

**WorkplaceNL**

**2024-05-T**

**Standing Offer for the Supply of Homestyle Adjustable Beds, Mattresses and Bed Rails for Injured Workers**

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**WorkplaceNL**

Health | Safety | Compensation

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**Issue Date: January 15, 2024**

**Tender Closing Date: January 29, 2024 before 2:00pm (NL Time)**

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

**1.1 INTENT**

The Workplace Health, Safety and Compensation Commission (WorkplaceNL) invites submission on the tender call for Homestyle Adjustable Beds, Mattresses and Bed Rails for Injured Workers, for a three (3) year period commencing February 24, 2024 to February 23, 2027 with an option to extend for an additional two (2) years until February 23, 2029 on the same terms and conditions. Should WorkplaceNL identify needs or if conditions change during the initial term of the Agreement, the said needs and/or conditions may be addressed in an Extension Agreement but pricing for the Services herein will remain firm.

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

**1.2 OVERVIEW**

WorkplaceNL provides services to employers, injured workers and their dependents, and the public through the administration of the **Workplace Health, Safety and Compensation Act, 2022**. These services include promoting workplace health and safety in order to prevent and reduce workplace injury and illness. WorkplaceNL strives to ensure injured workers receive the best care possible and the benefits to which they are entitled. WorkplaceNL facilitates injured workers' recovery, and early and safe return to work. In addition, WorkplaceNL administers an employer classification and assessment system and ensures adequate funding for services through sound financial management.

WorkplaceNL is organized along two main functional areas: 1) prevention and workplace services; and 2) corporate and 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 (no-fault compensation coverage).

**1.3 SCOPE OF WORK**

WorkplaceNL provides injured workers with specialized beds, mattresses and bed rails when medically necessary, due to a work-related or compensable injury to help address issues with bed mobility, positional changes on a regular basis and difficulty transferring into and out of bed. A supportive, yet cushioned mattress is required to support spinal curves while offering the required flexibility to work with an adjustable bed and permit a sitting to standing transfer while sitting on the side of the mattress.

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The mattress specifications have been compiled considering the individual subjective component for mattress comfort. These specifications should provide a combination of firm support, mattress flexibility and adequate cushioning for the user.

WorkplaceNL makes no guarantee of volumes with the award of this tender based on the following historical data.

Home-style Adjustable Beds purchases:

<b>Size</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>Jan 1 – Oct 25, 2023</b>
Twin	1	0	0	0	4
Double	2	4	7	4	3
Queen	10	5	6	6	8
Split King	13	11	8	16	11

Mattresses for home-style adjustable beds purchases:

<b>Size</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>Jan 1 – Oct 25, 2023</b>
Twin	26	26	30	37	34
Double	4	8	8	10	6
Queen	9	6	6	11	9

Bed rails for home-style adjustable beds purchases:

<b>Rail type</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>Jan 1 – Oct 25, 2023</b>
Bed helper	10	9	14	8	4
Bed side	1	1	0	3	2

The identification of the Home-style Beds, Mattresses and Bed Rails will be determined by the needs of the injured worker which may be established through a home assessment by an appropriate provider as approved by WorkplaceNL and as per WorkplaceNL policy.

Homestyle Adjustable Bed, Mattress and Bed Rail orders will be placed directly with the successful bidder via a purchase order number issued by WorkplaceNL. The manufacturer must honor all warranties and terms and conditions of the tender through the approved service provider.

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**1.4 SPECIFICATIONS**

**1.4.1 Homestyle Adjustable Bed**

- Steel frame construction.
- Independent head operation up to 60 degrees.
- Independent foot operation up to 45 degrees.
- Remote hand control operation.
- Solid base construction (not springs).
- End plates to prevent slippage.
- Height adjustable legs or option for heights between 24" – 29".
- Option for Twin (39" x 80"), Double (52" x 80"), Queen (60" x 80").
- Dual twin for King with solid connector to mount beds together.
- Option for manufacturer installed side rail(s).
- Option for manufacturer installed headboard and/or footboard.

**Warranty**

- Parts and replacement.
- Lift motor.
- Lifetime for manufacturer's defect(s) not pro-rated.

**Delivery**

- Directly to the injured worker's home in the room where it will be used.
- In the event that the bed and mattress have differing delivery dates, the bed should not be delivered prior to the mattress to ensure setup and demonstration of the full unit to the injured worker and their spouse or caregiver.

**Setup**

- Removed from packaging.
- All parts assembled on site (including solid connector for split king size) and bed ready for bedding and use.
- All controls should be fully tested to ensure they are fully operational.
- All features demonstrated to the injured worker with the injured worker and their spouse or caregiver able to demonstrate knowledge of same.

**Service**

- The Bidder must specify how product and service availability will be maintained in the event of plant shutdowns, strikes, etc.
- WorkplaceNL must be notified immediately of any interruption in product availability.

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- Response time to evaluate problems should be no longer than 5 business days.
- If a bed needs to be removed from the injured worker's home for servicing, an equivalent loaner bed must be provided prior to the bed being removed.

**1.4.2 Memory Foam Mattress compatible with an adjustable bed (2 options)**

- Soft support option with < 5 lbs. per cubic foot foam density.
- Medium-firm support option with  $\geq$  5 lbs. per cubic foot foam density.
- Allergen resistant.
- Latex-free.
- Non-skid bottom.

**Outer Mattress Fabric**

- Fabric should be breathable, stain resistant, wipeable, wear resistant and flexible to prevent fabric bunching which can contribute to shearing forces

**Mattress Cover**

- Fabric should be breathable, stain resistant, wear resistant, and flexible to prevent fabric bunching which can contribute to shearing forces, and washable.
- Available in Twin, Double, Queen and x 2 Twin (for King).

**Warranty**

- Lifetime for manufacturer's defect not pro-rated.

**Delivery**

- Directly to the injured worker's home in the room where it will be used.
- In the event that the bed and mattress have differing delivery dates, the bed should not be delivered prior to the mattress to ensure setup and demonstration of the full unit to the injured worker and the injured worker's spouse or caregiver.

**Setup**

- Removed from packaging.
- Positioned on bed ready for bedding and use.
- All features demonstrated to the injured worker with the injured worker and the injured worker's spouse or caregiver able to demonstrate knowledge of same. Recommend that the mattress be exposed to air for 24 hours prior to use to allow any odor to dissipate.

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**Service**

- Response time to evaluate problem should be no longer than 5 business days.
- If the mattress needs to be removed from the injured worker's home for servicing, an equivalent loaner mattress will be provided prior to the mattress being removed.

**1.4.3 Optional Half Side Bed Rail compatible with the adjustable bed**

**Warranty**

- Parts and replacement.
- Lifetime for manufacturer's defect(s) not pro-rated.

**Delivery**

- Directly to the injured worker's home and installed on the bed.
- In the event that the bed and mattress and rail have differing delivery dates, the bed should not be delivered prior to the mattress and/or rails to ensure setup.
- Demonstration of the full unit to the injured worker and the injured worker's spouse or caregiver.

**Setup**

- Removed from packaging.
- All parts assembled and installed on site and ready for use.
- Fully tested to determine it is fully operational.
- All features demonstrated to the injured worker and have the injured worker and the injured worker's spouse or caregiver demonstrate knowledge of same.

**Service**

- The Bidder must specify how product and service availability will be maintained in the event of plant shutdowns, strikes, etc.
- WorkplaceNL must be notified immediately of any interruptions in product availability.
- Response time to evaluate problems should not be longer than 5 business days.
- If a bed rail needs to be removed from the injured worker's home for servicing, an equivalent loaner rail must be provided prior to the rail being removed.

**Delivery and Setup**

- Delivery and setup of beds, mattresses and rails must be available in all areas of Newfoundland and Labrador.

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- Beds and/or mattresses and/or rails must be delivered directly to the injured worker's home which may be anywhere in rural Newfoundland and Labrador. Delivery time and cost by geographical area should be identified in Appendix "A".

**Product information**

- All submissions must include product information and any clinical data available to support the product.

**1.5 QUALITY OF GOODS**

- 1.5.1** Unless otherwise stated in the Tender, all material included in the Bid must be new, first quality goods. Used, refurbished, second, obsolete, discontinued or demonstrator items must only be proposed if the Tender specifically request or otherwise states that such goods will be allowed.
- 1.5.2** Where applicable, the end user must be provided with complete operation manuals, warranty registration forms, user licenses/authentications and/or other associated documentation normally provided by the manufacturer, reseller, installer and/or consultants.
- 1.5.3** The Bidder warrants that there are no patents, trademarks or other rights restricting the use, repair or replacement of the goods or services furnished or any part thereof. The Bidder agrees to indemnify and save harmless WorkplaceNL from and against all claims filed or prosecuted in any manner because of such use, repair, or replacement of the goods or services being a violation of any patent, trademark, or other right.

**SECTION 2 – INSTRUCTIONS TO BIDDERS**

**2.1 QUALIFICATIONS AND EXPERIENCE**

The successful Bidder must possess the necessary knowledge, skill and experience to supply the homestyle adjustable beds, mattresses and bed rails and must meet the following mandatory criteria:

- The successful Bidder must have a proven record of providing the good and services with a minimum of two (2) years' experience.

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**2.2 ELECTRONIC COPY OF DOCUMENT**

- 2.2.1** WorkplaceNL reserves the right to modify the terms of the Tender by issuance of addenda at any time prior to the Tender Closing Date. It is the responsibility of the Bidder to monitor WorkplaceNL's website (<http://www.workplaceni.ca>) or the Tender posting at [www.merx.com](http://www.merx.com) for any addendum to the Tender issued up to and including the Tender Closing Date.
- 2.2.2** It is the Bidder's responsibility to ensure that they have received a complete set of documents. By submitting a Bid, the Bidder verifies that they have received a complete set of Tender documents including any and all addenda. All terms, conditions, and/or specifications stated or referenced in the Tender are assumed to be accepted by the Bidder and incorporated in the Bid.
- 2.2.3** Bidders who have obtained the Tender electronically must not alter any portion of the document, with the exception of applying any addendum issued by WorkplaceNL.

**2.3 QUESTIONS AND CLARIFICATION**

- 2.3.1** All questions related to this Tender must be directed in writing by email to [purchasing@workplaceni.ca](mailto:purchasing@workplaceni.ca) or through the Tender posting on [www.merx.com](http://www.merx.com) and received by WorkplaceNL before 4:00 PM Newfoundland Time on January 22, 2024.
- 2.3.2** All questions should include the Bidder'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 Tender in question. All email questions must include the Tender number and title in the email subject line.
- 2.3.3** To the extent that WorkplaceNL considers that the answer to the question may assist in the preparation of a Bid, WorkplaceNL will post an addendum on its website and through the Tender posting on [www.merx.com](http://www.merx.com) which will be part of the Tender. WorkplaceNL may not answer a question where WorkplaceNL considers the information requested is not required to prepare a Bid, or where the answer to the question posed may be found in the Tender. No responses shall be binding upon WorkplaceNL unless made in writing. Information obtained from any other source is not official and may be inaccurate and it is not binding.

**2.4 CONFIDENTIALITY AND OWNERSHIP OF INFORMATION**

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



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- 2.4.2** The Tender and any supplementary document or portion thereof is proprietary information, and must not be used by the Bidder without the permission of WorkplaceNL, other than for the submission of Bids.
- 2.4.3** All Bids submitted become the property of WorkplaceNL. By submitting a Bid, the Bidder hereby grants WorkplaceNL a license to distribute, copy, print, or translate the Bid for the purposes of the Tender. Any attempt to limit WorkplaceNL's right in this area may result in rejection of the Bid.
- 2.4.4** The procurement process is subject to the **Access to Information and Protection of Privacy Act, 2015**, SNL 2015 c. A-1.2, as amended (**ATIPPA**). The Bidder's Bid package may be subject to disclosure under the **ATIPPA**. By submitting a Bid, the Bidder agrees to the appropriate disclosure of the information supplied, subject to the provisions of the governing law. WorkplaceNL cannot guarantee the confidentiality of the content of any Bid after the Tender Closing Date. WorkplaceNL shall not be liable to any Bidder for any claim, direct or indirect, whether for costs, expenses, losses or damages, or loss of anticipated profits, or for any other matter whatsoever incurred by the Bidder as a result of disclosure pursuant to the **ATIPPA**.
- 2.4.5** By submitting a Bid, the Bidder agrees that it has identified any specific information in its Bid that may qualify for an exemption from disclosure under subsection 39(1) of the **ATIPPA**. If no specific information has been identified it is assumed that, in the opinion of the Bidder, there is no specific information that qualifies for an exemption under subsection 39(1) of the **ATIPPA** and information may be released without further notice.
- 2.4.6** The financial value of a contract resulting from this procurement process will be publically released as part of the award notification process.

**2.5 NO CLAIMS BY BIDDER**

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

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**2.6 CONFLICT OF INTEREST**

- 2.6.1** For the purposes of this Tender, the term “conflict of interest” includes, but is not limited to, any situation or circumstance where:
- in relation to the Tender process, the Bidder has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to:
    - (i) having or having access to confidential information of WorkplaceNL in the preparation of its response that is not available to other Bidders;
    - (ii) having been involved in the development of the Tender, including having provided advice or assistance in the development of the Tender;
    - (iii) receiving advice or assistance in the preparation of its response from any individual or entity that was involved in the development of the Tender;
    - (iv) communicating with any person with a view to influencing preferred treatment in the Tender process (including but not limited to the lobbying of decision makers involved in the Tender process); or
    - (v) engaging in conduct that compromises, or could be seen to compromise, the integrity of the open and competitive Tender process or render that process non-competitive or unfair;
  - in relation to the performance of its contractual obligations under an agreement for services, the Bidder’s other commitments, relationships, or financial interests:
    - (i) could, or could be seen to, exercise an improper influence over the objective, unbiased, and impartial exercise of its independent judgement; or
    - (ii) could, or could be seen to, compromise, impair, or be incompatible with the effective performance of its contractual obligations.
- 2.6.2** The Bidder, its employees, officers, directors, associates and/or approved sub-contractors shall not and will not have any conflict of interest (actual or potential) in submitting its Bid or, if selected, in providing services under the agreement. Where applicable, the Bidder must declare in its Bid any situation that may be a conflict of interest in submitting its Bid or, if selected, with the contractual obligations under the agreement.
- 2.6.3** If, at the sole and absolute discretion of WorkplaceNL, the Bidder, its employees, officers, directors, associates and/or approved sub-contractors is found by WorkplaceNL to be in an actual or perceived conflict of interest either during the Tender or after award of the contract, WorkplaceNL may, in addition to any other remedies available at law or in equity, disqualify the Bid submitted by the Bidder or terminate the agreement.
- 2.6.4** Sub-contracting to any firm or individual whose current or past corporate or other interests may, in WorkplaceNL’s opinion, give rise to an actual or perceived conflict

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of interest in connection with this Tender will not be permitted. This includes, but is not limited to, any firm or individual involved in the preparation of the Tender.

**2.7 AGREEMENT**

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

**2.8 TENDER CLOSING**

- 2.8.1** Bids must be received in their entirety before 2:00 p.m. Newfoundland Time on January 29, 2024 (“Tender Closing Date”). Bids, or any portion thereof, received after the Tender Closing Date will not be accepted.
- 2.8.2** Bidders are solely responsible to ensure receipt of their Bid by WorkplaceNL in its entirety, in the manner and time prescribed. Bidders must submit their Bid via [www.merx.com](http://www.merx.com) (see Appendix “C” – Electronic Bid Submission Instructions). Hard copy paper Bids or Bids submitted by facsimile or email will not be accepted.

**2.9 BID INSTRUCTIONS**

- 2.9.1** The Bidder must submit the Bid and related documentation, including Appendix “A”, Check List.
- 2.9.2** The Bidder must submit the attached Appendix “B”, Bid Form, which must be signed by the Bidder or an authorized representative of the Bidder. If the Bidder is a corporation, the Bid must be signed by the authorized signing officer of the corporation.
- 2.9.3** It is essential that the Bid is complete and thoroughly addresses each requirement identified in the Tender, as incomplete Bids may be declared “non-responsive”. Bids that are improperly signed, conditional, illegible, obscure, or contain arithmetical errors, erasures, alterations, or irregularities of any kind may be considered invalid.

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- 2.9.4** The Bid must include a written statement outlining the knowledge, skills and experience of the Bidder and describing how the Bidder meets the mandatory criteria listed in paragraph 2.2.
- 2.9.5** The Bid shall be accompanied by a list with a minimum of three (3) client references with appropriate contact information who can provide evidence of previous experience providing similar services with comparable scope and tender value. This list shall include the name of a contact person for reference purposes. References may be contacted as part of the review process. The list of references should exclude any potential references from WorkplaceNL.
- 2.9.6** The Bidder must describe the duration, type (e.g. on site, depot, ship-in or carry-in) and terms of the manufacturer's warranty on all goods. If the Bidder provides any additional/supplementary warranty coverage, the Bidder must describe this as well.
- 2.9.7** If warranties can be upgraded or extended, the Bidder must identify the upgrade costs separately. Do not include warranty upgrade or extension costs in the Bid price unless the Tender specifically states that the upgrade is a mandatory requirement.
- 2.9.8** The Bidder must acknowledge that they have read and understood any and all addenda in both the Appendix "A", Check List and the Appendix "B", Bid Form.
- 2.9.9** Shipping, cartage, lading, insurance, duties, levies, and handling charges must be included in the total price. If these charges have not been stated specifically, it will be assumed that they have been included in the Bid price.
- 2.9.10** By submitting a Bid, the Bidder guarantees that, unless the Tender specifies otherwise, all components required to make the required equipment or system operable or to deliver the required services have been included in the Bid, or will be provided at no additional charge to WorkplaceNL.
- 2.9.11** While WorkplaceNL has tried to ensure the accuracy of the Tender, it is not guaranteed or warranted by WorkplaceNL to be accurate, nor is it necessarily comprehensive or exhaustive. WorkplaceNL will assume that all Bidders have resolved any questions they might have about the Tender and have informed themselves as to the existing conditions and limitations, site restrictions, etc. before submitting their Bids. Nothing in the invitation is intended to relieve Bidders from forming their own opinions and conclusions with respect to the matters addressed in the Tender.
- 2.9.12** Any error in the Bid is the responsibility of the Bidder. Submitted Bids may be amended prior to the Tender Closing Date by submitting a complete new Bid clearly indicating it replaces the previously submitted Bid. Any such new Bid is subject to the requirements as outlined herein. The said new Bid replaces any other Bids previously submitted by the Bidder, and only the last of any new Bids received will be accepted.

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**2.9.13** Any Bid received in response to a Tender may be withdrawn by written request to Manager of Purchasing at [purchasing@workplaceni.ca](mailto:purchasing@workplaceni.ca), but cannot be withdrawn, altered or changed in any way after the Tender Closing Date. All requests for withdrawal, amendment or submission of a replacement Bid must be submitted in writing on company letterhead or equivalent, and be signed by the Bidder, an authorized representative of the Bidder or, if a corporation, an authorized signing officer of the corporation.

## **2.10 BID EVALUATION**

**2.10.1** Tender evaluation and award of contract will be done in accordance with the **Public Procurement Act**, SNL 2016, c. P-41.001, as amended, and WorkplaceNL's procedures.

**2.10.2** Tenders will be opened publicly immediately following the Tender closing in accordance with the Public Procurement Regulations, as amended. The names of all Bidders will be provided at public opening. Bidders may email [purchasing@workplaceni.ca](mailto:purchasing@workplaceni.ca) to request a Webex meeting invite to attend the public opening. Bidders must include their name, email address, and tender number in the request. Meeting requests must be received by WorkplaceNL before 4:00 PM Newfoundland Time on January 29, 2024.

**2.10.3** WorkplaceNL reserves the right to non-disclosure of pricing submitted by Bidders during the public opening. All Bidders will be notified electronically of the Bidder names and Bid prices within two (2) business days of the public opening. This information is for reference purposes only, and a full Bid evaluation will be conducted to determine the preferred supplier.

**2.10.4** The Bid shall remain open for acceptance and is irrevocable for a period of ninety (90) days after the Tender Closing Date.

**2.10.5** WorkplaceNL reserves the right to waive any minor irregularity or non-compliance where such irregularity or non-compliance is not of a material nature in its sole and absolute discretion. Such minor irregularity or non-compliance will be deemed substantial compliance and capable of acceptance. WorkplaceNL will be the sole judge of whether a Bid is accepted or rejected.

**2.10.6** WorkplaceNL, in its sole discretion, reserves the right to cancel the Tender without award. WorkplaceNL reserves the right to accept or reject any or all Bids in whole or in part. WorkplaceNL is not bound to accept the lowest or any Bid.

**2.10.7** The Bidder may be required to demonstrate financial stability, authorization to provide the good/services being acquired, and/or regulatory agency approval, licensing or registration as needed, or otherwise clarify Bidder's capability to satisfy the Tender

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requirements. WorkplaceNL reserves the right to reject Bids from any Bidder that it feels is incapable of providing the necessary labour, materials, equipment, financing or management resources to perform the work or supply the goods in a satisfactory and timely manner.

- 2.10.8** WorkplaceNL, in its sole discretion, may assess the Bidders' experience and/or ability to provide the goods and/or services required and described in this Tender by checking the Bidders' references. A contract will not be awarded to any Bidder whose references, in the opinion of WorkplaceNL, are found to be unsatisfactory. WorkplaceNL reserves the right to obtain references from sources other than those provided in the Bid. WorkplaceNL reserves the sole discretion to determine whether the Bidder and its professional staff have the appropriate qualifications.
- 2.10.9** WorkplaceNL reserves the right to disqualify any Bidder if the Bidder has either breached an agreement and/or failed to provide satisfactory service and/or deliveries under any prior agreement with WorkplaceNL, in the sole opinion of WorkplaceNL.
- 2.10.10** WorkplaceNL reserves the right to determine equivalency, and may require demonstrator or sample items in order to be able to evaluate the items proposed. WorkplaceNL will be the sole judge of equivalence.
- 2.10.11** Where applicable, all equipment must be certified by the appropriate regulatory agencies and/or must be approved by the appropriate Provincial agency.
- 2.10.12** Upon acceptance by WorkplaceNL, a written Bid acceptance will be forwarded to the successful Bidder.
- 2.10.13** In the event that the selected Bid(s) is higher than the budget approved by WorkplaceNL's Board of Directors, any awards made pursuant to this Tender process are subject to approval of the Board of Directors. In addition to any other rights of cancellation contained herein, WorkplaceNL, in its sole discretion, reserves the right to cancel this Tender without award should the Board of Directors not approve the award.
- 2.10.14** As required by the **Public Procurement Regulations**, a ten percent (10%) reduction will be applied to the pricing submitted by provincial suppliers for the purposes of evaluating pricing. A "provincial supplier" is defined in the Public Procurement Regulations as a supplier of goods, services or public works that has a place of business in the province of Newfoundland and Labrador. A "place of business" is defined in the **Public Procurement Regulations** as an establishment where a supplier regularly conducts its activities on a permanent basis. WorkplaceNL may require a Bidder to provide information and/or documentation to confirm whether it is a provincial supplier, as defined above. In the event of a tie between a provincial and non-provincial supplier, the selected Bidder shall be the provincial supplier.

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**SECTION 3: GENERAL**

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

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**APPENDIX “A”**

**Check List**

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

<b>Tender documents are completely read and understood</b>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
<b>All addenda (if applicable) are completely read and understood</b>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
<b>Bid form signed and completed as required in the submission (Appendix “B”)</b>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
<b>Checklist completed (Appendix “A”)</b>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
<b>Written statement outlining knowledge, skills and experience included in the submission (2.9.4)</b>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
<b>List of references included in the submission (2.9.5)</b>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
<b>Warranty Information on all Goods (2.9.6)</b>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>

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

- A list of employees, officers, directors, associates and approved sub-contractor assigned to perform the services, including their job titles and qualifications as per Article 3 of WorkplaceNL Standard Terms and Conditions;
- Certificates of insurance as per Article 14 of WorkplaceNL Standard Terms and Conditions;
- Declarations of Confidentiality/Conflict of Interest signed by the Contractor or an officer or director of the Contractor as per Article 9 of WorkplaceNL Standard Terms and Conditions; and
- Initialed WorkplaceNL Standard Terms and Conditions.



**WorkplaceNL**

**2024-05-T**

**Standing Offer for the Supply of Homestyle Adjustable Beds, Mattresses and Bed Rails for Injured Workers**

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**APPENDIX "B"**

**Bid Form**

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

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

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

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

**Dated at:** \_\_\_\_\_ **this** \_\_\_\_\_ **day of** \_\_\_\_\_ **2024**

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

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

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

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

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

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

**Electronic Invoicing** **Agree**\_\_\_\_\_

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

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

**WorkplaceNL**

**2024-05-T**

**Standing Offer for the Supply of Homestyle Adjustable Beds, Mattresses and Bed Rails for Injured Workers**

<b>Item Description</b>	<b>Price</b>
Home-style adjustable twin bed	
Home-style adjustable double bed	
Home-style adjustable queen bed	
Home-style adjustable split king bed (double twin)	
Memory foam mattress, twin (< 5 lbs per cubic foot foam density)	
Memory foam mattress, double (< 5 lbs per cubic foot foam density)	
Memory foam mattress, queen (< 5 lbs per cubic foot foam density)	
Memory foam mattress, twin (≥ 5 lbs per cubic foot foam density)	
Memory foam mattress, double (≥ 5 lbs per cubic foot foam density)	
Memory foam mattress, queen (≥ 5 lbs per cubic foot foam density)	
½ length side bed rail	
Bed helper rail	

<b>Geographic Delivery Areas</b>	<b>Price</b>	<b>Delivery Time</b>
St. John's / Northeast Avalon		
Avalon Peninsula		
Clarenville and Surrounding Areas		
Bonavista Peninsula		
Burin Peninsula		
Gander and Surrounding Areas		
Grand Falls-Windsor and Surrounding Areas		
Connaigre Peninsula		
Baie Verte Peninsula		
Corner Brook and Surrounding Areas		
Northern Peninsula		
Labrador		
Southwest Coast		

**WorkplaceNL**

**2024-05-T**

**Standing Offer for the Supply of Homestyle Adjustable Beds, Mattresses and Bed Rails for Injured Workers**

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**APPENDIX “C”**

**Electronic Bid Submission Instructions**

1. In order to be accepted, Bids must be submitted through WorkplaceNL’s posting for this opportunity on [www.merx.com](http://www.merx.com).
2. Bidders shall create a supplier account and be registered on [www.merx.com](http://www.merx.com). This will enable the Bidder to download the bid opportunity, receive addenda/addendum email notifications, download addenda/addendum, and submit their Bid electronically through the MERX website.
3. The timing of the Bid is based on when the Bid is received by the bidding system, not when the Bid is submitted by the Bidder, as transmission can be delayed by “Internet Traffic” for any number of reasons. WorkplaceNL recommends that Bidder allow for ample time to provide for uploaded Bids to be received prior to the Tender Closing Date. Bids received after the Tender Closing Date will not be accepted.
4. It is the responsibility of the Bidder to ensure that the Bid is received on time. Once registered, MERX will send a confirmation email to the Bidder if the Bid was submitted successfully. If a confirmation has not been received by the Bidder, the Bid was not uploaded correctly and it is the responsibility of the Bidder to either reload the documents or to contact MERX to resolve any issues regarding their Bid.
5. Response materials should be prepared and submitted in accordance with the instructions in the bidding system, including any maximum upload file size. Documents should not be embedded within uploaded files, as the embedded files may not be accessible or evaluated.
6. To ensure receipt of the latest information and updates regarding this opportunity via email, the onus is on the Bidder to register with MERX, create a supplier account, and sign up for notices for this opportunity.
7. Clarifications and questions received for this opportunity electronically can be submitted via the opportunity listing on [www.merx.com](http://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.

## 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, directors, 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, directors, 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, directors, associates and approved sub-contractors assigned to perform the Services including their job titles and qualifications for the provision of Services. The employees, officers, directors, 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, director, 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, directors, 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** – Conflict of interest includes, but is not limited to, any situation or circumstance where in relation to the Services, the Contractor's other commitments, relationships, financial interests (i) could, or could be seen to, exercise an improper influence over the objective, unbiased, and impartial exercise of its independent judgement; or (ii) could, or could be seen to, compromise, impair, or be incompatible with the effective performance of its contractual obligations. 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.

## STANDARD TERMS AND CONDITIONS

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 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, directors, 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, 2022**, SNL 2022, c. W-11.1, 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 ("PHIA"), 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, directors, 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 ensure compliance of the Contractor's employees, officers, directors, associates, and/or approved sub-contractors with the provisions of the said Declaration of Confidentiality/Conflict of Interest. The Contractor shall provide to WorkplaceNL the said Declaration of Confidentiality/Conflict of Interest which has been executed by the Contractor or an officer or director of the Contractor.

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, directors, 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, directors, 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;

## STANDARD TERMS AND CONDITIONS

- (h) the Contractor, its employees, officers, directors, 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;
- (i) the Contractor, its employees, officers, directors, 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, directors, 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, directors, associates, and/or approved sub-contractors in performance of the Services and to ensure compliance with this Agreement. WorkplaceNL's approval of employees, officers, directors, 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, directors, 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, directors, 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 (WHIMIS)** – When dealing with materials designated as hazardous, the Contractor shall ensure all goods and materials are provided with appropriate labels and material safety data sheets where required by WHIMIS legislation.

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

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

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

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

- (a) the Contractor, its employees, officers, directors, 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;

## STANDARD TERMS AND CONDITIONS

- (c) the Contractor fail to make adequate progress in the performance of the Agreement, or alternatively, an indication by the Contractor that they cannot or will not meet any or all of the requirements of the Agreement;
- (d) WorkplaceNL determines, 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 reasonable control of that party. These events shall include, but not be limited to, strikes or other labour disturbance, riots, civil disturbances, wars, fires, explosions, floods, acts of God, epidemics, pandemics and acts of any government or branch or agency thereof. The performance of this Agreement shall resume as soon as practicable after force majeure has ceased.

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, directors, associates and/or approved sub-contractors shall not approach WorkplaceNL personnel, to in any way promote the business of the Contractor.

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

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

STANDARD TERMS AND CONDITIONS

DECLARATION OF CONFIDENTIALITY/CONFLICT OF INTEREST

As a Contractor to WorkplaceNL, \_\_\_\_\_, its employees, officers, directors, associates and/or approved sub-contractors (collectively, the "Company") will perform Services pursuant to the Agreement between the Contractor and WorkplaceNL. All information of or concerning WorkplaceNL, WorkplaceNL clients, or of third parties to whom WorkplaceNL owes a duty of confidence, that is received or obtained by the Company in the course of performing the Services, either directly or indirectly, is Confidential Information.

As a Contractor, I \_\_\_\_\_, (name), an officer or director of the Company, hereby swear (or affirm) on behalf of the Company:

- 1. I have read and understand the following documents and shall comply with all terms and conditions outlined therein:
• WorkplaceNL Policy GP-01, Information Protection, Access and Disclosure;
• WorkplaceNL Standard Terms and Conditions; and
• WorkplaceNL Confidentiality Schedule (if attached to the Agreement).
2. I will comply with all professional standards and all obligations imposed under any applicable privacy laws, which may include 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 ("PHIA").
3. I shall not collect, use, or retain, or disclose any Confidential Information whatsoever except to the extent necessary to perform Services, which shall be limited to the minimum amount of information necessary to accomplish the purpose. Further, I acknowledge and agree that these obligations continue indefinitely, beyond the completion of the Agreement.
4. When required, I shall return to WorkplaceNL any and all Confidential Information obtained in the course of performing Services. Upon termination of the Company's relationship with any employees, officers, directors, associates, and/or approved sub-contractors, or when required, I will ensure the return to the Company of any and all Confidential Information obtained in the course of performing Services. I will retain copies of Confidential Information only to the extent required by law and applicable professional standards.
5. I will immediately notify WorkplaceNL if the Company becomes aware of a breach or possible breach of confidentiality, whether the awareness of the breach is by an employee, officer, director, associate, and/or approved sub-contractor or any other party that the Company may engage to assist in any part of the performance of Services.
6. I will communicate WorkplaceNL's confidentiality and conflict of interest requirements to the Company's employees, officers, directors, associates, and/or approved sub-contractors and I will bind them to comply with those requirements and sign an oath which addresses the principles of confidentiality contained therein. I acknowledge and agree that the Company is fully and solely responsible for the actions of the Company and its employees, officers, directors, associates, and/or approved sub-contractors to ensure compliance with WorkplaceNL's confidentiality and conflict of interest requirements.
7. 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 the Company, and will immediately disclose any such conflict to WorkplaceNL in writing.
8. In particular, the Company is aware of its obligation:
• to comply with the requirements of applicable legislation to protect the confidentiality of Confidential Information and the privacy of the individuals who are the subject of that information;
• to protect the confidentiality of the information that is in the Company's custody or control and the privacy of any individual who is the subject of that information;
• to provide for the secure storage, retention and disposal of Confidential Information to minimize the risk of unauthorized access to or disclosure of the Confidential Information.

SWORN/AFFIRMED at \_\_\_\_\_, in the Province of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me:

Commissioner of Oaths

Signature of Individual

Print Name