

INTRODUCTION

Onetest provides Clients and Participants with access to the Onetest System including reports and all other services which may be offered from time to time including each and every feature which is collectively and jointly referred to as the "Onetest System".

These Onetest General Terms and Conditions cover the relationship between the Client, Participants and Onetest and these General Terms and Conditions supersede all previous versions hereof, prior negotiations, verbal agreements and form part of each and every transaction with Onetest. These General Terms and Conditions form part of the Client Agreement between the Client and Onetest for use of the Onetest System and additional Client specific terms and conditions are contained in each Client Agreement.

IT IS AGREED

1. Definitions and Interpretation

1.1. Definitions

In this Agreement the following expressions have the following meanings:

"Authorised Operators" means employees and/or subcontractors of the Client authorised by the Client to use the Onetest System. The Client will not approve anyone to become an Authorised Operator unless they have first undergone the recommended training by Onetest in the use of the Onetest System and have been approved by Onetest. To maintain this approval, Authorised Operators must complete refresher and update training as recommended by Onetest at least yearly.

"Business Day" means a day that is not a Saturday, Sunday or any other day which is a public holiday in the place where an act is to be performed or a payment is to be made.

"Cancellation Fee" means the fee as set out in your Agreement payable by the Client to Onetest for early termination of this Agreement for reasons other than those stated in Clause 18.1. If no fee is specifically listed this equates to 50% of the total amount remaining payable under your Agreement.

"Client" is the party so named in the specific Client Agreement.

"Client Agreement" means the specific Client Agreement executed between Onetest and the Client regarding the proper use of and payment for the use of the Onetest System and incorporates these General Terms and Conditions and adherence to the Onetest Privacy Policy.

"Commencement Date" means the date so specified in your Agreement.

"Confidential Information" means, in relation to a party, the confidential information of that party which relates to the subject matter of this Agreement and information relating to the design, specification and content of the Onetest System; the personnel, policies or business strategies of that party; and the terms on which access to the Onetest System is being made available under the Client Agreement; but does not relate to information which is already in the public domain other than information which is in the public domain as a result of a breach of this Agreement.

"Delivery Date" means the dates on which the Client has access to the Onetest System in accordance with the dates set out in your Agreement.

"Employment Offer" means the decision by a Client to offer a position to a Participant. It is important for Clients to ensure that any decision the Client takes in relation to employment is not based solely on information from the Onetest System but is based on all of the

relevant information and circumstances, and that this process is clearly documented, specifically recording that the Client has made a decision to offer employment, having regard to a range of information and factors, but that in doing so it does not make any representation to the Participant that it will not act to prevent any particular conduct that is in breach of the terms of employment or that is otherwise illegal from occurring. "Go live Date" means the date on which the Onetest System is made accessible to the Client as per your Agreement.

"Initial Term" means the period so specified in your Agreement.

"Intellectual Property Rights" means all intellectual property rights in Australia and throughout the world in the Onetest System, including each of the following:

- 1.1.1. Patents, copyright, rights in circuit layouts, registered designs, trade or service marks, trade, business or company names, indication of source or appellation of origin, and any right to have confidential information kept confidential.
- 1.1.2. Any application or right to apply for registration of, or assert or waive, any of the rights referred to in paragraph (1).
- 1.1.3. Moral rights, trade secrets, ideas, concepts, materials, know-how and techniques.

"Investment" means the fees fixed outlined in item 4 of Schedule 1 of your Client Agreement and as amended pursuant to clause 5.7 as consideration for Onetest providing the Client, invited Participants and Authorised Operators access to the Onetest System and Technical Support.

"Legitimate Employment Activity" means any activity using the Onetest System that does not illegally or unfairly disadvantage or discriminate against Participants.

"Link" means a hypertext link connecting a website to other websites.

"Onetest" means Onetest Pty Ltd ABN 58 089 022 202, Suite 1/21 Windorah Street, Stafford, Brisbane, Australia.

"Onetest Assessments" means professionally developed psychometric assessments designed specifically to identify the various attitudes, traits and likely actions of Participants in a work environment. Onetest Assessment Results are not intended to form the sole basis upon which the decision of the Client should be made. Clients should use Onetest Results in conjunction with all other available information such as reference checking, educational achievements, work experience and structured interviews when making recruitment decisions.

"Onetest Privacy Policy" means the Onetest Privacy Policy, which can be accessed through the World Wide Web and located at "<http://www.onetest.com.au>".

"Onetest Results" means the feedback, information and reports provided by the Onetest System based on Participant Input. Results created via the Onetest System are considered to be valid for a period of 12 months from the date the Participant Input was generated.

"Onetest System" means the Onetest website, accessed through the World Wide Web and located at "<http://www.onetest.com.au>", and all of the processes enabled there from including but not limited to talent management features, the development of online surveys, Onetest Assessments, profiling, Participant Input, skills tests, selected third party products and the provision of reporting of results to the Client, each and every feature whether referred to collectively or jointly and any feedback or other interaction between the Client and Onetest in the use of the Onetest System and Onetest Assessments whether or not the Client has access to the Onetest Website. Clients may be required to execute a third party sub licence agreement for some services provided by third party vendors.

"Onetest Technical Support" is provided as part of the Investment to Clients and Participants during the specific hours as detailed in clause 12.4 hereof for the purposes of ensuring exceptional user experience in the use of the Onetest System.

"Onetest Training" means the level of training required to utilise the Onetest System as detailed in your Agreement.

"Onetest Website" means the website located at addresses www.onetest.com.au; www.onetest.com; www.onetest.co.nz; www.onetest.co.uk and such other domains as advised from time to time.

"Participant" means an individual (an applicant, a candidate, a jobseeker, an employee current, prospective or future or a non-employee of the Client) who is asked to participate in online surveys or assessments as part of a specific Client project designed for recruitment, development or retention purposes. Onetest does not make any decisions as to the use of results obtained or any promotional or other offer made to the participant as a result of any project. Onetest always acts as an agent of the Client.

"Participant Input" means the input of data, answers and other personal information as requested from time by the Onetest System and provided by the Participant. Interpretation of this input in completion of Onetest Assessments produces Onetest Results as well as being used by the Onetest System in regular searches for possible vacancies suitable to the Participant's requirements.

"Performance Standards" means the availability standards set out in your Agreement.

"Site licence" means a licence for access to the Onetest System and the use of specific services by one particular Client physical location or Client group of registered users.

"Term" means the Initial Term, and each 12 month period of extension pursuant to clause 4.1, commencing on the anniversary of the Commencement Date.

1.2. Agreement Construction - reference to:

- 1.2.1. One gender includes the others;
- 1.2.2. The singular includes the plural and the plural includes the singular;
- 1.2.3. A person includes a body corporate;
- 1.2.4. A party includes the party's executors, administrators, successors and the Client assigns;
- 1.2.5. A statute, regulation or provision of a statute or regulation ("Statutory Provision") includes:
 - 1.2.6. That Statutory Provision as amended or re-enacted from time to time; and
 - 1.2.7. A statute, regulation or provision enacted in replacement of that Statutory Provision; and
- 1.2.8. Money is expressed in Australian dollars, unless otherwise stated.
- 1.2.9. "Including" and similar expressions are not words of limitation.
- 1.2.10. Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 1.2.11. Headings are for convenience only and do not form part of this Agreement or affect its interpretation.
- 1.2.12. A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.

1.3. Parties

- 1.3.1. If a party consists of more than 1 person, this Agreement binds each of them separately and any 2 or more of them jointly.
- 1.3.2. An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- 1.3.3. A party which is a trustee is bound both personally and in its capacity as a trustee.

2. Client access to the Onetest System

- 2.1. Onetest must make available the Onetest System to the Client on the Delivery Date.

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- 2.2. Onetest will advise the Client on establishing the link from the Client Website to the Onetest System if required.

3. Links and Warranty

- 3.1. Onetest will:
 - 3.1.1. Host the Onetest System;
 - 3.1.2. Display the Client's logo on relevant pages of the Onetest System in an unaltered format as prescribed by the Client ; and
 - 3.1.3. Provide a link to and from the Client's Website.
- 3.2. The Client warrants to the best of its knowledge that the materials provided to Onetest for the purposes of clause 3.1 and any amendment of those materials notified by the Client to Onetest from time to time:
 - 3.2.1. Are true and correct;
 - 3.2.2. Are the property of the Client;
 - 3.2.3. Do not infringe the rights of any third party;
 - 3.2.4. And are not illegal, defamatory, threatening, racially, sexually or politically offensive, dishonest or misleading, and do not violate any Commonwealth, State or local government law.
- 3.3. Onetest must store the Participant Input and the Onetest Results in a secure environment and must not disclose the Participant Input or the Onetest Results without the consent of the Participant other than:
 - 3.3.1. For the purposes of this Agreement or any Agreement between the Client and Onetest;
 - 3.3.2. For statistical, analytical, research, developmental, archival and promotional purposes which will be dealt with in accordance with Onetest's Privacy Policy; and
 - 3.3.3. For the purposes of trouble shooting errors or malfunctions with the Onetest System.
- 3.4. Onetest may be requested by other Clients to release Onetest Results for other positions or vacancies in which case Onetest will request the Participant to approve such a release prior to releasing the Onetest Results.
- 3.5. Onetest warrants that it will comply with the Onetest Privacy Policy.
- 3.6. The Client acknowledges that this Agreement requires all Participants to enter into the Participant Terms and Conditions in respect of their use of the Onetest System – usually at the time of logging on.
- 3.7. The Client acknowledges:
 - 3.7.1. That Onetest is required to abide by the terms of the Onetest Privacy Policy;
 - 3.7.2. That a Participant may consent to the disclosure of valid Onetest Results obtained through use of the Onetest System in relation to this Agreement to other Clients on subsequent dates for different positions;
 - 3.7.3. The Onetest System must not be used for any purpose other than recruitment, development and retention purposes unless agreed to in writing in advance by Onetest. Where the Onetest System is used for other than recruitment, Clients must first obtain Participants written consent to the project being undertaken;
 - 3.7.4. That the information obtained from assessment systems is persuasive rather than

- conclusive and should always be used in conjunction with other available information;
- 3.7.5. That due to the inherent limitations of assessment systems generally the Onetest System may not properly or fully assess the capability of every person who takes an assessment;
 - 3.7.6. That the Client is given private access to the Onetest System and undertakes and agrees not to allow anyone to access or view any part of the Onetest System or the Onetest Assessments, not to distribute or publish any information which is contained within the Onetest System or the Onetest Assessments except in the day to day use of the Onetest System as provided herein and the Client acknowledges that Onetest has the right to take appropriate legal action in cases where such violation of Onetest's Intellectual Property takes place.
 - 3.7.7. That Onetest will provide the Client with Onetest System usage statistics by email monthly and that the Client will provide Onetest with accurate relevant team member statistics as and when requested by Onetest, to enable confirmation of the predictive validity of the Onetest System in relation to the Client's recruitment process.
 - 3.7.8. That Onetest will survey Clients and Participants to ensure ongoing quality control of the Onetest System.
 - 3.7.9. That Onetest may communicate directly with Participants from time to time in relation to job placement opportunities and personal development.

4. Term of Agreement

- 4.1. This Agreement commences on the Commencement Date and continues for the Initial Term. The Term of the Agreement is automatically extended at the end of the Initial Term (and at the end of each additional Term under this clause) for a further period of 12 months unless the Client gives to Onetest written notice of its intention not to renew the Agreement at least one month prior to the expiration of the Term.
- 4.2. Onetest will provide the Onetest System for the Term subject to the Client meeting its obligations under this Agreement in full.
- 4.3. The Client confirms they meet the minimum hardware and Internet connection specifications to use and suitably utilise the Onetest System as detailed in your Agreement.
At least two months prior to the end of each Term, Onetest will notify the Client of any change in all relevant Onetest System fees that will apply to the extension of the Term.
- 4.4. In consideration of Onetest providing access to the Onetest System, the Client must pay the Investment within payment terms. The Client acknowledges that neither the Client nor the Participant will be entitled to Onetest Results unless and until the Investment is paid in accordance with this Agreement.

5. Payment

- 5.1. The Client must pay the Investment and all other invoiced amounts in the manner and terms specified by;
 - 5.1.1. Cash;
 - 5.1.2. Client cheque;
 - 5.1.3. Providing an authority to charge the Client's credit card to Onetest via email, telephone or via self service in the account section of the Onetest System; or
 - 5.1.4. Direct transfer of funds to Onetest's Client account (our preferred method):

Client: Westpac Private Client Brisbane
BSB: 034 111
Account: 190914
Name: Onetest Pty Ltd

- 5.2. Should a dispute ever arise regarding payment of an account, all items not in dispute on the account remain due and payable within the terms agreed. All other terms shall remain enforceable.
- 5.3. The Client will pay the Investment and other services invoiced, within the period allowable under this Agreement as shown in your Agreement.
- 5.4. The Client agrees to pay interest on overdue accounts which may be charged monthly on the overdue amount at a rate shown in your Agreement.
- 5.5. The Client agrees to pay Onetest an Overdue Account Fee of \$50 + GST per month for any accounts paid after the period allowable as per clause 5.3 of this Agreement.
- 5.6. The Client agrees that if it pays the Investment by credit card in accordance with Clause 5.1, Onetest may charge a process fee as shown in your Agreement to offset the fee charged to Onetest by our Bank or credit card company.
- 5.7. The Client agrees that the Investment is fixed for the Initial Term. During each renewal or extension of the Term pursuant to clause 4.1, the Investment will automatically increase, without any notice, on and from 1 July each year by up to 5% rounded down to the next whole cent and item 4 of Schedule 1 of your Client Agreement is amended accordingly.

6. GST

- 6.1. For the purpose of this clause 6:
 - 6.1.1. "GST" means GST within the meaning of the GST Act;
 - 6.1.2. "GST Act" means "A New Tax System (Goods and Services) Act 1999 (as amended).
- 6.2. To the extent that Onetest makes a taxable supply in connection with this Agreement, except where express agreement is made to the contrary and subject to this clause 6, the consideration payable by the Client under this Agreement represents the value of the taxable supply for which the payment is to be made.
- 6.3. Subject to clause 6.4 if Onetest makes a taxable supply in connection with this Agreement for a consideration which, under clause 6.2, represents its value, then the Client must also pay, at the same time and the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.
- 6.4. The recovery of consideration for any taxable supply made under this Agreement is subject to Onetest issuing to the Client a tax invoice in respect of that supply.

7. Limitation of Liability

- 7.1. To the extent permissible by law Onetest excludes any liability:
 - 7.1.1. For any failure of performance, error, omission, interruption, deletion, defect or delay in transmission or operation; or

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- 7.1.2. For any communications line failure; or
 - 7.1.3. For theft or destruction or
 - 7.1.4. Unauthorised access to, alteration of or use of the Onetest System; or
 - 7.1.5. For any injury, loss or damage arising out of use of or access to the Onetest System,
Provided that Onetest does not exclude any such liability if it arises as a result of Onetest's failure to take reasonable steps to guard against and use their best endeavours to immediately rectify any of the matters referred to in this clause 7.1.
- 7.2. To the fullest extent permissible at law, Onetest is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the use or performance of the Onetest System or Onetest Assessments, with the delay or inability to use the Onetest System, the provision of or failure to provide services or for any information, software, products, services or related graphics obtained through the Onetest System, any comments on or analysis of the Participant, any impact of any comments or analysis in respect of any decision of any person to make an Employment Offer or employ a Participant or otherwise arising out of the use of the Onetest System, whether based on Contract, negligence, strict liability or otherwise, even if Onetest has been advised of the possibility of damages.
- 7.3. The Client expressly agrees that use of the Onetest System is at the Client's sole risk. The Onetest System is provided to the Client on an "as is" and "as available" basis. To the extent allowed by law, Onetest's liability for breach of a term implied into this Agreement by any law is excluded. Onetest's liability (if any) is limited to the Investment.
- 7.4. In no circumstances is Onetest liable for any damages, arising out of the use, installation, improper use or inability to use the Onetest System.
- 7.5. Liability for the breach of any condition or warranty implied in this Agreement by the law is limited, in Onetest's sole discretion, to the provision supplying those services again or the cost of having the services supplied again.
- 7.6. The Client warrants that Onetest Results will not be the only information relied on by a Client when the Client makes decisions about a Participant. The Client will always use Onetest Results in conjunction with traditionally used information such as reference checks, structured interviews, educational achievements etc. Clients should ensure that any decision taken is clearly documented, specifically recording that the Client has made a decision to offer employment, having regard to a range of information and factors, but that in doing so it does not make any representation to the Participant that it will not act to prevent any particular conduct that is in breach of the terms of employment or that is otherwise illegal from occurring.

8. Acceptance Testing

- 8.1. Onetest will provide Clients with a number of days in which to test any custom programming if such is included in the Agreement. If, during the test period - 10 Business Days following the Delivery Date - the Onetest System fails to perform substantially as detailed in this Agreement it must be treated as not accepted.
- 8.2. The Client must within five (5) Business Days of the end of the test period give a written

report to Onetest of any defects it identified during the test period. Subject to clause 8.4, Onetest must be given the opportunity to rectify those reported defects in the Onetest System within a further period of five (5) Business Days, commencing on receipt of the written report. All written reports, whether sent from the Client to Onetest or Onetest to the Client may be sent by email to the accepted email address nominated.

- 8.3. If Onetest considers that it has rectified the defects reported in a written report, it shall promptly give written notice to the Client stating that it has corrected those defects. The date on which the Client receives that notice shall, for the purposes of clause 8.1, be a new Delivery Date and the provisions of clauses 8.1 and 8.2 shall apply again.
- 8.4. If Onetest has failed to correct the defects reported in a written report within 10 Business Days, that failure shall constitute a breach of an essential term of this Agreement and the Client may, at its option, terminate this Agreement immediately and without requiring a notice to comply.
- 8.5. The Onetest System must be treated as accepted if the Client does not notify Onetest in writing of any defect which is apparent during the test period, within five (5) business days.
- 8.6. If the Client terminates this Agreement pursuant to clause 8.4, then Onetest will immediately refund any money paid by the Client under your Agreement of this contract. Onetest will not be obliged to provide any further services pursuant to this Agreement on termination under clause 8.4.
- 8.7. Onetest will provide the Client access to the Onetest System and all other assistance which the Client may request in order to conduct any tests it may reasonably require during any test period.

9. Access to and Use of Onetest System

- 9.1. Onetest will provide the Client with a username and password to be used to access the Onetest System.
- 9.2. The Client will have completed Onetest Training as detailed in your Agreement and will possess or have access to the minimum hardware and Internet connections as detailed in your Agreement to gain access to the Onetest System.
- 9.3. The Onetest System may only be used pursuant to this Agreement:
 - 9.3.1. By the Client or its Authorised Operators where appropriate Onetest Training has been completed by all users;
 - 9.3.2. By Participants applying for positions listed on the Client website;
 - 9.3.3. By Participants completing online assessments as part of a legitimate recruitment exercise;
 - 9.3.4. By Participants completing Surveys or questionnaires as part of a development or retention exercises; and
 - 9.3.5. By authorised representatives or assigns of the Client who have been granted access by the Client to the Onetest System's read only portal.
- 9.4. Subject to clause 9.5, the Client is able to use the Onetest System for any recruitment, development and retention exercise. The Client can utilise the Onetest System or utilise information obtained from the Onetest System for the development and retention purposes

with the prior written consent of Onetest as to the form and content of the specific exercise.

- 9.5. In accessing or utilising any information pursuant to clause 9.4 the Client must not breach any Commonwealth or State privacy laws or any other laws applicable to the access or use of such information.
- 9.6. The Client must not submit, transmit, publish or display via the Onetest System any comment, information or material that is illegal, defamatory, threatening, racially, sexually or politically offensive, or which is dishonest or misleading, or which violates any Commonwealth, State or local government law.
- 9.7. If the Client engages in any of the proscribed activities mentioned in clause 9.5 and 9.6, Onetest reserves the right to terminate the Client's access without prejudicing Onetest rights to any paid or owing fees.
- 9.8. Onetest acknowledges that communications via the Onetest System between the Client and Participants are confidential to the Client and the Participant, and the Client acknowledges that these may also be read by employees of Onetest in the maintenance and monitoring of the Onetest System, subject to Onetest's obligations of confidentiality under clause 16.
- 9.9. Onetest uses third party suppliers to provide certain tests complimentary to those provides by Onetest. In some cases these third party suppliers will require that Clients wishing to use same sign separate agreement to cover the supplier's legal rights. Kenexa is a case in point and where their Skills Tests have been included in the Solution chosen, Clients will need to sign the Kenexa agreement.

10. Site licences

Onetest offers some of its services under a site licence agreement, valid for one physical office or group of users only. This usage will be monitored by way of IP address registration and tracking by Onetest and may occur randomly from time to time. It is the Client's responsibility to advise Onetest if it requires extensions to agreed site licences. Should Onetest identify unauthorised usage of a single site licence between multiple sites, Onetest will invoice and the Client agrees to pay for multiple licences.

11. Additional Authorised Operators

- 11.1. The Client may appoint Authorised Operators to operate the Onetest System for the Client provided that:
 - 11.1.1. The Client has complied with all its obligations under the Agreement;
 - 11.1.2. The Client must supply Onetest with the name and contact details of all Authorised Operators prior to those Authorised Operators being given access to the Onetest System;
 - 11.1.3. All Authorised Operators must comply with the Agreement (with the exception only of the provisions dealing with Payment) and must confirm acceptance of the Agreement prior to those Authorised Operators being given access to the Onetest

System;

- 11.1.4. The Authorised Operators must complete initial and ongoing training as notified to the Client by Onetest from time to time.
- 11.2. Nothing in this clause confers on the Client the right to sub-license the use or access of the Onetest System or Onetest Assessments to third parties other than those approved herein.

12. Onetest Training and Onetest Technical Support

- 12.1. Onetest will provide the Client and its Authorised Operators with the Onetest Training and Onetest Technical Support as detailed in your Agreement at the Investment rate shown in your Agreement. This support will include access to Onetest psychologists as well as specialists in the use of the Onetest System.
- 12.2. Where a Client or Participants of a particular Client continue to use Onetest Technical Support above the level which is normal for all users and Onetest identifies that a particular user needs Onetest Training, the Client will be so advised and further support of that user will be charged to the Client at our technical support rate as per your Agreement until the user has completed the recommended Onetest Training.
- 12.3. Onetest Technical Support is not intended to replace a Clients' system or network administrator and where Onetest is called upon to provide network advice, the time taken will also be charged at our technical support rate.
- 12.4. Where Clients have paid in advance for or included Onetest Technical Support in their Agreement, they can access our support by email to support@onetest.com.au or by phoning on 1300 137 937 on Business Days from 8.30am to 5.30pm AEST; on Business Days from 6.00pm to 9.00pm AEST; on non Business Days (weekends and public holidays) from 10.30am to 4.00pm AEST.

13. Security and Privacy

The parties must use their reasonable endeavours to ensure that access to and information provided by the Onetest System is protected at all times during and required for by this Agreement from unauthorised access or use by a third party and from physical misuse, damage or destruction by any person. All Onetest Results will be treated private information for this Agreement, the Participant Terms and Conditions and the Onetest Privacy Policy.

14. Ownership and Use of Software

- 14.1. The Client does not acquire any rights in connection with the Onetest System other than those usage rights as specified in this Agreement.
- 14.2. All Onetest Reports carry the Onetest logo as the primary company and provider. Under no circumstance may the Onetest logo be removed from reports generated using the Onetest System or methodology.

15. Use of assessments for purposes other than recruitment

- 15.1. It is the general recommendation of Onetest that organisations do not administer skills testing and assessments (other than the Onetest Behavioural Profile (OBP)) outside the requirements of a recruitment process. In instances where a Client wishes to assess Participants outside of a recruitment process (e.g. for development or retention purposes), Onetest requires that the Client advise Onetest in writing and gains the written consent of all Participants regarding the intended use of the Onetest Results.
- 15.2. Onetest Assessments will not be used for the recruitment of applicants for unskilled positions unless pre approved in writing by Onetest. All applicants will have at least Year 10 English as a minimum standard to qualify before using Onetest Assessments.

16. Confidentiality

- 16.1. A party must not, without the prior written approval of the other party, disclose the other party's Confidential Information or use it for any purpose other than permitted by this Agreement.
- 16.2. A party is not in breach of clause 16.1 in circumstances where it is legally compelled to disclose the other party's Confidential Information.
- 16.3. Each party must take all reasonable steps to ensure that its employees and agents, and any subcontractors engaged for the purposes of this Agreement, do not make public or disclose the other party's Confidential Information.
- 16.4. Despite any other provision of this clause 16, Onetest may disclose the terms of this Agreement (other than the Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers or accountants, but must ensure that every person to whom that disclosure is made uses that information solely for the purposes of advising or reporting to Onetest.
- 16.5. Despite any other provision of this clause 16, the Client may disclose the terms of this Agreement (other than the Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers or accountants, but must ensure that every person to whom that disclosure is made uses that information solely for the purposes of advising or reporting to the Client.
- 16.6. This clause 16 survives the termination of this Agreement.

17. Indemnity

- 17.1. A party in breach of its Privacy and Confidential Information obligations to a party under this Agreement, or a Participant ("Indemnifying Party") indemnifies the other party against:
 - 17.1.1. All losses incurred by the other party other than consequential loss;
 - 17.1.2. All liabilities incurred by the other party; and
 - 17.1.3. All legal costs (on a solicitor and own client or full indemnity basis, whichever is the greater) and other expenses incurred by the other party in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal);

arising directly or indirectly as a result of or in connection with a breach or non-performance of the Privacy and Confidential Information obligations of an Indemnifying Party under this Agreement.

- 17.2. Each party is solely liable for the development operation and maintenance of their website and all content on their website. Neither party will be in any way liable and each party indemnifies and hold the other party harmless from all claims, losses, damages and expenses (including reasonable legal costs) relating to the development, operation and maintenance of their website.

An Indemnifying Party must pay to the other party all liabilities, costs and other expenses referred to in clause 17.1, whether or not the other party has paid or satisfied them.

18. Default and Termination

- 18.1. The Client may terminate this Agreement at any time by written notice to Onetest if any of the following apply:
- 18.1.1. Onetest fails to carry out any provision of this Agreement, the failure is capable of remedy and Onetest does not remedy that failure within 10 business days after written notice to Onetest requiring it to be remedied;
 - 18.1.2. Onetest fails to carry out any material provision of this Agreement and the failure is capable of remedy;
 - 18.1.3. A warranty given by Onetest in this Agreement is materially incorrect;
 - 18.1.4. It becomes unlawful for Onetest to perform its obligations under this Agreement;
 - 18.1.5. Onetest is a body corporate and:
 - becomes an externally-administered body corporate under the Corporations Act 2001;
 - steps are taken by any person towards making Onetest an externally-administered body corporate; a controller (as defined in section 9 of the Corporations Act 2001) is appointed to any of the property of Onetest or any steps are taken for the appointment of a controller; Onetest is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act 2001.
- 18.2. Onetest may terminate this Agreement at any time by written notice to the Client if any of the following apply:
- 18.2.1. The Client fails to carry out any provision of this Agreement, the failure is capable of remedy and the Client does not remedy that failure within 10 business days after written notice to the Client requiring it to be remedied;
 - 18.2.2. The Client fails to carry out any material provision of this Agreement and the failure is capable of remedy;
 - 18.2.3. A warranty given by the Client in this Agreement is materially incorrect;
 - 18.2.4. It becomes unlawful for the Client to perform its obligations under this Agreement;
 - 18.2.5. Where the Client is a body corporate and:
 - becomes an externally-administered body corporate under the Corporations Act 2001; steps are taken by any person towards making the Client an externally-administered body corporate; a controller (as defined in section 9 of the Corporations Act 2001) is appointed to any of the property of the Client or any steps are taken for the appointment of a controller; the Client is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act 2001.

- 18.3. Termination of this Agreement for any other reason than those listed in clause 18.1 will incur a Cancellation Fee. One month's written notice is required to be provided to Onetest and the applicable Cancellation Fee as outlined in your Agreement will be applied from date of termination and invoiced to the Client and payable within 30 days of invoice date. If no fee is specifically listed this equates to 50% of the total amount remaining payable under your Agreement.
- 18.4. On termination of this Agreement under this clause 18 each party retains the rights it had against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by law.
- 18.5. On termination of this Agreement for any reason but subject to the payment to Onetest of all outstanding monies, Onetest shall if requested to do so, deliver to the Client a copy of all Onetest results held on the Onetest System. Onetest shall provide that information to the Client on a CD in a comma delimited file format.
- 18.6. Upon termination, the Client's access to the Onetest System will be terminated and, at the election of Onetest, the Client will either return or destroy all documentation and other materials supplied to it by Onetest in relation to the Onetest System.

19. Force Majeure

- 19.1. A party ("Affected Party") is not liable for any delay or failure to perform an obligation (other than to pay money due and payable) under this Agreement caused by:
 - 19.1.1. Act of God;
 - 19.1.2. War, riot, insurrection, vandalism or sabotage;
 - 19.1.3. Strike, lockout, ban, limitation of work or other industrial disturbance; and
 - 19.1.4. Law, rule or regulation of any government or governmental agency and executive or administrative order or act of general or particular application.
- 19.2. The Affected Party must notify each other party as soon as practical of any anticipated delay or failure caused by an event referred to in clause 19.1 ("Event").
- 19.3. The performance of the Affected Party's obligation is suspended for the period of delay caused by the Event.
- 19.4. If:
 - 19.4.1. Continuing performance of an obligation is prevented by an Event; or
 - 19.4.2. A delay caused by the Event exceeds 30 days;any party may terminate this Agreement at the expiration of not less than 7 days' notice to the other parties.
- 19.5. If a party terminates this Agreement under clause 19.4 all money previously paid under this Agreement for which no goods, services or other consideration has been provided must be refunded within 14 days after termination.

20. Inconsistency

To the extent that there is an inconsistency between a provision in a clause in the body of this Agreement and a provision in a Schedule, a Schedule takes precedence over a general provision.

21. Assignment

A party must not assign the benefit of this Agreement without the other parties written consent, which must not be unreasonably withheld.

22. Further Assurance

Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

23. Severability

If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

24. Entire Understanding

24.1. This Agreement:

24.1.1. Is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and

24.1.2. Supersedes any prior agreement or understanding on anything connected with that subject matter.

24.2. Each party has entered into this Agreement without relying on any representation by any other party or any person purporting to represent that party.

25. Variation

An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

26. Waiver

26.1. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

26.2. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

26.3. A waiver is not effective unless it is in writing.

26.4. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

27. Costs and Disbursements

Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Agreement.

28. Additional Material

28.1. The Client may add material or questions to an application form on the Onetest System used to collect personal information from Participants looking to secure employment with

the Client through use of the Onetest System.

- 28.2. Depending on the level of access the Client has to the Onetest System, Onetest may agree to add material or questions referred to in clause 28.1 on the client's behalf at an additional charge.
- 28.3. In no event is Onetest liable to the Client or any other person whether in contract, tort equity, under statute or otherwise for any material or questions inserted into or included within the Onetest System by the Client or by Onetest on the Client's behalf whether authorised or contemplated by these terms and conditions or otherwise.

29. Notices

- 29.1. A notice or other communication connected with this Agreement ("Notice") has no legal effect unless it is in writing.
- 29.2. In addition to any other method of service provided by law, the Notice may be:
- 29.2.1. Sent by prepaid ordinary mail to the address for service of the addressee as per your Agreement, if the address is in Australia and the Notice is sent from within Australia;
 - 29.2.2. Sent by prepaid airmail to the address for service of the addressee as per your Agreement, if the address is outside Australia or if the Notice is sent from outside Australia;
 - 29.2.3. Sent by email to the address stated in as per your Agreement;
 - 29.2.4. Sent by facsimile to the facsimile number of the addressee as per your Agreement; or
 - 29.2.5. Delivered at the address for service of the addressee as per your Agreement.
- 29.3. If the Notice is sent or delivered in a manner provided by clause 29.2 it must be treated as given to and received by the party to which it is addressed:
- 29.3.1. If mailed from within Australia to an address in Australia, on the 2nd Business Day (at the address to which it is mailed) after mailing;
 - 29.3.2. If mailed to an address outside Australia or mailed from outside Australia, on the 5th Business Day (at the address to which it is mailed) after mailing;
 - 29.3.3. If sent by email before 5.00pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt;
 - 29.3.4. If sent by facsimile before 5.00pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
 - 29.3.5. If otherwise delivered before 5.00pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
 - 29.3.6. Despite clause 29.3(3):
a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice; and a facsimile is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within three (3) hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.
- 29.4. If a Notice is served by a method which is provided by law but is not provided by clause 29.2, and the service takes place after 5.00pm on a Business Day, or on a day which is not a Business Day, it must be treated as taking place on the next Business Day.

- 29.5. A Notice sent or delivered in a manner provided by clause 29.2 must be treated as validly given to and received by the party to which it is addressed even if:
- 29.5.1. The addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or
 - 29.5.2. The Notice is returned unclaimed.
- 29.6. A party may change its address for service or facsimile number by giving Notice of that change to each other party.
- 29.7. If the party to which a Notice is the intended recipient consists of more than one (1) person then the Notice must be treated as given to that party if given to any of those persons.
- 29.8. Any Notice by a party may be given and may be signed by its solicitor or legal advisor.

30. Governing Law and Jurisdiction

The law in Queensland and the Commonwealth of Australia governs this Agreement and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.