

**Public Service Commission EAP / RWP Service Provider Agreement
(Corporate / Partnership Service Provider)**

THIS AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador the _____ day of _____, 20__.

BETWEEN: Her Majesty the Queen in Right of the Province of Newfoundland and Labrador as represented by the Public Service Commission
(“the Commission”)

AND: _____
(“the Service Provider”)
(jointly referred to as “the Parties”)

WHEREAS the Service Provider has represented to the Commission that the Service Provider is able to provide Services required by an individual employee of the Government of Newfoundland or his or her family member (“Client”) under the terms and conditions of the Employee Assistance Program and / or Respectful Workplace Program as set out herein;

AND WHEREAS the Commission may, on an as-needed basis, refer a Client to the Service Provider for Services;

AND WHEREAS the Parties wish to set out the terms and conditions governing the placement of a Service Provider on the Commission’s List of Service Providers, a referral of a Client to the Service Provider and the provision of Services to a Client;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants expressed, the Parties agree as follows:

1. Definitions

In addition to the terms defined in the General Terms and Conditions attached as Schedule “C”, the following words and phrases shall, wherever used in the Contract Documents, have the following meanings:

- a. “Contract Documents” shall mean and include:
 - i. This head agreement (the “Head Agreement”);
 - ii. The scope of services and list of counselors to be provided by the Service Provider and professional and other requirements for counselors attached as Schedule “A”;
 - iii. The Special Terms and Conditions attached as Schedule “B”;
 - iv. The General Terms and Conditions attached as Schedule “C”; and
 - v. Protocols for Security of Government Information on Information Technology assets of Contractors attached as Schedule “D”.

- b. "Commission" means the Public Service Commission, Government of Newfoundland and Labrador, and staff or representatives of the Commission;
- c. "List" means the List of Individual Counselors of the Service Provider set out in Schedule "A".
- d. "Services" means all activities necessary or incidental to the provision of the scope of services under the Employee Assistance Program ("EAP") and/or Respectful Workplace Program ("RWP") set out in Schedule "A" and includes any alteration of the scope of the Services made pursuant to this Agreement;
- e. "Representatives" means directors, officers, employees, consultants, sub-consultants, agents, advisors or partners of the Parties.

2. Program Services and Adjustment or Change

- 2.1 The Service Provider shall provide individual counselors to perform the Services. Each counselor shall meet professional and other requirements for the EAP and RWP set out in Schedule "A" and be pre-approved in writing by the Commission for inclusion on the List. The List may be amended from time to time as agreed by the Parties. The Commission shall have the right to require removal from the List of any counselor who does not meet initial or ongoing Schedule "A" requirements or who, in the sole opinion of the Commission, is not suitable to perform the Services. If the Service Provider fails to remove a counselor from the List as requested by the Commission the Commission may void this Agreement or refuse to accept subsequent work in which the counselor was involved and may refuse to make payment for such efforts.
- 2.2 The Service Provider shall do all things necessary to implement and fulfill all of the obligations of the Service Provider as set out in the Contract Documents. Services shall be performed by the Service Provider to the satisfaction of the Commission, provided always that the Commission, acting reasonably, may alter the scope or period of the Services to more fully achieve the objectives of this Agreement as the Commission may deem advisable.
- 2.3 The Service Provider agrees and warrants that, in relation to providing Services under this Agreement, it shall only provide individual counselors from the List and that each such individual counselor on the List has been provided with a copy of this Agreement and made aware of the rights of the Commission and obligations of the Service Provider under this Agreement, including but not limited to, record keeping and information security requirements of the Service Provider under this Agreement.

3. Payment

3.1 Consideration

- 3.1.1 Subject to Article 3.3, upon presentation of itemized and substantiated invoices satisfactory to the Commission, the Commission shall pay to the Service Provider for the satisfactory provision of Services to the Client, the following:
 - (a) Subject to paragraph 3.1.1 (b), for EAP Services the time rate of \$85.00 (plus HST) per one hour session, to a maximum of \$680.00 per fiscal year (April 1st - March 31st);

- (b) for EAP Services for displaced or terminated employees the Service Provider's actual hourly rate (plus HST) to a maximum of 8 counselling hours in the 12 months following the date of displacement or termination.
- (c) for RWP Services the Service Provider's actual hourly rate (plus HST) to a maximum of \$680.00 per fiscal year (April 1st - March 31st).

3.1.2 Payment in excess of the maximum amount in Article 3.1.1 shall not be made except in extraordinary circumstances as determined and approved in writing by the Commission prior to performance of the applicable Services.

3.1.3 No amount is payable for any service provided by the Service Provider to a Client prior to the date of referral by the Commission.

3.1.4 Payment will be made only for activities actually expended in performance of the Services. Costs for missed or cancelled appointments are not payable under this Agreement.

3.2 **No Reimbursement of Expenses**

The Commission shall not be responsible for any expenses incurred in relation to the Services.

3.3 **Payment General**

3.3.1 Payment will be made within 60 calendar days of receipt of a properly documented invoice. Interest is not payable should payment be delayed beyond this time period.

3.3.2 All invoices

(a) unless otherwise approved in writing by the Commission, shall be provided in original form: invoices sent by fax or e-mail shall not be accepted;

(b) shall clearly show the amount of HST billed by the Service Provider as a separate item;

(c) shall have a unique invoice number;

(d) shall not indicate the name of the Client or other identifying information other than the EAP / RWP number assigned to the Client for invoice purposes;

(e) shall include the original Client Verification form signed by the Client; and

(f) unless otherwise notified in writing by the Commission, shall be sent to the EAP / RWP Coordinator who made the referral to the Service Provider at the address provided in Article 4.1.

3.3.3 The Service Provider shall conform to any Commission request to alter the form of invoice customarily used by the Service Provider as may be reasonably required for the purposes of the Commission's internal accounting systems. The invoice shall have appended thereto any documentation required by the Commission.

3.3.4 The Parties agree and confirm that total amounts payable for or in respect of the Services shall not exceed the amounts set out in Article 3.1.

3.3.5 The Parties agree and confirm that as set out in section 25(6) of the *Financial Administration Act*, RSNL1990 cF-8, as amended, all amounts payable in accordance with this Agreement are subject to there being an appropriation for the Services for the fiscal year in which payment under this Agreement is made.

4. Notices

4.1 All notices, claims, payments, reports and other communications required under this Agreement shall be in writing. Addresses for service are as follows:

For the Commission:

Name: Ian Shortall
Position: Director, Employee Assistance and Respectful Workplace Programs
Address: P.O. Box 8700, St. John's, NL A1B 4J6
Phone: 729-5804
Fax: 729-6234
Email: ianshortall@gov.nl.ca

For the Service Provider

Name:
Position:
Corporate Name:
Address:
Phone: Insert phone number
Fax: insert fax number
Email: insert email address

4.2 Notices, requests or documents shall be deemed to have been received by the addressee as follows:

- (a) As of the date on which they are delivered where delivery is by a party or by messenger or special courier service;
- (b) As of the date on which they are sent where delivery is by telecopier or other means of electronic communication; and
- (c) Six (6) days after delivery to Canada Post where the postal service is used.

5. Termination

5.1 Upon written notice to the Commission the Service Provider may terminate this Agreement prior to the Completion Date. On termination the Service Provider shall be removed from the Commission's list of Service Providers.

5.2 Upon written notice to the Service Provider the Commission may terminate this Agreement without cause or reason prior to the Completion Date. The right to terminate this Agreement may be exercised by the Commission without prejudice to any other right or remedy that the Commission may have in law or under this Agreement

6. Indemnity

The Service Provider agrees to indemnify the Commission and any representative of the Commission from any and all claims of whatsoever nature and kind of any person whomsoever arising from the Service Provider's operations, the action or failure to act of the Service Provider or any of its servants, agents, employees or representatives whether such a claim arises in contract, tort or any other cause of action whatsoever.

7. Communications

In any communication with the public or any person whatsoever, the Service Provider agrees to respect and conform to the confidential provisions of the General Conditions of this Agreement.

8. No Assignment

This Agreement may not be assigned without the written consent of the Commission.

9. Compliance with Laws

The Service Provider shall comply with all applicable federal, provincial and municipal laws, statutes, regulations or by-laws, ordinances and standards.

10. Entire Agreement

It is hereby agreed that the Contract Documents constitute the entire agreement between the Parties (the "Agreement"). There are no understandings, representations or warranties of any kind except as expressly set forth herein. No changes, alterations, modifications or amendments of this Agreement shall be effective unless made in writing and signed by those persons designated for such purpose. This Agreement may not be amended or otherwise modified by e-mail.

11. Representations and Warranties

The Service Provider hereby represents and warrants that every fact stated or represented by the Service Provider or its Representatives to the Commission in connection with the delivery of the Services is true and agrees that the Commission shall be conclusively deemed to have relied on each such representation or statement in entering into this Agreement.

12. Conflict between Provisions

In the event of any conflict or inconsistency between provisions in the Contract Documents, the Contract Documents shall have precedence as follows: first the Head Agreement, second the Special Terms and Conditions, third the General Terms and Conditions, fourth the Protocols for Security of Government Information on Information Technology assets of Contractors, fifth the Schedule "A", and last, any documents incorporated by reference in any of the foregoing.

13. No Guarantee of Referral

The Service Provider acknowledges that neither acceptance for the Commission's List of Service Providers nor signing of this Agreement shall guarantee that the Service

Provider shall receive a referral for Services under this Agreement and that a referral will be made, at the sole discretion of the Commission, based on its assessment of EAP and Client need at any given time.

14. Start Date

The Service Provider warrants that at any time after the Start Date below it shall make every reasonable effort to be available to perform the Services upon receipt of a Client referral by the Commission. The Service Provider shall remain available to provide Services up to the termination of this Agreement.

Start Date: **Insert date**

15. Effective Date

The effective date of this Agreement shall be the earlier of the start date referred to in Article 14 or the date on the first page of this Head Agreement.

16. Paragraph Numbering

In the event that the General Terms and Conditions are modified, the numbering references in the General Terms and Conditions shall remain unchanged.

17. Counterparts

This Agreement may be executed in any number of counterparts, each of which will be considered an original of this Agreement, and which together will constitute one and the same instrument. No Party will be bound to this Agreement unless and until all Parties have executed a counterpart. A facsimile signature or an otherwise electronically reproduced signature of either Party shall be deemed to be an original.

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF NEWFOUNDLAND AND LABRADOR**

Public Service Commission

Date: _____

SERVICE PROVIDER

Authorized Signature

Date: _____

SCHEDULE "A"

Description of Services and Professional and Other Requirements for Counselors

Employee Assistance Program:

- 1) Provision of counseling services on a referral/as-required basis to individual government of Newfoundland/Labrador employees or family members under terms and conditions prescribed by the PSC.
- 2) Costs for Services provided to a Client over amounts payable under this Agreement will be the responsibility of the Client.
- 3) Qualifications for individual counselors of the Service Provider would normally be acquired through post secondary education at the master's level supplemented by significant relevant experience in clinical counseling. Extensive experience in clinical counseling, coaching services and assessment services is required. Equivalencies may be acceptable at the discretion of the Public Service Commission.
- 4) Provide private practice facilities in an accessible and professional environment.
- 5) Individual counselors of the Service Provider must:
 - meet and provide proof of professional registration or certification requirements for the provision of clinical counseling services (eg. Registration with Association of Newfoundland Psychologists);
 - provide annual proof of and maintain professional liability insurance coverage in the amount of \$2,000,000; and
 - sign an initial Statement of Personal Conduct and to update same annually.

Respectful Workplace Program

- 1) Provision of a range of services including conflict coaching, mediation, facilitated discussions, workshops, workplace assessments to employees and workplace groups as appropriate under terms and conditions prescribed by the PSC.
- 2) Costs for services provided will not exceed the agreed upon amounts.
- 3) Where required, provide private practice facilities in an accessible and professional environment.

- 4) Qualifications for Service Providers would normally be acquired through post secondary education at the master's level supplemented by significant relevant experience in RW programs, conflict coaching, mediation and or Alternate Dispute Resolution. Certification in Conflict Resolution as a mediator and/or arbitrator is an asset. Equivalencies may be acceptable at the discretion of the PSC.

- 5) Individual counselors of the Service Provider must:
 - meet and provide proof of professional registration or certification requirements for the provision of clinical counseling services (eg. Registration with Association of Newfoundland Psychologists);
 - provide annual proof of and maintain professional liability insurance coverage in the amount of \$2,000,000; and
 - sign an initial Statement of Personal Conduct and to update same annually.

SCHEDULE "A" (CONTINUED)
LIST OF INDIVIDUAL COUNSELORS OF THE SERVICE PROVIDER

Name

Professional Designation

- 1.
- 2.
- 3.
- 4.

SCHEDULE "B"

SPECIAL TERMS AND CONDITIONS

1. For greater certainty in the event of an inconsistency between a Service Provider's responsibilities or obligations under Schedules "C" and "D" of this Agreement and the *Personal Health Information Act*, SNL 2008 Ch. P-7.01, that Act shall prevail.
2. Notwithstanding Schedule "C" (Article 2) and Schedule "D" and for greater certainty "Confidential Information" in Schedules "C" and "D" shall not include professional / clinical health care records created by the Service Provider or its employees, servants and/or agents for the purpose of the provision of direct health care services to the Client.
3. Schedule C is amended as follows:
 1. Article 2.2 is amended by inserting the words "described in Article 2.1(a), (b) or (c)" between the words "Confidential Information" and "acquired by it".
 2. Article 2.8 is amended by inserting the words "described in Article 2.1(a), (b) or (c)" between the words "Confidential Information" and "to persons other".
 3. Articles 2.4 (Copyright and Ownership of Completed Work), 2.5 (Return or Destruction of Confidential Information), 3.1 (Employees of the Service Provider), 4.1 (Access to Facilities), 6.2 (Termination) and 11.1 (Use of Work) are deleted.
 4. Article 5.1 is deleted and replaced with the following:

"5.1 The Service Provider shall keep financial records, books or account and support documents in accordance with accepted accounting procedures and practices. Any such financial records, books or documents which pertain to Services paid for by the Commission under this Agreement shall be made available to the Commission or its authorized representative for observation or audit at mutually convenient times for up to two years after completion of Services to a Client performed under this Agreement."

SCHEDULE "C"

GENERAL TERMS AND CONDITIONS

- Article 1 - Information Supplied by the Commission
- Article 2 - Confidentiality, Materials and Copyright
- Article 3 - Employees of the Service Provider
- Article 4 - Access to Facilities
- Article 5 - Records and Audit
- Article 6 - Termination
- Article 7 - Liability
- Article 8 - Compliance with Law
- Article 9 - Arbitration
- Article 10 - Laws Governing
- Article 11 - Use of Work
- Article 12 - Conflict of Interest
- Article 13 - Subcontractors
- Article 14 - General

GENERAL TERMS AND CONDITIONS

Article – 1. INFORMATION SUPPLIED BY THE COMMISSION

- 1.1 The Commission will furnish to the Service Provider all available information necessary for the performance of the Services. The Service Provider shall review any information provided for accuracy and applicability.
- 1.2 Where discrepancies, omissions or obscurities in the information are evident, the Service Provider shall bring them to the attention of the Commission and secure written instructions from the Commission before proceeding with any work.

Article – 2. CONFIDENTIALITY, MATERIALS AND COPYRIGHT

- 2.1 For the purposes of this Agreement “Confidential Information” means:
 - (a) all communications and instructions from the Commission respecting the Services, including the fact of this Agreement;
 - (b) all information acquired by the Service Provider, its employees, servants and/or agents respecting policy consideration and development, business decisions, internal deliberations, discussions and considerations and any other aspect of the decision-making process of the Commission;
 - (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 the affairs of the Commission, disclosed directly or indirectly to the Service Provider, its employees, servants and/or agents during the performance of the Services or in any way related thereto;
 - (d) all personal information, as defined from time to time under the *Access to Information and Protection of Privacy Act*, SNL2002 cA-1.1, to mean recorded information about an identifiable individual, including
 - (i) the individual’s name, address or telephone number,
 - (ii) the individual’s race, national or ethnic origin, colour, or religious or political beliefs or associations,
 - (iii) the individual’s age, sex, sexual orientation, marital status or family status,
 - (iv) an identifying number, symbol or other particular assigned to the individual,
 - (v) the individual’s fingerprints, blood type or inheritable characteristics,

- (vi) information about the individual's health care status or history, including a physical or mental disability,
- (vii) information about the individual's educational, financial, criminal or employment status or history,
- (viii) the opinions of a person about the individual, and
- (ix) the individual's personal views or opinions

for any individual, which is, directly or indirectly, disclosed to or collected by the Service Provider, its, his/her employees, servants and/or agents during the performance of the Services or in any way related thereto

- (e) all information that is developed based upon Confidential Information including any information developed by the Service Provider or its employees, servants and/or agents.

- 2.2 The Service Provider shall treat all Confidential Information acquired by it in the performance of the Services as privileged and confidential and shall not divulge the same to any person or persons at any time, without the express written approval of the Commission unless required to do so by law, which may include a subpoena or other similar process or in connection with litigation, arbitration or other proceeding or by virtue of an Act or Regulations. In the event that such disclosure is required, the Service Provider shall give the Commission prompt notice of the requirement upon becoming aware that such disclosure is required. Where circumstances did not permit the Service Provider to provide such notice prior to disclosure, the Service Provider shall provide such notice to the Commission immediately after the required disclosure.
- 2.3 The Service Provider shall only use the Confidential Information acquired in the performance of the Services for the purposes specified in Schedule "A" of this Agreement, and shall not permit the use of the Confidential Information for any other purposes.
- 2.4 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 Service Provider 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 the Government of Newfoundland and Labrador and the contents thereof are privileged and confidential. Nothing in this Agreement shall give the Service Provider 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 Service Provider pursuant to the terms of this Agreement. The Service Provider acknowledges that the Commission's right to this information shall at all times be paramount to any rights of the Service Provider's, at law or in equity, and that the Service Provider's remedies against the Commission for the Commission's breaches

under this Agreement do not include the right to deprive the Commission of access to any information in the Service Provider's possession.

- 2.5 The Service Provider shall provide to the Commission and solely to the Commission upon completion of the Services or upon earlier termination of this Agreement all Confidential Information acquired during the performance of the Program, or shall, at the request of the Commission, destroy any and all copies and versions of the Confidential Information in the possession of the Service Provider, its employees, servants and/or agents and shall certify the destruction of same to the Commission.
- 2.6 The Service Provider acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Service Provider, its employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the *Access to Information and Protection of Privacy Act*, RSNL 1990 cP-22 and *Personal Health Information Act*, SNL 2008 Ch. P-7.01 as well as other legislation which may apply in the jurisdiction of the Service Provider's operation. The Service Provider is responsible to ensure the compliance with and satisfaction of the legislative requirements of all such information relating to the treatment of Confidential Information by the Service Provider, its, his/her employees, servants and/or agents.
- 2.7 The Service Provider shall ensure that its employees, servants and/or agents have in place and follow the appropriate systems, processes, protocols and policies to maintain the physical and electronic security of all Confidential Information, including but not restricted to the following:
 - (a) at a minimum, using the same level of physical and electronic security as the Service Provider employs to avoid disclosure or dissemination of the Service Provider's own confidential information, to prevent the disclosure of any of the Confidential Information to any third party, or to any of its employees, servants or agents other than those who are required to have access to property to perform the Services under this Agreement;
 - (b) Establish and maintain security policies, standards and safeguards to prevent unauthorized access, collection, use, disclosure or disposal of the Confidential Information;
 - (c) Ensure all employees, servants and/or agents of the Service Provider comply with all policies, standards and safeguards established under this Article;
 - (d) Advise the Commission of any changes in its security systems, procedures, standards and practices that may affect the Confidential Information and seek the Commission's consent prior to such changes; and
 - (e) Satisfaction of the foregoing commitments includes, but is not restricted to, compliance with the requirements set out in Schedule "D", unless otherwise advised by the Commission, and this includes:

- (i) complying with all alterations or updates of Schedule “D” as may be provided to the Service Provider from time to time; and
- (ii) adhering to any additional instructions (including oral instructions) from the Commission as they relate to the subject matter contained in Schedule “D” and this Article.

2.8 The Service Provider shall only disclose Confidential Information to persons other than its employees, servants and/or agents with the prior written consent of the Commission and then only to those persons who need to know the information in order to carry out the duties associated with this Agreement and only after confirming that such persons agree to comply with the provisions of this Article including the requirements set out in Schedule “D”.

2.9 The Service Provider shall

- (a) Notify the Commission promptly of any unauthorized possession, use or knowledge, or attempt thereof, of any confidential information in its possession, 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 Service Provider;
- (b) Promptly furnish to the Commission full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the Commission 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 the Commission in any litigation and investigation against third parties deemed necessary by the Commission to protect its proprietary rights or the confidentiality of such information;
- (d) Promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information; and
- (e) Refer to and follow the privacy breach protocol of the Government of Newfoundland and Labrador as it exists at the time of the breach and located on the Department of Justice website at <http://www.justice.gov.nl.ca/just/CIVIL/atiipp/default.htm> .

Article – 3. **EMPLOYEES OF THE SERVICE PROVIDER**

3.1 The Service Provider shall provide employees who are competent in their field of work or specialization. The Commission will have the right to have the Service Provider remove from the Services any person, who by misconduct or by failure to properly perform his/her duties is considered by the Commission to be unfit for employment on the Services. If the Service Provider fails to remove any unfit person from the Services as requested by the Commission, then the Commission

may void this Agreement or refuse to accept subsequent work in which the person was involved and may refuse to approve payment for such efforts.

Article – 4. **ACCESS TO FACILITIES**

- 4.1 The Service Provider agrees to provide, where it is deemed by the Commission, in its absolute and sole discretion to be necessary for the reasonable performance of, review, audit, or supervision of the Services.

Article – 5. **FINANCIAL RECORDS AND AUDIT**

- 5.1 The Service Provider shall keep records, books or account and support documents in accordance with accepted accounting procedures and practices. The records shall be made available to the Commission or its authorized representative for observation or audit at mutually convenient times and up to one year after discharge or termination of this Agreement.
- 5.2 The Service Provider shall furnish reports whether as required by the Agreement or as may be required by the Commission for the purpose of monitoring the provision of the Services.

Article – 6. **TERMINATION**

- 6.1 This Agreement is deemed to be concluded once the Services to be provided are no longer required by the Commission or when the time period of this Agreement expires whichever shall first occur.
- 6.2 Notwithstanding the provisions of this Agreement, the Commission may at any time by way of written notice to the Service Provider, terminate this Agreement whether for cause or otherwise.
- 6.3 Where this Agreement is terminated prior to a mutually agreed upon completion date, the Service Provider shall thereupon be entitled to payment in accordance with this Agreement in respect of that part of the Services completed up to the date of termination, provided however, that the Service Provider 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 arising from termination of this Agreement or in any other way related thereto. The Commission shall retain the right of set off with respect to any earned but unpaid proceeds then due, any amount owing to the Commission pursuant to this Agreement.

Article – 7. **LIABILITY**

- 7.1 The Service Provider agrees that in performance of the Services neither the Service Provider nor any Representative shall be or be deemed to be an officer, servant, agent or partner of the Commission.
- 7.2 In addition to the Service Provider's obligation to indemnify the Commission in respect of any claim set out in the Head Agreement, the Service Provider shall defend any and all actions by third parties and pay

all legal charges, costs and other expenses arising therefrom. Notwithstanding the foregoing, the Commission may at its own discretion retain its own solicitors to defend its interests in any such suit or claim, and the legal costs of that defense shall be paid by the Service Provider.

Article – 8. **COMPLIANCE WITH LAW**

8.1 The Service Provider shall provide (where requested by the Commission) evidence of compliance with all requirements of the Province of Newfoundland and Labrador with respect to Worker’s Compensation and/or Occupational Health and Safety, including without limitation, any payments or compliance orders due or issued thereunder.

Article – 9. **ARBITRATION**

9.1 In the case of a dispute arising between the Commission and the Service Provider as to their respective rights and obligations under this Agreement, the parties shall first attempt to resolve all matters through friendly negotiation by a meeting between their representatives upon notice. A resolution reached in this way must be reached within 10 days of both parties having knowledge and notice of the dispute and be reduced to writing.

9.2 In the case of a dispute arising between the Commission and the Service Provider as to their respective rights and obligations under this Agreement, (that has not been resolved pursuant to Article 9.1), either party may give the other notice of such dispute and to request arbitration thereof. If both parties agree, the parties shall, with respect to the particular matters then in dispute, submit the same to arbitration in accordance with the provisions of the *Arbitration Act*, RSNL 1990 cA-14, including such provisions for the appointment of arbitrators.

Article – 10. **LAWS GOVERNING**

10.1 This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Newfoundland and Labrador and all actions, suits or proceedings arising out of this Agreement shall be determined in a court of competent jurisdiction in Newfoundland and Labrador subject to any right of appeal.

Article – 11. **USE OF WORK**

11.1 The Commission shall have the right to use any material developed by the Service Provider for provision of the Services or variations thereof in other operations of the Commission.

Article – 12. **CONFLICT OF INTEREST**

12.1 No public employee or member of the House of Assembly of the Province of Newfoundland and Labrador shall be admitted to any part or share of the payments made pursuant to this Agreement or to any benefits arising therefrom except in accordance with the *Conflict of Interest Act* or the *House of Assembly Act*.

12.2 The Service Provider and its Representatives:

- (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 the Commission which might further their private interests.
- (c) shall not accept any commission, discount, allowance, payment, gift, or other benefit that is connected, directly or indirectly, with the performance of any duties related to this Agreement, 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 duties related to this Agreement.

Article – 13. **SUBCONTRACTORS**

- 13.1 The Service Provider shall not subcontract all or a portion of the Services without the prior written approval of the Commission.
- 13.2 The entry into any subcontract shall not relieve the Service Provider of any of its obligations under the terms of this Agreement.

Article – 14. **GENERAL**

- (a) Articles 2 and 7 of this Agreement shall survive the termination or expiration of this Agreement.
- (b) Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations is delayed, hindered, or prevented by force majeure. Force majeure shall be any cause beyond the control of the parties hereto which they could not reasonably have foreseen and guarded against.
- (c) Time shall be of the essence of this Agreement.
- (d) The failure of the Commission to insist upon or enforce in any instance strict performance by the Service Provider of any of the terms of this Agreement or to exercise any rights herein conferred shall not be construed as a waiver or a relinquishment to any extent of the Commission's right to assert or rely upon any such terms or rights on a future occasion.
- (e) If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, such invalidity or unenforceability shall attach only to such provision, and all other provisions hereof shall continue in full force and effect.

- (f) The division of this Agreement into Articles and Clauses and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (g) This Agreement shall inure to the benefit of and be binding upon the Parties hereto, their respective heirs, legal representatives, successors and assigns.

SCHEDULE "D"

PROTOCOLS FOR SECURITY OF GOVERNMENT INFORMATION ON INFORMATION TECHNOLOGY ASSETS OF SERVICE PROVIDERS

The Service Provider shall confirm with the Commission whether the Service Provider will be required to use information technology resources, including computers, of the Government of Newfoundland and Labrador in the provision of Services under the Agreement. The following requirements apply where the Service Provider will not be using such assets, but will instead have access to confidential information (including personal information) ("Confidential Information") received from the Commission and will be storing, manipulating or accessing that Confidential Information on its own information technology resources.

- All portable storage devices or media (e.g., flash drives, memory sticks, portable hard drives, writeable compact discs or digital video discs, etc.) may only be used to transport and/or store Confidential Information where either the Confidential Information or the device or media is encrypted.
- Unless specifically separately authorized by the Agreement or otherwise, the Service Provider is not permitted to attach non-government computers or other information technology systems to any Government network.
- The Service Provider is expected to implement and maintain up to date versions of all ordinary business software for the reasonable protection of information on computers attached to the internet which will have access to or store Confidential Information, including security firewall and anti-viral software.
- The Service Provider is not permitted to use any Peer to Peer file sharing program (e.g. Limewire, etc.) or chat program (i.e. 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 should not be used as a method to transmit Confidential Information across public networks such as the internet unless the e-mail and/or its attachments are encrypted or zipped in a secure manner.
- The Service Provider acknowledges that, in addition to the requirements of this Agreement, the Confidential Information acquired by the Service Provider, its employees, servants and/or agents in the performance of the Services and in particular personal information, is subject to privacy legislation in various jurisdictions, including but not limited to the *Access to Information and Protection of Privacy Act*, *Personal Health Information Act*, SNL 2008 Ch. P-7.01, *Management of Information Act*, SNL2005, cM-1.01 and the *Privacy Act*, RSNL 1990 cP-22, as well as other legislation which may apply in the jurisdiction of the Service Provider's operation. The Service Provider is responsible to ensure the compliance with and satisfaction of the legislative requirements of all such information relating to the treatment of Confidential Information by the Service Provider, its employees, servants and/or agents.

- Where the Service Provider will be granted access to the Government computer network during the course of the provision of Services, in addition to the requirements noted above, the Service Provider shall not:
 - share personal computer drives or folders on a computer accessing the network; or
 - access the network remotely, either through wired or wireless connections, except through the use of secure ID and virtual private network systems.
- These requirements apply to the Service Provider and all its agents, employees or permitted sub-contractors, and it is the responsible of the Service Provider to ensure that all such agents, employees or permitted sub-contractors are aware of these restrictions and are in compliance with them.