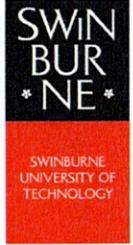


# Swinburne University of Technology



## NON-CASH COLLABORATIVE RESEARCH AGREEMENT

### Information Schedule

#### Parties

<b>Swinburne</b>	<b>SWINBURNE UNIVERSITY OF TECHNOLOGY</b> (ABN: 13 628 586 699) a body politic and corporate established under the <i>Swinburne University of Technology Act 2010 (Vic)</i> of John Street, Hawthorn in the State of Victoria, Australia ("SUT")
<b>Collaborator</b>	<b>The Party identified in Item 1 below</b>

#### Background

- A. Swinburne is a leading academic and research institution.
- B. Swinburne and the Collaborator wish to collaborate in the carrying out of agreed research and development activities under the terms and conditions set out in this Agreement.

#### Date

<b>Date of Agreement</b>	The date that the last party signs this agreement.
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#### Details

Item No	Identifier	Detail	
1	Collaborator	<b>Name:</b>	Rajamangala University of Technology Phra Nakhon ("RMUTP")
		<b>ABN:</b>	Not applicable
		<b>Address:</b>	399 Samsen Road Wachira Phayaban Dusit District, Bangkok 10300 THAILAND
		<b>Email:</b>	<a href="mailto:jirasak@rmutp.ac.th">jirasak@rmutp.ac.th</a>
		<b>Attention:</b>	Dr Jirasak Tharajak
2	Supervising Researcher	<b>Name</b>	<b>Representing</b>
		A/Prof Rosalie Hocking	SUT
		Dr Jirasak Tharajak	RMUTP
3	<b>Commencement Date of Project</b>	1 January 2025	
4	<b>Completion Date of Project</b>	31 December 2026	
5	<b>Project Title</b>	Novel Manufacturing Strategies for Electrolyser Component Manufacture	

6	Project Description	<p>This project aims to develop innovative acid-stable copper oxide (CuOx) and multimetal oxide catalyst systems to produce value-added C2+ products, such as hydrocarbons and syngas, using renewable energy in proton exchange membrane (PEM) electrolyzers. By advancing catalyst design and optimizing manufacturing techniques, the project addresses key challenges related to cost and scalability in the deployment of hydrogen production technologies.</p> <p>The research will focus on developing CuOx-based catalysts and multi-metal oxide formulations that improve stability and selectivity in acidic conditions. In a strong collaboration between Swinburne University of Technology (SUT) in Australia and Rajamangala University of Technology Phra Nakhon (RMUTP) in Thailand, the project will explore advanced thermal spray techniques, including Suspension Plasma Spray (SPS) and Cold Spray, to manufacture robust electrode stacks over 25 cm<sup>2</sup>. These stacks will be engineered for practical applications, ensuring optimal adhesion, conductivity, and surface properties.</p> <p>The project is supported by funding to SUT from the Australian Academy of Science <i>Global Science and Technology Diplomacy Fund – Strategic Element</i>.</p> <p>Refer to <a href="#">Annexure B - Grant Application</a> for further details on the project plan.</p>																																				
7	Project Objectives	<p><b>Objective 1.</b> Develop and optimize acid stable CuOx-based catalysts suitable for the chemical reduction of CO<sub>2</sub> to Commodity products. CuOx and multi-metal oxides including Bi<sub>2</sub>O<sub>3</sub>, SnO<sub>2</sub> and SbO<sub>2</sub> will be prepared with various ratios and formulations to investigate stability and selectivity towards both syngas and C2+ production.</p> <p><b>Objective 2.</b> Synergistically with Objective 1 and Objective 3, in-situ studies of both electrodes and electrolyzers will be used to understand factors effecting catalyst selectivity, stability, and system function. Structure-activity and System-activity correlations will be established based on insights gained from in situ studies, which facilitate optimisation of both catalysts and systems.</p> <p><b>Objective 3.</b> Upscale and optimise electrode manufacture using thermal spray to produce practical stacks of 25 cm<sup>2</sup>. Electrode engineering will be carried out to control phase changes, nano-composition hydrophobicity, adhesion, electrical contact, surface roughness and substrate engineering to make acid robust electrode materials.</p>																																				
8	Contributions	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #333; color: white;"> <th colspan="6" style="text-align: left; padding: 5px;"><i><b>Swinburne</b></i></th> </tr> <tr style="background-color: #ccc;"> <th style="width: 15%;"></th> <th style="width: 15%;">Year 1</th> <th style="width: 15%;">Year 2</th> <th style="width: 15%;">Year 3</th> <th style="width: 15%;">Year 4</th> <th style="width: 15%;">Total</th> </tr> </thead> <tbody> <tr> <td style="background-color: #333; color: white;"><i><b>In-kind</b></i></td> <td style="text-align: right;">\$82,409</td> <td style="text-align: right;">\$82,409</td> <td style="text-align: right;">\$.....</td> <td style="text-align: right;">\$.....</td> <td style="text-align: right;"><b>\$164,818</b></td> </tr> </tbody> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #333; color: white;"> <th colspan="6" style="text-align: left; padding: 5px;"><i><b>Collaborator</b></i></th> </tr> <tr style="background-color: #ccc;"> <th style="width: 15%;"></th> <th style="width: 15%;">Year 1</th> <th style="width: 15%;">Year 2</th> <th style="width: 15%;">Year 3</th> <th style="width: 15%;">Year 4</th> <th style="width: 15%;">Total</th> </tr> </thead> <tbody> <tr> <td style="background-color: #333; color: white;"><i><b>In-kind</b></i></td> <td style="text-align: right;">\$30,000</td> <td style="text-align: right;">\$30,000</td> <td style="text-align: right;">\$.....</td> <td style="text-align: right;">\$.....</td> <td style="text-align: right;"><b>\$60,000</b></td> </tr> </tbody> </table> <p>All contributions are in AUD.</p>	<i><b>Swinburne</b></i>							Year 1	Year 2	Year 3	Year 4	Total	<i><b>In-kind</b></i>	\$82,409	\$82,409	\$.....	\$.....	<b>\$164,818</b>	<i><b>Collaborator</b></i>							Year 1	Year 2	Year 3	Year 4	Total	<i><b>In-kind</b></i>	\$30,000	\$30,000	\$.....	\$.....	<b>\$60,000</b>
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9	Background Intellectual Property	Refer to <a href="#">Annexure A - Background Intellectual Property</a>																																				
10	Project Tasks, Milestones and Deliverables	Refer to <a href="#">Annexure B - Grant Application</a>																																				

## Execution

**Swinburne**

**SIGNED** for and on behalf of  
**SWINBURNE UNIVERSITY OF  
TECHNOLOGY** in the presence  
of:

3/10/2025

Date signed: ...../...../.....

Signed by:

*Michelle Critchley*

1751413B861B4E5...

Signature of witness

DocuSigned by:

*Tania Tambiah*

5591758920994CC...

Tania Tambiah

Name of signatory

Director, Research Serv

Title of signatory

**Collaborator**

**SIGNED** for and on behalf of  
**COLLABORATOR** in the  
presence of:

Date signed: 19/08/2025

*Jirunah*

Signature of witness



Dr. Natworapol Rachsirivatcharabul

Name of signatory

President

Title of signatory

## General Terms

This section of the Agreement sets out the General Terms applicable to this Collaborative Research Agreement. The signed Information Schedule constitutes an acceptance by the Parties of these of these General Terms and all other parts of this Agreement.

### 1. Term of Agreement

This Agreement will begin on the Commencement Date and, subject to earlier termination in accordance with the terms of this Agreement will terminate on the Completion Date unless otherwise varied with the written approval of the Parties.

### 2. The Project

**2.1** The Parties agree to collaborate on the terms and conditions of this Agreement for the purpose of carrying out the Project in accordance with the Project Objectives detailed in Item 7 of the Information Schedule.

#### 2.2 Each Party will:

**2.2.1** carry out the Project with appropriate professional care and skill;

**2.2.2** use reasonable efforts to carry out the Project so as to:

**2.2.2.1** complete the respective Tasks allotted to it in Item 10 of the Information Schedule; and

**2.2.2.2** achieve the Milestones by the applicable dates set out Item 11 of the Information Schedule,

**2.2.3** cooperate with and provide all information and instructions reasonably requested by the other Party to enable that Party to perform its obligations under this Agreement.

**2.3** The Parties acknowledge that:

**2.3.1** the conduct of the Project may be subject to obtaining ethics approval and other forms of statutory approval. The relevant party responsible for obtaining such approval will use their reasonable endeavours to gain such approval prior to the Commencement Date; and

**2.3.2** that research work is of its nature uncertain and that particular outcomes and results from the Project cannot be guaranteed. No Party will be liable to any other Party for any loss or damage (of any nature) whether arising from that Party's failure to perform work on time or within the estimated costs of the Project or otherwise, provided that the relevant Party has used its reasonable endeavours in all aspects in carrying out the Project.

**2.4** Nothing in this Agreement or otherwise shall be construed as imposing obligations on any staff, employee or other personnel of the Parties except those appointed to the Project Staff from time to time.

**3. Contributions**

Each Party will make its non-cash Contributions available for the Project at the time and in the manner set out in Item 8 of the Information Schedule and if not so specified, as reasonably requested by the Supervising Researchers to enable the Project to be conducted in accordance with:

**3.1** the Milestone requirements in Item 10 of the Information Schedule; and

**3.2** the Deliverable requirements in Item 11 of the Information Schedule; and

**4. Access to premises**

**4.1** Each Party will utilise its own premises to conduct the Project, unless otherwise agreed in writing.

**4.2** Each Party will allow access to the Project Staff of the other Party at all reasonable times and on reasonable notice to such part of its premises at which the Project is being carried out for the purpose of:

**4.2.1** carrying out the Project; and

**4.2.2** inspecting the progress of the Project.

**4.3** Each Party must ensure its Project Staff and other personnel comply with all safety, security

and confidentiality practices and requirements imposed and other reasonable directions given by the other Party while on the premises of that other Party.

**5. Materials**

**5.1** If the Parties are making any Materials available to each other for the purposes of the Project then, each Party:

**5.1.1** must organise and pay the costs of transport of its Materials to and from the other Party's premises;

**5.1.2** must advise the other Party of any hazardous or otherwise dangerous components or properties of the Materials and where applicable, instructions for safe use and operation of the Materials;

**5.1.3** is responsible for insuring, maintaining and, if necessary, repairing and replacing its Materials if required for the Project; and

**5.1.4** may store, dispose of or destroy the other Party's Materials in its possession or control at the end of the Project if:

**5.1.4.1** there are no return instructions;

**5.1.4.2** a written request has been made to the other Party to collect its Materials and the other Party does not promptly make arrangements for the collection of those Materials.

**5.2** The Parties acknowledge that some of the Materials may be altered, damaged or destroyed during the conduct of the Project as an anticipated and necessary part of the Project. In these circumstances the obligations:

**5.2.1** in clause 5.1.3; and

**5.2.2** to return the Materials, will not apply.

**5.3** No Party is obliged to commence or continue the Project until it has completed an assessment to confirm the other Party's Materials are safe and suitable for the purposes of the Project.

**5.4** A Party will at its own cost replace any of its Materials that the other Party deems unsafe or unsuitable for the purposes of the Project.

5.5 Any costs incurred by a Party as a consequence of defective, unsafe or unsuitable Materials supplied by the other Party will be reimbursed by that other Party.

**6. Access to Assets**

6.1 Where a Party is making available any Assets for the conduct of the Project then that Party is responsible for insuring those Assets against loss or damage.

6.2 Each Party must ensure its Project Staff comply with all directions and requirements reasonably imposed by the other Party as to the care, handling and use of the Assets of that other Party.

**7. Project Management and Governance**

7.1 Each Party appoints as its Supervising Researcher the person named in Item 2 of the Information Schedule or if no person is named, the person notified by each of the Parties in writing.

7.2 Each Party must ensure that its Supervising Researcher:

7.2.1 manages the day to day conduct of those tasks allocated to it in Item 10 of the Information Schedule;

7.2.2 liaises with the Supervising Researcher of the other Party to facilitate the achievement of the Milestones;

7.2.3 maintains full and accurate records of the performance of the Project.

7.3 The Supervising Researchers have no power to agree to variations to the terms of this Agreement.

7.4 Each Party will ensure that its Supervising Researcher provides the Parties with the Reports identified in Item 13 of the Information Schedule, which are to include:

7.4.1 the progress of the Project against the Milestones;

7.4.2 the tasks performed for the Milestones; and

7.4.3 any Project Intellectual Property generated.

7.5 Within 30 days of the Completion Date or the earlier termination of this Agreement, the Parties will ensure that their Supervising Researchers work together to provide the

Parties with a final report (**Final Report**) specifying:

7.5.1 all the tasks performed during the Project;

7.5.2 the results of the Project; and

7.5.3 all Project Intellectual Property generated.

**8. Conflict of interest**

8.1 Each Party warrants to Swinburne that it does not, and will ensure that its employees, agents and contractors do not, hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with or might appear to be created in conflict with their duties and interest under this Agreement.

8.2 A Party must promptly inform Swinburne of any matter which may give rise to an actual or potential conflict of interest at any time during the term of this Agreement.

8.3 Each Party acknowledges and agrees that failure to comply with this clause 8 will constitute a breach of a fundamental provision of this Agreement.

**9. Background Intellectual Property**

9.1 Each Party grants to each other a non-exclusive, royalty-free, right to use the first Party's Background Intellectual Property for the sole purpose and only to the extent necessary to:

9.1.1 carry out the Project; and

9.1.2 exercise rights under clause 10.4.2.

9.2 The rights granted under clause 9.1 may not be sub-licensed to a third party and are subject to any restrictions on use identified in Annexure A-Background Intellectual Property.

9.3 Each Party will give the other Party prompt notice of any infringement of Background Intellectual Property which comes to the first Party's attention.

**10. Project Intellectual Property**

10.1 The rights in each identifiable or separately registrable item of Project Intellectual Property which are created through agreed Project research activities undertaken at Swinburne premises, without involving any use of the

Collaborator's materials or equipment, will be owned exclusively by Swinburne.

- 10.2** Swinburne grants to the Collaborator a non-transferable, royalty free, non-exclusive right to use the Project Intellectual Property identified in clause 10.1 for the sole purpose and only to the extent necessary to:

**10.2.1** carry out the Project; and

**10.2.2** subject always to clause 9.2, undertake Internal Research and Development.

- 10.3** All rights in each identifiable or separately registrable item of Project Intellectual Property which are created through agreed Project research activities undertaken at the Collaborator's premises by personnel from either Party, will vest jointly in the Parties as tenants in common in equal shares (**Owning Parties**).

- 10.4** Each Owning Party grants to each other Party a non-transferable, royalty free, non-exclusive right to use the Project Intellectual Property identified in clause 10.3 for the sole purpose and only to the extent necessary to:

**10.4.1** carry out the Project; and

**10.4.2** subject always to clause 9.2, undertake Internal Research and Development.

- 10.5** The commercialisation of any Project Intellectual Property will be subject to a separate agreement with mutually agreed terms.

- 10.6** The Parties will execute all documents and do everything required to give effect to this clause 10.

## **11. Protection of Project Intellectual Property**

- 11.1** Unless otherwise agreed in writing, the Parties must treat all Project Intellectual Property as potentially patentable or potentially capable of giving rise to other registrable Intellectual Property protection.

- 11.2** The Owning Parties identified in clause 10.3 will determine the most appropriate method of protection for any jointly-owned Project Intellectual Property; failing agreement within a reasonable period of time, the Owning Parties agree that the Supervising Researchers will determine the most appropriate method of protection.

- 11.3** For Project Intellectual Property owned exclusively by Swinburne under clause 10.1,

Swinburne will determine the most appropriate method of Intellectual Property protection.

## **12. Exploitation**

- 12.1** Except as permitted under clause 10.4, a Party may only Exploit jointly-owned Project Intellectual Property with the prior written consent of the Owning Parties, such consent not to be withheld unreasonably.

- 12.2** If the Owning Parties agree to the Exploitation of any jointly-owned Project Intellectual Property under clause 12.1, then the Owning Parties will enter into a separate agreement to cover such Exploitation, which agreement is to provide (among other things):

**12.2.1** for the equitable sharing by Owning the Parties of any financial returns or benefits generated from Exploitation of jointly-owned Project Intellectual Property, net of reasonable expenses (including reasonable legal and patent attorney charges);

**12.2.2** to the extent that some or all of the benefits take the form of non-cash consideration, for a fair and reasonable means for sharing the benefit of the non-cash component thereof; and

**12.2.3** for each Party to continue to use the jointly-owned Project Intellectual Property for Internal Research and Development.

- 12.3** Each Party that contributes Background Intellectual Property will grant rights to its Background Intellectual Property to the extent necessary to enable the other Party to Exploit the jointly-owned Project Intellectual Property as agreed under clause 12.2, provided that:

**12.3.1** the jointly-owned Project Intellectual Property has been developed using that Background Intellectual Property;

**12.3.2** that Background Intellectual Property is required for the Exploitation of the jointly-owned Project Intellectual Property;

**12.3.3** the Parties have agreed in writing to an equitable sharing of financial returns and other benefits arising from such Exploitation; and

**12.3.4** the grant of rights to that Background Intellectual Property is subject to any

restrictions on its use specified or notified in accordance with clause 9.2.

### 13. Reporting

Each Party must maintain reasonable, up to date and accurate records regarding the conduct and conclusions of its part of the Project and its respective Contributions.

### 14. Scientific Knowledge And Skills

The general knowledge and skills that any Project Staff will use to carry out the Project may be further developed while performing the Project. The Parties and their Project Staff are free to use such knowledge and skill in the future either alone or with third Parties provided that in so doing they do not disclose any Confidential Information.

### 15. Confidential Information

**15.1** Confidential Information disclosed during the Project must only be used for the express purpose for which it was disclosed.

**15.2** Each Party must treat all Confidential Information owned by another Party as confidential and must not, without the prior written consent of the other Party, disclose or permit the same to be disclosed to any third person.

**15.3** Each Party must ensure that its employees, officers and agents comply with the obligations of confidentiality imposed upon it by this clause.

**15.4** Each Party's obligations under this clause survive termination of this Agreement.

### 16. Publication

**16.1** Any Party (**Publishing Party**) proposing to publish or publicly present material incorporating Project Intellectual Property that has not already been published in accordance with this Agreement, shall submit the proposed publication or abstract of the presentation to each Party for approval at least thirty (30) days prior to the date of proposed submission for publication or presentation. Each Party shall notify the Publishing Party in writing of any required amendments within twenty-one (21) days of receipt of the proposed publication or abstract and shall not unreasonably withhold or delay their approval for publication or presentations. If any Party fails to respond to the Publishing Party under this clause within the said twenty-one (21) day period, the Party's approval will be taken to have been given to the relevant publication or presentation.

**16.2** Where the proposed publication or presentation contains Confidential Information, the Party to which the Confidential Information belongs may require the proposed publication or presentation be amended so as not to contain that information. The Party to which the Confidential Information belongs shall notify the Publishing Party in writing of their required amendments within twenty-one (21) days of receipt of the proposed publication or abstract and shall not unreasonably withhold or delay their approval for publication or presentation.

**16.3** If a Party to which the Confidential Information belongs fails to respond to the Publishing Party within the said twenty-one (21) day period, that Party's approval will be taken to have been given to the relevant publication or presentation.

**16.4** The Collaborator acknowledges that Swinburne has obligations under its statutes to ensure that any student involved in the Project is able to complete the requirements of his or her candidature, and that this obligation extends to submitting the Student's thesis for examination and depositing in a library a copy of the Student's completed thesis or work submitted for a higher degree. Nothing in this Agreement affects the operation of Swinburne's relevant statutes, regulations or policies or creates any obligations contrary to those statutes, regulations or policies.

**16.5** Depositing a copy of the Student's completed thesis or work submitted for a higher degree in a library, in accordance with clause 16.4, shall be subject to reasonable conditions being imposed by agreement by all Parties to this Agreement. A reasonable condition may include giving effect to a request that a student's thesis or work be withheld from access to library users for a period of not more than six (6) months after assessment.

### 17. Warranties

**17.1** Each Party excludes all warranties, terms, conditions, representations or undertakings, whether statutory or otherwise, to the full extent permitted by the laws of the Commonwealth of Australia or of any State or Territory of Australia having jurisdiction, including:

**17.1.1** any warranty of merchantability of or fitness for a particular purpose in respect of the Background Intellectual Property and Project Intellectual Property; and

**17.1.2** any warranty that the Background Intellectual Property and Project Intellectual Property does not infringe any third party's Intellectual Property rights.

**18. Sub-Contracting**

A Party may only sub-contract its obligations under this Agreement to a third party with the prior written consent of each other Party to this Agreement. If the other Party consents to a Party sub-contracting in accordance with the provisions of this clause, the party whom sub-contracts:

- 18.1** remains primarily responsible for its obligations under this Agreement; and
- 18.2** must ensure that it enters into an agreement with such subcontractor on terms consistent with this Agreement.

**19. Termination**

**19.1** The Parties may immediately terminate this Agreement by mutual consent in writing.

**19.2** Swinburne may terminate this Agreement immediately upon the giving of written notice to the Collaborator if:

- 19.2.1** that Party is in breach of a material obligation of this Agreement (including clause 24) and has failed to rectify that breach within twenty-one (21) days of written notice by Swinburne;
- 19.2.2** that Party is insolvent within the meaning of the Corporations Act, or a court is required under the Corporations Act to presume that that Party is insolvent;
- 19.2.3** an application or order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting or an application to a court or other steps are taken for that Party's winding up or dissolution, or that Party enters into an arrangement, compromise or composition with or assignment for the benefit of its creditors or any of them;
- 19.2.4** an administrator is appointed over all or any of that Party's assets or undertaking, any step preliminary to the appointment of an administrator is taken, or a controller within the meaning of the Corporations Act or

similar officer is appointed to all of that Party's assets or undertaking; or

**19.2.5** the condition of clause 2.3.1 is not met in a reasonable time.

**19.3** Termination of this Agreement for whatever cause is without prejudice to any rights or obligations that have accrued and are owing prior to such termination.

**20. Unavoidable event**

**20.1** If a party (**Affected Party**):

**20.1.1** is prevented from or delayed in performing an obligation by an Unavoidable Event;

**20.1.2** as soon as possible after the Unavoidable Event occurs, notifies the other party of full particulars of:

**20.1.2.1** the Unavoidable Event;

**20.1.2.2** the effect of the Unavoidable Event on performance of the Affected Party's obligations;

**20.1.2.3** the anticipated period of delay; and

**20.1.2.4** the action (if any) the Affected Party intends to take to mitigate the effect and or remove or reduce the period of delay; and

**20.1.3** promptly and diligently acts to mitigate the effect of the Unavoidable Event and or to reduce the period of delay;

then:

**20.1.4** the Affected Party's obligations under this Agreement are suspended during, but for no longer than, the period the Unavoidable Event continues and such further period as is reasonable in the circumstances; and

**20.1.5** if the Affected Party is prevented from or delayed in performing the obligations under this Agreement by the Unavoidable Event for at least 30 days, then either party may, by notice in writing to the other party, immediately terminate this Agreement.

**20.2** Nothing in clause 20.1.3 obliges either party to settle any strike, lockout, ban, limitation of work or other industrial disturbance.

## 21. Publicity

- 21.1** Neither party may use the other party's name, trade marks or service marks or refer to the other party (inclusive of its employees or officers) directly or indirectly in any media release, public announcement or public disclosure relating to this Agreement or its subject matter, including in any promotional or marketing materials, customer lists or business presentations, without obtaining the prior written consent from the other party.
- 21.2** The obligation in this clause 21 does not apply to any disclosure which a Party is required to make by law, provided that the Party so required consults with the other party as to the information to be disclosed prior to disclosure.

## 22. Sanctions and Associated Laws

- 22.1** Swinburne and the Collaborator acknowledge that they are each responsible for complying with all relevant laws and regulations including, without limitation, all laws and regulations applicable to the import and export of particular goods and services as specified from time to time (**Goods and Services**) from and or to particular countries under the Autonomous Sanctions Act 2011, the Charter of the United Nations Act 1945 (**Sanctions Laws**), and the Defence Trade Controls Act 2012 (**Associated Law**).
- 22.2** The Collaborator acknowledges that Swinburne cannot provide directly or indirectly any Goods or Services to:
- 22.2.1** embargoed and sanctioned countries as notified by the Australian Department of Foreign Affairs and Trade; or
- 22.2.2** a person who is a member of Al-Qaida or the Taliban or to any other person who is listed on the Consolidated List maintained by the Department of Foreign Affairs and Trade.
- 22.3** The Collaborator acknowledges that the countries, organisations and persons referred to in this clause are constantly subject to change in accordance with Australian and other relevant national and international export and import laws and regulations.
- 22.4** The Collaborator assures and warrants to Swinburne that services received or supplied under this Agreement are not subject to embargo or sanction under the Sanctions Laws, the Associated Law, or any other applicable

regulations, and that products for which services are provided under this Agreement have been legally exported/imported under all of the applicable laws and regulations.

- 22.5** The Collaborator will provide to Swinburne not less than ten (10) days' prior written notice if any items provided by or through the Collaborator and used or accessed by Swinburne in performing the services are controlled for export under the Sanctions Laws, the Associated Law, or under any other applicable laws.
- 22.6** Unless otherwise expressly agreed, the Party who actually imports any items used in the Project will be the importer of record of any such items for which import is required for delivery of any portion of the services from outside of Australia.
- 22.7** At its option, Swinburne may suspend performance under this Agreement to the extent necessary to assure compliance under the Sanctions Laws, the Associated Law and or any other applicable laws if it reasonably forms the opinion that the Collaborator is in violation of any applicable laws or regulations.
- 22.8** If Swinburne suspends, in whole or in part, performance under this Agreement because it has formed a reasonable opinion that the Collaborator is in violation of any of the applicable laws or regulations, Swinburne shall not be liable to the other Parties for any costs (including legal costs), expenses, losses, or damages of any kind whatsoever, and whether any such costs, expenses, losses or damages are direct, indirect or consequential in nature.

## 23. Privacy and Associated Laws

- 23.1** The Collaborator acknowledge that:
- 23.1.1** Swinburne is subject to the provisions of the:
- 23.1.1.1** *Privacy Act 1988 (Commonwealth)* (including the Australian Privacy Principles);
- 23.1.1.2** *Privacy and Data Security Act (Victoria)* (including the Victorian Information Privacy Principles);
- 23.1.1.3** *Health Records Act 2001 (Victoria)* (including the Victorian Health Privacy Principles);

**23.1.1.4** *Freedom of Information Act 1982 (Victoria)*;

**23.1.1.5** *Charter of Human Rights and Responsibilities Act 2006 (Victoria)*;

**23.1.1.6** *Freedom of Information Act 1982 (Commonwealth)*; and

**23.1.1.7** all relevant international laws to which Australia is a signatory, and all relevant regulations, rules, guidelines, codes, determinations and any other associated legislative enactments or amendments applicable to the above,

(hereinafter called the '**Relevant Laws**').

**23.1.2** pursuant to the terms of this Agreement, and for valuable consideration, the Collaborator will receive from Swinburne, data and or information that may contain information or an opinion about an identified individual, or an individual who is reasonably identifiable notwithstanding whether the information or opinion is true or not and notwithstanding how the information or opinion is recorded (hereinafter called '**Personal Information**').

**23.2** The Collaborator unconditionally agrees and undertakes, that as a condition to it receiving Personal Information from Swinburne:-

**23.2.1** it shall be bound by the Relevant Laws;

**23.2.2** it will ensure that it has in place a compliant complaint handling process for privacy complaints;

**23.2.3** it specifically acknowledges that it will ensure that it implements a data breach response plan which includes a mechanism for notifying Swinburne where there are reasonable grounds to suspect a data breach has occurred, and that included in the plan, shall be an outline of the appropriate remedial action to be taken in particular situations;

**23.2.4** it shall enter a similar contractual arrangement to that contained in this clause with any third parties to whom it intends to disclose Personal Information (for example, a subcontractor or a consultant) prior to it making any such disclosure, and in every case, only after it has first obtained Swinburne's specific approval in writing to the proposed disclosure to such a third party; and

**23.2.5** it shall, prior to making disclosure of Personal Information to any of its employees, enter a similar contractual arrangement to that contained in this clause, and in all parts of this clause, with any employee it engages to process or otherwise deal with Personal Information in a manner contemplated by this Agreement.

**23.3** At the expiry or earlier termination of this Agreement, the Collaborator shall forthwith return all the Personal Information and all and any copies of the Personal Information it may have in its possession or under its control to Swinburne.

## **24. Non-disparagement**

During the currency of this Agreement and for a period of 24 months thereafter, the Collaborator agrees and undertakes to take no action which is intended, or would reasonably be expected, to harm Swinburne (inclusive of its officers and employees) or its reputation or which would reasonably be expected to lead to unwanted or unfavorable publicity of Swinburne or its officers and employees.

## **25. Dispute Resolution**

**25.1** A Party must not commence legal proceedings relating to this Agreement unless the Party wishing to commence proceedings has complied with this clause 25.

**25.2** The Parties must co-operate with each other and use their best endeavours to resolve by mutual agreement any disputes between them and all other difficulties which may arise from time to time relating to this Agreement.

**25.3** Any dispute not resolved under clause 25.2 must be dealt with as follows:

**25.3.1** the Party claiming a dispute exists must notify in writing the other Party of that dispute (**Notification**);

- 25.3.2 within 10 days of receipt of that Notification, the dispute must be referred to the Chief Executive Officer of the Collaborator and the Deputy Vice-Chancellor (Research & Enterprise) of Swinburne, or their nominees for resolution; and
- 25.3.3 if the dispute is not resolved within 28 days of Notification, the dispute shall be referred for mediation to the Australian Disputes Centre Limited (ADC). If the Dispute has not been resolved within 60 days of referral to ADC either Party is free to initiate court proceedings.

**26. General**

**26.1 Interpretation**

The following rules apply unless the context requires otherwise:

- 26.1.1 Capitalised terms have the meanings provided in the Glossary;
- 26.1.2 words denoting the singular include the plural and vice versa;
- 26.1.3 words denoting natural persons include corporations and vice versa;
- 26.1.4 words denoting any gender include all genders;
- 26.1.5 headings are for convenience only and do not affect interpretation;
- 26.1.6 reference to any Party to this Agreement or any other relevant agreement or document includes that Party's successors and permitted assigns;
- 26.1.7 reference to any document or agreement is deemed to include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time; and
- 26.1.8 references to any legislation or to any provision of any legislation include any modification or re-enactment of such legislation or any legislative provisions substituted for, and all legislation and statutory instruments issued under, such legislation.

**26.2 No partnerships:** This Agreement does not create a partnership, agency, fiduciary or other

relationship, except the relationship of contracting parties. No Party is liable for the acts or omission of any other Party, save as set out in this Agreement.

**26.3 Assignment:** A Party must not assign, sub-contract, or transfer any of its rights or obligations under this Agreement to any person without the prior written consent of the other Parties. Such consent must not be unreasonably withheld.

**26.4 Severability:** If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected and all other provisions will remain in full force and effect.

**26.5 Governing Law:** This Agreement shall be governed by the laws of Victoria, Australia. Each Party submits to the non-exclusive jurisdiction of the courts of that place.

**26.6 Several Obligations:** Each Party's obligations and liabilities under this Agreement are several and not joint or joint and several.

**26.7 No Waiver:** Any failure by a Party to compel performance by the other Party of any of the terms and conditions of this Agreement will not constitute a waiver of those terms or conditions or diminish the rights arising from their breach.

**26.8 Counterparts:** 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. This Agreement is binding on the Parties on the exchange of counterparts. A copy of a counterpart sent by electronic transmission –

**26.8.1** must be treated as an original counterpart;

**26.8.2** is sufficient evidence of the execution of the original; and

**26.8.3** may be produced in evidence for all purposes in place of the original.

**26.9 Signatories:** The signatories to this Agreement warrant that they have the authority to enter into this agreement on behalf of the party they are stated to represent.

**26.10 Variation:** This Agreement may only be varied in writing, signed by all Parties.

**26.11 No representation:** A Party shall not represent that another Party or any of their staff in any way endorse, support or approve of, any products, services, Intellectual Property or business of the representing party unless that other Party has given its express written consent to such representation.

**26.12 Contra Proferentem:** This Agreement or any part of this Agreement is not to be construed against a Party merely because that Party was responsible for preparing it.

**26.13 Entire Agreement:** This Agreement-

**26.13.1** is the entire agreement and understanding between the Parties on everything connected with the subject matter of this Agreement; and

**26.13.2** supersedes any prior agreement or understanding on anything connected with that subject matter.

**26.14 Execution:** This Agreement is null and void unless it is executed by all parties.

**26.15 Survival:** Termination of this Agreement does not relieve any party from that party's obligations under clauses 9, 10, 11, 12, 15, 16, 17, 19, 20, 22, 25 and 26.

## 27. Notices

Any notice given under this Agreement:

**27.1** must be in writing and signed by a person authorised by the sender;

**27.2** must be delivered to the intended recipient by post or by hand or fax or email to the address or fax number or email address set out in the Information Schedule;

**27.3** will be taken to be duly given or made:

**27.3.1** in the case of delivery in person, when delivered;

**27.3.2** in the case of delivery by post, five Business Days after the date of posting unless it has been received earlier;

in the case of fax, on receipt by the sender of a transmission control report from the dispatching machine; and

**27.3.3** if transmitted electronically, upon actual receipt by the addressee provided that the sender does not receive notification of invalid email delivery address or other transmission error. In the case where the sender receives a transmission error report, the sender must re-send the notice by one of the other means by hand, post or fax;

but if the result is that a notice would be taken to be given or made on a day which is not a Business Day, or is later than 4.00pm (local time), it will be taken to have been duly given or made on the next Business Day.

## Glossary

<b>Affected Party</b>	has the meaning given in clause 20.1.
<b>Agreement</b>	means this agreement including this Glossary, the Information Schedule, the General Terms, all Annexures to this agreement, and any amendment to it in writing.
<b>Annexure</b>	means an annexure to this Agreement.
<b>Application</b>	means an application for Protection of an Invention.
<b>Assets</b>	mean equipment, plant and facilities of a Party.
<b>Background Intellectual Property</b>	means pre-existing or independently developed Intellectual Property, owned or controlled by a Party which it determines, in its discretion, to make available for the carrying out of the Project. This includes but is not limited to any Intellectual Property outlined in Annexure A.
<b>Business Day</b>	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.
<b>Commencement Date</b>	means the commencement date of the Project as set out in Item 3 of the Information Schedule.
<b>Completion Date</b>	means the completion date of the Project as set out in Item 4 of the Information Schedule.
<b>Confidential Information</b>	<p>means any information:</p> <ul style="list-style-type: none"> <li>(a) in any form or media that is by its nature confidential or is identified by a Party as confidential; and</li> <li>(b) which is disclosed by one Party to the other Party, or of which a Party becomes aware, whether before or after the date of commencement of the Project; or</li> <li>(c) which one or both of the Parties create in the course of and as a result of carrying out the Project;</li> <li>(d) without limiting (a), (b) and (c) above, includes: <ul style="list-style-type: none"> <li>(i) Background Intellectual Property;</li> <li>(ii) information embodied in Materials;</li> <li>(iii) Project Intellectual Property;</li> <li>(iv) any confidential information specified in the Project Plan; and</li> <li>(v) all copies and notes of the information in (i) to (iv) above,</li> </ul> </li> </ul> <p>but does not include information which:</p> <ul style="list-style-type: none"> <li>(e) prior to disclosure is in the public domain or subsequent to disclosure to the receiving party becomes part of the public domain other than as a breach of this Agreement or other obligation owed to the disclosing party;</li> <li>(f) is received by the receiving party from a third party without any</li> </ul>

	<p>obligation to hold in confidence and which has not been obtained by that third party directly or indirectly from the receiving party; or</p> <p>(g) is independently developed by an employee or officer of the receiving party while having no knowledge of the disclosing party's Confidential Information.</p>
<b>Contributions</b>	means the Assets, services of Project Staff and other non-cash contributions to be provided by a Party for the purposes of the Project as set out in Item 8 of the Information Schedule, but does not include any Background Intellectual Property or Materials contributed to the Project.
<b>Corporations Act</b>	means the Corporations Act 2001 (Cth).
<b>Deliverables</b>	mean those technologies and physical items to be produced or developed by one or both of the Parties in the course of the Project and any reports as specified in Item 12 of the Information Schedule.
<b>Exploit</b>	<p>means:</p> <p>(a) in relation to a product—make, hire, sell or otherwise dispose of the product, offer to make, sell, hire or otherwise dispose of it, use or import it, or keep it for the purpose of doing any of those things;</p> <p>(b) in relation to a method or process—use the method or process or do any act mentioned in paragraph (a) in respect of a product resulting from such use;</p> <p>(c) in relation to a copyright work—reproduce, adapt, modify and communicate the copyright work to the public; and</p> <p>(d) to assign the rights to or to license or sublicense a third party to do any of the above; and</p> <p><b>Exploited, Exploitation and Exploiting</b> will be similarly construed.</p>
<b>Final Report</b>	means the report specified in clause 7.5.
<b>General Terms</b>	means the general terms described as such in this Agreement.
<b>Glossary</b>	means this glossary.
<b>Information Schedule</b>	means the Schedule at the start of this Agreement which details the key information relevant to this Agreement.
<b>Intellectual Property</b>	<p>means all intellectual property rights, including:</p> <p>(a) rights in relation to inventions, including patents, plant breeders rights, copyright (present and future), rights in circuit layouts, registered designs, trade marks and know how; and</p> <p>(b) any application or right to apply for registration of any of the rights referred to in paragraph (a),</p> <p>but excluding moral rights and similar non assignable personal rights of any person.</p>
<b>Internal Research and Development</b>	means research and development activities which are conducted solely by a Party and includes:

	<p>(a) research conducted for or on behalf of a third party; or</p> <p>(b) research conducted in collaboration with a third party</p> <p>where there is no licensing or disclosure (express or implied) of the Project Intellectual Property.</p>
<b>Inventions</b>	means any discovery, innovation or invention (whether or not patentable) made during the course of and as a result of conducting the Project.
<b>Item</b>	means an item in the Information Schedule.
<b>Material</b>	means any raw materials, samples, materials, software, goods, information or data stored by any means, chemical or biological reagents and prototypes.
<b>Milestone</b>	mean each of the project milestones set out in Item 11 of the Information Schedule.
<b>Parties</b>	means the parties to this Agreement and their respective successors and permitted assigns, and <b>“Party”</b> means any one of them.
<b>Project</b>	means the project to be conducted by the Parties under this Agreement, as described in Item 6 of the Information Schedule or attached as an Annexure to this Agreement.
<b>Project Intellectual Property</b>	means all Project Patents and other Intellectual Property created in the course of and as a result of carrying out the Project excluding copyright in a Student’s thesis.
<b>Project Patents</b>	means patent applications or granted patents in respect of Inventions.
<b>Project Staff</b>	means a Party’s employees, directors, officers, agents and contractors.
<b>Protection</b>	means patent protection or other registered Intellectual Property protection for an Invention.
<b>Publishing Party</b>	has the meaning given to it in clause 16.1.
<b>Schedule</b>	means a schedule to this Agreement.
<b>Student</b>	means any student of Swinburne engaged in the Project.
<b>Supervising Researchers</b>	mean the supervising researchers provided by each of the Parties under this Agreement, as described in Item 2 of the Information Schedule.
<b>Unavoidable Event</b>	<p>means any of the following events:</p> <p>(a) act of God;</p> <p>(b) pandemic or epidemic;</p> <p>(c) war, terrorism, riot, insurrection, vandalism or sabotage;</p> <p>(d) strike, lockout, ban, limitation of work or other industrial disturbance; or</p> <p>(e) law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular</p>

	<p>application;</p> <p>which:</p> <p>(f) is beyond the reasonable control of the Affected Party; and</p> <p>(g) occurs without any fault or negligence on the part of the Affected Party.</p>
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### Annexure A – Background Intellectual Property

Contributor	Description of Background Intellectual Property	Restrictions on Use
SUT		
RMUTP		

### Annexure B – Grant Application