

## INDUSTRY ENGAGEMENT SCHEME RESEARCH AGREEMENT

## SCHEDULE

<b>Project Title</b>	[insert]
<b>ECU File Reference</b>	[insert]
<b>EDITH COWAN UNIVERSITY (ABN 54 361 485 361) ("ECU")</b>	<p><b>Notices to ECU shall be addressed to:</b>            Manager Research Support            Research Services            Edith Cowan University,            270 Joondalup Drive, JOONDALUP WA 6027            Phone No.: 618 6304 5473            Email: <a href="mailto:research-grants@ecu.edu.au">research-grants@ecu.edu.au</a></p> <p><b>Specified Personnel:</b>            [insert name], Chief Investigator</p>
<b>[NAME OF COLLABORATOR AND ABN/ACN] ("First Collaborator")</b>	<p><b>Notices to the First Collaborator shall be addressed to:</b>            [Name]            [Position]            [Organisation]            [Address]            Phone No.: [insert]            Email: [insert]</p> <p><b>Specified Personnel:</b>            [insert name and title]</p>
<b>[IF MORE THAN ONE COLLABORATOR, INSERT NAME AND ABN/ACN] ("Second Collaborator")</b>	<p><b>Notices to the Second Collaborator shall be addressed to:</b>            [Name]            [Position]            [Organisation]            [Address]            Phone No.: [insert]            Email: [insert]</p> <p><b>Specified Personnel:</b>            [insert name and title]</p>
<b>Term</b>	<p>Start Date: The date of execution of this Agreement by the last Party.            End Date: The later of: (a) 12 months from Start Date or (b) 12 months from all relevant Ethics Approvals being obtained.</p>
<b>Project Role</b>	<p><b>ECU:</b>            [Insert general description of ECU's role in the Project. Eg. Lead the project, recruitment of participants, data collection, data analysis, report writing.]</p> <p><b>Collaborator:</b>            [Insert general description of role the Collaborator(s) in the Project i.e. contribution of any Background IP, the provision of in-kind or financial]</p>

	<p>contributions. [e.g. provide access to information to complete the research, premises, participants to the research,]</p> <p>If no participation in Project other than to provide financial contributions, insert “Financial Contributions (see below)”.]</p> <p><b>[Second Collaborator:]</b>          [Insert general description of role the Collaborator(s) in the Project i.e. contribution of any Background IP, the provision of in-kind or financial contributions. [e.g. provide access to information to complete the research, premises, participants to the research]]</p> <p>NB: The Project Role should outline if Ethics Approval is required, the Party primarily responsible for obtaining Ethics Approval and the appropriate HREC.</p>																								
<b>Project Reports</b>	<p><b>ECU:</b>          [Insert details of reports ECU will be required to provide to the Collaborator, include when required and manner of delivery.]          [e.g. An annual written progress report and a final written project report on project completion will be provided to the Collaborator.]</p> <p><b>Collaborator:</b>          [Insert details of reports Collaborator will be required to provide to ECU, include when required and manner of delivery.]</p> <p><b>[Second Collaborator:]</b>          [Insert details of reports Collaborator will be required to provide to ECU, include when required and manner of delivery.]</p>																								
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This Agreement is made between ECU and Collaborator(s) set out in the Schedule, on the date it is executed by the last Party.

## **RECITALS**

- A. ECU has developed and manages an Industry Engagement Scheme, designed to foster engagement and collaboration with industry, leading to world class collaborative research and the development of strong research-oriented relationships.
- B. ECU and the Collaborator(s) both have expertise and a mutual interest in the area of [field of study].

- C. The Parties have agreed to collaborate together to conduct the Project under the Industry Engagement Scheme, on the terms set out in this Agreement.

**IT IS AGREED AS FOLLOWS:**

**1. INTERPRETATION**

**1.1. Definitions.**

**“Agreement”** means this agreement and all schedules, annexures and variations made in accordance with this Agreement.

**“Background IP”** means Intellectual Property that is already owned or controlled by a Party, including but not limited to Intellectual Property developed prior to or independently of this Agreement, which the Party determines, in its sole discretion, to make available for the carrying out of the Project.

**“Business Day”** means any day on which the trading banks in Western Australia are open for business.

**“Collaborator”** means the Collaborator(s) named in the Schedule. If there is more than one Collaborator, “Collaborator” shall refer to both of them unless otherwise specified in this Agreement or unless the context requires it.

**“Confidential Information”** means and includes all unpatented inventions, ideas, know-how, concepts, trade secrets, processes, techniques, software, products and all other unregistered or unpatented Intellectual Property, financial and business information and all other commercially valuable information of the Disclosing Party which the Disclosing Party regards as confidential to it or which is evident by its nature or the manner of its disclosure to be confidential and all copies, notes and records and all related information generated by the Receiving Party based on or arising out of any such disclosure. Confidential Information excludes, or as the case requires, ceases to include information which is, or becomes:

- (a) available to the public at or after the date of its disclosure to the Receiving Party otherwise than through the default of the Receiving Party;
- (b) at the date of its disclosure to the Receiving Party, already properly in the possession of the Receiving Party in written form otherwise than by prior confidential disclosure from the Disclosing Party;
- (c) after the date of its disclosure to the Receiving Party, properly available to the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party; or
- (d) demonstrated by the Receiving Party to be independently developed by an employee, contractor or agent of the Receiving Party having no knowledge of such information the subject of the disclosure.

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

**“Disclosing Party”** means the Party that is disclosing the Confidential Information.

**“Ethics Approval”** means ethics approval, or written confirmation that ethics approval is not required, given by the relevant registered Human Research Ethics Committee registered with the National and Health Medical Research Council (NHMRC).

**“Financial Contributions”** means the financial contributions of each Party as set out in the Schedule.

**“Force Majeure Event”** includes an act of God, strike, lockout, other industrial disturbance or labour difficulty, war, act of public enemy, blockade, riot, insurrection, civil commotion, lightening, storm, flood, fire, earthquake, explosion, embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation, or anything done or not done by or to a person, government or other competent authority, except where any of the foregoing is caused or contributed to by the Party relying on such cause.

**“Improvement”** means any improvement, advancement or modification to a Party’s Intellectual Property such that the improved Intellectual Property cannot be used without infringing the Party’s underlying Intellectual Property.

**“Individual Contributions”** means the Financial Contributions and In-Kind Contributions of each Party.

**“In-Kind Contributions”** means the in-kind contributions of each Party as set out in the Schedule.

**“Intellectual Property”** means all rights resulting from intellectual activity, whether capable of protection by statute, common law or in equity, and including but not limited to all rights in relation to copyright, designs, discoveries, inventions, know-how, patents, registered and unregistered trade marks, trade secrets, circuit layouts and plant varieties, and all rights and interests of a similar nature, together with any documentation or application relating to such rights and interests, but excludes moral rights as conferred by the *Copyright Act 1968*.

**“Party”** means a party to this Agreement.

**“Personnel”** means any employees, officers or agents of a Party.

**“Project”** means the research and development activities to be carried out in accordance with this Agreement.

**“Project Asset”** means an item of real or personal property, but does not include Intellectual Property, created or 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 Individual Contributions.

**“Project IP”** means the Intellectual Property created, developed or discovered as a result of carrying out the Project.

**“Project Plan”** refers to the details of the Project and related matters as set out in the annexure to this Agreement.

**“Receiving Party”** means the Party that is receiving the Confidential Information.

**“Specified Personnel”** means the personnel of each Party specified in the Schedule.

**“Term”** means the term specified in the Schedule and any agreed extension of this Term.

## 1.2. Interpretation.

- (a) A reference to any statute, or any particular provision or provisions of a statute, includes any amendment, replacement or re-enactment thereof for the time being in force and any by-laws, statutory instruments, rules, regulations, notices, orders, directions, consents or permissions made there under and any conditions attaching thereto.
- (b) The singular includes the plural and vice versa.
- (c) A reference to any gender includes all genders.
- (d) A reference to a person includes a reference to the person's executors, administrators, substitutes, successors and permitted assigns.
- (e) A reference to a person includes a reference to a natural person, body corporate, joint venture or partnership.
- (f) A covenant, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally.
- (g) A covenant representation or warranty on the part of two or more persons binds them jointly and severally.
- (h) Headings in this Agreement are for convenience only and do not affect the construction or interpretation of this Agreement.
- (i) No rule of construction of contracts will apply to the disadvantage of a Party who is responsible for preparing this Agreement or any part of it.

## 2. THE RESEARCH PROJECT

- 2.1. **Term.** This Agreement will commence on the first day of the Term and will continue for the Term unless otherwise agreed to in writing or unless terminated earlier in accordance with this Agreement.
- 2.2. **Undertake research.** The Parties shall carry out the Project in accordance with the Project Plan and with all relevant professional, scientific and ethical principles and standards.
- 2.3. **Uncertainty of research.** The Parties agree that due to the inherently uncertain nature of research the actual outcomes and results of the Project cannot be assured. ECU will not be liable to the Collaborator for any loss or damage arising by reason of its failure to perform work on time or within estimated costs or at all, provided that it has used its reasonable endeavours in all respects in carrying out the Project.
- 2.4. **Ethics Approval.** Notwithstanding any other clause, where it is specified in the Project Role that part or all of the Project requires Ethics Approval then:
  - (a) the Party whose responsibility it is to obtain Ethics Approval will use their best endeavours to obtain Ethics Approval within a reasonable period;

- (b) all other Parties will use their best endeavours to provide such information as may be required to obtain Ethics Approval within a reasonable period;
- (c) a Parties' obligation to perform its Project Role will be suspended pending Ethics Approval, to the extent that Ethics Approval is required.

Where the Parties, having used their best endeavours, cannot obtain Ethics Approval within 12 months from the date of execution of this Agreement by the last Party:

- (d) the Parties' will act in good faith to negotiate changes to the Project so that either Ethics Approval can be obtained or there becomes no requirement for Ethics Approval; and
- (e) if the matter cannot be resolved by agreement in accordance with (d) within 20 business days of the date nominated in the Project Role, this Agreement will be terminated. In addition to clause 14, the Parties will be entitled to a refund of any Financial Contribution paid, where such money has not already be expended in carrying out the Project or a Parties' rights and obligations under this Agreement.

2.5. **General obligations.** Each Party agrees to:

- (a) provide its respective Individual Contributions in accordance with the Schedule;
- (b) provide any other related assistance, information, data, equipment, facilities, resources or materials as may be reasonably required to satisfactorily perform the Project;
- (c) notify each other Party of any unusual risks or dangers in the In-Kind Contributions or Background IP they provide to the Project of which the Party's Specified Personnel are aware; and
- (d) comply with all safety, security and other procedures notified to it by any other Party while on any other Party's site.

2.6. **No solicitation.** A Party will not solicit for the purposes of employment another Party's Specified Personnel during the Term and for 6 months following the expiry of the Term, without the other Party's prior written consent.

2.7. **Project Assets.** ECU will retain title to Project Assets during the Project and after completion of the Project.

### 3. **PERSONNEL**

3.1. **Specified Personnel.** The Parties agree to contribute their respective Specified Personnel to the conduct of the Project.

3.2. **Unavailability.** If for any reason any Specified Personnel of a Party become unavailable, that Party will use reasonable endeavours to secure a replacement acceptable to the all Parties. If the relevant Party is not able to secure replacement Specified Personnel in accordance this clause and this renders it unable to perform its obligations under this Agreement, this will constitute a Force Majeure Event.

#### 4. FINANCIAL MATTERS

The Collaborator shall pay its Financial Contributions to ECU within 28 days of receiving a valid tax invoice from ECU, unless otherwise agreed in writing by the Parties.

#### 5. GOODS & SERVICES TAX

- 5.1. In this clause, the expressions “adjustable note”, “consideration”, “GST”, “supply”, “tax invoice”, “recipient” and “taxable supply” have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999 (“**GST Act**”).
- 5.2. All sums payable or consideration to be provided under this Agreement are exclusive of GST.
- 5.3. If GST is imposed on any supply made under this Agreement, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply.
- 5.4. Such amount must be paid in addition to and at the same time as payment for the taxable supply is required to be made under this Agreement.
- 5.5. If a GST-inclusive price is charged or varied under this Agreement, the supplier must provide the recipient of the supply with a valid tax invoice or adjustment note at or before the time of payment or variation.
- 5.6. If the amount of GST paid or payable by the supplier on any supply made under this Agreement differs from the amount of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient, as the case requires.
- 5.7. To enable ECU to be able to complete and lodge its BAS Statements and to account for GST on In-Kind Contributions, it is necessary for ECU to create Recipient Created Tax Invoices (“**RCTIs**”) on behalf of the Collaborator. In the case of "in-kind" payments the Parties agree to the following:
  - (a) ECU will issue tax invoices in respect to supplies the Collaborator makes to ECU;
  - (b) the Collaborator will not issue tax invoices in respect to supplies for which ECU has issued a tax invoice;
  - (c) each Party confirms that they are registered for GST and that they will notify the other Party should they cease to be registered; and
  - (d) 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.

#### 6. BACKGROUND IP

- 6.1. Each Party agrees it will not have any claim, ownership or interest in the other Party's Background IP or Improvements in such Background IP.
- 6.2. To the extent that a Party makes its Background IP available for the purposes of the Project, that Party grants to the other Parties an irrevocable, non-exclusive,



royalty-free, fee-free, worldwide licence to use its Background IP during the Term for the purpose of carrying out the Project.

6.3. Intellectual Property in any Improvements to a Party's Background IP arising from the conduct of the Project will be owned by the Party that made the Background IP available.

6.4. The Collaborator agrees that:

- (a) if Background IP which has been made available pursuant to sub-clause 6.2 is required by ECU for the Commercialisation of Project IP; or
- (b) if Improvements referred to in sub-clause 6.3 are required by ECU for the Commercialisation of Project IP;

then such Background IP and Improvements must be made available on commercial terms to be negotiated in good faith by the Parties. If the Parties cannot reach agreement on commercial terms, the matter must be dealt with in accordance with clause 16 [Dispute Resolution].

## **7. PROJECT IP**

7.1. The Parties agree that all Project IP vests in ECU on creation and hereby assign all Project IP, whether existing now or created in the future, to ECU.

7.2. ECU grants to the Collaborator a non-exclusive, royalty-free licence to use the Project IP for the purpose of:

- (a) undertaking the Project in accordance with this Agreement; and
- (b) its non-commercial operations,

provided that the Collaborator maintains the confidentiality of Confidential Information and does not otherwise default under the terms of this Agreement.

7.3. The Collaborator agrees to do all acts and things and execute all documents which may be necessary for the purpose of vesting ownership of the Project IP under this clause 7.

7.4. Any Improvement to the Project IP made by a Collaborator within 18 months after the termination or expiration of this Agreement, pursuant to the licence granted to it under clause 7.2, will be owned by the Collaborator, provided that the Collaborator:

- (a) must notify ECU of any Improvement to the Project IP as soon as practicable after that Improvement is created; and
- (b) grants to ECU a non-exclusive, royalty-free, fee-free, irrevocable, worldwide licence (with the right to sub-licence) to use such Improvement in the use and exploitation of the underlying Project IP for any purpose.

7.5. Each Party warrants that:

- (a) to the best of its knowledge the Background IP provided by it and the Project IP created by it will not infringe the Intellectual Property rights of any person; and
- (b) it has or will obtain the necessary rights to vest the Project IP and grant the licences as provided for in this clause 7.

## 8. FURTHER RESEARCH OF PROJECT IP

Where the Project IP requires further research, ECU has a first option to undertake such further research. Any arrangement negotiated between ECU and a Collaborator for such further research is outside the scope of this Agreement and must be the subject of a separate agreement.

## 9. MORAL RIGHTS

Each Party acknowledges that employees, contractors, agents and any other representatives of the Parties involved in the Project will, if they are authors of material comprised in the Project IP in which copyright subsists, have moral rights in those copyright materials.

## 10. CONFIDENTIAL INFORMATION

10.1. When receiving Confidential Information, the Receiving Party must:

- (a) keep all Confidential Information of the Disclosing Party confidential unless strictly required otherwise by law;
- (b) limit access to those of its Personnel reasonably requiring the Confidential Information on a strictly need to know basis;
- (c) not use any Confidential Information in any way other than for the Project or as otherwise contemplated by this Agreement without the prior written permission of the Disclosing Party; and
- (d) ensure that all Personnel to whom Confidential Information is disclosed are legally bound under the terms and conditions of their employment agreements or otherwise to keep the Confidential Information confidential and not to use the Confidential Information except for the Research Project.

10.2. At the termination or expiration of this Agreement or upon the earlier written request of the Disclosing Party, the Receiving Party must return to the Disclosing Party or destroy all Confidential Information and must not keep any copies in any form, except that the Receiving Party may retain such copies as are necessary to comply with any laws, regulations or internal record keeping requirements.

## 11. PUBLICITY

No Party will use the name or trade mark 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 which consent can be withheld at a Party's absolute discretion.

## 12. LIABILITY

12.1. **Warranty.** Each Party warrants that it will carry out its obligations under this Agreement with due care and skill and in a professional manner.

12.2. **Statutory terms.** Where any statute implies in this agreement any term, and that statute voids or prohibits provisions under a contract which exclude or modify the operation of such term, such term is deemed to be included in this agreement.

12.3. **Resupply of Services:** ECU's liability for breach of any term, whether express or implied, will be, if permitted by law, limited (at ECU's option) to the resupply

or re-performance of ECU's obligation, or payment of the cost of resupply or re-performance the relevant obligation.

- 12.4. **Indemnity.** Each Party ("the Indemnitor") indemnifies and shall keep indemnified all other Parties and the other Parties' respective officers, employees, agents and contractors (each, an "**Indemnitee**") against all costs, losses, expenses, claims, damages and other liabilities (including, without limitation, legal costs and expenses) as a result of any action, suit, claim, demand or proceeding taken or made against any Indemnitee arising from or in connection with this Agreement and:
- (a) any breach of this Agreement by the Indemnitor;
  - (b) any wilful, tortious or unlawful act or omission of the Indemnitor or any of its officers, employees, agents or contractors; or
  - (c) any breach of a State or Commonwealth law by the Indemnitor or any of its officers, employees, agents or contractors.
- 12.5. The Indemnitor's liability under the indemnity in clause 12.4 will be reduced proportionately to the extent that any costs, losses, expenses, claims, damages or other liabilities result from any wilful, tortious or unlawful act or omission of any Indemnitee.
- 12.6. The indemnity is a continuing obligation and remains in force and effect notwithstanding the expiry of the Term or early termination of this Agreement irrespective of how it is terminated or who terminated it.

### 13. **INSURANCE**

- 13.1. Each Party must effect and maintain and keep current for the duration of this Agreement the following insurances with its self-insurance fund or an insurer authorised by the Australian Prudential Regulation Authority to conduct business in Australia:
- (a) public liability and professional indemnity insurance cover appropriate and sufficient to cover the activities of that Party anticipated under the terms of this Agreement; and
  - (b) workers' compensation insurance in accordance with any applicable legal requirements and including cover for common law liability for an amount of not less than \$50,000,000 any one event covering their workers.
- 13.2. Each Party must provide the other, if requested, with certificates of currency for the insurance policies referred to in clause 13.1.
- 13.3. The public liability insurance and workers' compensation insurance required in clause 13.1 must be maintained during the Term.
- 13.4. The professional indemnity insurance required under clause 13.1 must be maintained for at least six years after the termination or expiry of this Agreement.
- 13.5. Each Party must not do or omit to do or allow to be done or omitted to be done anything that may render the insurance void, voidable or otherwise liable to cancellation.

- 13.6. The existence of insurance cover as required under this clause 13 shall not, in any way, limit the obligations or responsibilities of the Parties under this Agreement.

#### 14. TERMINATION OR EXPIRY OF THIS AGREEMENT

- 14.1. **Mutual.** This Agreement may be terminated at any time by written agreement of all the Parties.

- 14.2. **For default.** Where a defaulting Party:

- (a) breaches a term of this Agreement and fails to remedy the breach within 30 days after receiving notice requiring it to do so;
- (b) fails to provide any of its Individual Contributions in accordance with the Schedule and does not provide the relevant Individual Contribution within 14 days after receiving notice requiring it to do so; or
- (c) fails to provide a Financial Contribution in accordance with the Schedule, and does not provide the relevant Individual Contribution within 7 days after receiving notice requiring it to do so;

the non-defaulting Party may terminate this Agreement with immediate effect by providing written notice of termination to the defaulting Party.

[ALTERNATIVE CLAUSE 14.2, WHERE THERE ARE TWO OR MORE PARTIES]

**For default.** Where a defaulting Party:

- (a) breaches a term of this Agreement and fails to remedy the breach within 30 days after receiving notice from an affected Party requiring it to do so; or
- (b) fails to provide any of its Individual Contributions in accordance with the Schedule and does not provide the relevant Individual Contribution within 14 days after receiving notice from an affected Party requiring it to do so,

the non-defaulting Parties may either:

- (c) jointly agree to terminate this Agreement with immediate effect by providing written notice of termination to the defaulting Party;
- (d) perform the defaulting Party's obligations on terms to be agreed between the non-defaulting Parties and specified in writing. In this event, the defaulting Party will:
  - (i) will be notified accordingly;
  - (ii) not be entitled to be remunerated or compensated for obligations being performed by a non-defaulting Party;
  - (iii) will be liable to compensate the non-defaulting Parties for any loss or additional cost incurred as a result of their default; and
  - (iv) will act in accordance with clause 14.3 as if the contract had been terminated.

- 14.3. **Consequences of termination or expiry.** On the termination or expiry of this Agreement for any reason, each Party will:
- (a) return all property in its possession belonging to the other Party, including Confidential Information; and
  - (b) pay all of their respective Financial Contributions owing at the date of termination or expiry within 14 days of termination or expiry.
- 14.4. **No Prejudice.** Termination of this Agreement is without prejudice to the rights of the Parties to obtain damages for any breach of this Agreement.

## 15. NOTICE

- 15.1. A notice under this Agreement
- (a) must be in writing;
  - (b) may be sent by email, mail, or personally delivered to any one of the addresses for the intended recipient as set out in the Schedule, or such other address(es) notified by the intended recipient in accordance with clause 15.2; and
  - (c) unless proven to the contrary, will be deemed to have been served and received:
    - (i) if sent by post, on the 3<sup>rd</sup> Business Day after posting;
    - (ii) if sent by email before 4pm on a Business Day, on the day it is sent and otherwise on the next Business Day – however an email is not treated as given or received if the sender receives notification that the email has been delayed or not delivered; or
    - (iii) if delivered in person, upon delivery.
- 15.2. A Party that changes its address or email address must give 5 Business Days' notice of that change to the other Party.

## 16. DISPUTE RESOLUTION

- 16.1. If a dispute arises in connection with this Agreement, a Party must serve a notice specifying the dispute and requiring its resolution under this clause 16 ("**Notice of Dispute**"). The notice will be addressed to the Party the subject of the Dispute, and copied to all Parties.
- 16.2. Within 7 days of receiving the Notice of Dispute, the disputing Parties must negotiate and attempt to resolve the dispute.
- 16.3. If the dispute remains unresolved within 30 days of the Notice of Dispute, a nominated member of the senior management of each disputing Party ("**Nominated Persons**") must negotiate and attempt to resolve the dispute.
- 16.4. If the dispute remains unresolved within 30 days of the commencement of the negotiations between the Nominated Persons, any of the disputing Parties may refer the dispute to mediation by a mediator agreed by all the disputing Parties, or failing agreement, a mediator appointed by the Resolution Institute, on the terms of a standard mediation to be conducted agreement by the Resolution Institute. The reference will commence when a disputing Party gives written

notice to all other disputing Parties specifying the dispute and requiring resolution under this clause.

- 16.5. The disputing Parties will cooperate to enable the mediator to mediate the dispute within 30 days of the mediator's appointment.
- 16.6. The fees of the mediator will be paid by the disputing Parties in equal proportions. Where there are 3 or more Parties to this Agreement, a Party not directly involved in the dispute may elect not to participate in the mediation. A Party who elects not to participate under this sub-clause will not be liable for the mediator's costs.
- 16.7. This clause 16 does not prevent any Party from obtaining any injunctive, declaratory or other interlocutory relief from a court which may be urgently required. However, a Party shall not otherwise commence legal action to resolve a dispute unless and until it has first complied with clauses 16.1 to 16.6.

## **17. FORCE MAJEURE**

- 17.1. If by reason of a Force Majeure Event a Party is unable to perform any fundamental obligation of this Agreement and such non-performance continues for 60 days, the other Party may, upon giving 30 days' notice to the Party affected by the Force Majeure Event, terminate this Agreement.
- 17.2. No Party is liable for any breach of its obligations under this Agreement to the extent that the breach resulted from a Force Majeure Event provided that it:
  - (a) promptly notifies the other Party (with appropriate details); and
  - (b) takes all reasonable steps to work around or reduce the effects of the Force Majeure Event.

### **[ALTERNATIVE CLAUSE 17.1 AND 17.2 IF TWO OR MORE PARTIES]**

- 17.1 If by reason of a Force Majeure Event any Party is unable to perform any fundamental obligation of this Agreement and such non-performance continues for 60 days, the other Parties may, upon giving 30 days' notice to the Party affected by the Force Majeure Event:
  - (a) jointly agree to terminate this Agreement by giving written notice to the affected Party; or
  - (b) agree to perform the affected Party's obligations on terms to be agreed between the remaining Parties and specified in writing. In this event, the affected Party will be given notice, and the affected Party will not be entitled to be remunerated or compensated for obligations being performed by the remaining Parties.
- 17.2 No Party is liable for any breach of its obligations under this Agreement to the extent that the breach resulted from a Force Majeure Event provided that it:
  - (c) promptly notifies the other Parties (with appropriate details); and
  - (d) takes all reasonable steps to work around or reduce the effects of the Force Majeure Event.

## 18 MISCELLANEOUS

- 18.1 **Entire Agreement:** This Agreement constitutes the entire Agreement between ECU and the Collaborator(s) in relation to the Project, and any previous correspondence is expressly excluded. ECU and the Collaborator(s) declare that there are no extraneous agreements, representations or undertakings either express or implied which affect this Agreement.
- 18.2 **Relationship of the Parties:** Nothing in this Agreement creates a relationship of partnership, employment, joint venture or agency between the Parties.
- 18.3 **Severability:** If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of the Agreement remains in force.
- 18.4 **Variation:** A variation to this Agreement is only effective if it is in writing between all of the Parties.
- 18.5 **Assignment or Subcontracting:** A Party must not subcontract, assign, sub-licence, dispose of or create an interest in, its rights and obligations under this Agreement, without the prior written consent of all other Parties, which consent may not be unreasonably withheld. Approval may be conditional upon the assignee, subcontractor or sub-licensee and its personnel agreeing to be bound the terms of this Agreement, including but not limited to provisions relating to confidentiality, intellectual property and insurance, and signing or producing any necessary documentation to give effect to this clause. A Party will be liable for all acts, defaults and omissions of its subcontractors, assignees and sub-licensees.
- 18.6 **Waiver:** A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. 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. A waiver is not effective unless it is in writing. 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.
- 18.7 **Governing Law:** The Agreement is governed by Western Australia law and the Parties submit to the exclusive jurisdiction of the Western Australian courts and the Federal Court of Australia.
- 18.8 **Counterparts:** This Agreement may be signed in counterparts, exchanged by email or mail, which together constitute one agreement.
- 18.9 **Further Acts:** The Parties will promptly do and perform all acts and things and execute all documents as may from time to time be required and at all times will act in good faith for the purposes of, or to give effect to, this Agreement.
- 18.10 **Independent Advice:** Each Party acknowledges that before signing this Agreement it has been given an opportunity to review its terms and obtain independent financial and legal advice.

## 19 SURVIVING OBLIGATIONS

- 19.1 Any clause of this Agreement that contains an obligation of a Collaborator that is intended to or can be performed after the end of the Term shall continue to exist and be in force notwithstanding the Term coming to an end or termination or sooner expiration of the Agreement.
- 19.2 Without limiting the application of sub-clause 19.1, it is agreed that the following clauses survive the termination of this Agreement for any reason: clauses 6 [Background IP], 7 [Project IP], 8 [Further Research of Project IP], 9 [Moral Rights], 10 [Confidential Information], 11 [Publicity], 12 [Liability], 13 [Insurance],

14.3 and 14.4 [Consequence of Termination or Expiry] and 16 [Dispute Resolution].

**EXECUTED AS AN AGREEMENT:**

<b>SIGNED</b> for and on behalf of <b>EDITH COWAN UNIVERSITY</b> by its duly authorised representative in the presence of:  ..... Signature of Witness  ..... Name of Witness (block letters)	) ) )	..... Signature of authorised person
		..... Office held
		..... Name of authorised person (block letters)
		..... Date

<b>SIGNED</b> for and on behalf of <b>[INSERT THE COLLABORATOR NAME]</b> by its duly authorised representative in the presence of:  ..... Signature of Witness  ..... Name of Witness (block letters)	) ) )	..... Signature of authorised person
		..... Office held
		..... Name of authorised person (block letters)
		..... Date

<b>SIGNED</b> for and on behalf of <b>[INSERT THE COLLABORATOR NAME]</b> by its duly authorised representative in the presence of:  ..... Signature of Witness  ..... Name of Witness (block letters)	) ) )	..... Signature of authorised person
		..... Office held
		..... Name of authorised person (block letters)
		.....



		Date
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OR: Where the Collaborator is a company...

<p><b>SIGNED</b> for and on behalf of <b>[INSERT THE COLLABORATOR NAME]</b> by its duly authorised representative(s):</p> <p>..... Signature of authorised person</p> <p>..... Office held (Director, sole director, or company secretary – please specify)</p> <p>..... Name of authorised person (block letters)</p> <p><b>Date:</b></p>	) ) )	<p>..... Signature of authorised person</p> <p>..... Office held (Director, sole director, or company secretary – please specify)</p> <p>..... Name of authorised person (block letters)</p> <p><b>Date:</b></p>
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## **Annexure – Project Plan**

**Research Project Aim**

**Project Milestones and Dates**

**Project Deliverables and Dates**