
DATED

DAY OF



DEFENCE INNOVATION PARTNERSHIP COLLABORATIVE RESEARCH FUNDING AGREEMENT

BETWEEN

PREMIER OF SOUTH AUSTRALIA

as represented by Defence SA

(Defence SA)

-AND-

[insert]

(Recipient)

[This document is a DRAFT provided only for the purposes of furthering negotiations between the parties. No party will be legally bound unless and until this document is executed by the parties and any actions taken in anticipation of such formal execution is at the risk of the person taking them.]

TABLE OF CONTENTS

1.	TERM OF AGREEMENT.....	1
2.	ADMINISTRATION OF AGREEMENT.....	1
3.	PAYMENT OF FUNDS.....	1
4.	OBLIGATIONS OF THE RECIPIENT	2
5.	CONFIDENTIAL INFORMATION.....	2
6.	INTELLECTUAL PROPERTY	3
7.	INFORMATION AND REPORTS	3
8.	TERMINATION.....	3
9.	INSURANCE	4
10.	GST	4
11.	AUDIT	4
12.	ASSIGNMENT.....	4
13.	PRIVACY.....	4
14.	PUBLICITY.....	5
15.	CONSENT	5
16.	ENTIRE AGREEMENT.....	5
17.	PROPER LAW	5
18.	JURISDICTION OF COURTS	5
19.	COMPLIANCE WITH LAWS.....	5
20.	NOTICES.....	5
21.	WAIVER	6
22.	MODIFICATION	6
23.	SEVERANCE	6
24.	READING DOWN.....	6
25.	AUDITOR-GENERAL.....	7
26.	PUBLIC DISCLOSURE.....	7

SCHEDULE

ANNEXURE A	PROFORMA CLAIM NOTICE
ANNEXURE B	PROFORMA FINANCIAL REPORT

AGREEMENT dated _____ day of _____ 20__

PARTIES:

THE PREMIER OF SOUTH AUSTRALIA a body corporate under the *Administrative Arrangements Act 1994 (SA)* (as represented by Defence SA) of Level 4, 151 Pirie Street, Adelaide, South Australia 5000 (**Defence SA**)

AND

INSERT of (Recipient)

RECITALS

- A. The Recipient is seeking to undertake a collaborative research fund related to (name of activity) (Project).
- B. Research topics will include the following area(s): (general statement of scope of work)
- C. At the Recipient's request the Premier has agreed to provide to the Recipient grant Funds, in aggregate not to exceed \$XX.XX, excluding GST, to facilitate the Project.
- D. Defence SA agrees to provide the Funds on the terms and conditions of this agreement.

IT IS AGREED:

1. **TERM OF AGREEMENT**

The **Term** of this agreement is the period specified in the schedule.

2. **ADMINISTRATION OF AGREEMENT**

Any power or discretion exercisable by Defence SA under this agreement may be exercised by the person for the time being in the position of Chief Executive, Defence SA.

3. **PAYMENT OF FUNDS**

- 3.1 Subject to this agreement, in consideration of the Recipient participating in the **Project** Defence SA agrees to pay the funds to the Recipient in accordance with the **Milestone Payments** (if any) as specified in the schedule.
- 3.2 The Recipient may only use the Funds for the **Purpose** specified in the Schedule.

- 3.3 Defence SA will pay the Funds to the Recipient at the times specified in the Schedule and within thirty (30) days of receipt of claim notice in the form provided in Annexure A, or another form satisfactory to Defence SA.
- 3.4 At the end of the Term the Recipient must:
- 3.4.1 provide a report on the level of any unexpended Funding to Defence SA;
 - 3.4.2 repay any part of the Funding which is unexpended at the end of the Term to Defence SA, unless Defence SA gives written approval for the Recipient to retain the money.

4. OBLIGATIONS OF THE RECIPIENT

The Recipient must:

- 4.1 comply with the terms and conditions of this agreement, including the **Special Conditions** specified in the schedule.
- 4.2 at all times, make best endeavours to achieve the **Key Performance Indicators** specified in the Schedule;
- 4.3 Where the Schedule specifies Named Persons then the Project must be delivered by those Named Persons.
 - 4.3.1 The Recipient may substitute a Named Person with the consent of Defence SA subject to Defence SA being satisfied as to the expertise, experience and suitability of the substitute.
- 4.4 The Recipient must ensure that the Project is delivered:
 - (a) by any Milestone Dates.
- 4.5 maintain accounting records of the Funding in accordance with generally accepted accounting principles and any other standards reasonably required by Defence SA;
- 4.6 ensure that any activity carried out by the Recipient in connection with the Project complies with the laws from time to time in force in South Australia; and
- 4.7 comply with its constitution, or other governing instrument.

5. CONFIDENTIAL INFORMATION

- 5.1 Subject to this clause 5, neither the Recipient nor Defence SA may not disclose any Confidential Information belonging to the other party except as genuinely and necessarily required for the purpose of this Agreement.
- 5.2 Either the Recipient or Defence SA may disclose Confidential Information belonging to the other party:
 - 5.2.1 to an employee, agent or adviser of that party, on a “need to know” and confidential basis;
 - 5.2.2 as required by law or a court order;
 - 5.2.3 in accordance with any Parliamentary or constitutional convention;
 - 5.2.4 for the purposes of prosecuting or defending proceedings.

5.3 The parties may mutually agree to disclose Confidential Information.

6. INTELLECTUAL PROPERTY

6.1 Nothing in this Agreement affects the ownership of Intellectual Property owned by either party.

6.2 Defence SA makes no claim on ownership of background or foreground IP from this Project.

7. INFORMATION AND REPORTS

7.1 The Recipient must provide Defence SA with appropriate and regular information, records and reports as specified in the schedule and otherwise as requested by Defence SA from time to time, including information about:

- 7.1.1 the progress of and material changes to the nature and scope of the Project;
- 7.1.2 any other funding or financial assistance promised or received for the Project from sources other than Defence SA;
- 7.1.3 the use of the Funding; and
- 7.1.4 any other matters relevant to the Project, as reasonably required by Defence SA.

7.2 The Recipient must:

- 7.2.1 prepare financial statements in the nature of a general purpose financial report; and
- 7.2.2 where requested by Defence SA, provide management accounts, annual reports, financial statements and any other information or documents relevant to the Funding.

7.3 The Recipient must, upon reasonable notice permit any officer authorised by Defence SA:

- 7.3.1 to have access to all accounting records, equipment, documents and information in relation to the Project and the Funding; and
- 7.3.2 to discuss matters pertaining to the Project and the Funding with employees of the Recipient.

8. TERMINATION

8.1 If the Recipient fails to comply with this agreement, Defence SA may at its reasonable discretion, do one or more of the following:

- 8.1.1 require the Recipient to repay any portion of the Funding Amount paid but not properly expended at the time of termination, in Defence SA's absolute discretion;
- 8.1.2 pursue any legal rights or remedies which may be available to the Defence SA; and
- 8.1.3 terminate this agreement by giving thirty (30) days written notice.

- 8.2 Defence SA may review any decision made pursuant to clause 7.1 if the Recipient is able to satisfy Defence SA that the Recipient has complied with the conditions of this agreement.

9. **INSURANCE**

The Recipient must comply with any insurance obligations specified in the schedule.

10. **GST**

- 10.1 The parties acknowledge that compliance with obligations or the grant of rights under this agreement by the Recipient will be a Taxable Supply as defined in the GST Law and the Recipient will be liable to pay GST on the Taxable Supply.
- 10.2 In addition to the Funding Defence SA will pay an amount calculated by multiplying the Funding by the rate at which GST is levied at the time of this agreement (**GST payment**).
- 10.3 If the Funding is payable in instalments, the GST payment will be payable in proportionate instalments.
- 10.4 Defence SA is not liable to pay the GST payment or any instalment of the GST payment unless the Recipient has delivered to Defence SA a valid Tax Invoice under GST Law, referable to the Funding (or instalment of the Funding) and associated GST payment.
- 10.5 For the purpose of this clause, **GST Law** has the meaning attributed to it in the *A New Tax System (Goods and Services Tax) Act 1999*.

11. **AUDIT**

- 11.1 Defence SA may direct the Recipient to arrange for the financial accounts relating to the Funding to be audited at the Recipient's expense.
- 11.2 Defence SA may specify the minimum qualifications to be held by a person appointed to conduct the audit.

12. **ASSIGNMENT**

The Recipient must not assign, novate or encumber any of its rights or obligations under this agreement without the prior written consent of Defence SA.

13. **PRIVACY**

- 13.1 The Recipient must comply with the *Privacy Act 1988* (Cth) ("**Privacy Act**") and the Australian Privacy Principles established under that Act in undertaking its obligations under this Agreement including in relation to all Personal Information received created or held by it for the purposes of this Agreement.
- 13.2 The Recipient must promptly notify the Government Party if it fails to comply with this clause or if it becomes aware of any actual or threatened disclosure of or unauthorised access to Personal Information.
- 13.3 For the purposes of this special condition, "Personal Information" has the same meaning as in the Privacy Act.

14. PUBLICITY

- 14.1 Subject to clause 14.2, the Recipient must not make or permit a public announcement or media release to be made about any aspect of this agreement without first obtaining Defence SA's consent, which may not be unreasonably withheld and which will not be required if the public announcement is required by law.
- 14.2 Nothing in clause 14.1 derogates from the operation of the *Not-for-profit Freedom to Advocate Act 2013* or operates to restrict the Recipient from engaging in political or policy advocacy.

15. CONSENT

If the Recipient requires Defence SA's consent under this agreement, Defence SA may, in its absolute discretion, give or withhold its consent (subject to any provision in this agreement to the contrary) and if giving consent, Defence SA may impose any condition on that consent that it considers appropriate. Defence SA's consent will not be effective unless it is in writing and signed.

16. ENTIRE AGREEMENT

- 16.1 This agreement incorporates any schedules and annexures.
- 16.2 This agreement contains the entire agreement between the parties with respect to its subject matter and supersedes any prior agreement, understanding or representation of the parties on the subject matter.

17. PROPER LAW

The laws in force in South Australia apply to this agreement.

18. JURISDICTION OF COURTS

- 18.1 The courts of South Australia will have exclusive jurisdiction to determine any proceeding in relation to this agreement.
- 18.2 Any proceeding brought in a Federal Court must be instituted in the Adelaide Registry of that Federal Court.

19. COMPLIANCE WITH LAWS

The Recipient must comply with the laws in force in South Australia in the course of performing its obligations under this agreement.

20. NOTICES

- 20.1 A "**notice**" means a notice in writing or a consent, approval or other communication required to be in writing under this agreement.
- 20.2 Addresses for notices are set out in the Schedule.
- 20.3 A notice must be signed by or on behalf of the sender addressed to the recipient and:
- 20.3.1 delivered to the recipient's address;

-
- 20.3.2 sent by pre-paid mail to the recipient's address; or
- 20.3.3 transmitted by email to the recipient's address.
- 20.4 A notice given to a person in accordance with this clause is treated as having been given and received:
- 20.4.1 on the day of delivery if delivered before 5.00 pm on a business day, otherwise on the next business day;
- 20.4.2 if sent by pre-paid mail, on the third business day after posting; or
- 20.4.3 if transmitted by transmitted by email:
- (a) when the relevant email appears in the sender's sent log with properties disclosing an appropriate routing; and
- (b) the sender does not receive a message from the system operator to the effect that the relevant email was undeliverable.
- 20.5 A party may from time to time notify its change of its contact details by written notice to the other party.
- 21. WAIVER**
- 21.1 Any waiver of any provision of this agreement is ineffective unless it is in writing and signed by the party waiving its rights.
- 21.2 A waiver by either party in respect of a breach of a provision of this agreement by the other party is not a waiver in respect of any other breach or any other provision.
- 21.3 The failure of either party to enforce any of the provisions of this agreement at any time must not be interpreted as a waiver of that provision.
- 22. MODIFICATION**
- Any modification of this agreement must be in writing and signed by each party.
- 23. SEVERANCE**
- 23.1 Each word, phrase, sentence, paragraph and clause of this agreement is severable.
- 23.2 If a court determines that a part of this agreement is unenforceable, invalid, illegal or void, that part may be severed.
- 23.3 Severance of a part of this agreement will not affect any other part of it.
- 24. READING DOWN**
- Where a word, phrase, sentence, paragraph, clause or other provision of this agreement would otherwise be unenforceable, illegal or void, the effect of that provision will, so far as possible, be limited and read down so that it is not unenforceable, illegal or void.

25. AUDITOR-GENERAL

- 25.1 Nothing in this agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).
- 25.2 Without limiting the previous sub-clause, the Recipient acknowledges the Auditor-General's obligations and powers under sections 32 and 34 of the *Public Finance and Audit Act 1987* (SA).

26. PUBLIC DISCLOSURE

- 26.1 Defence SA may disclose this agreement and/or information in relation to this agreement in either printed or electronic form to the public or to a particular person as a result of a specific request.
- 26.2 Nothing in this clause derogates from:
- 26.2.1 The Recipient's obligations under any provision of this agreement; or
 - 26.2.2 the provisions of the *Freedom of Information Act 1991* (SA).

SAMPLE ONLY

EXECUTED AS AN AGREEMENT

Executed for and on behalf of the **Premier** by his representative in the presence of:

Signature of witness

Signature of representative

Full name of witness (print)

Full name of representative (print)

Executed for and on behalf of **[Recipient]** by its representative in the presence of:

Signature of witness

Signature of representative

Full name of witness (print)

Full name of representative (print)

Address of witness (print)

SCHEDULE**1. THE TERM**

The period commencing on the date of execution of this agreement and ending on **Insert date**.

2. THE ACTIVITY

Insert details

3. THE PURPOSE

Insert details

4. NAMED PERSONS

Named Persons	<insert names and positions or insert "not applicable">

5. KEY PERFORMANCE INDICATORS

The Key Performance Indicators are the achievement of Major Milestones as outlined in Section 8 of this schedule.

6. THE FUNDING

The total amount of Funding is \$xxxxx (excluding GST) over the Term, to be paid as set out below.

Payment 1	90% (\$xxxx) on signing of this agreement and provision of a tax invoice for this amount
Payment 2	10% (\$xxxx) on provision of a Completion Report at the end of the project and provision of a tax invoice for this amount.

7. INSURANCE

No specific or minimum level of insurance required.

8. SPECIAL CONDITIONS

NIL

9. MILESTONES

Milestone	Date	Details

10. REPORTS

Milestone Reports

To be provided within two weeks of either of the following events:

- (a) An activity milestone as detailed within the Funding Agreement is achieved, or
- (b) It is realised that an activity milestone as detailed within the Funding Agreement cannot be met.

A Milestone Report should be limited to one page and contain (at least) the following information:

- (i) Activity name;
- (ii) Lead participant details;
- (iii) Title of milestone;
- (iv) Statement of key activities and/or outcomes achieved;
- (v) In the case where an activity milestone cannot be met, include details of the reason why the milestone can't be met and details of proposed changes to scope, schedule or budget;
- (vi) Indication of any additional risks identified (can be in relation to scope, schedule or resources) and risk mitigation or controls put in place; and
- (vii) Confirm scope and schedule for the next phase of the activity.

Completion Report

To be provided within one month of completing the activity the Recipient must:

- (a) Complete a Completion Report, and
- (b) Support the preparation of a short case study and presentation to highlight the activity methodology, outcomes and potential benefits for key stakeholders.

The Completion Report should be limited to no more than four pages and contain (at least) the following information:

- (i) Activity name;
- (ii) Lead participant details;
- (iii) Title of milestone;
- (iv) Statement of outcomes;
- (v) Details of benefits or opportunities identified, either potential or realised, including opportunities for additional collaboration, further development or alternate funding;
- (vi) Details of any recommendations resulting from the activity;
- (vii) Signed copy of the Income and Expenditure Statement as per the DIP CRF Funding Agreement (see Annexure C for template); and
- (viii) Complete the Completion Survey that will be forwarded by email and conducted online on receipt of your Completion report.

Financial Report

A report in the form provided at Annexure B to be submitted with the Completion Report.

11. NOTICES**Defence SA**

Director, Defence Innovation Partnership
Level 4, 151 Pirie Street, Adelaide SA 5000
Ph: + 61 (08) 8463 7035

enquiries@defenceinnovationpartnership.com

Recipient

Name:

Position:

Address:

Telephone:

Email:

SAMPLE ONLY

**Annexure A
CLAIM NOTICE**

[Proforma to be completed by Recipient]

To: Premier of South Australia
Attention: Chief Executive, Defence SA
Defence SA
Level 4, 151 Pirie Street
ADELAIDE SA 5000

This notice requesting payment of Funding is issued under the agreement dated [Insert] between the Premier of South Australia and [insert name of the Recipient].

Unless the context otherwise requires, terms defined in the agreement have the same meanings where used in this notice.

1. Required Information

- (a) Financial Year: [insert]
- (b) Deposit account details:
- Bank:
- Name:
- Account No:
- BSB No:
- (c) Details of achieved Milestone/s

2. Representations and Warranties

The Recipient represents and warrants as at the date of this notice that:

- (a) the proposed Funding will be applied towards the Purpose;
- (b) the representations and warranties set out in the Agreement are true and correct and not misleading in any respect;
- (c) the Payment Milestone relevant to this notice has been achieved;
- (d) the amount of the Funding requested is in accordance with the Minister's agreement to provide Funding under the agreement; and
- (e) the Recipient has used all previous payments of the Funding for the Purpose and is not otherwise in breach of the agreement.

3. Attachments

The following reports required to be provided under the agreement are attached:

- not required

Signed for and on behalf of the Recipient by [insert name and position]

.....
Date:

Annexure B
STATEMENT OF INCOME AND EXPENDITURE
FOR THE PERIOD

Project Title

Program

INCOME	COMMENTARY	\$
Income to be received from Premier		\$
Income received from other parties (separate line for each party, including the Grantee)		\$
TOTAL INCOME FOR THE REPORTING PERIOD		\$
EXPENDITURE [Premier's funds only]		
		\$
		\$
		\$
		\$
Total Expenditure of Funds (paid by the Premier) for the reporting period		\$
Surplus/Deficit for the reporting period		\$
BALANCE OF FUNDS (paid by the Premier) AS AT 30 JUNE		\$