

WorkplaceNL

Health | Safety | Compensation

2019-33-T

Standing Offer – Supply of Lexmark Cartridges

Issue Date: December 2, 2019

Closing Date: December 16, 2019 at 2:00pm (NL Time)

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1.1 INTENT

The Workplace Health, Safety and Compensation Commission (WorkplaceNL) invites submissions on a Standing Offer for the supply of toner cartridges for a one (1) year term. WorkplaceNL will, in its sole discretion, have an option to extend the contract for an additional two (2), one (1) year terms 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).

1.3 SCOPE OF WORK

1.3.1 Specifications

Part Number	Description	Quantity (Approximate for all offices)
E250A11A	Lexmark E250 DN	2
T650H11A	Lexmark T654DN/T650/T652	24
52D1X00	Lexmark MS811DN/MS812DN	79
E260A11A	Lexmark E260DN	15
58D1H00	Lexmark MS821DN	12
50F1H00	Lexmark MS312DN	2

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1.3.2 Quantities listed in the specifications above are estimates for tendering purposes and are approximates only. WorkplaceNL reserves the right to increase or decrease these amounts as circumstances may require during the contract term. There are no minimum or maximum guarantee made and order quantities will vary depending on the requirement.

1.3.3 The successful bidder must ship cartridges requested by the WorkplaceNL’s regional offices (Grand Falls and Corner Brook) directly to the regional office and the bidder’s price must include all delivery and shipping costs. Below is a summary of cartridges for the regional offices. This is for information purposes only.

Regional Office	Description	Quantity
Grand Falls	Lexmark MS811DN (Part # 52D1X00)	3
Corner Brook	Lexmark MS811DN (Part # 52D1X00)	3
Corner Brook	Lexmark T654DN (Part # T650H11A)	15
Grand Falls	Lexmark T654DN (Part # T650H11A)	10

1.4 QUALITY OF GOODS

1.4.1 Unless otherwise stated in the Tender, all material included in the bid must be new, first quality goods. Used, refurbished, second, obsolete, discontinued or demonstrator items must only be proposed if the Tender specifically request or otherwise states that such goods will be allowed.

1.4.2 Any damaged or defective toners will be returned to the successful bidder at no cost to WorkplaceNL and no restocking charge will be considered. All costs for restocking will be the responsibility of the successful bidder.

1.4.3 Where applicable, the end user must be provided with complete operation manuals, warranty registration forms, user licenses/authentications and/or other associated documentation normally provided by the manufacturer, reseller, installer and/or consultants.

1.4.4 The bidder warrants that there are no patents, trademarks or other rights restricting the use, repair or replacement of the goods or services furnished or any part thereof. The bidder agrees to indemnify and save harmless WorkplaceNL from and against all claims filed or prosecuted in any manner because of such use, repair, or replacement of the goods or services being a violation of any patent, trademark, or other right.

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SECTION 2 – INSTRUCTIONS TO BIDDERS
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2.1 QUALIFICATIONS AND EXPERIENCE

The successful bidder must have a proven record of providing the services tendered with a minimum of five (5) years' experience.

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.workplaceni.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, 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 December 6, 2019 by email to:

Carla Reid
E-mail Address: carla.reid@workplaceni.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.

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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 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

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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 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** The successful bidder shall comply with the WorkplaceNL Standard Terms and Conditions attached hereto. To be eligible to provide services to WorkplaceNL, the successful bidder shall initial all 5 pages of the WorkplaceNL Standard Terms and Conditions within the time frame established by WorkplaceNL.
- 2.7.2** Any awards made pursuant to this Tender process are subject to receipt by WorkplaceNL of the initialed WorkplaceNL Standard Terms.
- 2.7.3** Claims made by the bidder in the bid will constitute Contractual warranties.

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:

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Attention: Carla Reid
WorkplaceNL
146-148 Forest Road
P. O. Box 9000
St. John's, NL A1A 3B8

Bids must be received before 2:00 p.m. Newfoundland Time on Monday, December 16, 2019 at WorkplaceNL's St. John's office.

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 "C", 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.

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- 2.9.4** The bidder must describe the duration, type (e. g. on site, depot, ship-in or carry-in) and terms of the manufacturer’s warranty on all goods. If the bidder provides any additional/supplementary warranty coverage, the bidder must describe this as well.
- 2.9.5** If warranties can be upgraded or extended, the bidder must identify the upgrade costs separately. Do not include warranty upgrade or extension costs in the bid price unless the Tender specifically states that the upgrade is a mandatory requirement.
- 2.9.6** The bidder must acknowledge that they have read and understood any and all addenda in both the Appendix “C”, Check List and the Appendix “B”, Bid Form.
- 2.9.7** Shipping, cartage, lading, insurance and handling charges must be included in the total price. If these charges have not been stated specifically, it will be assumed that they have been included in the bid price.
- 2.9.8** By submitting a bid, the bidder guarantees that, unless the Tender specifies otherwise, all components required to make the required equipment or system operable or to deliver the required services have been included in the bid, or will be provided at no additional charge to WorkplaceNL.
- 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, Carla Reid, 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.

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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 public opening.
- 2.10.3** 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.
- 2.10.4** The bid shall remain open for acceptance and is irrevocable for a period of ninety (90) days after the Tender closing date.
- 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.

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- 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** WorkplaceNL reserves the right to determine equivalency, and may require demonstrator or sample items in order to be able to evaluate the items proposed. WorkplaceNL will be the sole judge of equivalence.
- 2.10.11** Where applicable, all equipment must be certified by the appropriate regulatory agencies and/or must be approved by the appropriate Provincial agency.
- 2.10.12** Upon acceptance by WorkplaceNL, a written bid acceptance will be forwarded to the successful bidder.
- 2.10.13** 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 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.

SECTION 3: GENERAL

- 3.1** Payment of invoices will be through direct deposit. The successful bidder is required to meet WorkplaceNL's billing and accounting requirements. Invoices must be legible and clearly labeled with the successful bidder's invoice number. The bidder must acknowledge in Appendix "B" 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”

PRODUCT INFORMATION FORM

Product Description	Qty	Unit Cost	Extended Cost	HST	TOTAL COST
Lexmark E250 (Part Number - E250A11A)	2				
Lexmark T654DN/T650/T652 (Part Number - T650H11A)	24				
Lexmark MS811DN/MS812DN (Part Number - 52D1X00)	79				
Lexmark E260DN (Part Number - E260A11A)	15				
Lexmark MS821DN (Part Number – 58D1H00)	12				
Lexmark X364DN (Part Number - X264H21G)	2				

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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. : _____

Direct Deposit **Agree**_____

Price Protection Period for 90 days **Agree**_____

Tender documents are completely read and understood **Agree**_____

I hereby acknowledge that I have read and understand any and all addenda **Agree**_____

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APPENDIX “C”

Check List to be completed and included with Bid

Product Information Form included (Appendix “A”)	YES <input type="checkbox"/>	NO <input type="checkbox"/>
Bid form completed, signed and included (Appendix “B”)	YES <input type="checkbox"/>	NO <input type="checkbox"/>

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

- Certificates of insurance as per Article 14 of WorkplaceNL Standard Terms and Conditions;
and
- Initialed WorkplaceNL Standard Terms and Conditions

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APPENDIX "D"

STANDARD TERMS AND CONDITIONS

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 sub-contractors, 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 sub-contractors 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 the 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 sub-contract 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 sub-

contractors 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 seven (7) 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

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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 offer, solicit, receive or 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 and 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 sub-contractors 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 sub-contractors 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;

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- (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**, RSNL 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 sub-contractors 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 and 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 and 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 (WHMIS) – 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 WHMIS 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

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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.

The Contractor shall not be entitled to any other payment in respect of such termination including, without prejudice to the generality of the foregoing, any payment for any consequential loss or damage or loss of profits arising from termination of this Agreement or in any other way related thereto.

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 and 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 and liability, records and 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.

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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 _____, 2019, before me:

Commissioner of Oaths

Signature of Individual