



WESTERN AUSTRALIAN HEALTH PROMOTION FOUNDATION AGREEMENT

File Number «FileNumber»

Parties:

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

and

**«Organisation»
(Organisation)**

ABN «ABN»

Agreement dated 29 May 2017

Parties **Western Australian Health Promotion Foundation**
of Ground Floor, 24 Outram Street, West Perth, Western Australia
(Healthway)

«Organisation»
 ABN «ABN»
 of «OrgAddress», «OrgSuburbPostcode»
 (Recipient)

Introduction

- A** Healthway is established under the Act to, among other things, provide sponsorship to sports, arts and racing organisations and community groups in Western Australia which encourage healthy lifestyles.
- B** The Recipient seeks the Sponsorship Consideration from Healthway to fund the Sponsorship.
- C** Healthway has agreed to provide the Sponsorship Consideration to the Recipient for the Sponsorship on the terms and conditions set out in this Agreement.

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

- (1) **Act** means the *Western Australian Health Promotion Foundation Act 2016 (WA)*;
- (2) **Agreement** means this document, including any schedule or annexure to it;
- (3) **Application Form** means the Sponsorship Application Form submitted by the Recipient to Healthway seeking Sponsorship for the Sponsorship Project;
- (4) **Approved Budget** means the budget specified in Item 4 of Schedule 1;
- (5) **Auditing Party** has the meaning given in clause 7.6;
- (6) **Authorised Officer** has the meaning given in clause 18.2(3);
- (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) **Completion Date** means the date set out in Item 2 of Schedule 1;
- (10) **Conditions** means the conditions referred to in the Schedule(s);
- (11) **Corporations Act** means the *Corporations Act 2001 (Cth)*;

- (12) **Co-sponsors** means other sponsors of Healthway sponsored organisations, such as the Recipient, or with a presence at Healthway sponsored events, such as the Sponsorship Project, whose involvement has the potential to diminish the effectiveness of the Sponsorship, including the Sponsorship Objective or the Healthway Objectives;
- (13) **Co-sponsorship Information** has the meaning given in clause 8.2;
- (14) **Dispute Notice** has the meaning given in clause 18.2;
- (15) **Event of Default** has the meaning given in clause 19.1;
- (16) **Financial Report** means a statement of income and expenditure for the Sponsorship Project comparing actual income and expenditure with the Approved Budget, 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) unless the Recipient has obtained an exemption from Healthway (as specified in Item 6 of Schedule 1) either:
 - (i) is 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 Sponsorship as a line item in or as a note to the financial report of the Recipient;
- (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) **Healthway Objectives** means the objectives of the Healthway sponsorship program being to:
- (a) encourage healthy lifestyles through the effective promotion of health messages relating to Healthway priority areas;
 - (b) reduce the promotion of unhealthy messages or brands which undermine Healthway's objectives;

- (c) facilitate structural and policy change within organisations and venues to create healthy environments; and
- (d) increase opportunities for priority populations to participate in healthy activities;

(22) **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(22)(a) to 1.1(22)(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;

(23) **Insurance Policy** has the meaning given in clause 16.1;

- (24) **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(24)(a) to 1.1(24)(d);
- (25) **Leveraging** has the meaning given in clause 10.1;
- (26) **Milestones** means the events identified as being milestones in the Schedule(s) which on their satisfaction an amount (being part of the Sponsorship Consideration) is payable by Healthway to the Recipient pursuant to clause 4;
- (27) **Notice** has the meaning given in clause 28.1;
- (28) **Offer Letter** means the letter entitled “Offer of Sponsorship” sent from Healthway to the Recipient regarding the Sponsorship;
- (29) **Project Report** means a report which:
- (a) sets out details of the manner in which the Sponsorship Consideration has been used, including an assessment by the Recipient of the success of the Sponsorship in light of the Sponsorship Objective and the Healthway Objectives;
 - (b) contains any other details relating to the Sponsorship reasonably requested by Healthway in writing; and
 - (c) is signed by an authorised officer of the Recipient;
- (30) **RCTI** has the meaning given in clause 21.1(2);
- (31) **Records** has the meaning given in clause 7.5;
- (32) **Sponsorship** means all activities undertaken by the Recipient under this Agreement, including the Sponsorship Project;
- (33) **Sponsorship Consideration** means the amount payable by Healthway to the Recipient as set out in the Schedule(s);
- (34) **Sponsorship Objective** means the objective(s) set out in the Schedule(s);
- (35) **Sponsorship Project** means the project set out and further described in the Schedule(s);
- (36) **Support Body** means the government department, authority or agency or other body which has received funds from Healthway so that it can implement the health promotion strategy outlined in the Sponsorship Leveraging Plan;
- (37) **Support Leveraging Plan** means the health promotion strategy jointly developed by Healthway, the Recipient and the Support Body (where relevant) to be used for the Term in connection with the Sponsorship Project, including the Leveraging strategies pursuant to clause 10, in order to assist the Recipient to use the Sponsorship to the maximum effect, as varied with the approval of Healthway from time to time; and
- (38) **Term** means the period beginning on the Commencement Date and ending on the earlier of the:

- (a) Completion Date; or
- (b) termination of this Agreement.

1.2 Interpretation

- (1) 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 Conditions

- 2.1 This Agreement (other than this clause 2 and clauses 1, 18, 28 and 29) and the payment of the Sponsorship Consideration are conditional upon and subject to the satisfaction of each of the Conditions.
- 2.2 Each party must at its own cost do everything reasonably necessary on its part to procure satisfaction of the 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 Condition is satisfied.

- 2.3 The Conditions are for the sole benefit of Healthway and may only be waived in writing by Healthway.
- 2.4 If any 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 Sponsorship

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

4 Satisfaction of Milestones and payment of Sponsorship

- 4.1 Subject to clauses 4.2 and 4.4, Healthway will pay the Sponsorship Consideration:
 - (1) on satisfaction by the Recipient of the relevant Milestone, as determined by Healthway in its absolute discretion;
 - (2) on the date of payment set out in the Schedule(s); and
 - (3) by electronic funds transfer to the bank account nominated by the Recipient in the Application Form.
- 4.2 The payment of the Sponsorship Consideration in respect of Years 2 and 3, as applicable, as set out in the Schedule(s) is subject to the Recipient complying with its obligations under this Agreement, including its obligations for Years 1 and 2, as applicable, as determined by Healthway in its absolute discretion.
- 4.3 The payment of any amount by Healthway under this Agreement, including the Sponsorship Consideration, is subject to Healthway having sufficient money available for sponsorships as determined in accordance with the Act. Healthway may, in its absolute discretion, determine whether it has sufficient money for the payment of the Sponsorship Consideration, 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 Sponsorship Consideration, Healthway will terminate this Agreement by giving not less than 90 days' notice in writing to the Recipient.

5 General obligations of Recipient

- 5.1 The Recipient must use the Sponsorship Consideration only for the Sponsorship Project for the purpose of achieving the Sponsorship Objective and complying with the Healthway Objectives.
- 5.2 The Recipient must use the Sponsorship Consideration only in accordance with the Approved Budget.
- 5.3 The Recipient must ensure that, so far as possible, the Sponsorship Consideration provided by Healthway is publicly acknowledged in connection with the Sponsorship 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 Sponsorship Project at no cost to Healthway.
- 5.5 The Recipient must comply with all Western Australian and Commonwealth of Australia laws which may apply to the Sponsorship Project (for example, the *Working with Children (Criminal Record Checking) Act 2004 (WA)* and the *Disability Services Act 1993 (WA)*).
- 5.6 The Recipient must cooperate with Healthway to evaluate the Sponsorship Project as required by Healthway, at Healthway's sole expense.

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 Sponsorship Objective and comply with the Healthway Objectives pursuant to clauses 3 and 5.1.
- 6.2 The Recipient must meet the Minimum Health Policy Requirements (details of which are available from Healthway's website at www.healthway.wa.gov.au) for all events or activities in connection with the Sponsorship.
- 6.3 The Recipient must not do or allow anything which may directly or indirectly encourage or support the use of tobacco or tobacco products.
- 6.4 If the Recipient obtains a liquor licence as part of the Sponsorship Project, the Recipient must ensure that it complies with the *Liquor Control Act 1988 (WA)*, including:
- (1) not selling or supplying alcohol to an intoxicated (drunk) person;
 - (2) ensuring the quiet or good order of a neighbourhood is not frequently disturbed by a Sponsorship Project occurring at the licensed premises or by patrons in the vicinity of the premises; and
 - (3) not allowing the sale or supply of alcohol to persons aged under 18.
- 6.5 If a Sponsorship Project has any televised coverage, either live or delayed, the Recipient agrees that the television network(s) involved will be required to ensure that if digital insertion technology is used in the broadcast(s) of these activities and/or events, it will not reduce the impact of or alter the intent of the Sponsorship Objective or the Healthway Objectives.

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 co-operate with Healthway in clarifying any questions which are asked by Healthway in relation to the Financial Report and must provide any further financial information connected with the Sponsorship Consideration reasonably requested by Healthway as soon as that information is available.
- 7.5 The Recipient must keep proper records of the Sponsorship 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 Sponsorship records, including original records, against loss or damage;
 - (b) retention of the records for a minimum of 7 years (unless otherwise determined by Healthway); and
 - (c) disposal of paper records by shredding and/or pulping and digital 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 the Auditing Party 5 days prior to any inspection. The Auditing Party may, at its sole expense, require the Recipient to provide photocopies of the Records.

8 Co-sponsorship

8.1 The Recipient warrants that, as at the Commencement Date:

- (1) it:
 - (a) is not receiving money or revenues from the tobacco industry or its associated foundations, whether directly or indirectly;
 - (b) does not have arrangements or dealings with the tobacco industry, whether directly or indirectly, which may actually, potentially or perceivably compromise tobacco control initiatives; and
 - (c) does not have any direct or indirect arrangements, connections or dealings with the sale, promotion or distribution of tobacco products which may actually, potentially or perceivably compromise tobacco control initiatives; and
- (2) it has disclosed in writing to Healthway, including pursuant to the Application Form, all existing sponsorship received by the Recipient from food, drink, alcohol and gambling related companies, brands or interests.

8.2 If, during the Term, the Recipient wishes to enter into an arrangement with a Co-sponsor of the nature described in clause 8.1(2) then, prior to entering into any agreement with the Co-sponsor, the Recipient must provide all relevant information regarding the proposed arrangement to Healthway including:

- (1) the name of the proposed Co-sponsor;
- (2) the type of the proposed sponsorship; and
- (3) any other information relating to the nature of the proposed sponsorship that Healthway deems necessary to assess the risk of the sponsorship undermining the Sponsorship Objective, the Healthway Objectives or health promotion returns,

(together the **Co-sponsorship Information**).

8.3 Within 4 weeks of receipt of the Co-sponsorship Information, Healthway will make a decision, in its absolute discretion, regarding whether the Co-sponsorship can proceed during the Term and will notify the Recipient of that decision. Without limiting its discretion under this clause 8.3, Healthway will refer to its Co-Sponsorship Guidelines (a copy of which is available from Healthway's website at www.healthway.wa.gov.au) when assessing a Co-Sponsor proposal.

8.4 If:

- (1) notwithstanding Healthway's decision pursuant to clause 8.3, the Recipient proceeds with the proposed arrangement with the Co-sponsor; or
- (2) the Recipient enters into an arrangement with a Co-sponsor without complying with clause 8.2,

then Healthway may terminate this Agreement with immediate effect by notice in writing to the Recipient.

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 Sponsorship Project and, where applicable, the Sponsorship Leveraging Plan.
- (2) The Recipient must:
 - (a) ensure that its use of Healthway's Intellectual Property is consistent with the Sponsorship Objective and the Healthway Objectives;
 - (b) ensure that Healthway's Intellectual Property is not used in conjunction with any Co-sponsor'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 co-operate fully with Healthway in stopping 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 with 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.

- (3) If, within 12 months after the end of the Term, the parties do not enter into a new sponsorship agreement, Healthway grants to the Recipient a perpetual, irrevocable, royalty-free and licence fee-free, worldwide, non-assignable, non-exclusive licence to use, copy, modify and exploit any such Intellectual Property assigned under clause 9.3(2).

10 Leveraging

- 10.1 As part of the development of the Sponsorship Leveraging Plan, Healthway may propose to the Recipient ideas or activities that can be used by the Recipient during the Term to maximise the effectiveness of the Sponsorship (**Leveraging**).
- 10.2 The Recipient is obliged to adopt all Leveraging strategies as agreed in the Sponsorship Leveraging Plan and use its best endeavours to adopt any additional Leveraging strategies proposed by Healthway during the Term.
- 10.3 Leveraging that is adopted by the Recipient in connection with the Sponsorship must be adopted exclusively in connection with the Sponsorship and must not be used by the Recipient for any other purpose during the Term, including in connection with any other sponsorship. If the Recipient adopts any Leveraging strategies in connection with the Sponsorship then this will be at no increase to the Sponsorship Consideration for the Term.
- 10.4 If the Recipient does not adopt any Leveraging strategies proposed by Healthway, whether as part of the development of the Sponsorship Leveraging Plan, in addition to the Sponsorship Leveraging Plan or otherwise, then the Recipient is not permitted to use these proposed Leveraging strategies for any other purpose during the Term, including in connection with any other sponsorship.
- 10.5 If the Recipient adopts any Leveraging strategies in breach of this clause 10 then Healthway may terminate this Agreement with immediate effect by notice in writing to the Recipient.

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 statute, regulation or 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.

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 terms and conditions and the identity of the Recipient. .

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)* and the *Auditor General Act 2006 (WA)* are not limited or otherwise affected by this Agreement.

14 Risk management plan

- 14.1 If required under the Offer Letter or as otherwise required by Healthway, the Recipient must, during the Term, maintain an expertly certified risk management plan in respect of the Sponsorship Project.
- 14.2 Without limiting clause 14.1, the Recipient must, during the Term, maintain appropriate risk management policies and practices in relation to the Sponsorship Project, including complying with AS/NZS ISO 31000:2009 Risk management - Principles and guidelines.

15 Warranties

- 15.1 In addition to any other warranty given by it under this Agreement, 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:
 - (a) been duly appointed; and
 - (b) authority to bind the Recipient;
 - (4) it is not subject to an Insolvency Event;
 - (5) all information contained in the Application Form continues to be complete and correct including any amendments or variations agreed with Healthway in writing;
 - (6) neither the Recipient nor any officer, employee, contractor or agent 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.

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 and unlimited in the number of occurrences happening in the Term, of at least \$5,000,000 and covers the Recipient's liabilities to third parties whenever engaged in the Sponsorship; and
 - (2) any other insurance policy or policies which it would be reasonable for the Recipient to maintain in respect of the Sponsorship,

(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 days of 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 indemnifies Healthway against:

- (1) all losses incurred by Healthway;
- (2) all liabilities incurred by Healthway; and
- (3) all costs actually payable by Healthway to its own legal representatives (whether or not under a costs agreement) and other expenses incurred by Healthway in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal) on an indemnity basis and without regard to any scale of costs,

in connection with, arising from or associated with any:

- (4) breach by the Recipient of this Agreement, including any warranty given by it under this Agreement; or
- (5) act, error or omission by the Recipient or its officers, employees, contractors or agents in respect of the Sponsorship, including any Leveraging strategy.

17.2 The Recipient's liability under the indemnity in clause 17.1 will be reduced proportionally to the extent that any costs, losses, expenses, claims, damages or other liabilities result from the negligence of Healthway or its officers, employees, contractors or agents.

18 Dispute resolution

18.1 Subject to clause 18.8, the parties agree that unless and until a party has complied with the requirements of this clause 18, a party may not commence any court proceedings in respect of any dispute.

18.2 If at any time a dispute exists between Healthway and the Recipient, a party may give a written notice to the other party in accordance with this clause 18.2 (**Dispute Notice**). The Dispute Notice must:

- (1) state that the notice is given under this clause 18;
- (2) describe the nature of the dispute; and
- (3) nominate the party's authorised officer for resolution of the dispute (**Authorised Officer**).

18.3 Within 2 Business Days after receipt of a Dispute Notice, the recipient party must give a written notice to the other party nominating its Authorised Officer.

18.4 The parties must ensure that their Authorised Officers meet and negotiate with a view to resolving the dispute within 5 Business Days after receipt of the Dispute Notice given by a party in accordance with clause 18.2.

18.5 If the parties' Authorised Officers fail to resolve the dispute within 10 Business Days after receipt of the Dispute Notice given by a party in accordance with clause 18.2, the parties' Authorised Officers may agree a dispute resolution process for the resolution of the dispute in which case the dispute will be resolved in accordance with such process.

18.6 Either party may commence litigation if:

- (1) the parties fail to resolve the dispute in accordance with clause 18.4 and fail to agree a dispute resolution process in accordance with clause 18.5 within 10 Business Days after the receipt of a Dispute Notice given by a party in accordance with clause 18.2;

- (2) either party fails to comply with any of the requirements of this clause 18; or
 - (3) either party fails to comply with any dispute resolution process agreed in accordance with clause 18.5.
- 18.7 The parties must continue to perform their obligations under this Agreement despite the existence of any dispute between the parties.
- 18.8 This clause 18 does not apply:
- (1) if a party considers it necessary to seek an urgent interim determination; or
 - (2) where Healthway considers that an Event of Default has occurred under this Agreement.

19 Default

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

- (1) the Recipient fails to comply with any obligation under this Agreement, the failure is capable of remedy and the Recipient does not remedy that failure within 7 days after notice in writing to the Recipient requiring it to be remedied;
- (2) the Recipient breaches any warranty given by it under this Agreement, the failure is capable of remedy and the Recipient does not remedy that failure within 7 days after notice in writing to the Recipient requiring it to be remedied;
- (3) the Recipient is subject to an Insolvency Event;
- (4) any officer, employee, contractor or agent 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 of Western Australia is, or is likely to be, damaged by any act or omission of the Recipient or any of the Recipient's officers, employees, contractors or agents; and 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 terms of this Agreement.

19.2 If an Event of Default occurs, Healthway may on 7 days notice in writing to the Recipient terminate this Agreement.

19.3 If Healthway commits a substantial breach of this Agreement and fails to remedy that breach within 14 days after the Recipient gives written notice to Healthway requiring it to be remedied, the Recipient may, on giving 7 days prior written notice to Healthway, terminate this Agreement.

20 Termination

20.1 On termination of this Agreement:

- (1) except as otherwise provided for in this Agreement, 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 Sponsorship Consideration to the Recipient on or after the date of termination; and
- (4) Healthway may seek a refund of any amounts paid to the Recipient as part of the Sponsorship Consideration, up to and including the date of termination, which has not been spent for an authorised purpose or otherwise remains unspent or uncommitted.

20.2 Clauses 9.2, 9.3, 11, 12, 13, 17, 20 and 21 survive termination of this Agreement.

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, cost or expense incurred by that other party, that loss, cost or expense 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 Sponsorship Consideration; the Recipient will not issue tax invoice in respect of the Sponsorship Consideration 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 Sponsorship Consideration 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 if necessary delivering all documents) necessary or desirable to give full effect to this Agreement.

23 Entire understanding

- 23.1 This Agreement:

- (1) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
- (2) 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 document or information available from Healthway's website at www.healthway.wa.gov.au is a reference to that 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.

28 Notices

- 28.1 A notice or other communication connected with this Agreement (excluding communications in relation to operational matters for the Sponsorship Project) (**Notice**) has no legal effect unless it is in writing.
- 28.2 In addition to any other method of service provided by law, the Notice may be:
- (1) sent by prepaid post to the address of the addressee set out in this Agreement or subsequently notified;
 - (2) sent by facsimile to the facsimile number of the addressee; or
 - (3) delivered at the address of the addressee set out in this Agreement or subsequently notified.
- 28.3 If the Notice is sent or delivered in a manner provided by clause 28.2, it must be treated as given to and received by the party to which it is addressed:
- (1) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;
 - (2) if sent by facsimile before 5pm 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
 - (3) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- 28.4 Despite clause 28.2(1):
- (1) 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
 - (2) 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 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.
- 28.5 A Notice sent or delivered in a manner provided by clause 28.2 must be treated as validly given to and received by the party to which it is addressed even if:
- (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
 - (2) the Notice is returned unclaimed.

28.6 Healthway's address for service and facsimile number are:

Name : Western Australian Health Promotion Foundation
Attention : Director Corporate Services
Address : Ground Floor, 24 Outram Street, West Perth WA 6005
Facsimile no : (0)8 9324 1145

28.7 The Recipient's address for service and facsimile number are set out at Item 3 of Schedule 1.

28.8 A party may change its address for service or facsimile number 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.

29.2 The parties submit to the non-exclusive jurisdiction of the courts of Western Australia and of the Commonwealth of Australia.

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.

Schedule 1 General Details

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Executed as an agreement.

LINA BARBATO
Director, Corporate Services

BILL ONGLEY
Acting Director, Sponsorship

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

Signature of witness

Signature of authorised representative

Name of witness
(BLOCK LETTERS)

Name of authorised representative
(BLOCK LETTERS)

Address of witness

Executed by «**Organisation**»
in accordance with section 127 of the
Corporations Act 2001:

Director/company secretary

Director

Name of director/company secretary
(BLOCK LETTERS)

Name of director
(BLOCK LETTERS)