



Request for Qualifications (RFQ): 2021-04-Q

Permanent Functional Impairment (PFI) Assessments of Injured Workers

Issue Date: April 27, 2021

RFQ Closing Date: May 24, 2021 before 2:00 p.m. (NL Time)

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SECTION 1 - OVERVIEW AND SCOPE OF SERVICES

1.1 Request for Proposal Summary

The Workplace Health, Safety and Compensation Commission ("WorkplaceNL") is seeking to establish a list of qualified physicians to conduct Permanent Functional Impairment (PFI) assessments of Injured Workers, at the request of WorkplaceNL, in several geographic regions across the province of Newfoundland and Labrador. The intent is to enter into an agreement with all Applicants who meet the mandatory criteria.

The term of the agreement will be for a period of three (3) years. WorkplaceNL will, in its sole discretion, have an option to extend the agreement for an additional term of two (2) years on the same terms and conditions. Should needs be identified or conditions change during the original agreement, the needs and/or conditions may be addressed in the Extension Agreement but pricing for the items identified in the original agreement will remain firm.

If you are interested in providing this service for WorkplaceNL, please submit your completed proposal before the RFQ Closing Date. Please review the enclosed documents for complete instructions and an explanation of the process.

1.2 Background

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).

PFI Assessments are based upon a defined process for the assessment of an Injured Worker's impairment resulting from their work-related injury as referenced in Policy EN-01

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Permanent Functional Impairment. Please refer to Appendix “B” for Policy EN-01 and Appendix “C” Permanent Functional Impairment Rating Schedule. The policy and rating schedule are also available in the Policies and Procedures section of WorkplaceNL’s website www.workplacenl.ca.

1.3 Scope of Work

1.3.1 PFI Assessment Referral from WorkplaceNL

The Case Manager initiates the referral for a PFI Assessment usually at a time when the degree of permanent impairment can be properly determined, i.e. at the point of maximum medical improvement when a medical plateau of the compensable condition has been reached.

The decision to make a referral for a PFI Assessment rests with the Case Manager, or other management or staff member designated by WorkplaceNL.

Referrals are forwarded based upon a rotational and geographic order. The PFI Assessment referral will consist of:

- the PFI referral
- all relevant medical, functional, and diagnostic information and psychological assessments previously conducted and in the possession of WorkplaceNL as part of the Injured Worker’s file

The Service Provider is responsible to review all referral documentation prior to commencing the PFI Assessment.

1.3.2 Acceptance and Denial of Referral and Time Frames

Upon receipt of the PFI Assessment referral, Service Providers are required to schedule and conduct the PFI Assessment of the Injured Worker within fifteen (15) working days of the receipt of the referral documentation. Setting Assessment appointments will be coordinated by WorkplaceNL through the Service Provider in consultation with the Injured Worker. A report dictated into WorkplaceNL’s digital dictation system must occur within one calendar week of the date of the PFI Assessment.

If the Service Provider is unable to complete the PFI Assessment of the Injured Worker within the stated time frames, they are required to notify WorkplaceNL within three (3) business days and the referral will be re-issued to another Service Provider. Any files which have been provided to the Service Provider must be returned to WorkplaceNL within two (2) calendar weeks of the referral cancellation.

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Upon receipt of a referral for an Injured Worker with whom the Service Provider perceives a potential conflict of interest, the Service Provider is required to contact WorkplaceNL to disclose the conflict. At the discretion of WorkplaceNL, the referral may be re-issued to another Service Provider. In cases where the Service Provider identifies the conflict after the file has been provided by WorkplaceNL, the Service Provider is required to return the file and any copies thereof to WorkplaceNL in its entirety.

1.3.3 Communication with the Injured Worker

The PFI Assessment involves a thorough analysis of an Injured Worker's current physical condition and impairment level, a significant component of this process is communication with the Injured Worker during the process. The Service Provider must ensure that the Injured Worker understands the reason for the referral, the process of the Assessment and the next steps regarding the PFI Award process.

1.3.4 PFI Assessment

The purpose of the PFI Assessment is to rate the worker's non-economic loss as a result of the compensable injury(s) based on measurable loss of bodily function.

- Process of the PFI Assessment: At the beginning of the PFI Assessment session, the Service Provider must explain the PFI Assessment process to the Injured Worker as well as the reason for the referral. It is important for the Injured Worker to understand the process and have any questions that he or she may have about the Assessment answered.
- History: The Service Provider must review the medical documentation from the Injured Worker's file prior to the PFI Assessment. In the PFI Assessment the Service Provider will record or confirm a detailed history of the Injured Worker in accordance with accepted medical practice for same.
- Physical: A physical examination will be conducted in accordance with the American Board of Independent Medical Examiners (ABIME) standards and accepted medical practice for same, utilizing the most recent edition of the Guides to the Evaluation of Permanent Impairment.
- Exit Comments: The Service Provider must advise the Injured Worker that a report will be completed and that copies will be sent to WorkplaceNL. The Service Provider must not verbally disclose the "results" of the PFI Assessment (e.g. make any reference to possible impairment percentage minimums or maximums or dollar value of the potential PFI Award) to the Injured Worker during the PFI Assessment appointment.

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1.3.5 Delays

The Service Provider is required to contact WorkplaceNL if there are difficulties with the Injured Worker attending appointments (e.g. Injured Worker cancels the appointment or fails to show up at the scheduled appointment time, etc.).

1.3.6 PFI Assessment Report

PFI Assessment results will be documented using the reporting format established by WorkplaceNL. Please refer to Appendix “D” for PFI Assessment Reporting Format.

Where WorkplaceNL determines, in its sole discretion, that:

- a) a PFI Assessment does not fully address the PFI rating, (e.g. issues such as proportionment or combined values have not been fully addressed), and
- b) the Service Provider was in receipt of the complete PFI referral information necessary to address the issues, the Service Provider will provide WorkplaceNL with a written PFI addendum, within two (2) calendar weeks of notification by WorkplaceNL that the PFI Assessment does not fully address the PFI rating, addressing the outstanding issue at no additional charge to WorkplaceNL.

1.3.7 Internal Resources

In addition to the Case Managers, who are the decision makers on the claim, WorkplaceNL currently has medical (physicians), physiotherapy, occupational therapy, chiropractic and audiology consultants who are available as needed. The Service Providers will have reasonable and timely telephone access to these resources, as appropriate.

1.3.8 Rotation of Referrals

Referrals will be made on a rotational basis among Service Providers within the specified geographic region.

1.3.9 Service Regions

PFI services will be structured around the geographical regions shown in the chart below. Applicants may submit a proposal for one or more regions. However, qualified Applicants may be chosen from any geographic location in the province based on the geographic distribution of Injured Workers.

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Region	Geographic Description
Avalon Peninsula A	St. John's
Avalon Peninsula B	Ferryland, St. Mary's, Argentia
Burin Peninsula	Burin Peninsula
Clarenville	Clarenville, Bonavista South
Gander	Gander, Bonavista North
Grand Falls-Windsor A	Grand Falls-Windsor, Botwood
Grand Falls-Windsor B	Springdale, Baie Verte
Labrador	Labrador
Northern Peninsula	Deer Lake, Northern Peninsula
Trinity Conception	Trinity Bay South, Conception Bay
Western NL A	Corner Brook, Stephenville
Western NL B	Port aux Basques

1.4 Mandatory Criteria

The successful Applicant(s) must meet the mandatory criteria and possess the necessary knowledge, skills and experience to supply the required service. The mandatory criteria are as follows:

- Applicants must provide the services of individuals who are physicians licensed with the College of Physicians and Surgeons of Newfoundland and Labrador and members of the Newfoundland and Labrador Medical Association.
- Applicants must provide the services of physicians who are Certified Independent Medical Examiners with the American Board of Independent Medical Examiners (ABIME) certified in the most recent edition of the Guides to the Evaluation of Permanent Impairment. If the ABIME certification is not complete at the time of submitting the proposal, the Applicant must provide confirmation that the physician(s) is in the process of obtaining ABIME certification, or demonstrate intent to obtain ABIME certification. The course must be successfully completed, and documentation of certification presented, prior to performing PFI services for WorkplaceNL.
- Applicants must have an appropriate facility, or access to an appropriate facility, in the geographic region for which they are applying. An appropriate facility is defined as having the following requirements;
 - (i) wheelchair and free parking immediately adjacent to the main entrance of the building,
 - (ii) wheelchair accessible entrance, reception area and examining room for conducting examinations, and

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- (iii) wheelchair accessible washroom

1.5 Fees

The \$600.00 fee per PFI Assessment includes review of the client's file, the PFI Assessment and the PFI Report.

SECTION 2 – INSTRUCTIONS TO APPLICANTS

2.1 Electronic Copy of this Document

WorkplaceNL reserves the right to modify the terms of the RFQ by issuance of addenda at any time prior to RFQ Closing Date.

It is the responsibility of the Applicants who retrieve or download this RFQ from WorkplaceNL's website (<http://www.workplacenl.ca>) or externally through the RFQ posting at www.merx.com to monitor the sites for any addendum to the RFQ issued up to and including the RFQ Closing Date.

It is the Applicant's responsibility to ensure that they have received a complete set of documents. By submitting a proposal, the Applicant verifies that they have received a complete set of RFQ documents including any and all addenda. All terms, conditions, and/or specifications stated or referenced in the RFQ are assumed to be accepted by the Applicant and incorporated in the proposal.

By submitting a proposal, the Applicant confirms that all components necessary to deliver the required services have been included in the proposal, or will be provided at no additional charge to WorkplaceNL.

Applicants who have obtained the RFQ electronically must not alter any portion of the document, with the exception of applying any addendum issued by WorkplaceNL.

2.2 RFQ Closing

The RFQ CLOSING DATE is:

MAY 24, 2021 BEFORE 2:00 PM NEWFOUNDLAND TIME

Applicants are required to submit and ensure proposals are received via electronic upload at www.merx.com

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Proposals will be opened publicly immediately following the RFQ closing in accordance with the Public Procurement Regulations, as amended. The names of all Applicants will be provided at the public opening. Applicants may email purchasing@workplacenl.ca to request a Webex meeting invite to attend the public opening. Applicants must include their name; email address; and tender number in the request. Meeting requests must be received by WorkplaceNL before 4:00 p.m. Newfoundland Time on May 20, 2021.

In the event that WorkplaceNL's St. John's office is closed due to poor weather conditions or other unscheduled closure, the RFQ Closing Date will be extended to the next business day before 2:00 p.m. Newfoundland Time.

2.3 Proposal Instructions

All proposals must be legible and complete and supply all information required in SECTION 4: RESPONSE REQUIREMENTS. Applicants are not required to return any sections of this document in their proposal.

All proposals must be received by WorkplaceNL in its entirety by the RFQ Closing Date. Proposals or any portion thereof, received after the RFQ Closing Date will not be accepted.

Applicants are solely responsible to ensure receipt of their proposal by WorkplaceNL in its entirety, in the manner and time prescribed. Applicants must submit their proposal via www.merx.com (see Appendix "A" – Electronic Proposal Submission Instructions).

Proposals must be signed by the Applicant or an authorized representative of the Applicant. If the Applicant is a corporation, the proposal must be signed by the authorized signing officer of the corporation submitting the proposal.

2.4 Proposal Conditions

2.4.1 Confidentiality and Ownership of Information

The procurement process is subject to the **Access to Information and Protection of Privacy Act, 2015**, SNL 2015 c. A-1.2, as amended (**ATIPPA**). The Applicant's proposal may be subject to disclosure under the **ATIPPA**. By submitting a proposal, the Applicant 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 proposal after the RFQ Closing Date. WorkplaceNL shall not be liable to any Applicant 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 Applicant as a result of disclosure pursuant to the **ATIPPA**.

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By submitting a proposal, the Applicant agrees that it has identified any specific information in its proposal 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 Applicant, 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.

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

2.4.2 No Claims By Applicant

By participating in the process outlined in this RFQ document, the Applicant consents to the procedures as described in this RFQ.

By submitting a proposal, each Applicant 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 proposal 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 proposal or otherwise breached or fundamentally breached the terms of this procurement.

2.5 Questions and Clarification

Any questions related to the RFQ must be directed in writing by email to purchasing@workplacenl.ca or through the RFQ posting on www.merx.com and received by WorkplaceNL before 4:00 PM Newfoundland Time on May 17, 2021.

All questions should include the Applicant's name and address, contact person's name, telephone number, and email address, and the reference to the specific section and page number of the RFQ in question. All email questions must include the RFQ number and title in the email subject line.

To the extent that WorkplaceNL considers that the answer to the question may assist in the preparation of a proposal, WorkplaceNL will post an addendum on its website and through the RFQ posting on www.merx.com which will be part of the RFQ. WorkplaceNL may not answer a question where WorkplaceNL considers the information requested is not required to prepare a proposal, or where the answer to the question posed may be found in the RFQ. No responses shall be binding upon WorkplaceNL unless made in writing.

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WorkplaceNL may request additional data, discussions, presentations or on-site visits in support of the proposal, all without obligation to provide other RFQ recipients with similar information or notice of such communication. Additionally, WorkplaceNL reserves the rights to implement the appropriate due diligence processes to confirm or clarify any information provided, or to collect more evidence of managerial, financial and technical abilities, including but not limited to, meetings and visits with current customers served by the Applicant.

Any written information received by WorkplaceNL from an Applicant in response to a request for additional data from WorkplaceNL will be considered an integral part of the Applicant's proposal.

2.6 Ineligibility of Proposals

It is essential that the proposal is complete and thoroughly addresses each requirement identified in the RFQ, as incomplete proposals may be declared "non-responsive". Proposals that are improperly signed, conditional, illegible, obscure, or contain arithmetical errors, erasures, alterations, or irregularities of any kind may be considered invalid.

2.7 Acceptance of Proposal

WorkplaceNL reserves the right, as the interests of WorkplaceNL may require, to accept or reject in whole or in part any or all proposals. 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 proposal is accepted or rejected.

WorkplaceNL, in its sole discretion, reserves the right to cancel the RFQ without award. WorkplaceNL is not bound to award a contract to any Applicant. The awarding of the contract(s) (if any) shall be at WorkplaceNL's sole discretion.

WorkplaceNL reserves the right to reject all proposals and to refuse any proposal that does not meet the information or timing requirements of this RFQ.

If WorkplaceNL does not receive compliant and acceptable proposals in response to the RFQ, WorkplaceNL reserves the right to enter into negotiations with one or more of the Applicants or with any other party in order to complete the procurement of services.

A proposal may not be eligible for acceptance if current or past corporate or other interests of the Applicant or the Applicant's key personnel may, in WorkplaceNL's opinion, give rise to a conflict of interest.

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WorkplaceNL reserves the right to disqualify any Applicant if the Applicant or the Applicant's key personnel have 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.

2.8 Agreement

WorkplaceNL shall not be obligated to any Applicant until a written agreement has been duly executed related to an approved proposal. Any awards made pursuant to this RFQ process are subject to execution of a written agreement which is acceptable to WorkplaceNL.

To be eligible to provide services to WorkplaceNL, the successful Applicant(s) 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 "F" within the time frame established by WorkplaceNL. The successful Applicant(s) shall be responsible for compliance with the terms and conditions outlined in the Standard Form Agreement in Appendix "F".

Claims made by the Applicant in the proposal will constitute contractual warranties. Any provision in the proposal may, in WorkplaceNL's sole discretion, be included as a provision of the agreement between WorkplaceNL and the successful Applicant. In the case of conflict between the written agreement between WorkplaceNL and the successful Applicant and the RFQ and proposal, the terms of the said written agreement shall prevail.

2.9 Estimated Time Frames

The following timetable outlines the estimated schedule for this RFQ process. The timing and the sequence of events resulting from this document may vary.

DESCRIPTION	DATE
RFQ issue date	APRIL 27, 2021
Deadline for questions	MAY 17, 2021
Proposals to be received by	MAY 24, 2021
Date of award (tentative)	JUNE 4, 2021
Start date of service	JUNE 14, 2021

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SECTION 3 – GENERAL TERMS AND CONDITIONS

- 3.1** The successful Applicant(s) is required to meet WorkplaceNL's billing and accounting requirements. Progress billing should be submitted to WorkplaceNL every 30 days or other frequency as agreed to between WorkplaceNL and the successful Applicant(s). Invoices must be legible and clearly labeled with the Applicant's invoice number.
- 3.2** This RFQ, all proposals, and any agreements will be construed and interpreted in accordance with the laws of the Province of Newfoundland and Labrador.
- 3.3** The Applicant shall not use WorkplaceNL's name or logo or make reference to this RFQ in any advertising copy or other promotional materials or messages without WorkplaceNL's prior written consent.
- 3.4** WorkplaceNL cannot guarantee the volume of referrals it will provide to any successful Applicant. The successful Applicant(s) will be allocated referrals only on an "as required" basis. An approximate average of 500 PFI referrals are made annually. This number should be used as a guideline only and is not binding upon WorkplaceNL. WorkplaceNL had approximately 487 referrals to a similar service in 2017, 471 referrals in 2018 and 449 referrals in 2019. The number of referrals in 2020 are not indicated as referral quantities were affected by Covid-19 restrictions.

SECTION 4 – RESPONSE REQUIREMENTS

It is important that Applicants provide complete information with their proposal so it can be readily understood and evaluated. The following minimum information and format must be provided in the proposal. A proposal will be considered non-compliant if it fails to provide sufficient detail necessary to evaluate the proposal against the requirements outlined in this RFQ.

Cover Letter

Identify the RFQ description. Identify your name and your company's name (if applicable), address, telephone number, fax number and email address. Identify the representative responsible for your proposal. The letter must confirm that you and your company (if applicable) are in compliance with the **Personal Information Protection and Electronic Documents Act**, S.C. 2000, c.5, and Regulations thereto, as amended. The letter must be dated and signed.

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Company Profile & Background

If the Applicant is a company, provide a brief introduction and an overview of your company's background and profile, including information on full services offered. Provide names of all owners, including silent partnerships, affiliated relationships and/or companies, governing boards, etc.

Overview

The Applicant must provide a clear and concise description of the Applicant's understanding of the service, their role in the service, and an overview of how the Applicant will meet the service requirements. Provide any additional information that would enhance your ability to provide the service, e.g. resources, specialized personnel, affiliations, etc. Indicate the city/town from which you propose to conduct the major activities of this work and include the completed checklist of the geographic region(s) for which service is proposed.

Professional Staff Complement

Provide a description of the professional staff and resources available. Identify the number, availability, and roles of physicians intended to be assigned to perform the PFI Assessments and describe how they meet the mandatory criteria. Include proof of licensure with the College of Physicians and Surgeons of Newfoundland and Labrador, membership with the Newfoundland and Labrador Medical Association and proof of the most recent ABIME certification (or confirmation of intent to complete the most recent ABIME certification) as outlined in Section 1 - Overview and Scope of Services above.

Professional Staff Resumes

Provide a resume of not more than three pages outlining education and work experience for each physician to be involved in the provision of services.

Previous Experience

Describe your organization's experience in performing certified independent medical examinations or PFI assessments. Provide a list of a minimum of **three (3)** references with appropriate contact information who can provide evidence of previous experience providing similar services. References may be for contracts currently being performed or where work has been completed. References will be contacted as part of the review process. The list of references should exclude any potential references from WorkplaceNL.

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Facilities

Provide the location and street address of the proposed facility(s). Provide a site plan which identifies complementary parking, including wheelchair parking areas. Provide a floor plan of the facility(s) which identifies the entrance, reception area, examining room, and washroom. You must also confirm that all these areas are wheelchair accessible.

Privacy/Confidentiality

Provide company policies, practices and tools for protecting privacy, confidentiality and security of information.

SECTION 5 – EVALUATION PROCESS AND CRITERIA
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4.1 Evaluation

The proposals will be evaluated by a committee designated at the sole discretion of WorkplaceNL, who will use the mandatory criteria to determine the successful Applicant(s). The evaluation committee will evaluate all proposals against the mandatory criteria as stated in Section 1. Proposals that do not meet all mandatory criteria will be rejected on that basis.

WorkplaceNL, in its sole discretion, may assess the Applicant(s)' experience and/or ability to provide the services required and described in this RFQ by checking the Applicant(s)' references. A contract will not be awarded to any Applicant 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 quote. WorkplaceNL reserves the sole discretion to determine whether the Applicant and its professional staff have the appropriate qualifications.

The evaluation committee may require clarification from Applicants to assist in making its evaluation.

The intent is to enter into a contract with all Applicants who meet the mandatory criteria.

4.2 Notice of Results

WorkplaceNL will notify both the successful and unsuccessful Applicants in writing. Unsuccessful Applicants will be notified following the award to the successful Applicant(s).

If the selected Applicant(s) becomes unable or unwilling to complete the agreement, or becomes unable to provide the required services, WorkplaceNL may enter negotiations with one or more of the Applicants or with any other party in order to obtain the service.

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APPENDIX “A”

ELECTRONIC PROPOSAL SUBMISSION INSTRUCTIONS

1. In order to be accepted, proposals must be submitted through WorkplaceNL’s posting for this opportunity on www.merx.com.
2. Applicants shall create a supplier account and be registered on www.merx.com. This will enable the Applicant to download the bid opportunity, receive addenda/addendum email notifications, download addenda/addendum, and submit their proposal electronically through the MERX website.
3. The timing of the proposal is based on when the proposal is **received** by the bidding system, **not** when the proposal is submitted by the Applicant, as transmission can be delayed by “Internet Traffic” for any number of reasons. WorkplaceNL recommends that Applicants allow for ample time to provide for uploaded proposals to be received prior to the RFP Closing Date. Proposals received after the RFP Closing Date will not be accepted.
4. It is the responsibility of the Applicant to ensure that the proposal is received on time. Once registered, MERX will send a confirmation email to the Applicant if the proposal was submitted successfully. If a confirmation has not been received by the Applicant, the proposal was not uploaded correctly and it is the responsibility of the Applicant to either reload the documents or to contact MERX to resolve any issues regarding their proposal.
5. To ensure receipt of the latest information and updates regarding this opportunity via email, the onus is on the Applicant to register with MERX, create a supplier account, and sign up for notices for this opportunity.
6. Clarifications and questions received for this opportunity electronically can be submitted via the opportunity listing on www.merx.com. Questions can be submitted, and confirmation will be received to the inquiry. Responses will be answered on an individual basis or collectively at the discretion of WorkplaceNL.

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APPENDIX “B”

POLICY EN-01

Client Services Policy Manual

Policy Number: **EN-01**
 Subject: **Permanent Functional Impairment**
 Chapter: **Entitlement**

Policy Statement

A worker who suffers a permanent impairment as a result of a work-related injury may be entitled to a lump sum payment for Permanent Functional Impairment (PFI). The PFI benefit recognizes non-economic loss, as opposed to loss of earning capacity, and is based on measurable loss of bodily function.

Entitlement Determination

Entitlement is determined by WorkplaceNL through consideration of its adopted rating schedule known as the **Permanent Functional Impairment Rating Schedule**.

Where the **Permanent Functional Impairment Rating Schedule** does not address a certain type of impairment, or where it is not precise enough to fully evaluate the extent of an impairment, WorkplaceNL may use the American Medical Association (AMA) Guides as a reference. The impairment percentages given in the AMA Guides include allowances for the pain that may occur with the impairment. The existence of pain does not enhance the impairment percentages recommended. No award is given specifically for pain and suffering.

Permanent mental health impairment resulting from serious or life threatening injuries that have been accepted as compensable under Policy EN-18, Traumatic Mental Stress may be considered for permanent functional impairment ratings.

Permanent functional impairment benefits shall be proportioned based on the difference between functional impairment caused by the work injury and the known or estimated functional impairment due to other causes. Where, for example, the overall impairment rating for a worker with a back impairment is 25%, but the worker has a non-work related spinal fusion which would by itself be rated 10%, the worker's entitlement will be 15%.

The PFI benefit does not apply to fatal injury cases.

1. Referrals for a PFI Consideration

A referral for a PFI consideration occurs at a time when the degree of permanent impairment can be properly determined, i.e., at the point of maximum medical improvement when a medical plateau of the compensable condition has been reached. A referral may also occur when the worker is being considered for long term

Client Services Policy Manual

Policy Number:

EN-01

Subject:

Permanent Functional Impairment

Chapter:

Entitlement

disability/extended earnings loss entitlement, or at such other time as may be appropriate in a specific case.

2. PFI Assessments

The PFI shall be rated by a medical consultant appointed by WorkplaceNL. Once a PFI assessment has been conducted, any reassessment shall only occur where reasonable medical information supports a deterioration of the condition since the time of the most recent assessment, and not before 12 months, except in the case of industrial cancer. Decisions regarding the existence of deterioration may require consultation with a medical consultant.

If after six months from the date of injury it is determined that the worker's condition is irreversible or regressive (e.g. an amputation), WorkplaceNL may rate the worker's permanent impairment resulting from the injury and pay a lump sum award. The PFI rating may be reviewed as necessary.

In the case of terminal industrial disease the impairment rating shall be 100% and provided as soon as the compensable disease is confirmed. Non-terminal industrial diseases will be rated based on measurable permanent impairment of function.

When rating a PFI consideration must be given to any Permanent Partial Disability (PPD) rated for the same part of body. With respect to PPD ratings for low back injury, a new value must be assigned to the PPD rating since the range for rating permanent disability for the low back prior to 1984 was 0-30% and for post-1984 it is 0-50%. Therefore, for example, a 15% PPD is equivalent to a 25% PFI.

The combination of PPD and PFI ratings for all injuries cannot exceed 100%. Therefore, when a worker sustains impairment involving multiple body regions, either on the same claim or in combination with previous claims, the combined values chart in the AMA Guides is applied when determining the overall PFI rating whether the individual ratings were determined using the Permanent Functional Impairment Rating Schedule or using the AMA Guides.

Client Services Policy Manual

Policy Number:
Subject:
Chapter:

EN-01
Permanent Functional Impairment
Entitlement

3. PFI for Industrial Cancer

In the case of compensable industrial cancer, where medical evidence indicates that the prognosis is terminal, the impairment rating shall be 100% and provided immediately.

“Terminal” is typically used to refer to an illness/disease that cannot be cured or adequately treated and that is reasonably expected to result in the death of the patient within a short period of time. Consultation with a medical consultant may be required in making this determination.

Non-terminal industrial cancers will be rated based on measurable permanent impairment of function following maximum medical recovery.

4. PFI Benefit Unpaid at Death

Where a PFI has been rated but the payment has not been made to the worker prior to the worker's death, WorkplaceNL will pay the PFI benefit to the surviving spouse or dependent children.

Where a PFI has not been rated prior to the worker's death, WorkplaceNL may estimate a PFI rating and provide the benefit to the worker's surviving spouse or dependent children where the claim for compensation was made within the time limits provided under section 53 of the Workplace Health, Safety and Compensation Act. Where the claim was not made within the time limits, the PFI payment may be considered under section 54.

Client Services Policy Manual

Reference: Workplace Health, Safety and Compensation Act, Sections 19, 43, 43.1, 53, 54, 69, 73 and 90-92
Workplace Health, Safety and Compensation Regulations, Sections 19, 22 and 23
Policy EN-18, Traumatic Mental Stress

Amendment History

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WorkplaceNL
Request for Qualifications 2021-04-Q
Permanent Functional Impairment (PFI) Assessments of Injured Workers

APPENDIX “C”

PERMANENT FUNCTIONAL IMPAIRMENT RATING SCHEDULE



Permanent Functional Impairment Rating Schedule

Revised November 2009

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INTRODUCTION TO APPLICATION OF SCHEDULE

This rating schedule is similar in most respects to the schedule used by other compensation jurisdictions in Canada.

The schedule is designed to recognize impairment of body function of significant magnitude to cause the injured worker to modify his/her activities whether or not it affects his/her earning capacity. The stress is on impairment of normal physical activity so that 100% impairment is rated when there is cessation of normal physical activity, rather than when there is cessation of life processes - an injured worker with 100% functional impairment might live for many years and could die of some cause unrelated to the compensable impairment.

The evaluation of functional impairment is done by experienced physicians who are knowledgeable about body function. The impairment rating process is much too complicated to be described in minute detail; however, it is based on the application of a few simple rules:

1. Awards are given for **permanent** functional impairment so that treatment must be complete and adequate healing time have elapsed before the rating is done.
2. Impairment ratings are never based on the type of injury or the type of surgery performed but are based on **demonstrable loss of function** after adequate healing time and after adequate treatment has been provided.
3. No award is given, specifically, for pain and suffering.
4. Cosmetic impairment (disfigurement) of significant degree, will merit an award at the discretion of WorkplaceNL.
5. Functional impairment resulting from injury to internal organs will be dealt with on the merits of the individual case. In general, no award will be given unless the injury is sufficient to cause the worker to modify his/her activities. In some cases, for example head injuries, injuries to heart, circulatory system, and lungs, impairment rating will be done by independent consultants with special knowledge and experience.
6. Ratings for loss of function of an extremity cannot exceed the rating for amputation of the extremity.
7. The rating for loss of function at a joint rarely exceeds one half of the rating for an amputation at that joint.

8. Functional impairment is expressed as a percentage of **total** body function.
9. With the exception of the special schedules for loss of hearing and loss of vision, the smallest rating to be assigned will be 0.5% total body impairment and the impairment rating will be in multiples of 0.5% for ratings of 10% or less and multiples of 2.5% for ratings in excess of 10%. Ratings for loss of hearing and loss of vision will be in multiples of 0.5% whether the rating is below or above 10% total body impairment.
10. The monetary value of the permanent functional impairment award is a percentage of the maximum amount set by regulation with a minimum of \$1,000.
11. Where the monetary value based on the percentage of functional impairment is less than the minimum prescribed, the minimum award will be payable. However, should the impairment worsen, either as a consequence of the old compensable injury or as the result of a new compensable injury, there will be no increase in the award unless the total percentage of impairment exceeds that which would give a value greater than the minimum prescribed.

Example: A worker rated at 1% will receive \$1,000 but will not receive an additional award unless the functional impairment rating is increased to 2.5% or greater.

APPLICATION OF THE SCHEDULE

THE SCHEDULE IS A GUIDE

A great many cases will not fit neatly into a rating schedule. In these cases, the schedule will be used as a guide and the examining physician will use his/her judgment to estimate the percentage of total body impairment. The rating that is used should be consistent with ratings for impairment of other parts of the body which, in the average person, would have a similar effect on activities.

ENHANCEMENT OF MULTIPLE INJURIES

In multiple injuries, or in successive injuries, the impairment rating must sometimes be enhanced in order to accurately reflect the effect of the injury on the individual's activities. This is true when injuries involve parts of the body which perform identical functions, e.g. both arms, both legs, both eyes, etc. Ordinarily there would be no enhancement factor between a hand and foot, a foot and an eye, etc. An enhancement of up to 50% of the lesser impairment might be warranted in injuries to both arms or both legs, but care must be taken that the sum of the two individual ratings plus the added enhancement is not disproportionate when applied to the whole person.

Enhancement is particularly important when dealing with finger rating injuries. Therefore, the enhancement factor is included in the finger injury rating schedule. An enhancement factor is also incorporated into the schedule for loss of hearing and vision.

AMPUTATIONS

The scheduled ratings for amputations compensate for loss of tissue. The ratings given are applicable for "average" stumps, suitably padded, and sufficiently pain free, to be functional. For an amputation with an average result, the scheduled rating covers the cosmetic aspect of the amputation.

In rating major limb amputations, the suitability of the stump for prosthetic fitting must be considered. When the stump has significant defects, which makes it less than ideal for prosthesis, and the defects cannot be improved, a rating greater than the scheduled rating may be applied on a judgment basis.

SCOPE OF THE SCHEDULE

The following schedule includes the type of impairment involved in the vast majority of compensation claims. When implementing the schedule, the medical examiner will employ judgment, taking into consideration such factors as loss of sensation, impaired circulation, muscular weakness, and loss of range of movement in the affected area.

When dealing with a type of functional impairment not covered in this schedule, the advice of an appropriate authority may be sought. The American Medical Association publication, "*AMA GUIDES TO EVALUATION OF PERMANENT IMPAIRMENT*," may be used as a reference.

INJURY TO BRAIN, SPINAL CORD AND PERIPHERAL NERVES**BRAIN AND SPINAL CORD**

Quadriplegia.....	100%
Paraplegia.....	100%
Paraparesis - rated on loss of function	
Hemiplegia	100%
Hemiparesis - rated on loss of function	
Diffuse injury to brain and/or spinal cord - rated on loss of body function	

DENERVATION

Peroneal nerve, complete	12.5%
Median nerve, complete at elbow	40 %
Median nerve, complete at wrist	20 %
Ulnar nerve, complete at elbow	10 %
Ulnar nerve, complete at wrist	8 %

IMPAIRMENT OF SPECIAL SENSES

SENSE OF SMELL

Complete loss of sense of smell
(including impairment of sense of taste) 3%

LOSS OF VISION

Enucleation of one eye 18%
Total loss of vision, one eye 16%
Hemianopsia, right field 25%
Hemianopsia, left field 20%
Diplopia, all fields 10%
Scotoma, depending on location and extent 0-16%
Total loss of vision, both eyes 100%

PARTIAL LOSS OF VISION (Best Corrected Vision)

English	Metric 6	OR	Metric 4	Percentage Rating
20/30	6/10		4/6	0%
20/40	6/12		4/8	1%
20/50	6/15		4/10	2%
20/60	6/20		4/12	4%
20/80	6/24		4/16	6%
20/100	6/30		4/20	8%
20/200	6/60		4/40	12%
20/400	6/120		4/80	14%

Partial loss of vision in both eyes will be calculated according to the above schedule, employing an enhancement factor of 84/16, for the better eye, i.e., the poorer eye is rated according to the above schedule and the better eye is rated according to the same schedule but multiplied by 84/16, and the sum of the two gives the combined rating.

APHAKIA

Aphakia is considered to be an additional visual impairment, and if it is present is weighted by an additional 50% decrease in the value for the remaining corrected central visions.

Example: - best corrected visions 20/40, plus aphakia, would be awarded a functional impairment at the 20/60 level. The award would be increased from 1% to 4%.

Ratings for aphakic eyes are only considered warranted when unusual means have to be taken to obtain the best corrected visions, i.e., heavy lenses like coke bottles. With the implantation of interocular lenses, the need for more obvious means of correction has been decreased. In the case of successful lens implants, the regular schedule should apply without a rating for aphakia. Individual judgment will have to be used in determining if an aphakic award is necessary. It must be remembered that lens implants are more prone to complications, both immediate and remote.

LOSS OF SENSE OF HEARING

When calculating impairment due to loss of hearing, the ANSI audiometric calibration will be used and the hearing loss will be averaged at 500, 1000, 2000 and 3000 hertz. A presbycusis factor of one-half decibel for each year over 75 years of age will be deducted from the actual hearing loss.

A hearing loss averaging 80 decibels is considered to be total loss of hearing in that ear.

Deafness, complete one	5%
Deafness, complete both ears	30%
Deafness, complete in both ears occurring as a sudden traumatic loss of hearing	60%

Reassessments for further hearing loss will only be considered where there has been continued employment exposure to hazardous noise levels. Reassessments may be considered in the absence of further noise exposure for the purpose of hearing aid adjustments or replacement where compensable hearing loss has already been established.

UNILATERAL HEARING LOSS

In order to be considered for a PFI rating for unilateral hearing loss, there must be an average hearing loss of at least 35 decibels in one ear. The rating is based on the difference of hearing loss between both ears. The average hearing loss in the unaffected ear is subtracted from the average hearing loss in the affected ear and the difference determines the impairment rating.

Difference of 30 - 39 dB HL	1%
Difference of 40 - 49 dB HL	2%
Difference of 50 - 59 dB HL	3%
Difference of 60 - 69 dB HL	4%
Difference of 70 dB HL or greater	5%

BILATERAL, PARTIAL HEARING LOSS

In order to be considered for a PFI rating for bilateral hearing loss, there must be an average hearing loss of at least 35 decibels in each ear.

In calculating the impairment for a bilateral loss, the poorer ear is rated according to the scale below, the better ear according to the same scale but multiplied by 5. The sum of the two gives the combined rating.

35 dB HL in single ear	0.4%
40 dB HL in single ear	0.7%
45 dB HL in single ear	1.0%
50 dB HL in single ear	1.4%
55 dB HL in single ear	1.8%
60 dB HL in single ear	2.3%
65 dB HL in single ear	2.8%
70 dB HL in single ear	3.4%
75 dB HL in single ear	4.0%
80 dB HL in single ear	5.0%

TINNITUS

Tinnitus is a subjective experience defined as the perception of sound (such as ringing or hissing) in the absence of an acoustic stimulus. In order to be considered for a PFI rating, the rating physician must be convinced that the tinnitus is problematic to the worker's day to day life. If it is problematic, it is almost certain that the attending

physician, the Ear Nose and Throat (ENT) Specialist, and/or the audiologist will have mentioned it in their reports.

Tinnitus, in the presence of a measurable compensable hearing loss, will be evaluated for a PFI rating based on the guidelines below. This will be in addition to any PFI entitlement for hearing loss. It is exceedingly rare for tinnitus to be sufficiently distressing to warrant a 5% rating.

Guidelines:¹

Intermittent, one ear	1%
Intermittent, both ears	2%
Continuous, one ear.....	3%
Continuous, both ears	4%
Continuous, both ears (severe)	5%

¹Guidelines effective from January 24, 1996

IMPAIRED FUNCTION OF UPPER EXTREMITY

JUDGEMENT RATINGS

While loss of tissue and loss of range of movement at a joint is readily measured and easily rated in impairment rating schedules, circulation, sensation, and muscle power are equally important. Especially when dealing with fingers, sensation is of utmost importance to the extent that a digit with complete loss of sensation results in impairment approaching the impairment caused by amputation. Similarly, with impaired circulation and muscle power.

The examining physician must take impairment of sensation, circulation, and power into consideration on a judgment basis. It is often necessary to think in terms of retained function as well as lost function in order to ensure that the impairment rating is appropriate for the part.

AMPUTATIONS

Forequarter	70 %
Proximal third of humerus or disarticulation at shoulder	65 %
Middle third of humerus	62.5%
Distal third of humerus to biceps insertion	60 %
Biceps insertion to wrist (depending on usefulness of stump).....	50 - 60 %
Total amputation of hand	50 %
Thumb, including first metacarpal	20 %
Thumb, at MP joint	15 %
Thumb, at IP joint	10 %
Thumb, one-half distal phalanx	5 %
Thumb, at least one-quarter of distal phalanx	2.5%

FINGER AMPUTATIONS

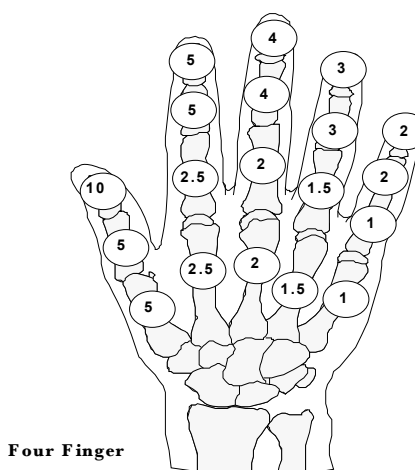
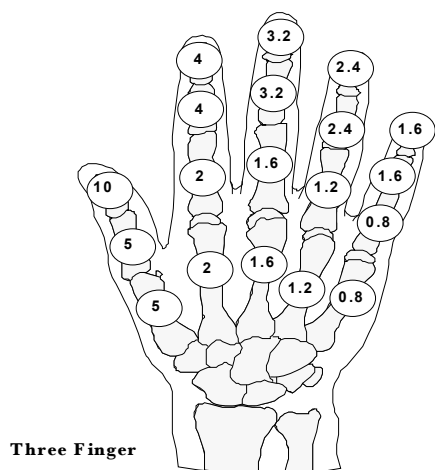
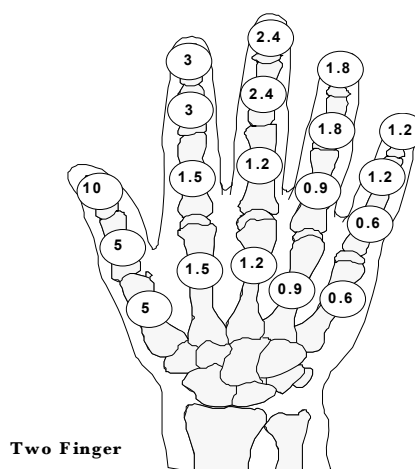
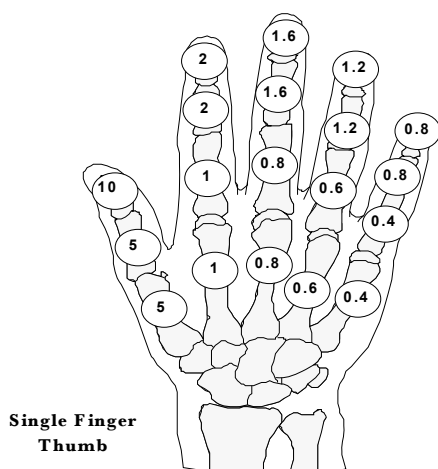
An in-person assessment may not be required for impairment involving the hand and/ or finger(s) provided sufficient information is provided in the Hand Form (Form 53) which is completed by the worker's health care provider, to enable WorkplaceNL's Medical Officer to rate the degree of permanent impairment.

Fingers will be rated according to the detailed finger chart (page D-2). Amputation of less than one half of a distal phalanx, with acceptable stump, will, ordinarily, warrant no rating. Corrective shaping of the head of the next phalanx or metacarpal, done to improve the shape of the stump, does not increase the rating.

If a single finger is involved, the single finger chart will be used.

In multiple finger amputations, use the chart corresponding to the number of fingers having impaired function at, or proximal to, a specific level. Begin at the DIP joint and assign values to the distal phalanx from the chart corresponding to the number of fingers having impairment at or proximal to the distal joint. Then proceed to the PIP joint and assign values to the middle phalanx from the chart corresponding to the number of fingers having impairment at or proximal to the middle phalanx. Then proceed to the MP joint, and in a similar fashion assign values to the proximal phalanges.

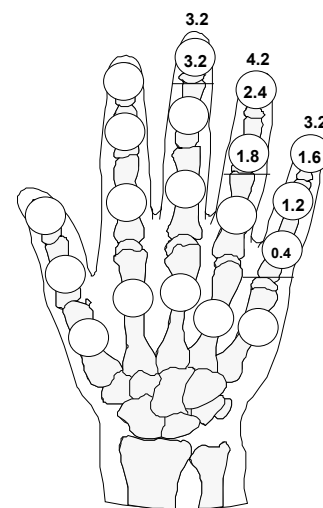
Impairment rating for finger injury must take into consideration loss of movement as well as amputation. Please refer to the appropriate section of this guide.



There is no enhancement factor between thumb and fingers.

Example #1:

Suppose a worker has had amputation of the MP joint of his little finger, the PIP joint of ring finger, and the DIP joint of middle finger. All three distal phalanges will be valued on the three finger chart. The middle phalanges of ring and little fingers will be valued on the two finger chart. The middle phalanges of ring and little fingers will be valued on the two finger chart. The proximal phalanx of the little finger will be valued on the single finger chart. The diagram below shows the values assigned to each phalanx.



The impairment rating would, then, be as follows:

Amputation middle finger, at DIP joint..... 3.2%

Amputation ring finger, at PIP joint..... 4.2%

Amputation of little finger, at MP joint 3.2%

Total 10.6%

which will be rounded to an impairment of **10.5%** total body impairment

IMPAIRMENT OF MOBILITY IN UPPER EXTREMITY

Shoulder, ankylosed without either articular or scapular movement..... 35 %

Elbow, completely ankylosed in position of function 20%

Wrist, completely ankylosed in position of function..... 12.5

Pronation and supination, complete immobility in mid position..... 10%

Thumb, both joints ankylosed in position of function 7.5%

Thumb, distal joint ankylosed in position of function..... 5%

FINGERS

Fingers will be rated according to the detailed finger chart (see Page D-2). When a finger joint is ankylosed in the position of ideal function, the rating is one half of what it would be for an amputation at that level. If a joint is ankylosed in a position that is not ideal, and there is some good reason why surgical correction will not be done, the rating could equal up to the rating for amputation of that joint.

PARTIAL LOSS OF MOVEMENT

The impairment rating for partial loss of movement will be proportional to the amount of movement that is lost. In as much as there are great variations from person to person in ranges of movement, when there is a completely normal extremity to compare with, loss of movement can be determined by comparing the movement in the joint being examined with the movement in the normal joint on the opposite extremity.

When there is not a normal extremity to compare with, the following will be considered to be normal ranges of movement for upper extremity joints:

Shoulder	Forward Elevation	150°
Shoulder	Backward Elevation	40°
	Abduction	150°
	Adduction	30°
	Internal Rotation	40°
	External Rotation	90°
Elbow:	Flexion-extension	150°-
Forearm:	Pronation	80°
	Supination	80°
Wrist	Dorsiflexion	60°
	Palmar Flexion	70°
	Radial Deviation	20°
	Ulnar Deviation	20°
Thumb:	MP Joint	60°
	IP Joint	80°
(Abduction and Adduction vary greatly from Person to Person)		
Fingers	MP Joint	90°
	PIP Joint	100°
	DIP Joint	70°

PARTIAL LOSS OF MOVEMENT OF FINGERS

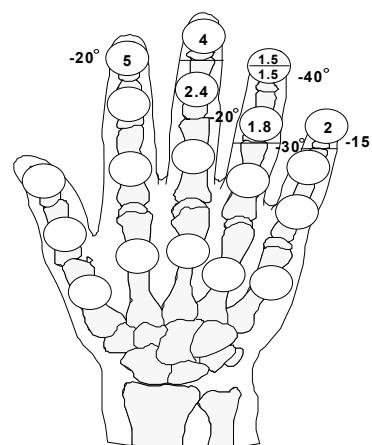
For partial loss of movement at a joint, the lost range of movement, in degrees, is divided by the normal range of movement and multiplied by one half of the amputation rating at that joint. If there has been an amputation at a point distal to the joint, only the values of the retained phalanx or phalanges are employed in the calculation for loss of movement.

Example 2

When a worker had a crushing injury to his fingers with amputation of the distal phalanx the middle finger and one-half distal phalanx of the ring finger. When impairment was assessed, he was found to have the following loss of ranges of movement:

Index, DIP - 20 degrees; Middle, PIP - 20 degrees; Ring, DIP - 40 degrees; Ring, PIP - 30 degrees; Little, DIP - 15 degrees.

Please see diagram for the values assigned to each phalanx.



The calculation would be done as follows:

Index finger, DIP - $20/70 \times 5 = 0.7\%$
 Middle finger, DIP amputation - 4%
 Middle finger, DIP - $20/100 \times \frac{1}{2} \times 2.4 = 0.2\%$
 Ring finger, amputation one-half distal phalanx - 1.5%
 Ring finger, DIP $40/70 \times \frac{1}{2} \times 1.5\% = 0.4\%$
 Little finger, DIP - $15/70 \times \frac{1}{2} \times 2 = 0.2\%$

The impairment would be added as follows:

Index Finger	0.7%
Middle Finger	4.2%
Ring Finger	2.4%
Little Finger	<u>0.2%</u>
Total	7.5%

IMPAIRED FUNCTION OF LOWER EXTREMITY

AMPUTATIONS

The scheduled ratings assigned to major amputations of the lower extremity assume that the amputation stump is suitable for weight bearing prosthesis. Generally, the stump must be well padded and the scar properly placed. There should not be undue tenderness over areas that are subject to pressure. When stump defects exist which cannot be remedied, a rating greater than that shown in the schedule might be necessary.

AMPUTATION RATINGS

Hip-disarticulation or short stump requiring ischial bearing prosthesis.....	65 %
Thigh, seat of election.....	50 %
End bearing or short below-knee stump not suitable for conventional B.K. prosthesis..	45 %
Leg, suitable for B.K. prosthesis.....	35 %
Leg, at ankle, end bearing	25 %
Through foot	10-25 %
Great toe, both phalanges	5.0%
Great toe, one phalanx	2.5%
Other toes, total amputation, each.....	0.5%
All toes, total amputation.....	7.5%

LOSS OF MOBILITY OF LOWER EXTREMITY

Hip, ankylosed in acceptable position.....	30 %
Knee, ankylosed in acceptable position.....	25%
Ankle, ankylosed in acceptable position	15%
Triple arthrodesis	5-12.5%
Subtalar arthrodesis	0-10 %
Great toe, ankylosis both joints	2.5%
Great toe, ankylosis distal joint.....	0.5 %

SHORTENING OF THE LEG

1 inch (2.5 cm)	1.5%
1 ½ inches (4 cm.)	3 %
2 inches (5 cm).....	6 %
3 inches (7.5 cm).....	15 %

IMPAIRED SPINAL FUNCTION

INTRODUCTION

The assessment of functional impairment due to spinal injury is primarily a judgment rating. Pain is often the major limiting factor resulting from spinal injury. While there is no fool proof method of assessing pain, one can, through experience, use objective observations which are of assistance in evaluating the effect of pain. Such factors as muscle spasm, limitation of movement ranges, muscle wasting, etc., should be taken into consideration.

In order to warrant a rating, the compensable spinal injury must result in some modification of activities. Intermittent symptoms that do not stop the individual from engaging in normal activities will not warrant an award. Intermittent symptoms which are sufficiently frequent or sufficiently severe to cause an individual to avoid certain normal activities such as heavy lifting, will warrant an impairment award. Since these are largely judgment ratings, the lowest rating for spinal injury will be 2.5% total body impairment and all other ratings will be in multiples of 2.5%.

The individual with severe spinal injury, would warrant a rating of up to 50% total body impairment.

Because of the amount of judgment involved in rating impairment due to spinal injury, a rigid rating schedule is not possible. Since it is important that consistency of rating be achieved, the following can be used as a guide.

IMPAIRMENT RATING GUIDE FOR SPINAL INJURY

Symptom	Signs	Rating
Cervical Spine		
Intermittent neck pain. No referred symptoms. Intermittent restriction of activity.	Minor loss of movement. No muscle spasm	0-5%
Neck Pain. Intermittent referred shoulder-arm pain. Avoidance of heavy lifting.	Moderate loss of movement. Some flattening of Lordotic curve. No nerve root signs.	5-10%
Persistent neck pain. Referred pain. Upper limb sensory changes and/or weakness. Avoidance of exertion.	Moderate or severe loss of movement. Muscle spasm of neck. Motor and/or sensory neurological changes. Diminished upper limb reflexes.	10-20%
Thoracolumbar Spine		
Mild, intermittent back pain. Avoids extremely heavy lifting.	Mild loss of movement. No spasm. No neurological changes	0 - 5%
Moderate back pain. Intermittent referred pain. Avoids heavy lifting and repetitive bending.	Moderate loss of movement. Increased muscle tone. No objective neurological changes.	5 - 10%
Moderate to severe back pain. Intermittent referred pain. Avoids moderate lifting and bending.	Moderate to severe loss of movement. Muscle spasm. Mild objective neurological changes, but no muscle wasting.	10 - 20%
Severe back and referred pain. Sensory lower limb changes. Lower extremity weakness. Avoids all lifting, bending and twisting.	Severe restriction of movement. Persistent muscle spasm. Moderate to severe objective neurological changes including muscle wasting and weakness in lower limbs.	20 - 50%

DISFIGUREMENT AND SCARRING

Introduction

Disfigurement or scarring resulting from burns or other trauma will be rated on the basis of physical impairment and cosmetic impairment. The physical impairment will be rated by a physician when treatment is complete and functional recovery is well advanced.

In assessing physical impairment, the examining physician must assess strength, ranges of movement, sensation, circulation, etc. In addition, the effects of loss of the skin glands, oil and perspiration must be taken into account. Susceptibility to injury from environmental factors must also be considered. In this regard, there may be some room for recommending a judgment factor in the impairment rating.

As physicians have a tendency to view the cosmetic results in terms of the initial damage and not to be adversely affected by scarring, as the general population might be, then the cosmetic impairment should be rated by a committee of experienced claims personnel.

Cosmetic impairment will usually be assessed at the same time as physical impairment. In some instances, it might have to be delayed to give livid scars time to fade and assume more permanent condition. In assessing the cosmetic impairment, consideration will have to be given to such factors as the worker's reaction to the disfigurement or scarring, the age of the worker, the area affected and perceived public appearance of both the worker and the Committee members.

Cosmetic Impairment Committee will make judgment rating up to 25% of total impairment. This will be in addition to any rating for impairment on the basis of functional disability (physical limitations). While the Committee may not exceed 25%, it could give the full additional award for grotesque facial scarring.

MINOR on body parts usually covered by clothing; may include facial scarring but would have to be a minor area involved..... 0 - 5%

MODERATE could include either covered or uncovered parts of body; scars on covered parts would be more extensive than those on uncovered parts..... 6 - 10%

MAJOR usually on body parts regularly exposed to the
public; commonly would involve the face; could
involve covered areas of major portion of an area
involved 11 - 25%

TIMING AND PERMANENT IMPAIRMENT ASSESSMENT

In cases where the rating for the award is so obvious that no examination will be required, the award for functional impairment can be set at any time. Examples of this are severe brain injury without hope of recovery, quadriplegia, paraplegia, and hemiplegia.

In the case of eye injury resulting in enucleation of the eye or obvious total permanent loss of vision of an eye, the award for permanent partial functional impairment can be given early.

In case of a single finger injury, where it is evident that there will be measurable permanent functional impairment but of sufficiently minor degree that examination in the WORKPLACENL office is not anticipated, the award can be given when the worker is fit to resume work.

In the case of cosmetic impairment, adequate healing time must be allowed following treatment. It is suggested that in the case of cosmetic impairment due to lacerations or minor burns, at least one year should elapse following surgery and in the case of severe or multiple burns, at least two years should elapse after injury and at least one year after the most recent surgery.

In the case of industrial disease where the impairment is irreversible or regressive, the impairment rating may be made as soon as the compensable disease is confirmed. Annual reviews may be made as necessary.

The following are the minimum time intervals that should be allowed to elapse prior to permanent functional impairment assessment, following injury or surgery, which ever is the most recent:

INJURY	TIME INTERVAL
Head Injuries..	2 years
Major Nerve Injuries.....	2 years
Back Injuries...	1 year
Pelvic Fractures.....	18 months
Intra-abdominal Injuries.....	1 year
Single Digit Injuries.....	6 months
Multiple Digit Injuries.....	1 year
Gross Head Injuries	1 year
Colles' Fracture	1 year
Forearm Fractures	1 year
Elbow Fractures.....	1 year
Humeral Shaft Fractures	1 year
Shoulder Injuries	18 months
Amputation of Toes	6 months
Serious Injuries to Toes and Forefoot	1 year
OS Calcis Fractures	18 months
Ankle Fractures	18 months
Tibia and Fibula Fractures	18 months
Injury Involving Knee Joint	1 year
Fractures of Femur	1 year
Major Limb Amputations after satisfactory fitting of prosthesis	3 months
Corneal Scars and Ulcers from end of treatment	1 year
Retinal Detachment and Major Eye Injuries	1 year
Diplopia, Hemianopsia, Field Defect	1 year
Trauma to Ear Including Traumatic Deafness	6 months
Noise Deafness (Acoustic Trauma)	As soon as medical investigation complete

WorkplaceNL
Request for Qualifications 2021-04-Q
Permanent Functional Impairment (PFI) Assessments of Injured Workers

APPENDIX “D”

PFI REPORTING FORMAT

- HISTORY OF INJURY AND TREATMENT
- PERSONAL HISTORY
- PRE-INJURY ACTIVITIES
- POST-INJURY ACTIVITIES
- CURRENT CONCERNS
- PHYSICAL EXAMINATION
- SUMMARY

WorkplaceNL
Request for Qualifications 2021-04-Q
Permanent Functional Impairment (PFI) Assessments of Injured Workers

APPENDIX “E”

PROPOSED SERVICE AREAS

Region	Geographic Description	Indicate “Yes” or “No”	Facility location
Avalon Peninsula A	St. John’s		
Avalon Peninsula B	Ferryland, St. Mary’s, Argentia		
Burin Peninsula	Burin Peninsula		
Clareville	Clareville, Bonavista South		
Gander	Gander, Bonavista North		
Grand Falls-Windsor A	Grand Falls-Windsor, Botwood		
Grand Falls-Windsor B	Springdale, Baie Verte		
Labrador	Labrador		
Northern Peninsula	Deer Lake, Northern Peninsula		
Trinity Conception	Trinity Bay South, Conception Bay		
Western NL A	Corner Brook, Stephenville		
Western NL B	Port aux Basques		

WorkplaceNL
Request for Qualifications 2021-04-Q
Permanent Functional Impairment (PFI) Assessments of Injured Workers

APPENDIX “F”

STANDARD FORM AGREEMENT

THIS AGREEMENT made in the Province of Newfoundland and Labrador, this
day of _____, 2021.

BETWEEN: **WORKPLACE HEALTH, SAFETY AND COMPENSATION
COMMISSION**, a statutory corporation established under the
Workplace Health, Safety and Compensation Act, RSNL
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 Permanent Functional Impairment (“PFI”) Assessment 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.
- 1.3 The Contractor shall not solicit services from an Injured Worker. The Contractor acknowledges that all Services shall be initiated by either the Injured Worker or WorkplaceNL. In the event that the Contractor is approached by a potential client who has not yet initiated a claim, the Contractor must inform the potential client to contact WorkplaceNL. The Contractor shall not make specific comments about claim entitlement.
- 1.4 The Contractor agrees not to communicate with Injured Workers in any manner with respect to WorkplaceNL's policies, procedures, and practices, except as expressly put forth in this Agreement. The Contractor agrees to refer Injured Workers who have questions or concerns beyond the scope of this Agreement to WorkplaceNL for information.

2.0 Payment and 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 three (3) year period commencing on <insert date> and ending on <insert date> unless terminated prior to this date in accordance with Article 23 of the WorkplaceNL Standard Terms and Conditions and/or Article 5.0 herein.
- 3.2 WorkplaceNL, at its sole discretion, has the right to renew the Agreement for a further two (2) year term 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 Injured Workers

- 4.1 Where WorkplaceNL has evidence regarding the compromised safety of an Injured Worker related to Services provided by the Contractor, WorkplaceNL or a representative of WorkplaceNL shall immediately notify the Contractor of same.
- 4.2 The Contractor will immediately investigate and provide written documentation to WorkplaceNL for any injury to an Injured Worker or persistent symptoms secondary to Services outside the normal response expected from that Service, occurring during or resulting from the Service, notwithstanding the reporting requirements of the Contractor's professional liability carrier.
- 4.3 The Contractor shall immediately provide notice to WorkplaceNL of any agreement with an employer or other agency to provide any other service in relation to an Injured Worker for whom they are providing Services.

5.0 Termination

5.1 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 be convicted of a criminal offense punishable by indictment where such cause is not prohibited by law or upon summary conviction if the offense can reasonably be said to go to the trustworthiness or moral character of the Contractor where such cause is not prohibited by law;
- (b) WorkplaceNL determines, in its sole discretion, that the Contractor has participated in public behavior which will reflect poorly on WorkplaceNL and/or is not consistent with the public image which they intend to project.

5.2 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 to Injured Workers under this Agreement to be discontinued, unless WorkplaceNL has provided its express, written consent to the continuation of Services;
- (b) immediately allow WorkplaceNL full access to the Contractor's premises, records, and files;
- (c) within three (3) working days of receiving the notice of termination, provide WorkplaceNL with a list of all Injured Workers who were scheduled for Services by the Contractor at the date of notice of termination;

- (d) within five (5) working days of receiving the notice of termination, provide WorkplaceNL with all existing reports which as of the date of the notice of termination had not been forwarded to WorkplaceNL;
- (e) within seven (7) working days of receiving notice of termination, provide copies of all records and files for workers who were scheduled for Services at the date of the notice of termination;
- (f) within ten (10) working days, provide a final report/discharge statement for each Injured Worker who received Services by the effective date of Termination; and
- (g) within thirty (30) working days of the effective date of termination provide 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.

6.0 General

- 6.1 All schedules and appendices attached hereto form part of this Agreement.
- 6.2 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.

- 6.3 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.
- 6.4 The following clauses and articles shall survive the termination of this Agreement, however caused:
- 2.0 Payment and Reports
 - 5.0 Termination
 - 6.0 General
- 6.5 WorkplaceNL hereby designates the Director of Health Care Services or another who the Director may appoint from time to time, to administer this Agreement.
- 6.6 For the purposes of day-to-day contact throughout the term of this Agreement, the Contractor shall deal through the Manager of Health Care Services, or another who the Director may appoint from time to time.
- 6.7 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.
- 6.8 This Agreement may be executed in multiple counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement. The counterparts of this Agreement may be executed and delivered by facsimile, email, or other electronic signature (including portable document format) by either of the parties and the receiving party may rely on the receipt of such document

- 6.9 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 Health Care Services
WorkplaceNL
146-148 Forest Road
P.O. Box 9000
St. John's, NL A1A 3B8
Tel: 709.778.1364
Fax: 709.778.1514

to the Contractor: < >
< >
Tel: 709< >
Fax: 709< >

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.

**WORKPLACE HEALTH, SAFETY
AND COMPENSATION COMMISSION**

Date of Signature

<  >

Date of Signature

SCHEDULE “A”

Scope of Work

- A.01 The Contractor shall supply a Physician (hereinafter the “Physician”) to perform the Services. The Contractor is responsible for ensuring the complete compliance of the Physician with all terms and conditions of this Agreement. The Contractor designates < > as the Physician(s). As per paragraph 1.7 herein, the Physician(s) assigned to perform Services shall not change except with prior written consent of WorkplaceNL.
- A.02 The Physician must meet the following criteria in order to be approved to perform Services:
- he/she must be a physician licensed with the College of Physicians and Surgeons of Newfoundland and Labrador;
 - he/she must be a member of the Newfoundland and Labrador Medical Association; and
 - he/she must be a Certified Independent Medical Examiner with the American Board of Independent Medical Examiners (“ABIME”), certified in the most recent edition of the Guides to the Evaluation of Permanent Impairment.
- A.03 PFI Assessments are based upon a defined process for the assessment of an injured worker’s impairment resulting from their work-related injury as referenced in WorkplaceNL’s Policy EN-01 Permanent Functional Impairment and Permanent Functional Impairment Rating Schedule. The policy and rating schedule are available in the Policies and Procedures section of WorkplaceNL’s website at www.workplacenl.ca.
- A.04 The PFI Award recognizes non-economic loss, as opposed to loss of earning capacity, and is based on measurable loss of bodily function. The

Physician must clearly understand the fundamental difference between impairment and disability.

- A.05 When performing a PFI Assessment, the Physician must advise the injured workers of the process and fully assess him/her with respect to his/her bodily impairment.

PFI Assessment Referral from WorkplaceNL

- A.06 WorkplaceNL's case manager initiates the referral for a PFI Assessment usually at a time when the degree of permanent impairment can be properly determined, i.e., at the point of maximum medical improvement when a medical plateau of the compensable condition has been reached.
- A.07 The decision to make a referral for a PFI Assessment rests with the case manager, or other management or staff member designated by WorkplaceNL.
- A.08 Referrals are forwarded based upon a rotational and geographic order. The PFI Assessment referral will consist of:
- (i) the PFI referral, and
 - (ii) all relevant medical, functional, and diagnostic information and psychological assessments previously conducted and in the possession of WorkplaceNL as part of the injured worker's file.
- The Physician shall review all referral documentation prior to commencing the PFI Assessment.

Acceptance and Denial of Referral and Time Frames

- A.09 Upon receipt of the PFI Assessment referral, Physicians shall schedule and conduct the PFI Assessment of the injured worker within fifteen (15) working days of the receipt of the referral documentation. Setting Assessment appointments will be coordinated by WorkplaceNL through the Physician in

consultation with the injured worker. The Physician must dictate a report into WorkplaceNL's digital dictation system within one calendar week of the date of the PFI Assessment.

- A.10 If the Physician is unable to complete the PFI Assessment of the injured worker within the stated time frames, he/she shall notify WorkplaceNL within three (3) business days and the referral will be re-issued to another Physician. Any files which have been provided to the Physician must be returned to WorkplaceNL in its entirety along with any copies thereof within two (2) calendar weeks of the referral cancellation.
- A.11 Upon receipt of a referral for an injured worker with whom the Physician perceives a potential conflict of interest, the Physician shall contact WorkplaceNL to disclose the conflict. At the discretion of WorkplaceNL, the referral may be re-issued to another Physician. If the Physician identifies the conflict after the file has been provided by WorkplaceNL, the Physician shall immediately return the file and any copies thereof to WorkplaceNL in its entirety.

Communication with the Injured Worker

- A.12 The PFI Assessment involves a thorough analysis of an injured worker's current physical condition and impairment level. A significant component of this process is communication with the injured worker during the process. The Service Provides must ensure that the injured worker understands the reason for the referral, the process of the Assessment and the next steps regarding the PFI Award process.

PFI Assessment

- A.13 The purpose of the PFI Assessment is to rate the injured worker's non-economic loss as a result of the compensable injury(s) based on measurable loss of bodily function.

- (i) Process of the PFI Assessment – At the beginning of the PFI Assessment session, the Physician must explain the PFI Assessment process to the injured worker as well as the reason for the referral. It is important for the injured worker to understand the process and have any questions that he or she may have about the Assessment answered.
- (ii) History – The Physician must review the medical documentation from the injured worker's file prior to the PFI Assessment. In the PFI Assessment, the Physician will record or confirm a detailed history of the injured worker in accordance with accepted medical practice for same.
- (iii) Physical– The Physician shall conduct a physical examination in accordance with the American Board of Independent Medical Examiners (ABIME) standards and accepted medical practice for same, utilizing the most recent edition of the Guides to the Evaluation of Permanent Impairment.
- (iv) Exit Comments – The Physician must advise the injured worker that a report will be completed and that copies will be sent to WorkplaceNL. The Physician must not verbally disclose the “results” of the PFI Assessment (e.g. make any reference to possible impairment percentage minimums or maximums or dollar value of the potential PFI Award) to the injured worker during the PFI Assessment appointment.

Delays

A.14 The Physician shall contact WorkplaceNL if there are difficulties with the injured worker attending appointments (e.g. injured worker cancels the appointment or fails to show up at the scheduled appointment time, etc.).

PFI Assessment Report

A.15 PFI Assessment results shall be documented using the current reporting format and any amendments thereto as established by WorkplaceNL. The current PFI Assessment Reporting Format that is approved by WorkplaceNL is as follows:

PFI ASSESSMENT REPORTING FORMAT

- HISTORY OF INJURY AND TREATMENT RECEIVED
- PERSONAL HISTORY
- PRE-INJURY ACTIVITIES
- POST-INJURY ACTIVITIES
- CURRENT CONCERNS
- PHYSICAL EXAMINATION
- SUMMARY

A.16 Where WorkplaceNL determines, in its sole discretion, that:

- a) a PFI Assessment does not fully address the PFI rating, (e.g. issues such as proportionment or combined values have not been fully addressed), and
- b) the Physician was in receipt of the complete PFI referral information necessary to address the issues,

the Physician will provide to WorkplaceNL with a written PFI addendum within two (2) calendar weeks of notification by WorkplaceNL that the PFI Assessment does not fully address the PFI rating, addressing the outstanding issue at no additional charge to WorkplaceNL.

Internal Resources

A.17 In addition to the case managers, who are the decision makers on the claim, WorkplaceNL currently has medical consultants (physicians), physiotherapy consultants, occupational therapy consultants, chiropractic consultants as well as an audiologist who are available as needed. The Physicians will have reasonable and timely telephone access to these resources, as deemed appropriate by WorkplaceNL.

Rotation of Referrals

A.18 Referrals will be made on a rotational basis in each geographic region among those contractors with whom WorkplaceNL has entered an Agreement in relation to the geographic region.

Facility Structure

A.19 The Contractor shall have an appropriate facility, or access to an appropriate facility, in each geographic region for which it is providing Services. An appropriate facility is defined as having the following requirements:

- (i) the facility has wheelchair and free parking immediately adjacent to the main entrance of the building,
- (ii) the facility has a wheelchair accessible entrance, reception area and examining room to conduct examinations, and
- (iii) the facility has a wheelchair accessible washroom.

Service Regions

A.20 The Contractor shall provide Services in each of the following geographic regions as defined below: (specify the appropriate regions)

Region	Geographic Description
Avalon Peninsula A	St. John's
Avalon Peninsula B	Ferryland, St. Mary's, Argentia
Burin Peninsula	Burin Peninsula
Clareville	Clareville, Bonavista South

Gander	Gander, Bonavista North
Grand Falls-Windsor A	Grand Falls-Windsor, Botwood
Grand Falls-Windsor B	Springdale, Baie Verte
Labrador	Labrador
Northern Peninsula	Deer Lake, Northern Peninsula
Trinity Conception	Trinity Bay South, Conception Bay
Western NL A	Corner Brook, Stephenville
Western NL B	Port aux Basques

Volume of Referrals

A.21 WorkplaceNL is unable to guarantee the number of referrals that would be generated annually. Any referrals for PFI Assessments that may be made by WorkplaceNL pursuant to this Agreement are made solely on an as needed basis.

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 SIX HUNDRED DOLLARS (\$600) per PFI Assessment for Services performed pursuant to this Agreement. The said rate includes review of the client's file, the PFI Assessment and the PFI Report.

B.02 A separate, detailed invoice shall be submitted to WorkplaceNL on at least a monthly basis, for each injured worker who received Services. The following information must be included on all invoices:

- vendor name and number,
- purchase order number,
- injured worker's name and claim number,
- date of Services rendered,
- Service description,
- invoice date,
- invoice number,
- total invoice amount, and

Invoices that do not include the referenced information will be returned to the Contractor, and payment may be delayed pending proper invoicing by Contractor.

B.03 When WorkplaceNL or the Injured Worker provides notice of cancellation more than two (2) working days prior to the PFI Assessment date, the Contractor shall not bill WorkplaceNL for Services. Where cancellation occurs within two (2) working days, the Contractor shall make every effort to utilize the assessment time for other clients. However, where the Contractor cannot use the assessment time for other billable services, WorkplaceNL shall pay the Contractor a cancellation fee of \$600.00.

TRAVEL EXPENSES

- B.04 Travel costs will only be reimbursed when WorkplaceNL has provided written pre-approval for the travel. The Contractor shall comply with WorkplaceNL's Procedure 100.00: "Travel Procedures" for all travel expenses. The Contractor further agrees that:
- a) only time while actually traveling will be reimbursed;
 - b) travel time will be reimbursed at \$75.00/hour; and
 - c) copies of receipts for travel disbursements will be provided to WorkplaceNL at the time of invoicing for travel costs; and
- B.05 The Contractor shall prorate the costs of travel where there are multiple services provided, including services provided at the request of parties other than WorkplaceNL.
- B.06 The Contractor shall make their travel arrangement in accordance with WorkplaceNL's procedure (Procedure number 100.00: Travel Procedures). The Contractor will use the most practical and economical arrangements for travel and accommodations considering both the dollars cost and travelling time involved. WorkplaceNL shall determine in its sole discretion what expenses shall be considered reasonable.
- B.07 Air travel will be by economy class.
- B.08 WorkplaceNL's offices at 146-148 Forest Road, St. John's, shall be considered the starting and return point of any trip.
- B.09 The type, standard and cost of accommodation will not be in excess of the minimum rate in a commercial establishment for a single room with attached bathroom. Accommodations must not be upgraded to suites or executive floor.

- B.10 Special Government rates, available at many hotels/motels, must be requested when making reservations and wherever possible, establishments that offer discounts should be given preference by the person making the travel arrangements.
- B.11 Compensation for expenses shall be paid in accordance with WorkplaceNL's procedure (Procedure number 100.00: Travel Procedures) for expenses for management employees.

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

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 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;

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**, 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

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.

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 paragraph 9 of 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 _____, 20____, 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, ("ATIPPA") and the **Personal Health Information Act**, SNL 2008, c. P-7.01, as amended, ("PHIA") 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 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 **PHIA** which WorkplaceNL deems necessary, in WorkplaceNL's sole discretion;
 - (f) report to WorkplaceNL at least annually, but more often if required by WorkplaceNL, the status of its security measures and any further measures that may be taken to ensure confidentiality is maintained; and
 - (g) 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 ("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) follow the privacy breach protocol of the Government of Newfoundland and Labrador as it exists at the time of the breach as per the **ATIPPA** website: <http://www.atipp.gov.nl.ca/info/Privacy-Breach-Protocol.pdf>.

CONFIDENTIALITY SCHEDULE

Protocols for Security of WorkplaceNL Information on Information Technology Assets

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.

GENERAL

- 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.
- Contractors must 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 email and/or its attachments are encrypted or zipped in a secure manner.

USE OF APPROVED DEVICES ON WORKPLACENL NETWORK

The following protocols apply to computing devices (desktop, laptop, mobile or other device) that have been approved for use on the WorkplaceNL network (Network). This may be a WorkplaceNL-issued device.

- The Contractor will permit WorkplaceNL to access and audit the device and all WorkplaceNL records on the device:
 - to validate the security of the device or for maintenance or security of the Network.
 - to add, remove, update and/or block any content, technical or otherwise, necessary for the maintenance or security of the Network or Confidential Information.
 - to determine if the device or inappropriate use of the device had adversely impacted the Network or Confidential Information.
 - to respond to an Access to Information and Protection of Privacy or legal discovery request.
- It is not permissible to:
 - use the Network or device for illegal purposes, for personal gain or to contravene legislation, policies, directives or standards.
 - attempt to gain unauthorized access to the Network or to initiate or participate in any activity that negatively impacts the Network's security or performance.
 - share personal computer drives or folders on a computer accessing the network.
 - access the network remotely, either through wired or wireless connections, except through the use of secure ID and virtual private network systems.

CONFIDENTIALITY SCHEDULE

- copy or transfer personal or Confidential Information from the Network to any media without the prior written approval of the business owner and/or the Director responsible for Information Technology Services. If copying or transferring personal or Confidential Information from the Network to any media is approved, then proper WorkplaceNL security procedures and protocols must be followed in the copying or transferring of that information.
- The Contractor must:
 - securely manage and protect Network and device usernames and passwords.
 - take reasonable precautions to prevent the introduction of viruses, SPAM or other malicious content.
 - immediately notify the IT Service Desk (service.desk@workplacnl.ca or 709.778.1555) if potential harm to the Network or any device is known or suspected.
- There is no reasonable expectation of privacy when using the Network or when accessing Confidential Information. Equipment and resources will be monitored and/or searched, where necessary, by those authorized to do so on behalf of WorkplaceNL or law enforcement agencies.
- Where a determination is made that the Network or Confidential Information on the device could be or has been used for an improper or illegal purpose, WorkplaceNL may forward the device or information to law enforcement agencies for investigation.
- WorkplaceNL is within its rights to deny or sever access to the Network or application if the Contractor is found to be in violation of any protocol outlined herein.
- WorkplaceNL devices must be returned to a manager or direct supervisor upon departure from WorkplaceNL.

USE OF NON-WORKPLACENL DEVICES

- 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. (e.g., plug your computer directly into a Network jack in a WorkplaceNL building).
- To obtain access to the Network, the Contractor must submit a request in writing to WorkplaceNL's Security Manager. If permission is granted, the Contractor must adhere to the terms and conditions of the Security Manager.