



## **Swinburne University of Technology Nano Fabrication and Solar Facilities Access and Pricing Policy**

Document Name: Swinburne University of Technology Nano Fabrication and  
Solar Facilities Access and Pricing Policy

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Approved by: Swinburne University of Technology  
Version: (SoSCET,SR,OSC) SUTNFS-SFAPP-V2.0  
14<sup>th</sup> December 2022



# **Swinburne University of Technology Nano Fabrication and Solar Facilities Access Agreement- General Terms**

## **INTRODUCTION**

Swinburne University of Technology Nano Fabrication and Solar Facilities (SUTNFS) seeks to provide access and foster collaboration for a variety of research investigations and programmes with internal and external researchers and academics. SUTNFS facilities are located on Swinburne University of Technology (Hawthorn campus). Laboratories span across three buildings (AS, ATC and AMDC buildings) comprising of forty-four laboratories.

The purpose of this policy is to provide guidance for access of SUTNFS facilities and pricing information.

## **ORGANISATION AND GOVERNANCE**

SUTNFS facilities are governed by Swinburne University of Technology authorities;

School of Science, Computing and Engineering Technology, Swinburne Research and various Centre directors who serve as head of individual facilities, monitoring operations, research direction, capacity, compatibility and facility usage prioritisation.

Oversight and day to day management of facilities and equipment along with technical support team management is administered by the Operations manager.

The SUTNFS is operated within Swinburne University of Technology and all users must therefore satisfy all Swinburne University of Technology policies and procedures which govern accessibility, OH&S, applicable inductions, Australian regulatory compliance and any other specific procedures and policies of SUTNFS.

# Swinburne University of Technology Nano Fabrication and Solar Facilities Access Agreement- General Terms

## CLIENT AND PROJECT DETAILS SCHEDULE

### ITEM 1: INVESTIGATOR

Chief Investigator: \_\_\_\_\_  
 Institution: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Tel No: \_\_\_\_\_  
 Other Investigators(Staff /Student): \_\_\_\_\_

### ITEM2: PROJECT DETAILS

Project Title: \_\_\_\_\_  
 Number of Investigators: \_\_\_\_\_  
 Facility Usage Start Date: \_\_\_\_\_ Facility Usage End Date: \_\_\_\_\_  
 Other Investigators(Staff /Student): \_\_\_\_\_

No. of hours: _____	Equipment Usage: _____	Fee: \$ _____
No. of hours: _____	Equipment Usage: _____	Fee: \$ _____
No. of hours: _____	Equipment Usage: _____	Fee: \$ _____
No. of hours: _____	Equipment Usage: _____	Fee: \$ _____
No. of hours: _____	Staff User Training Time: _____	Fee: \$ _____
No. of hours: _____	Staff Time General: _____	Fee: \$ _____
Other Services: Experiment: _____		Fee: \$ _____

Licence-back to Swinburne of Design: ☐ No  
 (clause 6.2 of the attached General Terms refers)

**All above Fees are exclusive of GST unless otherwise specified.**

### ITEM3: CLIENT AND FINANCIAL INFORMATION

Grant or funding Source: \_\_\_\_\_  
 Swinburne fund Number: \_\_\_\_\_  
 External Institution fund number: \_\_\_\_\_  
 Finance officer in charge of account: \_\_\_\_\_  
 Client institution/Organisation: \_\_\_\_\_  
 ABN: \_\_\_\_\_  
 School/centre: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Contact: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Tel No: \_\_\_\_\_

Invoicing Schedule(Please tick one): ☐ PAID UPFRONT ☐ MONTHLY BASED ON USE ☐ OTHER, PLEASE STATE: \_\_\_\_\_

**Note: any time paid upfront must be used before facility End Date unless otherwise agreed. Facility paid time unused on expiry of the agreed period will be forfeited.**

### ITEM4: SIGNATURES

Signed for and on behalf of Swinburne University of Technology (SUT) by authorised Nanofabrication representative and independent witness:

Auth. Rep.: _____	Position _____	Signature _____	Date: / /
Witness: _____	Position _____	Signature _____	Date: / /

Signed for and on behalf of Client institution/organisation by its authorised Representative:

Name: _____	Position _____	Signature _____	Date: / /
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The above client signatory warrants that they are authorised to enter into binding agreements for and on behalf of the client institution/organisation.

This Nanofabrication and Solar Facilities Access Agreement consists of this completed project and client details schedule, the attached General Terms and all applicable Swinburne Policies.

The signatory warrants that they have read and understood the attached General Terms and all applicable Swinburne Policies.

The signatory agrees to acknowledge Swinburne University of Technology Nano Fabrication and Solar facility (SUTNFS) on all publications that arise from this research project.

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# **Swinburne University of Technology Nano Fabrication and Solar Facilities Access Agreement- General Terms**

## **1. The Agreement**

### **1.1 Formation**

This Swinburne University of Technology Nanofabrication and Solar Facilities Access Agreement (**Agreement**) consists of the completed Client application schedule Page 2 (**Schedule**), **these clauses 1-14 (General Terms)** and all applicable Swinburne Policies, which are deemed to be incorporated into and to form part of this Agreement.

### **1.2 Inconsistency**

In the event of any inconsistency between the Swinburne Policies and this Agreement, this Agreement will have priority.

### **1.3 Parties**

This Agreement is between Swinburne University of Technology ABN 13 628 586 699, a body politic and corporate established under the Swinburne University of Technology Act 1992 (Vic), of John Street, Hawthorn, Vic., 3122 (Swinburne) and the client institution/organisation specified at Item 3 of the Schedule (Client).

### **1.4 Client Personnel and Participants**

Where this Agreement refers to an obligation that applies to any Client Personnel or to any Participant, Client will ensure that all Client Personnel comply and will cooperate with Swinburne in ensuring that Participants comply, with all such obligations.

### **1.5 Term**

This Agreement commences on the date Swinburne's authorised representative signs it as indicated in the Schedule (Commencement Date) and continues until 5pm on the facility usage End Date specified in Item 2 of the Schedule Facility usage End Date.

## **2. Access, Services and Deliverables**

### **2.1 Access to Equipment and premises**

2.1.1 Swinburne will provide access for Client, its Investigators and Participants to Swinburne University of Technology Nano Fabrication and Solar Facilities (SUTNFS) equipment and other equipment located on Swinburne's Hawthorn Campus in the Advanced Technology Centre, Advanced Manufacturing and Design Centre, Applied Science as specified in Item 2 of the Schedule.

2.1.2 Access will be between the Facility Usage Start Date and the Facility Usage End Date during the Hours of Operation and for the number of hours specified in Item 2 of the Schedule.

### **2.2 Services and Deliverables**

2.2.1 Qualified Swinburne staff and/or training will be provided to users to operate SUTNFS Equipment, as indicated.

2.2.2 Swinburne will also provide the SUTNFS Services and associated Deliverables as specified in Item 2 of the Schedule.

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2.3 General enquiries regarding usage or project work requests must be reviewed by responsible facility academic coordinator through contact information as found on Swinburne web page for Nano Fabrication and Solar specialist facilities and on the Access and induction authorisation form.

2.3.1 A written application should be completed describing work to be conducted, equipment usage, staffing resources and desired outcomes. Additional review for OHS compliance and compatibility of project with facility and ongoing programmes would be undertaken by applicable specialists. It is highly recommended that a full list of proposed material usage and processes be disclosed at this stage to avoid delay or revocation of access due to OHS risk or facility incompatibility.

2.3.2 Once the application review process is complete, the operations technical team for SUTNFS will coordinate and process user authorisation forms, arrange applicable inductions, training and coordinate funding source processing.

2.3.3 SUTNFS reserves the right to suspend or cancel user access at any stage due to an OHS issue or where continued work would risk facility or equipment damage.

2.3.4 Client must obtain Swinburne's written approval to any variation to project work.

2.3.5 Client will ensure that only suitably qualified personnel are involved with the project work and proposed for access.

2.4 Compliance with directions and Swinburne policies while on any Swinburne premises, Client, Client Personnel and Participants must:

2.4.1 Comply with all applicable Swinburne Policies;

2.4.2 Comply with any directions given by Swinburne staff;

2.4.3 Act in a manner that protects the safety of all people and property;

2.4.4 Not commit any nuisance or cause any unnecessary noise or disturbance;

2.4.5 Act in a safe and lawful manner; and

2.4.6 Comply with all applicable work, health and safety laws.

2.5 Training and induction;

Client Personnel and Participants must complete Swinburne's training and induction program before access will be granted.

2.5.1 Client will be required to attend standard specialised training where applicable, with testing to ensure comprehension prior to access and undertaking any work.

2.7 Reporting Duties;

Client must report all publications that result from the project using Swinburne facilities and equipment. Clients must complete all reporting requests from Swinburne. Requests include details about publications, presentations, and media reports. By signing this contract the Client agrees to report on all requested details in the requested time frame.

### **3. Availability of Access**

Swinburne will endeavour to provide access at the agreed times but reserves the right not to for safety, maintenance, operational or other reasons. In the event access cannot be provided at any agreed time, Swinburne and Client will agree an alternative access schedule to make up the lost time. Swinburne will otherwise have no liability to Client in respect of access not being provided.

### **4. Fees and taxes**

4.1 Payment of Fees

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Client will pay the Fees to Swinburne.

### **4.2 GST**

If either party makes a taxable supply of goods or services as defined in the Goods and Services Tax (GST) legislation, the receiving party will pay to the supplying party an amount equal to the GST payable on the supply. The supplying party must provide the recipient with a compliant tax invoice as defined in the GST legislation.

### **4.3 Other taxes**

Client is liable to pay any other taxes, duties, imposts or like charges levied by any government agency in respect of this Agreement.

### **4.4 Invoicing and payment**

4.4.1 Swinburne will render invoices as per the Invoicing Schedule specified at Item 3 of the Schedule.

4.4.2 All invoices must be paid by Client within 14 days of the invoice date.

4.4.3 Any undisputed invoices not paid by the date due under clause 4.4.2 may attract interest from the due date until the date of payment in accordance with the interest rate fixed from time to time under the Penalty Interest Rates Act 1983 (Vic).

## **5. Swinburne Intellectual Property**

### **5.1 Ownership of Swinburne IP**

5.1.1 Swinburne is the proprietor or licensee of all Intellectual Property Rights in and to the equipment, recipe parameters and protocols, and all other materials and information provided to Client by Swinburne under or in connection with this Agreement (Swinburne IP).

5.1.2 Swinburne or its licensors (as applicable) will own all modifications, adaptations or developments of any Swinburne IP (Developed Swinburne IP).

### **5.2 Grant of licence to Client**

5.2.1 Swinburne grants to Client and its Investigators a non-exclusive, royalty free licence to:  
(a) access and use the Equipment in accordance with this Agreement during the Term; and  
(b) use the recipe parameters and protocols solely in connection with the Design and the Approved project.

5.2.2 Other than the non-exclusive rights granted under clause

5.2.1, no rights are granted to Client, and Client does not acquire any rights in or to any of the Swinburne IP or the Developed Swinburne IP.

## **6. Client Intellectual Property**

### **6.1 Design**

All copyright in the Design vests in Client upon creation of the Design, subject to payment by Client of the Fees.

### **6.2 Licence-back to Swinburne of Design**

Unless provided to the contrary at Item 2 of the Schedule, Client grants to Swinburne a perpetual, non-exclusive, royalty-free licence to access, use, reproduce, adapt, modify and develop the Design for any purpose.

### **6.3 Client Materials licence**

6.3.1 Client grants to Swinburne and to Swinburne Personnel for the Term a non-exclusive, royalty-free licence to access, use and reproduce any materials provided to Swinburne by Client (Client Materials) for the purposes of Swinburne providing the Services.

6.3.2 If Swinburne is providing any Fabrication and Services, Client grants to Swinburne and to Swinburne Personnel for the Term a non-exclusive, royalty-free licence to modify, adapt or

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develop any Client Materials provided to Swinburne by Client for such purposes, including Client research proposals or experiment protocols.

6.3.3 Client will own all Intellectual Property Rights in or to any modifications, adaptations or developments of the Client Materials prepared by Swinburne under clause 6.3.1 (Developed Client IP). Client grants to Swinburne a perpetual, non-exclusive licence to exercise the Developed Client IP for its internal research purposes.

6.3.4 Other than the non-exclusive rights granted under clauses

6.3.1, 6.3.2 and 6.3.3, no rights are granted to Swinburne, and Swinburne does not acquire any rights, in or to any of the Client Materials.

### **7. References and acknowledgements**

Client will:

7.1.1 include a reference to Swinburne as provider of equipment, access and related services in all publications relating to the approved project;

7.1.2 include an acknowledgement in all publications incorporating or referring to the Fabrication that the Fabrication was acquired at Swinburne University of Technology, Nano Fabrication and Solar Facility Research Centre, Melbourne Australia on applicable fabrication tool; and

7.1.3 forward a copy of all such publications to Swinburne.

### **8. Confidentiality**

#### **8.1 Non-disclosure**

Subject to clause 8.2, each party agrees that it will not use, disclose or otherwise make available to any person any Confidential Information of the other party without the written consent of the disclosing party, except as expressly permitted or required by this Agreement or as otherwise permitted or required by any applicable law.

#### **8.2 Client consent**

Client consents to Swinburne publishing or otherwise making available information in relation to Client and this Agreement as may lawfully be required by the Victorian Auditor-General.

### **9. Termination**

#### **9.1 Termination by Swinburne**

Swinburne may terminate this Agreement immediately by notice in writing to Client if:

9.1.1 Client or any Client Personnel commit a breach of this Agreement;

9.1.2 Client is or becomes bankrupt, has an administrator, a receiver or a receiver and manager appointed, goes into liquidation (whether voluntary or otherwise), or is wound up, dissolved or declared insolvent.

#### **9.2 Termination for convenience**

Swinburne may at any time terminate this Agreement without cause by giving notice to Client in writing.

#### **9.3 Termination by Client**

9.3.1 Client may terminate this Agreement at any time by giving notice in writing to Swinburne.

9.3.2 Termination by Client will be subject to Swinburne's Cancellation Policy.

#### **9.4 Consequences of Termination**

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9.4.1 Termination of this Agreement will not prejudice any right of action or remedy which may have accrued to either party before termination.

9.4.2 Immediately upon termination or expiry of this Agreement:

(a) Client, Client Personnel and Participants will no longer be permitted access to the Equipment or to any Swinburne premises; and

(b) Client must pay any outstanding Fees to Swinburne.

9.5 Survival

Clauses 4, 5.1, 5.2.1(b), 5.2.2, 6.1, 6.2, 6.3.3, 6.3.4, 7, 8, 10, 11, 12, 13

and 14 of this Agreement survive the termination or expiry of this Agreement and may be enforced at any time.

### **10. Liability**

10.1 Swinburne warranty

Swinburne warrants that it will perform the Swinburne Services and otherwise perform all of its obligations under this Agreement competently, professionally and with due care and skill.

10.2 Exclusions

10.2.1 Other than the express warranty under clause 10.1, to the extent permitted by law and subject to clause 10.3, Swinburne excludes all warranties regarding its performance of the Swinburne Services and its obligations under this Agreement.

10.2.2 To the extent permitted by law and subject to clause 10.3, Swinburne makes no warranties in relation to any of the Equipment, including whether such items are fit for the purposes of the Approved project or for any other purpose.

10.3 Warranties implied by statute

To the extent any warranty is implied by statute (including the Competition and Consumer Act 2010 (Cth)) into this Agreement and application of the warranty or Swinburne's liability for breach of the warranty cannot be contractually excluded or limited, Swinburne's liability is limited:

10.3.1 in the case of goods, at Swinburne's election and discretion, to:

(a) the replacement of the goods or supply of equivalent goods;

(b) the repair of the goods;

(c) the payment of the cost of replacing the goods or of acquiring relevant goods; or

(d) payment of the cost of having the goods repaired; and

10.3.2 in the case of services, at Swinburne's election and discretion, to:

(a) the supply of the services again; or

(b) payment of the cost of having the services supplied again.

10.4 Cap on Swinburne's liability

10.4.1 To the extent permitted by law and subject to clause 10.3, Swinburne's total aggregate liability to Client under or in connection with this Agreement for or in respect of any claim however it arises, whether for breach of contract, in tort (including negligence), under statute or otherwise, will in all circumstances be limited to the amount of any Fees actually paid by Client to Swinburne.

10.4.2 The limitation in clause 10.4.1 does not apply to Swinburne's obligation to indemnify Client under clause 11.2.

10.5 Exclusion of consequential loss

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To the extent permitted by law and subject to clause 10.3, Swinburne excludes all liability to Client for or in respect of any consequential or indirect loss, loss of income, loss of profit, loss of revenue or loss of opportunity, whether actual or anticipated.

### **11. Indemnity**

#### **11.1 Client indemnity**

Client agrees to indemnify Swinburne and to hold it harmless from and against any and all loss, liability, costs, damages and expenses (including legal fees and costs on a full indemnity basis) (Loss) suffered or incurred by Swinburne to the extent such Loss arises as a result of or in connection with any:

11.1.1 personal injury (including illness) or the death of any person caused by Client, by any Client Personnel or by any Participant;

11.1.2 loss of or damage to any real or tangible property of any person caused by Client, by any Client Personnel or by any Participant; or

11.1.3 claim by any person that the exercise by Swinburne or any Swinburne Personnel of the rights granted by Client under clauses 6.2, 6.3.1, 6.3.2 or 6.3.3 infringes the Intellectual Property Rights, Moral Rights or any other rights of any person.

#### **11.2 Swinburne indemnity**

Swinburne agrees to indemnify Client and to hold it harmless from and against any and all Loss suffered or incurred by Client to the extent such Loss arises as a result of or in connection with any:

11.2.1 personal injury (including illness) or the death of any person caused by Swinburne or by any Swinburne Personnel or

11.2.2 loss of or damage to any real or tangible property of any person caused by Swinburne or by any Swinburne Personnel.

### **12. Notices**

#### **12.1 Method of service**

Any notices to be given under this Agreement must be in writing and is given for all purposes by delivery in person, by pre-paid post, electronic mail or by facsimile addressed to the receiving party at the address set out in the Schedule.

#### **12.2 When service will be deemed**

Any notice given in accordance with this Agreement will be deemed to have been duly served:

12.2.1 in the case of posting, at the expiry of 3 Business Days after the date of posting;

12.2.2 subject to clause 12.3, in the case of a facsimile, 2 hours after transmission, providing it has been successfully transmitted to the intended recipient in full and without error; and

12.2.3 subject to clause 12.3, in the case of electronic mail, 2 hours after the message leaves the sender's server, providing the sender has not received any notification that the message was not or could not be delivered to the intended recipient.

#### **12.3 Service after 5pm or on a non-Business Day**

If a facsimile or an electronic mail message is served on a non-Business Day or is deemed under clause 12.2 to have been served after 5pm on a Business Day, the relevant notice will be deemed to have been served at 9am on the next Business Day.

### **13. Definitions and interpretation**

#### **13.1 Definitions**

## **Swinburne University of Technology Nano Fabrication and Solar Facilities Access Agreement- General Terms**

In this Agreement, unless the context requires otherwise or a contrary intention appears, capitalised terms have the meanings given above and:

Business Day means Monday to Friday excluding public holidays in Victoria.

Cancellation Policy means the Cancellation Policy for projects and the Cancellation Policy for Equipment bookings as published from time to time on the Swinburne Website at [www.swinburne.edu.au/sutnfs/fees.html](http://www.swinburne.edu.au/sutnfs/fees.html).

Client Personnel means the employees, agents and contractors of Client.

Confidential Information means all information and materials, in any form, which is capable at law or in equity of protection as confidential information, excluding information:

- (a) which at the time of its first disclosure or observation under this Agreement was in the public domain;
- (b) which, after disclosure or observation under this Agreement, comes into the public domain otherwise than by disclosure in breach of this Agreement; or
- (c) which is received by either party from a third party who has the right to provide the information.

Fabrication means the Fabrication derived from design produced using the Nano Fabrication or Solar Equipment.

Deliverables means deliverables to be provided by Swinburne as part of the provision of Nanofabrication Services, as specified at Item 2 of the Schedule.

Equipment means the equipment specified in Item 2 of the Schedule, including other ancillary equipment as Swinburne provides access to under this Agreement.

Fees means the fees specified in Item 2 of the Schedule payable by Client for the access, services and deliverables provided by Swinburne under this Agreement.

Hours of Operation means the Nanofabrication Facilities Hours of Operation.

Intellectual Property Rights means all and any patents, patent applications, trademarks, service marks, trade names, domain names, registered designs, unregistered design rights, copyrights, know how, trade secrets and rights in confidential information, URLs and all and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same.

Investigator means the person specified as the Chief Investigator and any Other Investigators as per Item 1 of the Schedule.

Moral Rights means:

- (a) a right of attribution or authorship;
- (b) a right not to have authorship falsely attributed;
- (c) a right of integrity of authorship; or
- (d) a right of a similar nature,

which is conferred by statute and which exists, or comes to exist, anywhere in the world.

Swinburne Policies means Swinburne's policies relating to access and equipment as published from time to time on the Swinburne Website including the Fee Schedule, the Cancellation Policy, the Booking Guide, Hours of Operation, Access (including the Conditions of use for the Nano Fabrication and Solar equipment), Users Guide to the Nanofabrication Facilities, the Emergency Procedures and the Safe Practices Procedures.

Swinburne Services means operation of the Equipment and the provision of the Nanofabrication Services (if applicable). Swinburne Staff means the employees, agents and contractors of Swinburne.

Swinburne Website means [www.swinburne.edu.au](http://www.swinburne.edu.au).

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### **13.2 Interpretation**

In this Agreement, unless the context requires otherwise or a contrary intention appears, a reference to:

13.2.1 a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;

13.2.2 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;

13.2.3 a person includes the legal personal representatives, successors and assigns of that person;

13.2.4 any body which no longer exists or has been reconstituted is a reference to a body which most closely serves the purposes or objects of the first-mentioned body;

13.2.5 this or other documents includes the document as varied or replaced regardless of any change in the identity of the parties;

13.2.6 the singular includes the plural and vice versa; and

13.2.7 the terms 'including' and 'includes' are not terms of limitation.

### **14. General**

#### **14.1 Mutual warranties**

Swinburne warrants to Client and Client warrants to Swinburne that:

14.1.1 it has the legal right and power to enter into this Agreement and to perform its obligations under this Agreement;

14.1.2 the execution, delivery and performance of this Agreement has been duly and validly authorised by all necessary action on its part; and

14.1.3 the Agreement is a valid and binding agreement on it and enforceable in accordance with its terms.

#### **14.2 Entire understanding**

This Agreement contains the entire understanding between the parties as to the subject matter contained in it and all previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

#### **14.3 Variation**

This document may only be varied or replaced by a document duly executed by the parties.

#### **14.4 Governing law and jurisdiction**

This Agreement will be governed and construed in accordance with the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of Victoria.