**HEALTH AND SAFETY EXCELLENCE PROGRAM AGREEMENT**

This Agreement is between [THE PROVIDER]’S NAME (“**Provider acronym**”) and the following party (“**Client**”):

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| **Full legal name of Client:** |  |
| **Address:** |  |
| **Telephone number:** |  |
| **E-mail address:** |  |
| **Primary Client contact:** |  |
| **WSIB Account Number:** |  |
| **Premiums:** |  |

[THE PROVIDER] is an Ontario non‑profit corporation [*include other relevant information*]. [THE PROVIDER] is involved in, among other things, [*general description of Provider*].

[THE PROVIDER] has been approved as a Workplace Safety & Insurance Board (“WSIB”) Health and Safety Excellence program provider. In compliance with the Health and Safety Excellence program delivery standards for providers, [THE PROVIDER] will deliver services to support the Client select and complete topics as part of the Health and Safety Excellence program as set out below.

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| **Description of Services Provided:** | [THE PROVIDER] will:   * Provide the Client with a link to the WSIB Health and Safety Excellence program digital portal, once the client is registered. * Help the Client select the most relevant health and safety topics for your workplace. * Provide resources to help the Client develop and complete the selected health and safety topics. * Facilitate networking and sharing of best practices between the Client and other program members. * Review and provide feedback on the evidence provided by the Client to show successful topic completion, prior to submission to the WSIB for validation. * [Provider-specific services] |
| **Format of Services Provided:** | * [Provide specifics if relevant on online or in-person formats or any other specifics] |
| **Service Fee:** | $#### + applicable taxes |
| **Service Term:** | Services will be provided for a period of up to 455 calendar days of the Client registering on the WSIB digital portal on the agreed “Start Date”.  This includes up to 90 calendar days to support topic selection, and up to 365 calendar days thereafter for topic completion. |
| **Agreed Start Date :** | For the 2020 Program, the agreed “Start Date” will be the latter of January 1, 2020, or the “Effective Date”. |
| **Extended Services Provided:** | As required, provide recommendations for the Client to address gaps identified by the WSIB desk validation within 60 calendar days of the validation for those topics selected and completed within twelve (12) months of the agreed “Start Date” |
| **Extended Services Term :** | Following WSIB desk validation of the topics selected and completed by the Client within the Service Term, [THE PROVIDER] will provide Extended Services for a period of 60 calendar days from the date of desk validation. |
| **Description of Client Program Responsibilities** | The client will :   * Complete a health and safety assessment through the WSIB digital portal. * Complete a Culture Assessment – *voluntary only* * Select between one (1) to five (5) topics and submit the action plan on the WSIB digital portal within ninety (90) calendar days of accessing the digital portal. * Develop and complete the selected health and safety topics for all locations covered by the WSIB account number registered in the Excellence Program within twelve (12) months of the finalization of the action plan on the WSIB digital portal * Be encouraged to attend as many networking meetings as possible to to share best practices with similar firms registered for [THE PROVIDER]’s Excellence Program. * Complete and implement each topic using WSIB’s “five steps to managing health and safety” or another [THE PROVIDER]-approved model that follows the plan-do-check-act cycle * Once the action plan is completed, provide evidence of implementation for each topic selected and completed to [THE PROVIDER] for review and submit evidence to WSIB for validation within a period of 90 calendar days from and up to 365 calendar days of accessing the WSIB digital portal. * Participate in the desk validation by WSIB as required. * Address any identified gaps within 60 days following desk validation by WSIB. * Participate in an onsite validation by WSIB if the Client is so selected. |
| **Description of additional services and fees for additional services:** | To complete the topics, additional consulting services, training and products can be provided for additional fees. |

By signing below, [THE PROVIDER] and Client intend to be legally bound, and agree to all the provisions of this Agreement, including this Cover Sheet and the attached Terms and Conditions, as of the Effective Date.

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| **For Client:** | **For [THE PROVIDER]:** |
| Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: | Name: |
| Title: | Title: |
| Date: | Date: |
| *I have authority to bind Client* | *I have authority to bind the Association* |

**TERMS AND CONDITIONS**

**NOW THEREFORE**, in consideration of the mutual covenants and Agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Services.**
   1. Subject to the terms and conditions of this Agreement, [THE PROVIDER] shall perform the services and/or deliver the deliverables set out in the Cover Pages hereto (“**Services**”). This Agreement constitutes the only terms and conditions under which [THE PROVIDER] will provide the Services. Any and all terms contained in any document of the Client shall not apply to the Services.
   2. The Parties may agree on the provision of additional services at the request of the Client in addition the terms set out in the Cover Pages or a statement of work (“**Additional Services**”), which will be outside of this Agreement.
2. **Terms and Termination.** 
   1. This Agreement shall commence on the Effective Date and shall continue in full force and effect until the Services are supplied to Client, unless otherwise terminated in accordance with terms hereof.
   2. [THE PROVIDER] may terminate this Agreement at any time and for any reason whatsoever upon ten (10) days prior written notice to Client.
   3. Either party may terminate this Agreement for cause in the event of a breach by the other party if such breach is not cured within thirty (30) days after receipt of written notice advising of such breach (or such other period as agreed to by the parties).
   4. Either party may immediately terminate this Agreement by giving written notice to the other party if: (a) the other party becomes insolvent or has a petition brought by or against it under the insolvency laws of any jurisdiction; (b) the other party makes an assignment for the benefit of creditors; or (c) if a receiver, trustee or similar agent is appointed with respect to any property or business the other party.
3. **Payment of Invoices.**
   1. In consideration for the Services, Client shall pay to [THE PROVIDER] the fees and expenses set out in the Cover Pages (“**Fees**”) by such method specified by [THE PROVIDER] in writing. Client shall pay all invoices within thirty (30) days of receipt.
   2. In consideration for the provision of Additional Services, Client will pay the fees as applicable as set out in the Cover Pages **(“Fees for Additional Services”**)**.**
   3. Client shall be responsible for payment of all sales, value-added, excise or other similar taxes applicable to the performance of the Services; however, Client has no liability for any taxes based on [THE PROVIDER]’s net assets or income.
   4. Overdue payments under this Agreement will bear interest at the rate which is the lesser of (i) 1.5% per month and (ii) the maximum amount permissible under applicable law, on the amount outstanding from the date when payment is due until the date payment in full is received by [THE PROVIDER]. Client’s obligation to pay the Fees will be absolute and unconditional and shall not be subject to any set-off, counterclaim or withholding.
4. **Representations and Warranties**.
   1. [THE PROVIDER] represents, warrants, and covenants, and acknowledges that Client is relying on such representations, warranties and covenants, that:
      1. it is duly established and validly existing under the laws of its jurisdiction of formation;
      2. it has the power and the capacity to enter into, and to perform its obligations under this Agreement;
      3. this Agreement has been duly authorized, and when executed and delivered by [THE PROVIDER], shall constitute a valid, binding and legally enforceable agreement of [THE PROVIDER]; and
      4. the execution and delivery of this Agreement and the performance of the covenants and agreements herein contained are not limited or restricted by and are not in conflict with any contract, agreement or other instrument by which [THE PROVIDER] is bound.
   2. Client represents, warrants, and covenants, and acknowledges that [THE PROVIDER] is relying on such representations, warranties and covenants, that:
      1. it is duly established and validly existing under the laws of its jurisdiction of formation;
      2. it has the power and the capacity to enter into, and to perform its obligations under this Agreement;
      3. this Agreement has been duly authorized, and when executed and delivered by Client, shall constitute a valid, binding and legally enforceable agreement of Client; and
      4. the execution and delivery of this Agreement and the performance of the covenants and agreements herein contained are not limited or restricted by and are not in conflict with any contract, agreement or other instrument by which Client is bound.
   3. Except as expressly set forth in Section 4.1, [THE PROVIDER] makes no representations or warranties in connection with the Services. [THE PROVIDER] hereby expressly disclaims, all other warranties, performance guarantees and conditions whether written or oral, statutory, express or implied, including, but not limited to, all warranties and conditions of merchantability or fitness for a particular purpose and all warranties and conditions arising from course of dealing or usage or trade.
5. **Client Obligations**.
   1. Client shall perform all of the obligations set out in the Cover Pages (“**Client Obligations**”) and acknowledges that the ability of [THE PROVIDER] to perform the Services is subject to Client’s completion of the Client Obligations in a timely manner. [THE PROVIDER] shall be not liable for failure to provide the Services, in whole or in part, or for delay in providing the Services, to the extent such failure or delay is the result of Client’s failure to perform the Client Obligations in a timely manner.
6. **Indemnity**.
   1. Client hereby agrees to defend, indemnify, and hold harmless [THE PROVIDER], including his employees, agents and representatives (each an “**Indemnified Person**”) from and against any and all claims, actions, demands, legal proceedings, liabilities, damages, losses, judgments, authorized settlements, costs or expenses, including without limitation reasonable legal fees arising out of or in connection with (i) a breach by Client of any of the terms of this Agreement; and (ii) the negligence or willful misconduct of Client, including its directors, officers, employees, agents and representatives. [THE PROVIDER] accepts the foregoing indemnity in favour any Indemnified Person that is not a party to this Agreement as agent and trustee of that Indemnified Person and may enforce any such indemnity in favour of that Indemnified Person on behalf of that Indemnified Person.
7. **LIMITATION OF LIABILITY**.
   1. THE LIABILITY OF [THE PROVIDER] IN RELATION TO THIS AGREEMENT WILL IN ALL CIRCUMSTANCES BE LIMITED TO DIRECT DAMAGES AND [THE PROVIDER] WILL NOT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES OR LOSS OF PROFIT, WHETHER IN CONTRACT, TORT OR OTHERWISE RESULTING FROM ANY CAUSE OF ACTION WHATSOEVER, INCLUDING NEGLIGENCE, GROSS NEGLIGENCE, NEGLIGENT MISREPRESENTATION OR FUNDAMENTAL BREACH OR OTHER THEORY OF LAW. [WITHOUT LIMITING THE GENERALITY OF THE FOREGOING SENTENCE, [THE PROVIDER]’S LIABILITY IN AGGREGATE IN RELATION TO THIS AGREEMENT WILL NOT EXCEED THE FEES.]
8. **Intellectual Property**.
   1. Client acknowledges and agrees all intellectual property rights anywhere in the world including, without limitation, any copyright, trade-mark right, patent right, right of privacy, right of publicity or other proprietary right, any right to produce, reproduce, distribute, publish, publicly perform, publicly present at public exhibitions or otherwise exhibit, communicate to the public by telecommunication, make available to the public and otherwise use or re use for any purpose whatsoever, including without limitation, for advertising, trade, display, exhibition and editorial use, in any manner or medium whatsoever, including without limitation, digital and non digital media, the Service materials, including any works depicted therein or any picture, likeness, modification, alteration, addition, deletion, representation, negative, transparency, print, digital information, in whole or in part derived therefrom are and shall remain the sole property of [THE PROVIDER].
9. **Liquidated Damages**.
   1. In the event that Client breaches the terms of this Agreement, including purporting to terminate this Agreement other than in accordance with Section 2, Client agrees to forthwith pay to [THE PROVIDER] liquidated damages equal to the full amount of the Fees then outstanding. The parties acknowledge that the amounts payable under this Section 9.1 are paid as liquidated and ascertained damages and such amounts are reasonable.
10. **Confidentiality**.
    1. With regard to information disclosed by a party (“**Disclosing Party**”) to the other (the “**Receiving Party**”) that would reasonably be considered of a confidential or proprietary nature (whether marked as such or not), including, without limitation, the terms of this Agreement, business data, financial or accounting data, customer or employee data including personally identifiable information, and marketing or advertising data, (collectively, the “**Confidentia**l **Information**”), the Receiving Party agrees to: (a) keep strictly confidential the Confidential Information by use of reasonable safeguards; (b) not directly or indirectly disclose or make available the Confidential Information to any third party; and (c) to use the Confidential Information only as necessary for the sole, internal purpose of meeting is obligations hereunder. The obligation of confidentiality shall not apply to information that is: (i) publicly available through authorized disclosure; (ii) is known by the Receiving Party at the time of disclosure as evidenced in writing; (iii) is rightfully obtained from a third party who has the right to disclose it; or (iv) that is required by a court of competent jurisdiction or other governmental authority or otherwise as required by law to be disclosed.
    2. All right, title and interest in and to the Confidential Information will remain the exclusive property of the Disclosing Party and the Confidential Information will be held in trust by the Receiving Party for the Disclosing Party. No interest, licence or any right respecting the Confidential Information is granted to the Receiving Party under this Agreement by implication or otherwise other than under section 8.
    3. Each party acknowledges and agrees that damages would not adequately compensate the other party if it were to breach its obligations under this Section 10. Consequently, each party agrees that, in the event of any such breach, the other party shall be entitled, in addition to any other remedies, to seek to enforce this Agreement by means of a restraining order and/or injunction or other equitable relief without the requirement of posting a bond.
11. **Force Majeure.** 
    1. Any delay in the performance by either party hereunder shall be excused if and to the extent caused by acts of God, fire, flood, tornadoes, hurricanes or other unusually severe weather conditions, explosion, riot, war, insurrection, sabotage, and vandalism, accident, unless caused by the affected party, delays attributable to reputable common carriers, which events are beyond the reasonable control of the affected party. The affected party shall promptly give written notice of the event to the other party, specifying the nature of the delay, and the probable extent of the delay, if determinable. If such notice is duly given, the time for performance hereunder shall be extended for such period as may be both reasonable and necessary due to said event. Should the Services be suspended under this Section 11.1 for more than thirty (30) consecutive days, either party may terminate this Agreement.
12. **General.**
    1. **Construction.** This Agreement has been negotiated by each party with the benefit of legal representation, and any rule of construction to the effect that any ambiguities are to be resolved against the drafting party does not apply to the construction or interpretation of this Agreement.
    2. **Certain Rules of Interpretation**. In this Agreement:

##### the division into Articles and Sections are for convenience of reference only and do not affect the construction or interpretation of this Agreement;

##### the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular portion of this Agreement; and

##### unless specified otherwise or the context otherwise requires "including" or "includes" means "including (or includes) but is not limited to" and is not to be construed to limit any general statement preceding it to the specific or similar items or matters immediately following it;

##### unless specified otherwise or the context otherwise requires words in the singular include the plural and vice-versa and words in one gender include all genders; and

##### all monetary amounts set out in this Agreement are in Canadian funds unless expressly stated otherwise.

* 1. **Entire Agreement**. This Agreement, its schedules, exhibits or other attachments, including documents incorporated by reference therein constitute the entire Agreement between the parties with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings and understandings of any nature whatsoever, whether oral or written, unless they are expressly incorporated by additional reference in this Agreementhen.
  2. **Survival.** Regardless of the circumstances of termination or expiration of this Agreement or any schedule or other attachment, any provision which by its nature extends beyond the termination or expiration will survive according to their terms, including, but not limited to, the provisions of: Sections 4 (Representations and Warranties), 6 (Indemnity), 7 (Limitation of Liability), 8 (Intellectual Property), 9 (Liquidated Damages), 10 (Confidentiality) and 12 (General).
  3. **Relationship.** [THE PROVIDER] shall act solely as an independent contractor in relation to Client. Nothing in this Agreement or any schedule constitutes or should be construed as creating a partnership, joint venture, principal-agent, purchaser-servant, or an employer-employee relationship between Client and [THE PROVIDER].
  4. **Severance**. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is found to violate a law, it will be severed from the rest of this Agreement and ignored and a new provision deemed added to this Agreement to accomplish to the extent possible, the intent of the parties as evidenced by the provision so severed. The headings used in this Agreement have no legal effect.
  5. **Remedies**. Except as may be otherwise provided in this Agreement, the rights or remedies of the parties hereunder are not exclusive, and either party is entitled alternatively or cumulatively, subject to the other provisions of this Agreement, to damages for breach, to apply for an order from an appropriate court requiring specific performance, or to any other remedy available at law or in equity.
  6. **Governing Law**. This Agreement is governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The parties hereby attorn to the exclusive jurisdiction of the Courts of Ontario.
  7. **Counterparts and Electronic Execution**. This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile or other electronic transmission and all the counterparts and electronic transmissions will be as effective as delivery of a manually executed copy of the Agreement and together will constitute one and the same agreement.

[SIGNATURE PAGE PRECEDES THESE TERMS AND CONDITIONS AND IS REFERED TO AS THE COVER PAGES THROUGHOUT]