

1 Q. Further to the above question in CA-NLH-255, did Morneau Shepell place any  
2 conditions upon its disclosure in a regulatory setting?

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5 A. Morneau Shepell was engaged to conduct a Benefits Market Study. While there is  
6 no specific reference to disclosure in a regulatory setting, Morneau Shepell restricts  
7 disclosure of such information.

8

9 Each participant was required to complete a reciprocal Confidentiality Agreement  
10 prior to submitting a request for proposal (RFP) for Hydro's Group Insurance  
11 Review. Hydro's Confidentiality Agreement is provided in CA-NLH-256, Attachment  
12 1.

13

14 The RFP also outlines terms of confidentiality. CA-NLH-256, Attachment 2, provides  
15 relevant excerpts as follows:

- 16 • Section 2.5 - *Confidential or Proprietary Information* specifies that  
17 proponents can identify any information contained in their proposal as  
18 confidential or propriety.
- 19 • Section 2.9 – *Confidentiality* stipulates that the proposals and any  
20 deliverables are strictly confidential and may not be divulged or disclosed to  
21 anyone without the prior written consent of Morneau Shepell.

22

23 Morneau Shepell's "Standard Terms and Conditions for Engagements" is provided  
24 in CA-NLH-256, Attachment 3. Section 6 – *Restriction on Use* restricts the use of any  
25 deliverables to internal use and client information purposes only.

## CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (hereinafter referred to as the "**Agreement**"), entered into this 9th day of May, 2013 ("**Effective Date**") by and between:

**NALCOR ENERGY** a corporation existing under the laws of Newfoundland and Labrador and having an office in the City of St. John's, in the Province of Newfoundland and Labrador (hereinafter referred to as the "**Disclosing Party**")

- and -

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(hereinafter referred to as the "**Receiving Party**")

### DEFINITIONS

1.

- (a) "**Affiliated Company**" shall mean any company, legal entity or partnership which Controls, or is Controlled by, or which is controlled by an entity, which controls, a Party.
- (b) "**Control**" shall mean the ownership directly or indirectly of more than fifty per cent (50%) percent of the voting rights in a company, other legal entity or partnership.
- (c) "**Confidential Information**" means all oral, written, electronic, and machine readable information and data and any accompanying support materials, and documentation relating to the project, disclosed directly or indirectly by the Disclosing Party to the Receiving Party, or any of its Affiliates, including but not limited to any commercial, financial, and legal, information, and any discussions or negotiations concerning any such information that may take place among the Parties relating to the project, all of which is consistently treated in a confidential manner by the Disclosing Party and any information as described in Section 2 hereto and Nalcor Energy Divisions and number of covered employees and retirees as set out in Appendix A.
- (d) "**Party**" shall mean the Disclosing Party or Receiving Party and "Parties" shall mean both of them.
- (e) "**CONFIDENTIAL INFORMATION**"
  - .i In connection with Employee and Retiree Group Benefits Program, the Disclosing Party is willing, in accordance with the terms and conditions of

this Agreement, to disclose (either through itself or its representatives) to the Receiving Party (or its representatives) certain Confidential Information.

- .ii In consideration of the disclosure referred to in Section 2 hereof, the Receiving Party agrees that the Confidential Information shall be kept strictly confidential and shall not be sold, traded, published or otherwise disclosed to anyone in any manner whatsoever, including by means of photocopy, reproduction or electronic media without the Disclosing Party's prior written consent, except as provided in this Agreement.

### **LIMITED PURPOSE**

2. The Receiving Party shall only use, or permit the use of, the Confidential Information which is not a permitted disclosure under S. 4 disclosed under this Agreement to prepare a proposal for the Disclosing Party.

### **STANDARD OF CARE AND LIMITATION OF CLASSES OF LIABILITY**

3. The Receiving Party shall be responsible for ensuring that all persons to whom the Confidential Information is disclosed under this Agreement shall keep such information confidential, shall not disclose or divulge the same to any unauthorized person, and shall comply with the use restrictions set forth in this Agreement. The obligations respecting confidentiality and use restrictions under this Confidentiality Agreement will be deemed satisfied if Receiving Party utilizes the same degree of care with respect to those obligations as Receiving Party utilizes with respect to its own proprietary information and other proprietary information of third parties. Except where a result of a Party's gross negligence or willful misconduct, neither Party shall be liable in an action initiated by one against the other for special, indirect, consequential, exemplary or punitive damages resulting from or arising out of this Agreement, including, without limitation, loss of profit or business interruptions.

The Receiving Party acknowledges that it has read and agrees to the terms and conditions of the **Request for Proposals for Employee and Retiree Group Benefits Program** and agrees to be bound by the terms therein.

The Articles below are copied from the **Request for Proposals for Employee and Retiree Group Benefits Program**

#### **2.9 Confidentiality**

The contents of the RFP, the Receiving Party's proposals, information divulged by Morneau Shepell/Nalcor during the performance of the services and any resulting deliverables are strictly confidential and may not be divulged or disclosed to anyone without the prior written consent of Morneau Shepell and the Disclosing Party. The

Receiving Party shall not issue any publicity or news releases pertaining to the RFP, or any selection or contract, without obtaining the prior written approval of Morneau Shepell and the Disclosing Party.

#### **OWNERSHIP AND RETURN OF CONFIDENTIAL INFORMATION**

4. The Receiving Party shall acquire no proprietary interest in or right to the Confidential Information and the Disclosing Party may demand the return thereof at any time upon giving written notice to the Receiving Party. Within ten (10) days of receipt of such notice, the Receiving Party shall return all of the original Confidential Information provided on behalf of the Disclosing Party and shall destroy or cause to be destroyed all copies and reproductions (in whatever form, including but not limited to, electronic media) in its possession and in the possession of persons to whom it was disclosed pursuant to this Agreement.

#### **REPRESENTATIONS, WARRANTIES AND LIMITATIONS**

5.
  - (a) The Disclosing Party hereby represents and warrants that it has the right and authority to disclose the Confidential Information to the Receiving Party (or its representatives). The Disclosing Party, however, makes no representations or warranties, express or implied, as to the quality, accuracy and completeness of the Confidential Information disclosed hereunder, and the Receiving Party (on behalf of itself and its representatives) expressly acknowledges the inherent risk of error in the acquisition, processing and interpretation of the Confidential Information.. The Disclosing Party, its Affiliated Companies, their officers, directors and employees shall have no liability whatsoever with respect to the use of or reliance upon the Confidential Information by the Receiving Party (or its representatives).
  - (b) Disclosing Party shall have no liability with respect to the use of or reliance upon the Confidential Information by Receiving Party or its Affiliated Companies.

#### **GOVERNING LAW AND DISPUTE RESOLUTION**

6. This Agreement shall be governed by and interpreted in accordance with the substantive law in effect in Newfoundland and Labrador and the Parties agree to attorn to its courts..
  - (a) Any and all claims, demands, causes of action, disputes, controversies and other matters in question arising out of or relating to this Agreement, including any question regarding its breach, existence, validity or termination, which the Parties do not resolve amicably, shall upon the mutual agreement of the Parties be resolved by a sole arbitrator through arbitration administered by the ADR Institute of Canada Inc., in accordance with its "National Arbitration Rules" except as modified by this Agreement. The place of arbitration shall be St. John's Newfoundland and Labrador. The proceedings shall be in the English language. The resulting arbitral award shall be final and binding, and judgment upon such

award may be entered in any court having jurisdiction thereof. A dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect. The Receiving Party acknowledges that remedies at law may be inadequate to protect against breach of this Agreement. The arbitrator may therefore award both monetary and equitable relief, including injunctive relief and specific performance. A Party may apply to any competent judicial authority for interim or conservatory relief. The application for such measures or for the enforcement of such measures ordered by the arbitrator shall not be deemed an infringement or waiver of the agreement to arbitrate and shall not affect the powers of the arbitrator. Except where a result of a Party's gross negligence or willful misconduct, it is expressly agreed that the arbitrator shall have no authority to award special, indirect, consequential, exemplary or punitive damages, and the arbitrator shall certify in the decision that no part of the award includes such damages.

### **GENERAL PROVISIONS**

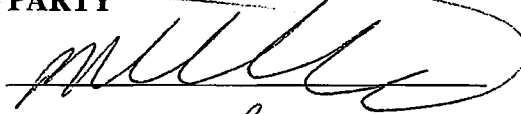
7. No amendments, changes or modifications to this Agreement shall be valid except if the same are in writing and signed by a duly authorized representative of each of the Parties hereto.
8. This Agreement comprises the full and complete agreement of the Parties hereto with respect to the disclosure of the Confidential Information and supersedes and cancels all prior communications, understandings and agreements between the Parties hereto relating to the Confidential Information, whether written or oral, expressed or implied .
9. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns.
10. This Agreement may be executed in any number of counterparts, each of which will be deemed an original of this Agreement, and which together will constitute one and the same instrument. Neither Party will be bound to this Agreement unless and until both Parties have executed a counterpart.
11. A Party's failure to pursue remedies for the breach of this Agreement does not constitute a waiver by that Party of any breach of this Agreement or raise any defence against Claims for breach of this Agreement. The waiver or failure to require the performance of any covenant or obligation contained in this Agreement or pursue remedies for breach of this Agreement does not waive a later breach of that covenant or obligation.
12. Each provision of this Agreement is severable and if any provision is determined to be invalid, unenforceable or illegal under any existing or future law by a court, arbitrator of competent jurisdiction or by operation of any applicable law, this invalidity, unenforceability or illegality does not impair the operation of or affect those portions of this Agreement that are valid, enforceable and legal.
13. The provisions of this Confidentiality Agreement shall be in force from the date of the execution of this Agreement and shall continue for five (5) years from the Effective Date.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have caused this Agreement to be executed on the date first written above.

Nalcor Energy. as

**"DISCLOSING PARTY"**

By:



Printed Name:

MICHAEL ROBERTS

Title:

MANAGER, HUMAN RESOURCES + LABOUR RELATIONS

as

**"RECEIVING PARTY"**

By:

\_\_\_\_\_

Printed Name:

\_\_\_\_\_

Title:

\_\_\_\_\_



**REQUEST FOR PROPOSALS FOR EMPLOYEE  
AND RETIREE GROUP BENEFITS PROGRAM**

April 2013

## 2.5 CONFIDENTIAL OR PROPRIETARY INFORMATION

1. Nalcor's and Morneau Shepell's normal business practices will be observed in handling proposal materials. If the Proponent considers the cost proposal or any other information contained in its proposal to be confidential or proprietary, then each page of the proposal containing such information must be clearly marked "Confidential".
2. All information shall be subject to PIPEDA guidelines relative to disclosure of aggregate and personally identifiable information to third parties, except as permitted or as may be required by law.

## 2.6 CONTRACT DEVELOPMENT PROCESS

The following general conditions will apply:

1. Nalcor reserves the right to select any proposal(s) considered by it to be in its best interest or the most satisfactory. Nalcor reserves the right to engage in post-award negotiations with a Proponent(s), and by submitting a proposal the Proponent agrees that if its proposal is selected by Nalcor, the Proponent will negotiate in good faith with Nalcor. The selection of any proposal by Nalcor shall not obligate Nalcor to enter into a Contract with the selected Proponent.
2. Nalcor reserves the right, post-submission and/or post-award, to change the scope of work, the benefits, price or any conditions with any one or more Proponent without having any duty or obligation to advise any other Proponent or to allow them to vary their proposal as a result of such changes and Nalcor shall have no liability to any other Proponent as a result of such negotiations or modifications.
3. If Nalcor and the selected Proponent cannot come to terms, Nalcor shall be at liberty to select another Proponent.
4. In the event negotiations with any Proponent(s) are not satisfactory to Nalcor, Nalcor reserves the right to discontinue such negotiations at any time.

## 2.7 GENERAL TERMS & CONDITIONS

Notwithstanding anything contained elsewhere in this RFP, including any schedules or attachments hereto, this RFP is subject to the following terms and conditions, all of which the Proponent is deemed to accept without qualification by the Proponent's submission of a proposal in response to this RFP:

1. No Obligations: This is an invitation for proposals and not a tender call. Nalcor does not intend to and does not assume or owe any contractual or other duties or obligations as a result of the issuance of this RFP, the preparation, the evaluation of proposals, provision of additional information or conduct of presentations, the Proponent's participation in any discussions, or any other basis whatsoever arising out of this RFP. Without limiting the generality of the foregoing and for certainty, no Contract is formed by the submission of a proposal in response to this RFP.
2. Discretionary Process: Nalcor shall have sole and absolute discretion to:

- (viii) Pro-actively assist Nalcor in providing group benefit programs to its eligible employee/retiree classes that meet their needs while being cost effective for Nalcor.
- (ix) Ability to ensure a smooth transition – Outline a detailed project plan and timeframe; if you are willing to contribute to cost of transition, please provide details.
- (x) References – Please provide three references, including contact information, two who are current clients (one new within the last year) and one terminated (state reason for termination).

Proponents must address in detail each of these criteria in their proposals.

## 2.9 CONFIDENTIALITY

The contents of this RFP, the Proponents' proposals, information divulged by Morneau Shepell/Nalcor during the performance of the services and any resulting deliverables are strictly confidential and may not be divulged or disclosed to anyone without the prior written consent of Morneau Shepell/Nalcor. The Proponent shall not issue any publicity or news release pertaining to this RFP, or any selection or contract, without obtaining the prior written approval of Morneau Shepell/Nalcor. The Selected Proponent(s) will be required to sign a confidentiality agreement in the format provided by Nalcor.

## Standard Terms and Conditions for Engagements

The following terms and conditions shall apply to the engagement letter between you and Morneau Sobeco (sometimes referred to as "we", "us" or "our") to which these terms and conditions are attached and to any other services performed by Morneau Sobeco for you. These terms and conditions, together with the engagement letter shall be referred to as this "agreement".

1. **Cooperation and Information.** You shall cooperate with us in the performance of our services. You shall be responsible for the timeliness, accuracy and completeness of all data and information provided to us. Our advice is based upon the facts and assumptions provided to us. We will not independently verify this information.
2. **Payment of Invoices.** Invoices submitted by us are payable upon receipt. Interest on unpaid invoices will accrue beginning thirty three (33) days after the date of an invoice at the Toronto Dominion Bank's prevailing annual Prime Rate, plus 1%.
3. **Taxes.** All fees and other charges do not include any applicable federal, provincial or other goods and services or sales taxes, or any other taxes or duties whether presently in force or imposed in the future. Any such taxes and duties shall be assumed and paid by you without deduction from the fees and charges hereunder.
4. **Confidentiality.** We will treat as such all confidential information obtained from you in the course of performing our services and, except as provided in this paragraph, will not use or disclose such information except in connection with the performance of our services. This restriction will not apply to any confidential information that we are required by law or professional standards to disclose; that is in or subsequently enters the public domain; that is now or subsequently becomes known to us without breach of any confidentiality obligation of which we are aware; or that is independently developed by us.
5. **Intellectual property rights.** We retain all rights, including intellectual property rights, in all materials, software, documentation, tools, know-how, techniques, processes and methodologies supplied to you ("Deliverables") or created or used by us in the performance of our services. We grant you a non-exclusive, non-transferable, perpetual license to use the Deliverables for which we own the intellectual property rights for internal business purposes, such grant to become effective upon payment in full of all fees and taxes payable hereunder. This agreement shall not be construed as precluding or limiting in any way our right to (i) provide consulting or other services of any kind or nature to any person or entity or (ii) develop for us, or for others, anything that is competitive with the Deliverables or anything created or used by us to perform our services.
6. **Restriction on Use.** Our services and materials delivered in connection therewith are provided by us for your internal use and information only and may not be distributed, published, made available or relied upon by any other person, without our express written permission. This engagement is not intended for the express or implied benefit of any third party.
7. **Force Majeure.** Neither party shall be liable for delays resulting from circumstances or causes beyond its control, including without limitation, fire or other casualty, act of God, strike or labour dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.
8. **Term.** This engagement may be terminated by either party at any time in writing to the other party. In the event of termination pursuant to this paragraph, you agree to compensate us for our time and expenses incurred to the termination date specified in the notice of termination, as well as for reasonable time and expenses incurred to bring the services to a close in a prompt and orderly manner.
9. **Limitation on liability.** Morneau Sobeco's maximum liability to you for any aspect of this engagement shall be limited to direct money damages in the amount of fees paid for the services set out in the engagement letter for the preceding 6 month period. In no event shall Morneau Sobeco be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including without limitation lost profits and opportunity costs). You are responsible any decisions you make as a result of or in connection with our services. For the purposes of this paragraph, the term Morneau Sobeco includes our related entities and their respective directors, officers, employees and agents. This paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense or loss, whether in contract, statute, tort (including negligence) or otherwise.

10. **Limitation Period.** No action, regardless of form, arising out of or relating to this agreement may be brought by you more than one year after the cause of action has accrued.
  11. **Survival.** Terms which by their nature survive expiration or termination of this agreement shall survive, including sections 4,5,6,9 and 10.
  12. **Independent Contractor.** It is understood and agreed that each of the parties is an independent contractor and that neither party is, nor shall be considered to be an agent, distributor, partner, fiduciary or representative of the other. Neither party shall act or represent itself, directly or by implication, in any such capacity in respect of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other.
  13. **Legal Counsel and Review by Authorities.** You should consult with or engage legal counsel for the purpose of obtaining legal advice or opinions on matters on which we provide our advice or services. We will use our professional judgment in resolving questions affecting your affairs relating to services we provide. However, you understand that the result of any such advice is not binding on regulatory authorities or the courts and should never be considered a representation, warranty, or guarantee that the authorities or courts will concur with our advice.
  14. **The Morneau Sobeco entity with whom you entered this agreement is an affiliate of other entities within the Morneau Sobeco group of entities (the "Morneau Sobeco Group"). Each member of the Morneau Sobeco Group is a separate and independent legal entity and no member has any liability for any other's acts or omissions. Unless otherwise specified in this agreement, the services provided hereunder are delivered by the specific entity named in the engagement letter and no other member within the Morneau Sobeco Group.**
  15. **Governing Law.** This agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.
  16. **Entire Agreement.** This agreement constitutes the entire agreement between us concerning this engagement and the services provided hereunder, and supercedes all other oral or written representations, proposals, understandings or agreements relating to the subject matter thereof. This agreement may only be amended in writing by the parties. In the event of conflict or inconsistency between these Terms and Conditions and the attached engagement letter, these terms and conditions prevail.
  17. **Severability.** In the event that any provision of this agreement shall be held to be invalid, void or unenforceable, then the remainder of this agreement shall not be affected, impaired or invalidated, and each such provision shall be valid and enforceable to the fullest extent permitted by law.
  18. **Assignment.** This agreement shall be binding upon both parties and our respective, successors and permitted assigns. Morneau Sobeco is permitted to assign, transfer or delegate any of its rights or obligations to any affiliate or successor in interest to all or substantially all of the assets or business of the relevant Morneau Sobeco practice, without your consent, in which case, such affiliate or successor in interest shall be bound by and entitled to the benefit of the terms of this agreement.
  19. **Language.** The parties have requested that this agreement and all communications and documents relating hereto be expressed in the English language. Les parties ont exigé que la présente convention ainsi que tous les documents s'y rattachant soient rédigés en anglais.
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