the project (on XDCam disc). If the client declines, all original media will be deleted and the XDCam discs will be recycled and returned to DELTS. The client is responsible for obtaining and retaining all rights and release forms from anyone participating in the production.

Note: Any change in scope requires completion of a "Project Change Request" form (DELTs 21-139). Refer to sample attached.

DELTS 21-140 – Version 8
July 2011  Page 1 of 3
QUOTATION OR SERVICE AGREEMENT

Budget

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Subtotal: $8,920

H.S.T.: $1,160

Total Cost: $10,080

Communication

If you have any questions, please contact Shari Costello at 864-2672; or scostell@mun.ca.

Other Notes

To accept this quote, please sign and fax to 864-7941. To discuss or decline, please call or email Shari Costello at scostell@mun.ca or 864-2672.

The above quote is based on information provided by the client. If the project content changes then the quote is no longer valid and a new quote will be prepared. Quotation is valid for 30 days from date of issue.

DELTS APPROVAL

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DELTS 21-140 – Version 6
July 2011
Memorial University

Distance Education, Learning and Teaching Support

DATE: APRIL 12, 2016
PROJECT NUMBER: 2016-501

PROJECT DETAILS

| PROJECT NAME: | Department of Education – K-3 Reading and Writing Initiative – Graphic Update |
| LOCATION: | n/a |
| CONTACT NAME: | Carolyn Wheeler-Scott |
| CONTACT INFORMATION: | 729-2901; carolynwheeler.scott@gov.nl.ca |

Project Description

To update specific graphic elements currently existing in three of the videos from the Primary Reading and Writing series. The changes will be made in both English and French versions.

Scope

This project requires a producer, and post-production editing. The client will provide specific detail regarding the graphic changes to the producer.

The client is responsible to provide the French translation.

The final video will be delivered to the client in a file format suitable for upload to the client’s website.

At completion of the project, the client has the right to retain all original media recorded for the project (on XDcam disc). If the client declines, all original media will be deleted and the XDcam discs will be recycled and returned to DELTS. The client is responsible for obtaining and retaining all rights and release forms from anyone participating in the production.

Note: Any change in scope requires completion of a ‘Project Change Request’ form (DELTS 21-139). Refer to sample attached.

Budget

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<th>Resources</th>
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Subtotal: $1,510

H.S.T.: $196

Total Cost: $1,706
Communication

If you have any questions, please contact Shari Costello at 864-2672; or scostell@mun.ca.

Other Notes

To accept this quote, please sign and fax to 864-7941. To discuss or decline, please call or email Shari Costello at scostell@mun.ca or 864-2672.

The above quote is based on information provided by the client. If the project content changes then the quote is no longer valid and a new quote will be prepared. Quotation is valid for 30 days from date of issue.

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[Signatures and dates redacted]
Consultant Appointment

Your firm has been selected to provide professional services for the following in accordance with the attached conditions outlined below.

Project #400326022 – Structural Assessment of Auditorium
Bishop Field Elementary, St. John's, NL

The scope of services will entail a site visit with Department staff and a representative of the School District, or others as designated by the Department. Once this assessment is complete, a minuted scope review meeting with the Department of Education and Early Childhood Development and school district officials will take place to discuss findings and prepare recommendations for the scope of the work.

Fees for this portion of your commission will be per diem rates plus expenses at government rates and policies up to a maximum upset limit that must be agreed to prior to performing the assessment and upon which a prime consultant agreement will be signed.

By accepting this commission, your firm acknowledges that it is willing to enter into a contract containing the terms as outlined in the Government of Newfoundland and Labrador’s Standard Form of Agreement and a negotiated fee and schedule as outlined by our Project Manager. An electronic copy of our standard Agreement is attached for your perusal.

The assessment and recommendations must be completed within 4 weeks of the date of this letter.

If you are interested in carrying out this work, upon receipt of this letter, please contact Mr. John Trahey, Design and Construction Division, at (709) 729-1067, to arrange the assessment. Also, please forward an updated copy of your proof of insurance as well as a letter of good standing with WorkplaceNL for our records.
If you are unable to undertake this work, please advise within one week of receipt of this letter so that we can arrange to appoint another consultant.

Sincerely,

INGRID E. CLARKE, P.Eng., FEC
Assistant Deputy Minister
(Infrastructure)

cc: Ms. Janet Vivian-Walsh
    Mr. Jim Sinnott
    Mr. John Trahey
    Ms. Natalie Hallett
    Ms. Kara Connors
    Mr. Blair Medd
    Mr. Paul Lahey
STANDARD FORM OF AGREEMENT
BETWEEN CLIENT AND PRIME CONSULTANT

BISHOP FIELD ELEMENTARY
STRUCTURAL ASSESSMENT OF AUDITORIUM
Project # 400326022
AGREEMENT

THIS AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador, on this 4th day of August, 2016.

BETWEEN: HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR as represented by the Minister of Education and Early Childhood Development.

("the Client")

AND: NOVA CONSULTANTS INC.

("the Prime Consultant")

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

I. Definitions
In addition to the terms defined in the Special Terms and Conditions attached as Schedule "B", (if any), and the General Terms and Conditions attached as Schedule "C", the following words and phrases shall have the following meanings:

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

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

II. The Prime Consultant's Work
The Prime Consultant shall do all things necessary to fulfill and carry out all of the obligations of the Prime Consultant as set out in the Contract Documents (the "Work").

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

IV. **Representations and Warranties**

The Prime Consultant hereby represents and warrants that every fact stated or represented by the Prime Consultant or its Representatives to the Client in connection with any proposal made by the Prime 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.

V. **Conflict Between Provisions**

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

VI. **Start and Completion Date**

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

- **Start Date:** August 4, 2016
- **Completion Date:** August 11, 2016

VII. **Effective Date**

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

VIII. **Paragraph Numbering**

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

IX. **Counterparts**

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

J. Vernon Walsh, Deputy Minister
Minister of Education and Early Childhood Development
or his/her authorized designate

Recommended by (Name/Date):
PM: ____________________________
Manager: S. Norhay, Aug 9, 2016
Director: ____________________________

Nova Consultants Inc.

__________________
Steve Barbour

Name: Stephen A. Barbour, P. Eng.
Date: August 4, 2016
SCHEDULE "A"
SCOPE OF WORK
BETWEEN PRIME CONSULTANT AND CLIENT

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Schedule III ............. Additional Reimbursement Allowances
Schedule IV ............ Schedule of the Performance of Consultant Services
Schedule V .............. Other Conditions of Services
PART 1  DEFINITIONS

1.1 Project Budget Forecast: means the Client's estimated total expenditure for the project. It includes the construction budget forecast and all other costs to the Client for the project such as, but not limited to, professional fees and acquisition costs.

1.2 Construction Budget Forecast: means the Client's estimated Construction Cost including contingencies for cost increases.

1.3 Construction Cost: means the contract price(s) of all elements of the project designed or specified by or on behalf of the Prime Consultant including, all applicable taxes. Where there is no contract price for all or part of the project, the Construction Cost shall be the elemental cost analysis using market rates at the estimated time of construction as determined by the Prime Consultant and agreed by the Client. The Construction Cost does not include professional fees, or land acquisition costs.

1.4 Contract: means an agreement between the Client and the Contractor for the provision of labour, materials and equipment for the construction of the project or part of the project by a Contractor.

1.5 Contractor: means a person, firm, or corporation contracting with the Client to provide labour, materials and equipment for the construction of the Project or part of the Project.

1.6 Project Management Design Administration Manual (PMDA Manual): a manual developed and maintained by the Department of Transportation and Works, Works Branch, for the purpose of presenting standards, guidelines and instructions for the delivery of building projects administered by the Works Branch. Unless otherwise agreed between the parties, the version published on the date of this Contract shall be the version applicable to this Contract.

1.7 Additional Services: means Consulting Services provided that are additional to the Basic Services.

1.8 Basic Services: means Consulting Services as outlined in the PMDA Manual.

1.9 Cost Control Services: means a service to monitor and advice on Project Budget and Construction Budget Forecasts.

1.10 Partial Services: means Reduced Basic Services as negotiated by the Client with the Prime Consultant.

1.11 Program Advisory Services: means Consulting Services provided by the Prime Consultant prior to start of Basic Services.

1.12 Authorities Having Jurisdiction (AHJ): means a person or persons representing these agencies that have authority to provide plan approvals and permits for the purpose of constructing the project.
PART 2  RESPONSIBILITIES

2.1  PRIME CONSULTANT

.1  The Prime Consultant's services consist of Basic Services and Additional Services which may be required to perform the Work. The phases of the Prime Consultant's Basic Services, and Additional Services are listed on Schedule II, and further elaborated in the Project Management and Design Administration (PMDA) Manual of the Department of Transportation and Works.

.2  The Prime Consultant's services as provided for under and pursuant to this Agreement at and during all phases of the Work shall encompass coordination of all disciplines, quality assurance and documentation control to integrate all services and sub consultant's work. The Prime Consultant shall prepare and submit contract documents in accordance with the Client's requirements, as outlined in the PMDA Manual.

.3  During the tendering and contract award phase, the Prime Consultant may advise and assist the Client in obtaining bids and awarding construction contracts. The Client's tendering and contract procedures and administrative practices will be followed in the performance of this phase, as outlined in the PMDA Manual.

.4  The Client may require the Prime Consultant to provide construction administration services. When required the Prime Consultant's service shall be based upon either full responsibility or partial responsibility.

.1  Full Responsibility

.1  As outlined in the PMDA Manual, services provided under full responsibility include assessing construction work carried out on or in relation to the project and offering an opinion as to whether or not the construction of the project is in accordance with the contract documents prepared by the Prime Consultant.

.2  Partial Service

.1  The scope of this partial service is to be outlined in Schedule I of this agreement, as agreed between the Client and the Prime Consultant.

.5  The project completion phase represents the portion of the Basic Services to be provided at the commencement of substantial completion until expiry of the one year Project warranty period. This service includes the provision of record drawings as outlined in the PMDA Manual, and advice concerning issues arising during this period.

.6  Cost Control Services are included under the scope of Basic Services to be provided by the Prime Consultant, as outlined in the PMDA Manual.

.7  The following schedules apply:

   Schedule I - Project Description
   Schedule II - Basic and Other Additional Services Fees
   Schedule III - Additional Reimbursable Allowances
   Schedule IV - Other Conditions of Services
2.2

CLIENT'S RESPONSIBILITIES

.1 The Client shall give due consideration to documentation submitted by the Prime Consultant and, whenever action is necessary, the Client shall inform the Prime Consultant of the Client's decisions, in a reasonable and timely manner.

.2 The Client shall authorize persons to act on behalf of the Client with respect to delivery and administration of the project.

.3 If the Client observes or otherwise becomes aware of any fault or defect in the project or any nonconformity with the requirements of the Contract, the Prime Consultant shall be so notified in writing.

.4 The Client may provide information regarding the project including: a program, which shall set forth the Client's spatial and functional requirements and relationships. The Prime Consultant is responsible for requesting or providing information that is required to prepare the design and contract documents.

.5 The Client will provide the Prime Consultant with a Project Budget Forecast.

.6 The Client shall reimburse the Prime Consultant for procuring information which the Prime Consultant requires for the provision of services necessary to carry out the preparation of design and/or contract documentation when the information is not available upon request from the Client such as site surveys, hazardous material surveys.

.7 When the Client supplies the Prime Consultant with information contained within reports or equipment data sheets, the Prime Consultant will not be required to exhaustively check information supplied by the Client to verify the same unless it is requested to do so by the Client. However, if the Prime Consultant observes, or otherwise becomes aware, of any fault or defect in the information supplied to it by the Client, the Consultant shall cause the Client to be notified in writing of any such fault or defect forthwith.

.8 Where the Prime Consultant has been authorized by the Client to procure or obtain information, the Prime Consultant shall be responsible in seeing that the information provided meets the needs of the sub-consultant(s) performing the work under the direction of the Prime Consultant.

.9 The Client will reimburse the Prime Consultant for other specialist consultants that may be required to carry out quality control services during the project, subject to prior approval of scope of the work and an agreement on the fee or fees payable for the same by the Client.

PART 3

GENERAL REQUIREMENTS

3.1

STAFF

The Prime Consultant will provide the Client with a list of its employees and those of its sub-consultants who will be assigned to the project. The list will include the classification of each employee and the hourly rate to be charged for additional services rendered. The Prime Consultant will obtain written prior approval of
Client for any replacement of key employees, changes in the numbers of key employees or changes to rates of key employees assigned to the project.

3.2 SCHEDULE

.1 The Prime Consultant has developed and submitted a time schedule for the performance of consultant services on the project (which Schedule has been approved by the Client and is appended as Schedule “IV” hereto. The schedule shall incorporate all major design milestones as presented in the PMDA Manual.

.2 Unless otherwise agreed to between the parties, the failure by a party to comply with the approved schedule for those aspects of the Work that a party is responsible for may be sufficient cause for the other party to terminate this Agreement, if that failure is not rectified within seven (7) days after the defaulting party is given notice of its default.

.3 If either party believes that a change in the approved schedule is necessary the party requesting that change shall promptly give notice of that fact to the other party in writing, provide the other party with a revised schedule and the reason(s) why the change is requested for its consideration and request its written approval of the same. Should that approval be forthcoming the revised schedule will become the approved schedule for the project.

3.3 COST CONTROL

.1 The Prime Consultant shall provide Cost Control Services in accordance with PMDA Manual.

.2 If at any time the Prime Consultant considers its estimates indicate costs which exceed the Project or Construction Budget Forecast, the Prime Consultant will immediately advise the Client. If the excess is due to, discretionary design elements under the control of or reasonably foreseeable by the Prime Consultant, or the negligence or default of the Prime Consultant in the performance of this Agreement, the Client may require the Prime Consultant to redesign the project at the Prime Consultant’s expense to bring the cost estimate within the approved Project Budget Forecast.

.3 If the preferred bidder’s tender for the project for which the Prime Consultant has prepared and provided the design(s) and provided cost pricing and control services exceeds the Construction Budget Forecast as a result of the negligence or default of the Prime Consultant under this Agreement or is for reasons related to discretionary design elements which are under the Prime Consultant’s control or which the Prime Consultant should have reasonably foreseen and could have guarded against, then the Prime Consultant, at no additional cost to the Client, shall redesign to bring the cost within the Construction Budget Forecast and retender.

3.4 CHANGES AND ADJUSTMENT

.1 Changes and adjustment to the fees payable under this Agreement will be only considered if there is a material change in the level of services agreed to be provided or in the scope of the Project, or there is a material delay in the performance of the work required under the Contract.
The amounts due to the Prime Consultant arising from a material change to the Agreement will be determined by a negotiated fixed amount, or failing such negotiation, the actual cost as determined by level of effort incurred times the agreed hourly rate, plus receipted expenses.

Any increases in the fees payable caused by a material changes or other changes shall be communicated by the Prime Consultant in writing to the Client prior to incurring such costs to permit the Client to mitigate the amount of increased costs.

ERRORS AND OMISSIONS

Any costs resulting from design errors on the part of the Prime Consultant, sub-consultants chosen by the Prime Consultant, or agents, or employees of the Prime Consultant or of any sub-consultant chosen by the Prime Consultant will be the responsibility of the Prime Consultant to remedy. However, where the Client and not the Prime Consultant chooses a sub-consultant to do hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work, the Prime Consultant shall not be held responsible for design errors attributed to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, or construction testing services, done by sub-consultants chosen by the Client, unless those design errors are directly caused by the Prime Consultant. In the case of sub-consultants chosen by the Client, the Client and not the Prime Consultant shall be responsible to takes such steps as the Client deems to be appropriate, to ensure that any sub-consultant chosen by the Client has appropriate and adequate policies of insurance that are acceptable to the Client in place to cover design errors attributable to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work done by any such sub-consultant.

Any costs resulting from errors in design or omissions may be paid by the Client providing the cost of such design omissions does not entail removing material or equipment that has already been constructed in accordance with the plans and specifications. The cost of the original material and equipment, as indicated on the plans and specifications, and the labour to remove such will be the responsibility of the Prime Consultant.

PRIME CONSULTANT ACTIONS AND DECISIONS

The Prime Consultant acknowledges that adequate discussion has taken place regarding the Work with the Client and that the Prime Consultant has access to sufficient information to undertake the services contracted for within the Project Budget.

The Prime Consultant and the Client agrees to act promptly and diligently on all matters within their respective direction and control requiring an action or decision affecting the design, construction or administration of the project.

Only express approval by the Client shall be deemed to relieve the Prime Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant. No acceptance or approval by the Client, that is implied shall be deemed to relieve the Prime
Consultant of professional or technical responsibility for the quality of the project
documentation prepared or assembled by the Prime Consultant.

3.7 INSURANCE COVERAGE

.1 The Prime Consultant shall supply written proof of:

.1 Professional liability insurance coverage equal or greater than $250,000
per claim, $500,000 in aggregate for projects under $2 million
construction value or $500,000 per claim, $1,000,000 aggregate for
projects over $2 million. The Prime Consultant shall be fully responsible
for all amounts deducted from this value by the Prime Consultant's
Insurer. This insurance shall remain in effect until the expiry of the
genral contractor's one year warranty on the project.

.2 Commercial liability insurance acceptable to the Client with a minimum
limit of $1,000,000.

.2 The Insurer shall be an insurance company licensed to do business in the
Province of Newfoundland & Labrador.

PART 4 BASIS OF PAYMENT SCHEDULE

4.1 The Client will pay for Program Advisory Services on the basis of an agreed fixed
fee or on the basis of approved level of effort at agreed per diem rates.

4.2 The Client will pay for Basic Services on the basis of the agreed fixed fee. The
Client's Project Budget Forecast will be made available to the Prime Consultant
to assist in the evaluation of the level of effort required.

4.3 The fee for Basic Services will be apportioned to the phases of service as
outlined in Schedule II - "Basic Services and Other Additional Services' Fees".

4.4 The fee for Basic Services will also include the management and co-ordination
by the Prime Consultant and specialist consulting services as may be requested
by the Client. Compensation for specialist or other consulting services will be on
the basis of an agreed fixed fee for the level of effort required.

4.5 The Client will pay for resident services during construction, when requested
based on an agreed fixed fee amount. The fee amount is to include all payroll
costs, site-related expenses and allowances as agreed.

4.6 The Client will pay for construction management services when requested on the
basis of the level of effort required during project implementation based on an
agreed fixed fee.

4.7 The Client will pay for commissioning services on the basis of an agreed fixed
fee. The fee amount shall include level of effort; associated with the preparation
of documents and site visits to carry out commissioning activities, as outlined in the PMDA Manual.

4.8 The Client will pay for day-to-day routine expenses such as; long distance charges, reproduction costs, client presentations and submissions, original contract documents (hardcopy), courier services, travel over 50 km from office on an agreed fixed amount. All routine expenses to be charged at cost. Meals, Private Vehicle usage, and incidental expense are to be paid on the basis of Government Rates at time of this Agreement.

4.9 The Client will pay for Additional Reimbursable Allowances as provided for in Schedule III - "Additional Reimbursable Allowances". These allowances require supporting documents to be provided for payment.
SCHEDULE I
PROJECT DESCRIPTION

(Provide concise summary description of project)

Conduct site visit and preliminary assessment of work scope. Provide a summary report.
SCHEDULE IV
SCHEDULE OF THE PERFORMANCE OF CONSULTANT SERVICES

Site Visit – August 8, 2016

Preliminary Assessment – Summary Report – August 11, 2016
SCHEDULE V
OTHER CONDITIONS OF SERVICES

(Not applicable unless text is added to this schedule)
SCHEDULE “B”

SPECIAL TERMS AND CONDITIONS (as necessary)

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

Denise Woodrow, Q.C., General Counsel  Lori Anne Companion, Deputy Minister

The Special Terms and Conditions of this Agreement are follows:
As per the Contract terms contained herein

OR

1. No Special Terms and Conditions

Department of Justice

Deputy Minister
**SCHEDULE “C”**

**GENERAL TERMS AND CONDITIONS**

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SCHEDULE “C”

GENERAL TERMS AND CONDITIONS

Article 1. PAYMENT

1.1 Consideration

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

Payment Option #1

Subject to Article 1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, for the satisfactory performance of the Work, Insert text dollar value (Insert Numeric Dollar Value) (plus HST) in accordance with the following payment schedule:

(i) Periodic payments – payments paid monthly proportional with the amount of work completed to date.

Payment Option #2 Not Applicable

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

(i) Person / Professional Designation – Hourly Rate

Payment Option #3 Not Applicable

Subject to Article 1.3, upon the satisfactory completion of the Work and the presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, $Insert Absolute Limit on Cost of Services (plus HST).

1.2 Reimbursement of Expenses

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

Reimbursement Option A

(a) The Client shall only be responsible for the following reimbursable expenses, payable at cost, provided the Prime Consultant can
demonstrate to the Client that such expenses were incurred in relation to the Work, and that documentation, satisfactory to the Client, is provided in support of the reimbursable expense claimed and is attached to the applicable invoice, including for example, originals of supporting receipts, invoices or statements issued by non-parties to this Agreement:

(i) **Insert Specific Reimbursable Items**

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

Reimbursement Option B Not Applicable

The Client shall not be responsible for any expenses incurred by the Prime 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) The Prime Consultant shall remain obligated to complete the Work notwithstanding that the actual costs of the Prime Consultant, whether in respect of professional services or in respect of costs or expenses incurred, may exceed the total aggregate sum set out in this Agreement.

(b) The Parties agree and confirm that as set out in section 25(6) of the Financial Administration Act, RSNL 1990 c. F-8, as amended, all fees payable in accordance with this Agreement are subject to there being an appropriation for the work for the fiscal year in which payment under this Agreement is due.

(c) Payment will be made within 60 calendar days of receipt of a properly documented invoice. The Client shall within thirty (30) days of the execution of this Agreement should the Prime Consultant request the same provide direction to the Prime Consultant as to what constitutes a properly documented invoice.

(d) All invoices shall clearly show the amount of HST billed by the Prime Consultant as a separate item.

(e) The Prime Consultant shall conform to any request that may be made by the Client to alter the form of invoice customarily used by the Prime Consultant as may be reasonably required for the purposes of the Client's internal accounting systems. The Prime 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 Prime Consultant which may arise from work, services or expenses incurred to remedy errors or omissions in the Work for which the Prime Consultant is responsible.

(g) The Prime Consultant shall submit invoices to:
Department of Education and Early Childhood Development
Design and Construction Division
5th Floor, West Block, Confed. Building
St. John’s, NL A1B 4J6

Article - 2. INFORMATION SUPPLIED BY THE CLIENT

2.1 The Client will furnish to the Prime Consultant all available information necessary for the performance of the Work.

2.2 Where discrepancies, omissions or obscurities in the information are evident, the Prime Consultant shall bring them to the attention of the Client and secure written instructions from the Client before proceeding with any work.

Article - 3. CONFIDENTIALITY, MATERIALS AND COPYRIGHT

3.1 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 Prime Consultant, the Prime Consultant’s 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;

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 Prime Consultant, the Prime Consultant’s employees, servants and/or agents during the performance of the services or in any way related thereto;

(c) all personal information, as defined from time to time under the Access to Information and Protection of Privacy Act, SNL 2002 c. A-1.1, to mean recorded information about an identifiable individual, including,

(i) the individual’s name, address or telephone number,

(ii) the individual’s race, national or ethnic origin, colour, or religious or political beliefs or associations,
(iii) the individual's age, sex, sexual orientation, marital status or family status,
(iv) an identifying number, symbol or other particular assigned to the individual,
(v) the individual's fingerprints, blood type or inheritable characteristics,
(vi) information about the individual's health care status or history, including a physical or mental disability,
(vii) information about the individual's educational, financial, criminal or employment status or history,
(viii) the opinions of a person about the individual, and
(ix) the individual's personal views or opinions

for any individual, which is, directly or indirectly, disclosed to or collected by the Prime Consultant, the Prime Consultant's 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 Prime Consultant, the Prime Consultant's 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 Prime Consultant was or thereafter became part of the public domain through no act or omission of the Prime Consultant or the Prime Consultant's Representatives; or

(ii) is information which the Prime Consultant can show possession of prior to the date of this Agreement and which was received or developed by the Prime Consultant free of obligations of confidentiality to the Client.

3.2 The Prime Consultant shall treat all Confidential Information acquired by the Prime Consultant in the performance of the Services as privileged and confidential and shall not divulge the same to any person or persons at any time without the express written approval of the Client, unless required to do so by law, which may include any subpoena or other similar process or in connection with litigation, arbitration or other proceeding or by virtue of an act or regulations. In the event that such disclosure is required, the Prime Consultant shall give the Client prompt notice of the requirement upon becoming aware that such disclosure is required. Where circumstances do not permit the Prime Consultant to provide such notice prior to disclosure, the Prime Consultant shall provide such notice to the Client immediately after the required disclosure.

3.3 The Prime 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.

3.4 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 Prime 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 Prime 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 Prime Consultant pursuant to the terms of this Agreement. The Prime Consultant acknowledges that the Client's right to this information shall at all times be paramount to any rights of the Prime Consultant, at law or in equity, and that the Prime 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 Prime Consultant's possession.

3.5 The Prime 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 Prime Consultant, the Prime Consultant's employees, servants and/or agents, and shall certify the destruction of same to the Client. However, nothing in this Agreement shall preclude the Prime Consultant's privilege to retain copies of documents provided to it or prepared by it in connection with the Work, provided such documents are kept in a secure manner, are used by the Prime Consultant solely for the purposes of defending itself against claims arising from the Work of the Contract, and that the aforesaid documentation is destroyed or returned to the Client at the end of all limitation periods for commencing any action in connection with the Work or upon the conclusion or settlement with finality of any claim or action with respect to the Work.

3.6 The Prime Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Prime Consultant, the Prime Consultant's employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the Access to Information and Protection of Privacy Act, the Management of Information Act, SNL 2005, c. M-1.01, and the Privacy Act, RSNL1990 c. P-22, as well as other legislation which may apply in the jurisdiction of the Prime Consultant's operation. The Prime 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 Prime Consultant, and the Prime Consultant's employees, servants and/or agents.

3.7 The Prime Consultant shall ensure that it, and the Prime Consultant's 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 Prime Consultant employs to avoid disclosure or dissemination of the Prime Consultant's own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of the Prime Consultant's employees, servants or agents other than those who are required to have access to the same 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 Prime Consultant comply with all policies, standards and safeguards established under this Article;

(d) advise the Client of any changes in the Prime Consultant's 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 Prime 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.

3.8 The Prime Consultant shall only disclose Confidential Information to persons other than the Prime Consultant's 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".

3.9 The Prime 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 Prime 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 Prime Consultant;

(b) promptly furnish to the Client full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the Client in investigating or preventing the recurrence of any unauthorized
possession, use or knowledge, or attempt thereof, of Confidential Information;

(c) use reasonable efforts to cooperate with the Client in any litigation and investigation against third parties deemed necessary by the Client to protect its proprietary rights;

(d) promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information; and

(e) refer to and follow the privacy breach protocol of the Government of Newfoundland and Labrador as it exists at the time of the breach and located on the Department of Justice website at http://www.justice.gov.nl.ca/just/info/privacybreach.html

Article - 4. EMPLOYEES OF THE PRIME CONSULTANT

4.1 The Prime Consultant shall provide employees who are competent in their field of specialization. The Client will have the right to have the Prime 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 Prime 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 concerned was involved and may refuse to approve payment for such Work.

4.2 The Prime 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 - 5. ACCESS TO FACILITIES

5.1 The Client agrees to provide, access to the project site for the Prime Consultant to perform the Work during Client office hours.

5.2 When using or accessing the premises of the Client, the Prime Consultant and all officers, employees and agents of the Prime Consultant shall comply with all security regulations and workplace policies and procedures in effect from time to time at the Client’s facilities.

Article - 6. RECORDS AND AUDIT

6.1 The Prime 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.

6.2 The Prime Consultant shall furnish reports as required by the Client for the purpose of monitoring the progress of the Work.
Article - 7. TERMINATION

7.1 This Agreement is deemed to be concluded once the Work has been completed to the satisfaction of the Client and the payment(s), as stipulated in the Agreement, has been issued to the Prime Consultant.

7.2 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.

7.3 Where this Agreement is terminated prior to the mutually agreed upon completion date, the Prime Consultant shall thereupon be entitled to payment in accordance with this Agreement in respect of that part of the Work completed up to the date of termination, provided however, that the Prime 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 - 8. NOTICES

8.1 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:

John Trahey, Project Manager
Design and Construction Division
5th Floor, West Block, Confederation Building
St. John’s, NL A1B 4J6
Phone: (709) 729-1067
Fax: (709) 729-1400
Email: JohnTrahey@gov.nl.ca

For the Prime Consultant:

Stephen A. Barbour, P. Eng.
37 Hallett Crescent
St. John’s, NL A1B 4C4
Phone: (709) 753-2260
Fax: (709) 753-1514
Email: [redacted]

8.2 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 telexcopier or other means of electronic communication; and
(c) Six (6) days after delivery to Canada Post Corporation where the postal service is used.

Article - 9. LIABILITY

9.1 The Prime Consultant agrees that in performance of the Work neither the Prime Consultant nor any Prime Consultant’s Representative shall be or be deemed to be an officer, servant, agent or partner of the Client.

9.2 The Client shall not be liable for, and the Prime 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 negligence or default of the Prime Consultant under this Agreement, including the negligence or default of any sub-consultant chosen by the Prime Consultant. Except to the extent that such losses, costs, charges or expenses as are referenced in this clause are caused by the negligence or default of the Client under this Agreement, the Prime Consultant shall defend any and all such actions and pay all legal charges, costs and other expenses arising therefrom. Where the Prime Consultant fails to defend such an action, 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 Prime Consultant.

Article - 10. COMPLIANCE WITH LAW

10.1 In respect of any work within the Province of Newfoundland and Labrador connected with or arising from this Agreement, the Prime 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.

10.2 The Prime Consultant shall ensure that the Prime Consultant and its Representatives comply with all requirements of any governing federal, provincial or municipal legislation, by-laws or regulations applicable to the Prime Consultant or the Prime Consultant’s Representatives in the performance of the Work.

Article - 11. ARBITRATION

11.1 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, the parties shall first attempt to resolve all matters through friendly negotiation by a meeting between their representatives upon notice per Article 8. A resolution reached in this way must be reached within 10 days of both parties having knowledge and notice of the dispute and be reduced to writing.
11.2 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Article 11.1), either party may give the other notice of such dispute and request third party mediation thereof.

11.3 Should the parties not agree to third party mediation or the matter in dispute between the parties not be resolved by mediation, then in the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Articles 11.1 and 11.2), either party may give the other notice of such dispute and 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 c. A-14, including such provisions for the appointment of arbitrators.

Article - 12. LAWS GOVERNING

12.1 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 - 13. USE OF WORK

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

13.2 With respect to 13.1 the Prime Consultant's liability to the Client for and in respect of the Work is solely limited to the project described in this Agreement.

Article - 14. CONFLICT OF INTEREST

14.1 No member of the House of Assembly of the Province of Newfoundland and Labrador shall be admitted to any part or share of the payments made pursuant to this Agreement or to any benefits arising therefrom.

14.2 The Prime Consultant and the Prime 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 - 15. SUBCONTRACTORS

15.1 The Prime Consultant shall not sub-contract all or a portion of the Work without the prior written approval of the Client, which consent will not be unreasonably withheld.

15.2 The entry into any subcontract shall not relieve the Prime Consultant of any of its obligations under the terms of this Agreement.

Article - 16. GENERAL

16.1 Articles 3 and 9 of this Agreement shall survive the termination or expiration of this Agreement.

16.2 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.

16.3 Time shall be of the essence of this Agreement.

16.4 The failure of the Client to insist upon or enforce in any instance strict performance by the Prime 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.

16.5 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.

16.6 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.

16.7 This Agreement shall enure to the benefit of and be binding upon the Parties hereto, their respective heirs, legal representatives, successors and assigns.

16.8 The Prime Consultant shall not assign this Agreement in whole or in part to any third party without the prior written approval of the Client.
SCHEDULE "D"

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

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

- All portable storage devices or media (e.g., flash drives, memory sticks, portable hard
  drives, writeable compact discs or digital video discs, etc.) may only be used to transport
  and/or store Confidential Information where either the Confidential Information or the device
  or media is encrypted.

- Unless specifically authorized by the Prime Consultant’s Contract or otherwise, the Prime
  Consultant is not permitted to attach non-government computers or other information
  technology systems to any Government network.

- The Prime Consultant is expected to implement and maintain up to date versions of all
  ordinary business software for the reasonable protection of information on computers
  attached to the Internet which will have access to or store Confidential Information, including
  security firewall and anti-viral software.

- The Prime Consultant is not permitted to use any Peer to Peer file sharing program (e.g.,
  Limewire, etc) or chat program (e.g., MSN, Skype) on any information technology asset
  which will contain Confidential Information, or which will be connected via a network to any
  computer which will contain Confidential Information.

- Email should not be used as a method to transmit Confidential Information across public
  networks such as the Internet unless the e-mail and/or its attachments are encrypted or
  zipped in a secure manner.

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

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

- For the purposes of Schedule D, routine exchanges of design and construction information
between the Client, the Prime Consultant and the Prime Consultant’s sub-consultants that is
of a non confidential nature need not be encrypted.
Consultant Appointment

Your firm has been selected to provide professional services for the following in accordance with the attached conditions outlined below.

**Project #400213012 – Plumbing Retrofit Assessment**

Lake Academy, Fortune, NL

1. The scope of services will entail a site visit with Department staff and a representative of the School District, or others as designated by the Department. Once this assessment is complete, a minuted scope review meeting with the Department of Education and Early Childhood Development and school district officials will take place to discuss findings and prepare recommendations for the scope of the work.

2. Fees for this portion of your commission will be per diem rates, plus expenses at government rates and policies. A maximum upset limit will have to be agreed upon prior to performing the assessment and a prime consultant agreement signed.

3. By accepting this commission, your firm acknowledges that it is willing to enter into a contract containing the terms as outlined in the Government of Newfoundland and Labrador's Standard Form of Agreement and a negotiated fee and schedule as outlined by our Project Manager. An electronic copy of our standard Agreement is attached for your perusal.

4. The assessment and recommendations must be completed within 4 weeks of the date of this letter. If you are interested in carrying out this work, upon receipt of this letter, please contact Mr. Michael Carroll, Design and Construction Division, at (709) 729-2892, to arrange the assessment. Also, please forward an updated copy of your proof of insurance as well as a letter of good standing with Workplace NL.
If you are unable to undertake this work, please advise within one week of receipt of this letter so that we can arrange to appoint another consultant.

Sincerely,

INGRID E. CLARKE, P.Eng., FEC
Assistant Deputy Minister
(Infrastructure)

cc: Ms. Janet Vivian-Walsh
    Mr. Jim Sinnott
    Mr. Michael Carroll
    Ms. Natalie Hallett
    Ms. Kara Connors
    Mr. Blair Medd
    Mr. Paul Lahey
STANDARD FORM OF AGREEMENT
BETWEEN CLIENT AND PRIME CONSULTANT

Plumbing Retrofit Assessment
Lake Academy, Fortune, NL
Project #400213012
AGREEMENT

THIS AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador, on this 26 day of July, 2016.

BETWEEN: HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR as represented by the Minister of Education & Early Childhood Development. ("the Client")

AND: Rowsell Appleby Newton Engineering Inc. ("the Prime Consultant")

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

I. Definitions
In addition to the terms defined in the Special Terms and Conditions attached as Schedule "B", (if any), and the General Terms and Conditions attached as Schedule "C", the following words and phrases shall have the following meanings:

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

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

II. The Prime Consultant's Work
The Prime Consultant shall do all things necessary to fulfill and carry out all of the obligations of the Prime Consultant as set out in the Contract Documents (the "Work").

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

IV. **Representations and Warranties**

The Prime Consultant hereby represents and warrants that every fact stated or represented by the Prime Consultant or its Representatives to the Client in connection with any proposal made by the Prime 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.

V. **Conflict Between Provisions**

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

VI. **Start and Completion Date**

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

- **Start Date:** July 26, 2016
- **Completion Date:** August 26, 2016

VII. **Effective Date**

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

VIII. **Paragraph Numbering**

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

IX. **Counterparts**

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

Joan K. Harrington—Wales, Deputy Minister
Minister of Education and Early Childhood Development,
or his/her authorized designate

Rowsell Appleby Newton Engineering Inc.

Name: Mr. Craig Rowsell, P. Eng.
Date: July 26, 2016

Name: Mr. Jason Smith, P. Eng.
Date: July 26, 2016

Recommended By (Name/Date):
Manager: S. McKeag July 28/16
Director: P. L'Heureux July 29/16

Reissued 2015/07/24
**SCHEDULE "A"**

**SCOPE OF WORK**

**BETWEEN PRIME CONSULTANT AND CLIENT**

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Schedule III............ Additional Reimbursement Allowances
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PART 1  DEFINITIONS

1.1  Project Budget Forecast: means the Client’s estimated total expenditure for the project. It includes the construction budget forecast and all other costs to the Client for the project such as, but not limited to, professional fees and acquisition costs.

1.2  Construction Budget Forecast: means the Client’s estimated Construction Cost including contingencies for cost increases.

1.3  Construction Cost: means the contract price(s) of all elements of the project designed or specified by or on behalf of the Prime Consultant including, all applicable taxes. Where there is no contract price for all or part of the project, the Construction Cost shall be the elemental cost analysis using market rates at the estimated time of construction as determined by the Prime Consultant and agreed by the Client. The Construction Cost does not include professional fees, or land acquisition costs.

1.4  Contract: means an agreement between the Client and the Contractor for the provision of labour, materials and equipment for the construction of the project or part of the project by a Contractor.

1.5  Contractor: means a person, firm, or corporation contracting with the Client to provide labour, materials and equipment for the construction of the Project or part of the Project.

1.6  Project Management Design Administration Manual (PMDA Manual): a manual developed and maintained by the Department of Transportation and Works, Works Branch, for the purpose of presenting standards, guidelines and instructions for the delivery of building projects administered by the Works Branch. Unless otherwise agreed between the parties, the version published on the date of this Contract shall be the version applicable to this Contract.

1.7  Additional Services: means Consulting Services provided that are additional to the Basic Services.

1.8  Basic Services: means Consulting Services as outlined in the PMDA Manual.

1.9  Cost Control Services: means a service to monitor and advice on Project Budget and Construction Budget Forecasts.

1.10  Partial Services: means Reduced Basic Services as negotiated by the Client with the Prime Consultant.

1.11  Program Advisory Services: means Consulting Services provided by the Prime Consultant prior to start of Basic Services.

1.12  Authorities Having Jurisdiction (AHJ): means a person or persons representing these agencies that have authority to provide plan approvals and permits for the purpose of constructing the project.
PART 2  RESPONSIBILITIES

2.1  PRIME CONSULTANT

.1  The Prime Consultant's services consist of Basic Services and Additional Services which may be required to perform the Work. The phases of the Prime Consultant's Basic Services, and Additional Services are listed on Schedule II, and further elaborated in the Project Management and Design Administration (PMDA) Manual of the Department of Transportation and Works.

.2  The Prime Consultant's services as provided for under and pursuant to this Agreement at and during all phases of the Work shall encompass coordination of all disciplines, quality assurance and documentation control to integrate all services and sub consultant's work. The Prime Consultant shall prepare and submit contract documents in accordance with the Client's requirements, as outlined in the PMDA Manual.

.3  During the tendering and contract award phase, the Prime Consultant may advise and assist the Client in obtaining bids and awarding construction contracts. The Client's tendering and contract procedures and administrative practices will be followed in the performance of this phase, as outlined in the PMDA Manual.

.4  The Client may require the Prime Consultant to provide construction administration services. When required the Prime Consultant's service shall be based upon either full responsibility or partial responsibility.

.1  Full Responsibility

.1  As outlined in the PMDA Manual, services provided under full responsibility include assessing construction work carried out on or in relation to the project and offering an opinion as to whether or not the construction of the project is in accordance with the contract documents prepared by the Prime Consultant.

.2  Partial Service

.1  The scope of this partial service is to be outlined in Schedule I of this agreement, as agreed between the Client and the Prime Consultant.

.5  The project completion phase represents the portion of the Basic Services to be provided at the commencement of substantial completion until expiry of the one year Project warranty period. This service includes the provision of record drawings as outlined in the PMDA Manual, and advice concerning issues arising during this period.

.6  Cost Control Services are included under the scope of Basic Services to be provided by the Prime Consultant, as outlined in the PMDA Manual.

.7  The following schedules apply:

   Schedule I - Project Description
   Schedule II - Basic and Other Additional Services Fees
   Schedule III - Additional Reimbursable Allowances
   Schedule IV - Other Conditions of Services
2.2 CLIENT’S RESPONSIBILITIES

.1 The Client shall give due consideration to documentation submitted by the Prime Consultant and, whenever action is necessary, the Client shall inform the Prime Consultant of the Client’s decisions, in a reasonable and timely manner.

.2 The Client shall authorize persons to act on behalf of the Client with respect to delivery and administration of the project.

.3 If the Client observes or otherwise becomes aware of any fault or defect in the project or any nonconformity with the requirements of the Contract, the Prime Consultant shall be so notified in writing.

.4 The Client may provide information regarding the project including: a program, which shall set forth the Client’s spatial and functional requirements and relationships. The Prime Consultant is responsible for requesting or providing information that is required to prepare the design and contract documents.

.5 The Client will provide the Prime Consultant with a Project Budget Forecast.

.6 The Client shall reimburse the Prime Consultant for procuring information which the Prime Consultant requires for the provision of services necessary to carry out the preparation of design and/or contract documentation when the information is not available upon request from the Client such as site surveys, hazardous material surveys.

.7 When the Client supplies the Prime Consultant with information contained within reports or equipment data sheets, the Prime Consultant will not be required to exhaustively check information supplied by the Client to verify the same unless it is requested to do so by the Client. However, if the Prime Consultant observes, or otherwise becomes aware, of any fault or defect in the information supplied to it by the Client, the Consultant shall cause the Client to be notified in writing of any such fault or defect forthwith.

.8 Where the Prime Consultant has been authorized by the Client to procure or obtain information, the Prime Consultant shall be responsible in seeing that the information provided meets the needs of the sub-consultant(s) performing the work under the direction of the Prime Consultant.

.9 The Client will reimburse the Prime Consultant for other specialist consultants that may be required to carry out quality control services during the project, subject to prior approval of scope of the work and an agreement on the fee or fees payable for the same by the Client.

PART 3 GENERAL REQUIREMENTS

3.1 STAFF

The Prime Consultant will provide the Client with a list of its employees and those of its sub-consultants who will be assigned to the project. The list will include the classification of each employee and the hourly rate to be charged for additional services rendered. The Prime Consultant will obtain written prior approval of
Client for any replacement of key employees, changes in the numbers of key employees or changes to rates of key employees assigned to the project.

3.2 SCHEDULE

.1 The Prime Consultant has developed and submitted a time schedule for the performance of consultant services on the project (which Schedule has been approved by the Client and is appended as Schedule “IV” hereto. The schedule shall incorporate all major design milestones as presented in the PMDA Manual.

.2 Unless otherwise agreed to between the parties, the failure by a party to comply with the approved schedule for those aspects of the Work that a party is responsible for may be sufficient cause for the other party to terminate this Agreement, if that failure is not rectified within seven (7) days after the defaulting party is given notice of its default.

.3 If either party believes that a change in the approved schedule is necessary the party requesting that change shall promptly give notice of that fact to the other party in writing, provide the other party with a revised schedule and the reason(s) why the change is requested for its consideration and request its written approval of the same. Should that approval be forthcoming the revised schedule will become the approved schedule for the project.

3.3 COST CONTROL

.1 The Prime Consultant shall provide Cost Control Services in accordance with PMDA Manual.

.2 If at any time the Prime Consultant considers its estimates indicate costs which exceed the Project or Construction Budget Forecast, the Prime Consultant will immediately advise the Client. If the excess is due to, discretionary design elements under the control of or reasonably foreseeable by the Prime Consultant, or the negligence or default of the Prime Consultant in the performance of this Agreement, the Client may require the Prime Consultant to redesign the project at the Prime Consultant’s expense to bring the cost estimate within the approved Project Budget Forecast.

.3 If the preferred bidder’s tender for the project for which the Prime Consultant has prepared and provided the design(s) and provided cost pricing and control services exceeds the Construction Budget Forecast as a result of the negligence or default of the Prime Consultant under this Agreement or is for reasons related to discretionary design elements which are under the Prime Consultant’s control or which the Prime Consultant should have reasonably foreseen and could have guarded against, then the Prime Consultant, at no additional cost to the Client, shall redesign to bring the cost within the Construction Budget Forecast and re-tender.

3.4 CHANGES AND ADJUSTMENT

.1 Changes and adjustment to the fees payable under this Agreement will be only considered if there is a material change in the level of services agreed to be provided or in the scope of the Project, or there is a material delay in the performance of the work required under the Contract.
The amounts due to the Prime Consultant arising from a material change to the Agreement will be determined by a negotiated fixed amount, or failing such negotiation, the actual cost as determined by level of effort incurred times the agreed hourly rate, plus receipted expenses.

Any increases in the fees payable caused by a material changes or other changes shall be communicated by the Prime Consultant in writing to the Client prior to incurring such costs to permit the Client to mitigate the amount of increased costs.

3.5 ERRORS AND OMISSIONS

Any costs resulting from design errors on the part of the Prime Consultant, sub-consultants chosen by the Prime Consultant, or agents, or employees of the Prime Consultant or of any sub-consultant chosen by the Prime Consultant will be the responsibility of the Prime Consultant to remedy. However, where the Client and not the Prime Consultant chooses a sub-consultant to do hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work, the Prime Consultant shall not be held responsible for design errors attributed to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, or construction testing services, done by sub-consultants chosen by the Client, unless those design errors are directly caused by the Prime Consultant. In the case of sub-consultants chosen by the Client, the Client and not the Prime Consultant shall be responsible to take such steps as the Client deems to be appropriate, to ensure that any sub-consultant chosen by the Client has appropriate and adequate policies of insurance that are acceptable to the Client in place to cover design errors attributable to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work done by any such sub-consultant.

Any costs resulting from errors in design or omissions may be paid by the Client providing the cost of such design omissions does not entail removing material or equipment that has already been constructed in accordance with the plans and specifications. The cost of the original material and equipment, as indicated on the plans and specifications, and the labour to remove such will be the responsibility of the Prime Consultant.

3.6 PRIME CONSULTANT ACTIONS AND DECISIONS

The Prime Consultant acknowledges that adequate discussion has taken place regarding the Work with the Client and that the Prime Consultant has access to sufficient information to undertake the services contracted for within the Project Budget.

The Prime Consultant and the Client agrees to act promptly and diligently on all matters within their respective direction and control requiring an action or decision affecting the design, construction or administration of the project.

Only express approval by the Client shall be deemed to relieve the Prime Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant. No acceptance or approval by the Client, that is implied shall be deemed to relieve the Prime Consultant.
Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant.

4 If the Prime Consultant does not promptly and diligently comply with or fails to meet the requirements of the Client, the Client may without prejudice to any other right or remedy the Client may have by giving the Prime Consultant written notice, and without prejudice to the Client's rights at law or elsewhere in this Agreement, take all such action deemed necessary for the prompt and economical completion of the project, and/or terminate the contract.

3.7 INSURANCE COVERAGE

1 The Prime Consultant shall supply written proof of:

1.1 Professional liability insurance coverage equal or greater than $250,000 per claim, $500,000 in aggregate for projects under $2 million construction value or $500,000 per claim, $1,000,000 aggregate for projects over $2 million. The Prime Consultant shall be fully responsible for all amounts deducted from this value by the Prime Consultant's Insurer. This Insurance shall remain in effect until the expiry of the general contractor's one year warranty on the project.

1.2 Commercial liability insurance acceptable to the Client with a minimum limit of $1,000,000.

2 The Insurer shall be an insurance company licensed to do business in the Province of Newfoundland & Labrador.

PART 4 BASIS OF PAYMENT SCHEDULE

4.1 The Client will pay for Program Advisory Services on the basis of an agreed fixed fee or on the basis of approved level of effort at agreed per diem rates.

4.2 The Client will pay for Basic Services on the basis of the agreed fixed fee. The Client's Project Budget Forecast will be made available to the Prime Consultant to assist in the evaluation of the level of effort required.

4.3 The fee for Basic Services will be apportioned to the phases of service as outlined in Schedule II - "Basic Services and Other Additional Services' Fees".

4.4 The fee for Basic Services will also include the management and co-ordination by the Prime Consultant and specialist consulting services as may be requested by the Client. Compensation for specialist or other consulting services will be on the basis of an agreed fixed fee for the level of effort required.

4.5 The Client will pay for resident services during construction, when requested based on an agreed fixed fee amount. The fee amount is to include all payroll costs, site-related expenses and allowances as agreed.

4.6 The Client will pay for construction management services when requested on the basis of the level of effort required during project implementation based on an agreed fixed fee.

4.7 The Client will pay for commissioning services on the basis of an agreed fixed fee. The fee amount shall include level of effort; associated with the preparation
of documents and site visits to carry out commissioning activities, as outlined in the PMDA Manual.

4.8 The Client will pay for day-to-day routine expenses such as; long distance charges, reproduction costs, client presentations and submissions, original contract documents (hardcopy), courier services, travel over 50 km from office on an agreed fixed amount. All routine expenses to be charged at cost. Meals, Private Vehicle usage, and incidental expense are to be paid on the basis of Government Rates at time of this Agreement.

4.9 The Client will pay for Additional Reimbursable Allowances as provided for in Schedule III - "Additional Reimbursable Allowances". These allowances require supporting documents to be provided for payment.
SCHEDULE I
PROJECT DESCRIPTION

Perform an assessment of the existing plumbing at Lake Academy, Fortune, NL with representatives from the Department of Education and Early Childhood Development and the School District. Upon completion of the assessment, all findings will be discussed and recommendations prepared for the scope of work.
SCHEDULE IV
SCHEDULE OF THE PERFORMANCE OF CONSULTANT SERVICES

August 12, 2016
Site Investigation/Assessment
August 26, 2016
Assessment Report Issued for Review
SCHEDULE V
OTHER CONDITIONS OF SERVICES

(Not applicable unless text is added to this schedule)
SCHEDULE “B”
SPECIAL TERMS AND CONDITIONS (as necessary)

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

Margaret Gillies, Q.C., General Counsel  Janet Vivian-Walsh, Deputy Minister

The Special Terms and Conditions of this Agreement are follows:
As per the Contract terms contained herein

OR

1. No Special Terms and Conditions

Department of Justice

Deputy Minister
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SCHEDULE "C"

GENERAL TERMS AND CONDITIONS

Article - 1. PAYMENT

1.1 Consideration

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

Payment Option #1

Subject to Article 1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, for the satisfactory performance of the Work, Forty six hundred ($4,600) (plus HST) in accordance with the following payment schedule:

(i) Periodic payments -- payments paid monthly proportional with the amount of work completed to date.

Payment Option #2 Not Applicable

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

(i) Person / Professional Designation – Hourly Rate

Payment Option #3 Not Applicable

Subject to Article 1.3, upon the satisfactory completion of the Work and the presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, $Insert Absolute Limit on Cost of Services (plus HST).

1.2 Reimbursement of Expenses

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

Reimbursement Option A

(a) The Client shall only be responsible for the following reimbursable expenses, payable at cost, provided the Prime Consultant can
demonstrate to the Client that such expenses were incurred in relation to the Work, and that documentation, satisfactory to the Client, is provided in support of the reimbursable expense claimed and is attached to the applicable invoice, including for example, originals of supporting receipts, invoices or statements issued by non-parties to this Agreement:

(i) Insert Specific Reimbursable Items

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

Reimbursement Option B Not Applicable

The Client shall not be responsible for any expenses incurred by the Prime 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) The Prime Consultant shall remain obligated to complete the Work notwithstanding that the actual costs of the Prime Consultant, whether in respect of professional services or in respect of costs or expenses incurred, may exceed the total aggregate sum set out in this Agreement.

(b) The Parties agree and confirm that as set out in section 25(6) of the Financial Administration Act, RSNL 1990 c. F-8, as amended, all fees payable in accordance with this Agreement are subject to there being an appropriation for the work for the fiscal year in which payment under this Agreement is due.

(c) Payment will be made within 60 calendar days of receipt of a properly documented invoice. The Client shall within thirty (30) days of the execution of this Agreement should the Prime Consultant request the same provide direction to the Prime Consultant as to what constitutes a properly documented invoice.

(d) All Invoices shall clearly show the amount of HST billed by the Prime Consultant as a separate item.

(e) The Prime Consultant shall conform to any request that may be made by the Client to alter the form of invoice customarily used by the Prime Consultant as may be reasonably required for the purposes of the Client’s internal accounting systems. The Prime 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 Prime Consultant which may arise from work, services or expenses incurred to remedy errors or omissions in the Work for which the Prime Consultant is responsible.

(g) The Prime Consultant shall submit invoices to:
Department of Education and Early Childhood Development
Design and Construction Division
3rd Floor, West Block, Confed. Building
St. John’s, NL A1B 4J6

Article - 2. INFORMATION SUPPLIED BY THE CLIENT

2.1 The Client will furnish to the Prime Consultant all available information necessary for the performance of the Work.

2.2 Where discrepancies, omissions or obscurities in the information are evident, the Prime Consultant shall bring them to the attention of the Client and secure written instructions from the Client before proceeding with any work.

Article - 3. CONFIDENTIALITY, MATERIALS AND COPYRIGHT

3.1 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 Prime Consultant, the Prime Consultant’s 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;

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 Prime Consultant, the Prime Consultant’s employees, servants and/or agents during the performance of the services or in any way related thereto;

(c) all personal information, as defined from time to time under the Access to Information and Protection of Privacy Act, SNL 2002 c. A-1.1, to mean recorded information about an identifiable individual, including,

(i) the individual’s name, address or telephone number,

(ii) the individual’s race, national or ethnic origin, colour, or religious or political beliefs or associations,
(iii) the individual's age, sex, sexual orientation, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual's fingerprints, blood type or inheritable characteristics,

(vi) information about the individual's health care status or history, including a physical or mental disability,

(vii) information about the individual's educational, financial, criminal or employment status or history,

(viii) the opinions of a person about the individual, and

(ix) the individual's personal views or opinions

for any individual, which is, directly or indirectly, disclosed to or collected by the Prime Consultant, the Prime Consultant's 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 Prime Consultant, the Prime Consultant's 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 Prime Consultant was or thereafter became part of the public domain through no act or omission of the Prime Consultant or the Prime Consultant's Representatives; or

(ii) is information which the Prime Consultant can show possession of prior to the date of this Agreement and which was received or developed by the Prime Consultant free of obligations of confidentiality to the Client.

3.2 The Prime Consultant shall treat all Confidential Information acquired by the Prime Consultant in the performance of the Services as privileged and confidential and shall not divulge the same to any person or persons at any time without the express written approval of the Client, unless required to do so by law, which may include any subpoena or other similar process or in connection with litigation, arbitration or other proceeding or by virtue of an act or regulations. In the event that such disclosure is required, the Prime Consultant shall give the Client prompt notice of the requirement upon becoming aware that such disclosure is required. Where circumstances do not permit the Prime Consultant to provide such notice prior to disclosure, the Prime Consultant shall provide such notice to the Client immediately after the required disclosure.

3.3 The Prime 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.

3.4 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 Prime 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 Prime 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 Prime Consultant pursuant to the terms of this Agreement. The Prime Consultant acknowledges that the Client's right to this information shall at all times be paramount to any rights of the Prime Consultant, at law or in equity, and that the Prime 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 Prime Consultant's possession.

3.5 The Prime 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 Prime Consultant, the Prime Consultant's employees, servants and/or agents, and shall certify the destruction of same to the Client. However, nothing in this Agreement shall preclude the Prime Consultant's privilege to retain copies of documents provided to it or prepared by it in connection with the Work, provided such documents are kept in a secure manner, are used by the Prime Consultant solely for the purposes of defending itself against claims arising from the Work of the Contract, and that the aforesaid documentation is destroyed or returned to the Client at the end of all limitation periods for commencing any action in connection with the Work or upon the conclusion or settlement with finality of any claim or action with respect to the Work.

3.6 The Prime Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Prime Consultant, the Prime Consultant's employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the Access to Information and Protection of Privacy Act, the Management of Information Act, SNL 2005, c. M-1.01, and the Privacy Act, RSNL1990 c. P-22, as well as other legislation which may apply in the jurisdiction of the Prime Consultant's operation. The Prime 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 Prime Consultant, and the Prime Consultant's employees, servants and/or agents.

3.7 The Prime Consultant shall ensure that it, and the Prime Consultant's 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 Prime Consultant employs to avoid disclosure or dissemination of the Prime Consultant’s own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of the Prime Consultant’s employees, servants or agents other than those who are required to have access to the same 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 Prime Consultant comply with all policies, standards and safeguards established under this Article;

(d) advise the Client of any changes in the Prime Consultant’s 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 Prime 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.

3.8 The Prime Consultant shall only disclose Confidential Information to persons other than the Prime Consultant’s 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”.

3.9 The Prime 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 Prime 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 Prime Consultant;

(b) promptly furnish to the Client full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the Client in investigating or preventing the recurrence of any unauthorized
possession, use or knowledge, or attempt thereof, of Confidential Information;

(c) use reasonable efforts to cooperate with the Client in any litigation and investigation against third parties deemed necessary by the Client to protect its proprietary rights;

(d) promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information; and

(e) refer to and follow the privacy breach protocol of the Government of Newfoundland and Labrador as it exists at the time of the breach and located on the Department of Justice website at: http://www.justice.gov.nl.ca/just/info/privacybreach.html

Article - 4. EMPLOYEES OF THE PRIME CONSULTANT

4.1 The Prime Consultant shall provide employees who are competent in their field of specialization. The Client will have the right to have the Prime 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 Prime 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 concerned was involved and may refuse to approve payment for such Work.

4.2 The Prime 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 - 5. ACCESS TO FACILITIES

5.1 The Client agrees to provide, access to the project site for the Prime Consultant to perform the Work during Client office hours.

5.2 When using or accessing the premises of the Client, the Prime Consultant and all officers, employees and agents of the Prime Consultant shall comply with all security regulations and workplace policies and procedures in effect from time to time at the Client's facilities.

Article - 6. RECORDS AND AUDIT

6.1 The Prime 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.

6.2 The Prime Consultant shall furnish reports as required by the Client for the purpose of monitoring the progress of the Work.
Article - 7. TERMINATION

7.1 This Agreement is deemed to be concluded once the Work has been completed to the satisfaction of the Client and the payment(s), as stipulated in the Agreement, has been issued to the Prime Consultant.

7.2 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.

7.3 Where this Agreement is terminated prior to the mutually agreed upon completion date, the Prime Consultant shall thereupon be entitled to payment in accordance with this Agreement in respect of that part of the Work completed up to the date of termination, provided however, that the Prime 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 - 8. NOTICES

8.1 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:

Attn: Michael Carroll, P. Eng.
Education and Early Childhood Development
Design and Construction Division
3rd Floor, West Block, Confederation Building
St. John’s, NL A1B 4J6
Phone: (709) 729-2892
Fax: (709) 729-1400
Email: michaelcarroll@gov.nl.ca

For the Prime Consultant:

Rowsell Appleby Engineering Inc.
Suite 101, 1 Centennial Street, Mount Pearl, NL, A1N 0C9
Phone: (709) 745-9135
Fax: (709) 237-5972
Email: [redacted]

8.2 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 telex or other means of electronic communication; and

(c) Six (6) days after delivery to Canada Post Corporation where the postal service is used.

**Article - 9. LIABILITY**

9.1 The Prime Consultant agrees that in performance of the Work neither the Prime Consultant nor any Prime Consultant's Representative shall be or be deemed to be an officer, servant, agent or partner of the Client.

9.2 The Client shall not be liable for, and the Prime 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 negligence or default of the Prime Consultant under this Agreement, including the negligence or default of any sub-consultant chosen by the Prime Consultant. Except to the extent that such losses, costs, charges or expenses as are referenced in this clause are caused by the negligence or default of the Client under this Agreement, the Prime Consultant shall defend any and all such actions and pay all legal charges, costs and other expenses arising therefrom. Where the Prime Consultant fails to defend such an action, 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 Prime Consultant.

**Article - 10. COMPLIANCE WITH LAW**

10.1 In respect of any work within the Province of Newfoundland and Labrador connected with or arising from this Agreement, the Prime 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.

10.2 The Prime Consultant shall ensure that the Prime Consultant and its Representatives comply with all requirements of any governing federal, provincial or municipal legislation, by-laws or regulations applicable to the Prime Consultant or the Prime Consultant's Representatives in the performance of the Work.

**Article - 11. ARBITRATION**

11.1 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, the parties shall first attempt to resolve all matters through friendly negotiation by a meeting between their representatives upon notice per Article 8. A resolution reached in this way must be reached within 10 days of both parties having knowledge and notice of the dispute and be reduced to writing.
11.2 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Article 11.1), either party may give the other notice of such dispute and request third party mediation thereof.

11.3 Should the parties not agree to third party mediation or the matter in dispute between the parties not be resolved by mediation, then in the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Articles 11.1 and 11.2), either party may give the other notice of such dispute and 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 c. A-14, including such provisions for the appointment of arbitrators.

Article - 12. LAWS GOVERNING

12.1 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 - 13. USE OF WORK

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

13.2 With respect to 13.1 the Prime Consultant's liability to the Client for and in respect of the Work is solely limited to the project described in this Agreement.

Article - 14. CONFLICT OF INTEREST

14.1 No member of the House of Assembly of the Province of Newfoundland and Labrador shall be admitted to any part or share of the payments made pursuant to this Agreement or to any benefits arising therefrom.

14.2 The Prime Consultant and the Prime 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 - 15. SUBCONTRACTORS

15.1 The Prime Consultant shall not sub-contract all or a portion of the Work without the prior written approval of the Client, which consent will not be unreasonably withheld.

15.2 The entry into any subcontract shall not relieve the Prime Consultant of any of its obligations under the terms of this Agreement.

Article - 16. GENERAL

16.1 Articles 3 and 9 of this Agreement shall survive the termination or expiration of this Agreement.

16.2 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.

16.3 Time shall be of the essence of this Agreement.

16.4 The failure of the Client to insist upon or enforce in any instance strict performance by the Prime 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.

16.5 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.

16.6 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.

16.7 This Agreement shall enure to the benefit of and be binding upon the Parties hereto, their respective heirs, legal representatives, successors and assigns.

16.8 The Prime Consultant shall not assign this Agreement in whole or in part to any third party without the prior written approval of the Client.
SCHEDULE “D”

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

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

- All portable storage devices or media (e.g., flash drives, memory sticks, portable hard drives, writeable compact discs or digital video discs, etc.) may only be used to transport and/or store Confidential Information where either the Confidential Information or the device or media is encrypted.

- Unless specifically authorized by the Prime Consultant’s Contract or otherwise, the Prime Consultant is not permitted to attach non-government computers or other information technology systems to any Government network.

- The Prime Consultant is expected to implement and maintain up to date versions of all ordinary business software for the reasonable protection of information on computers attached to the Internet which will have access to or store Confidential Information, including security firewall and anti-viral software.

- The Prime Consultant is not permitted to use any Peer to Peer file sharing program (e.g., Limewire, etc) or chat program (e.g., MSN, Skype) on any information technology asset which will contain Confidential Information, or which will be connected via a network to any computer which will contain Confidential Information.

- Email should not be used as a method to transmit Confidential Information across public networks such as the Internet unless the e-mail and/or its attachments are encrypted or zipped in a secure manner.

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

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

- For the purposes of Schedule D, routine exchanges of design and construction information between the Client, the Prime Consultant and the Prime Consultant’s sub-consultants that is of a non-confidential nature need not be encrypted.
Mr. Craig Rowsell, P.Eng.
RAN Engineering Inc.
1 Centennial Street, Suite 101
Mount Pearl, NL, A1N 0C9

Dear Mr. Rowsell:

Consultant Appointment

Your firm has been selected to provide professional services for the following in accordance with the attached conditions outlined below.

Project #400228013 – Plumbing Retrofit Assessment
St. Lawrence Academy, St. Lawrence, NL

The scope of services will entail a site visit with Department staff and a representative of the School District, or others as designated by the Department. Once this assessment is complete, a minuted scope review meeting with the Department of Education and Early Childhood Development and school district officials will take place to discuss findings and prepare recommendations for the scope of the work.

Fees for this portion of your commission will be per diem rates, plus expenses at government rates and policies. A maximum upset limit will have to be agreed upon, and a prime consultant agreement signed, prior to performing the assessment.

By accepting this commission, your firm acknowledges that it is willing to enter into a contract containing the terms as outlined in the Government of Newfoundland and Labrador's Standard Form of Agreement and a negotiated fee and schedule as outlined by our Project Manager. An electronic copy of our standard Agreement is attached for your perusal.

The assessment and recommendations must be completed within 4 weeks of the date of this letter.

If you are interested in carrying out this work upon receipt of this letter, please contact Mr. Michael Carroll, Design and Construction Division, at (709) 729-2892 to arrange the assessment. Also, please forward an updated copy of your proof of insurance as well as a letter of good standing with Workplace NL for our records.
If you are unable to undertake this work, please advise within one week of receipt of this letter so that we can arrange to appoint another consultant.

Sincerely,

[Signature]

INGRID E. CLARKE, P.Eng., FEC
Assistant Deputy Minister
(Infrastructure)

cc: Ms. Janet Vivian-Walsh
    Mr. Jim Sinnott
    Mr. Michael Carroll
    Ms. Natalie Hallett
    Ms. Kara Connors
    Mr. Blair Medd
    Mr. Paul Lahey
STANDARD FORM OF AGREEMENT
BETWEEN CLIENT AND PRIME CONSULTANT

Plumbing Retrofit Assessment
St. Lawrence Academy, St. Lawrence, NL
Project #400228013
AGREEMENT

THIS AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador, on this 28 day of July, 2016.

BETWEEN: HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR as represented by the Minister of Education & Early Childhood Development,
("the Client")

AND: Rowsell Appleby Newton Engineering Inc.
("the Prime Consultant")

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

I. Definitions

In addition to the terms defined in the Special Terms and Conditions attached as Schedule "B", (if any), and the General Terms and Conditions attached as Schedule "C", the following words and phrases shall have the following meanings:

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

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

II. The Prime Consultant's Work

The Prime Consultant shall do all things necessary to fulfill and carry out all of the obligations of the Prime Consultant as set out in the Contract Documents (the "Work").

III. Entire Agreement

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

IV. Representations and Warranties
The Prime Consultant hereby represents and warrants that every fact stated or represented by the Prime Consultant or its Representatives to the Client in connection with any proposal made by the Prime 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.

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

VI. Start and Completion Date
The Prime Consultant shall commence activities in relation to the Work with the start and completion dates mutually agreed upon as follows:

Start Date: July 26, 2016
Completion Date: August 26, 2016

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

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

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

Assistant Deputy Minister
Minister of Education and Early Childhood Development,
or his/her authorized designate

Rowsell Appleby Newton Engineering Inc.

Name: Mr. Craig Rowsell, P. Eng.
Date: July 25, 2016

Name: Mr. Jason Smith, P. Eng.
Date: July 28, 2016

Recommended By (Name/Date):
PM: M. Currie 27 - July 2016
Manager: E. Vaullese July 28/16
Director: Natalie Gillott July 28/16
SCHEDULE "A"

SCOPE OF WORK
BETWEEN PRIME CONSULTANT AND CLIENT

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Schedule V............ Other Conditions of Services
PART 1

DEFINITIONS

1.1 Project Budget Forecast: means the Client's estimated total expenditure for the project. It includes the construction budget forecast and all other costs to the Client for the project such as, but not limited to, professional fees and acquisition costs.

1.2 Construction Budget Forecast: means the Client's estimated Construction Cost including contingencies for cost increases.

1.3 Construction Cost: means the contract price(s) of all elements of the project designed or specified by or on behalf of the Prime Consultant including, all applicable taxes. Where there is no contract price for all or part of the project, the Construction Cost shall be the elemental cost analysis using market rates at the estimated time of construction as determined by the Prime Consultant and agreed by the Client. The Construction Cost does not include professional fees, or land acquisition costs.

1.4 Contract: means an agreement between the Client and the Contractor for the provision of labour, materials and equipment for the construction of the project or part of the project by a Contractor.

1.5 Contractor: means a person, firm, or corporation contracting with the Client to provide labour, materials and equipment for the construction of the Project or part of the Project.

1.6 Project Management Design Administration Manual (PMDA Manual): a manual developed and maintained by the Department of Transportation and Works, Works Branch, for the purpose of presenting standards, guidelines and instructions for the delivery of building projects administered by the Works Branch. Unless otherwise agreed between the parties, the version published on the date of this Contract shall be the version applicable to this Contract.

1.7 Additional Services: means Consulting Services provided that are additional to the Basic Services.

1.8 Basic Services: means Consulting Services as outlined in the PMDA Manual.

1.9 Cost Control Services: means a service to monitor and advice on Project Budget and Construction Budget Forecasts.

1.10 Partial Services: means Reduced Basic Services as negotiated by the Client with the Prime Consultant.

1.11 Program Advisory Services: means Consulting Services provided by the Prime Consultant prior to start of Basic Services.

1.12 Authorities Having Jurisdiction (AHJ): means a person or persons representing these agencies that have authority to provide plan approvals and permits for the purpose of constructing the project.
PART 2  

RESPONSIBILITIES  

2.1 PRIME CONSULTANT  

.1 The Prime Consultant's services consist of Basic Services and Additional Services which may be required to perform the Work. The phases of the Prime Consultant's Basic Services, and Additional Services are listed on Schedule II, and further elaborated in the Project Management and Design Administration (PMDA) Manual of the Department of Transportation and Works.  

.2 The Prime Consultant's services as provided for under and pursuant to this Agreement at and during all phases of the Work shall encompass coordination of all disciplines, quality assurance and documentation control to integrate all services and sub consultant's work. The Prime Consultant shall prepare and submit contract documents in accordance with the Client's requirements, as outlined in the PMDA Manual.  

.3 During the tendering and contract award phase, the Prime Consultant may advise and assist the Client in obtaining bids and awarding construction contracts. The Client's tendering and contract procedures and administrative practices will be followed in the performance of this phase, as outlined in the PMDA Manual.  

.4 The Client may require the Prime Consultant to provide construction administration services. When required the Prime Consultant's service shall be based upon either full responsibility or partial responsibility.  

.1 Full Responsibility  

.1 As outlined in the PMDA Manual, services provided under full responsibility include assessing construction work carried out on or in relation to the project and offering an opinion as to whether or not the construction of the project is in accordance with the contract documents prepared by the Prime Consultant.  

.2 Partial Service  

.1 The scope of this partial service is to be outlined in Schedule I of this agreement, as agreed between the Client and the Prime Consultant.  

.5 The project completion phase represents the portion of the Basic Services to be provided at the commencement of substantial completion until expiry of the one year Project warranty period. This service includes the provision of record drawings as outlined in the PMDA Manual, and advice concerning issues arising during this period.  

.6 Cost Control Services are included under the scope of Basic Services to be provided by the Prime Consultant, as outlined in the PMDA Manual.  

.7 The following schedules apply:  

Schedule I - Project Description  
Schedule II - Basic and Other Additional Services Fees  
Schedule III - Additional Reimbursable Allowances  
Schedule IV - Other Conditions of Services
2.2 CLIENT’S RESPONSIBILITIES

1. The Client shall give due consideration to documentation submitted by the Prime Consultant and, whenever action is necessary, the Client shall inform the Prime Consultant of the Client’s decisions, in a reasonable and timely manner.

2. The Client shall authorize persons to act on behalf of the Client with respect to delivery and administration of the project.

3. If the Client observes or otherwise becomes aware of any fault or defect in the project or any nonconformity with the requirements of the Contract, the Prime Consultant shall be so notified in writing.

4. The Client may provide information regarding the project including: a program, which shall set forth the Client’s spatial and functional requirements and relationships. The Prime Consultant is responsible for requesting or providing information that is required to prepare the design and contract documents.

5. The Client will provide the Prime Consultant with a Project Budget Forecast.

6. The Client shall reimburse the Prime Consultant for procuring information which the Prime Consultant requires for the provision of services necessary to carry out the preparation of design and/or contract documentation when the information is not available upon request from the Client such as site surveys, hazardous material surveys.

7. When the Client supplies the Prime Consultant with information contained within reports or equipment data sheets, the Prime Consultant will not be required to exhaustively check information supplied by the Client to verify the same unless it is requested to do so by the Client. However, if the Prime Consultant observes, or otherwise becomes aware, of any fault or defect in the information supplied to it by the Client, the Consultant shall cause the Client to be notified in writing of any such fault or defect forthwith.

8. Where the Prime Consultant has been authorized by the Client to procure or obtain information, the Prime Consultant shall be responsible for seeing that the information provided meets the needs of the sub-consultant(s) performing the work under the direction of the Prime Consultant.

9. The Client will reimburse the Prime Consultant for other specialist consultants that may be required to carry out quality control services during the project, subject to prior approval of scope of the work and an agreement on the fee or fees payable for the same by the Client.

PART 3 GENERAL REQUIREMENTS

3.1 STAFF

The Prime Consultant will provide the Client with a list of its employees and those of its sub-consultants who will be assigned to the project. The list will include the classification of each employee and the hourly rate to be charged for additional services rendered. The Prime Consultant will obtain written prior approval of
Client for any replacement of key employees, changes in the numbers of key employees or changes to rates of key employees assigned to the project.

3.2 SCHEDULE

.1 The Prime Consultant has developed and submitted a time schedule for the performance of consultant services on the project (which Schedule has been approved by the Client and is appended as Schedule "IV" hereto. The schedule shall incorporate all major design milestones as presented in the PMDA Manual.

.2 Unless otherwise agreed to between the parties, the failure by a party to comply with the approved schedule for those aspects of the Work that a party is responsible for may be sufficient cause for the other party to terminate this Agreement, if that failure is not rectified within seven (7) days after the defaulting party is given notice of its default.

.3 If either party believes that a change in the approved schedule is necessary the party requesting that change shall promptly give notice of that fact to the other party in writing, provide the other party with a revised schedule and the reason(s) why the change is requested for its consideration and request its written approval of the same. Should that approval be forthcoming the revised schedule will become the approved schedule for the project.

3.3 COST CONTROL

.1 The Prime Consultant shall provide Cost Control Services in accordance with PMDA Manual.

.2 If at any time the Prime Consultant considers its estimates indicate costs which exceed the Project or Construction Budget Forecast, the Prime Consultant will immediately advise the Client. If the excess is due to, discretionary design elements under the control of or reasonably foreseeable by the Prime Consultant, or the negligence or default of the Prime Consultant in the performance of this Agreement, the Client may require the Prime Consultant to redesign the project at the Prime Consultant’s expense to bring the cost estimate within the approved Project Budget Forecast.

.3 If the preferred bidder’s lender for the project for which the Prime Consultant has prepared and provided the design(s) and provided cost pricing and control services exceeds the Construction Budget Forecast as a result of the negligence or default of the Prime Consultant under this Agreement or is for reasons related to discretionary design elements which are under the Prime Consultant’s control or which the Prime Consultant should have reasonably foreseen and could have guarded against, then the Prime Consultant, at no additional cost to the Client, shall redesign to bring the cost within the Construction Budget Forecast and rebid.

3.4 CHANGES AND ADJUSTMENT

.1 Changes and adjustment to the fees payable under this Agreement will be only considered if there is a material change in the level of services agreed to be provided or in the scope of the Project, or there is a material delay in the performance of the work required under the Contract.
The amounts due to the Prime Consultant arising from a material change to the Agreement will be determined by a negotiated fixed amount, or failing such negotiation, the actual cost as determined by level of effort incurred times the agreed hourly rate, plus receipted expenses.

Any increases in the fees payable caused by a material changes or other changes shall be communicated by the Prime Consultant in writing to the Client prior to incurring such costs to permit the Client to mitigate the amount of increased costs.

3.5 ERRORS AND OMISSIONS

Any costs resulting from design errors on the part of the Prime Consultant, sub-consultants chosen by the Prime Consultant, or agents, or employees of the Prime Consultant or of any sub-consultant chosen by the Prime Consultant will be the responsibility of the Prime Consultant to remedy. However, where the Client and the Prime Consultant chooses a sub-consultant to do hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work, the Prime Consultant shall not be held responsible for design errors attributed to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, or construction testing services, done by sub-consultants chosen by the Client, unless those design errors are directly caused by the Prime Consultant. In the case of sub-consultants chosen by the Client, the Client and not the Prime Consultant shall be responsible to take such steps as the Client deems to be appropriate, to ensure that any sub-consultant chosen by the Client has appropriate and adequate policies of insurance that are acceptable to the Client in place to cover design errors attributable to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work done by any such sub-consultant.

Any costs resulting from errors in design or omissions may be paid by the Client providing the cost of such design omissions does not entail removing material or equipment that has already been constructed in accordance with the plans and specifications. The cost of the original material and equipment, as indicated on the plans and specifications, and the labour to remove such will be the responsibility of the Prime Consultant.

3.6 PRIME CONSULTANT ACTIONS AND DECISIONS

The Prime Consultant acknowledges that adequate discussion has taken place regarding the Work with the Client and that the Prime Consultant has access to sufficient information to undertake the services contracted for within the Project Budget.

The Prime Consultant and the Client agrees to act promptly and diligently on all matters within their respective direction and control requiring an action or decision affecting the design, construction or administration of the project.

Only express approval by the Client shall be deemed to relieve the Prime Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant. No acceptance or approval by the Client, that is implied shall be deemed to relieve the Prime Consultant.
Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant.

If the Prime Consultant does not promptly and diligently comply with or fails to meet the requirements of the Client, the Client may without prejudice to any other right or remedy the Client may have by giving the Prime Consultant written notice, and without prejudice to the Client’s rights at law or elsewhere in this Agreement, take all such action deemed necessary for the prompt and economical completion of the project, and/or terminate the contract.

3.7 INSURANCE COVERAGE

The Prime Consultant shall supply written proof of:

1. Professional liability insurance coverage equal or greater than $250,000 per claim, $500,000 in aggregate for projects under $2 million construction value or $500,000 per claim, $1,000,000 aggregate for projects over $2 million. The Prime Consultant shall be fully responsible for all amounts deducted from this value by the Prime Consultant’s Insurer. This Insurance shall remain in effect until the expiry of the general contractor’s one year warranty on the project.

2. Commercial liability insurance acceptable to the Client with a minimum limit of $1,000,000.

3. The Insurer shall be an insurance company licensed to do business in the Province of Newfoundland & Labrador.

PART 4 BASIS OF PAYMENT SCHEDULE

4.1 The Client will pay for Program Advisory Services on the basis of an agreed fixed fee or on the basis of approved level of effort at agreed per diem rates.

4.2 The Client will pay for Basic Services on the basis of the agreed fixed fee. The Client’s Project Budget Forecast will be made available to the Prime Consultant to assist in the evaluation of the level of effort required.

4.3 The fee for Basic Services will be apportioned to the phases of service as outlined in Schedule II - “Basic Services and Other Additional Services’ Fees”.

4.4 The fee for Basic Services will also include the management and co-ordination by the Prime Consultant and specialist consulting services as may be requested by the Client. Compensation for specialist or other consulting services will be on the basis of an agreed fixed fee for the level of effort required.

4.5 The Client will pay for resident services during construction, when requested based on an agreed fixed fee amount. The fee amount is to include all payroll costs, site-related expenses and allowances as agreed.

4.6 The Client will pay for construction management services when requested on the basis of the level of effort required during project implementation based on an agreed fixed fee.

4.7 The Client will pay for commissioning services on the basis of an agreed fixed fee. The fee amount shall include level of effort; associated with the preparation
of documents and site visits to carry out commissioning activities, as outlined in
the PMDA Manual.

4.8

The Client will pay for day-to-day routine expenses such as: long distance
charges, reproduction costs, client presentations and submissions, original
contract documents (hardcopy), courier services, travel over 50 km from office on
an agreed fixed amount. All routine expenses to be charged at cost. Meals,
Private Vehicle usage, and incidental expense are to be paid on the basis of
Government Rates at time of this Agreement.

4.9

The Client will pay for Additional Reimbursable Allowances as provided for in
Schedule III - "Additional Reimbursable Allowances". These allowances require
supporting documents to be provided for payment.
SCHEDULE I
PROJECT DESCRIPTION

Perform an assessment of the existing plumbing at St. Lawrence Academy, St. Lawrence, NL with representatives from the Department of Education and Early Childhood Development and the School District. Upon completion of the assessment, all findings will be discussed and recommendations prepared for the scope of work.
SCHEDULE IV
SCHEDULE OF THE PERFORMANCE OF CONSULTANT SERVICES

August 12, 2016
Site Investigation/Assessment

August 26, 2016
Assessment Report Issued for Review
SCHEDULE V
OTHER CONDITIONS OF SERVICES

(Not applicable unless text is added to this schedule)
SCHEDULE "B"
SPECIAL TERMS AND CONDITIONS (as necessary)

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

Margaret Gillies, Q.C., General Counsel
Janet Vivian-Walsh, Deputy Minister

The Special Terms and Conditions of this Agreement are follows:
As per the Contract terms contained herein
OR

1. No Special Terms and Conditions
## SCHEDULE "C"

### GENERAL TERMS AND CONDITIONS

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SCHEDULE "C"

GENERAL TERMS AND CONDITIONS

Article - 1. PAYMENT

1.1 Consideration

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

Payment Option #1

Subject to Article 1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, for the satisfactory performance of the Work, Forty six hundred ($4,600) (plus HST) in accordance with the following payment schedule:

(i) Periodic payments – payments paid monthly proportional with the amount of work completed to date.

Payment Option #2 Not Applicable

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

(i) Person / Professional Designation – Hourly Rate

Payment Option #3 Not Applicable

Subject to Article 1.3, upon the satisfactory completion of the Work and the presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, $Insert Absolute Limit on Cost of Services (plus HST).

1.2 Reimbursement of Expenses

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

Reimbursement Option A

(a) The Client shall only be responsible for the following reimbursable expenses, payable at cost, provided the Prime Consultant can
demonstrate to the Client that such expenses were incurred in relation to the Work, and that documentation, satisfactory to the Client, is provided in support of the reimbursable expense claimed and is attached to the applicable invoice, including for example, originals of supporting receipts, invoices or statements issued by non-parties to this Agreement:

(i) Insert Specific Reimbursable Items

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

Reimbursement Option B Not Applicable

The Client shall not be responsible for any expenses incurred by the Prime 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) The Prime Consultant shall remain obligated to complete the Work notwithstanding that the actual costs of the Prime Consultant, whether in respect of professional services or in respect of costs or expenses incurred, may exceed the total aggregate sum set out in this Agreement.

(b) The Parties agree and confirm that as set out in section 25(6) of the Financial Administration Act, RSNL 1990 c. F-8, as amended, all fees payable in accordance with this Agreement are subject to there being an appropriation for the work for the fiscal year in which payment under this Agreement is due.

(c) Payment will be made within 60 calendar days of receipt of a properly documented invoice. The Client shall within thirty (30) days of the execution of this Agreement should the Prime Consultant request the same provide direction to the Prime Consultant as to what constitutes a properly documented invoice.

(d) All invoices shall clearly show the amount of HST billed by the Prime Consultant as a separate item.

(e) The Prime Consultant shall conform to any request that may be made by the Client to alter the form of invoice customarily used by the Prime Consultant as may be reasonably required for the purposes of the Client's internal accounting systems. The Prime 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 Prime Consultant which may arise from work, services or expenses incurred to remedy errors or omissions in the Work for which the Prime Consultant is responsible.

(g) The Prime Consultant shall submit invoices to:
Department of Education and Early Childhood Development
Design and Construction Division
3rd Floor, West Block, Confed. Building
St. John’s, NL A1B 4J6

Article - 2. INFORMATION SUPPLIED BY THE CLIENT

2.1 The Client will furnish to the Prime Consultant all available information necessary for the performance of the Work.

2.2 Where discrepancies, omissions or obscurities in the information are evident, the Prime Consultant shall bring them to the attention of the Client and secure written instructions from the Client before proceeding with any work.

Article - 3. CONFIDENTIALITY, MATERIALS AND COPYRIGHT

3.1 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 Prime Consultant, the Prime Consultant’s 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;

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 Prime Consultant, the Prime Consultant’s employees, servants and/or agents during the performance of the services or in any way related thereto;

(c) all personal information, as defined from time to time under the Access to Information and Protection of Privacy Act, SNL 2002 c. A-1.1, to mean recorded information about an identifiable individual, including,

(i) the individual’s name, address or telephone number;

(ii) the individual’s race, national or ethnic origin, colour, or religious or political beliefs or associations,
(iii) the individual's age, sex, sexual orientation, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual's fingerprints, blood type or inheritable characteristics,

(vi) information about the individual's health care status or history, including a physical or mental disability,

(vii) information about the individual's educational, financial, criminal or employment status or history,

(viii) the opinions of a person about the individual, and

(ix) the individual's personal views or opinions

for any individual, which is, directly or indirectly, disclosed to or collected by the Prime Consultant, the Prime Consultant's 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 Prime Consultant, the Prime Consultant's 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 Prime Consultant was or thereafter became part of the public domain through no act or omission of the Prime Consultant or the Prime Consultant's Representatives; or

(ii) is information which the Prime Consultant can show possession of prior to the date of this Agreement and which was received or developed by the Prime Consultant free of obligations of confidentiality to the Client.

3.2 The Prime Consultant shall treat all Confidential Information acquired by the Prime Consultant in the performance of the Services as privileged and confidential and shall not divulge the same to any person or persons at any time without the express written approval of the Client, unless required to do so by law, which may include any subpoena or other similar process or in connection with litigation, arbitration or other proceeding or by virtue of an act or regulations. In the event that such disclosure is required, the Prime Consultant shall give the Client prompt notice of the requirement upon becoming aware that such disclosure is required. Where circumstances do not permit the Prime Consultant to provide such notice prior to disclosure, the Prime Consultant shall provide such notice to the Client immediately after the required disclosure.

3.3 The Prime 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.

3.4 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 Prime 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 Prime 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 Prime Consultant pursuant to the terms of this Agreement. The Prime Consultant acknowledges that the Client's right to this information shall at all times be paramount to any rights of the Prime Consultant, at law or in equity, and that the Prime 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 Prime Consultant's possession.

3.5 The Prime 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 Prime Consultant, the Prime Consultant's employees, servants and/or agents, and shall certify the destruction of same to the Client. However, nothing in this Agreement shall preclude the Prime Consultant's privilege to retain copies of documents provided to it or prepared by it in connection with the Work, provided such documents are kept in a secure manner, are used by the Prime Consultant solely for the purposes of defending itself against claims arising from the Work of the Contract, and that the aforesaid documentation is destroyed or returned to the Client at the end of all limitation periods for commencing any action in connection with the Work or upon the conclusion or settlement with finality of any claim or action with respect to the Work.

3.6 The Prime Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Prime Consultant, the Prime Consultant's employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the Access to Information and Protection of Privacy Act, the Management of Information Act, SNL 2005, c. M-1.01, and the Privacy Act, RSNL1990 c. P-22, as well as other legislation which may apply in the jurisdiction of the Prime Consultant's operation. The Prime 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 Prime Consultant, and the Prime Consultant's employees, servants and/or agents.

3.7 The Prime Consultant shall ensure that it, and the Prime Consultant's 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 Prime Consultant employs to avoid disclosure or dissemination of the Prime Consultant's own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of the Prime Consultant's employees, servants or agents other than those who are required to have access to the same 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 Prime Consultant comply with all policies, standards and safeguards established under this Article;

(d) advise the Client of any changes in the Prime Consultant's 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 Prime 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.

3.8 The Prime Consultant shall only disclose Confidential Information to persons other than the Prime Consultant's 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".

3.9 The Prime 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 Prime 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 Prime Consultant;

(b) promptly furnish to the Client full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the Client in investigating or preventing the recurrence of any unauthorized
possession, use or knowledge, or attempt thereof, of Confidential Information;

(c) use reasonable efforts to cooperate with the Client in any litigation and investigation against third parties deemed necessary by the Client to protect its proprietary rights;

(d) promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information; and

(e) refer to and follow the privacy breach protocol of the Government of Newfoundland and Labrador as it exists at the time of the breach and located on the Department of Justice website at: http://www.justice.gov.nl.ca/just/info/privacybreach.html

Article - 4. EMPLOYEES OF THE PRIME CONSULTANT

4.1 The Prime Consultant shall provide employees who are competent in their field of specialization. The Client will have the right to have the Prime 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 Prime 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 concerned was involved and may refuse to approve payment for such Work.

4.2 The Prime 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 - 5. ACCESS TO FACILITIES

5.1 The Client agrees to provide, access to the project site for the Prime Consultant to perform the Work during Client office hours.

5.2 When using or accessing the premises of the Client, the Prime Consultant and all officers, employees and agents of the Prime Consultant shall comply with all security regulations and workplace policies and procedures in effect from time to time at the Client’s facilities.

Article - 6. RECORDS AND AUDIT

6.1 The Prime 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.

6.2 The Prime Consultant shall furnish reports as required by the Client for the purpose of monitoring the progress of the Work.
Article - 7. TERMINATION

7.1 This Agreement is deemed to be concluded once the Work has been completed to the satisfaction of the Client and the payment(s), as stipulated in the Agreement, has been issued to the Prime Consultant.

7.2 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.

7.3 Where this Agreement is terminated prior to the mutually agreed upon completion date, the Prime Consultant shall thereupon be entitled to payment in accordance with this Agreement in respect of that part of the Work completed up to the date of termination, provided however, that the Prime 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 - 8. NOTICES

8.1 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:

Attn: Michael Carroll, P. Eng.
Education and Early Childhood Development
Design and Construction Division
3rd Floor, West Block, Confederation Building
St. John’s, NL A1B 4J6
Phone: (709) 728-2892
Fax: (709) 728-1400
Email: michaelcarroll@gov.nl.ca

For the Prime Consultant:

Rowseff Appleby Engineering Inc.
Suite 101, 1 Centennial Street, Mount Pearl, NL A1N 0C9
Phone: (709) 745-9135
Fax: (709) 237-5972
Email: [redacted]

8.2 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 telex or other means of electronic communication; and

(c) Six (6) days after delivery to Canada Post Corporation where the postal service is used.

Article - 9. LIABILITY

9.1 The Prime Consultant agrees that in performance of the Work neither the Prime Consultant nor any Prime Consultant's Representative shall be or be deemed to be an officer, servant, agent or partner of the Client.

9.2 The Client shall not be liable for, and the Prime 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 negligence or default of the Prime Consultant under this Agreement, including the negligence or default of any sub-consultant chosen by the Prime Consultant. Except to the extent that such losses, costs, charges or expenses as are referenced in this clause are caused by the negligence or default of the Client under this Agreement, the Prime Consultant shall defend any and all such actions and pay all legal charges, costs and other expenses arising therefrom. Where the Prime Consultant fails to defend such an action, 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 Prime Consultant.

Article - 10. COMPLIANCE WITH LAW

10.1 In respect of any work within the Province of Newfoundland and Labrador connected with or arising from this Agreement, the Prime 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.

10.2 The Prime Consultant shall ensure that the Prime Consultant and its Representatives comply with all requirements of any governing federal, provincial or municipal legislation, by-laws or regulations applicable to the Prime Consultant or the Prime Consultant's Representatives in the performance of the Work.

Article - 11. ARBITRATION

11.1 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, the parties shall first attempt to resolve all matters through friendly negotiation by a meeting between their representatives upon notice per Article 8. A resolution reached in this way must be reached within 10 days of both parties having knowledge and notice of the dispute and be reduced to writing.
11.2 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Article 11.1), either party may give the other notice of such dispute and request third party mediation thereof.

11.3 Should the parties not agree to third party mediation or the matter in dispute between the parties not be resolved by mediation, then in the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Articles 11.1 and 11.2), either party may give the other notice of such dispute and 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 c. A-14, including such provisions for the appointment of arbitrators.

Article - 12. LAWS GOVERNING

12.1 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 - 13. USE OF WORK

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

13.2 With respect to 13.1 the Prime Consultant's liability to the Client for and in respect of the Work is solely limited to the project described in this Agreement.

Article - 14. CONFLICT OF INTEREST

14.1 No member of the House of Assembly of the Province of Newfoundland and Labrador shall be admitted to any part or share of the payments made pursuant to this Agreement or to any benefits arising therefrom.

14.2 The Prime Consultant and the Prime 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
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 - 15. SUBCONTRACTORS

15.1 The Prime Consultant shall not sub-contract all or a portion of the Work without the prior written approval of the Client, which consent will not be unreasonably withheld.

15.2 The entry into any subcontract shall not relieve the Prime Consultant of any of its obligations under the terms of this Agreement.

Article - 16. GENERAL

16.1 Articles 3 and 9 of this Agreement shall survive the termination or expiration of this Agreement.

16.2 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.

16.3 Time shall be of the essence of this Agreement.

16.4 The failure of the Client to insist upon or enforce in any instance strict performance by the Prime 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.

16.5 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.

16.6 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.

16.7 This Agreement shall enure to the benefit of and be binding upon the Parties hereto, their respective heirs, legal representatives, successors and assigns.

16.8 The Prime Consultant shall not assign this Agreement in whole or in part to any third party without the prior written approval of the Client.
SCHEDULE "D"

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

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

- All portable storage devices or media (e.g., flash drives, memory sticks, portable hard drives, writable compact discs or digital video discs, etc.) may only be used to transport and/or store Confidential Information where either the Confidential Information or the device or media is encrypted.

- Unless specifically authorized by the Prime Consultant's Contract or otherwise, the Prime Consultant is not permitted to attach non-government computers or other information technology systems to any Government network.

- The Prime Consultant is expected to implement and maintain up to date versions of all ordinary business software for the reasonable protection of information on computers attached to the Internet which will have access to or store Confidential Information, including security firewall and anti-viral software.

- The Prime Consultant is not permitted to use any Peer to Peer file sharing program (e.g., Limewire, etc) or chat program (e.g., MSN, Skype) on any information technology asset which will contain Confidential Information, or which will be connected via a network to any computer which will contain Confidential Information.

- Email should not be used as a method to transmit Confidential Information across public networks such as the Internet unless the e-mail and/or its attachments are encrypted or zipped in a secure manner.

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

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

- For the purposes of Schedule D, routine exchanges of design and construction information between the Client, the Prime Consultant and the Prime Consultant's sub-consultants that is of a non-confidential nature need not be encrypted.

Reissued 2013/07/24
AGREEMENT TO PROVIDE CONSULTATION SERVICES FOR THE PERFORMANCE MEASUREMENT FRAMEWORK INITIATIVE

It is hereby agreed that Schaeter Consulting is offered and accepts the task of providing consultation services for the Department of Education and Early Childhood Development’s Performance Measurement Framework Initiative.

The Division of Evaluation and Research will require Schaeter Consulting to provide consultation on an as-needed basis between April 1, 2016 and March 31, 2017.

The Department of Education and Early Childhood Development shall pay Schaeter Consulting on a monthly basis for all services provided in the preceding month, based on a daily consulting fee of $1,600 (plus taxes).

Ron Smith
Director
Evaluation and Research Division

Mark Schaeter
Schaeter Consulting

March 30, 2016
DATE
Mr. Chris Bowes  
Stantec Architecture Ltd.  
99 Airport Road  
St. John’s NL A1A 4Y3  

Dear Mr. Bowes:  

Consultant Appointment  

Your firm has been selected to provide professional services for the following in accordance with the attached conditions outlined below.  

**Project #500095015 – Masonry Replacement**  
École des Grands-Vents, St. John’s, NL  

The scope of services will entail a site visit with Department staff and a representative of the School District or others as designated by the Department. Once this assessment is complete, a minuted scope review meeting with the Department of Education and Early Childhood Development and school district officials will take place to discuss findings and prepare recommendations for the scope of the work.  

Fees for the assessment portion of your commission will be per diem rates, plus expenses at government rates and policies. A maximum upset limit will have to be agreed upon and a prime consultant agreement (PCA) signed prior to performing the site visit. A fixed fee will be required once the review is completed and the PCA will be amended to reflect final scope.  

By accepting this commission, your firm acknowledges that it is willing to enter into a contract containing the terms as outlined in the Government of Newfoundland and Labrador’s Standard Form of Agreement and a negotiated fee and schedule as outlined by our Project Manager. An electronic copy of our standard Agreement is attached for your perusal.  

The assessment and recommendations must be completed within 4 weeks of the date of this letter. The detailed design and contract documents would be required within 6 weeks of final scope approval.
If you are interested in carrying out this work, upon receipt of this letter, please contact Mr. Claude Foley, Design and Construction Division, at (709) 729-4982, to arrange the assessment. Also, please forward an updated copy of your proof of insurance as well as a letter of good standing with WorkplaceNL for our records.

If you are unable to undertake this work, please advise within one week of receipt of this letter so that we can arrange to appoint another consultant.

Sincerely,

INGRID E. CLARKE, P.Eng., FEC
Assistant Deputy Minister
(Infrastructure)

cc: Ms. Janet Vivian-Walsh
    Mr. Peter Smith
    Mr. Claude Foley
    Ms. Natalie Hallett
    Ms. Kara Connors
    Mr. Blair Medd
    Mr. Paul Lahey
STANDARD FORM OF AGREEMENT BETWEEN CLIENT AND PRIME CONSULTANT

Masonry Replacement and Exterior Maintenance Ecole des Grands-Vents Project # 500933015
AGREEMENT

THIS AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador, on this day of August 22, 2016.

BETWEEN: HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR as represented by the Minister of Education.

(“the Client”)

AND: Stantec Architecture Ltd.

(“the Prime Consultant”)

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

I. Definitions

In addition to the terms defined in the Special Terms and Conditions attached as Schedule “B”, (if any), and 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” means directors, officers, employees, consultants, sub-consultants, agents, advisors or partners.

II. The Prime Consultant’s Work

The Prime Consultant shall do all things necessary to fulfill and carry out all of the obligations of the Prime Consultant as set out in the Contract Documents (the “Work”).

III. Entire Agreement

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

IV. **Representations and Warranties**

The Prime Consultant hereby represents and warrants that every fact stated or represented by the Prime Consultant or its Representatives to the Client in connection with any proposal made by the Prime 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.

V. **Conflict Between Provisions**

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

VI. **Start and Completion Date**

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

- **Start Date:** August 29, 2016
- **Completion Date:** September 12, 2016

VII. **Effective Date**

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

VIII. **Paragraph Numbering**

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

IX. **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.
MINISTER OF EDUCATION, OR HIS/HER AUTHORIZED DESIGNATE

Stantec Architecture Ltd.

Name: Mark Keel
Date: August 22, 2016

Name: Tom Horrocks
Date: August 22, 2016

Recommended By (Name/Date): April 23, 2016
PM: C. Adams
Manager: S. Verbeke August 21/16
Director: Natalie Halliday Aug 24/16
# SCHEDULE “A”

## SCOPE OF WORK

BETWEEN PRIME CONSULTANT AND CLIENT

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Schedule I  Project Description  
Schedule II Basic Services and other Services Fee Schedule  
Schedule III Additional Reimbursement Expenses  
Schedule IV Schedule for the Performance of Consultant Services  
Schedule V Other Conditions of Services
PART 1  DEFINITIONS

1.1 Project Budget Forecast: means the Client’s estimated total expenditure for the project. It includes the construction budget forecast and all other costs to the Client for the project such as, but not limited to, professional fees and acquisition costs.

1.2 Construction Budget Forecast: means the Client’s estimated Construction Cost including contingencies for cost increases.

1.3 Construction Cost: means the contract price(s) of all elements of the project designed or specified by or on behalf of the Prime Consultant including, all applicable taxes. Where there is no contract price for all or part of the project, the Construction Cost shall be the elemental cost analysis using market rates at the estimated time of construction as determined by the Prime Consultant and agreed by the Client. The Construction Cost does not include professional fees, or land acquisition costs.

1.4 Contract: means an agreement between the Client and the Contractor for the provision of labour, materials and equipment for the construction of the project or part of the project by a Contractor.

1.5 Contractor: means a person, firm, or corporation contracting with the Client to provide labour, materials and equipment for the construction of the Project or part of the Project.

1.6 Project Management Design Administration Manual (PMDA Manual): a manual developed and maintained by the Department of Transportation and Works, Works Branch, for the purpose of presenting standards, guidelines and instructions for the delivery of building projects administered by the Works Branch. Unless otherwise agreed between the parties, the version published on the date of this Contract shall be the version applicable to this Contract.

1.7 Additional Services: means Consulting Services provided that are additional to the Basic Services.

1.8 Basic Services: means Consulting Services as outlined in the PMDA Manual.

1.9 Cost Control Services: means a service to monitor and advice on Project Budget and Construction Budget Forecasts.

1.10 Partial Services: means Reduced Basic Services as negotiated by the Client with the Prime Consultant.

1.11 Program Advisory Services: means Consulting Services provided by the Prime Consultant prior to start of Basic Services.

1.12 Authorities Having Jurisdiction (AHJ): means a person or persons representing these agencies that have authority to provide plan approvals and permits for the purpose of constructing the project.
PART 2  RESPONSIBILITIES

2.1  PRIME CONSULTANT

.1 The Prime Consultant’s services consist of Basic Services and Additional Services which may be required to perform the Work. The phases of the Prime Consultant’s Basic Services, and Additional Services are listed on Schedule II, and further elaborated in the Project Management and Design Administration (PMDA) Manual of the Department of Transportation and Works.

.2 The Prime Consultant’s services as provided for under and pursuant to this Agreement at and during all phases of the Work shall encompass coordination of all disciplines, quality assurance and documentation control to integrate all services and sub consultant’s work. The Prime Consultant shall prepare and submit contract documents in accordance with the Client’s requirements, as outlined in the PMDA Manual.

.3 During the tendering and contract award phase, the Prime Consultant may advise and assist the Client in obtaining bids and awarding construction contracts. The Client’s tendering and contract procedures and administrative practices will be followed in the performance of this phase, as outlined in the PMDA Manual.

.4 The Client may require the Prime Consultant to provide construction administration services. When required the Prime Consultant’s service shall be based upon either full responsibility or partial responsibility.

.1 Full Responsibility

.1 As outlined in the PMDA Manual, services provided under full responsibility include assessing construction work carried out on or in relation to the project and offering an opinion as to whether or not the construction of the project is in accordance with the contract documents prepared by the Prime Consultant.

.2 Partial Service

.1 The scope of this partial service is to be outlined in Schedule “D” of this agreement, as agreed between the Client and the Prime Consultant.

.5 The project completion phase represents the portion of the Basic Services to be provided at the commencement of substantial completion until expiry of the one year Project warranty period. This service includes the provision of record drawings as outlined in the PMDA Manual, and advice concerning issues arising during this period.

.6 Cost Control Services are included under the scope of Basic Services to be provided by the Prime Consultant, as outlined in the PMDA Manual.

.7 The following schedules apply:

Schedule I - Project Description
Schedule II - Basic and Other Additional Services Fees
Schedule III - Additional Reimbursable Allowances
Schedule IV - Other Conditions of Services
2.2 CLIENT’S RESPONSIBILITIES

.1 The Client shall give due consideration to documentation submitted by the Prime Consultant and, whenever action is necessary, the Client shall inform the Prime Consultant of the Client’s decisions, in a reasonable and timely manner.

.2 The Client shall authorize persons to act on behalf of the Client with respect to delivery and administration of the project.

.3 If the Client observes or otherwise becomes aware of any fault or defect in the project or any nonconformity with the requirements of the Contract, the Prime Consultant shall be so notified in writing.

.4 The Client may provide information regarding the project including: a program, which shall set forth the Client’s spatial and functional requirements and relationships. The Prime Consultant is responsible for requesting or providing information that is required to prepare the design and contract documents.

.5 The Client will provide the Prime Consultant with a Project Budget Forecast.

.6 The Client shall reimburse the Prime Consultant for procuring information which the Prime Consultant requires for the provision of services necessary to carry out the preparation of design and/or contract documentation when the information is not available upon request from the Client such as site surveys, hazardous material surveys.

.7 When the Client supplies the Prime Consultant with information contained within reports or equipment data sheets, the Prime Consultant will not be required to exhaustively check information supplied by the Client to verify the same unless it is requested to do so by the Client. However, if the Prime Consultant observes, or otherwise becomes aware, of any fault or defect in the information supplied to it by the Client, the Consultant shall cause the Client to be notified in writing of any such fault or defect forthwith.

.8 Where the Prime Consultant has been authorized by the Client to procure or obtain information, the Prime Consultant shall be responsible in seeing that the information provided meets the needs of the sub-consultant(s) performing the work under the direction of the Prime Consultant.

.9 The Client will reimburse the Prime Consultant for other specialist consultants that may be required to carry out quality control services during the project, subject to prior approval of scope of the work and an agreement on the fee or fees payable for the same by the Client.

PART 3 GENERAL REQUIREMENTS

3.1 STAFF

The Prime Consultant will provide the Client with a list of its employees and those of its sub-consultants who will be assigned to the project. The list will include the classification of each employee and the hourly rate to be charged for additional services rendered. The Prime Consultant will obtain written prior approval of
Client for any replacement of key employees, changes in the numbers of key employees or changes to rates of key employees assigned to the project.

3.2 SCHEDULE

.1 The Prime Consultant has developed and submitted a time schedule for the performance of consultant services on the project (which Schedule has been approved by the Client and is appended as Schedule “IV” hereto. The schedule shall incorporate all major design milestones as presented in the PMDA Manual.

.2 Unless otherwise agreed to between the parties, the failure by a party to comply with the approved schedule for those aspects of the Work that a party is responsible for may be sufficient cause for the other party to terminate this Agreement, if that failure is not rectified within seven (7) days after the defaulting party is given notice of its default.

.3 If either party believes that a change in the approved schedule is necessary the party requesting that change shall promptly give notice of that fact to the other party in writing, provide the other party with a revised schedule and the reason(s) why the change is requested for its consideration and request its written approval of the same. Should that approval be forthcoming the revised schedule will become the approved schedule for the project.

3.3 COST CONTROL

.1 The Prime Consultant shall provide Cost Control Services in accordance with PMDA Manual.

.2 If at any time the Prime Consultant considers its estimates indicate costs which exceed the Project or Construction Budget Forecast, the Prime Consultant will immediately advise the Client. If the excess is due to, discretionary design elements under the control of or reasonably foreseeable by the Prime Consultant, or the negligence or default of the Prime Consultant in the performance of this Agreement, the Client may require the Prime Consultant to redesign the project at the Prime Consultant’s expense to bring the cost estimate within the approved Project Budget Forecast.

.3 If the preferred bidder’s tender for the project for which the Prime Consultant has prepared and provided the design(s) and provided cost pricing and control services exceeds the Construction Budget Forecast as a result of the negligence or default of the Prime Consultant under this Agreement or is for reasons related to discretionary design elements which are under the Prime Consultant’s control or which the Prime Consultant should have reasonably foreseen and could have guarded against, then the Prime Consultant, at no additional cost to the Client, shall redesign to bring the cost within the Construction Budget Forecast and retender.

3.4 CHANGES AND ADJUSTMENT

.1 Changes and adjustment to the fees payable under this Agreement will be only considered if there is a material change in the level of services agreed to be provided or in the scope of the Project, or there is a material delay in the performance of the work required under the Contract.
The amounts due to the Prime Consultant arising from a material change to the Agreement will be determined by a negotiated fixed amount, or failing such negotiation, the actual cost as determined by level of effort incurred times the agreed hourly rate, plus receipted expenses.

Any increases in the fees payable caused by a material changes or other changes shall be communicated by the Prime Consultant in writing to the Client prior to incurring such costs to permit the Client to mitigate the amount of increased costs.

3.5 ERRORS AND OMISSIONS

Any costs resulting from design errors on the part of the Prime Consultant, sub-consultants chosen by the Prime Consultant, or agents, or employees of the Prime Consultant or of any sub-consultant chosen by the Prime Consultant will be the responsibility of the Prime Consultant to remedy. However, where the Client and not the Prime Consultant chooses a sub-consultant to do hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work, the Prime Consultant shall not be held responsible for design errors attributed to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, or construction testing services, done by sub-consultants chosen by the Client, unless those design errors are directly caused by the Prime Consultant. In the case of sub-consultants chosen by the Client, the Client and not the Prime Consultant shall be responsible to take such steps as the Client deems to be appropriate, to ensure that any sub-consultant chosen by the Client has appropriate and adequate policies of insurance that are acceptable to the Client in place to cover design errors attributable to incomplete or incorrect hazardous materials studies, environmental reports, geotechnical reports, topographical or legal surveys, construction testing services or other work done by any such sub-consultant.

Any costs resulting from errors in design or omissions may be paid by the Client providing the cost of such design omissions does not entail removing material or equipment that has already been constructed in accordance with the plans and specifications. The cost of the original material and equipment, as indicated on the plans and specifications, and the labour to remove such will be the responsibility of the Prime Consultant.

3.6 PRIME CONSULTANT ACTIONS AND DECISIONS

The Prime Consultant acknowledges that adequate discussion has taken place regarding the Work with the Client and that the Prime Consultant has access to sufficient information to undertake the services contracted for within the Project Budget.

The Prime Consultant and the Client agrees to act promptly and diligently on all matters within their respective direction and control requiring an action or decision affecting the design, construction or administration of the project.

Only express approval by the Client shall be deemed to relieve the Prime Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant. No acceptance or approval by the Client, that is implied shall be deemed to relieve the Prime Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant.
Consultant of professional or technical responsibility for the quality of the project documentation prepared or assembled by the Prime Consultant.

.4 If the Prime Consultant does not promptly and diligently comply with or fails to meet the requirements of the Client, the Client may without prejudice to any other right or remedy the Client may have by giving the Prime Consultant written notice, and without prejudice to the Client's rights at law or elsewhere in this Agreement, take all such action deemed necessary for the prompt and economical completion of the project, and/or terminate the contract.

3.7 INSURANCE COVERAGE

.1 The Prime Consultant shall supply written proof of:

.1 Professional liability insurance coverage equal or greater than $250,000 per claim, $500,000 in aggregate for projects under $2 million construction value or $500,000 per claim, $1,000,000 aggregate for projects over $2 million. The Prime Consultant shall be fully responsible for all amounts deducted from this value by the Prime Consultant's Insurer. This Insurance shall remain in effect until the expiry of the general contractor's one year warranty on the project.

.2 Commercial liability insurance acceptable to the Client with a minimum limit of $1,000,000.

.2 The Insurer shall be an insurance company licensed to do business in the Province of Newfoundland & Labrador.

PART 4 BASIS OF PAYMENT SCHEDULE

4.1 The Client will pay for Program Advisory Services on the basis of an agreed fixed fee or on the basis of approved level of effort at agreed per diem rates.

4.2 The Client will pay for Basic Services on the basis of the agreed fixed fee. The Client's Project Budget Forecast will be made available to the Prime Consultant to assist in the evaluation of the level of effort required.

4.3 The fee for Basic Services will be apportioned to the phases of service as outlined in Schedule II - "Basic Services and Other Additional Services' Fees".

4.4 The fee for Basic Services will also include the management and co-ordination by the Prime Consultant and specialist consulting services as may be requested by the Client. Compensation for specialist or other consulting services will be on the basis of an agreed fixed fee for the level of effort required.

4.5 The Client will pay for resident services during construction, when requested based on an agreed fixed fee amount. The fee amount is to include all payroll costs, site-related expenses and allowances as agreed.

4.6 The Client will pay for construction management services when requested on the basis of the level of effort required during project implementation based on an agreed fixed fee.

4.7 The Client will pay for commissioning services on the basis of an agreed fixed fee. The fee amount shall include level of effort; associated with the preparation
of documents and site visits to carry out commissioning activities, as outlined in the PMDA Manual.

4.8 The Client will pay for day-to-day routine expenses such as, long distance charges, reproduction costs, client presentations and submissions, original contract documents (hardcopy), courier services, travel over 50 km from office on an agreed fixed amount. All routine expenses to be charged at cost. Meals, Private Vehicle usage, and incidental expense are to be paid on the basis of Government Rates at time of this Agreement.

4.9 The Client will pay for Additional Reimbursable Allowances as provided for in Schedule III - "Additional Reimbursable Allowances". These allowances require supporting documents to be provided for payment.
SCHEDULE I
PROJECT DESCRIPTION

(Assess building for masonry replacement, generate a report, hold meeting to discuss recommendations, and define scope to be undertaken for design and tender.)
SCHEDULE IV
SCHEDULE OF THE PERFORMANCE OF CONSULTANT SERVICES

Complete site visit with client to assess work to be completed under design scope of work. Complete report outlining findings. Meet with owner representatives to decide full scope of work to be completed under this contract. Fee for design, tender and contract administration portions of the work to be discussed following initial assessment.
SCHEDULE V
OTHER CONDITIONS OF SERVICES

N/A
SCHEDULE “B”

SPECIAL TERMS AND CONDITIONS (as necessary)

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

Margaret Gillies, General Counsel  Janet Vivian-Walsh, Deputy Minister

The Special Terms and Conditions of this Agreement are follows:
As per the Contract terms contained herein

OR

1. No Special Terms and Conditions

Department of Justice

Deputy Minister
SCHEDULE “C”
GENERAL TERMS AND CONDITIONS

Article - 1. PAYMENT

1.1 Consideration

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

Payment Option #1

Subject to Article 1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, for the satisfactory performance of the Work, two thousand and six hundred dollars ($2,600.00) (plus HST) in accordance with the following payment schedule:

(i) Periodic payments – payments paid monthly proportional with the amount of work completed to date.

Payment Option #2 Not Applicable

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

(i) Person / Professional Designation – Hourly Rate

Payment Option #3 Not Applicable

Subject to Article 1.3, upon the satisfactory completion of the Work and the presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Prime Consultant, $Insert Absolute Limit on Cost of Services (plus HST).

1.2 Reimbursement of Expenses

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

Reimbursement Option A

(a) The Client shall only be responsible for the following reimbursable expenses, payable at cost, provided the Prime Consultant can demonstrate to the Client that such expenses were incurred in relation to the Work, and that documentation, satisfactory to the Client, is provided in
support of the reimbursable expense claimed and is attached to the applicable invoice, including for example, originals of supporting receipts, invoices or statements issued by non-parties to this Agreement:

(i) Travel (kilometers)

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

Reimbursement Option B Not Applicable

The Client shall not be responsible for any expenses incurred by the Prime 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) The Prime Consultant shall remain obligated to complete the Work notwithstanding that the actual costs of the Prime 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).

(b) The Parties agree and confirm that as set out in section 25(6) of the Financial Administration Act, RSNL 1990 c. F-8, as amended, all fees payable in accordance with this Agreement are subject to there being an appropriation for the work for the fiscal year in which payment under this Agreement is due.

(c) Payment will be made within 60 calendar days of receipt of a properly documented invoice. The Client shall within thirty (30) days of the execution of this Agreement should the Prime Consultant request the same provide directions to the Prime Consultant as to what constitutes a properly documented invoice.

(d) All invoices shall clearly show the amount of HST billed by the Prime Consultant as a separate item.

(e) The Prime Consultant shall conform to any request that may be made by the Client to alter the form of invoice customarily used by the Prime Consultant as may be reasonably required for the purposes of the Client's internal accounting systems. The Prime 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 Prime Consultant which may arise from work, services or expenses
incurred to remedy errors or omissions in the Work for which the Prime Consultant is responsible.

(g) The Prime Consultant shall submit invoices to:
Department of Education
Design and Construction Division
3rd Floor, West Block, Confed. Building
St. John's, NL A1B 4J6

Article - 2. INFORMATION SUPPLIED BY THE CLIENT

2.1 The Client will furnish to the Prime Consultant all available information necessary for the performance of the Work.

2.2 Where discrepancies, omissions or obscurities in the information are evident, the Prime Consultant shall bring them to the attention of the Client and secure written instructions from the Client before proceeding with any work.

Article - 3. CONFIDENTIALITY, MATERIALS AND COPYRIGHT

3.1 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 Prime Consultant, the Prime Consultant's 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;

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 Prime Consultant, the Prime Consultant's employees, servants and/or agents during the performance of the services or in any way related thereto;

(c) all personal information, as defined from time to time under the Access to Information and Protection of Privacy Act, SNL 2002 c. A-1.1, to mean recorded information about an identifiable individual, including,

(i) the individual's name, address or telephone number,

(ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,
(iii) the individual’s age, sex, sexual orientation, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual’s fingerprints, blood type or inheritable characteristics,

(vi) information about the individual’s health care status or history, including a physical or mental disability,

(vii) information about the individual’s educational, financial, criminal or employment status or history,

(viii) the opinions of a person about the individual, and

(ix) the individual's personal views or opinions

for any individual, which is, directly or indirectly, disclosed to or collected by the Prime Consultant, the Prime Consultant’s 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 Prime Consultant, the Prime Consultant’s 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 Prime Consultant was or thereafter became part of the public domain through no act or omission of the Prime Consultant or the Prime Consultant’s Representatives; or

(ii) is information which the Prime Consultant can show possession of prior to the date of this Agreement and which was received or developed by the Prime Consultant free of obligations of confidentiality to the Client.

3.2 The Prime Consultant shall treat all Confidential Information acquired by the Prime Consultant in the performance of the Services as privileged and confidential and shall not divulge the same to any person or persons at any time without the express written approval of the Client, unless required to do so by law, which may include any subpoena or other similar process or in connection with litigation, arbitration or other proceeding or by virtue of an act or regulations. In the event that such disclosure is required, the Prime Consultant shall give the Client prompt notice of the requirement upon becoming aware that such disclosure is required. Where circumstances do not permit the Prime Consultant to provide such notice prior to disclosure, the Prime Consultant shall provide such notice to the Client immediately after the required disclosure.

3.3 The Prime 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.

3.4 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 Prime 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 Prime 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 Prime Consultant pursuant to the terms of this Agreement. The Prime Consultant acknowledges that the Client’s right to this information shall at all times be paramount to any rights of the Prime Consultant, at law or in equity, and that the Prime 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 Prime Consultant’s possession.

3.5 The Prime 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 Prime Consultant, the Prime Consultant’s employees, servants and/or agents, and shall certify the destruction of same to the Client. However, nothing in this Agreement shall preclude the Prime Consultant’s privilege to retain copies of documents provided to it or prepared by it in connection with the Work, provided such documents are kept in a secure manner, are used by the Prime Consultant solely for the purposes of defending itself against claims arising from the Work of the Contract, and that the aforesaid documentation is destroyed or returned to the Client at the end of all limitation periods for commencing any action in connection with the Work or upon the conclusion or settlement with finality of any claim or action with respect to the Work.

3.6 The Prime Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Prime Consultant, the Prime Consultant’s employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the Access to Information and Protection of Privacy Act, the Management of Information Act, SNL 2005, c. M-1.01, and the Privacy Act, RS NL1990 c. P-22, as well as other legislation which may apply in the jurisdiction of the Prime Consultant’s operation. The Prime 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 Prime Consultant, and the Prime Consultant’s employees, servants and/or agents.

3.7 The Prime Consultant shall ensure that it, and the Prime Consultant’s 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 Prime Consultant employs to avoid disclosure or dissemination of the Prime Consultant’s own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of the Prime Consultant’s employees, servants or agents other than those who are required to have access to the same 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 Prime Consultant comply with all policies, standards and safeguards established under this Article;

(d) advise the Client of any changes in the Prime Consultant’s 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 Prime 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.

3.8 The Prime Consultant shall only disclose Confidential Information to persons other than the Prime Consultant’s 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”.

3.9 The Prime 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 Prime 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 Prime 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;
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;

promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information; and

refer to and follow the privacy breach protocol of the Government of Newfoundland and Labrador as it exists at the time of the breach and located on the Department of Justice website at: http://www.justice.gov.nl.ca/just/CIVIL/atipp/default.htm

Article 4. EMPLOYEES OF THE CONSULTANT

4.1 The Prime Consultant shall provide employees who are competent in their field of specialization. The Client will have the right to have the Prime 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 Prime 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 concerned was involved and may refuse to approve payment for such Work.

4.2 The Prime 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 5. ACCESS TO FACILITIES

5.1 The Client agrees to provide, access to the project site for the Prime Consultant to perform the Work during Client office hours.

5.2 When using or accessing the premises of the Client, the Prime Consultant and all officers, employees and agents of the Prime Consultant shall comply with all security regulations and workplace policies and procedures in effect from time to time at the Client’s facilities.

Article 6. RECORDS AND AUDIT

6.1 The Prime 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.

6.2 The Prime Consultant shall furnish reports as required by the Client for the purpose of monitoring the progress of the Work.
Article - 7. TERMINATION

7.1 This Agreement is deemed to be concluded once the Work has been completed to the satisfaction of the Client and the payment(s), as stipulated in the Agreement, has been issued to the Prime Consultant.

7.2 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.

7.3 Where this Agreement is terminated prior to the mutually agreed upon completion date, the Prime Consultant shall thereupon be entitled to payment in accordance with this Agreement in respect of that part of the Work completed up to the date of termination, provided however, that the Prime 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 - 8. NOTICES

8.1 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:

Claude Foley
Department of Education
Design and Construction Division
3rd Floor, West Block, Confederation Building
St. John's, NL A1B 4J6
Phone: (709) 729-4982
Fax: (709) 729-1400
Email: claudefoley@gov.nl.ca

For the Prime Consultant:

Mark Keel
141 Kelsey Drive
St. John's, NL A1B 0L2
Phone: (709) 576-1458
Fax: (709) 576-8120
Email: s.40(1)

8.2 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.

**Article - 9. LIABILITY**

9.1 The Prime Consultant agrees that in performance of the Work neither the Prime Consultant nor any Prime Consultant’s Representative shall be or be deemed to be an officer, servant, agent or partner of the Client.

9.2 The Client shall not be liable for, and the Prime 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 negligence or default of the Prime Consultant under this Agreement, including the negligence or default of any sub-consultant chosen by the Prime Consultant. Except to the extent that such losses, costs, charges or expenses as are referenced in this clause are caused by the negligence or default of the Client under this Agreement, the Prime Consultant shall defend any and all such actions and pay all legal charges, costs and other expenses arising therefrom. Where the Prime Consultant fails to defend such an action, 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 - 10. COMPLIANCE WITH LAW**

10.1 In respect of any work within the Province of Newfoundland and Labrador connected with or arising from this Agreement, the Prime 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.

10.2 The Prime Consultant shall ensure that the Prime Consultant and its Representatives comply with all requirements of any governing federal, provincial or municipal legislation, by-laws or regulations applicable to the Prime Consultant or the Prime Consultant’s Representatives in the performance of the Work.

**Article - 11. ARBITRATION**

11.1 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, the parties shall first attempt to resolve all matters through friendly negotiation by a meeting
between their representatives upon notice per Article 8. A resolution reached in this way must be reached within 10 days of both parties having knowledge and notice of the dispute and be reduced to writing.

11.2 In the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Article 11.1), either party may give the other notice of such dispute and request third party mediation thereof.

11.3 Should the parties not agree to third party mediation or the matter in dispute between the parties not be resolved by mediation, then in the case of a dispute arising between the Client and the Prime Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Articles 11.1 and 11.2), either party may give the other notice of such dispute and 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 c. A-14, including such provisions for the appointment of arbitrators.

Article - 12. LAWS GOVERNING

12.1 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 - 13. USE OF WORK

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

13.2 With respect to 13.1 the Prime Consultant's liability to the Client for and in respect of the Work is solely limited to the project described in this Agreement.

Article - 14. CONFLICT OF INTEREST

14.1 No member of the House of Assembly of the Province of Newfoundland and Labrador shall be admitted to any part or share of the payments made pursuant to this Agreement or to any benefits arising therefrom.

14.2 The Prime Consultant and the Prime 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;
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 - 15. SUBCONTRACTORS

15.1 The Prime Consultant shall not sub-contract all or a portion of the Work without the prior written approval of the Client. which consent will not be unreasonably withheld.

15.2 The entry into any subcontract shall not relieve the Prime Consultant of any of its obligations under the terms of this Agreement.

Article - 16. GENERAL

16.1 Articles 3 and 9 of this Agreement shall survive the termination or expiration of this Agreement.

16.2 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.

16.3 Time shall be of the essence of this Agreement.

16.4 The failure of the Client to insist upon or enforce in any instance strict performance by the Prime 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.

16.5 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.

16.6 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.

16.7 This Agreement shall enure to the benefit of and be binding upon the Parties hereto, their respective heirs, legal representatives, successors and assigns.

16.8 The Prime Consultant shall not assign this Agreement in whole or in part to any third party without the prior written approval of the Client.
SCHEDULE D
Protocols for Security of Government Information on Information Technology assets of Contractors

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

- All portable storage devices or media (e.g., flash drives, memory sticks, portable hard drives, writeable compact discs or digital video discs, etc.) may only be used to transport and/or store Confidential Information where either the Confidential Information or the device or media is encrypted.

- Unless specifically authorized by the Prime Consultant’s Contract or otherwise, the Prime Consultant is not permitted to attach non-government computers or other information technology systems to any Government network.

- The Prime Consultant is expected to implement and maintain up to date versions of all ordinary business software for the reasonable protection of information on computers attached to the Internet which will have access to or store Confidential Information, including security firewall and anti-viral software.

- The Prime Consultant is not permitted to use any Peer to Peer file sharing program (e.g., Limewire, etc) or chat program (e.g., MSN, Skype) on any information technology asset which will contain Confidential Information, or which will be connected via a network to any computer which will contain Confidential Information.

- Email should not be used as a method to transmit Confidential Information across public networks such as the Internet unless the e-mail and/or its attachments are encrypted or zipped in a secure manner.

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

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

- For the purposes of Schedule D, routine exchanges of design and construction information between the Client, the Prime Consultant and the Prime Consultant’s sub-consultants that is of a non confidential nature need not be encrypted.
AGREEMENT

THIS AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador, on this 8th day of January 2016.

BETWEEN: HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR as represented by the Minister of Education and Early Childhood Development

("the Client")

AND: Dr. Dorothy Vaandering

("the Consultant")

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

1. Definitions

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

a. "Contract Documents" shall mean and include:

i. This head agreement (the "Head Agreement");

ii. The Scope of Work attached as Schedule "A";

iii. The Special Terms and Conditions attached as Schedule "B";

iv. The General Terms and Conditions attached as Schedule "C"; and

v. Protocols for Security of Government Information on Information Technology assets of Contractors attached as Schedule "D".

b. "Representatives" means directors, officers, employees, Consultants, sub-Consultants, agents, advisors or partners.

2. The Consultant's Work

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

1.1 Consideration

It is agreed and understood that payments made for the satisfactory performance of the Work pursuant to this Agreement shall be made, subject to Article 1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Consultant, for the satisfactory performance of the Work, $1,200.00 (plus HST, as applicable).

1.2 Reimbursement of Expenses

It is agreed and understood that the Client shall only be responsible for the following reimbursable expenses, payable at cost, provided the Consultant can demonstrate to the client that such expenses were incurred in relation to the work, and that documentation, satisfactory to the client, is provided in support of the reimbursable expense claimed and is attached to the applicable invoice, including for example, originals or supporting receipts, invoices or statements issued by non-parties to this Agreement:

(i) $2,682.00 plus HST, as applicable to reimburse total costs of Materials (books & videos $2250.00) and Meeting Venue $430.00.

All claims submitted for reimbursable expenses in accordance with this Article 3.1.2 shall be reimbursed at rates not to exceed those established by Treasury Board pursuant to the guidelines and policies of the Client even if such rates are lower than the actual costs incurred by the Consultant.

1.3 Payment General

(a) The Parties agree and confirm that total amounts payable for the Work and reimbursable expenses shall not exceed a monetary ceiling of $3,882.00 (plus HST, as applicable).

(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, RSNL 1990 c8, as amended, all fees payable in accordance with this Agreement are subject to there being an appropriation for the work for the fiscal year in which payment under this Agreement is due.

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

(e) All invoices shall clearly show the amount of HST (if applicable) billed by the Consultant as a separate item.
(f) The Consultant shall conform to any request that may be made by the client to alter the form of invoice customarily used by the Consultant as may be reasonably required for the purposes of the Client's internal accounting systems. The Consultant agrees that each invoice shall clearly show and identify the work or service which is being charged under that invoice to the client. The invoice shall have appended thereto any documentation required by the Client.

(g) The Client shall not be responsible to pay any amounts invoiced by the Consultant which may arise from work, services or expenses incurred to remedy errors or omissions in the Work for which the Consultant is responsible.

(h) The Consultant shall submit invoices to:

Student Support Services
Department of Education
P.O. Box 8700
St. John's, NL A1B 4J6

4. Notices

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

For the Client:

Ms. Rhonda McKinnon
Department of Education and Early Childhood Development
Confederation Building, West Block
P.O. Box 8700
St. John's, NL A1B 4J6

Phone: 709-729-6779
Fax: 709-729-1400
Email: rhondamckinnon@gov.nl.ca

For the Consultant:

Dr. Dorothy Vaandering

Phone: [Redacted]
Email: [Redacted]

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

s.40(1)
(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 telex or other means of electronic communication; and

(c) Six (6) days after delivery to Canada Post Corporation where the postal service is used.

5. **Entire Agreement**

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

6. **Representations and Warranties**

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

7. **Conflict Between Provisions**

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

8. **Start and Completion Date**

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

Start Date: January 20, 2016

Completion Date: January 20, 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.

HER MAJESTY IN RIGHT OF
NEWFOUNDLAND AND LABRADOR

[Signature]
Janet Vivian Walsh, Deputy Minister

FOR THE CONSULTANT

[Signature]
Dorothy Vaandring
SCHEDULE "A"

SCOPE OF WORK

The Consultant shall complete the work and/or perform the following services:

This contract is for Session 1, the first of an anticipated eight training session Restorative Justice Institute to be provided to eleven Safe and Caring Schools and Inclusion Itinerants and three EECD consultants. Each session will be delivered by the Consultant, RF-RJE of NL Consortium founder Dorothy Vaandering, Ph.D. and a co-facilitator to be selected, supervised and remunerated by the Consultant. The Client shall have no financial or other legal obligation to any co-facilitator. The Consultant shall ensure a co-facilitator is provided a copy of Schedules C and D of this Contract and aware of the obligations of the Consultant, her employees, servants or agents and the contractual terms set out in those Schedules.

Based on a responsive, relational approach to professional development and research that indicates intensive, on-going sessions best support participants willing to engage with and implement new frameworks of thinking and practice, the following outlines the Restorative Justice Institute. It is anticipated that eight full days will be delivered in 1-3 day segments 4 times in the next 9 months. The Institute will model a participatory, relational, restorative philosophy in its delivery so that each participant experiences the approach personally for greater understanding.

The content of the Institute is anticipated to include:

Session 1 (January 20, 2016): Introduction to Restorative Justice in Education
- The Role of Relationship

Session 2 (April 12, 2016)
- Relationship with Self and Other Adults

Session 3 (April 13, 2016)
- Relationship with Other Adults
- How do I introduce the philosophy and principles of restorative justice to schools in my region?

Session 4 (April 14, 2016)
- Relationships with and amongst Students
- How do I introduce the practices of restorative justice to schools in my region?

Session 5 & 6: (May 17-18, 2016)
- Making things right, when things go wrong
- Facilitating interventions for serious harm

Session 7: (May 19, 2016)
- Moving forward in creating intentional, relational school cultures in NL. Providing leadership in schools – a 3-5 year plan towards sustainability.
Session 8: (TBA)

- Participants to reflect on and implement what they learn in their personal and professional lives
- Planning time for the development of an implementation plan

It is anticipated there will be regular on-line support between each Session.

The Client acknowledges and agrees that this Contract relates solely to the provision of Session 1 services and that the Client is under no legal or other obligation to the Consultant or any other person in relation to anticipated Sessions 2-8, which may be the subject of a future contract(s).
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 initiated by the Deputy Minister.

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

OR

1. No Special Terms and Conditions

[Signatures]
Deputy Minister

[Signature]
Consultant
SCHEDULE “C”

GENERAL TERMS AND CONDITIONS

Article 1 - Information Supplied by the Client
Article 2 - Confidentiality, materials and Copyright
Article 3 - Employees of the Consultant
Article 4 - Access to Facilities
Article 5 - Records and audit
Article 6 - Termination
Article 7 - Liability
Article 8 - Compliance with Law
Article 9 - Arbitration
Article 10 - Laws governing
Article 11 - Use of Work
Article 12 - Conflict of Interest
Article 13 - Subcontractors
Article 14 - General
GENERAL TERMS AND CONDITIONS

Article – 1  INFORMATION SUPPLIED BY THE CLIENT

1.1  The Client will furnish to the Consultant all available information necessary for the performance of the Work. The Client makes no guarantee either expressed or implied as to the accuracy 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, 2015 SNL 2015 c. A-1.2, or the Personal health information Act, SNL 2008 c. P-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) 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

(i) 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 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, 2015 SNL 2015 c. A-1.2, the Management of Information Act, SNL 2008 c. P-7.01, as well as other legislation which may apply in the jurisdiction of the Consultant's operation. The Consultant is responsible to ensure the compliance with and satisfaction of the legislative requirements of all such information relating to the treatment of confidential Information by the Consultant, its, his/her employees, servants and/or agents. The Client may be compelled to disclose financial information pursuant to the first cited Act.

2.7 The Consultant shall ensure that it, his/her employees, servants and/or agents have in place and follow the appropriate systems, processes, protocols and policies to maintain the physical and electronic security of all Confidential Information, including but not restricted to the following:

(a) at a minimum, using the same level of physical and electronic security as the Consultant employs to avoid disclosure or dissemination of the Consultant's own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of the 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 his/her security systems, procedures, standards and practices that may affect the Confidential Information and seek the client's consent prior to such changes; and
(e) satisfaction of the foregoing commitments includes, but is not restricted to, compliance with the requirements set out in Schedule "D", unless otherwise advised by the Client, and this includes:

(i) complying with all alterations or updates of Schedule "D" as may be provided to the Consultant from time to time; and

(ii) adhering to any additional instructions (including oral instructions) from the client as they relate to the subject matter contained in Schedule "D" and this Article.

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

2.9 The Consultant shall:

(a) notify the Client promptly of any unauthorized possession, use or knowledge, or attempt thereof, of the client's information in the possession of the Consultant, including but not limited to data processing files, transmission messages or other confidential information by any person or entity which may become known to the Consultant.

(b) promptly furnish to the Client full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the Client in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of confidential information;

(c) use reasonable efforts to cooperate with the Client in any litigation and investigation against third parties deemed necessary by the client to protect its proprietary rights;

(d) promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of confidential information; and

(e) refer to and follow the privacy breach protocol of the government of Newfoundland and Labrador as it exists at the time of the breach and located on the Government of Newfoundland and Labrador, Executive Council website at: http://www.atipp.gov.nl.ca/info/privacybreach.html
Article – 3 EMPLOYEES OF THE CONSULTANT

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

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

Article – 4 ACCESS TO FACILITIES

4.1 The Client agrees to provide, where it is deemed by the Client, in its absolute and sole discretion to be necessary for the reasonable performance of the work, working space and equipment access for the Consultant to perform the work during client office hours.

4.2 When using or accessing the premises of the Client, the Consultant and all officers, employees and agents of the Consultant shall comply with all security regulations and workplace policies and procedures in effect from time to time at the Client’s facilities.

Article – 5 RECORDS AND AUDIT

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

5.2 The Consultant shall furnish reports as required by the Client for the purpose of monitoring the progress of the Work.

Article – 6 TERMINATION

6.1 This Agreement is deemed to be concluded once the Work has been completed to the satisfaction of the client and payment(s), as stipulated in the Agreement, has been issued to the Consultant.

6.2 Notwithstanding the provisions of this Agreement, either of the Parties may at any time by way of fourteen (14) days written notice to the other, terminate this Agreement.

6.3 Where this Agreement is terminated prior to the mutually agreed upon
completion date, the Consultant shall thereupon be entitled to payment in accordance with this Agreement in respect of that part of the Work completed up to the date of termination, provided however, that the Consultant shall not be entitled to any other payment in respect of such termination, including, without prejudice to the generality of the foregoing, any payment for any consequential loss or damage or loss of profits arising from termination of this Agreement or in any other way related thereto. The Client shall retain the right of set off with respect to any earned but unpaid proceeds then owing pursuant to this Agreement.

Article – 7 LIABILITY

7.1 The Consultant agrees that in performance of the work neither the Consultant nor any Consultant’s Representative shall be or be deemed to be an officer, servant, agent or partner of the Client.

7.2 The Client shall not be liable for, and the Consultant shall indemnify and save harmless the Client and the Client’s Representatives against all losses, costs, charges, or expenses incurred by the Client and its agents as a result of action, 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 c. A-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, 1995 SNL 1995 c. C-30.1 or the House of Assembly Act RSNL 1990 c. H-10.

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 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 rights 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 or reference only and shall not affect the construction or interpretation of this Agreement.

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

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

END OF SCHEDULE C
SCHEDULE “D”

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

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

- All portable storage devices or media (e.g., flash drives, memory sticks, portable hard drives, writable compact discs or digital video discs, etc.) may only be used to transport and/or store Confidential Information where either the Confidential Information or the device or media is encrypted.

- Unless specifically separately authorized by the Agreement or otherwise, the Consultant is not permitted to attach non-government computers or other information technology systems to any Government network.

- Consultants are expected to implement and maintain up to date versions of all ordinary business software for the reasonable protection of information on computers attached to the Internet which will have access to or store Confidential Information, including security firewall and anti-viral software.

- Consultants are not permitted to use any Peer to Peer file sharing program (e.g., Limewire, etc.) or chat program (i.e., MSN, Skype) on any information technology asset which will contain Confidential Information, or which will be connected via a network to any computer which will contain Confidential Information.

- Email should not be used as a method to transmit Confidential Information across public networks such as the Internet unless the e-mail and/or its attachments are encrypted or zipped in a secure manner.

- The Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Consultant, its employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the Access to Information and Protection of Privacy Act, 2015 SNL 2015 c. A-1.2 and Management of Information Act, SNL 2005, c. M-1.01, and the Privacy Act, RSNL 1990 c. P-22, as well as other legislation which may apply in the jurisdiction of the Consultant’s operation. The Consultant is responsible to ensure the compliance with and satisfaction of the legislative requirements of all such information relating to the treatment of Confidential information by the Consultant, its employees, servants and/or agents.
• Where a Consultant will be granted access to the Government computer network during the course of the work, in addition to the requirements noted above, the Consultant shall not:
  
  o Share personal computer drives or folders on a computer accessing the network; or
  
  o Access the network remotely, either through wired or wireless connections, except through the use of secure ID and virtual private network systems.

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

END OF SCHEDULE D
AGREEMENT

THIS AGREEMENT made at St. John’s, in the Province of Newfoundland and Labrador, on this 4th day of April 2016.

BETWEEN: HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR as represented by the Minister of Education and Early Childhood Development

(“the Client”)

AND: Dr. Dorothy Vaandering

(“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” means directors, officers, employees, Consultants, sub-
      Consultants, agents, advisors or partners.

2. The Consultant’s Work
   The Consultant shall do all things necessary to fulfill all of the obligations of the Consultant as set out in the Contract Documents (the “Work”). The Work shall be performed by the Consultant to the satisfaction of the Client.
3. Payment

1.1 Consideration

It is agreed and understood that payments made for the satisfactory performance of the Work pursuant to this Agreement shall be made, subject to Article 1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Consultant, for the satisfactory performance of the Work, $3,600.00 (plus HST, as applicable).

1.2 Reimbursement of Expenses

It is agreed and understood that the Client shall only be responsible for the following reimbursable expenses, payable at cost, provided the Consultant can demonstrate to the client that such expenses were incurred in relation to the work, and that documentation, satisfactory to the client, is provided in support of the reimbursable expense claimed and is attached to the applicable invoice, including for example, originals or supporting receipts, invoices or statements issued by non-parties to this Agreement:

(i) $795.00 plus HST, as applicable to reimburse total costs of travel for presenter ($315.00) and Meeting Venue $480.00.

All claims submitted for reimbursable expenses in accordance with this Article 3.1.2 shall be reimbursed at rates not to exceed those established by Treasury Board pursuant to the guidelines and policies of the Client even if such rates are lower than the actual costs incurred by the Consultant.

1.3 Payment General

(a) The Parties agree and confirm that total amounts payable for the Work and reimbursable expenses shall not exceed a monetary ceiling of $4,395.00 (plus HST, as applicable).

(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).

(d) The Parties agree and confirm that as set out in section 25(6) of the Financial Administration Act, RSNL 1990 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.

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

(f) All invoices shall clearly show the amount of HST (if applicable) billed by the Consultant as a separate item.
(g) 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.

(h) 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.

(i) The Consultant shall submit invoices to:

Student Support Services  
Department of Education  
P.O. Box 8700  
St. John's, NL A1B 4J6

4. Notices

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

For the Client:

Ms. Rhonda McKinnon  
Department of Education and Early Childhood Development  
Confederation Building, West Block  
P.O. Box 8700  
St. John's, NL A1B 4J6

Phone: 709-729-6779  
Fax: 709-729-1400  
Email: rhondamckinnon@govl.nl.ca

For the Consultant:

Dr. Dorothy Vaandering

Phone:  
Email:  

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 telex or other means of electronic communication; and
(c) Six (6) days after delivery to Canada Post Corporation where the postal service is used.

5. **Entire Agreement**

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

6. **Representations and Warranties**

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

7. **Conflict Between Provisions**

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

8. **Start and Completion Date**

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

- **Start Date:** April 12, 2016
- **Completion Date:** April 14, 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.

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

[Signature]

Janet Vivian Walsh, Deputy Minister

**FOR THE CONSULTANT**

[Signature]

Dorothy Vaandering
SCHEDULE “A”
SCOPE OF WORK

The Consultant shall complete the work and/or perform the following services:

This contract is for Sessions 2, 3 and 4, as described below. These sessions are part of an anticipated eight training session Restorative Justice Institute to be provided to eleven Safe and Caring Schools and Inclusion Itinerants and three EECD consultants. Each session will be delivered by the Consultant, RF-RJE of NL Consortium founder Dorothy Vaandering, Ph.D. and a co-facilitator to be selected, supervised and remunerated by the Consultant. The Client shall have no financial or other legal obligation to any co-facilitator. The Consultant shall ensure a co-facilitator is provided a copy of Schedules C and D of this Contract and aware of the obligations of the Consultant, her employees, servants or agents and the contractual terms set out in those Schedules.

Based on a responsive, relational approach to professional development and research that indicates intensive, on-going sessions best support participants willing to engage with and implement new frameworks of thinking and practice, the following outlines the Restorative Justice Institute. It is anticipated that eight full days will be delivered in 1-3 day segments 4 times in the next 9 months. The Institute will model a participatory, relational, restorative philosophy in its delivery so that each participant experiences the approach personally for greater understanding.

The content of the Institute is anticipated to include:

Session 1 (January 20, 2016): Introduction to Restorative Justice in Education
- The Role of Relationship

Session 2 (April 12, 2016)
- Relationship with Self and Other Adults

Session 3 (April 13, 2016)
- Relationship with Other Adults
- How do I introduce the philosophy and principles of restorative justice to schools in my region?

Session 4 (April 14, 2016)
- Relationships with and amongst Students
- How do I introduce the practices of restorative justice to schools in my region?

Session 5 & 6: (June 7, 8, 2016)
- Making things right, when things go wrong
- Facilitating interventions for serious harm

Session 7: (June 9, 2016)
- Moving forward in creating intentional, relational school cultures in NL. Providing leadership in schools – a 3-5 year plan towards sustainability,
Session 8: (TBA)

- Participants to reflect on and implement what they learn in their personal and professional lives
- Planning time for the development of an implementation plan

It is anticipated there will be regular on-line support between each Session.

The Client acknowledges and agrees that this Contract relates solely to the provision of Session 2, 3, 4 services and that the Client is under no legal or other obligation to the Consultant or any other person in relation to anticipated Sessions 5-8, which may the subject of a future contract(s).
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 initiated by the Deputy Minister.

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

OR

1. No Special Terms and Conditions

Deputy Minister

Consultant
**SCHEDULE “C”**

**GENERAL TERMS AND CONDITIONS**

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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 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, 2015 SNL 2015 c. A-1.2, or the Personal health information Act, SNL 2008 c. P-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) 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 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, 2015 SNL 2015 c. A-1.2, the Management of Information Act, SNL 2008 c. P-7.01, as well as other legislation which may apply in the jurisdiction of the Consultant’s operation. The Consultant is responsible to ensure the compliance with and satisfaction of the legislative requirements of all such information relating to the treatment of confidential Information by the Consultant, its, his/her employees, servants and/or agents. The Client may be compelled to disclose financial information pursuant to the first cited Act.

2.7 The Consultant shall ensure that it, his/her employees, servants and/or agents have in place and follow the appropriate systems, processes, protocols and policies to maintain the physical and electronic security of all Confidential Information, including but not restricted to the following:

(a) at a minimum, using the same level of physical and electronic security as the Consultant employs to avoid disclosure or dissemination of the Consultant's own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of the 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 his/her security systems, procedures, standards and practices that may affect the Confidential Information and
seek the client’s consent prior to such changes; and

(e) satisfaction of the foregoing commitments includes, but is not restricted to, compliance with the requirements set out in Schedule “D”, unless otherwise advised by the Client, and this includes:

(i) complying with all alterations or updates of Schedule “D” as may be provided to the Consultant from time to time; and

(ii) adhering to any additional instructions (including oral instructions) from the client as they relate to the subject matter contained in Schedule “D” and this Article.

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

2.9 The Consultant shall:

(a) notify the Client promptly of any unauthorized possession, use or knowledge, or attempt thereof, of the client’s information in the possession of the Consultant, including but not limited to data processing files, transmission messages or other confidential information by any person or entity which may become known to the Consultant.

(b) promptly furnish to the Client full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the Client in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of confidential information;

(c) use reasonable efforts to cooperate with the Client in any litigation and investigation against third parties deemed necessary by the client to protect its proprietary rights;

(d) promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of confidential information; and

(e) refer to and follow the privacy breach protocol of the government of Newfoundland and Labrador as it exists at the time of the breach and located on the Government of Newfoundland and Labrador, Executive Council website at: http://www.atipp.gov.nl.ca/info/privacybreach.html
Article – 3 EMPLOYEES OF THE CONSULTANT

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

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

Article – 4 ACCESS TO FACILITIES

4.1 The Client agrees to provide, where it is deemed by the Client, in its absolute and sole discretion to be necessary for the reasonable performance of the work, working space and equipment access for the Consultant to perform the work during client office hours.

4.2 When using or accessing the premises of the Client, the Consultant and all officers, employees and agents of the Consultant shall comply with all security regulations and workplace policies and procedures in effect from time to time at the Client’s facilities.

Article – 5 RECORDS AND AUDIT

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

5.2 The Consultant shall furnish reports as required by the Client for the purpose of monitoring the progress of the Work.

Article – 6 TERMINATION

6.1 This Agreement is deemed to be concluded once the Work has been completed to the satisfaction of the client and payment(s), as stipulated in the Agreement, has been issued to the Consultant.

6.2 Notwithstanding the provisions of this Agreement, either of the Parties may at any time by way of fourteen (14) days written notice to the other, terminate this Agreement.
6.3 Where this Agreement is terminated prior to the mutually agreed upon completion date, the Consultant shall thereupon be entitled to payment in accordance with this Agreement in respect of that part of the Work completed up to the date of termination, provided however, that the Consultant shall not be entitled to any other payment in respect of such termination, including, without prejudice to the generality of the foregoing, any payment for any consequential loss or damage or loss of profits arising from termination of this Agreement or in any other way related thereto. The Client shall retain the right of set off with respect to any earned but unpaid proceeds then owing pursuant to this Agreement.

Article – 7 LIABILITY

7.1 The Consultant agrees that in performance of the work neither the Consultant nor any Consultant’s Representative shall be or be deemed to be an officer, servant, agent or partner of the Client.

7.2 The Client shall not be liable for, and the Consultant shall indemnify and save harmless the Client and the Client's Representatives against all losses, costs, charges, or expenses incurred by the Client and its agents as a result of action, 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 c. A-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*, 1995 SNL 1995 c. C-30.1 or the *House of Assembly Act* RSNL 1990 c. H-10.

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 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 rights 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 or reference only and shall not affect the construction or interpretation of this Agreement.

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

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

END OF SCHEDULE C
SCHEDULE "D"

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

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

- All portable storage devices or media (e.g., flash drives, memory sticks, portable hard drives, writeable compact discs or digital video discs, etc.) may only be used to transport and / or store Confidential Information where either the Confidential Information or the device or media is encrypted.

- Unless specifically separately authorized by the Agreement or otherwise, the Consultant is not permitted to attach non-government computers or other information technology systems to any Government network.

- Consultants are expected to implement and maintain up to date versions of all ordinary business software for the reasonable protection of information on computers attached to the Internet which will have access to or store Confidential Information, including security firewall and anti-viral software.

- Consultants are not permitted to use any Peer to Peer file sharing program (e.g., Limewire, etc.) or chat program (i.e., MSN, Skype) on any information technology asset which will contain Confidential Information, or which will be connected via a network to any computer which will contain Confidential Information.

- Email should not be used as a method to transmit Confidential Information across public networks such as the Internet unless the e-mail and/or its attachments are encrypted or zipped in a secure manner.

- The Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Consultant, its employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the Access to Information and Protection of Privacy Act, 2015 SNL 2015 c. A-1.2 and Management of Information Act, SNL 2005, c. M-1.01, and the Privacy Act, RSNL 1990 c. P-22, as well as other legislation which may apply in the jurisdiction of the Consultant’s operation. The Consultant is responsible to ensure the compliance with and satisfaction of the legislative
requirements of all such information relating to the treatment of Confidential Information by the Consultant, its employees, servants and/or agents.

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

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

END OF SCHEDULE D
AGREEMENT

THIS AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador, on this 17th day of May 2016.

BETWEEN: HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR as represented by the Minister of Education and Early Childhood Development

("the Client")

AND: Dr. Dorothy Vaandering

("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" means directors, officers, employees, Consultants, sub-
      Consultants, agents, advisors or partners.

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

1.1 **Consideration**

It is agreed and understood that payments made for the satisfactory performance of the Work pursuant to this Agreement shall be made, subject to Article 1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Consultant, for the satisfactory performance of the Work, $3,600.00 (plus HST, as applicable).

1.2 **Reimbursement of Expenses**

It is agreed and understood that the Client shall only be responsible for the following reimbursable expenses, payable at cost, provided the Consultant can demonstrate to the client that such expenses were incurred in relation to the work, and that documentation, satisfactory to the client, is provided in support of the reimbursable expense claimed and is attached to the applicable invoice, including for example, originals or supporting receipts, invoices or statements issued by non-parties to this Agreement:

(i) $795.00 plus HST, as applicable to reimburse total costs of travel for presenter ($315.00) and Meeting Venue ($480.00).

All claims submitted for reimbursable expenses in accordance with this Article 3.1.2 shall be reimbursed at rates not to exceed those established by Treasury Board pursuant to the guidelines and policies of the Client even if such rates are lower than the actual costs incurred by the Consultant.

1.3 **Payment General**

(a) The Parties agree and confirm that total amounts payable for the Work and reimbursable expenses shall not exceed a monetary ceiling of $4,395.00 (plus HST, as applicable).

(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, RSNL 1990 cf-8, as amended, all fees payable in accordance with this Agreement are subject to there being an appropriation for the work for the fiscal year in which payment under this Agreement is due.

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

(e) All invoices shall clearly show the amount of HST (if applicable) billed by the Consultant as a separate item.

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

(g) The Client shall not be responsible to pay any amounts invoiced by the Consultant which may arise from work, services or expenses incurred to remedy errors or omissions in the Work for which the Consultant is responsible.

(h) The Consultant shall submit invoices to:

Student Support Services
Department of Education
P.O. Box 8700
St. John’s, NL A1B 4J6

4. Notices

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

For the Client:

Ms. Rhonda McKinnon
Department of Education and Early Childhood Development
Confederation Building, West Block
P.O. Box 8700
St. John’s, NL A1B 4J6

Phone: 709-729-6779
Fax: 709-729-1400
Email: rhondamckinnon@govl.nl.ca

For the Consultant:

Dr. Dorothy Vaandering

Phone: 
Email: 

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 telex or other means of electronic communication; and
(c) Six (6) days after delivery to Canada Post Corporation where the postal service is used.

5. **Entire Agreement**

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

6. **Representations and Warranties**

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

7. **Conflict Between Provisions**

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

8. **Start and Completion Date**

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

| Start Date: | June 7, 2016 |
| Completion Date: | June 9, 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.

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

[Signature]

Janet Vivian Walsh, Deputy Minister

**FOR THE CONSULTANT**

[Signature]

Dorothy Vaandering
SCHEDULE "A"

SCOPE OF WORK

The Consultant shall complete the work and/or perform the following services:

This contract is for Sessions 5, 6 and 7 as described below. These sessions are part of an anticipated eight training session Restorative Justice Institute to be provided to eleven Safe and Caring Schools and Inclusion Itinerants and three EECID consultants. Each session will be delivered by the Consultant, RF-RJE of NL Consortium founder Dorothy Vaandenberg, Ph.D. and a co-facilitator to be selected, supervised and remunerated by the Consultant. The Client shall have no financial or other legal obligation to any co-facilitator. The Consultant shall ensure a co-facilitator is provided a copy of Schedules C and D of this Contract and aware of the obligations of the Consultant, her employees, servants or agents and the contractual terms set out in those Schedules.

Based on a responsive, relational approach to professional development and research that indicates intensive, on-going sessions best support participants willing to engage with and implement new frameworks of thinking and practice, the following outlines the Restorative Justice Institute. It is anticipated that eight full days will be delivered in 1-3 day segments 4 times in the next 9 months. The Institute will model a participatory, relational, restorative philosophy in its delivery so that each participant experiences the approach personally for greater understanding.

The content of the Institute is anticipated to include:

Session 1 (January 20, 2016): Introduction to Restorative Justice in Education

- The Role of Relationship

Session 2 (April 12, 2016)

- Relationship with Self and Other Adults

Session 3 (April 13, 2016)

- Relationship with Other Adults
- How do I introduce the philosophy and principles of restorative justice to schools in my region?

Session 4 (April 14, 2016)

- Relationships with and amongst Students
- How do I introduce the practices of restorative justice to schools in my region?

Session 5 & 6: (June 7, 8, 2016)

- Making things right, when things go wrong
- Facilitating interventions for serious harm

Session 7: (June 9, 2016) Moving forward in creating intentional, relational school cultures in NL. Providing leadership in schools – a 3-5 year plan towards sustainability.
Session 8: (TBA)

- Participants to reflect on and implement what they learn in their personal and professional lives
- Planning time for the development of an implementation plan

It is anticipated there will be regular on-line support between each Session.

The Client acknowledges and agrees that this Contract relates solely to the provision of Sessions 5, 6 and 7 services and that the Client is under no legal or other obligation to the Consultant or any other person in relation to anticipated Session 8, which may be the subject of a future contract.
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 initiated by the Deputy Minister.

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

OR

1. No Special Terms and Conditions

[Signatures]
Deputy Minister

[Signatures]
Consultant
**SCHEDULE "C"**

**GENERAL TERMS AND CONDITIONS**

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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 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, 2015 SNL 2015 c. A-1.2, or the Personal health information Act, SNL 2008 c. P-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) 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

(i) 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 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, 2015 SNL 2015 c. A-1.2, the Management of Information Act, SNL 2008 c. P-7.01, as well as other legislation which may apply in the jurisdiction of the Consultant's operation. The Consultant is responsible to ensure the compliance with and satisfaction of the legislative requirements of all such information relating to the treatment of confidential Information by the Consultant, its, his/her employees, servants and/or agents. The Client may be compelled to disclose financial information pursuant to the first cited Act.

2.7 The Consultant shall ensure that it, his/her employees, servants and/or agents have in place and follow the appropriate systems, processes, protocols and policies to maintain the physical and electronic security of all Confidential Information, including but not restricted to the following:

(a) at a minimum, using the same level of physical and electronic security as the Consultant employs to avoid disclosure or dissemination of the Consultant's own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of the 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 his/her security systems, procedures, standards and practices that may affect the Confidential Information and seek the client's consent prior to such changes; and

(e) satisfaction of the foregoing commitments includes, but is not restricted to, compliance with the requirements set out in Schedule "D", unless
otherwise advised by the Client, and this includes:

(i) complying with all alterations or updates of Schedule “D” as may be provided to the Consultant from time to time; and

(ii) adhering to any additional instructions (including oral instructions) from the client as they relate to the subject matter contained in Schedule “D” and this Article.

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

2.9 The Consultant shall:

(a) notify the Client promptly of any unauthorized possession, use or knowledge, or attempt thereof, of the client’s information in the possession of the Consultant, including but not limited to data processing files, transmission messages or other confidential information by any person or entity which may become known to the Consultant.

(b) promptly furnish to the Client full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the Client in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of confidential information;

(c) use reasonable efforts to cooperate with the Client in any litigation and investigation against third parties deemed necessary by the client to protect its proprietary rights;

(d) promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of confidential information; and

(e) refer to and follow the privacy breach protocol of the government of Newfoundland and Labrador as it exists at the time of the breach and located on the Government of Newfoundland and Labrador, Executive Council website at: http://www.atipp.gov.nl.ca/info/privacybreach.html
Article – 3  EMPLOYEES OF THE CONSULTANT

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

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

Article – 4  ACCESS TO FACILITIES

4.1 The Client agrees to provide, where it is deemed by the Client, in its absolute and sole discretion to be necessary for the reasonable performance of the work, working space and equipment access for the Consultant to perform the work during client office hours.

4.2 When using or accessing the premises of the Client, the Consultant and all officers, employees and agents of the Consultant shall comply with all security regulations and workplace policies and procedures in effect from time to time at the Client's facilities.

Article – 5  RECORDS AND AUDIT

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

5.2 The Consultant shall furnish reports as required by the Client for the purpose of monitoring the progress of the Work.

Article – 6  TERMINATION

6.1 This Agreement is deemed to be concluded once the Work has been completed to the satisfaction of the client and payment(s), as stipulated in the Agreement, has been issued to the Consultant.

6.2 Notwithstanding the provisions of this Agreement, either of the Parties may at any time by way of fourteen (14) days written notice to the other, terminate this Agreement.

6.3 Where this Agreement is terminated prior to the mutually agreed upon completion date, the Consultant shall thereupon be entitled to payment in accordance with this Agreement in respect of that part of the Work completed up
to the date of termination, provided however, that the Consultant shall not be entitled to any other payment in respect of such termination, including, without prejudice to the generality of the foregoing, any payment for any consequential loss or damage or loss of profits arising from termination of this Agreement or in any other way related thereto. The Client shall retain the right of set off with respect to any earned but unpaid proceeds then owing pursuant to this Agreement.

Article 7  LIABILITY

7.1 The Consultant agrees that in performance of the work neither the Consultant nor any Consultant's Representative shall be or be deemed to be an officer, servant, agent or partner of the Client.

7.2 The Client shall not be liable for, and the Consultant shall indemnify and save harmless the Client and the Client's Representatives against all losses, costs, charges, or expenses incurred by the Client and its agents as a result of action, 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 c. A-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, 1995 SNL 1995 c. C-30.1 or the House of Assembly Act RSNL 1990 c. H-10.

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 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 rights 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 or reference only and shall not affect the construction or interpretation of this Agreement.

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

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

END OF SCHEDULE C
SCHEDULE “D”

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

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

- All portable storage devices or media (e.g., flash drives, memory sticks, portable hard drives, writeable compact discs or digital video discs, etc.) may only be used to transport and/or store Confidential Information where either the Confidential Information or the device or media is encrypted.

- Unless specifically separately authorized by the Agreement or otherwise, the Consultant is not permitted to attach non-government computers or other information technology systems to any Government network.

- Consultants are expected to implement and maintain up to date versions of all ordinary business software for the reasonable protection of information on computers attached to the Internet which will have access to or store Confidential Information, including security firewall and anti-viral software.

- Consultants are not permitted to use any Peer to Peer file sharing program (e.g., Limewire, etc.) or chat program (i.e., MSN, Skype) on any information technology asset which will contain Confidential Information, or which will be connected via a network to any computer which will contain Confidential Information.

- Email should not be used as a method to transmit Confidential Information across public networks such as the Internet unless the e-mail and/or its attachments are encrypted or zipped in a secure manner.

- The Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Consultant, its employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the Access to Information and Protection of Privacy Act, 2015 SNL 2015 c. A-1.2 and Management of Information Act, SNL 2005, c. M-1.01, and the Privacy Act, RSNB 1990 c. P-22, as well as other legislation which may apply in the jurisdiction of the Consultant’s operation. The Consultant is responsible to ensure the compliance with and satisfaction of the legislative requirements of all such information relating to the treatment of Confidential Information by the Consultant, its employees, servants and/or agents.
• Where a Consultant will be granted access to the Government computer network during the course of the work, in addition to the requirements noted above, the Consultant shall not:
  
  o Share personal computer drives or folders on a computer accessing the network; or
  
  o Access the network remotely, either through wired or wireless connections, except through the use of secure ID and virtual private network systems.

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

END OF SCHEDULE D
Government of Newfoundland and Labrador
Government Purchasing Agency
30 Strawberry Marsh Rd.
St. John's, NL
A1B 4R4

To: VIVID COMMUNICATIONS INC
15 Hallett Cres
St John's, NL
A1B 4C4
Canada

Bill To: Department of Finance
Corporate Financial Services
657 Topsail Road
St John's, NL A1E 2R3
Canada

Customer No. 40050976
Supplier No. 26-JAN-16 Parsons, A
Ordered / Buyer Revised / Buyer

F.O.B. DESTINATION Requestor: Donnelly, Bill

IMPORTANT: Document valid ONLY if NAME and DATE are present in "Authorized By" section.

AUTHORIZED BY: Parsons, A DATE: 26-JAN-16 TOTAL: $475.00

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Final File provided in high resolution. pdf for printing and low resolution .pdf for web

***End of Document***
January 26, 2016

Department of Education
Attention: Jill Handigran

Re: Quote for brochure

Ms. Handigran,

I have included below the parameters we used to determine our budget. If the project specifications are altered then a revised quote will be provided for your approval.

Project Parameters
Layout and design of a brochure
Full color throughout with full bleed
Flat size: 9 x 12, folded to 4 x 9
Final text and high resolution digital photos to be provided
Brochure will follow government standards

Final file provided in high resolution pdf for printing and low resolution pdf for web.

Proposed Budget
Brochure creative $475

Project Total (before tax): $475

Estimate does not include couriers or stock images

Thanks,
Vivid Communications Inc.

Regina Cole
Manager of Client Services