

Worker Health Checks Funding Agreement Terms and Conditions

Background

- A In accordance with its powers and functions under the *Accident Compensation Act 1985* (Vic), WorkHealth, a division of the Victorian WorkCover Authority (trading as WorkSafe Victoria), is providing financial assistance to employers to offer voluntary programs that promote worker health and wellbeing.
- B As part of this initiative, the Employer has agreed to engage Endorsed Service Providers to deliver Worker Health Checks to the Employer's workers and WorkHealth has agreed to provide funding for the Worker Health Checks on the terms and conditions set out in this agreement.
- C The Employer has agreed to carry out its obligations under this agreement for the consideration of the funding paid by WorkSafe as specified in this agreement.
- D These terms and conditions together with the accompanying Application Form constitute an agreement between the parties (**agreement**).

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Annual Remuneration means the amount of remuneration stated in the Employer's current WorkSafe Injury Insurance policy or registration of approval for self insurance.

Application Form means the form submitted by the Employer to WorkHealth to register the Employer to receive funding from WorkHealth for the delivery of the Worker Health Checks.

Business Day means a day that is not a Saturday, Sunday, bank holiday or public holiday in Victoria.

Business Hours means from 9.00am to 5.00pm on a Business Day.

Commencement Date means the date that WorkHealth writes to the Employer approving its Application to participate in the Worker Health Checks program.

Claim means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

Employer means the employer set out in the Application Form.

Endorsed Service Provider means a service provider listed on the WorkHealth website as a provider who is endorsed by WorkHealth to conduct Worker Health Checks.

Expiry Date means the earlier of 30 June 2013 and that date upon which the parties have discharged their obligations under the agreement.

Liabilities includes liabilities (whether actual, contingent or prospective), losses, damages, actions, costs, expenses, charges, fees (including legal costs on a full indemnity basis).

Term has the meaning given to it in clause 3.

Victorian WorkCover Authority means the statutory authority established under section 18 of the *Accident Compensation Act 1985* (Vic).

Worker Health Checks means health checks delivered by Endorsed Service Providers to provide information and advice to the Employer's workers about their risk of chronic diseases, in particular Type 2 diabetes and cardiovascular disease and the impact the worker's lifestyle may have on their health, comprising the following elements:

- (a) a questionnaire prepared by WorkHealth about diet, smoking, alcohol consumption, physical exercise activity, family and medical history to be completed by individual workers; and
- (b) a series of physical and biomedical measurements, including waist circumference, blood pressure, blood glucose and blood cholesterol.

2. Approval

When the Employer's application to have Worker Health Checks conducted by an Endorsed Service Provider has been approved by WorkHealth, WorkHealth will provide funding for the Worker Health Checks on the terms and conditions of this agreement.

3. Term

This agreement commences on the Commencement Date of this agreement and continues until the Expiry Date (**Term**).

4. Funding

4.1 Conditions of funding

WorkHealth is only required to provide funding in accordance with this clause 4 in respect of Worker Health Checks:

- (a) delivered by an Endorsed Service Provider; and
- (b) conducted at the sites stated in the Application Form.

4.2 Agreed funding

The Employer agrees that the funding which WorkHealth will provide to the Employer under this agreement is:

- (a) full reimbursement, capped at the amount authorised by WorkHealth in respect of the relevant Endorsed Service Provider, per Worker Health Check where the Employer's Annual Remuneration is less than \$10 million; or
- (b) \$30 (GST inclusive) towards each Worker Health Check in respect of the relevant Endorsed Service Provider, where the Employer has an Annual Remuneration equal to or more than \$10 million and where the Employer pays the balance of the costs of the Worker Health Check.

4.3 Invoicing

- (a) Once the Employer has received an invoice from an Endorsed Service Provider for Worker Health Checks completed by that provider, the Employer must send a tax invoice to WorkHealth in accordance with clause 9.7, attaching the following:
 - (i) the number of Worker Health Checks that have been performed by the Endorsed Service Provider;

- (ii) the total amount that the Employer is required to pay (or has paid) to the Endorsed Service Provider (including the amount of GST) for the completed Worker Health Checks; and
- (iii) an Activity Report.
- (b) The Employer may process and provide the invoices under clause 4.3(a) in batches.
- (c) Each Activity Report (as approved by WorkHealth from time to time) must be completed by the Employer as proof that the Worker Health Checks have been delivered by the relevant Endorsed Health Service Provider. The Activity Report marked by the Employer as the final Activity Report for the final batch of invoices, will trigger the final funding by WorkHealth under this agreement.
- (d) For the avoidance of doubt, the Employer agrees that WorkHealth is only required to reimburse the Employer in accordance with clause 4.2 where:
 - (i) the Employer's Annual Remuneration is less than \$10 million, for the amount charged to the Employer by the Endorsed Service Provider for the Worker Health Checks; or
 - (ii) the Employer's Annual Remuneration is equal to or more than \$10 million, \$30 (GST inclusive) towards the cost of each Worker Health Check to the Endorsed Service Provider.

4.4 Payment

- (a) WorkHealth will pay the funding to the Employer under this agreement in consideration for the Employer carrying out its obligations in accordance with this agreement.
- (b) WorkHealth must pay any correctly rendered and undisputed tax invoice within 14 Business Days after the date of receipt of that tax invoice under clause 4.3 (or such other period as may be agreed in writing between the parties for that tax invoice).
- (c) If WorkHealth considers that any tax invoice has not been correctly rendered, including where it disputes any amount in a tax invoice:
 - (i) WorkHealth will notify the Employer as soon as practicable after receipt of the tax invoice as to why it disputes the tax invoice;
 - (ii) WorkHealth will pay any undisputed amount of the tax invoice in accordance with clause 4.4(a); and
 - (iii) the disputed component of the tax invoice will be dealt with in accordance with clause 12.

5. Obligations

5.1 Employer's obligations

The Employer agrees:

- (a) to engage an Endorsed Service Provider to deliver the Worker Health Checks;
- (b) to promote and facilitate workers' participation in the Worker Health Checks through the scheduling of arrangements with the Endorsed Service Provider;
- (c) to complete surveys and provide feedback for evaluation of Worker Health Checks where the Employer has agreed to do so in the Application Form;
- (d) to ensure that Worker Health Checks will be conducted at the nominated worksites as stated in the Application Form (unless otherwise agreed with the Endorsed Service Provider) and in a dedicated private space, which is not a high visibility, high traffic location to ensure that the privacy of workers can be maintained;

- (e) to ensure that where it has requested an Endorsed Service Provider to provide additional services (such as to screen for non WorkHealth related conditions) **(Additional Services)** that such additional services are clearly distinguished from the WorkHealth program and that workers are informed that any such additional services are independent of, not endorsed by, nor paid for by, WorkHealth;
- (f) to cooperate with the Endorsed Service Providers to ensure that:
 - (i) any information about workers that is disclosed or collected by the Endorsed Service Providers is kept confidential;
 - (ii) personal information and health information of workers is handled in accordance with all applicable State and Commonwealth privacy legislation, and
 - (iii) the Worker Health Checks are delivered in accordance with WorkHealth's service standards and conditions; and
 - (iv) if the Endorsed Service Provider requires payment for a worker's failure to attend a Worker Health Check without giving notice, that the Endorsed Service Provider is paid 50% of the cost of each worker health check.
- (g) to notify WorkHealth if it becomes aware that Worker Health Checks are not being delivered by the Endorsed Service Provider in accordance with WorkHealth's service standards and conditions;
- (h) where it is entitled to receive a workplace profile report, with no identifying personal information or health information which profiles the overall health of its workforce (it has more than 50 workers participating in the Worker Health Checks,) to advise the Endorsed Service Provider if it does not wish to receive such a report;
- (i) to not collect or access any personal or health information collected by the Endorsed Service Provider in the Worker Health Check; and
- (j) to do all things reasonably requested by WorkHealth.

5.2 WorkHealth's obligations

WorkHealth agrees that it will not collect, use, disclose, store, transfer or otherwise handle 'personal information' (as defined in *the Information Privacy Act 2000 (Vic)*) or 'health information' (as defined in *the Health Records Act 2001 (Vic)*) that it collects in connection with this agreement and the Worker Health Checks unless it is in accordance with relevant privacy laws and principles that apply to it, including the Information Privacy Principles contained in *the Information Privacy Act 2000 (Vic)* and the Health Privacy Principles contained in *the Health Records Act 2001 (Vic)*.

6. Termination or withdrawal of Endorsed Service Provider

WorkHealth agrees to notify the Employer in writing as soon as reasonably possible if WorkHealth terminates or withdraws the endorsement of a Endorsed Service Provider engaged by the Employer. WorkHealth will pay the Employer in accordance with clause 4.4 for Worker Health Checks delivered by that Endorsed Service Provider up to the date of notification to the Employer under this clause.

7. Insurance

The Employer must for 7 years after termination or expiry of this agreement have and maintain for the Term appropriate public liability insurance to cover its:

- (a) obligations under this agreement; and
- (b) acts or omissions in relation to the Worker Health Checks; and

produce to WorkHealth on reasonable demand satisfactory evidence of the currency and adequacy of insurance required to be obtained under this clause 7.

8. Examination of books and records

8.1 Examination of Books

For the purpose of monitoring compliance by the Employer with this agreement and to verify the number of Worker Health Checks that have been conducted, the Employer will permit representatives of WorkHealth at any time during Business Hours to examine and copy any of the Employer's books and records relating to the Worker Health Checks.

8.2 Access to Books and Records

The Employer must promptly upon request produce all its books and records relating to the Worker Health Checks and otherwise co-operate fully with the representatives of WorkHealth to enable WorkHealth to exercise its rights under clause 8.1.

9. Goods and services tax

9.1 Interpretation

- (a) Words defined in the *A New Tax System (Goods and Service Tax) Act 1999 (Cth)* have the same meaning in clauses concerning GST.
- (b) If a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.

9.2 References to 'GST inclusive'

- (a) For the purposes of this agreement, where the expression 'GST inclusive' is used in relation to an amount payable or other consideration to be provided for a supply under this agreement, the amount or consideration will not be increased on account of any GST payable on that supply.
- (b) Any consideration to be paid or provided for a supply made under or in connection with this agreement, unless specifically described in this agreement as 'GST inclusive', does not include an amount on account of GST.

9.3 Gross up of consideration

Despite any other provision in this agreement, if a party (**Supplier**) makes a supply under or in connection with this agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this agreement as **GST inclusive**):

- (a) the consideration payable or to be provided for that supply under this agreement but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

9.4 Reimbursements (net down)

If a payment to a party under this agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

9.5 Acknowledgment

The parties acknowledge and agree that:

- (a) the Employer is making taxable supplies to WorkHealth under this agreement in consideration of the funding; and
- (b) the Employer will give WorkHealth a tax invoice in respect of the taxable supplies made by the Employer.

9.6 Adjustment events

If an adjustment event arises in respect of a supply made under or in connection with this agreement, then:

- (a) if the Supplier's corrected GST amount is less than the previously attributed GST amount, the Supplier will refund the difference to the Recipient; or
- (b) if the Supplier's corrected GST amount is greater than the previously attributed GST amount, the Recipient will pay the difference to the Supplier; and
- (c) the Supplier must issue an adjustment note to the Recipient.

9.7 Tax invoices

WorkHealth need not pay the GST Amount in respect of a taxable supply made under or in connection with this agreement until the Employer has given WorkHealth a tax invoice in respect of that taxable supply in accordance with clause 4.3.

10. Liability and indemnity

10.1 Release and discharge

The Employer acknowledges and agrees that it:

- (a) implements the Worker Health Checks at its own risk; and
- (b) unconditionally and irrevocably releases and forever discharges WorkHealth from all Claims which the Employer has or at any time in the future may have against WorkHealth (or any of its officers, employees or agents) (the **Indemnified**), arising out of or related to (whether directly or indirectly) any activities undertaken by the Employer under or in relation to this agreement including the implementation of the Worker Health Checks.

10.2 Indemnity

- (a) The Employer indemnifies and agrees to keep the Indemnified from and against any Liability or Claim suffered or incurred by the Indemnified arising as a result, whether directly or indirectly, of any breach of this agreement by the Employer and any wilful act or omission of its employees or agents.
- (b) The Employer indemnifies and agrees to keep the Indemnified from and against any Liability or Claim suffered or incurred by the Indemnified arising as a result, whether directly or indirectly, of the provision of any Additional Services as referred to in clause 5.1(e) above.

11. Termination

11.1 Termination for breach

Either party may terminate this agreement:

- (a) by giving 20 Business Days written notice to the other party; or

- (b) with immediate effect by giving notice to the other party if:
 - (i) the other party breaches any provision of this agreement and fails to remedy the breach within 5 Business Days after receiving notice requiring it to do so; or
 - (ii) the other party breaches a material provision of this agreement where that breach is not capable of remedy.

11.2 Consequences of termination

Termination of this agreement for any reason will be without prejudice to the continuing enforceability of any rights, obligations or remedies of the parties accrued at the time of termination.

12. Disputes resolution

12.1 Notification of dispute

A party claiming that a dispute, difference or question arising out of this agreement (**Dispute**) has arisen must notify the other party giving full details of the Dispute (**Notification**).

12.2 Where the dispute involves WorkHealth

- (a) Where the dispute involves WorkHealth, within 15 Business Days (or any longer period agreed between the parties) after a Notification is given, WorkHealth's representative and the Employer's Chief Executive Officer or a person holding the equivalent position must personally attempt to resolve the Dispute.
- (b) The parties must continue to perform their respective obligations under this agreement pending the resolution of the Dispute.
- (c) If, in relation to the Dispute, a party breaches any provision of this clause 12.2, the other party need not comply with those clauses in relation to that Dispute.
- (d) Each party must bear its own costs of complying with this clause 12.2.
- (e) A party must not start court proceedings (except proceedings seeking interlocutory relief) unless it has complied with this clause 12.2.

12.3 Where the dispute does not involve WorkHealth

- (a) Where the dispute does not involve WorkHealth, but arises out of this agreement, the Employer must, as soon as possible, notify WorkHealth of the dispute in writing and of the steps the Employer proposes to take to otherwise deal with the dispute with the third party (for example, the Endorsed Service Provider).
- (b) While WorkHealth will not play a role in resolving the dispute, if the Employer fails to notify WorkHealth of the dispute as required under clause 12.3(a) or the Employer is unable to or unwilling to resolve the dispute with the third party as required by WorkHealth, WorkHealth may terminate this agreement in accordance with clause 11.
- (c) The Employer must continue to perform its obligations under this agreement pending the resolution of the dispute with the third party.

13. Notices and other communications

13.1 Service of notices

A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and

- (b) hand delivered or sent by prepaid post, e-mail or facsimile to the recipient's address specified in the Application Form, as varied by any Notice given by the recipient to the sender.

13.2 Effective on receipt

A Notice given in accordance with clause 13.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by e-mail, when the e-mail enters the addressee's information system;
- (d) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

14. General

14.1 Assignment

A party must not assign this agreement or any right under this agreement without the prior written consent of the other party.

14.2 Alterations

This agreement may only be altered in writing signed by both parties.

14.3 Costs

Each party must bear its own costs of preparing and executing this agreement.

14.4 Counterparts

This agreement may be executed in any number of counterparts.

14.5 Further action

Each party must use reasonable efforts to do all things necessary or desirable to give full effect to this agreement.

14.6 Severability

Part or all of any provision of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining provisions of this agreement continue in force.

14.7 Waiver

Waiver of any provision of or right under this agreement:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

14.8 Governing law

This agreement is governed by the laws of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the Courts of Victoria.