

**UNIVERSITY OF DERBY**

and

**POLITEKNIK PERKAPALAN NEGERI SURABAYA**

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**Confidentiality / Non-Disclosure Agreement**

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**THIS AGREEMENT** is made on 29 March 2019

## **BETWEEN**

- .1 **University of Derby**, registered in England as company no. 3079282, whose registered office is at Kedleston Road, Derby, United Kingdom, DE22 1GB (hereinafter referred to as “the University”)

and

2. **Politeknik Perkapalan Negeri Surabaya**, registered in Indonesia, whose registered office is at Jl. Teknik Kimia, ITS Campus, Keputih Sukolilo, Surabaya 60111 (hereinafter referred to as “the Institution”)

Who may together hereafter be referred to as the “Parties” or in the singular as a “Party”.

## **BACKGROUND**

The Parties intend to disclose confidential information to each other for the purpose of discussing potential collaboration on a non-exclusive basis in the following ways:

- Joint funding proposal
- Research Collaboration
- Exchange Lecturer
- Joint Paper Publication
- Joint International Conference
- Curriculum Development

(the “**Purpose**”).

## 1. **DEFINITIONS**

1In this Agreement (unless the context otherwise requires) the following words and expressions have the following meanings:

“ <b>Business Day</b> ”	a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales
“ <b>Commencement Date</b> ”	29 March 2019
“ <b>Confidential Information</b> ”	subject to <b>clause 5</b> (Exceptions), means:  (a) any information (whether written, oral, in electronic form or in any other media) that is disclosed in connection with the Purpose by or on behalf of a Party (the “ <b>Discloser</b> ”) to the other Party (the “ <b>Recipient</b> ”) or any other Recipient Party whether before, on or after the date of this Agreement; and/or

- (b) the existence of the Purpose or any discussions or documents in relation to it (including the terms of this Agreement)

but excluding information that is trivial or by its nature immaterial

**“Recipient Parties”**

the Recipient and its officers, directors and employees, and with the prior written consent of the Discloser (not to be unreasonably withheld or delayed), its consultants and professional advisers; and **“Recipient Party”** means any of them

## 2. RECIPIENT’S OBLIGATIONS<sup>2</sup>

In consideration of the disclosure of Confidential Information, the Recipient will, subject to **clause 3** (Permitted Disclosure) and **clause 5** (Exceptions):

- 2.1 keep the Confidential Information secret and will only disclose it in the manner and to the extent expressly permitted by this Agreement;
- 2.2 use the Confidential Information solely for the Purpose;
- 2.3 only make such copies, summaries, extracts, transcripts, notes, reports, analyses and recordings (in any form of media) that use, contain or are based on or derived from Confidential Information as are reasonably necessary to fulfil the Purpose; and
- 2.4 keep the Confidential Information safe and secure and apply to it documentary and electronic security measures that match or exceed those the Recipient operates in relation to its own confidential information and will never exercise less than reasonable care.

## 3. PERMITTED DISCLOSURE

3

The Recipient may disclose Confidential Information:

- 3.1 to those of the Recipient Parties who need access to that Confidential Information in order for the Purpose to be fulfilled and will make each such person aware of the confidentiality obligations contained in this Agreement. The Recipient will take reasonable steps to procure that each Recipient Party will not do or omit to do anything which if done or omitted to be done by the Recipient would constitute a breach of this Agreement; and
- 3.2 to the extent required by law or a court of competent jurisdiction or the rules of any applicable listing authority, securities exchange or governmental or regulatory body. Where reasonably practicable and lawful the Recipient will notify the Discloser in writing in advance of such disclosure, will consult with the Discloser as to the content, purpose and means of disclosure and will seek to make such disclosure subject to obligations of confidence consistent, so far as possible, with the terms of this Agreement.

#### 4. INFORMATION IS THE DISCLOSER'S PROPERTY<sup>4</sup>

- 4.1 The Discloser or its licensors owns all right, title and interest in the Discloser's Confidential Information and, save as is expressly provided by this Agreement no licence or right to use any patent, copyright, registered design, unregistered design, trademark, trade name or similar right or any right to use any such Confidential Information or trade secrets is granted by the Discloser.
- 4.2 Subject to **clause** 4.3, the Recipient will on written request by the Discloser:
- 4.2.1 immediately cease to use the Discloser's Information; and
- 4.2.2 as soon as reasonably practicable return to the Discloser or destroy (or in respect of information held electronically permanently delete (to the extent technically feasible without incurring excessive expense)), all of the Discloser's Confidential Information.
- 4.3 The Recipient (and each Recipient Party) may retain a copy of any of the Discloser's Confidential Information to the extent required to do so for legal or regulatory purposes or by the rules of any professional body. Any retained Confidential Information (including, without limitation, any Confidential Information that cannot be returned or which it has not been technically feasible to permanently delete) will remain subject to the other provisions of this Agreement.

#### 5. EXCEPTIONS<sup>5</sup>

- 5.1 Subject to **clause** 5.2, the Recipient's obligations under this Agreement will not extend to Confidential Information which:
- 5.1.1 at the time of disclosure was in the public domain or subsequently enters into the public domain other than as the direct or indirect result of a breach of this Agreement by the Recipient or any Recipient Party;
- 5.1.2 the Recipient can prove to the reasonable satisfaction of the Discloser from written records or other substantive evidence:
- 5.1.2.1 has been received by the Recipient at any time from a third party who did not acquire it in confidence and who is free to make it available to the Recipient or the relevant group company without limitation; or
- 5.1.2.2 was independently developed by the Recipient without any breach of this Agreement.
- 5.2 **Clause** 5.1.2 will not apply to the matters referred to in **paragraph (b)** of the definition of Confidential Information set out in **clause** (Definitions).

#### 6. TERMINATION<sup>6</sup>

- 6.1 This Agreement commences on the Commencement Date and all obligations contained in this Agreement will continue in full force and effect for a period of 1 (one) year from the Commencement Date. This clause will survive termination or expiry of this Agreement.

6.2 Termination or expiry of this Agreement is without prejudice to any rights, obligation, claims (including claims for damages for breach) and liabilities which have accrued prior to termination or expiry.

## 7. NOTICES<sup>7</sup>

7.1 Every notice given or required to be given under this Agreement (a “**Notice**”) will be in writing in English and sent for the attention of the person, and to the address or email specified in this **clause 7** (Notices) (or such other address, email or other person as the Party may notify the other, in accordance with the provisions of this **clause 7** (Notices)) and will be:

7.1.1 delivered personally; or

7.1.2 sent by pre-paid registered mail (or airmail if the Institution is established outside of the United Kingdom); or

7.1.3 sent by email to that Party’s email address.

7.2 The addresses for the service of Notices are:

The University of Derby  
Kedleston Road  
Derby  
United Kingdom  
DE22 1GB

Politeknik Perkapalan Negeri Surabaya  
Jl. Teknik Kimia, ITS Campus  
Keputih Sukolilo  
Surabaya 60111  
Indonesia

[p.dewhurst@derby.ac.uk](mailto:p.dewhurst@derby.ac.uk)

[international@ppns.ac.id](mailto:international@ppns.ac.id)  
[ptsindhu@gmail.com](mailto:ptsindhu@gmail.com)

For the attention of:  
Peter Dewhurst  
Director of Strategic Projects

For the attention of:  
Dr.Mat Syai’in  
Head of International Affairs

7.1 A Notice is deemed to have been received:

7.1.1 If delivered personally, at the time of delivery; or

7.1.2 If given by pre-paid registered mail, on the second Business Day after the date of posting (or by airmail if the Institution is established outside of the United Kingdom, in which case it is deemed to have been received 10 days from the date of posting); or

7.1.3 If given as set out in **clause 7.1.3**, at the time of sending the email;

provided that, if deemed receipt under the previous paragraphs of this **clause 7** (Notices) is not within the business hours of the receiving Party, that Notice will be deemed to be received when business next starts in the place of receipt.

7.2 If a Notice is given in accordance with **clause 7.1.3**, the title to the email will begin with the words “Service of Notice” and a copy of the Notice will be sent to the receiving Party’s address (as set out in or changed in accordance with **clause 7.3**) by pre-paid registered mail (or airmail, as the case may be) within 24 hours after sending the email.

7.3 In proving service of a Notice it will be sufficient to prove that delivery was made or that the envelope containing the Notice was properly addressed and posted.

## 8. GENERAL<sup>8</sup>

8.1 The Recipient is entering into this Agreement in consideration of the disclosure of Confidential Information.

8.2 The Recipient acknowledges and agrees that damages alone would not be an adequate remedy for breach of **clauses** , **3** and **4** by the Recipient or any other Recipient Party. Accordingly, the Discloser will be entitled, without having to prove special damages, to equitable relief (including injunction and specific performance) for any breach or threatened breach of such clauses by the Recipient or any other Recipient Party.

8.3 No variation to this Agreement will be effective unless it is in writing and signed by a duly authorised representative on behalf of each of the Parties.

8.4 The Parties do not intend that any term of this Agreement will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the Parties.

8.5 A delay in exercising or failure to exercise a right or remedy under or in connection with this Agreement will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the Party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.

8.6 This Agreement may be executed in any number of counterparts, each of which will constitute an original, but which will together constitute one agreement. The term "counterpart" will include a facsimile copy of this Agreement.

8.7 This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.

8.8 The courts of England and Wales have non-exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement (including in relation to any non-contractual obligations).

8.9 Nothing in this Agreement shall operate to restrict, delay or prevent the Recipient from publishing any information that is not Confidential Information under the terms of this Agreement.

8.10 Should the Parties wish to enter into further collaboration or commercial relations such will be the subject of a separate written agreement on terms to be agreed by both Parties. Nothing in this Agreement shall commit the University or indicate that the University will make any commitment to make any purchase from the [Institution].

7. Any information which the University shares with the Institution during this collaboration shall be strictly confidential and the Institution will treat it as such.
8. This MOU does not imply that either Party shall have the right to use the Background Intellectual Property of the other Party without prior written consent. If the Parties anticipate that their collaborative efforts may result in the use of Background Intellectual Property or the creation of new intellectual property, they will first enter into a separate agreement establishing their respective rights therein. Neither Party obtains by this MOU any right, title or interest in, nor any right to reproduce nor to use for any purpose, the name, trade names, trade-or service marks, logos or copyrights of the other Party without its prior, written consent. "Background Intellectual Property" means property and the legal right therein of a Party or Parties developed before or independently of any collaboration with the University and the Institution, including inventions, patent applications, patents, copyrights, trademarks, mask works, trade secrets and any information embodying proprietary data such as technical data and computer software.
9. Dr. Dani Harmanto, CEng MIED BEng (Hons) MSc PhD PgPit FHEA AMIMechE is the point of contact at the University; Dr. Mat Syai'in is the point of contact at the Institution.
10. This Memorandum of Understanding will last for [1 year] from the date shown above [unless either Party agrees to end it sooner].

**Signed by the Parties to this Agreement:**

SIGNED by:

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Date: .....

**HARI PUNCHIHEWA**  
Deputy Chief Executive and Finance Director  
for and on behalf of the UNIVERSITY OF DERBY

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SIGNED by:

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Date: .....

**EKO JULIANTO**  
Director  
for and on behalf of POLITEKNIK PERKAPALAN NEGERI SURABAYA

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