

RESEARCH AND INTELLECTUAL PROPERTY AGREEMENT

ECU-INDUSTRY COLLABORATION SCHEME

Between

EDITH COWAN UNIVERSITY

and

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

and

ALCOA WORLD ALUMINA AUSTRALIA

Project Title: Black cockatoo use of extensive post-mining revegetated and agriculturally transformed landscapes

Chief Investigator: Professor William Stock

File Reference: SUB/1090

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SCHEDULE 1: PROJECT FUNDING TABLE

SCHEDULE 2: PROJECT PLAN

This Agreement is made the [___] day of [_____] 2007 between

Edith Cowan University (ABN 54 361 485 361) a body corporate established pursuant to the provisions of the Edith Cowan University Act 1984, of Joondalup Drive, Joondalup, Perth, Western Australia 6027 ("**ECU**"), and

Department of Environment and Conservation (ABN 38 052 249 024) of PO Box 1167, Bentley Delivery Centre, Bentley, Perth, Western Australia 6983, ("**Collaborator**") and

Alcoa World Alumina Australia (ABN 93 004 879 298) of PO Box 172, Pinjarra, Western Australia 6208 ("**Collaborator**")

RECITALS

- A. The Parties to this Agreement wish to perform a program of research "Black cockatoo use of extensive post-mining revegetated and agriculturally transformed landscapes ("**Project**")", details of which formed a proposal agreed between ECU, and the Collaborator, and a copy of which appears in Schedule 2 ("**Project Plan**") to this Agreement.
- B. The Project will be supported by a grant from the ECU Industry Collaboration Scheme.
- C. The Parties to this Agreement are required and desire to make certain provisions in relation to the ownership and commercialisation of intellectual property resulting from the Project.

IT IS AGREED AS FOLLOWS:

1. INTERPRETATIONS

Definitions

1.1 In this Agreement:

"Background Intellectual Property" means intellectual property that is the property of a Party and which a Party has agreed in writing to contribute as Background Intellectual Property to the Project;

"Budget" means the funding program for the Project as set out in the Project Funding Table (Schedule 1) and Project Plan (Schedules 2) hereto;

"Confidential Information" means all information (including information which is commercially sensitive, patentable or otherwise protectable or commercially exploitable) which is:

- (a) provided by a Party for the purpose of this Agreement or the Project and marked "confidential" or notified as confidential, in writing, at the time of provision;

- (b) information created by a Party or otherwise coming into existence pursuant to this Agreement or as a result of the Project; and
- (c) propriety information including but not limited to business strategies, costings, processes and procedures, trade secrets and proprietary know how;

which is not in the public domain except by the failure of a Party to perform and observe its covenants and obligations under this Agreement;

"Commercialise" in relation to Intellectual Property means to manufacture, sell, hire or otherwise exploit a product or process or to provide a service incorporating the Intellectual Property or to license a third party to do any of those things or to otherwise license or assign the Intellectual Property regardless of whether any revenue is generated or intended to be generated and **"Commercialisation"** is similarly construed;

"Commercialisation Costs" means the costs incurred by a Party in relation to protection and enforcement of the Project Intellectual Property rights and all costs, including but not limited to advisers' fees, professional fees and commissions, administration costs, staff salaries and wages, a reasonable apportionment of overheads, market research, sales, marketing and promotional costs and disbursements directly incurred in relation to the development, supply, sale or commercialisation of the Program, calculated in accordance with generally accepted Australian accounting principles. For the avoidance of doubt, costs incurred by a Party on commercialising the outcomes of Background Intellectual Property that has not been incorporated into Project Intellectual Property, are not included;

"Commercialisation Income" means all royalties, license fees, and other monetary proceeds (including monetary proceeds from the use or disposal of any non-monetary assets) from Commercialisation of Intellectual Property;

"GST" means GST as defined in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*, being any tax which may be levied or assessed or becomes payable in connection with the supply of goods, services or other things by a supplier to a recipient under this Agreement;

"Intellectual Property" means:

- (a) intellectual property as defined in The Convention Establishing the World Intellectual Property Organisation concluded at Stockholm on July 14 1967; and
- (b) all rights, titles and interests attaching to plant varieties, integrated circuits, trade secrets and Confidential Information; and
- (c) Copyright protected under the Copyright Act 1968 or as amended.

"Milestone" means a critical date or event identified or described as such in the Project Plan (Schedule 2);

"Party" means a party to this Agreement and **"Parties"** means either Party;

"Project Asset" means an item of tangible property acquired for use in or in the course of the Project, the acquisition and cost of which has been or is to be paid out of the Project Funds;

"Project Intellectual Property" means Intellectual Property created in the course of the Project;

"Project Funds" means cash provided from ECU under the ECU Industry Collaboration Scheme referred to in recital B, and the cash paid by the Collaborator to ECU in accordance with Schedule 1.

Interpretation

1.2 Unless expressed to the contrary:

1.2.1. words importing:

- (a) the singular include the plural and vice versa; and
- (b) any gender includes the other gender;

1.2.2 if a word or a phrase is defined, cognate words and phrases have corresponding definitions;

1.2.3 a reference to:

- (a) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
- (b) a person includes its legal personal representatives, successors and assigns;
- (c) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) a right includes a benefit, remedy, discretion, authority or power;
- (e) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation; and
- (f) this document includes all schedules referred to in it.

1.2.4 headings do not affect the interpretation of this document.

2. THE PROJECT

2.1 At the commencement of the Project the representatives of ECU and the Collaborator will be Professor William Stock, Dr Mark Garkaklis (DEC), and Dr Andrew Grigg (ALCOA) respectively.

2.2 The Project will commence by the 30 April 2007 and will continue for a period of one year unless otherwise agreed to in writing or unless terminated earlier in accordance with clause 12.

2.3 The Parties will use all reasonable efforts to adhere to any Milestones set out in Schedule 2.

- 2.4 ECU shall have overall responsibility for the recruitment of staff and the execution of the Research Project.
- 2.5 By arrangement with ECU, the Collaborator shall have access to the Project Assets for a period of three years following completion of the Project. ECU shall not unreasonably refuse access to or use of the Project Assets and associated equipment, including use off site. Access to the Project Assets after that time would be subject to a further agreement between the Parties.

3. FINANCIAL MATTERS

- 3.1 The Collaborator will pay to ECU the sums specified in Schedule 1 within 28 days of receiving a valid tax invoice from ECU, unless otherwise agreed by the Parties, such agreement to be in writing.
- 3.2 ECU will retain title to Project Assets and the expenditure of grant funds will be treated by the Parties as expenditure by ECU on the Project.
- 3.3 The Parties will commit to the Project such resources as are specified in Schedule 1 and Schedule 2.

4. GOODS & SERVICES TAX

- 4.1 The Parties acknowledge that they are bound by the *A New Tax System (Goods and Services Tax) Act 1999*.
- 4.2 If this Agreement, or any supply under it is subject to GST, and if the recipient of the consideration is liable to GST in relation to any supply under this Agreement, the Parties agree that the amount payable for such supply by any Party will be adjusted by the amount of GST. The Parties agree to do all things, including providing invoices or other documentation in such form and detail that may be necessary to enable or assist the other Parties to claim or verify any input tax credit, set off, rebate or refund in relation to any GST payable under this Agreement or in respect of any supply under this Agreement.
- 4.3 To enable ECU to be able to complete and lodge its BAS Statements and to account for GST on "in-kind" payments, it is necessary for ECU to create "**Recipient Created Tax Invoices**" (RCTI's) on behalf of the Collaborator. In the case of "in-kind" payments the Parties agrees to the following:
 - 4.3.1. ECU will issue tax invoices in respect to supplies the Collaborator makes to ECU;
 - 4.3.2. the Collaborator will not issue tax invoices in respect to supplies for which ECU has issued a tax invoice;
 - 4.3.3. each Party confirms that they are registered for GST and that they will notify the other Party should they cease to be registered;
 - 4.3.4. ECU will not issue a document which would be a RCTI after the date when either ECU or the Collaborator has failed to comply with any of the requirements for preparing an RCTI.

5. OWNERSHIP OF INTELLECTUAL PROPERTY

- 5.1 Ownership of Background Intellectual Property remains with the Party that made the Background Intellectual Property available.
- 5.2 Each Party grants to the other Party an irrevocable, royalty free and non-exclusive licence to use the Background Intellectual Property for the purposes of the Project.
- 5.3 Where Background Intellectual Property is incorporated within Intellectual Property created in the course of the Project the Party with rights to the Background Intellectual Property agrees to negotiate in good faith access to the Background Intellectual Property for the purposes of Commercialisation of the Project Intellectual Property.
- 5.4 All rights and title to Intellectual Property created in the course of the Project will be owned by ECU.
- 5.5 ECU will grant the Collaborator an irrevocable, non-exclusive, royalty-free right to use Project Intellectual Property for their own education, research and training purposes, including the right to use Project Intellectual Property for non-commercial research in conjunction with or as funded by third parties.
- 5.6 Each Party will promptly disclose to the other Party in writing any Intellectual Property created during the Project. Such disclosure will be sufficiently detailed for the Parties to assess the commercial viability of the technology and will be provided and maintained by the Parties in confidence pursuant to the terms of this Agreement.
- 5.7 ECU acknowledges that the Collaborator has beneficial interest in the Project Intellectual Property.
- 5.8 Should ECU Commercialise the Project Intellectual Property ECU shall enter into a revenue sharing agreement with the Collaborator, for the disbursement of revenue. Each Party:
 - 5.8.1. shall negotiate the revenue sharing agreement in good faith;
 - 5.8.2. acknowledges that for the purpose of this clause, revenue shall be defined as Commercialisation Income minus Commercialisation Costs (“**Revenue**”); and
 - 5.8.3. shall be entitled to a proportion of Revenue based on the financial contribution of each Party as defined in clause 5.10;
- 5.9 Where a Collaborator wishes to Commercialise Project Intellectual Property ECU shall negotiate a license to the Project Intellectual Property, subject to the terms below:
 - 5.9.1. the license to be non-exclusive or upon the Collaborator’s election, exclusive within the Collaborator’s field of commercial interest;
 - 5.9.2. the terms and conditions of the license, including specification of sub-licensing rights and royalties, to be negotiated in good faith and agreed between ECU and the Collaborator; and
 - 5.9.3. the license to include an obligation to share revenue with the other Parties to this agreement, where revenue has the meaning given to it in clause 5.8.2 and the proportion allocated to each Party is based on the financial contribution of each Party as defined in clause 5.10.
- 5.10 The Parties acknowledge that for the purpose of this clause 5 that:
 - 5.10.1. ECU’s financial contribution includes:

- a) the funding from the ECU-Industry Collaboration Scheme referred to in recital B;
- b) the in-kind contribution of ECU to the Project as calculated in accordance with Schedule 2.

5.10.2. the Collaborator's financial contribution includes the cash and in-kind contribution as calculated in accordance with Schedule 1 and Schedule 2.

5.10.3. the financial contribution of each Party may change during the course of the Project, such change to be agreed by the Parties, such agreement to be in writing.

5.11 The Parties agree to execute any documents necessary and do all reasonable things required to give effect to this clause 5.

5.12 The obligations under this clause 5 shall survive termination of this Agreement.

6. CONFIDENTIAL INFORMATION

6.1 Each Party shall use the Confidential Information of the other Party for the purpose of the Agreement, and subject to clause 6.2, a Party must keep the Confidential Information of the other Party confidential and not disclose it to any third party.

6.2 A Party may disclose Confidential Information of another Party:

6.2.1. with the written consent of that other Party;

6.2.2. as required by law;

6.2.3. to such of its officers, employees and agents who have a need to know for the purpose of this Agreement and only to extent that they need to know;

6.2.4. to students and contractors who have a need to know for the purpose of this Agreement provided that a confidentiality agreement has been executed by such student or contractor.

6.3 The obligations under clause 6.1 and 6.2 shall survive termination of this Agreement for a period of ten years.

7. PUBLICATION

7.1 Subject to clause 7.3 either Party may publish material concerning the research, experimentation and data obtained in performing the Project, including but not limited to articles, oral presentations and theses.

7.2 During the Project each Party will receive a copy of any proposed publication at the time of initial submission for publication or earlier if possible.

7.3 If a publication proposed by one Party contains information which could reasonably be thought to jeopardise the Commercialisation of Intellectual Property, then the Party seeking to publish the Article shall seek the permission of the other Party to make the publication, such permission not to be unreasonably withheld.

7.4 If within 28 days of a publication being provided to it for its approval under clause 7.3, the Party whose permission is being sought does not provide

express written refusal of permission then permission shall be deemed to be given.

7.5 Copyright in the Articles shall vest in the Party creating the Article.

7.6 Each Party agrees to acknowledge the support of the other Party in any Articles concerning the research, experimentation and data obtained in performing the Project.

8. PUBLICITY

No Party will use the name of the other Party, nor of any member of the other Party's employees or students, in any publicity, advertising, or news release without the prior written approval of an authorised representative of that Party.

9. REPORTS

ECU will, if required, produce and deliver to the Collaborator in a timely fashion and in the form required by the Collaborator, a final report on completion of the Project.

10. THIRD PARTY INTELLECTUAL PROPERTY TO BE IDENTIFIED

10.1 Each Party will use all reasonable efforts to ensure that the reports, any software or other works or inventions containing or embodying Project Intellectual Property do not contain intellectual property rights belonging to third parties. The Parties will use all reasonable efforts to ensure that any material prepared by any student under this Agreement will not infringe any third party intellectual property rights.

10.2 In the event that it is known or suspected by a Party that third party intellectual property rights are used or incorporated into the Project Intellectual Property, then the Party will notify the others of the full extent of that knowledge or suspicion.

11. LIABILITY

11.1 Neither of the Parties, nor any of their respective employees, students or subcontractors will be liable:

11.1.1. for any loss or damage sustained by another Party or any other person directly or indirectly from or in connection with the Project; or

11.1.2. for any consequential or economic loss or loss arising from the use or commercialisation of the Intellectual Property, however caused,

except to the extent caused by the wilful act, unlawful act or negligence of the first-mentioned Party, its employees or agents or by a breach of this Agreement by that Party, and each Party hereby releases and indemnifies the others, their officers, employees and agents from and against all actions, claims, proceedings and demands whatsoever, including through contract and tort which may be made or brought by any person, body or authority against either of them in respect of such loss and damage

12. TERMINATION OF PROJECT

- 12.1 The Agreement may be terminated by mutual written consent of all Parties.
- 12.2 In the event that any Party ("**Defaulting Party**") hereto commits any material breach of or default in any terms or conditions of this Agreement, and also fails to reasonably remedy such default or breach within sixty (60) days after receipt of written notice of the breach, the non-breaching Party may, at their option and in addition to any other remedies which they may have at law or in equity, terminate their obligations under this Agreement by sending notice of termination in writing to the Defaulting Party. Such termination will be effective on the day of the receipt of such notice.
- 12.3 The interests of the Defaulting Party in the Project Intellectual Property under clause 5 and the rights of the Defaulting Party under this Agreement will be deemed to be assigned to the other Party.
- 12.4 In the event of termination by ECU or termination by the Collaborator under clause 12.2 of this Agreement, then the Collaborator will not be required to pay further sums to ECU excepting for expenditure incurred prior to the termination and such costs of terminating the Project that ECU may be required to discharge.
- 12.5 Termination of a Party's rights and obligations under this Agreement under this clause will not affect the rights and obligations of the other Party accrued prior to the effective date of termination of this Agreement.
- 12.6 Upon completion or termination of the Project for any reason, or termination of the involvement in the Project of the Defaulting Party under clause 12, the obligations of the Parties or of such a Defaulting Party as to confidentiality, liability and ownership of Project Intellectual Property and in any other way relating to Intellectual Property will remain in force.

13. LEAVE

- 13.1 Leave and employment to be taken by employees of ECU engaged on the Project will be taken in accordance with the usual conditions and practice prevailing at ECU.

14. DISPUTE RESOLUTION

- 14.1 If a dispute or difference arises between the Parties in connection with this Agreement, then, at the request of any either Party, the Parties shall first meet and use all reasonable endeavours to resolve the dispute or difference between them and, if appropriate, shall seek the services of an independent mediator to assist.

15. GENERAL

- 15.1 This Agreement constitutes the entire agreement between the Parties in relation to the subject matter of this Agreement.
- 15.2 This Agreement will be construed and governed in accordance with the laws of Western Australia.
- 15.3 The rights and obligations of the Parties under this Agreement will not be assignable without written permission of the other Party.

15.4 If any provision of this Agreement is held unenforceable or void, the remaining provisions shall be enforced in accordance with their terms.

15.5 This Agreement may only be varied or replaced by a document duly executed by the Parties.

16. COUNTERPARTS

16.1 This Agreement may be executed in any number of counterparts and all counterparts taken together constitute the one instrument.

THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF THE DATE AT THE BEGINNING OF THIS AGREEMENT:

EDITH COWAN UNIVERSITY

BY: ITS DULY AUTHORISED SIGNATORY:

NAME

SIGNATURE

POSITION

WITNESS [print name]

SIGNATURE

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

BY: ITS DULY AUTHORISED SIGNATORY:

NAME

SIGNATURE

POSITION

WITNESS [print name]

SIGNATURE

ALCOA WORLD ALUMINA AUSTRALIA

BY: ITS DULY AUTHORISED SIGNATORY:

NAME

SIGNATURE

POSITION

WITNESS [print name]

SIGNATURE

SCHEDULE 1

Project Funding Table

Funding Source	Cash Contribution	In-kind Contribution	GST Component	Total
Edith Cowan University	\$22,575	\$11,619	\$0	\$34,194
Department of Conservation and Land Management	\$9,090	\$1,300	\$1,039	\$11,429
Alcoa World Alumina Australia	\$9,090	\$2,520	\$1,162	\$12,772
Totals	\$40,755	\$15,439	\$2,201	\$58,395

SCHEDULE 2

Research Proposal

AMERICAN