

**WorkplaceNL**

Health | Safety | Compensation

**Tender: 2018-29-T**

**Standing Offer for the Supply of Eye Examination Services**

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**Issue Date: December 24, 2018**

**Closing Date: January 14, 2019 at 2:00pm (NL Time)**

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**SECTION 1 – SCOPE OF WORK AND SPECIFICATIONS**

**1.1 INTENT**

The Workplace Health, Safety and Compensation Commission (WorkplaceNL) invites submission on the tender call for the supply of Eye Examination services for WorkplaceNL’s St. John’s office, for a one (1) year period commencing April 1, 2019 to March 31, 2020, with an option to extend for one (1) or two (2) additional one (1) year periods on the same terms and conditions.

WorkplaceNL reserves the right to contract with one provider of services for all regions or to contract with separate providers, as required, to provide the required services.

**1.2 OVERVIEW**

WorkplaceNL provides services to employers, injured workers and their dependents, and the public through the administration of the *Workplace Health, Safety and Compensation Act* (the Act). These services include promoting workplace health and safety in order to prevent and reduce workplace injuries and occupational disease. WorkplaceNL also works to ensure injured workers receive the best care possible and the benefits to which they are entitled; and facilitates recovery and return-to-work in an early and safe manner. In addition, WorkplaceNL administers an employer classification and assessment system, and must ensure adequate funding for services through sound financial management.

WorkplaceNL is organized along four main functional areas: 1) worker services; 2) employer services; 3) corporate services; and 4) financial services. These functional areas support the organization’s three main lines of business:

1. Education on the prevention of workplace injuries, illnesses, and occupational disease;
2. Claims management for injured workers; and
3. Employer assessments (insurance coverage).

WorkplaceNL makes no guarantee of quantity of examinations during the term of the contract. Exams will be arranged on an as needed basis only. There are approximately 338 employees located in WorkplaceNL’s St. John’s office. The chart below illustrates the number of eye examination services arranged by WorkplaceNL in the past 6 years.

<b>Year</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>Number of exams</b>	177	142	108	109	107	107

**1.3 SCOPE OF WORK**

**1.3.1** The Successful Bidder shall provide all material and labour necessary to provide annual eye examinations to employees of the St. John’s office of WorkplaceNL who

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choose to avail of the service. Scheduling of the examinations is to take place within a period of time mutually agreed upon by the Successful Bidder and WorkplaceNL.

**1.3.2** The Successful Bidder shall provide a comprehensive routine eye examination/ocular assessment outlined by the Canadian Association of Optometrists.

**1.3.3 Location**

Eye examination services will be located in close proximity to WorkplaceNL (146-148 Forest Road) within a maximum of seven (7) km radius.

**1.3.4 Eye Examinations**

The optometrist shall perform comprehensive eye examinations to diagnose visual acuity and disorders of the eye to employees referred by WorkplaceNL. The optometrist shall provide optometric prescriptions for those employees requiring them. Evaluation of an employee's colour vision is not a requirement of WorkplaceNL. The optometrist shall document refraction examinations and recommendations for inclusion in the employee's health records. The optometrist shall maintain the employee's health records in accordance with the Canadian Association of Optometrists and accepted medical standards however, it is not necessary to provide personal health information of the employee to WorkplaceNL. The documentation to be provided to WorkplaceNL is the invoice for the eye examination service which references the name of WorkplaceNL's employee(s).

The eye examination services shall be performed by a qualified optometrist licensed as necessary to practice in the Province of Newfoundland and Labrador, in accordance with the relevant professional standards.

Eye examinations are to be completed at the clinic of the Successful Bidder between 8:30 a.m. and 4:30 p.m. between April 1 and June 1 of each year. Additional clinics or rescheduling of clinics may be required from time to time on a mutually agreed upon date between WorkplaceNL and the Successful Bidder.

The optometrist shall refer the patient to other medical specialists, if required.

The optometrist shall review comprehensive eye examination service delivery on an ongoing basis and shall make necessary improvements to the service provided. WorkplaceNL shall advise the Successful Bidder of any employee concerns that WorkplaceNL deems appropriate to address. The Successful Bidder will take appropriate action as recommended by WorkplaceNL.

The Successful Bidder shall advise WorkplaceNL immediately of any concerns expressed by employees or of any problems encountered that should be referred to WorkplaceNL.

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In the event that the optometrist makes a prescription error that is not a patient caused misrepresentation, the Successful Bidder shall provide replacement lenses at no charge.

During the term of the contract, the Successful Bidder shall not induce or attempt to induce any employee of WorkplaceNL into availing of optometry services from the Successful Bidder, other than the WorkplaceNL sponsored routine eye examination. This includes but is not limited to promotional calls, mail outs or emails of any kind. The selection of the optometry service provider, if required, will be at the sole discretion of the employee.

<b>SECTION 2 – INSTRUCTIONS TO BIDDERS</b>
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## **2.1 QUALIFICATIONS AND EXPERIENCE**

The successful Bidder must possess the necessary knowledge, skill and experience to supply the eye examination services and must meet the following mandatory criteria:

- 2.1.1** The Optometrist(s) must be a graduate of an accredited school of optometry recognized by the Newfoundland and Labrador Association of Optometrists;
- 2.1.2** The Optometrist(s) must be actively licensed, registered and a member in good standing with the Newfoundland and Labrador Association of Optometrists and provide proof of licensure;
- 2.1.3** The Optometrist(s) must possess a minimum of five (5) years full-time (or equivalent) clinical experience as an Optometrist (one year full-time experience is equal to 12 months in a full-time capacity based on a 35 hour work week); and
- 2.1.4** The premises where the examinations will be conducted must have a private examination area, free parking available, wheelchair accessibility, and be located within a 7 km radius of WorkplaceNL office at 146-148 Forest Road.

## **2.2 ELECTRONIC COPY OF DOCUMENT**

- 2.2.1** WorkplaceNL reserves the right to modify the terms of the Tender by issuance of addenda at any time prior to closing. It is the responsibility of the Bidder to ensure that they monitor WorkplaceNL's website (<http://www.workplacnl.ca>) for any addendum to the Tender issued up to and including the closing date.
- 2.2.2** It is the Bidder's responsibility to ensure that they have received a complete set of documents. By submitting a Bid, the Bidder verifies that they have received a complete set of Tender documents including any and all addenda. All terms,

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conditions, and/or specifications stated or referenced in the Tender are assumed to be accepted by the Bidder and incorporated in the Bid.

- 2.2.3** Bidders who have obtained the Tender electronically must not alter any portion of the document, with the exception of applying any addendum issued by WorkplaceNL.

**2.3 QUESTIONS AND CLARIFICATION**

- 2.3.1** All inquiries related to this Tender must be directed in writing by January 10, 2019 by email to:

Pamela Meaney, Buyer  
E-mail Address: [pamela.meaney@workplacenl.ca](mailto:pamela.meaney@workplacenl.ca)

- 2.3.2** All questions should include the Bidder's name and address, contact person's name, telephone number, fax number and email address, and the reference to the specific section and page number of the Tender in question.

- 2.3.3** To the extent that WorkplaceNL considers that the answer to the question may assist in the preparation of a Bid, WorkplaceNL will post an addendum on its website which will be part of the Tender. WorkplaceNL may not answer a question where WorkplaceNL considers the information requested is not required to prepare a Bid, or where the answer to the question posed may be found in the Tender. No responses shall be binding upon WorkplaceNL unless made in writing. Information obtained from any other source is not official and may be inaccurate and it is not binding.

**2.4 CONFIDENTIALITY AND OWNERSHIP OF INFORMATION**

- 2.4.1** Information pertaining to WorkplaceNL obtained by the Bidder as a result of participation in this Tender and/or negotiations with WorkplaceNL, if any, is confidential and shall not be disclosed without prior written authorization from WorkplaceNL.

- 2.4.2** The Tender and any supplementary document or portion thereof is proprietary information, and must not be used by the Bidder without the permission of WorkplaceNL, other than for the submission of Bids.

- 2.4.3** All Bids submitted become the property of WorkplaceNL. By submitting a Bid, the Bidder hereby grants WorkplaceNL a license to distribute, copy, print, or translate the Bid for the purposes of the Tender. Any attempt to limit WorkplaceNL's right in this area may result in rejection of the Bid.

- 2.4.4** The procurement process is subject to the *Access to Information and Protection of Privacy Act, 2015*, S.N.L. 2015 c. A-1.2, as amended (*ATIPPA*). The Bidder's Bid

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package may be subject to disclosure under the *ATIPPA*. By submitting a Bid, the Bidder agrees to the appropriate disclosure of the information supplied, subject to the provisions of the governing law. WorkplaceNL cannot guarantee the confidentiality of the content of any Bid after the closing date. WorkplaceNL shall not be liable to any Bidder for any claim, direct or indirect, whether for costs, expenses, losses or damages, or loss of anticipated profits, or for any other matter whatsoever incurred by the Bidder as a result of disclosure pursuant to the *Access to Information and Protection of Privacy Act*, 2015, S.N.L. 2015, c. A-1.2, as amended.

**2.4.5** By submitting a bid, the Bidder agrees that it has identified any specific information in its bid that may qualify for an exemption from disclosure under subsection 39(1) of the *ATIPPA*. If no specific information has been identified it is assumed that, in the opinion of the Bidder, there is no specific information that qualifies for an exemption under subsection 39(1) of the *ATIPPA* and information may be released without further notice.

**2.4.6** The financial value of a contract resulting from this procurement process will be publically released as part of the award notification process.

**2.5 NO CLAIMS BY BIDDER**

**2.5.1** By participating in the process outlined in this Tender document, the Bidder consents to the procedures as described in this Tender.

**2.5.2** By submitting a bid, each Bidder irrevocably waives any claim, action or proceeding against WorkplaceNL, including without limitation any judicial review or injunction application, or against any of WorkplaceNL's employees, advisors or representatives for damages, expenses or costs including costs of bid preparation, loss of profits, loss of opportunity or any consequential loss for any reason including: any actual or alleged unfairness on the part of WorkplaceNL at any stage of the procurement process; if WorkplaceNL does not award or execute a contract; or, if WorkplaceNL is subsequently determined to have accepted a noncompliant bid or otherwise breached or fundamentally breached the terms of this procurement.

**2.6 CONFLICT OF INTEREST**

**2.6.1** The Bidder, its employees, officers, associates and/or approved sub-contractors shall not and will not have any conflict of interest (actual or potential) in submitting its Bid or, if selected, in providing services under the agreement. Where applicable, the Bidder must declare in its Bid any situation that may be a conflict of interest in submitting its Bid or, if selected, with the contractual obligations under the agreement.

**2.6.2** If, at the sole and absolute discretion of WorkplaceNL, the Bidder, its employees, officers, associates and/or approved sub-contractors is found by WorkplaceNL to be in an actual or perceived conflict of interest either during the Tender or after award

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of the contract, WorkplaceNL may, in addition to any other remedies available at law or in equity, disqualify the Bid submitted by the Bidder or terminate the agreement.

- 2.6.3** Sub-contracting to any firm or individual whose current or past corporate or other interests may, in WorkplaceNL’s opinion, give rise to an actual or perceived conflict of interest in connection with this Tender will not be permitted. This includes, but is not limited to, any firm or individual involved in the preparation of the Tender.

**2.7 AGREEMENT**

- 2.7.1** WorkplaceNL shall not be obligated to any Bidder until a written agreement has been duly executed related to an approved Bid. Any awards made pursuant to this Tender process are subject to execution of a written agreement which is acceptable to WorkplaceNL.

- 2.7.2** To be eligible to provide services to WorkplaceNL, the successful Bidder shall execute a written agreement with WorkplaceNL to perform the services which is acceptable to WorkplaceNL with terms and conditions as outlined in the Standard Form Agreement in Appendix “C” within the time frame established by WorkplaceNL. The successful Bidder shall be responsible for compliance with the terms and conditions outlined in the Standard Form Agreement in Appendix “C”.

- 2.7.3** Claims made by the Bidder in the Bid will constitute Contractual warranties. Any provision in the Bid may, in WorkplaceNL’s sole discretion, be included as a provision of the agreement between WorkplaceNL and the successful Bidder. In the case of conflict between the written agreement between WorkplaceNL and the successful Bidder and the Tender and Bid, the terms of the said written agreement shall prevail.

**2.8 TENDER CLOSING AND DELIVERY**

- 2.8.1** Bids must be in a sealed opaque envelope and/or sealed courier envelope clearly marked with the **Bidder’s name, mailing address, and Tender number** and shall be addressed to the following:

<p><b>Tender 2018-29-T</b> <b>Standing offer for the Supply of Eye Examination Services</b> <b>Attention: Pamela Meaney, Buyer</b> WorkplaceNL 146-148 Forest Road P.O. Box 9000 St. John’s, NL A1A 3B8</p>
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Bids must be received before 2:00 p.m. Newfoundland Time on January 14, 2019 at WorkplaceNL’s St. John’s office.

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In the event that WorkplaceNL's St. John's office is closed due to poor weather conditions or other unscheduled closure, the Tender deadline will be extended to the next business day before 2:00 pm Newfoundland time.

- 2.8.2** Bids must be time and date stamped at the time of delivery to the "Tender Submission Box" located in the main lobby of WorkplaceNL's St. John's office. WorkplaceNL has provided an electronic timer by the box for this purpose. Faxed or electronic tenders **will not** be accepted. It is the Bidder's responsibility to ensure that the Bid has been time and date stamped and delivered to the Tender Submission Box. Couriers and taxicabs do not have access to the Tender Submission Box, and the onus is on the Bidder to confirm proper delivery to the Tender Submission Box.
- 2.8.3** Bidders will be solely responsible for the delivery of their Bids, in their entirety, in the manner and time prescribed. Bids, or any portion thereof, received after the closing time will be returned to the Bidder unopened. WorkplaceNL time clock will be deemed to be correct in the event of dispute.

**2.9 BID INSTRUCTIONS**

- 2.9.1** The Bidder must submit two (2) hard copies of the Bid and related documentation, including Appendix "A", Check List.
- 2.9.2** The Bidder must submit one copy of the attached Appendix "B", Bid Form, which must be signed by the Bidder or an authorized representative of the Bidder. If the Bidder is a corporation, the Bid must be signed by the authorized signing officer of the corporation.
- 2.9.3** It is essential that the Bid thoroughly addresses and completes each requirement identified in the Tender, as incomplete Bids may be declared "non-responsive". Bids that are improperly signed, conditional, illegible, obscure, or contain arithmetical errors, erasures, alterations, or irregularities of any kind may be considered invalid.
- 2.9.4** The Bid must include a written statement of the company history, including, but not limited to, the length of time in business, and the length of time providing eye examination services of a similar size and scope.
- 2.9.5** The Optometrist(s) must provide a resume confirming education and work experience. The resume must not be more than three (3) pages and shall include a minimum of three (3) references with appropriate contact information who can provide as evidence of previous experience providing similar services. References may be for work currently being performed or where work has been completed. References may be contacted as part of the review process. The reference should not be a WorkplaceNL employee. A contract will not be awarded to any Bidder whose references, in the opinion of WorkplaceNL, are found to be unsatisfactory.

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- 2.9.6** The bid must include proof that the optometrist is actively licensed, registered and a member in good standing with the Newfoundland and Labrador Association of Optometrists.
- 2.9.7** The Bidder must confirm that the premises where the examinations will be conducted have a private examination area, free parking available, wheelchair accessibility, and are located within a 7 km radius of WorkplaceNL office at 146-148 Forest Road.
- 2.9.8** The Bidder must acknowledge that they have read and understood any and all addenda in both the Appendix “A”, Check List and the Appendix “B”, Bid Form.
- 2.9.9** While WorkplaceNL has tried to ensure the accuracy of the Tender, it is not guaranteed or warranted by WorkplaceNL to be accurate, nor is it necessarily comprehensive or exhaustive. WorkplaceNL will assume that all Bidders have resolved any questions they might have about the Tender and have informed themselves as to the existing conditions and limitations, site restrictions, etc. before submitting their Bids. Nothing in the invitation is intended to relieve Bidders from forming their own opinions and conclusions with respect to the matters addressed in the Tender.
- 2.9.10** Any error in the Bid is the responsibility of the Bidder. Submitted Bids may be amended prior to closing by submitting a complete new Bid clearly indicating it replaces the previously submitted Bid. Any such new Bid is subject to the requirements as outlined herein. The said new Bid replaces any other Bids previously submitted by the Bidder, and only the last of any new Bids received will be accepted.
- 2.9.11** Any Bid received in response to a Tender may be withdrawn by written request to WorkplaceNL, Pamela Meaney, Buyer, Finance, but cannot be withdrawn, altered or changed in any way after the Tender Closing Date. All requests for withdrawal, amendment or submission of a replacement Bid must be submitted in writing on company letterhead or equivalent, and be signed by the Bidder, an authorized representative of the Bidder or, if a corporation, an authorized signing officer of the corporation.

## **2.10 BID EVALUATION**

- 2.10.1** Tender evaluation and award of contract will be done in accordance with the *Public Procurement Act*, S.N.L. 2016, c. P-41.001, as amended, and WorkplaceNL’s procedures.
- 2.10.2** Tenders will be opened publicly at the WorkplaceNL building in St. John’s, immediately following the Tender closing in accordance with the Public Procurement Regulations, as amended. The names of all Bidders will be provided at the public opening.

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- 2.10.3** The Bid shall remain open for acceptance and is irrevocable for a period of ninety (90) days after the Tender closing date.
- 2.10.4** WorkplaceNL reserves the right to non-disclosure of pricing submitted by Bidders during the public opening. All Bidders will be notified electronically of the bidder names and bid prices within two (2) business days of the public opening. This information is for reference purposes only, and a full bid evaluation will be conducted to determine the preferred supplier.
- 2.10.5** WorkplaceNL reserves the right to waive any minor irregularity or non-compliance where such irregularity or non-compliance is not of a material nature in its sole and absolute discretion. Such minor irregularity or non-compliance will be deemed substantial compliance and capable of acceptance. WorkplaceNL will be the sole judge of whether a Bid is accepted or rejected.
- 2.10.6** WorkplaceNL, in its sole discretion, reserves the right to cancel the Tender without award. WorkplaceNL reserves the right to accept or reject any or all Bids in whole or in part. WorkplaceNL is not bound to accept the lowest or any Bid.
- 2.10.7** The Bidder may be required to demonstrate financial stability, authorization to provide the good/services being acquired, and/or regulatory agency approval, licensing or registration as needed, or otherwise clarify Bidder's capability to satisfy the Tender requirements. WorkplaceNL reserves the right to reject Bids from any Bidder that it feels is incapable of providing the necessary labour, materials, equipment, financing or management resources to perform the work or supply the goods in a satisfactory and timely manner.
- 2.10.8** WorkplaceNL, in its sole discretion, may assess the Bidders' experience and/or ability to provide the goods and/or services required and described in this Tender by checking the Bidders' references. A contract will not be awarded to any Bidder whose references, in the opinion of WorkplaceNL, are found to be unsatisfactory. WorkplaceNL reserves the right to obtain references from sources other than those provided in the Bid. WorkplaceNL reserves the sole discretion to determine whether the Bidder and its professional staff have the appropriate qualifications.
- 2.10.9** WorkplaceNL reserves the right to disqualify any Bidder if the Bidder has either breached an agreement and/or failed to provide satisfactory service and/or deliveries under any prior agreement with WorkplaceNL, in the sole opinion of WorkplaceNL.
- 2.10.10** Upon acceptance by WorkplaceNL, a written Bid acceptance will be forwarded to the successful Bidder prior to signing the agreement.
- 2.10.11** In the event that the selected Bid(s) is higher than the budget approved by WorkplaceNL's Board of Directors, any awards made pursuant to this Tender process are subject to approval of the Board of Directors. In addition to any other

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rights of cancellation contained herein, WorkplaceNL, in its sole discretion, reserves the right to cancel this Tender without award should the Board of Directors not approve the award.

<b>SECTION 3: GENERAL</b>
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- 3.1** Payment of invoices will be through direct deposit. The successful Bidder is required to meet WorkplaceNL's billing and accounting requirements. The successful Bidder shall invoice WorkplaceNL on a monthly basis. Invoices must be legible and clearly labeled with the successful Bidder's invoice number. The Bidder must acknowledge in the Appendix "B", Bid Form that the Bidder agrees to direct deposit.
- 3.2** This Tender, all Bids, and any agreement will be construed and interpreted in accordance with the laws of the Province of Newfoundland and Labrador.
- 3.3** The Bidder shall not use WorkplaceNL's name or logo or make reference to this Tender in any advertising copy or other promotional materials or messages without WorkplaceNL's prior written consent.
- 3.4** WorkplaceNL reserves the right to tender any services by invited tender or public tender, as deemed necessary.

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**APPENDIX “A”**

**Check List to be completed and included with submission**

<b>Tender documents are completely read and understood</b>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
<b>All addenda (if applicable) are completely read and understood</b>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
<b>Bid form signed and completed as required in the submission (Appendix “B”)</b>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
<b>Checklist completed (Appendix “A”)</b>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
<b>Written Statement of Company History included in the submission (2.9.4)</b>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
<b>Resume and List of references included in the submission (2.9.5)</b>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
<b>Proof of License, Registration and Good Standing with the Newfoundland and Labrador Association of Optometrists (2.9.6)</b>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
<b>Confirm premises with private examination area, free parking available, wheelchair accessibility, and location within a 7 km radius of WorkplaceNL office (2.9.7)</b>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>

**The Successful Bidder must provide the following within fourteen (14) days of award:**

- A list of employees, officers, associates and approved sub-contractor assigned to perform the services, including their job titles and qualifications as per Article 3 of WorkplaceNL Standard Terms and Conditions;
- Certificates of insurance as per Article 14 of WorkplaceNL Standard Terms and Conditions;
- Declarations of Confidentiality/Conflict of Interest signed by everyone who will perform services under the agreement as per Article 9 of WorkplaceNL Standard Terms and Conditions;
- Signed agreement in the form provided by WorkplaceNL; and
- Initialed WorkplaceNL Confidentiality Schedule.

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**APPENDIX "B"**

**Bid Form**

Name of Bidder: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Dated at: \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2019

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Authorized Name (Printed)

\_\_\_\_\_  
Witness Name (Printed)

HST No.: \_\_\_\_\_

Total Dollars Per Eye Exam (\$) \_\_\_\_\_ ) in Canadian Funds, **EXCLUDING** HST.

Direct Deposit Agree \_\_\_\_\_

Price Protection Period for 90 days Agree \_\_\_\_\_

I hereby acknowledge that I have read and understand any and all addenda Agree \_\_\_\_\_

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**APPENDIX "C"**

**Standard Form Agreement**

**THIS AGREEMENT** made in the Province of Newfoundland and Labrador, this day of \_\_\_\_\_, 2019.

**BETWEEN:**           **WORKPLACE HEALTH, SAFETY AND COMPENSATION COMMISSION**, a statutory corporation established under the *Workplace Health, Safety and Compensation Act*, R.S.N.L. 1990, c. W-11, as amended (the “Act”)  
  
(hereinafter called “WorkplaceNL”)

OF THE FIRST PART

**AND:**                   **<ENTER CONTRACTOR’S NAME>**  
  
(hereinafter called the “Contractor”)

OF THE SECOND PART

(hereinafter jointly referred to as the “Parties”)

**WHEREAS** WorkplaceNL wishes to retain the Contractor for the purpose of providing certain eye examination services and the Contractor agrees to provide those services upon the terms and conditions provided herein;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the mutual covenants and agreements herein contained, the Parties hereto covenant and agree with each other as follows:

**1.0    Services**

1.1    WorkplaceNL shall engage the Contractor to provide and the Contractor shall provide to WorkplaceNL the certain services listed in Schedule “A” (the “Services”) (which is attached hereto and forms part and parcel of the

within Agreement). The Parties shall observe their respective obligations as specified in the within Agreement.

- 1.2 The WorkplaceNL Standard Terms and Conditions with the Declaration of Confidentiality/Conflict of Interest and the WorkplaceNL Confidentiality Schedule are attached hereto and form part and parcel of the within Agreement.

## **2.0 Payment & Reports**

- 2.1 The Contractor shall invoice WorkplaceNL on a monthly basis in accordance with Schedule "B" which is attached hereto and forms part and parcel of the within Agreement.
- 2.2 As requested by WorkplaceNL, the Contractor shall furnish written reports providing details of Services provided under the Agreement and its progress in a format as specified by WorkplaceNL.

## **3.0 Term**

- 3.1 This Agreement is for a one (1) year period commencing on April 1, 2019, and ending on March 31, 2020, unless terminated prior to this date in accordance with Article 23 of the WorkplaceNL Standard Terms and Conditions.
- 3.2 WorkplaceNL, at its sole discretion, has the right to renew the Agreement for a further one (1) or two (2) additional one (1) year terms on the same terms and conditions. Should WorkplaceNL identify needs or if conditions change during the initial term of this Agreement, the said needs and/or conditions may be addressed in an Extension Agreement but pricing for the Services herein will remain firm.

#### 4.0 **General**

- 4.1 All schedules and appendices attached hereto form part of this Agreement.
- 4.2 Any unresolved disputes to this Agreement shall be referred to the arbitration of a single arbitrator, if the Parties agree upon one. If the Parties fail to reach agreement on a single arbitrator the dispute shall be submitted to the arbitration of three arbitrators, one to be nominated by each party and the third to be appointed by the two arbitrators nominated. The decision of any two of the arbitrators shall be binding. The cost of arbitration shall be borne equally by the Parties. The *Arbitration Act*, RSNL 1990 c. A-14, as amended, shall be applicable to any arbitrations in relation to the within Agreement.
- 4.3 The Parties will from time to time execute and deliver all such further documents and do all acts and things as the party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.
- 4.4 The following clauses and articles shall survive the termination of this Agreement, however caused:
- 2.0 Payment & Reports
  - 4.0 General
- 4.5 WorkplaceNL hereby designates the Director of Human Resources or another who the Director may appoint from time to time, to administer this Agreement.

- 4.6 For the purposes of day-to-day contact throughout the term of this Agreement, the Contractor shall deal through the Manager of Human Resources, or another who the Director may appoint from time to time.
  
- 4.7 The signatories of this Agreement hereby personally warrant that they have the full power and authority to enter into this Agreement on behalf of their respective principals and that the person signing this Agreement on behalf of each has been properly authorized and empowered. Each party further acknowledges that it has read this Agreement, understands, and is bound by it.
  
- 4.8 Any notice required to be given by either party under this Agreement, unless otherwise specified herein, shall be effectively given and deemed to have been received as follows:
  - (a) if delivered personally, on the day of delivery;
  - (b) if sent by ordinary, certified or registered mail, on the seventh day after mailing; and,
  - (c) if faxed to the other party on the next business day.

In the event of an actual or threatened postal strike or interruption, service shall be by personal delivery or fax only. The names and addresses of the authorized representatives of the Parties are as follows:

to WorkplaceNL:                      Director of Human Resources  
WorkplaceNL  
146-148 Forest Road  
P.O. Box 9000  
St. John's, NL A1A 3B8  
Tel: 709.778.1562  
Fax: 709.778.1038

to the Contractor:                      < [redacted] >  
< [redacted] >  
Tel: 709< [redacted] >  
Fax: 709< [redacted] >

**IN WITNESS WHEREOF** WorkplaceNL and the Contractor have caused this Agreement to be executed by their respective officers duly authorized in that behalf on the dates hereinafter set forth.

**SIGNED, SEALED, AND DELIVERED**  
by the Workplace Health, Safety  
and Compensation Commission,  
in the presence of:

**WORKPLACE HEALTH, SAFETY  
AND COMPENSATION COMMISSION**

\_\_\_\_\_  
**Witness**

\_\_\_\_\_

\_\_\_\_\_  
**Date of Signature**

**SIGNED, SEALED, AND DELIVERED**  
by the Contractor, <            >  
in the presence of:

\_\_\_\_\_  
**Witness**

\_\_\_\_\_

\_\_\_\_\_  
**Date of Signature**

## **SCHEDULE “A”**

### **Scope of Work**

- A.01 The Contractor shall supply an Optometrist (hereinafter the “Optometrist”) to perform the Services with the qualifications stipulated in Article 6.2 herein. The Contractor is responsible for ensuring the complete compliance of the Optometrist with all terms and conditions of this Agreement. The Contractor designates < [REDACTED] > as the Optometrist. As per paragraph 1.7 herein, the Optometrist assigned to perform Services shall not change except with prior written consent of WorkplaceNL.
- A.02 The Contractor warrants that the Optometrist:
- is a graduate of an accredited school of optometry recognized by the Newfoundland and Labrador Association of Optometrists;
  - is actively licensed, registered and a member in good standing with the Newfoundland and Labrador Association of Optometrists; and
  - possesses a minimum of five (5) years full-time (or equivalent) clinical experience as an Optometrist (one year full-time experience is equal to 12 months in a full-time capacity based on a 35 hour work week).
- A.03 The Contractor shall provide all material and labour necessary to provide annual eye examinations to employees of the St. John’s office of WorkplaceNL who choose to avail of the service. Scheduling of the examinations is to take place within a period of time mutually agreed upon by the Contractor and WorkplaceNL.
- A.04 The Optometrist shall provide a comprehensive routine eye examination/ocular assessment as outlined by the Canadian Association of Optometrists.

### **Location**

- A.05 Eye examination services will be located in close proximity to WorkplaceNL (146-148 Forest Road) within a maximum of seven (7) km radius. The premises shall have a private examination area, free parking available and must be wheelchair accessible.
- A.06 The Optometrist shall perform comprehensive eye examinations to diagnose visual acuity and disorders of the eye to employees referred by WorkplaceNL. The Optometrist shall provide optometric prescriptions for those employees requiring them. Evaluation of an employee’s colour vision is not a requirement of WorkplaceNL. The Optometrist shall document refraction examinations and recommendations for inclusion in

- the employee health records. The Optometrist shall maintain the employee's health records in accordance with the Canadian Association of Optometrists and accepted medical standards however, it is not necessary to provide any personal health information of the employee to WorkplaceNL. The documentation to be provided to WorkplaceNL is the invoice for the eye examination service which references the name of WorkplaceNL's employee(s).
- A.07 Eye examinations are to be completed at the clinic of the Contractor between 8:30 a.m. and 4:30 p.m. between April 1 and June 1 of each year. Additional clinics or rescheduling of clinics may be required from time to time on a mutually agreed upon date between WorkplaceNL and the Contractor.
- A.08 The Optometrist shall refer patients to other medical specialists if required.
- A.09 The Optometrist shall review comprehensive eye examination service delivery on an ongoing basis and shall make necessary improvements to the service provided. WorkplaceNL shall advise the Contractor of any employee concerns that WorkplaceNL deems appropriate to address. The Contractor will take appropriate action as recommended by WorkplaceNL.
- A.10 The Contractor shall advise WorkplaceNL immediately of any concerns expressed by employees or of any problems encountered that should be referred to WorkplaceNL.
- A.11 In the event that the Optometrist makes a prescription error that is not a patient caused misrepresentation, the Contractor shall provide replacement lenses at no charge.
- A.12 During the term of the contract, the Contractor shall not induce or attempt to induce any employee of WorkplaceNL into availing of optometry services from the Contractor, other than WorkplaceNL sponsored routine eye examination. This includes, but is not limited to, promotional calls, mail outs or emails of any kind. The selection of the optometry service provider, if required, will be at the sole discretion of the employee. This section does not preclude the Optometrist from complying with their professional standards in providing treatment and making necessary referrals to other medical specials with the consent of the WorkplaceNL employee.

**SCHEDULE "B"**

- B.01 Provided the Contractor has complied with all the terms, conditions and provisions of this Agreement, upon appropriate invoicing, WorkplaceNL shall pay the Contractor at the rate of < [REDACTED] > for each eye exam performed pursuant to this Agreement. HST is not applicable to this Service.
- B.02 The Contractor shall invoice WorkplaceNL indicating the times, date, and the employee name for the comprehensive eye exam. The Contractor shall only be paid for those exams authorized and completed in accordance with this Agreement.

## STANDARD TERMS AND CONDITIONS

**1. Agreement** - This Agreement includes the following documents and any conflict between the documents shall be resolved by giving priority to the documents in the order as they appear:

- (a) executed agreement between WorkplaceNL and the Contractor to which this document is appended (if applicable);
- (b) WorkplaceNL Confidentiality Schedule (if applicable);
- (c) WorkplaceNL Standard Terms and Conditions;
- (d) Declaration(s) of Confidentiality/Conflict of Interest;
- (e) procurement documents (including purchase orders) issued by WorkplaceNL; and
- (f) Contractor's bid, proposal or quote.

This Agreement constitutes the whole agreement of the parties relative to the purchase of Services from the Contractor by WorkplaceNL and supersedes all prior negotiations, representations, or agreements, either written or oral.

**2. Services** – Services means all goods, materials and/or services required under this Agreement.

The Contractor shall provide the Services. WorkplaceNL is responsible for the evaluation of the scope and suitability of the Services provided by the Contractor.

**3. Independent Contractor Status** - The Contractor is an independent contractor as to all Services. Neither the Contractor, its employees, officers, associates nor approved subcontractors, if any, are to be construed as constituting employees, agents, or representatives of WorkplaceNL. As an independent contractor, the Contractor assumes all legal and contractual obligations arising out of the performance of the Services.

The Contractor shall not enter into any contract or commitment in the name of or on behalf of WorkplaceNL, or bind WorkplaceNL in any respect or make statements or representations of any kind or take any other actions that would be binding on WorkplaceNL except as specifically provided in this Agreement.

The Contractor shall be fully responsible for any and all employee benefits to be provided to the Contractor's employees. Neither the Contractor nor its employees, officers, associates or approved subcontractors shall be entitled to participate in or receive any benefits whatsoever from WorkplaceNL as a result of performing Services. The Contractor is solely responsible for deducting the appropriate withholdings from the Contractor and its employees' pay cheques and for the remittance of such withholdings to the appropriate regulatory body as required by law.

Prior to commencing provision of Services the Contractor shall provide to WorkplaceNL a list of employees, officers, associates and approved sub-contractors assigned to perform the Services including their job titles and qualifications for the provision of Services. The employees, officers, associates and sub-contractors assigned to perform Services shall not change except with prior written consent of WorkplaceNL.

WorkplaceNL may, in its sole discretion, request that any employee, officer, associate or approved sub-contractor of the Contractor be prohibited from the performance of Service and/or from access to any files and/or to WorkplaceNL's premises, and the Contractor shall immediately comply with this request. The Contractor hereby releases and forever discharges and holds harmless WorkplaceNL from any costs, claims, losses, and damages of any kind whatsoever based on negligence, defamation, wrongful discharge/dismissal or otherwise which Contractor may suffer, sustain, pay or incur as a result of any actions under this paragraph and will indemnify, defend and hold harmless WorkplaceNL against any third party claims based on actions hereunder.

**4. Sub-Contractor** - Without the prior written consent of WorkplaceNL, the Contractor shall not subcontract any part of the Services, assign or transfer any interest, or delegate any responsibility arising out of this Agreement, to anyone other than the approved employees, officers, associates, or

subcontractors of the Contractor in accordance with the provisions of this Agreement. Prior to approval of a sub-contractor, the Contractor must establish to the satisfaction of WorkplaceNL, that the sub-contractor also meets the requirements of this Agreement.

**5. Payment** - Provided the Contractor has complied with all terms, conditions and provisions of this Agreement, WorkplaceNL shall make payments to the Contractor of those fees as set forth in this Agreement, following appropriate invoicing by the Contractor. WorkplaceNL shall not be liable to the Contractor for any other costs or expenses, unless such costs or expenses are approved in advance and in writing by WorkplaceNL, or are specifically set out in this Agreement. The Contractor shall submit expense claims in a format acceptable to WorkplaceNL.

WorkplaceNL shall effect payment of invoices within thirty (30) days of receipt of an acceptable invoice by WorkplaceNL provided that the amounts so billed are correct and properly payable under this Agreement. All invoices shall include the Contractor's registration number for Harmonized Sales Tax (HST) and shall separately identify the amounts of such tax. Payment of invoices may be delayed through failure of the Contractor to identify the registration number and the amount of HST. The Contractor shall maintain records sufficient to verify invoices submitted to WorkplaceNL and WorkplaceNL shall not be responsible for reconciliation and/or review of incorrect bookkeeping by the Contractor.

WorkplaceNL will not pay interest on late or overdue accounts.

Payment for Services shall be made by direct deposit. The Contractor shall supply the necessary banking information to WorkplaceNL within 7 (seven) working days of awarding the contract.

Purchase orders and notices of payments will be forwarded to the Contractor from WorkplaceNL. The Contractor shall supply facsimile information to WorkplaceNL within seven (7) working days of awarding the contract.

Services which have been performed prior to the issuance of a purchase order shall not be invoiced to WorkplaceNL. Only Services rendered within the date range delineated on the purchase order will be paid by WorkplaceNL.

The Contractor shall only submit an invoice for payment once. If the Contractor has not received payment for an invoice, the Contractor may contact the Accounts Payable Department of WorkplaceNL but it shall not resubmit the invoice unless expressly requested by WorkplaceNL. If the Contractor sends a Statement of Account, it shall be clearly marked "Statement of Account" at the top of the page.

**6. Set-Off** - At its sole option and without notice to the Contractor, WorkplaceNL shall have the right to set-off any amount due to WorkplaceNL by the Contractor under this Agreement or otherwise against any amount due and owing by WorkplaceNL to the Contractor under this Agreement.

**7. Non-exclusive** - This Agreement does not create an exclusive relationship between the Contractor and WorkplaceNL. WorkplaceNL may also, at any time retain other contractors to perform work in relation to the Services or any changes or additions to such Services. The Contractor is free to, and it is anticipated that the Contractor will, engage with other clientele in addition to its engagement herein with WorkplaceNL.

**8. Conflict of Interest** – The Contractor shall not provide Services if the Contractor is in a conflict of interest. The Contractor shall not permit any actual, possible or perceived conflict of interest between the interest of WorkplaceNL and/or its clients and the interest of the Contractor. The Contractor shall immediately disclose any such conflict of interest to WorkplaceNL in writing. WorkplaceNL shall, in its sole discretion, determine if an actual, possible or perceived conflict of interest exists and determine the appropriate course of action to be taken by WorkplaceNL and/or the

## STANDARD TERMS AND CONDITIONS

Contractor. WorkplaceNL's decision in this regard shall be final and conclusive.

The Contractor:

- (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 WorkplaceNL and/or WorkplaceNL's client, knowing that the decision might further its private interests;
- (c) shall not accept any communication, discount, allowance, payment, gift, or other benefit that is connected, directly or indirectly, with the performance of any Services, 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 Services.

**9. Confidentiality** - All data and information of or concerning WorkplaceNL, WorkplaceNL clients, or of third parties to whom WorkplaceNL owes a duty of confidence, obtained by the Contractor, its employees, officers, associates, and/or approved sub-contractors, is:

- (a) to be treated as confidential;
- (b) to be used only to supply or perform Services to WorkplaceNL pursuant to this Agreement;
- (c) not to be reproduced or disclosed to anyone other than WorkplaceNL personnel as required in the performance of this Agreement;
- (d) not to be removed from the offices of WorkplaceNL without prior written consent of WorkplaceNL;
- (e) to be delivered to WorkplaceNL without cost forthwith upon demand, including all copies and records of same; and
- (f) to be protected by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, disposal, and disaster.

Nothing in the Agreement will prohibit or limit either Party's use or disclosure of information (including, but not limited to, ideas, concepts, knowledge, techniques, and methodologies) which is:

- (a) previously known to it without an obligation of confidence;
- (b) independently developed by or for it;
- (c) acquired by it from a third party which is not under an obligation of confidence with respect to such information; or
- (d) required by law. In the case of a disclosure required by law, the Contractor shall notify WorkplaceNL in writing prior to the disclosure to provide an opportunity to restrain the disclosure.

The Contractor will notify WorkplaceNL both verbally and in writing in the event of any unauthorized access to or disclosure of data or information.

The Contractor acknowledges that WorkplaceNL is bound by the terms of the *Workplace Health, Safety and Compensation Act*, RSNL 1990, c. W-11, as amended (the "Act"), the *Access to Information and Protection of Privacy Act*, 2015, SNL 2015, c. A-1.2, as amended ("ATIPPA"), the *Management of Information Act*, SNL 2005, c. M-1.01, as amended, the *Privacy Act*, RSNL 1990, c. P-22, as amended, and the *Personal Health Information Act*, SNL 2008, c. P-7.01, as amended, and agrees to abide strictly by the terms of these and any other applicable laws and professional standards respecting the collection, use and disclosure of data or information that the Contractor, its employees, officers, associates, and/or approved sub-contractors, could become exposed to directly or indirectly during the performance of Services. WorkplaceNL may be compelled to disclose data or information pursuant to ATIPPA.

The Contractor shall observe all requirements, standards and protocols of WorkplaceNL, relating to confidentiality, conflict of interest, and collection, storage, transfer, copying, modification, use, disclosure and disposition of information. The Contractor shall comply with the provisions of the attached "Declaration of Confidentiality/Conflict of Interest" and shall provide to WorkplaceNL executed copies of the said Declaration of Confidentiality/Conflict of Interest by the Contractor and all of the Contractor's employees, officers, associates, and/or approved sub-

contractors who will perform Services under the Agreement prior to the provision of Services.

Without limiting the generality of the foregoing, the Contractor acknowledges that WorkplaceNL shall have the right to obtain injunctive relief for violation of the terms of the clause. All those carrying out this Agreement on the Contractor's behalf are subject to this Agreement and may be liable to suit by WorkplaceNL for breaching this clause.

When deemed appropriate by WorkplaceNL, in its sole discretion, WorkplaceNL may also require the Contractor and its employees, officers, associates, and/or approved sub-contractors to comply with the WorkplaceNL Confidentiality Schedule. The Contractor must initial the WorkplaceNL Confidentiality Schedule which will form part and parcel of this Agreement.

**10. Ownership of Information** - 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 Contractor 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 WorkplaceNL and the contents thereof are privileged and confidential. Nothing in the Agreement shall give the Contractor 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 Contractor pursuant to the terms of the Agreement. The Contractor acknowledges that WorkplaceNL's right to this information shall at all times be paramount to any rights of the Contractor, at law or in equity, and that the Contractor's remedies against WorkplaceNL for WorkplaceNL's breaches under the Agreement do not include the right to deprive WorkplaceNL of access to WorkplaceNL's information in the Contractor's possession.

**11. Access to Information** - WorkplaceNL is subject to the ATIPPA and consequently the public has a right of access to WorkplaceNL's records. WorkplaceNL shall not be liable for any claims, costs, losses or damages experienced by the Contractor as a result of WorkplaceNL's release of information to another party pursuant to the provisions of ATIPPA or due to any other legal requirements.

**12. Warranty & Liability** - The Contractor represents, warrants and covenants that:

- (a) the information contained in its bid, proposal or quote is true and accurate;
- (b) all equipment supplied meets and is operated in accordance with the manufacturer's specifications and applicable regulatory requirements;
- (c) all Services provided are free from any defects in design, materials and workmanship, and that the Services fully comply with specifications and are suitable and fit for its intended purpose;
- (d) the supply of Services will not infringe any patent, trademark or copyright;
- (e) the Contractor provides good and clear title to the Services to WorkplaceNL;
- (f) the Contractor, its employees, officers, associates and approved subcontractors have the necessary skills, expertise, materials and experience; are qualified in the safe work procedures and operations of equipment; and shall provide and perform the Services in accordance with the provisions of this Agreement;
- (g) the Contractor shall provide and perform the Services in accordance with all applicable law and professional standards, and in a skilful, safe, efficient and professional manner satisfactory to WorkplaceNL;
- (h) the Contractor, its employees, officers, associates and approved subcontractors shall comply with all safety and security rules and workplace policies and procedures in effect from time to time while using or accessing WorkplaceNL's premises, assets, and/or resources;

## STANDARD TERMS AND CONDITIONS

- (i) the Contractor, its employees, officers, associates, and/or approved sub-contractors will not commence work while under the influence of alcohol, marijuana or illegal drugs;
- (j) the Contractor, its employees, officers, associates, and/or approved sub-contractors shall comply with the *Occupational Health and Safety Act*, R.S.N.L. 1990, c. O-3, and the Regulations thereto, as amended; and
- (k) if the Contractor is carrying on an undertaking in the Province of Newfoundland and Labrador, the Contractor will during the term of this Agreement continue to be registered and authorized to carry on business in compliance with the laws of the Province of Newfoundland and Labrador.

The Contractor shall supply all labour, materials, and supervision to complete the Services in accordance with the Agreement. The Contractor shall obtain all permits and licences, pay such fees, and give all notices necessary for the lawful performance of the Services. Except as otherwise specifically stated in this Agreement, all facilities and equipment required for the provision of the Services shall be provided by the Contractor and shall remain the property and responsibility of the Contractor.

The Contractor is fully and solely responsible for the actions of the Contractor and its employees, officers, associates, and/or approved sub-contractors in performance of the Services and to ensure compliance with this Agreement. WorkplaceNL's approval of employees, officers, associates, or subcontractors does not relieve the Contractor of the Contractor's responsibilities under this Agreement.

**13. Indemnity** - The Contractor shall indemnify and hold harmless WorkplaceNL from and against all claims, actions, losses, expenses, costs and direct damages of every nature and kind whatsoever which WorkplaceNL or its employees, officers, associates, or agents may suffer where the same are based upon or arise out of anything done or omitted to be done by the Contractor or its employees, officers, associates, and/or approved sub-contractors.

**14. Insurance** - The Contractor shall, at its own expense and without limiting its liability herein, insure its operations under a contract of General Liability Insurance, with an insurer licensed in Newfoundland and Labrador, in an amount not less than Two Million Dollars (\$2,000,000) per occurrence, with an annual general aggregate, if any, of not less than Four Million Dollars (\$4,000,000) for each of its locations, insuring against any and all bodily injury, personal injury and property damage including loss of use thereof. Such insurance shall include blanket contractual liability and shall be in effect for the duration of the Agreement and any extensions or renewals. The deductibles applicable to the insurance required shall not exceed Five Thousand Dollars (\$5,000) per occurrence.

Certificates of insurance shall be provided to WorkplaceNL prior to the provision of Services under this Agreement and within thirty (30) days of any insurance renewal. All insurance called for under this Agreement shall be endorsed to provide WorkplaceNL with thirty (30) days advance written notice of cancellation, failure to renew or material change (material defined as any change restricting or reducing required coverage). WorkplaceNL may, at any time, request certified true copies of the policies and they shall be provided within fourteen (14) working days of the request. All insurance called for under this Agreement shall be primary insurance and shall not require the pro rata sharing of any loss by WorkplaceNL or any insurer of WorkplaceNL.

**15. Good Standing & Safety** – If the Contractor is engaged in, about or in connection with an industry in the province of Newfoundland and Labrador under the *Act*, prior to commencing provision of Services and during the term of this Agreement, the Contractor and any approved sub-contractors must be registered as an employer or have independent operator coverage under the *Act*, must be in good standing with WorkplaceNL, and shall comply with the *Act* and the Regulations thereto, as amended. The Contractor authorizes WorkplaceNL to obtain confirmation of the same.

### **16. Performance Standards**

Time is of the essence in the performance of the Agreement.

WorkplaceNL may notify the Contractor of any deficiencies, and in the event that the Contractor has failed to rectify the deficiencies within the time allocated by WorkplaceNL, WorkplaceNL may, at its discretion, obtain the Services, complete the work or rectify the deficiencies to its satisfaction and shall be entitled to deduct and set-off the costs of such work or rectification from any moneys due to the Contractor.

WorkplaceNL shall not be obligated to make any payments for Services rendered by the Contractor to remedy errors or omissions for which, in the reasonable opinion of WorkplaceNL, the Contractor is responsible.

**17. Inspection** – All Services are subject to final inspection and acceptance by WorkplaceNL. Services failing to conform to the specifications of this Agreement will be held at the Contractor's risk and may be returned to the Contractor. If so returned, all related costs are the responsibility of the Contractor. Services failing to conform to specifications of the Agreement may result in WorkplaceNL making adjustments to invoices.

**18. Non-waiver** – Mere acceptance of shipment of the Services specified and any inspection thereto by WorkplaceNL, shall not alter, limit or affect the obligations of the Contractor or the rights of WorkplaceNL herein or at law.

**19. Title & Risk** - Title to Services shall not pass to WorkplaceNL until delivered to a WorkplaceNL location and until such time shall be at the sole risk of the Contractor.

**20. Canadian Standards Association (CSA) Approval** – The Contractor shall ensure that all electrical, materials, hardware and assemblies supplied under the Agreement are fully CSA approved.

**21. Workplace Hazardous Materials Information System (WHIMIS)** – When dealing with materials designated as hazardous, the Contractor shall ensure all goods and materials are provided with appropriate labels and material safety data sheets where required by WHIMIS legislation.

**22. Changes** – WorkplaceNL, without invalidating the Agreement, may alter, add to or delete from the work, the Agreement sum being adjusted accordingly provided the Contractor has agreed to the same in writing. All such changes shall be governed by the conditions of the original Agreement. Any changes and unforeseen extras must be documented by change orders and approved by WorkplaceNL prior to proceeding. Supplementary invoices not supported by change orders will not be honored. The Contractor must notify WorkplaceNL of changes in the Contractor's policy or organization that affects its ability to meet its obligations outlined in the Agreement.

**23. Termination** - This Agreement may be terminated at any time by the mutual consent of the Parties.

WorkplaceNL may terminate this Agreement at any time, without cause, by giving thirty (30) calendar days written notice to the Contractor. WorkplaceNL shall not be subject to a claim for damages by the Contractor for any such termination.

WorkplaceNL may, in addition to and not in lieu of any other right or remedy available, at law or in equity, on the terms outlined in this paragraph terminate this Agreement at any time without notice, for cause and without compensation to the Contractor should:

- (a) the Contractor, its employees, officers, associates, and/or approved sub-contractors be in breach of any provision of this Agreement;
- (b) WorkplaceNL determine, in its sole discretion, that the Services are being provided in a manner inconsistent with this Agreement;
- (c) the Contractor fail to make adequate progress in the performance of the Agreement, or alternatively, an indication by the Contractor that

## STANDARD TERMS AND CONDITIONS

they cannot or will not meet any or all of the requirements of the Agreement;

- (d) WorkplaceNL determine, in its sole discretion, that the invoicing practices of the Contractor are unsatisfactory or improper; or
- (e) the Contractor becomes insolvent or bankrupt or makes an assignment for the benefit of creditors or receivers appointed of its business, or a voluntarily or involuntary petition in bankruptcy is filed, or proceedings for the reorganization or winding up of the Contractor is instituted.

WorkplaceNL may terminate the Agreement immediately or may provide the Contractor with written notice of the above noted default and provide the Contractor an opportunity to rectify the said default within 72 hours. If the default is not rectified to the satisfaction of WorkplaceNL within 72 hours, then WorkplaceNL can proceed to terminate this Agreement, for cause, without further notice.

Where this Agreement is terminated, either by mutual consent or otherwise, the Contractor shall, without any further fee or cost whatsoever to WorkplaceNL:

- (a) upon the effective date of termination of this Agreement cause all Services being provided under this Agreement to be discontinued, unless WorkplaceNL has provided its express, written consent to the continuation of Services; and
- (b) within thirty (30) working days of the effective date of termination, provide all work product and all final invoices for Services completed to the date of termination pursuant to this Agreement. The obligations of WorkplaceNL to make payment to the Contractor shall continue for Services performed up to and including the date of termination but do not continue beyond that time period. If the Agreement stipulates a lump sum payment, any such payment for Services performed shall be valued proportionately to the value of the contract.

**24. Force Majeure** – Neither the Contractor nor WorkplaceNL shall be deemed to be in default of its obligations under this Agreement, if, and for as long as, any delay or non-performance is directly or indirectly caused by or results from events of Force Majeure beyond the control of that party. These events shall include, but not be limited to, strikes, civil disturbances, wars, fires, acts of God, and acts of any government or branch or agency thereof.

Force Majeure shall not include the following:

- (a) late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences; and
- (b) late performance by a sub-contractor(s) unless the delay arises out of a Force Majeure occurrence in accordance with this clause.

**25. Records & Audit** - The Contractor shall maintain appropriate records and files in relation to the Services provided under this Agreement for seven (7) years, at which time the Contractor will destroy any and all copies and versions of the said records and files. The Contractor will retain copies of the records and files only to the extent required by law and applicable professional standards. The Contractor shall provide a copy of the said records and files within seven (7) working days of receipt of a written request from WorkplaceNL.

In addition to any other rights of inspection or audit that WorkplaceNL may have under this Agreement or under statute, WorkplaceNL or a person authorized by WorkplaceNL, may, at any reasonable time and upon reasonable notice to the Contractor, inspect, audit and evaluate the Contractor's compliance with the terms of this Agreement, including but not

limited to compliance with Service and invoice obligations, privacy, security and information management, under this Agreement through any means including but not limited to the following means:

- (a) on-site visit and examination of records and files, and inspection of electronic devices upon WorkplaceNL's request,
- (b) observation of the performance of the Services in progress,
- (c) full access to records and files and the ability to make copies of the record, and
- (d) oral or written communication pertaining to Services with any clients, employees, associates, directors, officers, agents and approved sub-contractors of the Contractor.

Notwithstanding any other provision of this Agreement, WorkplaceNL shall not be responsible for the Contractor's costs or fees associated with compliance with this section.

**26. General** - The paragraph headings shall not be considered in interpreting the text.

**27. Invalid or Unenforceable Provision** - If any term or provision of this Agreement is found to be illegal, invalid, or unenforceable, notwithstanding this Agreement may, at WorkplaceNL's option, remain in full force and effect and such term or provision shall be deemed removed from this Agreement and the remaining provisions form a valid agreement.

**28. Waiver** - Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the party giving it, and only in the specific instance and for the specific purpose for which it has been given. Failure on the part of any party to exercise, and/or delay in exercising, any right under this Agreement shall not operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

**29. Governing Law** - This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Newfoundland and Labrador, and the forum for all disputes shall be the Courts of the Province of Newfoundland and Labrador.

**30. Survival of Obligations** – All the obligations of the Contractor under this Agreement, including but not limited to independent contractor status, confidentiality, warranty & liability, records & audit, termination, indemnification and insurance provisions, shall survive the termination or completion of this Agreement.

**31. Promotion** - The Contractor shall not associate WorkplaceNL in any advertising or other promotional materials or messages associated with it without WorkplaceNL's prior written consent. The Contractor, its employees, officers, associates and/or approved sub-contractors shall not approach WorkplaceNL personnel, to in any way promote the business of the Contractor.

**32. Enurement** – Subject to the express limitations set out in the Agreement, this Agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the Parties.

**33. Agreement Amendment** - The Agreement may only be modified by a written agreement signed by persons duly authorized by the Contractor and WorkplaceNL.

## STANDARD TERMS AND CONDITIONS

### DECLARATION OF CONFIDENTIALITY/CONFLICT OF INTEREST

I, \_\_\_\_\_, of \_\_\_\_\_ do declare that:  
(Print name of individual) (Print name of contractor)

1. I am either a) an owner of the Contractor; b) an employee of the Contractor, c) an independent contractor or d) I have been determined to be an employee of the Contractor by WorkplaceNL pursuant to the *Workplace Health, Safety and Compensation Act*. I am not an employee of WorkplaceNL.
2. I will perform Services pursuant to the Agreement between the Contractor and WorkplaceNL in relation to WorkplaceNL and/or in relation to clients of WorkplaceNL. All data and information received or obtained in the course of performing the Services, either directly or indirectly, is confidential information. I shall conduct myself in accordance with applicable privacy legislation and professional standards and I shall keep in confidence any such confidential information. I shall not collect, use, or retain any such confidential information whatsoever except to the extent necessary to perform Services. I will protect this information from disclosure to any other person or other entity whatsoever.
3. I acknowledge that I have read and understand the WorkplaceNL Standard Terms and Conditions and any applicable WorkplaceNL Confidentiality Schedule and I, hereby, agree to comply with all terms and conditions outlined therein.
4. Upon termination of my employment with the Contractor or when required, I shall return to the Contractor any and all confidential information obtained in the course of performing Services which is in my possession and/or control. When required, I shall return to WorkplaceNL any and all confidential information obtained in the course of performing Services which is in my possession and/or control. I will retain copies of confidential information only to the extent required by law and applicable professional standards.
5. I will not permit any actual, possible or perceived conflict of interest between the interests of WorkplaceNL and/or its clients and the interests of either myself or the Contractor, and will immediately disclose any such conflict to WorkplaceNL in writing.
6. I agree:
  - (a) to conduct all duties related to Services with impartiality;
  - (b) that I shall not influence, seek to influence, or otherwise take part in a decision related to WorkplaceNL and/or its client, knowing that the decision might further my private interests or the interests of the Contractor;
  - (c) that I shall not accept any communication, discount, allowance, payment, gift, or other benefit that is connected, directly or indirectly, with the performance of Services, that causes, or would appear to cause, a conflict of interest; and
  - (d) that I 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 Services.
7. I acknowledge having read, understood and obtained receipt of a copy of this declaration.

SWORN/AFFIRMED at \_\_\_\_\_,  
in the Province of Newfoundland and Labrador, this  
\_\_\_\_\_ day of \_\_\_\_\_, 2018, before me:

\_\_\_\_\_  
Commissioner of Oaths

\_\_\_\_\_  
Signature of Individual

## CONFIDENTIALITY SCHEDULE

1. For the purposes of this Schedule, references to Contractor(s) shall include the Contractor, its employees, officers, associates, and/or approved sub-contractors and employees, officers, and associates of approved sub-contractors.
2. For the purposes of this Agreement “Confidential Information” means:
  - (a) all communications and instructions from WorkplaceNL respecting the Services;
  - (b) all information acquired by the Contractor respecting policy development, consideration and development, business decisions, internal deliberations, discussions and considerations and any other aspect of the decision-making process of WorkplaceNL;
  - (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 WorkplaceNL, WorkplaceNL employees, injured workers or employers, disclosed directly or indirectly to the Contractor during the performance of the Services or in any way related thereto;
  - (d) all personal information, as defined under the *Access to Information and Protection of Privacy Act, 2015*, SNL 2015 c. A-1.2, as amended and under the *Personal Health Information Act*, SNL 2008, c. P-7.01, as amended, which is, directly or indirectly, disclosed to or collected by the Contractor 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 Contractor; and
  - (f) Confidential Information shall not include any information which:
    - (i) at the time such information was provided to the Contractor was or thereafter became part of the public domain through no act or omission of the Contractor or its representatives; or
    - (ii) is information which the Contractor can show possession of prior to the date of the Agreement and which was received or developed by the Contractor free of obligations of confidentiality to WorkplaceNL.
3. The Contractor shall not directly or indirectly collect Confidential Information in the performance of the Services unless the collection is necessary in order to carry out the duties associated with the Agreement.
4. The Contractor shall only use the Confidential Information acquired in the performance of the Services for the purposes specified in the Agreement, and shall not permit the use of the Confidential Information for any other purposes.
5. The Contractor shall treat all Confidential Information acquired by the Contractor in the performance of the Services as privileged and confidential and shall not directly or indirectly disclose the same to any person or persons at any time without the express written approval of WorkplaceNL, unless required to do so by law. In the event that such disclosure is required, the Contractor shall notify WorkplaceNL prior to the disclosure to provide an opportunity to restrain the disclosure.
6. Upon request by WorkplaceNL, the Contractor shall provide to WorkplaceNL and solely to WorkplaceNL all Confidential Information acquired during the performance of the Services, or shall, at the request of WorkplaceNL, destroy any and all copies and versions of the Confidential Information in the possession and/or control of the Contractor and shall certify the destruction of same to WorkplaceNL. The Contractor shall retain copies of Confidential Information only to the extent required by law and applicable professional standards.
7. To assist and further ensure compliance with the Agreement, the Contractor shall have in place and follow the appropriate systems, processes, protocols and policies to maintain the physical and electronic security of all Confidential Information, which are acceptable to WorkplaceNL and consistent with all applicable privacy legislation, including but not restricted to the following:
  - (a) at a minimum, using the same level of physical and electronic security as the Contractor employs to avoid disclosure or dissemination of the Contractor’s own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of its employees, officers, associates, and/or approved sub-contractors other than those who are required to have access to properly perform the Services under the Agreement;
  - (b) establish and maintain security policies, standards and safeguards to prevent unauthorized access, collection, use, disclosure or disposal of the Confidential Information;
  - (c) prior to execution of the agreement, provide to WorkplaceNL copies of its policies and standards in relation to confidentiality, conflict of interest, and collection, storage, transfer, copying, modification, use, disclosure, disposition, and access of information;
  - (d) advise WorkplaceNL of any changes in its security systems, procedures, practices, policies and standards that may affect the Confidential Information and seek WorkplaceNL’s written consent prior to such changes;
  - (e) complete training relating to the *Personal Health Information Act*, SNL 2008, c.P-7.01, and regulations, as amended which WorkplaceNL deems necessary, in WorkplaceNL’s sole discretion; and
  - (f) satisfaction of the foregoing commitments includes, but is not restricted to, compliance with the requirements set out in the Protocols for Security of WorkplaceNL Information on Information Technology Assets of Contractors (hereinafter “Protocols”) which forms part and parcel of this Schedule, unless otherwise advised by WorkplaceNL, and this includes:
    - (i) complying with all alterations or updates of the Protocols as may be provided to the Contractor from time to time; and
    - (ii) adhering to any additional instructions (including oral instructions) from WorkplaceNL as it relates to the subject matter contained in the Protocols and this Schedule.
8. The Contractor shall only disclose Confidential Information to persons other than its approved employees, officers, associates, and/or sub-contractors with the prior written consent of WorkplaceNL, and then only to those persons who need to know the information in order to carry out the duties associated with the Agreement and only after confirming that such persons agree to comply with the provisions of the Agreement including the requirements set out in the Protocol by requiring such persons to execute the Declaration of Confidentiality/Conflict of Interest attached to the Agreement.
9. The Contractor shall:
  - (a) notify WorkplaceNL promptly of any unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information in the possession of the Contractor, 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 Contractor;
  - (b) promptly furnish to WorkplaceNL full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist WorkplaceNL 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 WorkplaceNL in any litigation and investigation against third parties deemed necessary by WorkplaceNL;
  - (d) promptly use all reasonable efforts to mitigate the damages related to the unauthorized use, possession, or knowledge and 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 Access to Information and Protection of Privacy Office website at: [http://www.atipp.gov.nl.ca/info/ Privacy-Breach-Protocol.pdf](http://www.atipp.gov.nl.ca/info/Privacy-Breach-Protocol.pdf).

## CONFIDENTIALITY SCHEDULE

### Protocols for Security of WorkplaceNL Information on Information Technology Assets of Contractors

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The Contractor should confirm with WorkplaceNL whether the Contractor will be required to use information technology resources, including but not limited to computers, of WorkplaceNL in the conduct of the work under the Agreement. The following requirements apply where the Contractor will not be using such assets, but will instead have access to Confidential Information as defined in the Agreement, received from WorkplaceNL and will be storing, manipulating or accessing that Confidential Information on the Contractor'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 Contractor's Agreement or otherwise, the Contractor is not permitted to attach non-WorkplaceNL computers or other information technology systems to any WorkplaceNL network.
- Contractors 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.
- Contractors 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 must not be used as a method to transmit Confidential Information across public networks such as the Internet unless the e-mail and/or its attachments are encrypted or zipped in a secure manner.
- Where a Contractor will be granted access to WorkplaceNL computer network during the course of the work, in addition to the requirements noted above, the Contractor 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 Contractor and all employees, officers, associates, and/or approved sub-contractors of the Contractor, and it is the responsibility of the Contractor to ensure that all such employees, officers, associates, and/or approved sub-contractors are aware of these restrictions and are in compliance herewith.