

The Workers' Compensation Board – Alberta
TERMS & CONDITIONS FOR PROFESSIONAL SERVICES AGREEMENT

1. **Service(s)** - means all goods, materials and/or services required under this Agreement.
2. **General Obligations** - The Service Provider shall provide the Services outlined in this Agreement. The WCB is responsible for the evaluation of Services provided by the Service Provider's personnel both as to the scope and suitability of such Services.
3. **Representations and Warranties** - The Service Provider warrants that the personnel to be provided under this Agreement can perform the duties and meet the requirements of this Agreement and will perform the work in a professional, skillful, safe and efficient manner, in accordance with all applicable law. The Service Provider further warrants that any Services provided under this Agreement shall conform to the requirements and be fit for its intended purpose.
4. **Agreement and Agreement Amendments** - This Agreement, and any Service Provider's proposal in response thereto expressly accepted constitute the entire agreement between the parties related to the subject matter hereof, and supersedes any and all prior understandings, statements, warranties, representations, and agreements, oral and written, relating hereto. All additions, amendments or modifications of this Agreement shall be binding only if the same is in writing and duly executed by the party against whom enforcement is sought. If any terms of the documents incorporated herein, conflict with the terms of this Agreement, the terms and conditions of this Agreement shall prevail.
5. **Term** - This Agreement shall be in effect for the Term of Service stated in this Agreement.
6. **Instructions** - The Service Provider's personnel shall perform their obligations under this Agreement in accordance with the instructions and directions of the WCB's contact person.
7. **Substitution of Personnel** - If the Service Provider is unable to provide the services of its named personnel to carry out this Agreement, a substitute may only be provided under the approval of the WCB's contact person, which approval may be arbitrarily withheld.
8. **Enurement** - Subject to the express limitations set out in this Agreement, this Agreement shall enure to the benefit of, and be binding upon, the parties and their respective successors and permitted assigns.
9. **Conflict of Interest** - During the term of this Agreement, the Service Provider shall not enter into any other contract with any other party, the requirements of which will conflict with the requirements of this Agreement or which will or may result in its interest in any other contract and this Agreement being in conflict.
10. **Assignment** - The Service Provider shall not assign or sublet the Agreement to anyone without having first obtained the WCB's written approval which may be withheld without providing reasons. In the event of such written approval being provided, the Service Provider shall remain responsible for the performance of all terms, conditions, covenants and provisions of the Agreement by any subcontractor(s) or assignee.
11. **Organization – Employment Disclaimer** - The Agreement is for the Services of the Service Provider, as a separate and independent business. Neither the Service Provider nor its employees, directors, officers and agents shall be entitled to any benefits of any nature whatsoever available to employees of the WCB other than to payments which are expressly provided for herein and those prescribed by law.

The Service Provider, in providing and performing the Services under the Agreement, does so under a contract for services and not of service. No agency, partnership, employer-employee or master-servant relationship is intended to be created between the Service Provider and the WCB.

In the event that the WCB becomes liable for any taxes, contributions, interest or other amount pursuant to a decision of the Canada Revenue Agency, in connection with any amount paid or payable by the WCB under this Agreement to the Service Provider, the Service Provider shall indemnify and hold the WCB harmless for any such amount.

This indemnity and hold harmless clause shall not apply to any penalties levied against the WCB by the Canada Revenue Agency in connection with this Agreement provided the Service Provider has at all material times acted in good faith.

12. **Health and Safety** - Persons engaged in the performance of the Agreement must be employees of the Service Provider or be subcontractor(s) retained by the Service Provider. The Service Provider shall ensure that its responsibilities under the Occupational Health and Safety Act and Regulations and Codes made under that Act, the Alberta Safety Codes Act and any other legislation concerning employer/employee relationships are met.
13. **Conduct of the Employees of the Service Provider** – While the Service Provider's employees or subcontractor's employees (collectively referred to as "personnel") are on the WCB's premises, the Service Provider shall:
 - a) Be responsible for direction and supervision and, if necessary, discipline of all personnel;
 - b) Ensure all personnel conform to the WCB's standards of behavior and dress and respect to the general requirements of the WCB;
 - c) Ensure all personnel comply with all on site WCB safety and security requirements;
 - d) Ensure that, should fire of any nature occur, personnel shall notify the local Civic Emergency Response Department immediately, whether extinguished or not;
 - e) Make its own arrangements for emergency treatment in the event of an injury or accident involving personnel. All injuries and accidents shall be reported to the WCB immediately; and
 - f) Ensure personnel are not accompanied by acquaintances, family members, or any other person unless that person is an authorized employee of the Service Provider or any of its subcontractor(s) and that person's attendance at the WCB's premises is necessary for the performance of the Agreement.
14. **Ethics** – When using WCB premises the Service Provider and its personnel shall comply with the WCB's Corporate Ethics Program. Information respecting this Program may be obtained from the WCB website <https://www.wcb.ab.ca/about-wcb/bid-and-vendor-information.html>.
15. **Performance Standards**
 - a) The Service Provider agrees that time is of the essence in the performance of the Agreement.
 - b) The WCB may notify the Service Provider of any deficiencies, and in the event that the Service Provider has failed to rectify the deficiencies within the time allotted by the WCB, the WCB 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 Service Provider.
 - c) The WCB shall not be obligated to make any payments for work completed, or Services rendered by the Service Provider, to remedy errors or omissions for which, in the reasonable opinion of the WCB, the Service Provider is responsible.
16. **Ownership** - All materials prepared, developed or produced by the Service Provider and its employees or agents under this Agreement are the property of the WCB. Without restricting the generality of the foregoing, the Service Provider agrees to provide all intellectual property rights associated with the materials provided under this Agreement and hereby waives all moral rights

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to such materials or deliverables. In the course of providing the Services, the Service Provider may use products, materials, tools and methodologies that are proprietary to the Service Provider or to third parties (collectively "Proprietary Items"). As between the WCB and Service Provider, Proprietary Items will be deemed Confidential Information of the Service Provider. The WCB will have or obtain no right in Proprietary Items (or in any modifications or enhancements to them) other than to use them (i) solely for the purposes of performing WCB responsibilities, (ii) as part of the deliverables for purposes of the WCB's internal business only, or (iii) pursuant to the Service Provider's standard license for Proprietary Items, or in the case of Proprietary Items owned by third parties, pursuant to terms acceptable to the applicable third party.

17. **Changes** - The WCB, without invalidating this Agreement, may alter, add to or delete from the work, the Agreement sum being adjusted accordingly provided the Service Provider 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 in writing and approved by the appointed WCB representative prior to proceeding. Supplementary invoices not supported by an approved change request will not be honored. The Service Provider must notify WCB of changes in the Service Provider's policy or organization that affects their ability to meet their obligations outlined in the Agreement.

18. **Termination** - The following shall be deemed to be defaults of the Agreement:

- a) Failure by the Service Provider to make adequate progress in the performance of the Agreement, or alternatively, an indication by the Service Provider that they cannot or will not meet any or all of the requirements of the Agreement;
- b) Failure by the Service Provider to observe and perform any of the terms, conditions, covenants or obligations which are contained in the Agreement, each and every one of which are subject hereto as though each were reiterated hereunder;
- c) Breach of any representation or warranty herein contained; and
- d) If the Service Provider makes any assignment for the benefit of creditors; has a Receiving Order made against it or makes a Response under any bankruptcy legislation; if any action, legislation or otherwise, is taken to accomplish a winding up, dissolution or liquidation of it; or if a receiver is appointed or any execution issues of or against the property of the Service Provider which remains outstanding for ten (10) days.

Should the Service Provider fail to comply with the terms of the Agreement, or otherwise be in default of the Agreement, the WCB may terminate the Agreement for cause and without notice to the Service Provider or may give the Service Provider written notice of default and the period of time the Service Provider shall have to fully correct such default. If the default has not been resolved to the WCB's complete satisfaction at the end of the period, the WCB may terminate the Agreement, for cause, without further notice.

Termination of this Agreement, as aforesaid shall not be in lieu of, limit or restrict, in any fashion, any other right or remedy available to the WCB herein or at law.

19. **Cancellation** - The WCB may, upon giving ten (10) days written notice, unilaterally terminate this Agreement without cause. If this Agreement is so terminated, the Service Provider shall be entitled to receive payment for Services actually performed, as of the date termination becomes effective. The WCB shall have no further obligation under this Agreement. The Service Provider shall turn over all data, information and work in progress in its possession at such termination to the WCB.

20. **Force Majeure** - Neither the Service Provider nor the WCB shall be deemed to be in default of its obligations under the Agreement, if, and for as long as, any delay or non-performance is directly or indirectly caused by or results from events of Force Majeure

beyond the control of that party. These events shall include, but not be limited to, strikes, civil disturbances, wars, fires, acts of God, and acts of any government or branch or agency thereof. Force Majeure shall not include the following:

- a) Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.
- b) Late performance by a subcontractor(s) unless the delay arises out of a Force Majeure occurrence in accordance with this clause.

21. **Hold Harmless** - The Service Provider agrees to indemnify and hold harmless the WCB, its directors, officers, employees and agents, from any and all third party claims, demands or actions for which the Service Provider is legally responsible, to the extent those claims arise directly out of the negligence or willful acts by the Service Provider's employees, agents, or for whom the Service Provider is legally responsible which cause bodily injury, death or damage. This hold harmless requirement shall survive this Agreement.

Excepting negligence or willful acts on the part of the WCB, the WCB shall not be liable nor responsible for any bodily or personal injury or property damage of any nature whatsoever that may be suffered or sustained by the Service Provider, its officers, directors, agents, subcontractor(s) or employees in the performance of this Agreement.

22. **Insurance Requirements**

- a) The Service Provider shall, without limiting his obligations or liabilities herein and at his own expense, provide and maintain the following insurance in forms and amounts acceptable to the WCB:
 - General Liability Insurance in an amount not less than \$2,000,000 inclusive per occurrence, in accordance with the Alberta Insurance Act, against bodily injury, and property damage including loss of use thereof. Such insurance shall include blanket contractual liability.
 - Errors and Omissions Insurance in an amount not less than \$5,000,000 insuring his liability resulting from errors and omissions in the performance of his professional services under this Agreement.
 - Automobile Liability Insurance in an amount not less than \$2,000,000 insuring against accidents while at the WCB premises.
- c) Any insurance called for under this Agreement shall be endorsed to provide the WCB thirty (30) days advance written notice of cancellation.
- d) As evidence of all required insurance, certificates of insurance acceptable to the WCB shall be provided to the WCB prior to the commencement of work under the Agreement and within thirty (30) days of any insurance renewal. Certified true copies of the policies shall be provided promptly upon request. All evidence must comply with the insurance requirements and be free of limitations or qualifications as to compliance.

23. **Licenses** - The Service Provider shall maintain in current status, all Federal, Provincial and Municipal licenses and permits required for the operation of the Service Provider's business as applicable to the Agreement and shall apply for and pay for all permits and licenses required for the execution of the Agreement.

24. **Codes, Regulations, By-Laws** - The Service Provider shall comply with all laws, ordinances, rules, regulations, orders, codes and other legally enforceable requirements applicable to the performance of the Agreement.

25. **Right of Audit** - The WCB reserves the right to audit or cause to be audited the Service Provider's financial statements and

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accounts regarding the WCB's account at any time during the term of this Agreement and for seven (7) years thereafter.

26. **Payment** - Provided that an invoice is submitted as required, herein, the WCB shall pay to the Service Provider the undisputed portion of an invoiced amount, in arrears, within thirty (30) days of receipt of such invoice. Payment of any invoice shall not preclude the WCB from making adjustments to invoices due to Services not meeting the requirements of this Agreement.
27. **Payment Indemnification** - The Service Provider shall be responsible for issuing payment for Services supplied or performed by the Service Provider's employees and will indemnify and hold harmless the WCB, its officers, directors, agents and employees for any and all claims whatsoever arising out of the demands of the employees, suppliers or any other third party incurred in the performance of the Agreement. The Service Provider shall, at the WCB's request, furnish satisfactory evidence that all such obligations have been paid, discharged or waived.
28. **Set Off** - The WCB may set off any amount due to the Service Provider under the terms of this Agreement as against any amount due to the WCB by the Service Provider under this Agreement or otherwise.
29. **Confidentiality** - All data and information of or concerning the WCB, WCB clients, or of third parties to whom the WCB owes a duty of confidence, obtained by the Service Provider or its personnel is (i) to be treated as confidential; (ii) to be used only to provide services to the WCB pursuant to this Agreement; (iii) not to be reproduced or disclosed to anyone other than WCB personnel as required in the performance of this Agreement; and (iv) all copies and records of same shall be delivered without cost forthwith upon demand.

Nothing in this Agreement will prohibit or limit either Party's use of information (including, but not limited to, ideas, concepts, know-how, techniques and methodologies) (i) previously known to it without an obligation of confidence, (ii) independently developed by or for it, (iii) acquired by it from a third party which is not under an obligation of confidence with respect to such information, or (iv) which is or becomes publicly available through no breach of this Agreement, or (v) as required by law. In the case of a disclosure required by law, the receiver agrees to notify the discloser in writing prior to the disclosure to provide an opportunity to restrain the disclosure.

Notwithstanding termination or cancellation of the Agreement, this clause shall continue to be in effect until waived by WCB in writing. Without limiting the generality of the foregoing, the Service Provider acknowledges that WCB shall have the right to obtain injunctive relief for violation of the terms of the clause and all those carrying out the Agreement on the Service Provider's behalf are subject to the provisions of sections 147 and 148 of the Workers' Compensation Act of Alberta, and are subject to prosecution for breaching the confidentiality in addition to being liable to suit by WCB.

30. **Invalid or Unenforceable Provisions** - If any provision of this Agreement is for any reason, found to be invalid or unenforceable by a body of competent jurisdiction, that provision shall be deemed severed from this Agreement and such invalidity, illegality or unenforceability shall not affect the validity of any other of its provisions.
31. **Notices** - All notices or communication to be made under this Agreement by either party shall be mailed by prepaid post, facsimiled or delivered to the contact person at the address of the other party stated in this Agreement. If it is faxed or delivered between 8:00 a.m. and 4:00 p.m. Alberta Time, Monday to Friday (excluding Statutory holidays), then it shall be deemed to have been received that day. Notice shall not be given by mail, if mail

delivery is affected or apt to be affected by a strike of Post Office personnel.

32. **Solicitation of Personnel** - The parties agree that during the term of this Agreement, and for six (6) months following its termination, neither will in any way solicit the services of any member of the personnel of the other party in the performance of this Agreement.
33. **Obligations of the Service Provider** - All the obligations of the Service Provider under this Agreement, including, but not limited to, indemnification and insurance requirements, shall survive the termination or completion of this Agreement.
34. **Freedom of Information and Protection of Privacy Act** - All information obtained by the WCB is a record under the Freedom of Information and Protection of Privacy Act (FOIP).
35. **The Workers' Compensation Act** - The WCB shall perform employer clearance certificates and account reviews of the Service Provider to ensure compliance with the requirements of the Workers' Compensation Act. The WCB may perform clearance certificates and account reviews to ensure continued compliance at any time during the Term. The WCB reserves the right to terminate any Agreement should the Service Provider not comply with any requirement of the Workers' Compensation Act or be in default of premiums due under that Act.

Furthermore, the Service Provider shall, at its own expense and without limiting its liabilities herein, **apply to the WCB for a deeming order** under section 16(2) of the Workers' Compensation Act, for any subcontractor, other entity or individual (collectively referred to as the "Subcontractor") performing any Work on WCB sites at the direction or for the benefit of the Service Provider, where the Subcontractor does not carry Workers' Compensation coverage, **deeming the Subcontractor to be the worker of the Service Provider.**

36. **Federal / Provincial Sales Tax (GST / HST)** - The Service Provider acknowledges that the WCB is not subject to the Goods and Services Tax (GST) or Harmonized Sales Tax (HST). Exempt #124072513RT0001.
37. **Governing Law** - This Agreement shall be interpreted according to the Laws of the Province of Alberta and the forum for all disputes shall be the Courts of the Province of Alberta.
38. **Statutory Holidays** - For the purposes of this Agreement the following days shall be considered "Statutory Holidays." This list is conditional to any changes in Federal and Provincial legislation and includes any "Float" and/or "In Lieu" days as a result of a Statutory Holiday falling on a weekend day.
- New Year's Day
 - Family Day
 - Good Friday
 - Easter Monday
 - Victoria Day
 - Canada Day
 - August Civic Holiday
 - Labour Day
 - Thanksgiving Day
 - Remembrance Day
 - Christmas Eve
 - Christmas Day
39. **Background Check** – Due to the nature of the services being provided at the WCB's offices, the WCB will require that any Vendor doing business with the WCB that are not escorted by WCB staff as outlined in the Personnel Security Clearance Procedure will be subject to the following background checks:
1. Police Information Check / Criminal Record Check, from the appropriate law enforcement agency

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2. Driving Record
3. Confirmation of professional designation (i.e. CA, CPA, LLB, etc.)

The WCB will only use the above information to determine the individual's suitability for work on the WCB's premises. All such information will be kept confidential.

40. **Personnel Security Clearance Procedure** - As part of maintaining a safe work environment for WCB staff, contractors, visitors and clients, any Service Provider doing business with the WCB requiring a building access card or working with WCB information will be required to present a current security clearance to Corporate Security. The Service Provider shall, at its sole expense, obtain a security clearance from a local law enforcement authority. Prior to any Service Provider's commencement of work with or on behalf of WCB, the WCB shall be provided with a current security clearance indicating that the individual has a 'clear' status for their criminal history.

Security clearance certificates/records shall be dated within the previous six (6) months of any Service Provider's commencement of work for the WCB. The accepted security clearance certificate will be valid for a period of twelve (12) months and shall be retained by the WCB's Corporate Security office.

Alternately, the WCB can assist the individual to obtain a security clearance certificate through Sterling (BackCheck). The WCB's Corporate Security office can send a link from their BackCheck account for the individual to follow the online steps for completing the security clearance process online. The process includes a cost of twenty five dollars (\$25.00) plus GST per request to be paid via a valid credit card. In most cases, the clearance results will be available within twenty four (24) hours and will be automatically shared with the WCB Corporate Security office. The WCB reserves the right to grant or deny permission at its sole discretion.

The Service Provider may request permission, in writing, for access by persons with a criminal record, provided that a copy of the criminal record is submitted along with the request. WCB may or may not grant such permission at its sole discretion.

Service Provider access to WCB premises and information will be restricted to:

- Persons for whom a "Clear" criminal history has been submitted to WCB; and
- Persons with a criminal record who have been granted special access permission, in writing, by WCB.

The WCB's refusal to grant access to any Service Provider on account of a criminal record does not relieve any of the Service Provider's obligations under the Agreement. The Service Provider is solely responsible for any consequences, including additional costs or time delays, arising from a refusal by WCB to grant access to any individual.

Security keys and passes not returned within five (5) business days to the WCB shall result in a five hundred dollar (\$500) fee per occurrence payable by the Service Provider to WCB.

If there are questions with regards to any of the above information, please contact the WCB Corporate Security office at 780-498-4822.

41. **General** - The paragraph headings shall not be considered in interpreting the text.