

Workforce Health Assessors Pty Ltd ABN 45 094 392
588 of Level 4, 15 Victoria Street, Hobart, Tasmania 7000
("WHA")

Background

- A. WHA provides pre-employment and employment-related health assessment services for employers in Australia and New Zealand.
- B. The Client has requested WHA to provide pre-employment health assessments of potential employees and employment-related health assessments of its employees.
- C. WHA has agreed to provide those assessments and related services on the terms and conditions of this Agreement.

Agreed terms

1. TERM

This Agreement begins on the commencement of services and continues until it is terminated in accordance with its terms (the "Term").

2. SERVICES

2.1 General

During the Term, WHA will provide Services to the Client in relation to the Candidates nominated by the Client.

2.2 Facilities

- (a) WHA will provide In-Facility Services:
- (i) at a suitably located WHA Facility using WHA Personnel; or
- (ii) if no suitably located WHA Facility is available, at an External Facility using External Personnel.
- (b) WHA will perform On-Site Services at the Client's premises using WHA Personnel.
- (c) WHA will use reasonable endeavours to ensure that all WHA Personnel and External Personnel who are involved in performing the Services:
- (i) are appropriately qualified and hold all necessary certifications and licences to perform the Services they provide; and
- (ii) provide the Services with due care and skill and in a professional manner.

2.3 Booking through the WHA Portal

- (a) The Client may arrange the provision of Services through the WHA Portal. The WHA Portal enables the Client to book and manage appointments and access results.
- (b) When making a booking in the WHA Portal, the Client will be presented with the following options:
- (i) the Client may use the WHA Portal to make an appointment itself, or to request WHA to make an appointment; or
- (ii) the Client may enable the Candidate to make their own appointment via the Candidate Dashboard. A secure link will be sent to the Candidate via email and SMS to enable the Candidate to access the Candidate Dashboard. The Client can disable the Candidate Dashboard in the WHA Portal at any time.
- (c) When accessing and using the WHA Portal, the Client must (and must ensure that its Candidates) comply with WHA's terms and conditions for the use of the WHA Portal, as updated from time to time.

2.4 Booking through the WHA customer service team

- (a) Alternatively, the Client may arrange the provision of Services through WHA's customer service team by telephoning 1300 552 722 or emailing bookings@wha.net.au or info@wha.net.au. The customer service team will notify details of the appointment to the Client and Candidate using the contact details provided by the Client, and the Client may manage the appointment through the WHA Portal or by contacting WHA by phone and/or email.
- (b) The Client may make bookings for On-Site Services by emailing onsitebookings@wha.net.au.

2.5 Candidate Details

- (a) When booking an appointment, the Client must provide WHA with accurate and complete details of the Candidate including full name, date of birth, mobile phone number, postcode, and email address ("Candidate Details").
- (b) The Client acknowledges a Candidate must complete WHA's consent documents for the applicable type of appointment.
- (c) The Client acknowledges that if any Candidate Details and/or Candidate's consent documents are not completed and provided to WHA prior to

the appointment, WHA may not be able to provide Services for that Candidate, and WHA may cancel the appointment, in which case the cancellation fees in clause 4 will apply.

2.6 Scope of Services

Any services other than the Services offered by WHA or requested by the Client are subject to prior agreement with WHA on terms and conditions (including associated rates and charges) as agreed by the parties.

3. FEES

3.1 Service Fees

The Client must pay the applicable Service Fee to WHA for each Service provided or arranged by WHA. A surcharge may apply for Services provided outside of Regular Operating Hours.

3.2 Invoicing

WHA will issue the Client with a tax invoice for the Services provided on a monthly basis, unless otherwise agreed. Where the Client requires a purchase order, reference number or similar, to be included on invoices issued by WHA, the Client must notify WHA of those requirements in writing, at the time of booking an appointment.

3.3 Payment Terms

- (a) The Client must pay WHA's invoices within 14 days of the invoice date, unless otherwise agreed, using a payment method acceptable by WHA. Acceptable payment methods will include electronic funds transfer and credit card.
- (b) WHA may charge interest on any outstanding amount at an interest rate equal to the then-current overdraft rate charged by WHA's bank.
- (c) WHA may require the Client to reimburse WHA for any costs incurred in recovering any outstanding debts owed by the Client to WHA, including debt collection fees and legal and court fees.

3.4 Set off

WHA will be entitled at all times to set-off any amount owing at any time from the Client to WHA against any amount payable at any time by WHA in connection with this Agreement.

3.5 GST

- (a) Unless otherwise expressly stated, all prices or other amounts payable or consideration to be provided under this Agreement are exclusive of GST.

- (b) If GST is payable by a supplier on any supply made under this Agreement, the recipient will pay to the supplier an amount equal to the GST payable on the supply. The recipient will pay this amount in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

- (c) The supplier must deliver a valid tax invoice to the recipient before the supplier is entitled to payment of an amount under clause 3.5(b).

- (d) In this clause 3.5, words and expressions which are not defined in this Agreement but which are defined in the GST Law have the same meaning as in the GST Law.

3.6 Client creditworthiness

- (a) The Client consents to WHA using the Client's business details to conduct credit checks on the Client. Any decision by WHA to provide credit, or to continue to provide credit, to the Client before or during the Term is at WHA's absolute discretion.
- (b) WHA may disclose any information provided by the Client in the course of a credit application to a credit reporting agency for the purpose of obtaining a credit report on the Client. The Client consents to WHA obtaining personal information, credit information and other information relating to the Client from a credit reporting agency, credit provider or other party for the purposes of assessing the Client's creditworthiness before or during the Term.

4. CANCELLATION AND NON-ATTENDANCE FEES

- (a) In relation to In-Facility Services:
 - (i) if an appointment is cancelled or rescheduled by the Client or Candidate less than one full Working Day before the appointment time, WHA will charge the Client a cancellation fee equal to 75% of the applicable Service Fee (subject to paragraphs (ii) and (iii) below);
 - (ii) if a Candidate fails to attend a scheduled appointment without prior notice to WHA, WHA will charge the Client a cancellation fee equal to 100% of the applicable Service Fee (subject to paragraph (iii) below); and
 - (iii) if WHA schedules an appointment for the Client or a Candidate less than one full Working Day ahead of time, and the appointment time is not confirmed by the Candidate or the Client, and the appointment is subsequently cancelled or rescheduled, no cancellation fee will apply.
- (b) In relation to On-Site Services:
 - (i) if On-Site Services are cancelled by the Client less than three full Working Days before the scheduled

time, WHA will charge the Client a cancellation fee equal to 100% of the total Service Fees for the On-Site Services, including any non-recoverable travel and accommodation expenses (subject to paragraph (ii) below);

(ii) WHA may waive or reduce the cancellation fee in paragraph (i) above if the Client reschedules On-Site Services to another date. However, the re-scheduling must occur within seven Working Days of the original scheduled appointment; and

(iii) if a Candidate fails to attend an On-Site Services appointment, WHA will charge the Client a cancellation fee equal to 100% of the applicable Service Fee for that Candidate's appointment.

5. RECORDS

(a) The Client agrees that all rights (including all intellectual property rights) in all Candidate Records created by or on behalf of WHA in the course of the provision of the Services are the sole property of WHA.

(b) WHA will collect and handle the Candidate Details and Candidate Records in accordance with applicable data privacy and health records laws.

6. WORKPLACE HEALTH & SAFETY

If WHA performs any On-Site Services, the Client must ensure that the premises at which those On-Site Services are performed comply with all applicable workplace health and safety laws and otherwise constitute a safe work environment for WHA Personnel that visit those premises in connection with the Services.

7. FORCE MAJEURE

(a) Neither party will be liable for any delay or failure to perform its obligations under this Agreement, apart from payment obligations, as a result of a Force Majeure Event. A party affected by a Force Majeure Event must immediately notify the other party of any anticipated delay or impact on the delivery of the Services due to the Force Majeure Event. Subject to clause 7(b), the performance of the affected party's obligations under this Agreement will be suspended for the period of the delay, and any deadlines will be extended to provide for the period of the delay.

(b) If a Force Majeure Event continues for longer than three months, the parties will discuss whether the Client still requires the suspended Services to be provided and if so, whether WHA is able to perform those Services, including the timing for delivery of the Services and any changes to the Service Fees.

8. CONFIDENTIALITY

Each party must keep the other party's Confidential Information confidential and must:

(i) not use it for any purpose other than in connection with this Agreement;

(ii) not disclose it without the consent of the other party, except to the extent that the party is required by law or the rules of a stock exchange to disclose it; and

(iii) take all reasonable and necessary precautions to keep it secure from unauthorised access, use, or disclosure.

9. TERMINATION

9.1 Termination for convenience

(a) Either party may terminate this Agreement at any time without cause by giving the other party 30 days' written notice of such termination.

(b) If a party gives written notice to terminate this Agreement in accordance with clause 9.1(a):

(i) any appointments made prior to the termination date which are scheduled to be held after the termination date, regardless of whether the date of the appointment is after the termination date and will be performed by WHA and paid for by the Client in accordance with this Agreement; and

(ii) no new appointments will be made for a date after the termination date.

9.2 Suspension or termination by WHA

(a) WHA may immediately suspend the performance of its obligations in this Agreement, or terminate this Agreement, by giving written notice to the Client, if the Client:

(i) fails to pay any Service Fees payable to WHA by the due date in accordance with this Agreement, and fails to pay the outstanding amounts within 14 days of receiving written notice from WHA requiring it to do so;

(ii) breaches clause 8 of this Agreement;

(iii) breaches any other term of this Agreement, and if that failure is capable of being remedied, fails to remedy that breach within 21 days of receiving written notice from WHA requiring it to do so; or

(iv) is subject to an Insolvency Event.

(b) If WHA gives written notice to terminate this Agreement in accordance with clause 9.2(a):

- (i) any appointments made prior to the termination date which are scheduled to be held after the termination date will be automatically cancelled; and
- (ii) no new appointments will be made for a date after the termination date.

9.3 Termination by the Client

- (a) The Client may immediately terminate this Agreement by giving written notice to WHA, if WHA:
 - (i) breaches clause 8 of this Agreement;
 - (ii) breaches any term of this Agreement, and if that failure is capable of being remedied, and fails to remedy that breach within 21 days of receiving written notice from the Client requiring it to do so; or
 - (iii) is subject to an Insolvency Event.
- (b) If the Client gives written notice to terminate this Agreement in accordance with clause 9.3(a):
 - (i) at the Client's option, any appointments made prior to the termination date which are scheduled to be held after the termination date may continue, in which case those appointments will be performed by WHA and paid for by the Client in accordance with this Agreement; and
 - (ii) no new appointments will be made for a date after the termination date.

9.4 Consequences of termination

- (a) On termination of this Agreement, each party will immediately return to the other party all Confidential Information of the other party in its possession or control.
- (b) Termination of this Agreement will not affect those provisions of this Agreement expressed to operate or have effect after the date of termination and is without prejudice to any rights accrued by either party in respect of any breaches existing before termination.

10. WARRANTIES

- (a) Other than as expressly set out in this Agreement, WHA gives no express or implied warranties, representations or guarantees regarding the Services, including in relation to fitness for purpose, efficacy, or non-infringement. The Client acknowledges that it has not relied on any such warranty, representation or guarantee in entering into this Agreement.
- (b) To the extent permitted by law, WHA excludes all warranties, representations and guarantees implied by law into this Agreement or relating to the Services. If any

such warranty, representation or guarantee cannot be so excluded, then to the extent permitted by law, WHA's liability for any breach of such warranty, representation or guarantee shall be limited to (at WHA's option) the supplying of the services again or the payment of the cost of having the services supplied again.

11. LIABILITY

- (a) Subject to clause 11(b), and to the extent permitted by law, the maximum cumulative liability of WHA for all Loss sustained by the Client under or in connection with this Agreement, whether for breach of contract (including fundamental breach), repudiation, in tort (including negligence), under statute or on any other basis, will be an amount equal to the Service Fees paid by the Client to WHA in:
 - (i) the 12 months preceding the first such Loss; or
 - (ii) if the first such Loss occurs in the first 12 months of the term of this Agreement, the first 12 months of the term of this Agreement.
- (b) Clause 11(a) does not limit or exclude WHA's liability for personal injury or death, or damage to or loss of real or personal property.
- (c) To the extent permitted by law, WHA will not be liable to the Client for any loss of revenue or profit, loss of goodwill, loss or corruption of data, interruption to business, or for any indirect or consequential loss arising out of or in connection with this Agreement, regardless of whether WHA had been advised of or could have foreseen or prevented any such loss.

12. AMENDMENTS TO AGREEMENT

WHA may amend this Agreement (including the Services and the Service Fees) at any time, by providing not less than 30 days written notice of such changes to the Client. To avoid doubt, if the Client does not accept such changes, it may terminate this Agreement under clause 9.1(a).

13. GENERAL

- (a) Each party must promptly do whatever the other party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.
- (b) This document is governed by and is to be construed in accordance with the laws applicable in the State of Tasmania. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in that State and waives any right to object to any proceedings being brought in those courts.
- (c) A party must not assign or deal with any right

under this Agreement without the prior written consent of the other party. Any purported dealing in breach of this clause is of no effect.

14. DEFINITIONS

In this document:

“Agreement” means this agreement between WHA and the Client.

“Candidate” means a person nominated by the Client to undertake a pre-employment medical assessment, on-site workplace health assessment or other test.

“Candidate Dashboard” means the section of the WHA Portal accessible by Candidates, which enables a Candidate to book and manage their own bookings.

“Candidate Records” means any records regarding Candidates created by or on behalf of WHA in the course of providing the Services.

“Confidential Information” means any information obtained by a party in connection with this Agreement which relates to the other party or its business that:

- (a) is by its nature confidential;
- (b) is designated as confidential; or
- (c) the first party knows or ought reasonably to have known is confidential,

but does not include information which is in the public domain or is in or comes into the first party's possession independently of this Agreement, other than due to a breach of this Agreement.

“External Facility” means a facility operated by a third party.

“External Personnel” means a contractor engaged by WHA to provide Services at an External Facility.

“Force Majeure Event” means any cause beyond the reasonable control of a party including strikes, industrial action, floods, fires, earthquake, riot, explosion, war, hostility, acts of government, military, civil or regulatory authority, epidemic, pandemic, change in any law or regulation, disruption or interruption to the supply of communications, internet, power or other utility.

“GST Law” means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

“Insolvency Event” means any of the following:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;

(b) a person is taken or must be presumed to be insolvent or unable to pay the person's debts under any applicable legislation;

(c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;

(d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven days;

(e) a controller is appointed in respect of any property of a corporation;

(f) a corporation is deregistered under the Corporations Act 2001 (Cth) or notice of its proposed deregistration is given to the corporation;

(g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;

(h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them;

(i) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven days or a person presents a petition against himself or herself;

(j) a person presents a declaration of intention under section 54A of the Bankruptcy Act 1966 (Cth); or

(k) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.

“In-Facility Services” means medical assessment and other services performed at a WHA Facility or an External Facility.

“Loss” means loss, damage, liability, charge, expense, outgoing payment or cost (including legal and other professional costs) of any nature or kind.

“On-Site Services” means employment-related medical assessment services performed at premises controlled or managed by the Client.

“Regular Operating Hours” means the hours of 7.00am to 7.00pm on Working Days in the location in which the

Services are provided, or as otherwise agreed.

“Service Fee” means the fee for a Service listed in the WHA Rates and Charges List or agreed between the parties under clause 2.6.

“Services” means:

- (a) pre-employment medical assessments;
- (b) ongoing medical assessments required for high risk roles, including rail workers, coal miners, hazardous substance workers, oil and gas workers;
- (c) employment-related testing services including drug and alcohol screenings, hearing assessments, vision assessments, fitness to drive assessments, general fitness tests;
- (d) annual health checks;
- (e) health and wellbeing assessments;
- (f) vaccination services;
- (g) pathology and medical imagery; and
- (h) any additional services notified by WHA to the Client, listed in the WHA Rates and Charges List or agreed by WHA and the Client.

“Term” has the meaning given in clause 1.

“WHA Facility” means a WHA-branded facility operated by WHA or operated under licence from WHA.

“WHA Personnel” means an employee or contractor of WHA or a WHA licensee.

“WHA Portal” means WHA’s online portal booking system.

“WHA Rates and Charges List” means the rates and charges list published by WHA from time to time.

“Working Day” means any day other than a Saturday, Sunday or public holiday at the location of the WHA Facility or External Facility at which Services are provided.

15. CONSTRUCTION

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (c) “includes” means includes without limitation;
- (d) headings do not affect the interpretation of this Agreement;

(e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party drafted or put forward the clause or would otherwise benefit from it;

(f) a reference to:

- (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
- (ii) a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;
- (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
- (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (v) a right includes a benefit, remedy, discretion or power;
- (vi) time is to local time in the place where Services are provided;
- (vii) “\$” or “dollars” is a reference to Australian or New Zealand currency, depending on where Services are provided;
- (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
- (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes electronic writing; and
- (x) a clause is a reference to a clause, as the case may be, of this Agreement; and
- (g) unless expressly required by this Agreement, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this Agreement.