



HEALTHY PARTNERSHIP PROGRAM AGREEMENT

Parties:

**Western Australian Health Promotion Foundation
(Healthway)**

and

**Organisation
(Recipient)**

Agreement dated

Parties **Western Australian Health Promotion Foundation**
Level 2, 38 Station Street, Subiaco, Western Australia, 6008
(Healthway)

Organisation
ABN
(Recipient)

Introduction

- A** Healthway is established under the Act to, among other things, provide support to sports, arts and racing organisations and community groups in Western Australia which encourage healthy lifestyles.
- B** The Recipient seeks support from Healthway to fund the Partnership.
- C** Healthway has agreed to provide Funding to the Recipient for the Partnership in accordance with this Agreement.

It is agreed

1 **Definitions and interpretation**

1.1 **Definitions**

In this Agreement unless the context otherwise requires:

- (1) **Act** means the *Western Australian Health Promotion Foundation Act 2016* (WA);
- (2) **Agreement** means this document, including the Application Form and any schedule or annexure to this Agreement;
- (3) **Application Form** means the Partnership Program Application submitted by the Recipient to Healthway seeking Funding for the Project;
- (4) **Approved Budget** means the budget (if any) agreed between Healthway and the Recipient for the expenditure of the Funding referenced in Item 4 of Schedule 1;
- (5) **Auditing Party** has the meaning given in clause 7.6;
- (6) **Breach** means a breach of a Provision;
- (7) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (8) **Commencement Date** means the date set out in Item 1 of Schedule 1;
- (9) **Commonwealth** means Commonwealth of Australia;
- (10) **Completion Date** means the date set out in Item 2 of Schedule 1;
- (11) **Consent** means prior written consent;
- (12) **Contractor** means contractor, consultant, subcontractor or subconsultant at any tier;
- (13) **Corporations Act** means the *Corporations Act 2001* (Cth);

- (14) **Event of Default** has the meaning given in clause 19.1;
- (15) **Financial Report** means a statement of income and expenditure for the Project, which:
- (a) is signed by the Chief Executive Officer/General Manager, or equivalent, of the Recipient;
 - (b) is prepared in accordance with generally accepted accounting principles and practices; and
 - (c) if required under this Agreement (as specified in Item 6 of Schedule 1) is either:
 - (i) certified by an independent auditor who is a member of a recognised body and is not an employee or otherwise affiliated with the Recipient; or
 - (ii) consists of the annual audited accounts for the Recipient clearly showing the Partnership Funding as a line item in or as a note to the financial statements of the Recipient;
- (16) **Funding** means the amount payable by Healthway to the Recipient as set out in Item 4 of Schedule 2;
- (17) **Governmental Agency** means any government and any governmental body whether:
- (a) legislative, judicial or administrative;
 - (b) a department, commission, authority, tribunal, agency or entity; or
 - (c) Commonwealth, State, territorial or local,
- but does not include a governmental body in respect of any service or trading functions as distinguished from regulatory or fiscal functions;
- (18) **GST** has the meaning given in clause 21.1(1);
- (19) **GST Act** has the meaning given in clause 21.1(1);
- (20) **GST law** has the meaning given in clause 21.1(3);
- (21) **Health Promotion** has the meaning given in clause 10.1;
- (22) **Healthway Objectives** means the objectives of the Healthy Partnership Program being to:
- (a) Educate and raise awareness about good health to support healthy choices;
 - (b) Create healthy environments within organisations and venues;
 - (c) Reduce the promotion of unhealthy messages or brands which do not align with Healthway Objectives;
 - (d) Provide opportunities for participation in healthy activities particularly among Healthway's priority populations; and
 - (e) Build the capacity of organisations and the community to advocate for health promoting culture, norms and practices;
- (23) **Indemnified Party** has the meaning given in clause 17.1;
- (24) **Information** includes information, data, records and documentation;

- (25) **Insolvency Event** means the happening of any of these events in relation to a party (Defaulting Party):
- (a) execution or other process of a court or authority or distress is levied for an amount exceeding \$10,000 upon any of the Defaulting Party's property and is not satisfied, set aside or withdrawn within 7 days of its issue;
 - (b) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Defaulting Party which is not satisfied within 7 days;
 - (c) the Defaulting Party suspends payment of its debts;
 - (d) where the Defaulting Party is a body corporate:
 - (i) the Defaulting Party becomes an externally administered body corporate under the Corporations Act;
 - (ii) steps are taken by any person towards making the Defaulting Party an externally administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 14 days);
 - (iii) a controller (as defined in section 9 of the Corporations Act) is appointed of any of the property of the Defaulting Party or any steps are taken for the appointment of a controller (but not where the steps taken are reversed or abandoned within 14 days);
 - (iv) the Defaulting Party is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act; or
 - (v) a resolution is passed for the reduction of capital of the Defaulting Party or notice of intention to propose such a resolution is given, without the prior written consent of the other party;
 - (e) where the Defaulting Party is a natural person:
 - (i) the Defaulting Party authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors;
 - (ii) a person holding a security interest in assets of the Defaulting Party enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; or
 - (iii) the Defaulting Party commits an act of bankruptcy; or
 - (f) an event happens analogous to an event specified in clauses 1.1(25)(a) to 1.1(25)(e) to which the law of another jurisdiction applies and the event has an effect in that jurisdiction similar to the effect which the event would have had if the law of Australia applied;
- (26) **Insurance Policy** has the meaning given in clause 16.1;
- (27) **Intellectual Property** includes:
- (a) all trade marks, names and logos;
 - (b) all copyright works;
 - (c) all registered and registrable designs;
 - (d) all patents and patentable inventions; and

- (e) any improvements to the items referred to at clauses 1.1(27)(a) to 1.1(27)(d);
- (28) **Invitee** means invitee, licensee or guest;
- (29) **Law** means any rule or requirement of a statute, subsidiary legislation, the common law or equity;
- (30) **Legal Rights** means the rights of any person at or under any Law;
- (31) **Liability** means a claim, demand, lawsuit, cause of action, action or the like;
- (32) **Loss** includes damage, loss, Liability, costs and expenses;
- (33) **Milestones** mean the events identified as being milestones in Item 5 of Schedule 2, the satisfaction of which entitles the Recipient to payment of part of the Funding by Healthway in accordance with clause 4 and Item 5 of Schedule 2;
- (34) **Notice** has the meaning given in clause 28.1;
- (35) **Officer** means member, employee, representative, volunteer, agent or contractor;
- (36) **Participate in** means enter into, perform or continue to perform;
- (37) **Partnership** means the activities undertaken by the Recipient under this Agreement to give effect to the Project, including the achievement of the Partnership Objective and compliance with Healthway Objectives;
- (38) **Partnership Implementation Plan** means the health promotion objectives and strategies jointly developed by Healthway, the Recipient and the Support Body (where relevant) to be used for the Term in connection with the Project (attached at Annexure B), including any additional strategies adopted by Healthway and the Recipient in accordance with clause 10.2 from time to time, in order to assist the Recipient to use the Partnership to the maximum effect;
- (39) **Partnership Objective** means the objective(s) set out in Item 3 of Schedule 2;
- (40) **Policy** means any policy, guidelines or rules of the State or Healthway including those set out at Healthway's website at www.healthway.wa.gov.au;
- (41) **Precluded Contract** means any contract, arrangement or dealing which involves the promotion, advertising or endorsement of alcohol, food and beverages with low nutrients and high in kilojoules, saturated fat, added sugar or added salt, the promotion of gambling products to underage audiences, and tobacco products (including cigarettes, heated tobacco products, e-cigarettes, vaping devices and other novel tobacco products);
- (42) **Project** means the project set out and further described in Item 1 and Item 2 of Schedule 2;
- (43) **Project Report** means a report which:
- (a) sets out details of how the Funding has been used, including compliance with the Partnership Implementation Plan and an assessment by the Recipient of the success of the Partnership in light of the Partnership Objective and the Healthway Objectives; and
 - (b) contains any other details relating to the Partnership reasonably requested by Healthway in writing;
- (44) **Provision** means term, condition, stipulation or warranty of or in this Agreement;
- (45) **RCTI** has the meaning given in clause 21.1(2);
- (46) **Records** has the meaning given in clause 7.5;

- (47) **Special Conditions** means the conditions, if any, described in Item 7 of Schedule 1;
- (48) **State** means the State of Western Australia and includes any agency, agent, instrumentality or emanation thereof;
- (49) **Support Body** means the government department, authority or agency or other body which has received funds from Healthway so that it can support the implementation of the health promotion strategy outlined in the Partnership Implementation Plan;
- (50) **Term** means the period beginning on the Commencement Date and ending on the earlier of the Completion Date or the termination of this Agreement;
- (51) **Warranty** means any warranty given by the Recipient under or in connection with this Agreement; and
- (52) **Wrong** includes a Breach, offence, tortious, actionable or civil wrong, or any breach of a Law.

1.2 Interpretation

- (1) In this Agreement, unless the context otherwise requires, reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a party includes the party's executors, administrators, successors and permitted assigns;
 - (e) a thing includes the whole and each part of it separately;
 - (f) a statute, regulation, code or other law or a provision of any of them includes:
 - (i) any amendment or replacement of it; and
 - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
 - (g) dollars means Australian dollars unless otherwise stated.
- (2) "Including", "for example" and similar expressions are not words of limitation.
- (3) 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.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.
- (5) 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.
- (6) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

1.3 Parties

- (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.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.

- (3) A party which is a trustee is bound both personally and in its capacity as a trustee.

2 Special Conditions

- 2.1 This Agreement (other than this clause 2 and clauses 1, 15, 18, 19, 20, 22, 23, 24, 25, 26, 28, 29, 30 and 31) and the payment of the Funding are conditional upon and subject to the satisfaction of each of the Special Conditions, if any.
- 2.2 Each party must at its own cost do everything reasonably necessary on its part to procure satisfaction of the Special Conditions as quickly as possible and in any event by their respective due dates for satisfaction. A party must immediately give written notice to the other if and when it becomes aware that a Special Condition is satisfied.
- 2.3 The Special Conditions are for the sole benefit of Healthway and may only be waived in writing by Healthway.
- 2.4 If any Special Condition is not satisfied or waived by its due date for satisfaction, or such later date agreed in writing by the parties, then Healthway may terminate this Agreement with immediate effect by giving notice in writing to the Recipient.

3 Partnership

- 3.1 During the Term, Healthway agrees to provide the Funding to the Recipient for the Project for the purpose of achieving the Partnership Objective and complying with the Healthway Objectives. The Recipient agrees to use the Funding for the purpose of achieving the Partnership Objective and complying with the Healthway Objectives.

4 Satisfaction of Milestones and payment of Funding

- 4.1 Subject to clauses 4.2 and 4.4, Healthway will pay the Funding:
- (1) on satisfaction by the Recipient of the relevant Milestone (if any), as determined by Healthway in its absolute discretion; and
 - (2) as per the Payment Schedule set out at Item 5 of Schedule 2.
- 4.2 The payment of the Funding in respect of the Milestones relating to years 2 and 3, if applicable, as set out in Item 5 of Schedule 2 is subject to the Recipient complying with its obligations under this Agreement, including its obligations for Milestones in years 1 and 2, if applicable, and implementing the Partnership Implementation Plan, as determined by Healthway in its absolute discretion.
- 4.3 The payment of any amount due by Healthway under this Agreement, including the Funding, is subject to Healthway having sufficient money available for partnerships as determined in accordance with the Act. Healthway may, in its absolute discretion, determine whether it has sufficient money for the payment of the Funding, whether in whole or in part.
- 4.4 If Healthway determines that it does not have sufficient money for the payment of all or any part of the Funding, Healthway may either:
- (1) reduce the amount of the Funding that remains due to the Recipient under this Agreement; or
 - (2) terminate this Agreement by giving not less than 90 days' notice in writing to the Recipient, which termination the Recipient agrees brings to an end the obligation of Healthway to pay any further unpaid Funding and does not give rise to any right or claim by the Recipient against Healthway.

5 General obligations of Recipient

- 5.1 The Recipient must use the Funding only for the Project for the purpose of achieving the Partnership Objective and complying with the Healthway Objectives.
- 5.2 The Recipient must use the Funding only in accordance with the Approved Budget.
- 5.3 The Recipient must ensure that, so far as possible, the Funding provided by Healthway is publicly acknowledged in connection with the Project. Any form of public acknowledgment which the Recipient proposes to make must first be approved by Healthway.
- 5.4 The Recipient must give Healthway's representatives access to the Project at no cost to Healthway.
- 5.5 The Recipient must comply with all State and Commonwealth Laws which may apply to the Project.
- 5.6 The Recipient must cooperate with Healthway to evaluate the Partnership as required by Healthway, at Healthway's sole expense.
- 5.7 The Recipient must, under and in connection with this Agreement:
- (1) comply with all Laws and Policies; and
 - (2) not infringe any Legal Rights.

6 Health promotion obligations of Recipient

- 6.1 The obligations in this clause 6 are in addition to the obligations of the Recipient to achieve the Partnership Objective and comply with the Healthway Objectives pursuant to clauses 3 and 5.1.
- 6.2 The Recipient must meet the Minimum Health Requirements (details of which are available from Healthway's website at www.healthway.wa.gov.au) for all Project activities in connection with the Partnership.

7 Reporting obligations of Recipient

- 7.1 The Recipient must provide a Project Report to Healthway on or before the dates specified in Item 5 of Schedule 1.
- 7.2 If specified, the Recipient must provide a Financial Report to Healthway on or before the dates specified in Item 6 of Schedule 1.
- 7.3 Notwithstanding clause 7.2, the Recipient must provide Healthway with a Financial Report at any time during the Term if requested by Healthway.
- 7.4 The Recipient must cooperate with Healthway in clarifying any questions which are asked by Healthway in relation to the Financial Report and must provide any further financial or other Information connected with the Funding and the Project reasonably requested by Healthway as soon as that Information is available.
- 7.5 The Recipient must keep proper records of the Project in accordance with:
- (1) generally accepted accounting principles and practices; and
 - (2) the minimum compliance requirements that Healthway must meet under the *State Records Act 2000 (WA)*, which are:
 - (a) storing, securing and safeguarding key Partnership records, including original records, against loss or damage;

- (b) retention of the Partnership records for a minimum of 7 years (unless otherwise determined by Healthway); and
- (c) disposal of paper Partnership records by shredding and/or pulping and digital Partnership records using an appropriate secure method.

(together the **Records**).

7.6 The Recipient must allow the Records to be inspected by:

- (1) Healthway; or
- (2) any Governmental Agency, including the Office of the Auditor General,

(each an **Auditing Party**)

on receipt of written notice from an Auditing Party 5 Business Days prior to any inspection. The Auditing Party may, at its sole expense, require the Recipient to provide photocopies of the Records.

8 Co-Supporters Policy

- 8.1 The Recipient must not in relation to the Project directly or indirectly Participate in any Precluded Contract without Healthway's prior written consent which may be given conditionally or unconditionally, or withheld, at Healthway's discretion.
- 8.2 If Healthway gives its conditional Consent, all such conditions must be complied with by the Recipient.
- 8.3 The Recipient must immediately disclose to Healthway all Precluded Contracts it has Participated in, is Participating in, or will or intends to Participate in. This clause 8.3 is subject to clause 8.1.
- 8.4 The Recipient must comply with all directions given to it by Healthway in respect to any subject matter of, or relating to, the preceding provisions of this clause 8.
- 8.5 The Recipient must comply with the Co-Supporters Policy during the Term. This policy is available from Healthway's website at www.healthway.wa.gov.au.
- 8.6 The preceding provisions of this clause 8 are fundamental terms of this Agreement.

9 Intellectual property

9.1 Use of Healthway's Intellectual Property

- (1) Healthway authorises the Recipient to use Healthway's Intellectual Property solely for the purpose of the Project and, where applicable, the Partnership Implementation Plan.
- (2) The Recipient must:
 - (a) ensure that its use of Healthway's Intellectual Property is consistent with the Partnership Objective and the Healthway Objectives;
 - (b) ensure that Healthway's Intellectual Property is not used in conjunction with any co-supporter's Intellectual Property, unless the Recipient has obtained Healthway's prior written consent; and
 - (c) consult with Healthway if it is unsure whether any proposed use of Healthway's Intellectual Property is inconsistent with this clause 9.1.

9.2 Infringement of Healthway's Intellectual Property

- (1) The Recipient must notify Healthway immediately in writing of any actual, suspected or anticipated infringement of Healthway's Intellectual Property of which it becomes aware.
- (2) The Recipient must cooperate fully with Healthway in preventing any infringement of Healthway's Intellectual Property.
- (3) Healthway may institute and prosecute an action against any infringer of Healthway's Intellectual Property at its discretion. The Recipient must provide to Healthway all assistance reasonably required by Healthway to conduct the proceedings.

9.3 Intellectual Property created under this Agreement

- (1) The ownership of any Intellectual Property created solely by Healthway in connection with or arising under this Agreement remains the property of Healthway.
- (2) The Recipient by this clause 9.3(2) assigns to Healthway immediately upon creation the ownership of any Intellectual Property created or improved on jointly by the parties, in connection with or arising under this Agreement. The Recipient must at its cost do all acts as may be necessary to give effect to such assignment, including by assisting Healthway in executing any required documents or effecting any required registrations.

10 Health Promotion

- 10.1 As part of the development of the Partnership Implementation Plan, Healthway may propose to the Recipient strategies or activities that can be used by the Recipient during the Term to maximise the effectiveness of the Partnership (**Health Promotion**).
- 10.2 The Recipient is obliged to adopt all Health Promotion strategies as agreed in the Partnership Implementation Plan and use its best endeavours to adopt any additional Health Promotion strategies proposed by Healthway during the Term.

11 Privacy

- 11.1 Unless the Recipient has its own privacy policy, the Recipient must comply with Healthway's privacy policy, as amended from time to time (a copy of which is available from Healthway's website at www.healthway.wa.gov.au). The Recipient must also comply with any applicable Law concerning privacy.
- 11.2 The Recipient consents to Healthway disclosing any names and contact details about any individual that Healthway has obtained from the Recipient to any third party for usual business and evaluation purposes by or on behalf of Healthway and in accordance with Healthway's privacy policy.
- 11.3 Healthway may disclose the terms of, or any aspect of or related to, this Agreement to the State or any other person.

12 Freedom of information

- 12.1 The Recipient acknowledges and agrees that this Agreement, and any information in relation to it, is subject to the *Freedom of Information Act 1992 (WA)* and that Healthway may publicly disclose information in relation to this Agreement including its Provisions and the identity of the Recipient. Healthway will notify the Recipient prior to making such disclosure.

13 Financial management

- 13.1 The Recipient acknowledges and agrees that the powers and responsibilities of the Office of the Auditor General under the *Financial Management Act 2006 (WA)* are not limited or otherwise affected by this Agreement.

14 Risk management plan

- 14.1 The Recipient must, during the Term, maintain an appropriate risk management plan in respect of the Partnership.
- 14.2 Without limiting clause 14.1, the Recipient must, during the Term, maintain appropriate risk management policies and practices in relation to the Partnership, including complying with AS/NZS ISO 31000:2009 Risk management - Principles and guidelines.

15 Warranties

- 15.1 In addition to any other Warranty the Recipient warrants that, as at the Commencement Date:

- (1) it is empowered to enter into this Agreement and to do all things that will be required by this Agreement;
- (2) all things have been done or will be done as may be necessary to render this Agreement legally enforceable in accordance with its terms and fully valid and binding on it;
- (3) the persons executing this Agreement on behalf of the Recipient have been duly appointed and have authority to bind the Recipient;
- (4) it is not subject to an Insolvency Event;
- (5) all information, (including promises, assertions, representations and projections) made or given by or on behalf of the Recipient in relation to or preparatory to the Funding (including such information, promises, assertions, representations and projections contained in the Application Form) is true, correct and complete and in no way misleading or deceptive;
- (6) neither the Recipient nor any Officer of the Recipient has been convicted of a criminal offence that is punishable by imprisonment or detention; and
- (7) it has no conflict of interest arising out of this Agreement.

- 15.2 Each Warranty is reported every day of the Term and if a Warranty becomes untrue or incorrect in any way, the Recipient shall promptly notify Healthway in writing, giving Healthway all relevant details.

16 Insurance

- 16.1 The Recipient must, during the Term, maintain:
- (1) a general public liability insurance policy which provides insurance cover for an amount in respect of any one occurrence of at least \$10,000,000 and covers the Recipient's liabilities to third parties whenever engaged in the Partnership; and
 - (2) any other insurance policy or policies which it would be reasonable for the Recipient to maintain in respect of the Partnership,
- (together the **Insurance Policy**).
- 16.2 The Insurance Policy must not contain provisions inconsistent with clause 17 or adverse to Healthway's interest.

- 16.3 The Recipient must provide Healthway with a copy of the Insurance Policy (including the schedule) and a certificate of currency issued under the Insurance Policy within 14 Business days after Healthway making a request for these. Healthway may make such a request at any time during the Term, at its absolute discretion.

17 Indemnity

- 17.1 The Recipient shall indemnify and hold harmless each of Healthway and the State (each an **Indemnified Party**) for, from, against and in respect of any and all Loss and Liability suffered, incurred or sustained by or made, brought or alleged against any Indemnified Party to the extent caused or contributed to by any Wrong committed by the Recipient or any Officer or Invitee of the Recipient.

18 Information

- 18.1 If Healthway requests Information or access to Information, which is in any way related to any aspect of this Agreement or its performance, and is in the Recipient's knowledge, possession or control, the Recipient must promptly comply, ensuring that all such Information provided, or to which access is provided, is accurate, complete, up to date and in no way misleading or deceptive.

19 Default

- 19.1 Each of the following is an event of default (**Event of Default**):

- (1) the Recipient commits a Breach and the Breach is not remediable or (if the Breach is remediable) the Recipient fails to remedy the Breach within a reasonable period of time (having regard to the nature and seriousness of the Breach and its ease of remediation);
- (2) the Recipient commits 2 or more Breaches in any given 365 day period;
- (3) the Recipient is subject to an Insolvency Event;
- (4) any Officer of the Recipient is convicted of a criminal offence that is punishable by imprisonment or detention;
- (5) the Recipient is convicted of a criminal or statutory offence that is punishable by a fine or penalty of, or exceeding, \$10,000;
- (6) in the reasonable opinion of Healthway, the reputation of Healthway or the State is, or is likely to be, damaged by any act or omission of the Recipient or any of the Recipient's Officers; and
- (7) any other event occurs or circumstance arises which, in the reasonable opinion of Healthway, is likely materially and adversely to affect the ability of the Recipient to perform all or any of its obligations under or otherwise to comply with the Provisions.

- 19.2 If an Event of Default occurs, Healthway may by notice in writing to the Recipient terminate this Agreement.

20 Termination

- 20.1 On termination of this Agreement:

- (1) except as otherwise provided for in this Agreement or at Law, this Agreement is no longer of any force or effect;
- (2) 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;

- (3) Healthway has no obligation to pay any part of the Funding to the Recipient on or after the date of termination; and
- (4) Subject to clause 20.1 (2), Healthway may request a refund of any amounts paid to the Recipient as part of the Funding, up to and including the date of termination, which has not been spent for an authorised purpose or otherwise remains unspent or uncommitted, and if Healthway makes such a request, the Recipient must promptly comply.

21 Goods and services tax

21.1 In this clause 21:

- (1) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended (**GST Act**) or any replacement or other relevant legislation and regulations;
- (2) **RCTI** means a recipient created tax invoice as referred to in section 29-70(3) of the GST Act;
- (3) words or expressions used in this clause 21 which have a particular meaning in the **GST law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires however the term "Recipient" has the meaning defined by this Agreement;
- (4) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
- (5) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
- (6) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

21.2 Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Agreement for any supply made under or in connection with this Agreement does not include GST.

21.3 To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is to be paid or provided.

21.4 To the extent that a party is required to reimburse or indemnify another party for a Loss incurred by that other party, that Loss does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

21.5 If the Recipient is registered for GST:

- (1) Healthway will issue RCTIs in respect of the Funding; the Recipient will not issue tax invoice in respect of the Funding where Healthway has issued a RCTI;
- (2) the Recipient warrants that it is registered for GST at the time of entering into this Agreement and will notify Healthway if the Recipient ceases to be registered for GST during the Term;
- (3) Healthway acknowledges that it is registered for GST and agrees that it will notify the Recipient if it ceases to be registered;

- (4) the Recipient will remit the GST liability in respect of the Funding to the Australian Taxation Office in accordance with the GST law; and
- (5) Healthway may issue an adjustment note in relation to GST adjustment events, where appropriate.

22 Further assurance

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

23 Entire understanding

- 23.1 This Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes any prior agreement or understanding on anything connected with that subject matter.

24 Variation

- 24.1 Subject to clause 24.2, an amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.
- 24.2 Any reference in this Agreement to a Policy, document or information available from Healthway's website at www.healthway.wa.gov.au is a reference to that Policy, document or information as amended or updated from time to time, and any such amendment or update is deemed to be an automatic variation to this Agreement. The Recipient acknowledges that Healthway is under no obligation to give the Recipient notice of any such amendment or update, and the Recipient will, during the Term, regularly visit Healthway's website to check for any such amendment or update.

25 Waiver

- 25.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 25.2 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.
- 25.3 A waiver is not effective unless it is in writing.
- 25.4 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.

26 Costs and outlays

- 26.1 Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Agreement.
- 26.2 The Recipient must pay all stamp duty and other government imposts payable in connection with this Agreement and all other documents and matters referred to in this Agreement when due or earlier if requested in writing by Healthway.

27 Assignment and sub-contracting

- 27.1 The Recipient must not sell, transfer, assign, mortgage, charge or otherwise dispose of or deal with any of its rights or obligations under this Agreement (or attempt to do any of those things) except with the prior written consent of Healthway.
- 27.2 The Recipient must not subcontract the performance of the whole or any part of its obligations under this Agreement except with the prior written consent of Healthway.

27.3 Healthway is not required to give consent or to justify the withholding of consent under this clause 27.

28 Notices

28.1 Each communication (including each notice, consent, approval, request and demand) in accordance with or in connection with this Agreement (in this clause 28, **Notices**):

- (1) must be in writing: and
- (2) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party.

28.2 All Notices must be:

- (1) delivered or posted by prepaid post to the address; or
- (2) sent by email in the form of a .pdf file letter (or such other form agreed by Healthway) to the email address (provided that the email contains a read receipt request),

of the addressee set out below (or as otherwise notified by that party to each other party from time to time).

28.3 Subject to clause 28.4, a Notice is taken to be received by the addressee:

- (1) in the case of prepaid post, on the third business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
- (2) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email from the recipient stated below; and
- (3) in the case of delivery by hand, on delivery.

28.4 If the Notice is taken to be received on a day which is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

28.5 Healthway's address for service is:

Name : Western Australian Health Promotion Foundation
Attention : Director Health Promotion
Address : Level 2, 38 Station Street Subiaco WA 6008
Phone No. : 133 777
Email : healthway@healthway.wa.gov.au

28.6 The Recipient's address for service is set out at Item 3 of Schedule 1.

28.7 A party may change its address for service by giving Notice of that change to each other party.

29 Governing law and jurisdiction

29.1 The law of Western Australia governs this Agreement and the parties submit to the non-exclusive jurisdiction of the courts of the State and of the Commonwealth.

30 Execution of counterparts

30.1 This Agreement may be executed in any number of counterparts. Each counterpart is an original, but the counterparts together are one and the same Agreement.

31 Application Form

- 31.1 In the event of any inconsistency between the Application Form and the remainder of this Agreement, the latter will prevail over the former to the extent of such inconsistency. Silence shall not constitute or form the basis of any inconsistency.

EXAMPLE ONLY

Schedule 1 General Details

Item 1 **Commencement Date**

Date of this Agreement

Item 2 **Completion Date**

Finish date

Item 3 **Recipient's address for service**

Organisation:

Attention:

Address:

Email:

Item 4 **Approved Budget**

An Approved Budget showing income and expenditure as agreed between Healthway and the Recipient forms part of this Agreement and is set out in Annexure A.

The Recipient must expend the Healthway Funding in accordance with the Approved Budget.

The Recipient must provide reporting of their actual income and expenditure in relation to each Approved Budget line item as per the dates specified at Item 6 of this Schedule 1.

Item 5 **Project Report dates**

(1) Report Due Date Year 1

(2) Report Due Date Year 2

(3) Report Due Date Year 3

Details of the Project evaluation requirements are in the Partnership Implementation Plan and should be addressed in the Project Report.

Item 6 **Financial Reports and Dates**

(4) Report Due Date Year 1

(5) Report Due Date Year 2

(6) Report Due Date Year 3

Each Financial Report must clearly identify the Funding received from Healthway and must be signed by the Chief Executive Officer/General Manager or equivalent of the Recipient. Where annual audited financial statements are available these should also be provided to Healthway as soon as possible.

The Recipient must provide reporting of their actual income and expenditure in relation to each Approved Budget line item. Refer to Item 4 of this Schedule 1.

Item 7

Special Conditions

Insert any Special Conditions here.

EXAMPLE ONLY

**Schedule 2
Project Details**

Item 1 **Project Title**

Item 2 **Project Description**

Item 3 **Partnership Objective**

To encourage healthy lifestyles through the effective promotion of health messages relating to Healthway priority areas.

Specifically, to raise awareness of the «HealthMessage» message in conjunction with the activities/events of «ProjectTitle».

Item 4 **Funding**

Board Approval Amount GST exclusive.

Item 5 **Payment of Funding**

Year 1

Amount	GST	Total	Weighting	Milestones	Payment Schedule
			60%	Commencement of Project	Within 14 days of receipt of correctly signed Agreement
			30%	On receipt of evidence of the successful implementation of agreed health message promotion strategies in the Year 1 Partnership Implementation Plan	[insert date]
			10%	Submission of Year 1 Project Report and Financial Reports	[insert date]

Year 2

Amount	GST	Total	Weighting	Milestones	Payment Schedule
			60%	On receipt of Year 1 Project Report and Financial Reports On written agreement of the Year 2 Partnership Implementation Plan	Within 14 days of receipt of Year 1 Project Report and Financial Reports to the satisfaction of Healthway Plan
			30%	On receipt of evidence of the successful implementation of agreed health message promotion strategies in the Year 2 Partnership Implementation Plan	[insert date]
			10%	Submission of Year 2 Project and Financial Reports	[insert date]

Year 3

Amount	GST	Total	Weighting	Milestones	Payment Schedule
			60%	On receipt of Year 2 Project and Financial Reports On written agreement of the Year 3 Partnership Implementation Plan	Within 14 days of receipt of Year 2 Project Report and Financial Reports to the satisfaction of Healthway
			30%	On receipt of evidence of the successful implementation of agreed health message promotion strategies in the Year 3 Partnership Implementation Plan.	[insert date]
			10%	Submission of Final Project and Financial Reports.	[insert date]

Annexure A
Approved Budget

An Approved Budget showing income and expenditure as agreed between Healthway and the Recipient forms part of this Agreement.

EXAMPLE ONLY

**Annexure B
Partnership Implementation Plan**

EXAMPLE ONLY

Please indicate your acceptance of this Agreement by signing in the space below. This document must be signed by the person(s) legally able to enter into contracts on behalf of the Recipient. The signed document must be returned in its entirety to Healthway via email: healthway@healthway.wa.gov.au.

EXECUTED AS AN AGREEMENT ON THE DATE SHOWN ON THE FIRST PAGE

.....
Julia Knapton
Director Health Promotion
For and on behalf of Healthway

.....
Susan Hunt PSM
Chief Executive Officer
For and on behalf of Healthway

Signed for and on behalf of «**Organisation**» ABN «ABN» by its authorised representative in the presence of:

.....
«LegalSignatoriesFirstName»
«LegalSignatoriesLastName»

.....
Signature of Witness

.....
«LegalSignatoriesJobTitle»

.....
Name of Witness
(BLOCK LETTERS)

.....
Address of Witness

.....
Date

.....
Date

