

## STUDENT PROJECT AGREEMENT

### 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
<b>Contracting Party</b>	<b>The Party identified in Item 1 below</b>

#### Date

<b>Date of Agreement</b>	29/09/2024
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#### Background

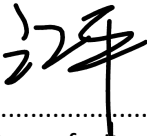
- A. The Contracting Party has a number of Projects that it wishes to engage Swinburne Undergraduate students to work on for their final year projects. The Contracting Party will participate in the selection of the Students.
- B. The Contracting Party wishes to support the skills development of the Students by providing the Contribution.
- C. Swinburne will arrange for the Student to assign any Intellectual Property in the Projects to Swinburne. Swinburne will assign the Project IP to the Contracting Party.
- D. The Contracting Party and Swinburne agree to perform their obligations in accordance with the terms and conditions of this Agreement.

#### Details

Item No	Identifier	Detail
1	Contracting Party	<div><div>Name:</div><div>Benjamin Tan Chen Hern</div></div>
		<div><div>ACN:</div><div></div></div>
		<div><div>Address:</div><div>78, Jalan SS 15/4b, Ss 15, 47500 Subang Jaya, Selangor</div></div>
		<div><div>email:</div><div>104477174@student.swin.edu.au</div></div>
		<div><div>Attention:</div><div>Huachang Growmax</div></div>
2	Project	Huachang Growmax Sales Order Application
3	Commencement Date	30/08/2024
4	Completion Date	TBD
5	Swinburne Supervisor	Ms. Robina Tinawin
6	Contribution	<div><div>In-kind:</div><div></div></div>
		<div><div>Cash:</div><div></div></div>

		Other:	
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Execution

Swinburne	SIGNED for and on behalf of SWINBURNE UNIVERSITY OF TECHNOLOGY in the presence of:	) ) ) )	.....
	Date signed:		.....
			Name of signatory
			Title of signatory
	Signature of witness		
Contracting Party	SIGNED for and on behalf of CONTRACTING PARTY in the presence of:	) ) )	.....
	Date signed: 07/ 10/ 2024	)	Dr. Tang Jiang Ping
			Name of signatory
			General Manager
	 Signature of witness		Title of signatory

General Terms

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

1. Term

This Agreement commences on the Commencement Date and continues until the Completion Date unless terminated earlier in accordance with clause 15.
2. Selection of Students

2.1 Swinburne agrees to:

2.1.1 liaise with the Contracting Party about the Students selected and that the Contracting Party will have the final right of approval of each Student; and

2.1.2 advise the Contracting Party if the Student fails to achieve an adequate level of performance, as determined by Swinburne, or the Student does not remain enrolled full-time in the undergraduate degree. The Contracting Party and Swinburne will then discuss finding a replacement student subject to the suitability and status of the relevant Project.

2.2 Swinburne agrees it will use its best endeavours to do the following in relation to each Student selected:

- 2.2.1** provide the Contracting Party with the contact details for each Student and assist the Contracting Party in obtaining the Student's agreement and signature to a confidentiality agreement prior to commencing any work on the Project;
  - 2.2.2** obtain an assignment of the Project IP the Student creates in the Project to Swinburne;
  - 2.2.3** obtain their agreement to give the Contracting Party a copy of their Assessment;
  - 2.2.4** obtain their agreement to grant the Contracting Party a world-wide, non-transferable, non-exclusive, royalty free licence to reproduce or adapt their Assessment (or parts thereof) for non-commercial research purposes; and
  - 2.2.5** obtain their agreement to comply with all lawful and reasonable directions given by the Contracting Party and policies and procedures relating to health, safety and security when visiting the Contracting Party premises.
- 2.3** The Contracting Party acknowledges that the Student will be required to comply with Swinburne's regulations governing the undergraduate course in which the Student is enrolled, including progression, reporting and examination.

### 3. The Contracting Party contribution

- 3.1** In consideration of Swinburne complying with the terms and conditions of this Agreement, the Contracting Party will make the Contribution during the Term at times to be determined by the Contracting Party.
- 3.2** Swinburne agrees that the Contracting Party is not liable for any fees, costs or expenses incurred by the Students or Swinburne other than as detailed in this Agreement.

### 4. Supervision of Students

- 4.1** For each Project during the Term the Student will be supervised by a nominee from the Contracting Party and a Swinburne Supervisor (collectively referred to as the **Advisory Committee**).
- 4.2** The Parties agree that:

- 4.2.1** the Swinburne Supervisor will be the primary point of contact for the Student;
- 4.2.2** the Advisory Committee will endeavour to meet four times during the Term with the Student and more regularly if requested by the Contracting Party;
- 4.2.3** the Contracting Party nominee on the Advisory Committee will be kept informed of the progress of each Project by the Swinburne Supervisor and the Student;
- 4.2.4** Swinburne will use reasonable efforts to procure Student to attend meetings with the Contracting Party as required by the Contracting Party; and
- 4.2.5** where the Contracting Party nominee believes the Student is not performing the Project in a manner that is satisfactory to the Contracting Party they will inform the Swinburne Supervisor in writing including an explanation of what the Contracting Party requires.

### 4.3 Swinburne agrees that it will ensure that the Student:

- 4.3.1** complies with any reasonable directions given by the Advisory Committee;
- 4.3.2** maintains the highest standards of professional ethics in their work on the Project;
- 4.3.3** does not use any Third Party IP in the Project without complying with clause 9; and
- 4.3.4** reports any potential inventions or innovations for the Project to the Swinburne Supervisor and the Advisory Committee as soon as reasonably practicable.

### 5. Reports by Students

- 5.1** Swinburne agrees that during the Term and upon request by the Contracting Party, the Swinburne Supervisor will provide the Contracting Party with a copy of any drafts of the Assessment or other relevant working documents produced by the Student in order to satisfy the Contracting Party that the Student is complying with the reasonable directions of the Advisory Committee.

- 5.2 Swinburne agrees that by no later than 30 June and 30 November of the relevant calendar year and it will submit a report to the Contracting Party prepared by the Student that details the progress of the Project and the Assessment.
- 5.3 At other times during the Term and on 30 days written notice, the Contracting Party may request an update from the Student regarding the progress of the Project and the Assessment.

## 6. Amending Projects

- 6.1 During the Term, the Contracting Party may amend any Project by written notice to the relevant Swinburne Supervisor after consultation with the Swinburne Supervisor and the Student.
- 6.2 The Parties agree that the Contracting Party has the final right of approval over any amended Project.

## 7. Project Intellectual Property

- 7.1 Swinburne assigns to the Contracting Party, immediately upon its creation, all right, title and interest in Project IP.
- 7.2 For the purposes of performing the Project, the Contracting Party grants Swinburne a fully paid up, royalty-free, non-transferable, non-exclusive perpetual licence in respect of the Project IP for Internal Research and Development.
- 7.3 Swinburne will do all things reasonably necessary, including but not limited to signing any documents, applications or declarations, in order to vest in the Contracting Party full and clear title to the Intellectual Property in the Project IP and to assist the Contracting Party in obtaining registration as proprietor of any such Intellectual Property Rights in Australia or elsewhere.

## 8. Background Intellectual Property

- 8.1 For the purposes of performing the Project, Swinburne grants the Contracting Party a fully paid up, royalty-free, irrevocable, world-wide, non-exclusive licence in respect of its Background IP to the extent it is required for the purposes of performing the Project for the Term.
- 8.2 Where Swinburne owned Background IP is required to use the Project IP, Swinburne will enter into negotiations with the Contracting Party to provide a licence to its Background IP on appropriate terms.
- 8.3 The Contracting Party grants Swinburne a non-transferable, fully paid up, royalty-free, non-

exclusive, irrevocable, licence in respect of its Background IP that is required for the purposes of performing the Project during the Term.

- 8.4 If the Contracting Party is no longer intending to fund a the Contracting Party Project after the Term all Background IP must be destroyed by Swinburne and a Certificate of Destruction provided within 60 days of such destruction.

- 8.5 Ownership of Background IP which either party contributes to a Project remains unaffected by this Agreement.

## 9. Third Party Intellectual Property

- 9.1 Swinburne acknowledges that the incorporation of Third Party IP into Project IP will require the Contracting Party to negotiate and enter a licence agreement with the third party. Swinburne must give the Contracting Party prior written notice if it proposes to use Third Party IP in a Project. In that notice Swinburne must include the following:

- 9.1.1 describe the Third Party IP;
- 9.1.2 how it is proposed to be used in the Project;
- 9.1.3 whether it will be included in Project IP;
- 9.1.4 ownership details of the Third Party IP; and
- 9.1.5 licence conditions, including any fees, for use of the Third Party IP.

- 9.2 It is within the Contracting Party's absolute discretion whether it agrees to the use of the Third Party IP in the Project.

- 9.3 Swinburne agrees to reasonably assist the Contracting Party to obtain a licence to exercise the Third Party IP on the best available commercial terms.

## 10. Publications

- 10.1 At least 30 days before submitting a proposed Publication to a publisher, Swinburne must provide the Contracting Party with a draft of any proposed Publication which relates to a Project as such Publication may include Project IP, the Contracting Party Confidential Information, the Contracting Party owned Background IP or other commercially sensitive information that may seriously impact the Contracting Party's business if disclosed.

- 10.2 The Contracting Party will respond within 30 days of receiving a request under by clause 10.1 by:

- 10.2.1 providing consent to the Publication;

**10.2.2** providing consent to the Publication subject to data being anonymised or the Contracting Party's Confidential Information, Project IP and/or Background IP being removed from the draft; or

**10.2.3** requesting a delay in disclosure of the Publication so as not to prejudice protection or commercialisation of the Contracting Party owned Intellectual Property or Confidential Information for a period to be agreed between the parties.

**10.3** If the Contracting Party does not respond in the 30 day period then consent is deemed to have been given to the proposed Publication.

**10.4** When a party publishes any material in relation to a Project, that party must acknowledge, at a prominent place in the Publication and/or Assessment, the support of the Contracting Party in funding the Project and involvement of Swinburne in creating the Project.

**10.5** The parties must not in any way, either expressly or impliedly, represent that the party or any associated entity endorses the other party's business.

**10.6** The Contracting Party agrees not to use Swinburne's trademark or name in any materials for publication without the prior written consent of Swinburne.

## **11. Assessment**

**11.1** The Contracting Party acknowledges that:

**11.1.1** the Student owns the Student IP; and

**11.1.2** the Student may wish results of the Project to be included and published as part of their Assessment.

**11.2** The Parties agree that appropriate steps must be taken as detailed below to ensure the confidentiality of Project IP, the Contracting Party Confidential Information, the Contracting Party owned Background IP or other commercially sensitive information that may seriously impact the Contracting Party's business if disclosed.

**11.2.1** Swinburne agrees that at least 30 days before submitting an Assessment for external examination (being examination by a person or entity not associated with Swinburne), Swinburne must provide the Contracting Party with a copy of the Assessment;

**11.2.2** the Contracting Party must respond within 15 days of receiving a request under clause 11.2.1 by:

**11.2.2.1** requiring the examiner sign a confidentiality deed with Swinburne;

**11.2.2.2** providing consent to the publication of the Assessment;

**11.2.2.3** providing consent to the publication of the Assessment subject to data being anonymised or the Contracting Party's Confidential Information, Project IP and/or Background IP being removed from the Assessment; and/or

**11.2.2.4** insisting that an Assessment must be submitted to the examiners in confidence and following examination the Assessment must be held by Swinburne in confidential restricted storage for a period to be agreed with the Contracting Party in accordance with Swinburne's policies and procedures.

## **12. Moral Rights**

**12.1** The Contracting Party will make reasonable endeavours to comply with a Student's Moral Rights in subject matter authored by a student and comprised in the Project IP. Swinburne will use reasonable efforts to obtain the consent of the Students to the following in relation any to any subject matter a student authors which is comprised in the Project IP:

**12.1.1** adapting, amending or making deletions to the subject matter;

**12.1.2** combining the subject matter with other works;

**12.1.3** publishing the subject matter without the name of the Student identified as the author; and

**12.1.4** any of the acts or omissions referred to in clause 12.1.1 to 12.1.3 being done by a licensee or assignee to whom the Contracting Party grants rights to the Project IP.

## **13. Warranties**

**13.1** Swinburne warrants and represents that:

**13.1.1** it will perform all of the matters listed in clause 2.2;

**13.1.2** it will ensure the Project is performed in accordance with all applicable laws and ethical requirements.

**13.2** The parties represent and warrant to each other that to the best of their knowledge as at the date of this Agreement (without having made any enquiries), the grant of the licences contemplated by clauses 7 and 8 and use of a party's Project IP and/or Background IP will not infringe the Intellectual Property of any third party.

**13.3** The Contracting Party agrees and acknowledges that Swinburne excludes all other warranties and representation about the quality or fitness or any particular purpose of the Project IP.

#### 14. Insurance

**14.1** Each Party must effect and maintain adequate insurance to cover participation of each Party and the Student in the Project, including without limitation:

**14.1.1** at least \$20,000,000 per claim for public liability insurance;

**14.1.2** at least \$10,000,000 per claim for professional indemnity insurance; and

**14.1.3** workers compensation insurance as required by law.

**14.2** The Parties agree that:

**14.2.1** if the Student sustains injury to his/her person whilst on the Contracting Party's premises (**Incident**) and if any claim is made against the Contracting Party and/or Swinburne as a result of the Incident then Swinburne will release and indemnify and keep indemnified the Contracting Party from and against all actions, claims, damage and loss that have arisen or that may at any future time arise from the Incident;

**14.2.2** the indemnity referred to in clause 14.2.1 will not apply, if the injury was caused by the Contracting Party, its servants or agents;

**14.2.3** Swinburne's liability will be reduced proportionately if the Incident was contributed to by the Contracting Party;

**14.2.4** Swinburne is not responsible for any losses, (other than an injury referred to in clause 14.2.1) which the Student incurs whilst in attendance or undertaking the Project at or for the Contracting Party; and

**14.2.5** this clause 14.2 sets out the extent of Swinburne's liability to the Contracting Party.

#### 15. Termination

**15.1** Either Party may terminate this Agreement immediately by notice to the other party if the other party commits a material breach of this Agreement and does not remedy that breach within 30 days of that breach being notified to it.

**15.2** The Contracting Party may give notice to Swinburne that the Student is no longer suitable for the Project if 30 days after notification the Student fails to sign any of the documentation, deeds or agreements required under this Agreement.

**15.3** Either party may terminate this Agreement immediately by notice to the other party if the other party commits an Insolvency Event.

**15.4** Following termination or expiration of this Agreement, the parties agree that:

**15.4.1** accrued rights and remedies of a party will not be affected;

**15.4.2** each party must return the Confidential Information of the other party in that party's possession or control; and

**15.4.3** clauses 7, 8 and 9 and any other provisions intended by the parties to survive termination or expiration, will survive termination or expiration of this Agreement and will not be affected by such termination or expiration.

#### 16. GST

**16.1** In this clause the expressions "consideration", "GST", "input tax credit", "supply", "recipient", "tax invoice" and "taxable supply" have the meanings given to those expressions in the GST Law.

**16.2** Unless otherwise expressly stated, all prices and other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

**16.3** If GST is imposed on any supply made under this Agreement, the recipient of the taxable

supply must pay to the supplier an additional amount equal to the GST payable on the taxable supply, subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this Agreement.

**16.4** If this Agreement requires a party to reimburse any other party for any expense, loss or outgoing ("reimbursable expense") incurred by another party, the amount required to be reimbursed by the first party will be the sum of:

**16.4.1** The amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense; and

**16.4.2** If the other Party's recovery from the first Party is a taxable supply (being a supply to which GST has application), any GST payable in respect of that supply.

## **17. Confidentiality**

**17.1** Each Party must:

**17.1.1** keep the Confidential Information of the other Party confidential;

**17.1.2** keep the Confidential Information of the other Party secure;

**17.1.3** not use or copy the Confidential Information of the other Party for any purpose other than to perform that Party's obligations or exercise that Party's rights under this Agreement;

**17.1.4** only allow access to the Confidential Information of the other Party to the officers, employees and agents of that Party who have a need to know the Confidential Information and who are bound by obligations of confidence to that Party to at least the standard contemplated by this clause 17.1;

**17.1.5** not disclose the Confidential Information of the other Party to any third party; and

**17.1.6** not use the Confidential Information of another Party to the disadvantage of that other Party.

**17.2** The obligations of confidence contemplated by clause 17.1 do not apply in relation to Confidential Information of another Party to the extent that the Confidential Information is required to be disclosed under applicable law, but only if the disclosing Party has given the other Party all available notice to enable the other Party to attempt to remove that requirement and the disclosing Party only discloses the minimum information required.

**17.3** Each Party acknowledges and agrees that:

**17.3.1** if that Party breaches this clause 17 in relation to another Party's Confidential Information, then that other Party may suffer loss or damage as a result of that breach for which monetary remedies would not be adequate; and

**17.3.2** if that Party attempts to breach or threatens to breach this clause 17 in relation to another Party's Confidential Information, then that other Party may seek injunctive relief including an injunction restraining that Party from committing any breach of this Agreement without the necessity of proving that any actual loss or damage has been sustained or is likely to be sustained by that Party.

## **18. Privacy**

Each Party will comply with the Relevant Laws in relation to personal information collected or received by it in undertaking the Projects under this Agreement.

## **19. Unavoidable event**

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

**19.1.1** is prevented from or delayed in performing an obligation (other than to pay money) by an Unavoidable Event;

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

**19.1.2.1** the Unavoidable Event;

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

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

**19.1.2.4** the action (if any) the Affected Party intends to take to mitigate the effect and or

remove or reduce the period of delay; and

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

then:

- 19.1.4** 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

- 19.1.5** 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.

- 19.2** Nothing in clause 19.1.3 obliges either party to settle any strike, lockout, ban, limitation of work or other industrial disturbance.

## 20. Publicity

- 20.1** 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.

- 20.2** The obligation in this clause 20 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.

## 21. Sanctions and Associated Laws

- 21.1** Swinburne and the Contracting Party 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**).

- 21.2** The Contracting Party acknowledges that Swinburne cannot provide directly or indirectly any Goods or Services to:

**21.2.1** embargoed and sanctioned countries as notified by the Australian Department of Foreign Affairs and Trade; or

**21.2.2** 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.

- 21.3** The Contracting Party 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.

- 21.4** The Contracting Party 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.

- 21.5** The Contracting Party will provide to Swinburne not less than ten (10) days' prior written notice if any items provided by or through the Contracting Party 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.

- 21.6** 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.

- 21.7** 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 Contracting Party is in violation of any applicable laws or regulations.

- 21.8** If Swinburne suspends, in whole or in part, performance under this Agreement because it



has formed a reasonable opinion that the Contracting Party 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.

## 22. Non-disparagement

During the currency of this Agreement and for a period of 24 months thereafter, the Contracting Party 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.

## 23. Dispute Resolution

**23.1** A Party must not commence legal proceedings relating to this Agreement unless the Party wishing to commence proceedings has complied with this clause 23.

**23.2** 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.

**23.3** Any dispute not resolved under clause 23.2 must be dealt with as follows:

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

**23.3.2** within 10 days of receipt of that Notification, the dispute must be referred to the Chief Executive Officer of the relevant Party and the Deputy Vice-Chancellor (Research & Development) of Swinburne, or their nominees for resolution; and

**23.3.3** if the dispute is not resolved within 28 days of Notification, the dispute shall be referred for mediation to the Australian Commercial Dispute Centre Limited (**ACDC**). If the Dispute has not been resolved within 60 days of referral to ACDC either Party is free to initiate court proceedings.

## 24. General

### 24.1 Interpretation

The following rules apply unless the context requires otherwise:

**24.1.1** Capitalised terms have the meanings provided in the Glossary;

**24.1.2** words denoting the singular include the plural and vice versa;

**24.1.3** words denoting natural persons include corporations and vice versa;

**24.1.4** words denoting any gender include all genders;

**24.1.5** headings are for convenience only and do not affect interpretation;

**24.1.6** reference to any Party to this Agreement or any other relevant agreement or document includes that Party's successors and permitted assigns;

**24.1.7** 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;

**24.1.8** 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; and

**24.1.9** any reference to "GST", "input tax credit", "recipient", "supplier", "supply", "tax invoice" and "taxable supply" has the meaning given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.

**24.2 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.

**24.3 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.

**24.4 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.

**24.5 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.

**24.6 GST:** If under GST Law any supply under this Agreement is taxable, the supplier will be entitled to recover from the recipient an amount equal to the GST payable by the supplier. If GST is payable, the supplier will provide the recipient with a tax invoice or other document adequate to claim an input tax credit.

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

**24.8 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.

**24.9 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 –

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

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

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

**24.10 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.

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

**24.12 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.

**24.13 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.

**24.14 Entire Agreement:** This Agreement-

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

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

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

**24.16 Survival:** Termination of this Agreement does not relieve any party from that party's obligations under clauses 7, 8, 9, 12, 17, 18, 19, 20, 21, 23 and 24.

## 25. Notices

Any notice given under this Agreement:

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

**25.2** 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 Schedule;

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

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

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

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

**25.3.4** 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>Advisory Committee</b>	means a committee comprising a nominee from the Contracting Party and a Swinburne nominated supervisor for each Project.
<b>Affected Party</b>	has the meaning given in clause 19.1.
<b>Agreement</b>	means this agreement including this Glossary, the 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>Assessment</b>	means any work or subject matter other than a work prepared by a Student relating to a Project and submitted by the Student for examination in relation to their undergraduate studies.
<b>Background IP</b>	<p>of a party means Intellectual Property that is:</p> <ul style="list-style-type: none"> <li>(a) in existence at the Commencement Date;</li> <li>(b) created or developed by that party during the Term independently of a Project;</li> <li>(c) obtained by that party during the Term independently of a Project; or</li> <li>(d) specified with respect to that party in Annexure A,</li> </ul> <p>and made available by that party for the purpose of carrying out a Project.</p>
<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>Certificate of Destruction</b>	means a certificate signed by an authorised representative listing each item of Background IP and certifying the date on which that Background IP was destroyed.
<b>Commencement Date</b>	means the commencement date of the Project as set out in Item 3 of the Schedule.
<b>Completion Date</b>	means the completion date of the Project as set out in Item 4 of the Schedule.
<b>Confidential Information</b>	<p>means all know-how and other information which a Party identifies as being confidential or which is by its nature confidential, in whatever form including inventions (whether patentable and whether or not patent protection has been sought), trade secrets, formulae, graphs, drawings, designs, biological materials, samples, devices, models and other materials of whatever description and includes all such information that may be in the possession of a Party's officers or employees, but does not include information which:</p> <ul style="list-style-type: none"> <li>(a) 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>(b) is received by the receiving party from a third party without any obligation to hold in confidence and which has not been obtained by that third party directly or indirectly from the receiving party; or</li> </ul>

	(c) is independently developed by an employee or officer of the receiving party while having no knowledge of the disclosing party's Confidential Information.
<b>Contribution</b>	means the in-kind or cash contribution detailed in Item 6 of the Schedule.
<b>General Terms</b>	means the general terms described as such in this Agreement.
<b>Glossary</b>	means this glossary.
<b>Intellectual Property</b>	means all industrial and intellectual property rights anywhere in the world, whether registered or unregistered, including all future and present copyright, neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields and any right of registration of such rights and all other intellectual property as defined in article 2 of the Convention Establishing the World Intellectual Property Organisation 1967.
<b>Internal Research and Development</b>	means research and development activities which are conducted solely by a Party and includes:  (a) research conducted for or on behalf of a third party; or  (b) research conducted in collaboration with a third party,  where there is no licensing or disclosure (express or implied) of the Project IP.
<b>Insolvency Event</b>	means any of the following events:  (a) a party, being an individual, commits an act of bankruptcy;  (b) a party becomes insolvent;  (c) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to a party or a party enters into a scheme of arrangement with its creditors or is wound up;  (d) a party assigns any of its property for the benefit of creditors or any class of them;  (e) an encumbrancer takes any step towards taking possession or takes possession of any assets of a party or exercises any power of sale; or  (f) a distress, attachment or other execution is levied or enforced against a party in excess of \$10,000.00.
<b>Item</b>	means an item in the Schedule.
<b>Moral Rights</b>	mean moral rights as described in Part IX of the Copyright Act 1968 (Cth).
<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 research activity described in Item 2 of the Schedule to this Agreement that will be performed by the selected Student for their final year project and any amendments made by the Contracting Party during the Term.

<b>Project IP</b>	means any Intellectual Property created in the course of or arising from the conduct of the Project but excludes Student IP.
<b>Publication</b>	means any conference paper, article for a journal, portion of a book, broadcast or other means of disclosure relating to the subject matter of a Project but does not include Assessment.
<b>Relevant Laws</b>	<p>mean collectively:</p> <ul style="list-style-type: none"> <li>(a) Privacy Act 1988 (Commonwealth) (including the Australian Privacy Principles);</li> <li>(b) Privacy and Data Security Act (Victoria) (including the Victorian Information Privacy Principles);</li> <li>(c) Health Records Act 2001 (Victoria) (including the Victorian Health Privacy Principles);</li> <li>(d) 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.</li> </ul>
<b>Schedule</b>	means a schedule to this Agreement.
<b>Student</b>	means the Swinburne undergraduate student that has been selected to participate in a Project.
<b>Student Deed Poll</b>	means the deed attached at Annexure B that each Student must enter.
<b>Student IP</b>	means copyright in any Assessment.
<b>Swinburne Supervisor</b>	means the Swinburne nominated supervisor, initially being the person identified in Item 5 of the Schedule (as amended from time to time in writing by Swinburne) who will be responsible for the guidance and education of the Student
<b>Term</b>	means the period from the Commencement Date to the Completion Date unless otherwise varied in writing agreed by the Parties.
<b>Third Party IP</b>	means Intellectual Property owned by an entity that is not Swinburne, the Contracting Party or the Swinburne Student.
<b>Unavoidable Event</b>	<p>means any of the following events:</p> <ul style="list-style-type: none"> <li>(a) act of God;</li> <li>(b) war, terrorism, riot, insurrection, vandalism or sabotage;</li> <li>(c) strike, lockout, ban, limitation of work or other industrial disturbance; or</li> <li>(d) law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application;</li> </ul> <p>which:</p> <ul style="list-style-type: none"> <li>(e) is beyond the reasonable control of the Affected Party; and</li> <li>(f) occurs without any fault or negligence on the part of the Affected Party.</li> </ul>

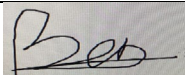


## Annexure A – Background IP

Contributor	Description of Background IP	Restrictions on Use

## Annexure B

### Student Deed Poll

We acknowledge and agree with the terms and conditions stated in this Agreement. Any prior amendment/ changes in the project (scope, timeline, deliverables, etc.) will be discussed first with both the Client and the Project Supervisor.

Full Name of Student	Matric ID	Signature
<a href="#">Benjamin Tan Chen Hern</a>	104477174	
Wallace Iglesias Chandrio	104180579	
Hein htet Naing	104329055	
Mahanthe Acharige Sachindri Sudeepa Chandrasiri	104338967	