



WA Early-Career Child Health Researcher Fellowship Program Fellowship Grant Funding Agreement General Terms and Conditions

1. Definitions and Interpretation

1.1 Defined terms

In this document capitalised expressions have the meaning given to them in the Glossary of Terms and expressions that are not defined in the Glossary of Terms have these meanings:

“this document” means these general terms and conditions of the Funding Agreement and the Offer Letter, which together comprise the Funding Agreement arising from the acceptance by the Awardee, the Research Entity and the Research Supervisor of the Fellowship Grant Funding described in the Offer Letter, all taken together, or each of those documents separately, as the case may be.

1.2 Interpretation

In this document and the Offer Letter (except where the context otherwise requires):

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this document, and a reference to this document includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Australian Western Standard time;
- (g) a reference to a party is to a party to the Funding Agreement, and a reference to a party to a document includes the party's executors, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the GST Act has the meaning given to it in the GST Act

- (k) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (l) 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;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this document or any part of it; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed, or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2. Responsibilities of Parties

2.1 Project Activity Progress

- (a) The Research Entity must ensure that the Awardee must carry out the Project Activity in accordance with the Fellowship Grant Approved Application.
- (b) In carrying out the Project Activity, the Research Entity must endeavour to achieve all Milestones by their corresponding Milestone Dates, including completing the Project Activity by the Date for Activity Completion.
- (c) If a Milestone is not, or is not likely to be, achieved by its corresponding Milestone Date, the following will apply:
 - i. the Research Entity is to contact and discuss with the Program Administrator the issue, who may agree then or thereafter at any time to adjust the relevant Milestone Date or insert additional milestones in relation to any aspect of the Project Activity or replace any Milestones with new milestones (**Additional/New Milestone**), in each case specifying a new Milestone Date for each Additional/New Milestone;
 - ii. in carrying out the Project Activity, the Research Entity must achieve each Additional/New Milestone by its corresponding Milestone Date; and
 - iii. if an Additional/New Milestone is not achieved by its corresponding Milestone Date, then the Program Administrator has the same rights as set out in this clause 2.1 to at any time adjust or insert new or replacement milestones.

2.2 No Material Changes

- (a) No material changes to the Project Activity or any agreed budget (including any Project Activity Budget) are to be made without prior consultation with and approval of the Program Administrator.

- (b) Any request for approval may require referral of the matter by the Program Administrator to all or any of the BRAC, the PFAP or the Program Sponsors before any decision can be made and accordingly should be submitted well in advance of any proposed changes.
- (c) Any approval by the Program Administrator may be withheld or declined or given with or without conditions.

2.3 Authorisations and Internal Policies and Procedures

- (a) All Authorisations required in relation to the Project Activity must be obtained prior to commencement of the Project Activity and maintained as required for the duration of the Project Activity and the Program Administrator may request from time to time confirmation from the Research Entity that such Authorisations are in place and until that confirmation has been provided, the transfer of Funds may be withheld.
- (b) The Project Activity must be conducted in accordance with any applicable Internal Policies and Procedures.
- (c) The Research Entity acknowledges and agrees that the Program Administrator or Program Sponsors are not responsible for obtaining or maintaining any Authorisations required in relation to the Project Activity.

2.4 Permitted Access to Premises

If the Project Activity or part thereof is being undertaken at or on premises that are not owned, occupied, or under the control or management of the Research Entity or the Employer, (and are not being undertaken at a WA health service provider site which requires site authorisation), the Research Entity must obtain and have in place during the Fellowship Term the written permission of the person who has control of management of those premises to carry out the relevant Project Activity or part thereof at or on those premises.

2.5 General Undertakings by the Research Entity

The Research Entity must:

- (a) at all times perform and observe the responsibilities under the Funding Agreement and promptly inform the Program Administrator of any occurrence that might adversely affect its ability to do so in a material way;
- (b) undertake those responsibilities with integrity, good faith and probity in accordance with good scientific and ethical governance practices;
- (c) comply with all Law;
- (d) not bring into disrepute the reputation of the Project Sponsors, the Employer or the Research Entity;
- (e) cooperate fully with the Program Administrator in the administration of the Funding Agreement;
- (f) carry out all aspects of the Project Activity and fulfil the responsibilities under the funding agreement in a competent, diligent, satisfactory and professional manner, and to a high standard;
- (g) prioritise use of or arrange other resources, including human resources, adequate to carry out properly and efficiently the Program Activity consistent with the responsibilities under the funding agreement;

- (h) liaise as appropriate with stakeholders in the Project Activity to ensure strong stakeholder ownership of and involvement in the Project Activity where required or appropriate;
- (i) not represent themselves, as being an employee, partner or agent of the Program Sponsors or the Program Administrator or as otherwise able to bind or represent any of the Program Sponsors or the Program Administrator; and
- (j) acknowledge and accept that they are not, by virtue of the Funding Agreement, or for any purpose deemed to be, an employee, partner, or agent of any of the Program Sponsors or the Program Administrator, or, have any power or authority to bind or represent any of them.

2.6 Disbursement of Funding

- (a) The provision of Fellowship Grant Funding to the Research Entity will be administered by the Program Administrator on behalf of the Program Sponsors.
- (b) The Research Entity will invoice the Program Administrator prior to the commencement of each 6 month period of a Fellowship Term. The invoice is to total the amount due from the Program Sponsors for the 6 month period.
- (c) On and subject to the terms of the Funding Agreement, the Program Administrator will advance to the Research Entity instalments of the Funding at the times and in the manner set out in the Fellowship Grant Funding Details.
- (d) The Research Entity is responsible for and must contribute to the Fellowship Grant Funding payments and costs according with the minimum annual contribution by the Research Entity specified in the Fellowship Grant Funding Details (**Minimum Annual Employer Contribution**).
- (e) In addition to the Minimum Annual Employer Contribution by the Research Entity, the Research Entity must supplement the salary and oncosts payable to the Awardee to the extent as may be necessary to increase the salary level and oncosts to a level payable for position classifications in accordance with its usual conditions of employment and Internal Procedures and Policies.
- (f) Fellowship grant funding payments will be paid to the Awardee by the Research Entity in accordance with their usual employment conditions.
- (g) If the Fellowship Grant Funding is insufficient to properly fulfil all of the relevant responsibilities of the Research Team Members, then those responsibilities must still be fulfilled but at the expense of the relevant party, as applicable.
- (h) The percentage of FTE of the Fellowship, Fellowship Term and direct research costs offered to the Awardee are subject to the discretion of the Program Sponsors, as set out in the Fellowship Grant Funding Details. Funding is offered subject to the availability of funds, which could be varied in the event of unforeseen circumstances.
- (i) The Research Entity acknowledges and agrees that:
 - i. the Fellowship Grant Funding set out in the Fellowship Grant Funding Details is the entirety of funding which the Program Sponsors are prepared to provide for the Project Activity; and

- ii. the Program Sponsors are under no obligation to, and have given no undertaking or assurance that they will, provide any further funding in respect of the Project Activity

2.7 Use of Funding

- (a) Fellowship Grant Funding is to provide salary support for FTE (or pro rata thereof) for research duties, as well as contribute to direct research costs (consumables) up to a maximum amount per annum. The duration of each Fellowship can be up to three years, depending on the extent of the CHR proposal.
- (b) During the Fellowship Term, clinical, academic, or other professional part- time duties in a WA based hospital or health services provider organisation or WA based tertiary institution may be continued but research duties at the Research Entity or another WA research institute or organisation must be maintained at a minimum of 0.5 FTE. Should this requirement cease to be met for whatever reason, then the Fellowship Grant Funding may also cease or be suspended, unless special circumstances apply (e.g. carer leave including parental leave, where funding may be suspended and/or deferred).
- (c) Use of Fellowship Grant Funding is limited to the following:
 - i. contributions to base salary components (incl. holiday, annual or compassionate leave taken) with a maximum value per annum (excl. on- costs) specified in the Fellowship Grant Funding Details; plus
 - ii. up to an additional percentage specified in the Fellowship Grant Funding Details of the base salary component amount as on- costs¹ (incl. super limited however to the equivalent of the ATO super guarantee levy) per annum; plus
 - iii. direct research costs (**DRC**) allowance of up to a maximum amount ²per annum specified in the Fellowship Grant Funding Details.
- (d) The base salary component may be applied towards payment of salary due during holiday, annual or compassionate leave taken, but not towards entitlements for any untaken annual leave, long service leave, extended leave (incl. parental leave) or severance, redundancy and termination payments that may arise or be accrued during the Fellowship Term.
- (e) Any salary, severance and termination payments and long service leave or extended leave (incl. parental leave) entitlements related to or leave entitlements accrued in non- Fellowship roles are not supported and must not be paid for with the Fellowship Grant Funding.
- (f) Any salary, on- cost or other expenses related to the Awardee for the awarded Fellowship FTE (or pro rata thereof) and Fellowship Term which is beyond the awarded Fellowship Grant Funding is the responsibility of the Employer and/or Research Entity. If the Awardee moves to a higher position classification (e.g. from research officer to research fellow), this does not affect the Fellowship Grant Funding, which remains

¹ This on- costs percentage may be less than what the Research Entity usually provides to its researchers. The Project Sponsors expect that the Research Entity will contribute any shortfall.

² This DRC allowance may be less than what the Research Entity usually provides to its researchers. The Project Sponsors expect that the Research Entity will contribute any shortfall.

funded and payable at the position classification applicable at the time of application as set out in the Fellowship Grant Funding Details.

- (g) The DRC allowance can be requested and applied without further approval towards defraying the cost of items directly related to the research/ research outcomes e.g.: access to relevant research databases, pathology tests, consumables, paper publishing costs. Annual acquittal statements will be required.
- (h) Additional research project costs, not included in the Fellowship Grant Funding, will need to be obtained by the Awardee. Requests for travel funds and any/additional publication fees will not normally be approved.
- (i) Fellowship Grant Funding must not be applied towards or offset against facility, administrative or other indirect costs that would be provided by an institution in the normal course of undertaking and supporting health and medical research (e.g.: those costs often incurred for common or joint objectives, utilities and services, regulatory and research compliance and administration of research services).
- (j) Fellowship Grant Funding is based on the awarded Fellowship FTE pro rata (up to 100%), Fellowship Term and direct research costs and this funding amount is final. In the event the Awardee incurs additional expenses for whatever reason, these will not be paid by the Program Sponsors.
- (k) Fellowship deferrals will be supported (upon request) in relation to carer responsibilities and major illness or injury.
- (l) Equipment purchased with the Fellowship Grant Funding remains the property of the Research Entity.
- (m) Funding that is advanced by the Program Administrator, used for purposes other than that for which it was awarded or is unspent at the conclusion of the Fellowship Term, is repayable to the Program Administrator and shall revert to the Program Sponsors.

2.8 Supervision and Mentoring Responsibilities of Research Entity

The Research Entity must:

- (a) identify, nominate and make available to the Awardee a suitably qualified senior/established researcher active in CHR, as a Research Supervisor and mentor, who will undertake to stringently monitor and review the Project Activity progress. The Research Supervisor must be available to provide guidance and advice to the Awardee regarding the Awardee's career progression in CHR and provide expert advice on the design and statistical analyses of the Project Activity as well as providing guidance, encouragement and ongoing support during the Fellowship Term; and
- (b) provide opportunities for the Awardee to progress and develop their CHR skills and research project management capabilities, including by making available research facilities, conference attendance grants and publishing opportunities and support.

2.9 Effect of Event of Default

If an Event of Default occurs, the Program Administrator may in addition to its other rights under the Funding Agreement and at Law do any one or more of the following by giving the affected parties notice:

- (a) to terminate the Funding Agreement, in which case the Funding Agreement will be terminated from the date specified in the notice; or
- (b) to suspend the performance of the Program Administrator's obligations until such time as the Program Administrator is satisfied in its absolute discretion that the Event of Default has been remedied, in which case the Program Administrator's obligations will be suspended from the date specified in the notice.

2.10 No further Funding and recovery of Funding

If the Funding Agreement is terminated under clause 2.9, or terminated or repudiated unlawfully by the affected party, then in addition to Program Administrator's other rights under the Funding Agreement and at Law:

- (a) there is no further obligation to pay any part of the Fellowship Grant Funding which has not yet been paid to the Employer; and
- (b) the Employer must repay to the Program Administrator within 15 Business Days from the termination date specified by the Program Administrator all Fellowship Grant Funding paid under the Funding Agreement that has not been spent or committed for expenditure by the termination date specified by the Program Administrator.

2.11 Termination by Program Administrator – change in Program or policy

- (a) If the Program is curtailed or suspended, or absorbed or merged with another research program or there is a change in the policy of the Program Sponsors or in State Government policy which impacts on the Funding Agreement, the Program Administrator may terminate the Funding Agreement by giving the affected parties notice.
- (b) If the Program Administrator gives notice of termination of the Funding Agreement under clause 2.11(a), the affected parties must:
 - i. comply with any instructions given in Program Administrator's notice in relation to the Project Activity or their obligations; and
 - ii. take all reasonable measures to minimise their loss resulting from the Program Administrator's notice.
- (c) If the Program Administrator terminates the Funding Agreement under clause 2.11(a), the Program Administrator will pay, subject to clause 2.11(d):
 - i. any amount of the Fellowship Grant Funding which was already due and payable at the date of the Program Administrator's notice; and
 - ii. to the extent they are not covered by any Funding amount the Program Administrator will pay to the Research Entity under clause 2.11(c)(i), an amount equal to the reasonable expenses which are directly related to the termination of the Funding Agreement and which the affected parties have incurred despite their compliance with clause 2.11 (b),
 - iii. up to a maximum of the total amount of Funding.

- (d) The Program Administrator will not pay the affected parties:
- i. any amount under clause 2.11(c) if an Event of Default subsists; or
 - ii. any other amounts, including any amounts in relation to compensation for loss of profits or loss of opportunity.

2.12 Transition of Project Activity

On expiry or termination of the Funding Agreement for any reason or if the Awardee ceases to carry out the Project Activity, the Research Entity will, on request by the Program Administrator:

- (a) give to the Program Administrator or to another person as the Program Administrator direct any Records held by or under the control of the Research Entity; and
- (b) return to the Program Administrator any material or correspondence which was given to the affected parties relating to the Project Activity.

3. Conflict of Interest

3.1 Warranty

The Research Entity warrants that, to the best of its knowledge and belief after making diligent inquiry:

- (a) Neither it nor the Awardee have any Conflict of Interest; and
- (b) no Conflict of Interest is likely to arise during the Fellowship Term.

3.2 Reasonable Steps

The Research Entity must take all reasonable steps to ensure that no Conflict of Interest arises or subsists during the Fellowship Term.

3.3 Disclosure

If during the Fellowship Term the Awardee or the Research Entity become aware of a Conflict of Interest or any matter that gives rise to a Conflict of Interest, the Research Entity must:

- (a) as soon as practicable give notice to the Program Administrator of the Conflict of Interest, providing details and all relevant information as to the Conflict of Interest and of the steps proposed to be taken to resolve or manage it; and
- (b) take such steps as the Program Administrator may reasonably require be taken to resolve or manage the Conflict of Interest.

4. Research Governance Requirements

- (a) Each Project Activity supported through the Program must be conducted in accordance with the Australian Code for Responsible Conduct of Research¹⁰.
- (b) The Research Entity will be responsible for obtaining any research ethics and governance approvals that might be required for undertaking the Project Activity prior to the commencement of the Project Activity and ensuring these approvals are maintained as required for the duration of the Project Activity.
- (c) Research ethics approvals must be obtained from appropriate ethics committees (human and/or animal). Research governance authorisation (also known as site specific

authorisation) must be obtained from each relevant institution/site where the project activity is conducted or providing access to data, participants, or tissue samples.

- (d) For information on research ethics and governance submission requirements for the WA public health system please refer to the following websites: Research Ethics;¹¹ Research Governance¹²; Multi-centre Research.¹³

5. Use of Data Collections

- (a) Project Activity that requires access to and use of WA Department of Health data collections requires review and approval for data release in accordance with the [Health Services Act 2016](#) and the [Health Services \(Information\) Regulations 2017](#). This is in addition to research ethics and governance approvals and will include a feasibility assessment to determine whether the data requested is appropriate for the purposes of the study and approval for use of the data, from the data custodian. Preliminary cost and time estimates can be obtained from contacting DataServ@health.wa.gov.au.
- (b) If the use of WA Department of Health data collections is proposed, reference should be made to the Research Data Services website^{14,15}.

6. Intellectual Property

- (a) The ownership of Intellectual Property produced by the Awardee or otherwise in the course of the Fellowship and conducting the Project Activity shall vest with the employing Research Entity. Intellectual Property that is produced in conjunction with an external host research group or other organisation shall be owned and controlled consistently with the relevant IP research policies of the relevant employing Research Entity.
- (b) The employing Research Entity must agree to the following licence terms:

Subject to the confidentiality provisions of the Agreement, Research Entity hereby grant to WA Health, a non-exclusive, irrevocable, perpetual, royalty-free licence to use (excluding the ability to sub-licence or grant further licences) any of the Intellectual Property generated in the Project Activity, and which falls within the scope of WA Health's normal activities. This includes, but is not necessarily limited to, activities related to healthcare provision, teaching, training and research. This license does not automatically extend to any potential or eventual commercial development of the Intellectual Property, and any commercial products that might directly or indirectly result from the Project Activity Intellectual Property. However, where the Research Entity believes that there is the potential for commercialisation of the Intellectual Property developed in the course of the Project Activity, both Parties shall negotiate in good faith the appropriate legal and beneficial interests, rights and access to the Intellectual Property by WA Health.
- (c) The employing Research Entity must ensure that appropriate agreements are in place with the Fellow, Research Supervisor and participating entities to give effect to this Clause 6. This includes relevant permissions to use third-party IP required to deliver the Project Activity. When a recipient or a project team member(s) from the WA public health system is a participant (i.e. the WA public health entity is not the Research Entity), the IP

agreement must be authorised at an appropriate level by the relevant WA public health system entity.

- (d) Any questions regarding such IP matters should, in the first instance, be directed to Program Administrator.

7. Reports

- (a) At the completion of each calendar year, the Research Entity is required to provide an Annual Progress Report, including an annual acquittal statement of expenditure of the funds during that calendar year.
- (b) If a satisfactory Annual Progress Report is not provided, then funding may be suspended or terminated.
- (c) At the completion of the Fellowship Term, the Research Entity is required to submit:
 - i. a Final Report; and
 - ii. an acquittal statement of the expenditure of funds that is certified by the relevant finance officer of the relevant Research Entity.
- (d) If a satisfactory Final Report and/or Acquittal Statement is not provided when requested, the Awardee and/or the Research Entity may not be eligible for future funding through all or any of the Project Sponsors.
- (e) Guidelines, templates and due dates for reports and the acquittal statement will be provided to the Research Entity by the Program Administrator as required.
- (f) Fellowship alumni will be asked to take part in follow-up questionnaires to evaluate research performance and impact that has come about after Fellowship funding and will inform the review of future funding programs. Alumni are asked to keep the Program Administrator updated with any changes to their contact information.

8. Professional Development

Fellows are encouraged, during the Fellowship Term, to:

- (a) seek an adjunct or honorary title with a WA University or other WA-based NHMRC-approved administering institution in order to apply for NHMRC funding;
- (b) familiarise themselves with the policies and procedures and timelines for applying for NHMRC's Investigator Grants Emerging Leadership scheme; and
- (c) complete the WA Health Translation Network (WAHTN) Research Education and Training Program (RETP) Good Clinical Practice course, and other relevant WAHTN RETP courses.

9. Acknowledgement

- (a) The Minister for Medical Research will publicly announce the WA ECCHRF Awardees. All parties are requested to withhold announcement/media coverage until after the Program Administrator advises this has occurred.
- (b) Acknowledgment of the Program Sponsors support should be made as opportunities arise in publications, conference presentations, public discussion, press statements etc, as appropriate. The preferred citation is:

“This work is/has been supported through the Western Australian Early-Career Child Health Researcher Fellowships Program, which is a co-funded partnership program of the Future Health Research and Innovation Fund and BrightSpark Foundation”.

- (c) References to the Fellowship should include the correct title: “*Western Australian Early-Career Child Health Researcher Fellowship*”.

10. Dissemination

- (a) The Research Entity is requested to forward copies of publications and other research communication activities resulting from the funded Fellowship to the Program Administrator.
- (b) In order to maximise knowledge exchange, the Research Entity must comply with the NHMRC’s ‘Publication and dissemination of research: a guide supporting the Australian Code for the Responsible Conduct of Research’, which can be downloaded from the [Australian Code for the Responsible Conduct of Research](#) page, and the NHMRC’s [Open Access Policy](#).
- (c) All peer-reviewed publications that are supported in whole or in part by the Program Sponsors must be made immediately open access, that is, without any embargo period at the time of first online publication, regardless of whether such publication is an advanced or early online publication or the Version of Record. Awardees are encouraged to upload to a pre-print site any draft publication or report resulting in whole or in part from the funded Project Activity prior to submission to a peer-reviewed publication (if permitted by the publisher) The Research Entity must notify the Program Administrator of all publication DOIs. If the paper is peer-reviewed and published, the Research Entity must notify the Program Administrator of the publication DOI.
- (d) The corresponding author’s ORCiD should also be notified to the Program Administrator.

11. Privacy Statement

- (a) In this Privacy Statement, the term Personal Information has the meaning given to that term in the Privacy Act 1988 (Cth).
- (b) The Program Administrator will ensure that any Personal Information received from an applicant in connection with their application is used and disclosed only to the extent

necessary for the purposes of assessment of the application, any award made and any required reporting requirements by law or by a Regulatory Authority.

- (c) The Program Administrator will take all reasonable steps to ensure that Personal Information managed by it in connection with the application and any award is protected against misuse, interferences and loss, and from unauthorised access, modification and disclosure.
- (d) By submitting an application, the applicant acknowledges that the Program Administrator may use their Personal Information for purposes in connection with the application and any award and may disclose their Personal Information to the Research Entity for the purposes of any award.

12. Claims, Liability, Indemnity and Insurance

12.1 Claims

- (a) In respect of each Research Team Member, the Research Entity must, subject to its legal and confidentiality obligations:
 - i. notify the Program Administrator of any actual, pending or threatened Claim against any Research Team Member relating to or arising from the Project Activity as soon as practicable after first becoming aware of that Claim;
 - ii. notify the Program Administrator immediately if a Research Team Member is in breach of any Law, receives an audit qualification, or fails to obtain or is under scrutiny through an inquiry or decree in respect to (as applicable) any Authorisation or agreement, order or award which is required in order to carry out or continue to the Project Activity; and
 - iii. notify the Program Administrator immediately of becoming aware of any fraud or corruption in relation to the Project Activity, the Funding or the Funding Agreement.

12.2 Liability

- (a) The Program Sponsors or the Program Administrator are not responsible or liable in any way for the success or otherwise of the Project Activity or for any Losses suffered by any of the Research Team Members in carrying out the Project Activity.
- (b) No party gives any warranty that the aims of the Project Activity will be achieved, or that the results of the Project Activity will be accurate for fit for any particular purpose. If a party makes use of any Project Activity outcome then it does so at its own risk.
- (c) No party is liable to the other in respect of any Consequential Loss suffered or incurred by the other party. “*Consequential loss*” means: (a) in the case of a breach of Funding Agreement, any cost, expense, loss or damage that may not fairly or reasonably be considered as arising naturally from that breach of Funding Agreement; (b) loss of profit or revenue; (c) loss of savings; (d) loss of third party contract; (e) loss of goodwill; (f) loss of opportunity; (g) any loss arising from business interruption; and (h) loss of data.

- (d) Each party's total liability arising out of or related to this Funding Agreement, whether based on contract, tort (including negligence), or any other legal or equitable theory, shall not exceed the total amount of the Fellowship Grant Funding amount disbursed to the Research Entity under this Funding Agreement.

12.3 Indemnity

- (a) The Research Entity agrees to indemnify BrightSpark and the Program Administrator from and against all Claims or Liability incurred by or brought against BrightSpark or the Program Administrator or any of their officers, employees and agents caused by, arising out of or relating directly or indirectly to any:
- i. breach of or failure to perform obligations under the Funding Agreement; or
 - ii. negligent act or omission or wilful misconduct of the Research Entity or their employees, contractors, officers or agents in the performance of this Agreement; or
 - iii. breach of a Law by any of the Research Team Members or any of their employees, contractors, officers or agents in conducting the Project Activity.
- (b) The liability of the Research Team Members under this clause will be reduced proportionally to the extent that any Claims or Liabilities result from the negligence of the Program Sponsors or the Program Administrator or any of their officers, employees or agents.

12.4 Insurance

- (a) Before commencing the Project Activities, the Research Entity must have:
- i. public and third-party liability insurance for not less than \$20 million. The insurance policy shall cover the Research Entity's liability to the Project Sponsors
 - ii. or loss of or damage to property and death or injury to any person arising out of the conduct of the Project Activities; and
 - iii. workers compensation and employers' liability insurance against liability for death of or injury to any Research Team Members or other workers or employees engaged on or in relation to the Project Activity.
- (b) The Research Entity must maintain such insurances for the duration of the Fellowship Term and produce evidence of insurances if requested.

13. GST

13.1 GST gross up

If a party makes a supply under or in connection with this document in respect of which GST is payable, the consideration for the supply but for the application of this clause 10 (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

13.2 Reimbursements

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 10.

13.3 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with this document until it receives a tax invoice for the supply to which the payment relates.

14. Notices and Other Communications

14.1 Service of notices

A notice, demand, consent, approval or communication under the Funding Agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or email to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.

14.2 Effective on receipt

A Notice given in accordance with clause 014 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) If hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by email, on the date the email is sent if the Party giving the notice has a confirmation report or any other written evidence that the email has reached the recipient's mailbox

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

15. Miscellaneous

15.1 Alterations

This document may be altered only in writing signed by each party. However, the Program Administrator may amend this document, by giving reasonable prior notice to the Research Entity, of those amendments which, acting reasonably, the Program Administrator considers are required:

- (a) due to changes outside of the control of the Program Sponsors which affect the ECCHR Fellowship Program, such as changes in government policy settings for research funding that apply generally to Research Entities in WA and/ or changes to government policy or applicable legislation affecting the taxation treatment of donations to charities such as BrightSpark; or

- (b) arising from operating experience and learnings from administering the Program, (particularly including feedback received from Program Sponsors, Applicants, Awardees and Research Entities), to improve market appeal of, and administrative efficiencies in designing, implementing and managing, the Fellowships Program, providing that does not detract materially from the aim, objectives and overall monetary value of the Fellowship.

15.2 Approvals and consents

Except where this document expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this document.

15.3 Assignment

A party may only assign this document or a right under this document with the prior written consent of each other party.

15.4 Costs

Each party must pay its own costs of negotiating, preparing and executing this document.

15.5 Survival

Any indemnity or any obligation of confidence under this document is independent and survives termination of this document. Any other term by its nature intended to survive termination of this document survives termination of this document.

15.6 No merger

The rights and obligations of the parties under this document do not merge on completion of any transaction contemplated by this document.

15.7 Entire agreement

This document constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

15.8 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this document and any transaction contemplated by it.

15.9 Severability

A term or part of a term of this document that is illegal or unenforceable may be severed from this document and the remaining terms or parts of the terms of this document continue in force.

15.10 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

15.11 Relationship

Except where this document expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

15.12 Confidentiality

A party may only use confidential information of another party for the purposes of this document, and must keep the existence and the terms of this document and any confidential information of another party confidential except where:

- (a) the information is public knowledge (but not because of a breach of this document) or the party has independently created the information;
- (b) the confidential information is received by a party seeking to disclose it from an independent third party on a non-confidential basis (unless it knows or ought to know that the third party did not have the right to disclose it on such basis); or
- (c) is independently created by the party seeking to disclose it, the reasonable proof of which is upon that party;
- (d) disclosure to the extent it is required by Law or a Regulatory Authority; or
- (e) disclosure is made to a person who must know for the purposes of this document on the basis that the person keeps the information confidential.

For the purposes of this clause 15.12, "Confidential Information" means:

- (a) any information disclosed by a third party to the other party for the purpose of or in connection with the Funding Agreement that is designated by the disclosing party in writing as confidential at the time of disclosure (or in the case of oral disclosure, advised to be confidential at the time of disclosure and confirmed in writing within 5 days); and
- (b) any financial, commercial or business information disclosed by a party to the other party for the purpose of or in connection with the Funding Agreement.

15.13 Announcements

A public announcement in connection with this document or any transaction contemplated by it must be agreed by the parties before it is made, except if required by Law or a Regulatory Authority, in which case the party required to make an announcement must, to the extent practicable, first consult with and take into account the reasonable requirements of each other party.

15.14 Governing law and jurisdiction

This document is governed by the law of Western Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of Western Australia.

15.15 Counterparts

This document may be executed in counterparts. All executed counterparts constitute one document.

15.16 Attorneys

Each of the attorneys (if any) who executes this document declares that he has no notice by any means of the revocation of the power of attorney pursuant to which he executes this document.