

[DATE]

[FIRM ADDRESS]

Dear ▲:

Re: ▲

This is to confirm the engagement of ▲, of the firm ▲, to conduct ▲ (the "Project"). Government understands that the services of your firm will be provided in accordance with the following specific undertakings:

1. *Conflict of Interest*

The firm confirms that it is not currently subject to any mandate which would be in conflict with Government's interest in the Project. On an ongoing basis, the firm will ensure that they will not accept a mandate which would put them in conflict with Government's interests in the Project. In the event that any potential conflict should be identified, it will immediately be communicated to Government and a mutually satisfactory resolution determined. The firm confirms that at all relevant times with respect to this engagement: (1) that their partnerships do not and will not include a partner whose relationship with the firm would cause that person to violate Part II of the *House of Assembly Act*, RSN 1990 cH-10 or (2) that they have not and will not employ any associate or employee in such a manner as to cause that person to violate Part II of the *House of Assembly Act*, RSN 1990 cH-10.

2. *Staffing*

Additional lawyers may be assigned in accordance with their experience and required expertise. It is understood that other than ▲, Government will have the right to prior approval of all lawyers who will be staffing the Project.

[For Prosecution-related retentions:

3. *Guide Book*

The firm will ensure that the prosecution is carried out in accordance with the *Guide Book of Policies and Procedures for the Conduct of Criminal Prosecutions*

*in Newfoundland and Labrador.* In accordance with same, the firm will advise the Director of Public Prosecutions prior to making any resolution offers, terminating any charges or taking other significant decisions with respect to the prosecution.]

4. *Professional Fees*

It is agreed your billing rate will be according to the attached Schedule "A", which rates will apply at least until 31 March, 2015. No changes to this rate will be permitted without Government's prior approval. Monthly accounts should be submitted to the undersigned. The monthly accounts will identify services performed, the lawyer performing the services and the time taken to perform the services. There is to be no billing for professional services in respect to travel time except for time traveled between the hours of nine to five local time at the lawyer's home base. In no case will that travel time exceed six hours in any one day.

5. *Disbursements*

Usual, non-overhead, out-of-pocket payments will be reimbursed, without markup, at actual cost. Government and the firm may from time to time agree on a standard cost for certain disbursements. Government's Executive Travel Rules as in force from time to time will apply to all necessary travel with respect to this engagement. Lawyers are expected to take advantage of advance booking rates for air travel, where reasonable. Educational programmes, seminars and conferences shall be non-billable, unless prior approval is given by Government. Document reproduction, binding and other disbursements will be reimbursed on the basis of the costs to your firm where they are provided by a third party, or on a cost recovery basis for costs directly incurred.

6. *Taxation of Accounts*

All accounts are subject to taxation by a Taxing Master of the Supreme Court of Newfoundland and Labrador whose taxation will finally determine the remuneration to which the firm is entitled.

7. *Firms and Experts*

Any consultants, experts and agents required to provide services and advice hereunder shall be engaged by the firm, upon prior approval from Government.

8. *Research Memoranda and Other Documents*

Copies of any research memoranda and other documents developed by the firm in connection with the Project will be the property of Government. Upon the termination of this Agreement by Government or the firm, all such research memoranda and other documents shall be delivered to Government if requested. The firm shall be entitled to retain copies of such research memoranda and other documents for their records.

9. *Assignment*

The firm shall not assign its rights or liabilities, in whole or in part under this agreement.

10. *Applicable Laws*

This agreement will be governed by and interpreted according to the laws in force in Newfoundland and Labrador.

11. *Entire Agreement*

This letter of engagement constitutes the entire agreement between us with respect to your engagement. Any modification to the agreement must be in writing, signed by the parties to it.

12. *Term*

This mandate, by definition, is without a fixed term and is not an exclusive retention of the firm by the Province for the provision of legal services on the Project. However, either Government or you may terminate at any time upon giving the other ten days' notice in writing. Provided further, however, that in the event that a partner, associate or employee of the firm is in violation of Part II of the *House of Assembly Act*, RSN 1990 cH-10, thereby breaching paragraph 1 hereof, Government shall be entitled to terminate the Agreement forthwith. Such termination shall in no respect trigger any default by Government under this Agreement.

13. *Confidentiality*

The Project may require disclosure to the firm of confidential information of Government and potentially personal information of third parties. The treatment of such information by the firm, and the handling of all communication between the firm and Government, is required to be in compliance with the attached Schedules "B" and "C". In addition to the enclosed, all communications between the firm and Government, regardless of format, are considered by Government to be solicitor and client privileged and the firm shall take every effort to protect that privilege, and no action by Government shall be treated as a waiver of that privilege by Government unless the firm receives written confirmation of such waiver from government, and then such waiver shall only apply to the specific information referenced in such waiver. Any materials provided by Government to the firm will be returned to Government, including any copies made of same, at Government's request. Finally, unless prior confirmation is given in writing by Government, the firm is not to disclose its retention in respect of the Project.

I would appreciate your confirming your acceptance of this mandate on the foregoing terms by signing and returning the enclosed copy of this letter.

Yours truly,

▲  
Deputy Minister and  
Deputy Attorney General

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The firm ▲

CONFIDENTIAL

Schedule "A"

Lawyer

Hourly Rate Per Lawyer

▲

\$▲

CONFIDENTIAL

Schedule "B"**Treatment of Confidential and Personal Information**

1. For the purposes of this Schedule "Confidential Information" means:
  - (a) all communications and instructions from the Department respecting the Project, including the fact of this contract;
  - (b) all information acquired by the firm, its employees, servants and/or agents respecting policy development, consideration and development, business decisions, internal deliberations, discussions and considerations and any other aspect of the decision-making process of the Department;
  - (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 Department, disclosed directly or indirectly to the firm, its employees, servants and/or agents during the performance of the Project or in any way related thereto;
  - (d) all personal information, as defined from time to time under the *Access to Information and Protection of Privacy Act*, SNL 2002 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
  - (e) for any individual, which is, directly or indirectly, disclosed to or collected

by the firm, its employees, servants and/or agents during the performance of the Project or in any way related thereto;

- (f) all information that is developed based upon Confidential Information including the work product of the firm, its employees, servants and/or agents; and
  - (g) Confidential Information shall not include any information which:
    - (i) at the time such information was provided to the firm was or thereafter became part of the public domain through no act or omission of the firm or its representatives, unless the firm is aware, or ought reasonably to be aware, that the information became part of the public domain only through disclosure by a third party in violation of the duties and obligations of that third party respecting the information; or
    - (ii) is information which the firm can show possession of prior to the date of this Agreement and which was received or developed by the firm free of obligations of confidentiality to the Department.
2. The firm shall treat all Confidential Information acquired by the firm in the performance of the Project 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 Department, 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 firm shall give the Department prompt notice of the requirement upon becoming aware that such disclosure is required. Where circumstances did not permit the firm to provide such notice prior to disclosure, the firm shall provide such notice to the Department immediately after the required disclosure.
  3. The firm shall only use the Confidential Information acquired in the performance of the Project for the purposes specified by the Department, and shall not permit the use of the Confidential Information for any other purposes.
  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 firm in performing the Project, 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 firm 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 firm pursuant to the terms of this Agreement. The firm acknowledges that the Department's right to this information shall at all times be paramount to any rights of the firm, at law or in equity, and that the firm's remedies against the Department

for the Department's breaches under this Agreement do not include the right to deprive the Department of access to the Department's information in the firm's possession.

5. The firm shall provide to the Department and solely to the Department upon completion of the Project or upon earlier termination of this Agreement all Confidential Information acquired during the performance of the Project, or shall, at the request of the Department, destroy any and all copies and versions of the Confidential Information in the possession of the firm, its employees, servants and/or agents, and shall certify the destruction of same to the Department.
6. The firm acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the firm, its employees, servants and/or agents in the performance of the Project 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 firm's operation. The firm 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 firm, its employees, servants and/or agents.
7. The firm shall ensure that it, 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 firm employs to avoid disclosure or dissemination of the firm'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 Project 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 firm comply with all policies, standards and safeguards established under this Article;
  - (d) advise the Department of any changes in its security systems, procedures, standards and practices that may affect the Confidential Information and seek the Department'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 Department, and this includes:
    - (i) complying with all alterations or updates of Schedule "C" as may be



provided to the firm from time to time; and

- (ii) adhering to any additional instructions (including oral instructions) from the Department as it relates to the subject matter contained in Schedule "C" and this Article.
- (f) The firm shall only disclose confidential information to persons other than its employees, servants and/or agents with the prior written consent of the Department, 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".

8. The firm shall:

- (a) notify the Department promptly of any unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information, 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 firm;
- (b) promptly furnish to the Department full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the Department 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 Department in any litigation and investigation against third parties deemed necessary by the Department 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 and Public Safety's website at: <http://www.justice.gov.nl.ca/just/CIVIL/atipp/default.htm>

Schedule "C"**Protocols for Security of Government Information on Information Technology assets of Contractors**

The Consultant should 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 contract. 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.
- 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 (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.
- Unless specifically separately authorized by the Consultant's contract or otherwise, the Consultant is not permitted to attach non-government computers or other information technology systems to any Government network.
- Where a Consultant will be granted access to the Government computer network during the course of the work, in addition to the requirements noted above, the Consultant shall not:
  - Share personal computer drives or folders on a computer accessing the network;  
or
  - Access the network remotely, either through wired or wireless connections, except through the use of secure ID and virtual private network systems.
- These requirements apply to the Consultant and all employees, servants and/or agents or permitted sub-Consultants of the Consultant, and it is the responsibility of the

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.

<End of Schedule>

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