



**WESTERN AUSTRALIAN HEALTH
PROMOTION FOUNDATION
(Healthway)**

and

**ORGANISATION
(Recipient)**

HEALTH PROMOTION RESEARCH FELLOWSHIP AGREEMENT

EXAMPLE ONLY

Agreement Dated

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

Organisation
ABN
(Recipient)

1. Definitions and interpretation

1.1. Definitions

In this Agreement unless the context otherwise requires:

- (1) **Act** means the *Western Australian Health Promotion Foundation Act 2016 (WA)*;
- (2) **Agreement** means this document, including the Application Form and any schedule or annexure to this Agreement;
- (3) **Allowances** means the amount set out in Item 3 of Schedule 1 which can only be spent in accordance with clause 5.4;
- (4) **Application Form** means the Healthway Research Fellowship Application Form submitted by the Recipient to Healthway seeking the Grant;
- (5) **Approved Budget** means the budget submitted in the Application Form relating to the use of the Grant approved by Healthway before the payment of the Grant, as varied with the approval of Healthway from time to time;
- (6) **Auditing Party** has the meaning given in clause 6.7;
- (7) **Breach** means a breach of a Provision;
- (8) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (9) **Commencement Date** means the date set out in Item 4 of Schedule 1;
- (10) **Commonwealth** means Commonwealth of Australia;
- (11) **Completion Date** means the date set out in Item 5 of Schedule 1;
- (12) **Consent** means prior written consent;
- (13) **Contractor** means contractor, consultant, subcontractor or subconsultant at any tier;
- (14) **Corporations Act** means the *Corporations Act 2001 (Cth)*;
- (15) **Event of Default** has the meaning given in clause 17.1;

- (16) **Fellowship Awardee** means the person stated in Item 1 of Schedule 1;
- (17) **Fellowship Supervisor(s)** mean the person(s) stated in Item 2 of Schedule 1;
- (18) **Financial Reports** has the meaning set out in Item 7 of Schedule 1;
- (19) **Governmental Agency** means any government and any governmental body whether:
- (a) Legislative, judicial or administrative;
 - (b) A department, commission, authority, tribunal, agency or entity; or
 - (c) Commonwealth, State, territorial or local,
- but does not include a governmental body in respect of any service or trading functions as distinguished from regulatory or fiscal functions;
- (20) **GST** has the meaning given in clause 19.1(1);
- (21) **GST Act** has the meaning given in clause 19.1(1);
- (22) **GST law** has the meaning given in clause 19.1(3);
- (23) **Grant** means the amount payable by Healthway to the Recipient as set out in Item 3 of Schedule 1;
- (24) **Grant Objectives** means the objectives as detailed in the Application Form;
- (25) **Healthway Objective** means the objective of the Healthway Research Fellowship program being to increase the number of experienced and trained researchers working in health promotion research within Western Australia;
- (26) **Information** means information, data, records and documentation;
- (27) **Insolvency Event** means the happening of any of these events in relation to a party (**Defaulting Party**):
- (a) execution or other process of a court or authority or distress is levied for an amount exceeding \$10,000 upon any of the Defaulting Party's property and is not satisfied, set aside or withdrawn within 7 days of its issue;
 - (b) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Defaulting Party which is not satisfied within 7 days;
 - (c) the Defaulting Party suspends payment of its debts;
 - (d) where the Defaulting Party is a body corporate:
 - (i) the Defaulting Party becomes an externally-administered body corporate under the Corporations Act;
 - (ii) steps are taken by any person towards making the Defaulting Party an externally-administered body corporate (but not where the steps taken

consist of making an application to a court and the application is withdrawn or dismissed within 14 days);

- (iii) a controller (as defined in section 9 of the Corporations Act) is appointed of any of the property of the Defaulting Party or any steps are taken for the appointment of a controller (but not where the steps taken are reversed or abandoned within 14 days);
 - (iv) the Defaulting Party is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act; or
 - (v) a resolution is passed for the reduction of capital of the Defaulting Party or notice of intention to propose such a resolution is given, without the prior written consent of the other party;
- (e) where the Defaulting Party is a natural person:
- (i) the Defaulting Party authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors;
 - (ii) a person holding a security interest in assets of the Defaulting Party enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; or
 - (iii) the Defaulting Party commits an act of bankruptcy; or
- (f) an event happens analogous to an event specified in clauses 1.1(23)(a) to 1.1(23)(e) to which the law of another jurisdiction applies and the event has an effect in that jurisdiction similar to the effect which the event would have had if the law of Australia applied;

(28) **Insurance Policy** has the meaning given in clause 14.1;

(29) **Intellectual Property** includes:

- (a) all trademarks, names and logos;
- (b) all copyright works;
- (c) all registered and registrable designs;
- (d) all patents and patentable inventions; and
- (e) any improvements to the items referred to at clauses 1.1(26)(a) to 1.1(26)(d);

(30) **Invitee** means invitee, licensee or guest;

(31) **Law** means any rule or requirement of a statute, subsidiary legislation, the common law of equity;

(32) **Legal Rights** means the rights of any person at or under any Law;

(33) **Liability** means a claim, demand, lawsuit, cause of action, action or the like;

- (34) **Loss** includes damage, loss, Liability, costs and expenses;
- (35) **Notice** has the meaning given in clause 26.1;
- (36) **Officer** means member, employee, representative, volunteer, agent or contractor;
- (37) **Participate in** means enter into, perform or continue to perform;
- (38) **Policy** means any policy, guidelines or rules of the State or Healthway including those set out at Healthway's website at www.healthway.wa.gov.au;
- (39) **Precluded Contract** means any contract, arrangement or dealing which involves the promotion, advertising or endorsement of alcohol, food and beverages with low nutrients and high in kilojoules, saturated fat, added sugar or added salt, the promotion of gambling products to underage audiences, and tobacco products (including cigarettes, heated tobacco products, e-cigarettes, vaping devices and other novel tobacco products);
- (40) **Provision** means term, condition, stipulation or warranty of or in this Agreement;
- (41) **RCTI** has the meaning given in clause 19.1(2);
- (42) **Records** has the meaning given in clause 6.6;
- (43) **Research Program** means the research program detailed in the Application Form and undertaken by the Recipient under this Agreement to achieve the Grant Objectives in compliance with the Healthway Objective;
- (44) **Research Program Reports** has the meaning set out in Item 8 of Schedule 1;
- (45) **Special Conditions** means the conditions, if any, described in Item 9 of Schedule 1;
- (46) **State** means the State of Western Australia and includes any agency, agent, instrumentality or emanation thereof;
- (47) **Term** means the period beginning on the Commencement Date and ending on the earlier of the Completion Date or the termination of this Agreement;
- (48) **Warranty** means any warranty given by the Recipient under or in connection with this Agreement; and
- (49) **Wrong** includes a Breach, offence, tortious, actionable or civil wrong, or any breach of a Law.

1.2. Interpretation

- (1) In this Agreement, unless the context otherwise requires, reference to:
- (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;

- (d) a party includes the party's executors, administrators, successors and permitted assigns;
 - (e) a thing includes the whole and each part of it separately;
 - (f) a statute, regulation, code or other law or a provision of any of them includes:
 - (i) any amendment or replacement of it; and
 - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
 - (g) dollars means Australian dollars unless otherwise stated.
- (2) "Including", "for example" and similar expressions are not words of limitation.
 - (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
 - (4) Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.
 - (5) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
 - (6) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

1.3. Parties

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

2. Special Conditions

- 2.1. The Recipient must comply with the special conditions, if any, relating to the Grant specified in Item 9 of Schedule 1 (**Special Conditions**).
- 2.2. The Special Conditions are for the sole benefit of Healthway and may only be waived in writing by Healthway.

3. Grant

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

4. Manner of payment

4.1. Subject to clause 4.3, Healthway will pay the Grant:

- (1) on satisfaction by the Recipient of any Special Conditions, as determined by Healthway in its absolute discretion;
- (2) on any applicable Ethics clearance being obtained and forwarded to Healthway; and
- (3) in the manner specified in Item 6 of Schedule 1.

4.2. The payment of any amount by Healthway under this Agreement, including the Grant, is subject to Healthway having sufficient money available for grants as determined in accordance with the Act. Healthway may in its absolute discretion determine whether it has sufficient money available for payment of the Grant, whether in whole or in part.

4.3. If Healthway determines that it does not have sufficient money for the payment of all or any part of the Grant, Healthway may either;

- (1) reduce the amount of the Grant that remains due to the Recipient under this Agreement; or
- (2) terminate this Agreement by giving not less than 90 days' notice in writing to the Recipient, which termination the Recipient agrees brings to an end the obligation of Healthway to pay any further unpaid Grant monies and does not give rise to any right or claim by the Recipient against Healthway.

5. General obligations of Recipient

5.1. The Recipient must use the Grant only for the Grant Objectives. The Recipient must not use the Grant for any other purpose without first obtaining written approval from Healthway.

5.2. The Recipient must not make any changes to the nominated Fellowship Supervisor(s) without first obtaining written approval from Healthway.

5.3. Expenditure of the Grant, including any Allowances paid by the Recipient to the Fellowship Awardee, shall only be in accordance with the Approved Budget. Prior approval from Healthway must be obtained for any variations in expenditure on the budget items.

5.4. The Recipient must ensure that any Allowances paid by the Recipient to the Fellowship Awardee are used only to cover the following items:

- (1) **Research Program Costs:** Funds of up to \$6,500 per annum may be used for Research Program costs. Funds may be used for equipment and consumable materials, where such items are necessary for the Research Program. The Recipient will require the Fellowship Awardee to justify to their Fellowship Supervisor the necessity for such funds. No further credit for these items will be available from Healthway. The purchase of computer equipment will not be funded by Healthway without prior written approval by Healthway;

- (2) Travel: Funds of up to \$2,000 may be used for the purpose of the Fellowship Awardee attending a face-to-face or virtual conference, course or meeting that is relevant to the Research Program which has been approved in writing by their Fellowship Supervisor. These funds may also be used for one overseas trip approved in writing by the Fellowship Supervisor, but no more than \$2,000 can be used in any one year. The costs can include one economy return air fare per year, accommodation and conference registration fees. The purchase of food cannot be included.
 - (3) Texts: Funds of up to \$250 per annum may be used to reimburse the Fellowship Awardee for text books related to the Research Program; and
 - (4) Thesis: A single contribution of up to \$500 for Masters and \$1,000 for Doctorate degrees is available toward preparation of the thesis for examination.
- 5.5. Unspent annual Allowances may only be carried forward into the following year of the Term with Healthway's prior written approval. Any Allowances which have not been spent or committed by the end of the Term will be returned to Healthway by the Recipient.
- 5.6. In accepting the Grant, the Recipient undertakes to provide normal overhead expenses in maintenance charges and no portion of the Grant will be applied for these purposes. Further, no part of the Grant will be used to fund the Recipient's infrastructure costs.
- 5.7. If:
- (1) the full amount of the Grant, including any Allowances, is not used for the Grant Objectives; or
 - (2) any misleading information or error in the Application Form or other materials supplied to Healthway by the Recipient results in more money being paid to the Recipient than is required in order to fulfil the Grant Objectives,
- then the Recipient must on request by Healthway immediately repay the unused amount of the Grant or over payment of the Grant to Healthway.
- 5.8. The Recipient intends that the Fellowship Awardee will undertake the Research Program under the Recipient's supervision, however the Recipient remains liable for the:
- (1) performance of the Research Program and the Recipient's other obligations under this Agreement; and
 - (2) acts and/or omissions of the Recipient.
- 5.9. Without limiting clause 5.5, the Recipient remains solely responsible for the engagement of the Fellowship Awardee and will ensure that the Fellowship Awardee undertakes the Research Program in compliance with this Agreement, including that the Fellowship Awardee devotes sufficient time to the completion of the Research Program.
- 5.10. If during the Term, the Fellowship Awardee is unable to continue with the Research Program, the Recipient must notify Healthway in writing immediately.
- 5.11. Nothing in this Agreement will be construed as implying that the relationship between the parties and/or between a party and the Fellowship Awardee is that of partners, joint venturers or employer/employee.

- 5.12. The Fellowship Awardee and the Recipient must ensure that the Grant provided by Healthway is publicly acknowledged in connection with any other relevant report or publication. Best endeavours are required to promote the role of Healthway and its corporate logo, to enhance community awareness of the authorising legislation, funding opportunities and funding achievements of Healthway. Any form of public acknowledgment which the Recipient proposes to make must first be approved by Healthway.
- 5.13. All publications of results of the Research Program shall acknowledge that the work reported on has been supported by Healthway. A copy of any journal publication and a copy of any report or book on work supported by the Grant shall be submitted following publication. Products resulting from the Research Program shall not be sold without the prior written approval of Healthway.
- 5.14. The terms of this Agreement must be kept confidential between the Recipient and its employees, legal advisers, auditors and consultants and may not be disclosed to any person by the Recipient except:
- (1) with the consent of Healthway; or
 - (2) if required by Law; or
 - (3) in connection with legal proceedings relating to this agreement; or
 - (4) if the information is generally and publicly available.
- 5.15. The Recipient must comply with all State and Commonwealth Laws which may apply to the Grant.
- 5.16. The Recipient must cooperate with Healthway to evaluate the Grant as required by Healthway, at Healthway's sole expense.
- 5.17. The Recipient must, under and in connection with this Agreement:
- (1) comply with all Laws and Policies; and
 - (2) not infringe any Legal Rights.

6. Reporting obligations of Recipient

- 6.1. The Recipient must provide the Research Program Reports on or before the dates specified in Item 8 of Schedule 1 in the format provided by Healthway.
- 6.2. The Recipient must cooperate with Healthway in clarifying any questions which are asked by Healthway in relation to the Research Program Reports and must provide any other Information connected with the Grant and the Research Program reasonably requested by Healthway as soon as that information is available.
- 6.3. One year after the Final Research Research Program Report referred to in Item 8 of Schedule 1 is received by Healthway, the Recipient will provide Healthway with details of all publications, presentations and application of results as a consequence of the Research Program. These details will be provided annually by the Recipient to Healthway until all publications, presentations or applications of results from the Research Program have ceased.

- 6.4. The Recipient must provide the Financial Reports on or before the dates specified in Item 7 of in Schedule 1. The Financial Reports must contain the details reasonably requested by Healthway. Healthway may ask questions in relation to the Financial Reports and the Recipient must ensure that full answers to those questions are provided as soon as reasonably possible.

Where Healthway has exempted the Recipient from providing audited financial statements as part of the Financial Reports, Healthway reserves the right during the Term to reverse its decision and require audited financial statements, in line with the financial reporting dates outlined in Item 7 of Schedule 1.

- 6.5. The Recipient must maintain detailed records of all expenditure items purchased with the Grant including details of all services paid for and all assets acquired.
- 6.6. Grant moneys not expended or committed at the Completion Date must be promptly returned to Healthway.
- 6.7. The Recipient must keep proper records of the Grant in accordance with:
- (1) generally accepted accounting principles and practices; and
 - (2) the minimum compliance requirements that Healthway must meet under the *State Records Act 2000* (WA), which are:
 - (i) storing, securing and safeguarding key Grant records, including original records, against loss or damage;
 - (ii) retention of the records for a minimum of seven (7) years (unless otherwise determined by Healthway); and
 - (iii) disposal of paper records by shredding and/or pulping and digital records using an appropriate secure method

(together the **Records**).

- 6.8. The Recipient must allow the Records to be inspected by:

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

(each an **Auditing Party**)

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

7. Co-Supporters

- 7.1. The Recipient, individuals and research groups involved in this Grant must not in relation to the Research Program directly or indirectly Participate in any Precluded Contract without Healthway's prior written consent which may be given conditionally or unconditionally, or withheld, at Healthway's discretion.
- 7.2. If Healthway gives its conditional consent, all such conditions must be complied with by the Recipient.

- 7.3. The Recipient must immediately disclose to Healthway the details of all Precluded Contracts it has Participated in, is Participating in, or will or intends to Participate in. This clause 7.3 is subject to clause 7.1.
- 7.4. The Recipient must comply with all directions given to it by Healthway in respect to any subject matter of, or relating to, the preceding provisions of this clause 7.
- 7.5. The Recipient must comply with the Co-Supporters Policy during the Term. The Policy is available from Healthway's website at www.healthway.wa.gov.au.
- 7.6. The preceding provisions of this clause 7 are fundamental terms of this Agreement.

8. Intellectual property

8.1. Use of Healthway's Intellectual Property

- (1) Healthway authorises the Recipient to use Healthway's Intellectual Property solely for the purpose of the Grant.
- (2) The Recipient must:
 - (i) ensure that its use of Healthway's Intellectual Property is consistent with the Grant Objectives and the Healthway Objective;
 - (ii) ensure that Healthway's Intellectual Property is not used in conjunction with any Co-Supporter's Intellectual Property, unless the Recipient has obtained Healthway's prior written consent; and
 - (iii) consult with Healthway if it is unsure whether any proposed use of Healthway's Intellectual Property is inconsistent with this clause 8.1.

8.2. Infringement of Healthway's Intellectual Property

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

8.3. Intellectual Property created under this Agreement

- (1) The ownership of any Intellectual Property created under this Agreement will vest, upon its creation, with the Recipient.
- (2) The Parties agree that ownership of the copyright in any thesis authored by the Fellowship Awardee in his/her capacity as a student of the Recipient remains with the Fellowship Awardee.

- (3) The Recipient and if necessary the Fellowship Awardee, grants to Healthway a perpetual, irrevocable, royalty-free and licence-fee free, worldwide, fully assignable, non-exclusive licence to use, copy, modify and exploit any such Intellectual Property created under this Agreement and indemnifies Healthway against all loss, liability or other liabilities resulting from the Recipient's failure to comply with this clause.

8.4. Registration and Commercialisation

- (1) With the consent of Healthway, the Recipient may at its own cost register, protect and enforce the Intellectual Property created by it under this Agreement.

9. Privacy

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

10. Freedom of information

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

11. Financial management

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

12. Risk management plan

- 12.1. The Recipient must, during the Term, maintain an appropriate risk management plan in respect of the Grant.
- 12.2. Without limiting clause 12.1, the Recipient must, during the Term, maintain appropriate risk management policies and practices in relation to the Research Program, including complying with AS/NZS ISO 31000:2009 Risk management - Principles and guidelines.

13. Warranties

- 13.1. In addition to any other Warranty the Recipient warrants that, as at the Commencement Date:
- (1) it is empowered to enter into this Agreement and to do all things that will be required by this Agreement;
 - (2) all things have been done or will be done as may be necessary to render this Agreement legally enforceable in accordance with its terms and fully valid and binding on it;
 - (3) the persons executing this Agreement on behalf of the Recipient have been duly appointed and have authority to bind the Recipient;
 - (4) it is not subject to an Insolvency Event;
 - (5) all information, (including promises, assertions, representations and projections) made or given by or on behalf of the Recipient in relation to or preparatory to the Grant (including such information, promises, assertions, representations and projections contained in the Application Form) is true, correct and complete and in no way misleading or deceptive;
 - (6) neither the Recipient nor any Officer of the Recipient has been convicted of a criminal offence that is punishable by imprisonment or detention; and
 - (7) it has no conflict of interest arising out of this Agreement.
- 13.2. Each Warranty is reported every day of the Term and if a Warranty becomes untrue or incorrect in any way, the Recipient shall promptly notify Healthway in writing, giving Healthway all relevant details.

14. Insurance

- 14.1. The Recipient must, during the Term, maintain:
- (a) a general public liability insurance policy which provides insurance cover for an amount in respect of any one occurrence of at least \$10,000,000 and covers the Recipient's liabilities to third parties whenever engaged in the Research Program; and
 - (b) any other insurance policy or policies which it would be reasonable for the Recipient to maintain in respect of the Research Program,
- (together the **Insurance Policy**).
- 14.2. The Insurance Policy must not contain provisions inconsistent with clause 15 or adverse to Healthway's interest.
- 14.3. The Recipient must provide Healthway with a copy of the Insurance Policy (including the schedule) and a certificate of currency issued under the Insurance Policy within 14 Business days after Healthway making a request for these. Healthway may make such a request at any time during the Term, at its absolute discretion.

15. Indemnity

- 15.1. The Recipient shall indemnify each of Healthway and the State (each an **Indemnified Party**) for, from, against and in respect of any and all Loss and Liability suffered, incurred or sustained by or made, brought or alleged against any Indemnified Party to the extent caused or contributed to by any Wrong committed by the Recipient or any Officer or Invitee of the Recipient.
- 15.2. The Recipient's liability under the indemnity in clause 15.1 will be reduced proportionally to the extent that any costs, losses, expenses, claims, damages or other liabilities result from the negligence of Healthway or its officers, employees or agents.

16. Information

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

17. Default

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

18. Termination

18.1. On termination of this Agreement:

- (1) except as otherwise provided for in this Agreement or at Law, this Agreement is no longer of any force or effect;
- (2) each party retains the rights it had against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by Law;
- (3) Healthway has no obligation to pay any part of the Grant to the Recipient on or after the date of termination; and
- (4) Subject to clause 18.1 (2), Healthway may request a refund of any amounts paid to the Recipient as part of the Grant, up to and including the date of termination, which has not been spent for an authorised purpose or otherwise remains unspent or uncommitted, and if Healthway makes such a request, the Recipient must promptly comply.

19. Goods and services tax

19.1. In this clause 19:

- (1) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended (GST Act) or any replacement or other relevant legislation and regulations;
- (2) **RCTI** means a recipient created tax invoice as referred to in section 29-70(3) of the GST Act;
- (3) words or expressions used in this clause 19 which have a particular meaning in the **GST law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires however the term "Recipient" has the meaning defined by this Agreement;
- (4) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
- (5) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
- (6) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

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

- 19.3. To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is to be paid or provided.
- 19.4. To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.
- 19.5. If the Recipient is registered for GST:
- (1) Healthway will issue RCTIs in respect of the Grant; the Recipient will not issue tax invoice in respect of the Grant where Healthway has issued a RCTI;
 - (2) the Recipient warrants that it is registered for GST at the time of entering into this Agreement and will notify Healthway if the Recipient ceases to be registered for GST during the Term;
 - (3) Healthway acknowledges that it is registered for GST and agrees that it will notify the Recipient if it ceases to be registered;
 - (4) the Recipient will remit the GST liability in respect of the Grant to the Australian Taxation Office in accordance with the GST law; and
 - (5) Healthway may issue an adjustment note in relation to GST adjustment events, where appropriate.

20. Further assurance

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

21. Entire understanding

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

22. Variation

- 22.1. Subject to clause 22.2, an amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.
- 22.2. Any reference in this Agreement to a Policy, document or information available from Healthway's website at www.healthway.wa.gov.au is a reference to that Policy, document or information as amended or updated from time to time, and any such amendment or update is deemed to be an automatic variation to this Agreement. The Recipient acknowledges that Healthway is under no obligation to give the Recipient notice of any such amendment or update, and the Recipient will, during the Term, regularly visit Healthway's website to check for any such amendment or update.

23. Waiver

- 23.1. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 23.2. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 23.3. A waiver is not effective unless it is in writing.
- 23.4. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

24. Costs and outlays

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

25. Assignment and sub-contracting

- 25.1. The Recipient must not sell, transfer, assign, mortgage, charge or otherwise dispose of or deal with any of its rights or obligations under this Agreement (or attempt to do any of those things) except with the prior written consent of Healthway.
- 25.2. The Recipient must not subcontract the performance of the whole or any part of its obligations under this Agreement except with the prior written consent of Healthway.
- 25.3. Healthway is not required to give consent or to justify the withholding of consent under this clause 25.

26. Notices

- 26.1. Each communication (including each notice, consent, approval, request and demand) in accordance with or in connection with this Agreement (in this clause 26, **Notices**):

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

- 26.2. All Notices must be:

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

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

- 26.3. Subject to clause 26.4, a Notice is taken to be received by the addressee:
- (1) in the case of prepaid post, on the third business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (2) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email from the recipient stated below; and
 - (3) in the case of delivery by hand, on delivery.
- 26.4. If the Notice is taken to be received on a day which is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day.

26.5. Healthway's address for service is:

Name : Western Australian Health Promotion Foundation
Attention : Director Health Promotion
Address : Locked Bag 66, Subiaco WA 6094
Phone No. : 133 777
Email : healthway@healthway.wa.gov.au

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

27. Governing law and jurisdiction

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

28. Execution of counterparts

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

29. Application Form

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

**Schedule 1
General Details**

Item 1 **Fellowship Awardee**

Item 2 **Fellowship Supervisor(s)**

Item 3 **Grant**

Total: \$ (excluding GST)

	Stipend	Allowances	Total
Year 1	\$	\$	\$
Year 2	\$	\$	\$
Year 3	\$	\$	\$
			\$

The Grant amount includes the above Allowances which can only be paid to the Fellowship Awardee as specified in clause 5.4.

Item 4 **Commencement Date**

Date of this Agreement

Item 5 **Completion Date**

Finish date

Item 6 **Manner of Payment**

Payments by Healthway electronic funds transfers in accordance with the conditions and dates detailed in Schedule 2, subject to satisfaction of any Special Conditions.

Item 7 **Financial Reports**

Annual Statement of Income and Expenditure related to the Research Program signed by the Chief Executive Officer/General Manager or equivalent of the Recipient **due by <insert date> and <insert date>**.

Final Statement of Income and Expenditure related to the Research Program signed by the Chief Executive Officer/General Manager or equivalent of the Recipient **due on <insert date>**.

The Recipient is required to provide the most recent financial statements **due by «ReportDueDate»** as part of the financial acquittal requirements of this Agreement. The financial statements as a minimum must ensure that the receipt of the Grant is reflected in the financial statements or as a note to the financial statements.

Item 8

Research Program Reports

Annual Report on the Research Program in the format as provided by Healthway **due by <insert date> and <insert date>**.

Final Report on the Research Program in the format as provided by Healthway **due by «ReportDueDate»**.

Item 9

Special Conditions

The Payment Schedule at Schedule 2 is conditional on the Recipient ensuring that the Fellowship Awardee resides in Western Australia for the duration of the Term.

EXAMPLE ONLY

Schedule 2 Payment Schedule

1. The Grant will be paid in instalments subject to the following terms and conditions.
 - (a) The first instalment of the Grant for the amount of «**Year1RequestedAmount**» **GST exclusive** will be paid by electronic funds transfer to the Recipient within 14 days of finalisation of this Agreement, if all Special Conditions have been met, including the receipt of any applicable institutional ethics approval. This instalment will constitute the funding for the first year of the Research Program.
 - (b) A second instalment of the Grant for the amount of «**Year2RequestedAmount**» **GST exclusive** will be paid by electronic funds transfer to the Recipient within 14 days of <Date>. This instalment will constitute the funding for the second year of the Research Program.
 - (c) A third instalment of the Grant for the amount of «**Year3RequestedAmount**» **GST exclusive** will be paid by electronic funds transfer to the Recipient within 14 days of <Date>. This instalment will constitute the first instalment of funding for the third year of the Research Program.
 - (d) A fourth and final instalment of the Grant for the amount of «**Year4RequestedAmount**» **GST exclusive** will be paid by electronic funds transfer to the Recipient within 14 days of submission of the final Research Program Report. This instalment will constitute the second and final instalment of funding for the final year of the Research Program.
2. Payment of the second and subsequent instalments is conditional. If the required Financial Reports and Research Program Reports are not satisfactorily completed as outlined in Item 7 and Item 8 of Schedule 1, payment may be withheld by Healthway without prejudice to any of the rights of Healthway.
3. Subject to satisfactory completion of the Financial Reports and Research Program Reports, the availability of subsequent years funding will not be unreasonably withheld by Healthway.
4. Healthway reserves the right to make payments in advance of instalment dates.

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

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

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

.....
Jeremy Hubble
A/Chief Executive Officer
For and on behalf of Healthway

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

.....
Signature

.....
Signature

.....
Name of director/company secretary
(BLOCK LETTERS)

.....
Name of director
(BLOCK LETTERS)

.....
Date

.....
Date