

# Terms and Conditions

## Apprentice Wage Subsidy (AWS) Program

### 1. Location

The SERVICE PROVIDER will maintain its location and the ACTIVITY LOCATIONS in Newfoundland and Labrador throughout the TERM. The SERVICE PROVIDER will immediately inform the PROVINCE of any change in its address or contact information set out in Schedule "A" or changes in its ACTIVITY LOCATIONS.

### 2. Amounts Owed

The SERVICE PROVIDER declares that it has provided the PROVINCE with a true and accurate list of all amounts owing to the federal government and to the PROVINCE under legislation or AGREEMENT as of the time of the SERVICE PROVIDER's application for funding. The SERVICE PROVIDER acknowledges and agrees that any such amounts owing to the PROVINCE may be recovered by way of deduction or set-off against amounts due or payable to the SERVICE PROVIDER under this AGREEMENT.

### 3. Representations

The SERVICE PROVIDER further declares that all statements made and all information provided to the PROVINCE in connection with its application for funding are true and all relevant facts have been disclosed.

### 4. Additional Funding

4.1 The SERVICE PROVIDER agrees to inform the PROVINCE promptly in writing of any additional funding or financial assistance received or to be received to assist it in carrying out the PROJECT.

4.2 Where the SERVICE PROVIDER receives any additional financial assistance referred to in 4.1, the PROVINCE may, in its discretion;

(a) reduce its contribution by such amount as it considers appropriate, up to the amount of the additional assistance received; or

(b) if the PROVINCE's contribution has already been paid, require repayment of such amount.

Upon receipt of notice to repay under this section, the SERVICE PROVIDER agrees to repay the amount as a debt due to the PROVINCE.

4.3 At the end of the TERM, the SERVICE PROVIDER shall provide the PROVINCE with a statement signed by a senior officer of the SERVICE PROVIDER, certifying the amounts of any financial assistance received from other sources during the TERM towards the costs of the PROJECT.

### 5. Ability to Perform

The SERVICE PROVIDER warrants that it has the personnel, experience, qualifications and other resources to provide the services in accordance with the requirements of this AGREEMENT.

### 6. Inconsistent Activities

During the TERM, the SERVICE PROVIDER will not engage in any activities that are inconsistent with the PROGRAM or AGREEMENT ACTIVITIES under this AGREEMENT.

### 7. Conflict of Interest

a) The SERVICE PROVIDER shall not permit a conflict of interest to arise between its obligations to the PROVINCE under this AGREEMENT and its obligations to any third PARTY. The SERVICE PROVIDER shall promptly notify the PROVINCE in writing if any such conflict arises.

b) No member of the House of Assembly shall be admitted to any share or part of this AGREEMENT or to any benefits to arise there from.

c) It is a TERM of this AGREEMENT that no individual, for whom the post-employment provisions of the *Conflict of Interest Act*, 1995 SNL 1995, c.C-30.1 (as amended) apply, shall derive a direct benefit from this AGREEMENT unless that individual is in compliance with the applicable post-employment provisions.

### 8. Assignment/Subcontracting

The SERVICE PROVIDER shall not assign or sub-contract this AGREEMENT or any part thereof without the written consent of the PROVINCE, which consent may be withheld for any reason.

## **9. Assistance**

The PROVINCE agrees to make available to the SERVICE PROVIDER such information and assistance as may be, in the opinion of the PROVINCE, reasonably necessary to assist the SERVICE PROVIDER in the performance of this AGREEMENT.

## **10. Funding Condition**

10.1 The PROVINCE's obligation to pay money under this AGREEMENT is subject to an appropriation being available in the fiscal year of the PROVINCE during which payment comes due. Where the PROVINCE is unable to provide the level of funding called for under this AGREEMENT it shall promptly advise the SERVICE PROVIDER in writing and, in the event the SERVICE PROVIDER is unwilling or unable to continue with the AGREEMENT as a result, the SERVICE PROVIDER may terminate this AGREEMENT upon not less than fourteen (14) days written notice and the provisions of section 26.2 shall apply.

10.2 The PROVINCE reserves the right to reduce the funding to the SERVICE PROVIDER in the event that it is apparent, based on empirical data and information contained in ACTIVITY REPORTS or FINANCIAL REPORTS that the PROJECT will not require the entire AGREEMENT Amount identified in Schedule "C."

## **11. Improper Expenditure**

The SERVICE PROVIDER acknowledges and agrees that it is responsible for the appropriate expenditure of moneys received under this AGREEMENT and that, without limiting the generality of the foregoing, expending money in any manner other than as agreed upon may lead to legal action against the SERVICE PROVIDER as well as the individual involved in such improper spending.

## **12. Compliance with Laws**

The SERVICE PROVIDER shall carry out its activities and obligations under this AGREEMENT in compliance with all applicable federal, provincial and municipal laws, regulations and by-laws.

## **13. Performance**

The SERVICE PROVIDER agrees that it will diligently and faithfully perform all of its services and obligations under this AGREEMENT in a prudent and professional manner and in accordance with the standards and applicable guidelines of the PROGRAM. The SERVICE PROVIDER shall consult with the PROVINCE, and keep the PROVINCE advised, as to all major policy matters relating to the performance of this AGREEMENT and shall apply sound administrative policies and operational policies consistent with terms and provisions of this AGREEMENT.

## **14. Nepotism**

14.1 No cost incurred in relation to, or wages paid to any person who is a member of the immediate family of the SERVICE PROVIDER or a principal of the SERVICE PROVIDER is eligible for reimbursement under this AGREEMENT unless the PROVINCE is satisfied that the participation, recruitment or hiring of that person was not the result of favoritism by reason of membership in the immediate family of the SERVICE PROVIDER or principal of the SERVICE PROVIDER.

14.2 For the purposes of 14.1,

"immediate family" means father, mother, step-father, step-mother, foster parent, brother, sister, spouse, child including child of spouse, stepchild, ward, father-in-law, mother-in-law, grandparent, grandchild, or a relative residing with the SERVICE PROVIDER or a principal of the SERVICE PROVIDER;

"principal" means a person having controlling authority over the SERVICE PROVIDER or any aspect of the SERVICE PROVIDER's operations;

"spouse" means a married spouse or a person cohabiting in a conjugal relationship for a period of at least one year.

## **15. Communications**

The SERVICE PROVIDER shall:

A) Ensure in any communication activities, publications, advertising or press releases relating this AGREEMENT and the services provided pursuant to this AGREEMENT, include an appropriate acknowledgment of the PROVINCE and, in some cases, the Government of Canada, in terms satisfactory to the PROVINCE;

B) Consult with and obtain approval from the PROVINCE prior to engaging in any communication activities, publications, advertising or press releases, relating to this AGREEMENT;

C) Cooperate and assist the PROVINCE with communication strategies related to this AGREEMENT;

D) Prominently display in any materials the SERVICE PROVIDER produces and distributes to the public for the purpose of publicizing or promoting the PROJECT, an acknowledgment of the PROVINCE, the form, content and location of which is subject to approval by the PROVINCE;

E) Post signage that acknowledges the PROVINCE and the Government of Canada, the form, content and location of which is subject to approval by the PROVINCE;

F) Incorporate a Provincial Brand in any acknowledgment described in subparagraph (d) or any signage described in subparagraph (e); and

G) Not use any Provincial Brand in any capacity or for any purpose other than those set out in subparagraph (f).

Forthwith after the execution of this AGREEMENT, the PROVINCE will provide the SERVICE PROVIDER with the Provincial Brand for use as described in paragraph 9.1.

The PROVINCE will consult with the SERVICE PROVIDER before making any public comment about this AGREEMENT, or the PROJECT that references the SERVICE PROVIDER's name.

#### **16. Confidentiality**

All information, data, documents and materials acquired by or to which access has been given to the SERVICE PROVIDER by the PROVINCE in the course of the performance of this AGREEMENT shall be treated as confidential during as well as after the TERM of this AGREEMENT.

#### **17. Privacy and Access to Information**

The SERVICE PROVIDER acknowledges that the PROVINCE is subject to the Newfoundland *Access to Information and Protection of Privacy Act* and that this AGREEMENT or portions of it are subject to disclosure in accordance with the provisions of that Act, and, without limiting the generality of the foregoing, which may include disclosure to Government departments or agencies to meet the necessary requirements of government operation.

#### **18. Management of Information**

18.1 The SERVICE PROVIDER shall comply with any provincial or federal statute or regulation governing the collection, use and disclosure of information.

18.2 Subject to any obligation under this AGREEMENT or other lawful requirement, the SERVICE PROVIDER shall develop and implement policies and procedures to protect the privacy of PARTICIPANTS in AGREEMENT ACTIVITIES and the confidentiality of their personal information.

18.3 For the purpose of 18.2, "personal information" has the same meaning as in the Newfoundland *Access to Information and Protection of Privacy Act*.

#### **19. Monitoring**

The SERVICE PROVIDER shall permit the PROVINCE's representatives access at all reasonable times to the ACTIVITY LOCATIONS or business premises for the purpose of monitoring the progress of the PROJECT. The SERVICE PROVIDER agrees that a representative of the PROVINCE may, with reasonable notice, attend any PROJECT-related meeting as an observer.

#### **20. Inspection and Audit**

20.1 The SERVICE PROVIDER shall keep proper books of account and records, in accordance with generally accepted business and accounting practices, of expenditures relating to the carrying out of the AGREEMENT ACTIVITIES. The accounts and records shall include all payroll records, invoices and receipts relating to the ELIGIBLE COSTS.

20.2 During the TERM and for a period of six (6) years thereafter, the SERVICE PROVIDER shall make the books and records available at all reasonable times for inspection and audit by representatives of the PROVINCE to ensure compliance with the terms and conditions of this AGREEMENT. The SERVICE PROVIDER shall permit the PROVINCE's representatives to take copies and extracts from such books and records and shall furnish the PROVINCE with such additional information as it may require.

#### **21. Reporting**

The SERVICE PROVIDER shall provide ACTIVITY REPORTS and FINANCIAL REPORTS that are complete, accurate and contain the level of detail acceptable to the PROVINCE, as specified in Schedule "F", in a style and format acceptable to the PROVINCE and according to the schedule set out in Schedule "F".

## **22. Liability**

22.1 This AGREEMENT is an AGREEMENT for a contribution only, not a contract for services or a contract of service or employment. The PROVINCE's responsibilities with respect to the AGREEMENT ACTIVITIES are limited to providing financial assistance to the SERVICE PROVIDER towards the ELIGIBLE COSTS. The PARTIES hereto agree that nothing in this AGREEMENT shall be construed as creating a partnership, employment or agency relationship between them.

22.2 The SERVICE PROVIDER has no authority to bind the PROVINCE to any AGREEMENT and agrees that it will not hold itself out as having any authority within the PROVINCE or on behalf of the PROVINCE.

22.3 Nothing in this AGREEMENT creates any undertaking, commitment or obligation by the PROVINCE respecting additional or future funding beyond the TERM and the PROVINCE shall have no responsibility for any costs incurred before or after the TERM or that exceed the maximum contribution payable under the AGREEMENT.

22.4 The PROVINCE shall not be liable for any injury to or loss suffered by the SERVICE PROVIDER or any employee, officer, agent or contractor of the SERVICE PROVIDER, including, without limitation, death or economic loss, caused by or in any way related to the carrying out of the AGREEMENT ACTIVITIES or to performance of any of the SERVICE PROVIDER's obligations under this AGREEMENT.

22.5 The SERVICE PROVIDER and an employee, servant, agent, contractor or volunteer of the SERVICE PROVIDER are not an agent, employee or servant of the PROVINCE. The management, supervision and control of its employees are the sole and absolute responsibility of the SERVICE PROVIDER. The SERVICE PROVIDER shall be solely responsible for any and all payments and deductions required by law to be made in respect of its employees including those required for the Canada Pension Plan, employment insurance, workers' compensation and income tax.

## **23. Insurance**

23.1 The SERVICE PROVIDER shall purchase and maintain in full force during the TERM, insurances to protect itself, the PROVINCE, their successors and assigns and their respective directors, officers, employees, agents and servants.

23.2 Such insurances shall provide coverage for all risks and be issued by insurers licensed to carry on business in Canada and shall be subject to approval by the PROVINCE. Insurers shall not cancel or materially change the policy without sixty (60) days prior written notice to the PROVINCE.

23.3 Upon request from the PROVINCE or its authorized representative, certified copies of all insurance policies or related documentation, renewals or replacements of policies, in form and content acceptable to the PROVINCE, shall be provided promptly to the PROVINCE.

## **24. Indemnification**

The SERVICE PROVIDER shall, both during and following the expiry or termination of this AGREEMENT, indemnify and save the PROVINCE, its employees and agents, harmless from and against all legal actions of any kind, costs or claims made, threatened to be brought or prosecuted, in any manner based upon or that arise out of any wilful or negligent act, misconduct, omission or delay on the part of the SERVICE PROVIDER or its employees, officers, contractors or agents in connection with anything purported to be or required to be provided by or done by the SERVICE PROVIDER under this AGREEMENT.

## **25. Termination for Default**

25.1 The following constitute Events of Default:

- (a) The SERVICE PROVIDER becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute from time to time being in force relating to bankrupt or insolvent debtors;
- (b) An order is made or resolution passed for the winding up of the SERVICE PROVIDER, or the SERVICE PROVIDER is dissolved;
- (c) The SERVICE PROVIDER ceases to operate;
- (d) The SERVICE PROVIDER is no longer able to deliver the AGREEMENT ACTIVITIES;
- (e) The SERVICE PROVIDER in support of its application for the contribution or in connection with this AGREEMENT, has made materially false or misleading declarations, representations or statements, or provided materially false or misleading information to the PROVINCE; and
- (f) The SERVICE PROVIDER is in breach of the performance of, or compliance with, any TERM, condition or obligation on its part to be observed or performed pursuant to this AGREEMENT.

25.2 If

- (a) An Event of Default specified in paragraph (1)(a), (b), (c), (d) or (e) has occurred; or
- (b) An Event of Default specified in paragraph (1)(e) or 1(f) has occurred; and
  - (i) Has not been remedied within 15 days of receipt by the SERVICE PROVIDER of written notice of default or within such longer period as the PROVINCE may allow; or
  - (ii) A plan satisfactory to the PROVINCE to remedy such Event of Default has not been put into place within such time period.

the PROVINCE may, in addition to any remedies otherwise available, immediately terminate the AGREEMENT by written notice. Upon providing such notice of termination, the PROVINCE shall have no obligation to make any further contribution to the SERVICE PROVIDER.

25.3 In the event the PROVINCE gives the SERVICE PROVIDER written notice of default pursuant to paragraph 25.2, the PROVINCE may suspend any further payment under this AGREEMENT until the end of the period given to the SERVICE PROVIDER to remedy the Event of Default.

**26. Termination on Notice**

26.1 Either PARTY may terminate this AGREEMENT at any time without cause, not less than thirty (30) days written notice.

26.2 In the event of a termination notice being given under this section, section 10 or section 29.2:

- (a) The SERVICE PROVIDER shall make no further commitments in relation to the use of the contribution and shall cancel or otherwise reduce, to the extent possible, the amount of any outstanding commitments in relation thereto;
- (b) All ELIGIBLE COSTS incurred by the SERVICE PROVIDER up to the date of termination, not exceeding the maximum amount of the PROVINCE's contribution payable under this AGREEMENT, will be paid by the PROVINCE, including the SERVICE PROVIDER's costs of, and incidental to, the cancellation of obligations incurred by it as a consequence of the termination of the AGREEMENT, provided that, payment and reimbursement under this paragraph shall only be made to the extent that it is established to the satisfaction of the PROVINCE that the costs mentioned herein were actually incurred by the SERVICE PROVIDER and the same are reasonable and properly attributable to the termination of the AGREEMENT and, in any case, do not exceed the maximum amount of the PROVINCE's contribution payable under this AGREEMENT.

**27. Obligations Following Expiry/Termination**

27.1 The SERVICE PROVIDER acknowledges and agrees that, upon termination or expiry of this AGREEMENT, the PROVINCE exclusively owns the PROVINCE's documents, any property provided by the PROVINCE to the SERVICE PROVIDER for the purposes of this AGREEMENT unless the PROVINCE has indicated in writing that the property provided is to be owned by the SERVICE PROVIDER, and any property acquired by the SERVICE PROVIDER with funds obtained from the PROVINCE under this AGREEMENT, unless the PROVINCE indicates in writing that the property is to be owned by the SERVICE PROVIDER.

27.2 Where the AGREEMENT is terminated or has expired, the SERVICE PROVIDER shall;

- (a) Upon request by the PROVINCE, immediately turn over to the PROVINCE all documents, records, reports, other materials and property belonging to the PROVINCE and in the possession of the SERVICE PROVIDER for the purposes of this AGREEMENT;
- (b) Immediately repay to the PROVINCE any amount by which the contribution paid to the SERVICE PROVIDER exceeds the amount to which the SERVICE PROVIDER is entitled under the AGREEMENT. Without limiting the generality of the foregoing, amounts to which the SERVICE PROVIDER is not entitled include:
  - (i) The amount of any unspent advances of the contribution in the hands of the SERVICE PROVIDER;
  - (ii) Any amount paid in error or in excess of the amount of costs actually incurred;
  - (iii) Amounts paid in respect of costs which are determined by the PROVINCE to be ineligible; and
  - (iv) Any amount in excess of the PROVINCE's maximum contribution.

Such amounts are debts to the PROVINCE.

27.3 The PROVINCE may holdback any payment due under Schedule "F" until all obligations of the SERVICE PROVIDER under this AGREEMENT have been completed to the satisfaction of the PROVINCE.

**28. No Waiver**

The fact that the PROVINCE refrains from exercising a remedy it is entitled to exercise under this AGREEMENT shall not be considered to be a waiver of such right and, furthermore, partial or limited exercise of a right conferred upon

the PROVINCE shall not prevent the PROVINCE in any way from later exercising any other right or remedy under this AGREEMENT or other applicable law.

#### **29. Force Majeure**

29.1 The SERVICE PROVIDER shall not be liable for a failure or delay in performing any of its obligations under this AGREEMENT that is attributable to causes beyond its reasonable control and that occur without the fault or negligence of the SERVICE PROVIDER (Force Majeure Event). The SERVICE PROVIDER shall give immediate notice to the PROVINCE of a Force Majeure Event describing it and its probable duration. The SERVICE PROVIDER will use all reasonable efforts to mitigate its impact on the performance of the SERVICE PROVIDER's obligations under this AGREEMENT.

29.2 If a failure or delay arising from a Force Majeure Event continues for fourteen (14) consecutive days, the PROVINCE may terminate this AGREEMENT on three (3) days notice to the SERVICE PROVIDER and the provisions of section 26.2 shall apply.

#### **30. Time of the Essence**

Subject to section 29, time shall be of the essence of this AGREEMENT.

#### **31. Survival of Provisions**

Any TERMS and conditions in this AGREEMENT which require their performance by the PARTIES after the expiration or termination of this AGREEMENT shall be and remain in force notwithstanding such expiration or termination of this AGREEMENT.

#### **32. Notices**

32.1 Any notices to be given, and all reports, ACTIVITY REPORTS, FINANCIAL REPORTS, information, correspondence and other documents to be provided, by either PARTY under this AGREEMENT shall be given or provided if personally delivered or sent by mail, courier service, fax or by electronic submission at the address, or fax number, as the case may be, of the receiving PARTY as set out in Schedule "A".

32.2 Notices, reports, information, correspondence and other documents that are delivered personally or by courier service shall be deemed to have been given or provided on the date of personal delivery or delivery by the courier service, or if sent by mail, five (5) days after the date of mailing, or in the case of notices and documents sent by fax or by electronic means, one (1) working day after they are sent.

#### **33. Amendment**

No amendment of any of the TERMS or provisions of this AGREEMENT is valid unless it is in writing and signed by both PARTIES.

#### **34. Entire AGREEMENT**

This AGREEMENT constitutes the entire AGREEMENT between the SERVICE PROVIDER and the PROVINCE with respect to its subject matter and supersedes all previous understandings, agreements, negotiations and documents collateral, oral or otherwise between them relating to its subject matter in the event of conflict.

#### **35. Severability**

Should any TERM or provision of this AGREEMENT be found to be invalid or unenforceable, the remainder of this AGREEMENT shall continue and be enforceable and any invalid TERM or provision shall be severable.

#### **36. Binding Effect**

This AGREEMENT shall ensure to and be binding on the PROVINCE and the successors and permitted assigns of the SERVICE PROVIDER.

#### **37. Further Assurances**

The PROVINCE and the SERVICE PROVIDER agree to execute and deliver all such further documents and instruments and to do or cause to be done all such acts and things as either PARTY may reasonably consider necessary to evidence the intent and meaning of this AGREEMENT.

### **38. PROVINCE's Representative**

All references in this AGREEMENT to the PROVINCE include any person authorized to act on behalf of the PROVINCE in respect of this AGREEMENT.

### **39. Signing Authority**

The SERVICE PROVIDER warrants that its representative who signs this AGREEMENT on behalf of the SERVICE PROVIDER has the authority to sign the AGREEMENT and to legally bind the SERVICE PROVIDER, and agrees to provide the PROVINCE with such evidence of that authorization as the PROVINCE may reasonably require.

### **40. Counterparts**

This AGREEMENT may be signed by the PROVINCE and the SERVICE PROVIDER in separate counterparts, each of which when signed and delivered shall be an original. The counterparts may be delivered by facsimile transmission and the transmission copy shall be deemed to be and considered an original.

### **41. Singular/Plural**

Where the context so requires, words in the singular include the plural and vice versa.

### **42. Governing Law**

This AGREEMENT shall be governed by and interpreted in accordance with the laws of Newfoundland and Labrador and the applicable laws of Canada and the courts of Newfoundland and Labrador shall have exclusive jurisdiction over any dispute or lawsuit between the PARTIES.

### **43. Environmental Protection**

The SERVICE PROVIDER shall:

- a) Demonstrate to the satisfaction of the PROVINCE that the PROJECT will maintain and implement any and all environmental protection measures that may be prescribed by competent authority for minimizing harm, if any, to the environment; and
- b) Upon request of the PROVINCE, produce any certificates, licenses, and other authorizations required for the carrying out of the PROJECT in respect of these rules relating to the environment.

### **44. Lobbyist's Registration and Lobbyist's Contingency Fees**

The SERVICE PROVIDER declares that any person who has been lobbying on its behalf to obtain the contribution that is the subject of this AGREEMENT and who is required to be registered pursuant to the *Lobbyist Registration Act* SNL2004, c.L-24.1 (as amended), was registered pursuant to the Act at the time the lobbying occurred.

The SERVICE PROVIDER certifies that it has not directly or indirectly paid or agreed to pay, and covenants that it will not directly or indirectly pay a contingency fee for the solicitation, negotiation or obtaining of this AGREEMENT to any person other than an employee acting in the normal course of the employee's duties

All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of this AGREEMENT shall be subject to the accounts and audit provisions of this AGREEMENT.

If the SERVICE PROVIDER certifies falsely under this section or is in default of the obligations contained therein, the PROVINCE may either terminate this AGREEMENT under termination for default provisions of this AGREEMENT or recover from the SERVICE PROVIDER by way of deduction from the contribution or otherwise the full amount of the contingency fee.

For the purposes of this section, "contingency fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining this AGREEMENT or negotiating the whole or any part of its TERMS;