Dear [Redacted]:

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act (File # NR-62-2019)

On April 5, 2019, the Department of Natural Resources received your request for access to the following records/information:

Decision/Direction Note from February titled Exploration Incentives Study.

I am pleased to inform you that a decision has been made by the Department of Natural Resources, confirmed by the Deputy Minister, to provide access to the requested records. The records are attached.

We are providing access to the most information possible but have made redactions in accordance with Sections 35(1)(d) and 40(1) of ATIPPA, 2015 as follows:

35. (1)(d) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose information, the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in significant loss or gain to a third party;

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

Please be advised that you may ask the Information and Privacy Commissioner to review the processing of your access request, as set out in section 42 of the Access to Information and Protection of Privacy Act (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.
The address and contact information of the Information and Privacy Commissioner is as follows:

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

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

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the Act.

Please be advised that this letter will be published following a 72 hour period after it 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 letter posted to the Office of Public Engagement's website within one business day following the applicable period of time.

If you have any questions, please feel free to contact me at 709-729-0463 or rhynes@gov.nl.ca.

Sincerely,

Rod Hynes

Rod Hynes  
ATIPP Coordinator
Decision Note
Department of Natural Resources

Title: Exploration Incentives Study – Procurement Process and Contract Award Recommendation

Decision/Direction Required:
- A decision is requested for the Department of Natural Resources (NR) to award a contract to Wood Mackenzie for consulting services to conduct a review of potential fiscal exploration incentives for application in the NL offshore oil and gas sector.

Background and Current Status:
- On February 19, 2018, the Provincial Government of Newfoundland and Labrador launched Advance 2030. This is a plan for growth in the oil and gas industry and the outcome of the collaborative work of the Council and the Government. The plan includes 17 focus areas comprising immediate, mid-term and long-term actions.

- Drive exploration was identified as an immediate priority (by 2020) and included a commitment to “Evaluate options to incentivize exploration through fiscal, land tenure options, and other global practices.”

- In moving forward with this immediate priority, NR has issued a scope of work with an objective to investigate a range of fiscal incentives that could accelerate exploration drilling in the Province’s offshore. The scope of work includes:
  - Identification of trends and key drivers impacting global exploration drilling in other competing jurisdictions;
  - Working with NR to develop a matrix of key considerations in designing an exploration incentive with the view to strengthen the competitiveness of NL’s overall fiscal and regulatory framework (e.g., aligns with NL’s fiscal capacity, considers the structure of NL’s existing fiscal terms including GORR);
  - Review and support modelling work undertaken by NR and provide expert advice as required in the design of an exploration incentive.

Analysis:
- The Economics and Benefits Division estimate for this consultant work was $40,000 to $50,000 (i.e. less than $50,000). These funds were included within a larger budget allocation of the Division, as part of the Budget 2018 planning process in late 2017/early 2018, for initiatives that support the work of the Oil and Gas Industry Development Council including Advance 2030 implementation. The funds were approved for the Division for the 2018/2019 fiscal year.

- The project budget estimate was based on anticipated schedule and consultancy expertise and abilities that would be required to complete the work. It was foreseen that approximately two months would be required to complete the study work and resourcing of a senior consultant team plus support personnel would be needed. As well, the consultant firm would need to possess and utilize their own in-house, proprietary database and library of global oil and gas sector resources and project information. These requirements were seen as a limiting factor for the number of potential consultant candidates for this work.

- Under section 5(1)(b) of the Public Procurement Regulations, an open call for bids is required on services of an estimated value of $50,000 or greater. Under section 6(a)(i) of these Regulations, a public body is not required to issue an open call for bids where the head of the public body determines that the estimated value of the commodity being
acquired is less than the thresholds established in section 5. Section 7.1 of the Public Procurement Policy Guidelines, also notes exemptions from the open call for bids process when the cost of the work is below the threshold outlined in section 5.1, which in this case was originally estimated to cost in the range of $40,000 to $50,000.

- During the week of January 21, 2019, NR contacted 4 consultancy firms, namely Wood Mackenzie, EY, PWC and Deloitte, with the proposed scope of work and invited the firms to submit a proposal bid. NR indicated to the consultants that, given the timeline for completion of the work was March 31, 2019, it was requesting bid submissions by midday January 28, 2019 to allow time for review and make a determination on moving forward.

- All firms except Wood Mackenzie declined the opportunity to submit bid proposals; EY initially declined to bid; however they contacted NR on January 28 requesting a two-day extension to the RFP due date. NR was unable to extend the deadline due to the tight timelines and in consideration to the other consultants who followed the process. Wood Mackenzie submitted a proposal on January 28 at a price of $50,000.

- Three quotes were not received and to ensure determination of a fair and reasonable price for the work as required in section 6.1.3 of the Public Procurement Policy Guidelines, NR reviewed pricing in previous consulting contracts.

- Wood Mackenzie has completed multiple contracts for NR requiring global upstream exploration and production sector expertise, the most recent being an assessment of NL’s competitiveness in oil and gas investment in 2018 which was completed over a 4 month period for $96,700.

- Given the international nature of the scope of work, timeline for completion (< 2 months), proposed Wood Mackenzie team, and work plan outlined in its proposal, the proposed price appears to be fair and reasonable.

- Wood Mackenzie has indicated that sign-off on its proposal is required by February 8, 2019 to guarantee delivery of the final report and findings by March 31, 2019.

- NR’s Economics and Benefits Division, which will be leading the work, has compiled a draft contract attached as Annex A.

Alternatives:
1. Direct NR officials to award the project work to Wood Mackenzie and execute a service contract. A copy of the contract is attached for signature. (RECOMMENDED)

   **Pros:**
   - Proposal demonstrates the in-house information, schedule and team capabilities to execute this project work.
   - The proposed approach and areas of focus are more in line with NR scope of work and expected project deliverables.
   - Bid price is within budget estimate.
   - Will help implement and inform Advance 2030 actions.

   **Cons:**
   - None identified.

2. Direct NR officials to cancel the limited call for bids process and issue a request for proposal on an open call for bids basis. (NOT RECOMMENDED)
Pros:
- An open call may result in a lower bid for the work.

Cons:
- Would delay completion of work into the 2019/2020 fiscal year.

Prepared/Approved by: G. Collins / N. Abundo / D. Trask

DM Approval: 

February 6, 2019

Schedule A: DOC-52131 (Contract)
Schedule A
Consultant Contract
AGREEMENT

THIS AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador, on this day of February 8, 2019.

BETWEEN: HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR as represented by the Minister of Natural Resources ("the Client")

AND: Wood Mackenzie Limited ("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**

3.1 **Consideration**

It is agreed and understood that payments made for the satisfactory performance of the Work pursuant to this Agreement shall be made in accordance with the Payment terms as outlined below.

**Payment:**

Subject to Article 3.3, upon completion of internal approvals and confirmation of engagement with the Consultant, the Client shall pay to the Consultant, $25,000 in Canadian dollars representing 50% of the Client’s total fee to complete the Work. Upon satisfactory completion of the Work and the presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay the remaining $25,000 in Canadian dollars to the Consultant.

3.2 **Reimbursement of Expenses**

It is agreed and understood that reimbursements for the Consultant’s expenses pursuant to this Agreement shall be made in accordance with the Reimbursement terms as outlined below.

**Reimbursement:**

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

3.3 **Payment General**

(a) Regardless of the payment option selected in Article 3.1 and/or 3.2, the Parties agree and confirm that total amounts payable for the Work shall not exceed a monetary ceiling of fifty thousand Canadian dollars ($50,000 CAD) and that a minimum of ten percent (10%) of the total fees payable for the Work will be withheld until such time as the project is completed to the satisfaction of the Client.

(b) The Consultant shall remain obligated to complete the Work notwithstanding that the actual costs of the Consultant, whether in respect of professional services or in respect of costs or expenses incurred, may exceed the total aggregate sum set out in Article 3.3(a).

(c) The Parties agree and confirm that as set out in section 25(6) of the Financial Administration Act, RSNL1990 cF-8, as amended, all fees payable in accordance with this Agreement are subject to there being an appropriation for the work for the fiscal year in which payment under this Agreement is due.
(d) Payment will be made within 60 calendar days of receipt of a properly documented invoice.

(e) All invoices shall clearly show the amount of HST 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:

Nena Abundo  
Department of Natural Resources  
4th Floor, Natural Resources Building  
50 Elizabeth Ave  
P.O. Box 8700  
St. John's, NL, Canada, A1B 4J6

4. **Notices**

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

**For the Client:**

Nena Abundo  
Director, Economics and Benefits  
Department of Natural Resources  
4th Floor, Natural Resources Building  
50 Elizabeth Avenue  
P.O. Box 8700  
St. John's, NL, Canada  
A1B 4J6  
Phone: (709)729-1958  
Fax: (709)729-2508  
Email: NenaAbundo@gov.nl.ca
For the Consultant:

David Parkinson  
Vice President – Upstream Consulting  
Wood Mackenzie Ltd  
5 Semple Street  
Edinburgh EH3 8BL  
United Kingdom  
Phone: +44 (0)131 243-4207  
Fax: +44 (0)7760 171 549  
Email: david.parkinson@woodmac.com

Notices, requests or documents shall be deemed to have been received by the addressee as follows:

(a) As of the date on which they are delivered where delivery is by a party or by messenger or special courier service;

(b) As of the date on which they are sent where delivery is by 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: February 8, 2019
- Completion Date: March 31, 2019

9. **Effective Date**

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

10. **Paragraph Numbering**

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

11. **Counterparts**

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

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HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR

[Signature]

Minister of Natural Resources, or her authorized designate

Wood Mackenzie Limited

Authorized Signature

Date: __________________________
SCHEDULE “A”

SCOPE OF WORK

The Consultant shall complete the work and/or perform the following services:

Review of Potential Fiscal Exploration Incentives for Offshore NL

Background
On February 19, 2018, Government released Advance 2030 — A Plan for Growth in the Newfoundland and Labrador Oil and Gas Industry which included a number of immediate, short-term and long-term priorities for action. Drive Exploration was identified as an Immediate priority (by 2020) and included a commitment to “Evaluate options to incentivize exploration through fiscal, land tenure options, and other global practices.”

Context
With the successful exploration strategy executed by Nalcor Energy Oil and Gas and ongoing marketing and promotion efforts of the Province, the backdrop for exploration offshore NL currently comprises:

- Over 650 leads and prospects, more than 20 basins mapped and a combined resource potential of 49.2 Billion barrels of oil and 193.8 trillion cubic feet of natural gas;
- 8 offshore exploration projects registered with the Canadian Environmental Assessment Agency;
- 25 exploration licenses (EL) issued by the Canada-Newfoundland and Labrador Offshore Petroleum Board;
- $3.43 billion in outstanding exploration work commitments including a record cumulative total of $1.38 billion in bids and a record single bid of $62.1 million in the recent 2018 Call for Bids; and
- 8 new corporate entrants to the offshore area with various exploration interests in multiple EL’s.

There has been significant work undertaken by Government to date to evaluate the Province’s global competitiveness and explore options to drive exploration. In April 2018, Government released Newfoundland and Labrador Competitiveness in Oil & Gas Investment, a jurisdictional review by Wood Mackenzie to assess the international competitiveness of the province’s offshore oil and gas industry; and in September 2018, Government engaged McKinsey & Company to support development of economic growth initiatives, including initiatives for the oil and gas sector to support implementation of Advance 2030.

Objective
Building on historical work to date, and immediate priorities identified in Advance 2030, the Department of Natural Resources is seeking to investigate a range of fiscal incentives that could accelerate exploration drilling offshore NL.

Proposed Scope of Work
Given NL’s current exploration landscape and opportunities, the scope of work for the Consultant will include:

- Identification of trends and key drivers impacting global exploration drilling in other competing jurisdictions;
- Working with NR to develop a matrix of key considerations in designing an exploration incentive with the view to strengthen the competitiveness of NL’s overall fiscal and regulatory framework (e.g., aligns with NL’s fiscal capacity, considers the structure of NL’s existing fiscal terms including GORR);
- Review and support modelling work undertaken by NR and provide expert advice as required in the design of an exploration incentive.

Project Management and Deliverables
This work will be led and contracted by the Economics and Benefits Division of the Department of Natural Resources (NR). A Steering Committee will be established comprised of NR officials and representation from the Department of Finance. The Consultant will conduct the research and analysis outlined above and provide the assessments and findings in a study report along with any accompanying electronic data files. The timeline for completion of the work is March 31, 2019.
Potential copyright material

If you wish to obtain a copy please contact the ATIPP Office at (709) 729-7072 or atippoffice@gov.nl.ca.
SCHEDULE “B”

SPECIAL TERMS AND CONDITIONS

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

1. **Schedule C, Article 7.2 is hereby deleted and replaced by:**

   7.2.1 Before making any payment in accordance with Section 3, the Client may require the Consultant to furnish evidence that the work done under this Agreement for which payment is being made is free and clear from any and all lawful claims.

   7.2.2 The Consultant shall indemnify and save harmless the Client in respect of all losses, costs, charges, or expenses incurred by the Client and its agents as a result of actions, claims or awards for compensation under any applicable legislation, made or brought by, against, suffered by or imposed upon the Client by a third party as a result of or related to this Agreement.

   7.2.3 The Client shall indemnify and save harmless the Consultant in respect of all losses, costs, charges, or expenses incurred by the Consultant and its agents as a result of actions, claims or awards for compensation under any applicable legislation, made or brought by, against, suffered by or imposed upon the Consultant by a third party as a result of or related to this Agreement.

   7.2.4 The aggregate liability of the Consultant and the Client individually under all indemnities noted above shall not exceed $2,000,000 (Cdn $) over the life of the Agreement.

   7.2.5 Neither the Client nor the Consultant shall:

   7.2.5.1 be liable for indirect, special, or consequential damages as a result of the action or inaction of either under the Agreement

   7.2.5.2 look to or pursue the directors, officers, or employees of the other for satisfaction of any claim or cause of action arising under this Agreement, including any liability, damages, expenses, or losses of any nature.

   7.2.5.3 in any event, be aggregately liable to the other for damages, either as a result of a breach of this Agreement and/or resulting from the indemnities noted above, in excess of $2,000,000 (Cdn $) over the life of the Agreement.

   [Signature]

   Deputy Minister

   [Signature]

   Consultant

END OF SCHEDULE B
SCHEDULE “C”

GENERAL TERMS AND CONDITIONS

Article 1 - Information Supplied By The Client
Article 2 - Confidentiality, Materials and Copyright
Article 3 - Employees of the Consultant
Article 4 - Access to Facilities
Article 5 - Records and Audit
Article 6 - Termination
Article 7 - Liability
Article 8 - Compliance with Law
Article 9 - Arbitration
Article 10 - Laws Governing
Article 11 - Use of Work
Article 12 - Conflict of Interest
Article 13 - Subcontractors
Article 14 - General
GENERAL TERMS AND CONDITIONS

Article - 1. INFORMATION SUPPLIED BY THE CLIENT

1.1 The Client will furnish to the Consultant all available information necessary for the performance of the Work. The Client makes no guarantee either expressed or implied as to the accuracy of the information supplied. The Consultant shall review the information for accuracy and applicability.

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

Article - 2. CONFIDENTIALITY, MATERIALS AND COPYRIGHT

2.1 For the purposes of this Article "Confidential Information" means:

(a) all communications and instructions from the Client respecting the Services, including the fact of this Agreement;

(b) all information acquired by the Consultant, his/her employees, servants and/or agents respecting policy consideration and development, business decisions, internal deliberations, discussions and considerations and any other aspect of the decision-making process of the Client;

(c) all oral, written, electronic, and machine readable information and data and any accompanying supporting materials and documentation, including without limitation, materials, documents, reports, databases, information and data of whatever nature and kind concerning the affairs of the Client, disclosed directly or indirectly to the Consultant, his/her employees, servants and/or agents during the performance of the Services or in any way related thereto;

(d) all personal information, as defined from time to time under the Access to Information and Protection of Privacy Act, SNL2002 cA-1.1, or the Personal Health Information Act, SNL2008 cP-7.01, to mean recorded information about an identifiable individual, including

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

(ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,

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

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

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

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

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

(ix) the individual's personal views or opinions

for any individual, which is, directly or indirectly, disclosed to or collected by the Consultant, its, his/her employees, servants and/or agents during the performance of the Services or in any way related thereto;

(e) all information that is developed based upon Confidential Information including the work product of the Consultant, its, his/her employees, servants and/or agents; and

(f) Confidential Information shall not include any information which:

(i) at the time such information was provided to the Consultant was or thereafter became part of the public domain through no act or omission of the Consultant or its, his/her Representatives; or

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

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

2.3 The Consultant shall only use the Confidential Information acquired in the performance of the Services for the purposes specified in the Scope of Work and this Agreement, and shall not permit the use of the Confidential Information for any other purposes.

2.4 All materials, data, designs, plans, drawings, specifications, research, reports, notes, estimates, summaries, calculations, surveys, papers, completed work, and work in progress and such other information and materials or parts thereof as are compiled, drawn and produced by the Consultant in performing the Services, including without limitation, computer printouts and computer models and all copyrights thereto and all patents, trademarks and industrial designs arising therefrom, are the sole and exclusive property of the Government of Newfoundland and Labrador and the contents thereof are privileged and confidential. Nothing in this Agreement shall give the Consultant a right, however arising, to assert any lien, claim, demand, property right, remedy or security right of any kind over the information provided to the Consultant pursuant to the terms of this Agreement. The Consultant acknowledges that the Client's right to this information shall at all times be paramount to any rights of the Consultant, at law or in equity, and that the Consultant's remedies against the Client for the Client's breaches under this Agreement do not include the right to deprive the Client of access to the Client's information in the Consultant's possession. Notwithstanding the foregoing, the Consultant shall retain ownership of all background intellectual property rights, including those in any
expertise, knowledge know-how, preparatory work or Consultant rights arising from or used for the purpose of the provision of the Services or any other material or information which is incidental to the provision of the Services and which do not constitute Confidential Information. The Consultant grants the Client a non-exclusive, non-transferable, royalty free licence to use such background intellectual property rights, solely to the extent necessary to receive the benefit of the advice or other deliverables provided as part of the Services. The Client may not share such background intellectual property rights other than with any third parties.

2.5 The Consultant shall provide to the Client and solely to the Client upon completion of the Services or upon earlier termination of this Agreement all Confidential Information acquired during the performance of the Services, or shall, at the request of the Client, destroy any and all copies and versions of the Confidential Information in the possession of the Consultant, his/her employees, servants and/or agents, and shall certify the destruction of same to the Client.

2.6 The Consultant acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Consultant, its employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the Access to Information and Protection of Privacy Act, the Management of Information Act, SNL2005, cM-1.01, and the Privacy Act, RSNL1990 cP-22, as well as other legislation which may apply in the jurisdiction of the Consultant's operation. The Consultant is responsible to ensure the compliance with and satisfaction of the legislative requirements of all such information relating to the treatment of Confidential Information by the Consultant, its, his/her employees, servants and/or agents.

2.7 The Consultant shall ensure that it, his/her employees, servants and/or agents have in place and follow the appropriate systems, processes, protocols and policies to maintain the physical and electronic security of all Confidential Information, including but not restricted to the following:

(a) at a minimum, using the same level of physical and electronic security as the Consultant employs to avoid disclosure or dissemination of the Consultant's own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of its employees, servants or agents other than those who are required to have access to properly perform the Services under this Agreement;

(b) establish and maintain security policies, standards and safeguards to prevent unauthorized access, collection, use, disclosure or disposal of the Confidential Information;

(c) ensure all employees, servants and/or agents of the Consultant comply with all policies, standards and safeguards established under this Article;

(d) advise the Client of any changes in its, his/her security systems, procedures, standards and practices that may affect the Confidential Information and seek the Client's consent prior to such changes; and

(e) satisfaction of the foregoing commitments includes, but is not restricted to, compliance with the requirements set out in Schedule “C”, unless otherwise advised by the Client, and this includes:
(i) complying with all alterations or updates of Schedule "C" 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 "C" 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 "C".

2.9 The Consultant shall:

(a) notify the Client promptly of any unauthorized possession, use or knowledge, or attempt thereof, of the Client’s information in the possession of the Consultant, including but not limited to data processing files, transmission messages or other confidential information by any person or entity which may become known to the Consultant;

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

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

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

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

Article - 3. EMPLOYEES OF THE CONSULTANT

3.1 The Consultant shall provide employees who are competent in their field of specialization. The Client will have the right to have the Consultant remove from the Work any person, who by misconduct or by failure to properly perform his/her duties is considered by the Client to be unfit for employment on the Work. If the Consultant fails to remove any unfit person from the Work as requested by the Client, then the Client may void this Agreement or refuse to accept subsequent Work in which the person was involved and may refuse to approve payment for such Work.

3.2 The Consultant shall not alter, remove or replace the employees or Representatives indicated in the Scope of Work without prior written approval by the Client.
Article - 4. ACCESS TO FACILITIES

4.1 The Client agrees to provide, where it is deemed by the Client, in its absolute and sole discretion to be necessary for the reasonable performance of the Work, working space and equipment access for the Consultant to perform the Work during Client office hours.

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

Article - 5. RECORDS AND AUDIT

5.1 The Consultant shall keep records, books of account and supporting documents in accordance with accepted accounting procedures and practices. The records shall be made available to the Client or its authorized representative for observation or audit at mutually convenient times and up to one year after discharge of this Agreement.

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

Article - 6. TERMINATION

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

6.2 Notwithstanding the provisions of this Agreement, either of the Parties may at any time by way of fourteen (14) days written notice to the other, terminate this Agreement.

6.3 Where this Agreement is terminated prior to the mutually agreed upon completion date, the Consultant shall thereupon be entitled to payment in accordance with this Agreement in respect of that part of the Work completed up to the date of termination, provided however, that the Consultant shall not be entitled to any other payment in respect of such termination, including, without prejudice to the generality of the foregoing, any payment for any consequential loss or damage or loss of profits arising from termination of this Agreement or in any other way related thereto. The Client shall retain the right of set off with respect to any earned but unpaid proceeds then owing pursuant to this Agreement.

Article - 7. LIABILITY

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

7.2 The Client shall not be liable for, and the Consultant shall indemnify and save harmless the Client and the Client’s Representatives against all losses, costs, charges, or expenses incurred by the Client and its agents as a result of actions, claims or awards for compensation at law, equity or under any applicable legislation, made or brought by, against, suffered by or imposed upon the Client, or its Representatives by a third party, as a result of or related to the performance of this Agreement by the Consultant or the Consultant’s Representatives.
7.3 The Consultant shall defend any and all such actions and pay all legal charges, costs and other expenses arising therefrom. Notwithstanding the foregoing, the Client may at its own discretion retain its own solicitors to defend its interests in any such suit or claim, and the legal costs of that defense shall be paid by the Consultant. In no event shall the Consultant be liable for any compromise or settlement entered into without Wood Mackenzie’s prior consent.

Article - 8.  COMPLIANCE WITH LAW

8.1 In respect of any work within the Province of Newfoundland and Labrador connected with or arising from this Agreement, the Consultant shall provide (where requested by the Client) evidence of compliance with all requirements of the Province of Newfoundland and Labrador with respect to Worker’s Compensation and or Occupational Health and Safety, including without limitation, any payments or compliance orders due or issued thereunder.

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

Article - 9.  ARBITRATION

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

9.2 In the case of a dispute arising between the Client and the Consultant as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Article 9.1), either party may give the other notice of such dispute and to request arbitration thereof. If both parties agree, the parties shall, with respect to the particular matters then in dispute, submit the same to arbitration in accordance with the provisions of the Arbitration Act, RSNL1990 cA-14, including such provisions for the appointment of arbitrators.

Article - 10.  LAWS GOVERNING

10.1 This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Newfoundland and Labrador and all actions, suits or proceedings arising out of this Agreement shall be determined in a court of competent jurisdiction in Newfoundland and Labrador subject to any right of appeal.

Article - 11.  USE OF WORK

11.1 The Client shall have the right to use the Work or variations thereof in other operations of the Client.
Article - 12. CONFLICT OF INTEREST

12.1 No public employee or member of the House of Assembly of the Province of Newfoundland and Labrador shall be admitted to any part or share of the payments made pursuant to this Agreement or to any benefits arising therefrom except in accordance with the Conflict of Interest Act or the House of Assembly Act.

12.2 The Consultant and the Consultant's Representatives:

(a) shall conduct all duties related to this Agreement with impartiality;
(b) shall not influence, seek to influence, or otherwise take part in a decision of the Client, knowing that the decision might further their private interests;
(c) shall not accept any commission, discount, allowance, payment, gift, or other benefit that is connected, directly or indirectly, with the performance of any duties related to this Agreement, that causes, or would appear to cause, a conflict of interest; and
(d) shall have no financial interest in the business of a third party that causes, or would appear to cause, a conflict of interest in connection with the performance of any duties related to this Agreement.

Article - 13. SUBCONTRACTORS

13.1 The Consultant shall not subcontract all or a portion of the Work without the prior written approval of the Client.

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

Article - 14. GENERAL

(a) Articles 2 and 7 of this Agreement shall survive the termination or expiration of this Agreement.

(b) Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations is delayed, hindered, or prevented by force majeure. Force majeure shall be any cause beyond the control of the parties hereto which they could not reasonably have foreseen and guarded against.

(c) Time shall be of the essence of this Agreement.

(d) The failure of the Client to insist upon or enforce in any instance strict performance by the Consultant of any of the terms of this Agreement or to exercise any rights herein conferred shall not be construed as a waiver or a relinquishment to any extent of the Client's right to assert or rely upon any such terms or rights on any future occasion.

(e) If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, such invalidity or unenforceability shall attach only to such provision, and all other provisions hereof shall continue in full force and effect.
(f) The division of this Agreement into Articles and Clauses and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.

(g) This Agreement shall inure to the benefit of and be binding upon the Parties hereto, their respective heirs, legal representatives, successors and assigns.

(h) The Consultant shall not assign this Agreement in whole or in part to any third party without the prior written approval of the Client.

END OF SCHEDULE C
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, and Management of Information Act, SNL2005, cM-1.01, and the Privacy Act, RSNL1990 cP-22, as well as other legislation which may apply in the jurisdiction of the Consultant’s operation. The Consultant is responsible to ensure the compliance with and satisfaction of the legislative requirements of all such information relating to the treatment of Confidential Information by the Consultant, its employees, servants and/or agents.
• Where a Consultant will be granted access to the Government computer network during the course of the work, in addition to the requirements noted above, the Consultant shall not:
  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