



## **Workplace Health Promotion Grants**

# **Workplace Health Promotion Grants Funding Agreement**

**Stage 1: 2008/09**

# Workplace Health Promotion Grants Funding Agreement

## Parties

Name **Victorian WorkCover Authority**, a statutory authority established under section 18 of the *Accident Compensation Act 1985* (Vic), trading as **WorkSafe Victoria**

ABN 90 296 467 627

Short form name **WorkHealth**

Name **[#insert name of applicant]**, [#in the case of a company insert full name of company including 'Pty Ltd', 'Limited' and ACN][#a union registered under the *Workplace Relations Act 1996* (Cth), as amended by the *Workplace Relations Amendment (Work Choices) Act 2005* (Cth)] [#an association incorporated under] [# the Associations Incorporation Act 1981 (Vic) – **[delete as applicable]**]

ABN [#insert ABN of Applicant ]

Short form name **Applicant**

## Background

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- A In accordance with its powers and functions under the *Accident Compensation Act 1985* (Vic), WorkHealth, a division of the Victorian WorkCover Authority, has established the WorkHealth Fund (**the WorkHealth Fund**) to provide financial assistance to employers to undertake initiatives that offer to workers voluntary programs that promote worker health and wellbeing.
- B The objectives of the WorkHealth Fund are to provide incentives to employers to establish activities and/or further improve existing workplace based health and wellbeing activities which are aimed at:
- encouraging workers health and healthy behaviours; and
  - promoting a work organisation and working environment supportive of worker's health;
- where the employer has already offered Worker Health Checks that have focused on some or all of the risk factors for chronic disease that are within the scope of WorkHealth to the majority of its workers within the previous two (2) years;
- (together, **the WorkHealth Fund Objectives**).
- C The Workplace Health Promotion Grants Application (**the Project**), as attached at Annexure A, has been approved by WorkHealth.
- D In implementing the Project, the Applicant will be making a supply to WorkHealth, the consideration of which is Funding to the Applicant subject to and in accordance with the terms and conditions of this agreement.
- E This agreement sets out the terms on which WorkHealth will provide Funding to the Applicant.

## Agreed terms

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### 1. Defined terms & interpretation

#### 1.1 Defined terms

In this document:

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

**Applicant Representative** means an officer nominated by the Applicant as specified in item 6(b) of Schedule 1 subject to variation under clause 22.1(c);

**Authorised Personnel** means those persons nominated by the Applicant to implement the Project, as set out in item 3 of Schedule 1;

**Budget** means the Applicant's budget for implementation of the Project set out under Annexure A;

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

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

**Commencement Date** means the date specified in item 4 of Schedule 1;

**Completion Date** means the date specified in item 5 of Schedule 1;

**Confidential Information** means:

- (a) the terms of this agreement; and
- (b) any information provided by or on behalf of WorkHealth to the Applicant or any employee, agent, consultant or representative of the Applicant, which is designated confidential or which otherwise would be understood by a reasonable person in the position of the recipient to be confidential in nature;

but does not include information which:

- (c) at the time of disclosure is in public domain; or
- (d) after disclosure becomes part of the public domain or otherwise than by disclosure in breach of this agreement;

**Deliverables** means the key tasks and milestones specified by the Applicant in part 5 of the Project under Annexure A;

**Final Report** has the meaning given in clause 7.2;

**Funding** means any amount provided by WorkHealth to the Applicant under this agreement, including under clause 4;

**Governmental Agency** means any government, public, statutory, governmental, semi-governmental, local government or judicial body, entity or authority and includes a Minister of Crown (in its own right);

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time;

**Health Information** has the meaning given in the *Health Records Act 2001* (Vic);

**Initial funds** mean the applicable up-front allocation to support the Project set up, as set out in Annexure C;

**Intellectual Property** means all intellectual property rights (whether or not such rights are capable of registration) including copyright, patents and patent applications, designs and design applications, trademarks and trade mark applications and confidential information (including trade secrets and Know-How);

**Laws** means the laws in force in State of Victoria including, without limitation, common or customary law, equity, judgment, legislation, orders, regulations, statutes, by-law, ordinances or any or legislative or regulatory measure and includes any amendment, modification or re-enactment of them;

**Liabilities** includes liabilities (whether actual, contingent or prospective), losses, damages, actions, costs, expenses, charges, fees (including legal costs on a full indemnity basis) and outgoings of whatever description;

**Payment Schedule** means the payment schedule set out in item 2 of Schedule 1 and under Annexure C;

**Personal Information** means information that is personal information as defined in the *Privacy Act 1988* (Cth) or that is information to which any other Privacy Laws apply;

**Preconditions to Funding** has the meaning given in clause 4.4;

**Privacy Laws** means all laws relating to privacy, confidentiality or use of any information about individuals, including:

- (a) the *Privacy Act 1988* (Cth) and the National Privacy Principles contained in schedule 3 to that Act or any approved privacy code that applies to any of the parties to this agreement;
- (b) the *Information Privacy Act 2000* (Vic) and the Information Privacy Principles contained in schedule 1 to that Act; and
- (c) the *Health Records Act 2001* (Vic) and the Health Privacy Principles contained in schedule 1 to that Act;

**Progress Report** has the meaning given in clause 7.1;

**The Project** means the application prepared by the Applicant in accordance with the WorkHealth Promotions Grants Application form, as varied and finally approved by WorkHealth, and attached under Annexure A;

**Report Guidelines** means the reporting guidelines and templates attached under Annexure B;

**Risk factors for chronic disease that are within the scope of WorkHealth** means lack of physical activity, poor diet and nutrition, tobacco smoking, excessive alcohol consumption and mental health issues;

**Worker Health Check** means the worker health checks offered by WorkHealth and intended to provide information and advice to individual workers about their risk of chronic diseases, especially Type 2 diabetes and cardiovascular disease and the impact the worker's lifestyle may have on their health;

**WorkHealth Fund** has the meaning given in paragraph A in the Background;

**WorkHealth Fund Objectives** means the objectives of the WorkHealth Fund as described in paragraph B in the Background;

**Tax Invoice** means a document that complies with the requirements of a tax invoice as specified in the GST Act;

**Term** means the term of this agreement as provided in clause 3;

**WorkHealth Representative** means an officer nominated by WorkHealth as specified in item 6(a) of Schedule 1, subject to variation under clause 22.1(c).

## 1.2 Interpretation

In this agreement, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of this agreement;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a clause, paragraph or schedule is a reference to a clause, paragraph of or schedule to this agreement and a reference to this agreement includes any schedules;
- (e) a reference to a document or agreement, including this agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
- (g) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (h) words and expression importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- (i) a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation, as applicable;
- (j) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally; and

- (k) the meaning of general words is not limited to specific examples introduced by 'including', 'for example' or similar expressions.

2. Appointment

WorkHealth appoints the Applicant to implement the Project and the Applicant accepts the appointment on the terms and conditions of this agreement.

3. Term

This agreement commences on the Commencement Date and continues until the Completion Date, unless terminated earlier in accordance with clause 18 (**Term**).

4. Provision of Funding

**4.1 Maximum funding**

- (a) The Applicant acknowledges that, despite any other provision of this agreement, the maximum aggregate Funding which WorkHealth will provide to the Applicant under this agreement is the amount set out in Item 2 of Schedule 1, which will include in-kind contributions (if applicable), and will be no more than:
  - (i) \$60 (including GST) per worker participating in the Project where the Applicant's Annual Remuneration is less than \$10 million; or
  - (ii) \$30 (including GST) per worker participating in the Project where the Applicant's Annual Remuneration is equal to or more than \$10 million.
- (b) The Funding is fixed and is not to be indexed subject to the Consumer Price Index or any other index.
- (c) Where an Applicant's Annual Remuneration is equal to or more than \$10 million, the Funding must be matched on a dollar for dollar basis by the Applicant as set out in item 2 of Schedule 1.
- (d) In calculating the amount of the Funding, any entitlement of the Applicant to claim input tax credits in relation to its costs incurred in implementing the Project will be taken into account when determining the amount of the Funding.

**4.2 Application of Funding**

- (a) The Applicant must ensure that the Funding:
  - (i) is applied solely in the implementation of the Project and in accordance with the Budget; and
  - (ii) is not used for any other purpose including, without limitation, for or in relation to any other initiative or research being undertaken by the Applicant.
- (b) Without limiting clause 4.2(a) the Applicant must ensure that the Funding is not paid or applied either directly or indirectly:
  - (i) to fund Worker Health Checks;
  - (ii) to fund major capital expenditure such as building renovations;
  - (iii) to fund ongoing operational costs such as salaries, rent and utilities;
  - (iv) to meet costs for activities, products or services produced or carried out prior to the date of this agreement; or
  - (v) towards the purchase of an existing product of the Applicant or a third party.
- (c) The Applicant must ensure that the Funding is not paid or applied, either directly or indirectly, to or (except as expressly contemplated by this agreement) for the benefit of the Applicant or any past or present employee, director or shareholder of the Applicant; or any Related Entity of the Applicant or of any past or present employee, director or shareholder of the Applicant.

**4.3 Terms of provision of Funding**

- (a) Subject to clause 4.4 and to WorkHealth being satisfied that the Applicant is in compliance with its obligations under this agreement, WorkHealth will provide Funding to the Applicant in accordance with the Payment Schedule as consideration for the Applicant undertaking and implementing the Project.

- (b) Each payment of Funding referred to in the Payment Schedule will be made within 30 Business Days of receipt by WorkHealth of:
  - (i) a valid Tax Invoice, which includes all of the information set out in the example tax invoice annexed to this agreement in Annexure D, issued by the Applicant for the amount prescribed in the Payment Schedule;
  - (ii) where applicable, a copy of the Tax Invoice in respect of costs paid to a third party in the implementation of the Project for each Deliverable, including detailed narrations of the services provided by the third party in a form approved by WorkHealth;
  - (iii) any other supporting material requested by WorkHealth in respect of the Project;
  - (iv) the corresponding Progress Report or Final Report, as the case may be, approved by WorkHealth in its absolute discretion under clause 8.

#### **4.4 Preconditions to Funding**

WorkHealth is not required to provide Funding to the Applicant in accordance with clause 4.3 unless the following preconditions are satisfied:

- (a) the Applicant has already offered Worker Health Checks that have focused on some or all of the risk factors for chronic disease that are of within the scope of WorkHealth to the majority of its workers within the previous two (2) years;
- (b) the Applicant has provided the bank account details required in item 12 of Schedule 1;
- (c) the performance by the Applicant of the activities and tasks required to be undertaken by it under this agreement in the period prior to the scheduled payment dates under Annexure C;
- (d) the submission and approval by the Applicant of the Progress Reports (where applicable) and Final Report; and
- (e) compliance by the Applicant with this agreement and the WorkHealth Fund Objectives to the satisfaction of WorkHealth;

(together the **Preconditions to Funding**).

#### **4.5 Acknowledgements**

The Applicant acknowledges and agrees that:

- (a) it must not incur any Liability or obligation in reliance on, or on the assumption that it will be granted, any amount of Funding, unless and until it has become absolutely entitled to that amount, and if it does incur any Liability or obligation in contravention of this clause 4.5 WorkHealth will not be under any obligation in respect of that Liability or obligation;
- (b) WorkHealth reserves the right to evaluate the Final Report and other documents and requests made to it in connection with the Funding, and to reject or accept them in its sole discretion;
- (c) except for Funding provided to the Applicant under this agreement, and applied by the Applicant in accordance with this agreement, WorkHealth will not be liable to compensate the Applicant or any other person for any Liabilities incurred in taking any action as a result of or in connection with the Project or this agreement;
- (d) it is not entitled to receive Funding unless and until it has complied with its obligations; and
- (e) WorkHealth may perform such security, probity, audit and/or financial investigations and procedures as WorkHealth, in its absolute discretion, may determine are necessary in relation to each Applicant and its Related Entities, and the Applicant must provide, at its own cost, all reasonable assistance to WorkHealth in this regard.

#### **4.6 Repayment of improperly applied Funding**

The Applicant must repay to WorkHealth on demand, without deduction or set-off, any amount of Funding paid by WorkHealth to the Applicant which has been paid or applied in breach of clause 4.2.

#### **4.7 Repayment of unused Funding**

If the Applicant has failed to spend or apply any amount of Funding provided to it under this agreement, in the manner required by this agreement (**Unused Funding**), the Unused Funding must be returned by the Applicant to WorkHealth within 15 days of the Completion Date.

#### **4.8 Directions**

The Applicant must comply with any lawful and reasonable direction of WorkHealth in connection with the Funding, Workplace Health Promotion Fund Initiative and the transactions and activities contemplated by or arising from this agreement.

#### **5. Accounts and records**

##### **5.1 Financial records**

The Applicant must keep and maintain proper and accurate financial records in relation to all aspects of the Project and this agreement in accordance with prudent archival practices during the Term and for a period of seven (7) years after the expiration of the Term or termination of this agreement.

##### **5.2 Access to accounts and records**

The Applicant must during the Term and for up to seven (7) years after the expiry or termination of this agreement, upon seven (7) Business Days written notice given by WorkHealth, grant WorkHealth, its auditors or its nominee, access to the Applicant's accounts and records to enable WorkHealth, its auditors or its nominee to verify that the Funding has been used and applied by the Applicant only for the purposes listed in clause 4.2 and that the Applicant has otherwise complied with this agreement.

#### **6. Implementation of the Project**

##### **6.1 Precedence of Documents**

To the extent that there is a conflict between any provision of this agreement (excluding Schedule 1) and Schedule 1, the provisions of this agreement (excluding Schedule 1) prevail over Schedule 1.

##### **6.2 Authorised Personnel**

With the exception of support or administrative staff, the Applicant must ensure that the Project is implemented solely by the Authorised Personnel.

##### **6.3 Commencement and Completion of the Project**

The Applicant must ensure that the Project commences within 45 days of the Applicant's receipt of the Initial funds and is fully implemented by the Completion Date.

##### **6.4 Changes to the Project**

The Applicant must not change the nature or scope of the Project without WorkHealth's prior written consent.

##### **6.5 Applicant early termination of the Project**

The Applicant must notify WorkHealth in writing where it has determined not to fully implement the Project. In the circumstances WorkHealth will determine what component of the Funding the Applicant will receive in respect of the completed part of the Project. Clauses 4.6 and 4.7 will apply where Funding has already been paid.

#### **7. Progress and Final Reports**

##### **7.1 Progress Reports**

Where applicable, the Applicant must prepare reports containing reasonable details of the financial and operating activities of the Applicant relating to the Project (**Progress Report**) for each of the periods specified in item 7 of Schedule 1 and must include information as detailed in the Report Guidelines (Annexure B).

##### **7.2 Final Report**

The Applicant must prepare a report containing reasonable details of the financial and operating activities of the Applicant relating to the Project, outcomes relating to Project and the intended strategy to sustain the outcomes of the implementation of the Project (**Final Report**).

##### **7.3 Timing, Content and Form of Progress Reports and Final Report**

Each Progress Report and the Final Report must:

- (a) be presented to WorkHealth Representative by the dates specified in item 7 of Schedule 1; and
- (b) comply with and contain the information contained in the Report Guidelines (Annexure B); and
- (c) be certified as to its accuracy in accordance with the Report Guidelines by, the Applicant's finance manager.

## **7.4 Request for supporting information**

The Applicant must, at the request of WorkHealth, provide WorkHealth within seven (7) Business Days of the request with additional information (or other period of time agreed to by WorkHealth in writing), documents or other written evidence to support any statements or information contained or made in the Progress Reports or the Final Report.

## **8. Receipt of Progress Report**

### **8.1 Review by WorkHealth**

- (a) On receipt of a Progress Report WorkHealth will consider the contents of such Progress Report and will determine whether, during the period the subject of the Progress Report, the Applicant has made satisfactory progress in meeting the Preconditions to Funding and the Deliverables.
- (b) If WorkHealth determines that the Applicant has, during the relevant period, made satisfactory progress in satisfying the Preconditions to Funding and the Deliverables, WorkHealth will approve the Progress Report and WorkHealth may make any relevant payment of Funding.
- (c) If WorkHealth determines that the Applicant has not, during the relevant period, made satisfactory progress in satisfying the Preconditions to Funding and the Deliverables, or that the Progress Report is unsatisfactory, WorkHealth Representative may decide not to approve the Progress Report in which case, WorkHealth may do one or both of the following:
  - (i) request that the Applicant remedy the relevant matter (in which case the Applicant must comply with WorkHealth's request) and withhold all or part of the payment of Funding until the relevant matter is remedied to the reasonable satisfaction of WorkHealth; and/or
  - (ii) suspend the operation of this agreement upon 10 Business Days written notice to the Applicant.

### **8.2 Consequences of Suspension**

If the operation of this agreement is suspended pursuant to clause 8.1(c):

- (a) WorkHealth is entitled to withhold all or part of the payment of Funding which would otherwise be payable to the Applicant during such suspension;
- (b) the suspension may be continued by WorkHealth (unless the agreement is terminated in the meantime) until the matter giving rise to the suspension is remedied to the reasonable satisfaction of WorkHealth. Once suspension is remedied to the reasonable satisfaction of WorkHealth, WorkHealth may make the payment of Funding that was withheld pursuant to clause 8.2(a); and
- (c) where this agreement is terminated by WorkHealth during a period of suspension, the Applicant is not entitled to receive payment of any Funding withheld pursuant to clause 8.2(a), except and only to the extent that the Funding was due and payable under this agreement before the period of suspension began.

## **9. Deliverables**

### **9.1 Deliverables**

- (a) Subject to clause 9.2, the Applicant must ensure that it meets the Deliverables specified in the Project or at item 8 of Schedule 1 to the satisfaction of WorkHealth and by the dates specified at item 8 of Schedule 1 or the Project respectively.
- (b) For the avoidance of doubt, the payment of Funding by WorkHealth to the Applicant is subject to the Applicant meeting the Deliverables by the dates specified in item 8 of Schedule 1 and the Project.

### **9.2 Variation of Deliverables**

WorkHealth may amend the Deliverables and corresponding timelines specified at item 8 of Schedule 1 and the Project with the consent of the Applicant, which must not be unreasonably withheld.

## **10. Ancillary obligations**

### **10.1 Applicant's obligations**

The Applicant must:

- (a) implement the Project in accordance with terms of this agreement;
- (b) act diligently and in good faith in carrying out all of its obligations under this agreement;
- (c) do anything else reasonably necessary upon WorkHealth's request; and

- (d) upon agreeing to be contacted by WorkHealth or a consultant of WorkHealth to participate in future evaluations of the WorkHealth program, complete surveys and provide feedback as requested from time to time.

## **10.2 WorkHealth's obligations**

WorkHealth will liaise with the Applicant and monitor progress of the implementation of the Project through the WorkHealth Representative.

## **11. Warranties and representations**

The Applicant represents and warrants on each day during the Term that:

- (a) the execution, delivery and performance by it of this agreement does not and will not violate:
  - (i) any Law, regulation, authorisation, ruling, consent, judgement, order or decree of any Governmental Agency;
  - (ii) its constitution or other constituent documents; or
  - (iii) any encumbrance or document which is binding upon it or any assets of it;
- (b) it complies with all obligations under the *Occupational Health and Safety Act 2004 (Vic)*, the *Accident Compensation (WorkCover Insurance) Act 1993 (Vic)* and the *Accident Compensation Act 1985 (Vic)* (as applicable), including the requirement to hold and maintain adequate workers' compensation insurance or is approved as a self insurer;
- (c) it is duly incorporated or registered, as the case may be, and existing under the laws of its state of incorporation or registration and has full power to enter into and provide the relevant services under this agreement without the consent of any other person;
- (d) in providing the relevant services under this agreement, it will not infringe any patent, trade mark, copyright or other Intellectual Property of any third party; and
- (e) the insurance policies referred to in clause 16.1 do not contain any exclusions or limitations which apply to the activities of the Applicant in relation to the Project.

## **12. Exclusions and limitations of liability**

### **12.1 Release and discharge**

The Applicant acknowledges and agrees that it:

- (a) implements the Project at its own risk; and
- (b) unconditionally and irrevocably releases and forever discharges WorkHealth from all Claims which the Applicant has or at any time in the future may have or which but for this clause 12.1 the Applicant would or at any time in the future might have had, against WorkHealth, arising out of or related to (whether directly or indirectly) any activities undertaken by the Applicant under or in relation to this agreement including the implementation of the Project.

### **12.2 No implied conditions and warranties**

WorkHealth excludes all implied conditions and warranties, except any implied condition or warranty the exclusion of which would contravene any statute or cause this clause 12 to be void.

### **12.3 Disclaimer**

WorkHealth disclaims any responsibility or Liability to the Applicant or any third party for the consequences of any act or omission of the Applicant in the performance of its obligations under this agreement, including:

- (a) any breach by the Applicant of this agreement;
- (b) any false, misleading or deceptive statement or conduct of the Applicant;
- (c) any breach by the Applicant of any statute; and
- (d) any act of the Applicant giving rise to a civil or criminal liability.

### **12.4 Indemnity**

The Applicant indemnifies and agrees to keep WorkHealth indemnified from and against any Liability or Claim suffered or incurred by WorkHealth arising from this agreement or the implementation of the Project including as a result of any of:

- (a) any breach of this agreement by the Applicant;

- (b) any false, misleading or deceptive statement or conduct of the Applicant;
- (c) any breach of any statute of the Applicant;
- (d) negligence of the Applicant; or
- (e) any act giving rise to a civil or criminal liability of the Applicant.

## 12.5 Pleading

This agreement may be pleaded and tendered by WorkHealth as an absolute bar and defence to any proceeding brought in breach of the terms of this agreement.

## 13. Confidentiality

### 13.1 Use and disclosure of Confidential Information by Applicant

Subject to clause 13.2 the Applicant agrees to:

- (a) use the Confidential Information for the sole purpose of implementing the Project and otherwise performing its obligations under this agreement;
- (b) not disclose or otherwise make available the Confidential Information to any third party other than to:
  - (i) Authorised Personnel; and
  - (ii) the Applicant's employees who have a need to know the information in order to carry out the Applicant's obligations under the agreement, but only to the extent that they need to know; and
- (c) ensure that any Authorised Personnel and employees who have access to the Confidential Information under clause 13.1(b) do not use the Confidential Information for any purpose other than implementing the Project and otherwise performing its obligations under this agreement.

### 13.2 Disclosure required by law

The Applicant may disclose Confidential Information if compelled to do so by order of a court, subject to it consulting with WorkHealth before doing so.

### 13.3 Disclosure by WorkHealth

The Applicant acknowledges that, to the extent permitted by law, WorkHealth is entitled to disclose and publish any information regarding the Project or that it obtains from the Applicant for the purpose of:

- (a) the WorkHealth Fund Objectives; and
- (b) its functions and objects under the *Occupational Health and Safety Act 2004 (Vic)* and the *Accident Compensation Act 1985 (Vic)*.

## 14. Privacy

### 14.1 Compliance with Statute

- (a) The Applicant acknowledges and agrees that it must comply with the confidentiality and secrecy provisions of sections 242A and 243 of the *Accident Compensation Act 1985 (Vic)* and all applicable Privacy Laws.
- (b) Any breach of these provisions is a breach of this agreement entitling WorkHealth to terminate the agreement without notice, and in any event may render the Applicant liable to prosecution and penalty.
- (c) The Applicant must ensure that access to Health Information and Personal Information is restricted to those of its employees and contractors who need to know the information for the purposes of the Applicant fulfilling its obligations under this agreement, and that those employees and contractors are aware of and agree to fulfil the Applicant's obligations under this clause 14.

## 15. Intellectual Property Rights

### 15.1 Protection of the WorkHealth Intellectual Property

The Applicant must not:

- (a) use, reproduce, publish or communicate to the public all or any part of the WorkHealth Intellectual Property (**the Intellectual Property**) other than as expressly permitted under this agreement;
- (b) challenge or in any way impugn WorkHealth's complete ownership of the Intellectual Property; or

- (c) represent that it has any rights in respect of the Intellectual Property other than as expressly granted in this agreement.

## **15.2 Grant to the Applicant**

WorkHealth grants to the Applicant a royalty free, non-exclusive license to use the Intellectual Property for the Term for the sole purpose of implementing the Project. The Applicant must however acknowledge WorkHealth, a division of WorkSafe Victoria, as the source of and the owner of that Intellectual property should the Applicant use, reproduce, publish or communicate to the public all or any part of the Intellectual Property.

## **16. Insurance**

### **16.1 Applicant to maintain insurance**

The Applicant must at its own expense obtain and maintain at all times during the Term, and for a period of five (5) years following the expiration of the Term, the insurances specified in items 9 and 10 of Schedule 1.

### **16.2 Applicant to provide evidence of adequate insurance**

The Applicant must, prior to the Commencement Date, provide WorkHealth with a copy of the certificate of currency for each of the insurance policies required under this clause 16 and, upon the request of WorkHealth, any other proof of the insurance policies required under this clause 16 to the satisfaction of WorkHealth (including a copy of the insurance policy).

### **16.3 Failure to maintain insurance**

If the Applicant fails to procure and maintain insurance policies as required by this agreement WorkHealth may, without limiting any other right or remedy of WorkHealth, refuse to provide further Funding due from time to time to the Applicant until WorkHealth is satisfied that the relevant insurance is in place and compliant.

## **17. Sub-contracting**

- (a) The Applicant may not subcontract any of its obligations under this agreement, except with the prior written consent of WorkHealth.
- (b) The Applicant will not, as a result of any sub-contracting arrangement, be relieved from its obligations or Liabilities in connection with this agreement and will be liable for all acts and omissions of the sub-contractor as though they were the actions of the Applicant itself.

## **18. Termination**

### **18.1 Termination without cause by WorkHealth**

- (a) WorkHealth may, in its absolute discretion, terminate this agreement without cause by giving the Applicant two (2) weeks written notice.
- (b) If notice is given under clause 18.1(a), WorkHealth will provide to the Applicant a portion of the Funding equal to that amount to which the Applicant is entitled and has properly accrued in accordance with clause 4.2 in respect of the period prior to the date of termination of this agreement.

### **18.2 Immediate termination by WorkHealth**

WorkHealth may terminate this agreement immediately by written notice if:

- (a) in the reasonable opinion of WorkHealth, the Applicant has failed to use its best endeavours to satisfy, or has failed in a serious or ongoing respect to satisfy, the Preconditions to Funding;
- (b) in the reasonable opinion of WorkHealth, the Applicant has breached any ethical considerations or standards, has failed to obtain any relevant approvals required, has failed to act competently, diligently or with honesty, or has compromised the safety or wellbeing of participants or subjects (actual or intended), in connection with its activities in the implementation of the Project;
- (c) a Progress Report and/or the Final Report:
  - (i) is not provided within five (5) Business Days of it being due under clause 7.2; or
  - (ii) in the reasonable opinion of WorkHealth, does not provide sufficient information on the progress of implementation of the Project;
- (d) the Applicant fails to achieve the Deliverables as required under clause 9;

- (e) the Applicant uses the Funding provided by WorkHealth in any way other than in accordance with clause 4.2;
- (f) the Applicant becomes insolvent or is unable to pay its debts as and when they fall due;
- (g) the Applicant stops or suspends payment to creditors generally, enters into an arrangement, assignment or composition with its creditors, or an execution or distress is effected or attempted or an order for execution of a judgment is made against the Applicant or any of the assets of the Applicant;
- (h) an administrator, receiver, receiver and manager or liquidator is appointed to the Applicant, or a request for appointment of an administrator, receiver, receiver and manager, or liquidator is made with respect to any of the property or assets or undertakings of the Applicant;
- (i) anything having a substantially similar effect to any of the events specified in paragraphs (g) or (h) above happens under the Law of any applicable jurisdiction; or
- (j) without limiting paragraphs (a) to (i) inclusive:
  - (i) the Applicant breaches a material provision of this agreement which is not capable of remedy; or
  - (ii) WorkHealth has given written notice to the Applicant to take action to remedy any breach of this agreement (which in the reasonable opinion of WorkHealth can be remedied) and, after seven (7) Business Days or any other reasonable period specified in the notice, the Applicant has failed, in the reasonable opinion of WorkHealth, to take such action.

### 18.3 Consequences of termination

On expiry of the Term or termination of this agreement for any reason:

- (a) the Applicant must repay to WorkHealth all Funding provided by WorkHealth to the Applicant other than amounts applied by the Applicant in accordance with this agreement prior to the expiry of the Term or date of termination of this agreement;
- (b) the Applicant must cease the implementation of the Project, except as directed by WorkHealth;
- (c) the Applicant's right to use the Project Intellectual Property ceases;
- (d) the Applicant's right to use the Confidential Information ceases (but the Applicant must continue to keep confidential that Confidential Information), and the Applicant must immediately at WorkHealth's option:
  - (i) return to WorkHealth;
  - (ii) destroy and certify in writing to WorkHealth the destruction of; or
  - (iii) destroy and permit WorkHealth to witness the destruction of,
    - all Confidential Information in the Applicant's possession or control; and
- (e) the Applicant must provide all information reasonably required by WorkHealth, including but not limited to, information concerning the Applicant's implementation of the Project.

### 18.4 Payment of Funding

WorkHealth will not be liable for payment of any Funding after the expiry of the Term or termination of this agreement, except for Funding due and payable in respect of the period up to the expiry of the Term or termination of this agreement.

### 18.5 Survival of obligations

Clauses 1, 4.2, 4.5, 4.6, 4.7, 4.8, 5, 10, 11, 12, 13, 14, 15, 16, 18, 20, 21 and 22 survive termination or expiry of this agreement.

## 19. GST

### 19.1 Interpretation

Words or expressions used in this clause 19 which are defined in the GST Act or, if not so defined, then which are defined in the *Trade Practices Act 1974* (Cth), have the same meaning in this clause.

### 19.2 GST inclusive amounts

For the purposes of this agreement where the expression **GST inclusive** or **inclusive of GST** is used in relation to an amount payable or other consideration to be provided for a supply under this agreement, the amount or consideration will not be increased on account of any GST payable on that supply.

### 19.3 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this agreement, unless specifically described in this agreement as **GST inclusive** or **inclusive of GST**, does not include an amount on account of GST.

### 19.4 Gross up of consideration

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

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

### 19.5 Reimbursements (net down)

If a payment to a party under this agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense. That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

## 20. Dispute resolution

### 20.1 Notification of Dispute

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

### 20.2 Where the dispute involves WorkHealth

- (a) Where the dispute involves WorkHealth, within seven (7) days (or any longer period agreed between the parties) after a Notification is given, WorkHealth's Director or other senior officer of WorkHealth and the Applicant's Chief Executive Officer or a person holding the equivalent position must personally attempt to resolve the Dispute.
- (b) The parties must continue to perform their respective obligations under this agreement pending the resolution of the Dispute.
- (c) If, in relation to the Dispute, a party breaches any provision of this clause 20.2, the other party need not comply with those clauses in relation to that Dispute.
- (d) Each party must bear its own costs of complying with this clause 20.2.
- (e) A party must not start court proceedings (except proceedings seeking interlocutory relief) unless it has complied with this clause 20.2.

### 20.3 Where the dispute does not involve WorkHealth

- (a) Where the dispute does not involve WorkHealth, but arises out of this agreement, the Applicant within seven (7) days after a Notification is given, must notify WorkHealth of the Dispute in writing and of the steps the Applicant proposes to take to otherwise deal with the Dispute with the third party.
- (b) While WorkHealth will not play a role in resolving the dispute, if the Applicant fails to notify WorkHealth of the Dispute as required under clause 20.3(a) or the Applicant is unable to or unwilling to resolve the Dispute with the third party as required by WorkHealth, WorkHealth may terminate this agreement in accordance with clause 18.
- (c) The Applicant must continue to perform its obligations under this agreement pending the resolution of the Dispute with the third party.
- (d) Each of the Applicant and the third party must bear their own costs of complying with this clause 20.3.

21. General

**21.1 Relationship**

This agreement does not create any relationship of agency, employment, partnership or joint venture between the parties.

**21.2 Set off**

WorkHealth may set off against any amount owing by WorkHealth to the Applicant, any amounts owing by the Applicant to WorkHealth or for which the Applicant is liable to WorkHealth.

**21.3 Waiver**

The failure of either party at any time to require performance of any obligation under this agreement is not a waiver of that party's right:

- (a) to insist on performance of, or claim damages for breach of, that obligation unless the party acknowledges in writing that the failure is a waiver; and
- (b) at any other time to require performance of that or any other obligation under this agreement.

**21.4 Entire agreement**

This agreement:

- (a) constitutes the entire agreement between the parties as to its subject matter; and
- (b) in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

**21.5 Governing law**

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

**21.6 Alteration**

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

**21.7 Severability**

Any provision of this agreement which is unenforceable or partly unenforceable is, where possible, to be severed to extent necessary to make this agreement enforceable, unless this would materially change intended effect of this agreement.

**21.8 Further acts**

The parties will do all things and execute all agreements required to permit or facilitate performance of transactions contemplated by this agreement.

**21.9 Assignment**

The Applicant's rights and obligations under this agreement are personal to the Applicant. The Applicant may not assign its rights under this agreement without the prior written consent of WorkHealth.

**21.10 Execution by individual**

Any individual executing this agreement on behalf of a party warrants in their personal capacity that they have been authorised to act on behalf of that party and that this agreement binds that party in accordance with its terms.

**21.11 Consent**

Where any provision of this agreement refers to a consent or approval of WorkHealth, WorkHealth may give, withhold or give subject to conditions, that consent or approval in its absolute discretion.

22. Communications

**22.1 Representatives**

- (a) WorkHealth Representative and Applicant Representative respectively are authorised to:
  - (i) give and receive any consent, approval, direction or notice under this agreement; and
  - (ii) otherwise act on behalf of WorkHealth and Applicant respectively in respect of this agreement and the transactions contemplated by it.
- (b) Each of WorkHealth and Applicant must ensure that WorkHealth Representative and Applicant Representative respectively are reasonably contactable during the Term.

- (c) Each of WorkHealth and Applicant must notify the other in writing of any change to WorkHealth Representative and Applicant Representative respectively or to their contact details.

**22.2 How to give a notice**

A notice, consent or communication is only effective if it is given by or to (as context requires) the person set out in item 11 of Schedule 1 at the address or fax number set out in item 11 of Schedule 1.



<p><b>Item 7 Reports</b> <b>(Clause 8)</b></p>	<p>Progress/Final Report [#Insert date]</p> <p>The relevant Report must be prepared in accordance with and contain the information specified in the Report Guidelines annexed at Annexure B.</p> <p>Report to be delivered to: [#xxxxxxxxxxxxxxxx] Workplace Health Promotion Fund Manger</p>
<p><b>Item 8 (Clause 9) Deliverables &amp; Dates</b></p>	<p>See Annexure B.</p>
<p><b>Item 9 (Clause 16)</b> <b>Professional Indemnity Insurance</b></p>	<p>a minimum of \$5,000,000 insurance.</p>
<p><b>Item 10 (Clause 16)</b> <b>Public Liability Insurance</b></p>	<p>a minimum of \$5,000,000 insurance.</p>
<p><b>Item 11 (Clause 22)</b> <b>Addresses for Notices</b></p>	<p><b>WorkHealth</b> Address: 222 Exhibition Street, Melbourne Fax number: [#xxxxxxxxxxxxxxxx] email address: [#xxxxxxxxxxxxxxxx] Attention: [#xxxxxxxxxxxxxxxx]Workplace Health Promotion Fund Manager</p> <p>[#Insert name of applicant] Address: [#xxxxxxxxxxxxxxxx] Fax number: [#xxxxxxxxxxxxxxxx] email address: [#xxxxxxxxxxxxxxxx] Attention: [#xxxxxxxxxxxxxxxx]</p>
<p><b>Item 12 (Clause 4.4 (b))</b> <b>Bank Account Details</b></p>	<p>Bank Name Branch Number/Bank BSB Bank Account Name (Payee Name) Bank Account Number (Payee Account Number);</p>

# Signing page

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**EXECUTED** as an agreement.

**DATED** \_\_\_\_\_.

**Signed** for the **Victorian WorkCover Authority** by an authorised officer in the presence of

\_\_\_\_\_  
Signature of officer



\_\_\_\_\_  
Signature of witness



\_\_\_\_\_  
Name of officer (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Office held

Applicant –

[#Company applicant – *delete as applicable*]

**Executed** by [#insert name of Applicant]

\_\_\_\_\_  
Signature of director



\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)



\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary (print)

[#Incorporated association or Union applicant – *delete as applicable*]

**Signed** for [#insert name of Applicant] by an authorised officer in the presence of

\_\_\_\_\_  
Signature of officer



\_\_\_\_\_  
Signature of witness



\_\_\_\_\_  
Name of officer (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Office held

## **Annexure A**

This is the Application Form and the Declaration

# Annexure B

## Report Guidelines

### Why we require reports

WorkHealth needs reports in order to be satisfied that our investment in the grant initiative achieves outcomes and funds are appropriately spent. Reporting also:

- . provides you an opportunity to evaluate your initiative and make improvements where necessary,
- . informs WorkHealth where the Workplace Health Promotion benefits can be spread beyond your initiative,
- . assists WorkHealth in developing future funding programs and policies and
- . demonstrates endorsement of the initiative progress by each of the grantee organisations.

### What we do with your reports

Your reports will be reviewed by WorkHealth to assess progress, performance and achievement. These reviews can cover both financial and administrative aspects (eg timeframes and milestones) as well as technical aspects. Progress payments are dependant on satisfactory reviews of your reports. We provide feedback from these reviews and may require clarification, amendment or further information.

### Timing of reports

The due dates and reporting periods for different reports are specified in writing by WorkHealth in Annexure C to this agreement. It is very important that you meet due dates. Missing a due date could delay a grant payment.

### Scope of reports

The purpose and scope of different types of reports should be as outlined below. Some points will be more important/relevant than others for certain initiatives and you may need to add other information. If in doubt, contact the WorkHealth Fund Manager.

### About the report

Purpose:

- . Comprehensively report on outcomes achieved, milestones met, activity / approach
- . Outline lessons and future opportunities
- . Demonstrate appropriate use of funds and allow acquittal of grant

### Contents of the report

Summary of the initiative, including:

- . Background to and objectives of the initiative
- . Outputs (Milestones achieved compared with those detailed in the Table of Deliverables below)
- . Methodology/Approach (summary of the activities undertaken, approach used and why)
- . Financial report showing:
  - . actual income & expenditure of WorkHealth funds, compared to approved budget;
  - . actual income & expenditure of other sources of funds (if applicable);
  - . estimated value of in-kind contributions (if applicable);

Evaluation of the implementation of the Project (how will you measure the success of the Project).

Required outcomes achieved against the Deliverables in this Annexure B.

Statement of the intended strategy to sustain the outcomes of the implementation of the Project (Refer to Clause 7 of this agreement);

Reports must be certified by the applicant's Financial Manager or other person approved in writing by WorkHealth who should note that:

- . the financial report accurately reflects income and expenditure for the initiative,
- . all payments were supported by adequate documentation to show that expenditure was for bona fide goods and services related to the initiative.

**Attachments**

Any significant completed documents, publications and materials produced

Copies (or summary) of media coverage obtained and significant written feedback from stakeholders on the initiative

**Table of Deliverables**

Site Location: INSERT LOCATION

Activity Number	Task/Objective	Description	Start Date	Finish/Milestone Date
1.				
2.				
3.				
4.				
5.				
6.				

Site Location: INSERT LOCATION

Activity Number	Task/Objective	Description	Start Date	Finish/Milestone Date
7.			Aug 09	Sept
8.			Oct 09	Oct 09
9.				
10.				
11.				
12.				

## Annexure C

### Payment Schedule

#### For grants equal to or less than \$20,000

Two reports are required for employers receiving grants of equal to or less than \$20,000 and who will receive an initial advance payment of 75% followed by a payment in arrears of 25%. The reports are as follows:

Reporting Schedule	Date report due	Payable	Amount payable (GST exclusive)	Deliverables
N/A	N/A	After execution of this agreement	75% of total grant	A signed Funding Agreement
Progress Report	Within 14 days of milestone date for expenditure of 75% of funds indicated in Annexure B	Approval to proceed with project	N/A	Completion of activities XXX with expenditure receipts and statement on how funds have been spent and progress to date
Final Report	By completion date for all activities specified in Annexure B	At completion of project	25% of total grant	On completion of project providing expenditure receipts and statement on how funds have been spent and outcome of project.
Total			\$ XX	

#### For grants greater than \$20,000

Three reports are required for employers receiving grants greater than \$20,000 and who will receive an initial advance payment of 25% followed by three successive payment in arrears of 25%. The reports are as follows:

Reporting Schedule	Date report due	Payable	Amount payable (GST exclusive)	Deliverables
N/A	N/A	After execution of this agreement	25% of total grant	A signed Funding Agreement
Progress Report	Within 14 days of milestone date specified in Annexure B	On expenditure of 25% of funds	25% of total grant	Completion of activities XXX with expenditure receipts and statement on how funds have been spent and progress to date
Progress Report	Within 14 days of milestone date specified in Annexure B	Approval to proceed with project	25% of total grant	Completion of activities XXX with expenditure receipts and statement on how funds have been spent and progress to date

Final Report	Within 28 days of completion date for all activities specified in Annexure B	At completion of project	25% of total grant	On completion of project providing expenditure receipts and statement on how funds have been spent and outcome of project.
Total			\$ XX	

## **Annexure D**

Sample Tax Invoice from Nick