

DATED

DAY OF

2023



**DEFENCE INNOVATION PARTNERSHIP
ACTIVATOR FUND
FUNDING AGREEMENT**

BETWEEN

MINISTER FOR DEFENCE AND SPACE INDUSTRIES

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.]

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SCHEDULE

ANNEXURE A	PROFORMA CLAIM NOTICE
ANNEXURE B	PROFORMA FINANCIAL REPORT

SAMPLE - Subject to Change

AGREEMENT dated _____ day of _____ 2023

PARTIES:

MINISTER FOR DEFENCE AND SPACE INDUSTRIES 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 RECIPIENT DETAILS] of [INSERT ADDRESS] (Recipient)

RECITALS

- A. The Defence Innovation Partnership has established the Activator Fund to support South Australian based projects in defence-relevant research, development and innovation.
- B. The Recipient is seeking to undertake the (name of Project) (Project).
- C. The Minister for Defence and Space Industries (the Minister) has agreed to provide to the Recipient the grant funds from the Activator Fund for the purpose of carrying out the Project and on the terms and conditions of this Funding Agreement.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In the Agreement, unless the contrary intention is apparent;

- 1.1.1 “**Australian Accounting Standards**” standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001*;
- 1.1.2 “**Agreement**” means this Funding Agreement between the Parties and includes the Schedules and any attachments;
- 1.1.3 “**Background IP**” means IP created prior to or outside the scope of the Project and provided by a Party for use in the Project;
- 1.1.4 “**Business Day**” means any day that is not a Saturday or Sunday or a public holiday in Adelaide under the *Holidays Act 1910 (SA)*;
- 1.1.5 “**Confidential Information**” means information, including Personal

Information, disclosed by or on behalf of a Party that:

- (a) is by its nature confidential or by the circumstances in which it is disclosed is confidential; or
- (b) is designated by the disclosing Party as confidential or identified in terms connoting its confidentiality;
- (c) but does not include information which is or becomes public knowledge other than by a breach of the Agreement;

- 1.1.6 **"GST"** means the tax imposed by the GST Law;
- 1.1.7 **"GST Law"** has the meaning attributed to it in the *A New Tax System (Goods and Services Tax) Act 1999*;
- 1.1.8 **"Foreground IP"** means Intellectual Property developed or created in the conduct of the Project excluding improvements to Background IP.
- 1.1.9 **"Funds"** means the total amount of grant funding that is available to the Grantee for the Project as specified in Schedule 1;
- 1.1.10 **"Intellectual Property Rights"** means any patent, copyright, trademark, tradename, design, trade secret, know-how or other form of confidential information, or any right to registration of such rights and any other form of intellectual property right whether arising before or after the execution of this Agreement;
- 1.1.11 **"Milestones"** means the Project Milestones set out in Schedule 1;
- 1.1.12 **"Milestone Payments"** means the payment of the Funds in two instalments on satisfaction of the Milestones as set out in Schedule 1;
- 1.1.13 **"Reports"** means the reports the Recipient is required to provide to Defence SA as set out in Schedule 1;
- 1.1.14 **"Parties"** means Defence SA and the Recipient and their respective successors and permitted assigns and a "Party" means any of the Parties;
- 1.1.15 **"Project"** means the project to be undertaken by the Recipient specified in Schedule 1;
- 1.1.16 **"Purpose"** means the purpose specified in Schedule 1;
- 1.1.17 **"Tax Invoice"** means a tax invoice as envisaged in the GST Law;
- 1.1.18 **"Taxable Supply"** has the meaning attributed to that expression in the GST Law;

1.2 Interpretation

1.2.1 In the Agreement unless a contrary intention is meant:

- (a) the clause headings are for convenient reference only and do not form part of the Agreement;
- (b) a reference to a clause number is a reference to all its subclauses;
- (c) a reference to a clause, subclause, Schedule or Attachment is a reference to a clause, subclause, schedule or attachment of the Agreement;
- (d) a word in the singular includes the plural and a word in the plural includes the singular;

- (e) a word importing a gender includes any other gender;
- (f) a reference to a person includes a partnership and a body corporate;
- (g) a reference to legislation includes legislation repealing, replacing or amending that legislation;
- (h) a reference to dollars is a reference to Australian dollars; and
- (i) where a word or phrase is given a particular meaning other parts of speech or grammatical forms of that word or phrase have corresponding meanings.

1.2.2 In resolving inconsistencies in the Agreement:

- (a) the Agreement (excluding the Schedule),
 - (b) the Schedule,
- have priority in that order.

2. TERM OF AGREEMENT

The Term of this Agreement is the period specified in the Schedule.

3. PAYMENT OF FUNDS

- 3.1 Subject to this Agreement, in consideration of the Recipient undertaking the Project, Defence SA agrees to pay the Funds to the Recipient in accordance with the Milestone Payments 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 on satisfaction of the Milestones 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.

4. UNEXPENDED FUNDS

- 4.1 At the end of the Term the Recipient must:
 - 4.1.1 provide a report on the level of any unexpended Funding to Defence SA;
 - 4.1.2 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.

5. OBLIGATIONS OF THE RECIPIENT

The Recipient must:

- 5.1 comply with the terms and conditions of this agreement, including the Special Conditions specified in the Schedule;
- 5.2 at all times, make best endeavours to achieve the Key Performance Indicators specified in the Schedule;

- 5.3 prepare financial statements relating to the Project in accordance with the Australian Accounting Standards at the end of each financial year during the Term, signed by an appropriate officer and submitted to Defence SA;
- 5.4 where requested by Defence SA, provide to Defence SA, management accounts, annual reports, financial statements and any other information or documents relevant to the Recipient's participation in the Project;
- 5.5 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 comply with its constitution, or other governing instrument.

6. CONFIDENTIAL INFORMATION

- 6.1 Subject to this clause 6, neither the Recipient nor Defence SA may disclose any Confidential Information belonging to the other Party except as genuinely and necessarily required for the purpose of this Agreement;
- 6.2 Either the Recipient or Defence SA may disclose Confidential Information belonging to the other party:
 - 6.2.1 to an employee, agent or adviser of that party, on a "need to know" and confidential basis;
 - 6.2.2 as required by law of a court order;
 - 6.2.3 in accordance with any Parliamentary or constitutional convention;
 - 6.2.4 for the purpose of prosecuting or defining proceedings.
- 6.3 The parties may mutually agree to disclose Confidential Information.

7. INTELLECTUAL PROPERTY

- 7.1 Nothing in this Agreement affects the ownership of Intellectual Property Rights created before the Commencement Date or outside the scope of the Project.
- 7.2 The Parties acknowledge and agree that any Intellectual Property Rights including Intellectual Property Rights in any Reports created directly or indirectly using the Funds will vest in the Recipient/s.
- 7.3 Defence SA makes no claim on ownership of background or foreground IP from this Project.
- 7.4 The Recipient must:
 - 7.4.1 use its best endeavours not to infringe the Intellectual Property Rights of any person in undertaking the Project; and
 - 7.4.2 keep Defence SA indemnified against all costs, expenses and liabilities whatsoever arising out of or in connection with any claim that the undertaking of the Project by the Recipient infringes the Intellectual Property Rights of any person.
- 7.5 The Recipient's liability under clause 7.4.2 will be reduced proportionately to the extent that the indemnified costs, expenses and liabilities of Defence SA were contributed to by Defence SA.
- 7.6 The Recipient must execute the Commonwealth of Australia Intellectual Property Licence Deed.

8. INFORMATION AND REPORTS

8.1 The Recipient must provide Defence SA with:

- 8.1.1 the Reports specified in the Schedule; and
- 8.1.2 appropriate and regular information, records and any other reports requested by Defence SA from time to time, including information about:
 - (a) the application of the Funds by the Recipient (with appropriate evidence in support);
 - (b) the progress of and material changes to the nature and scope of the Project;
 - (c) any significant changes to the nature and/or scope of the activities conducted by the Recipient with respect to the Project;
 - (d) any other funding or financial assistance promised or received for the Project from sources other than Defence SA;
 - (e) the performance of the Recipient's undertakings and obligations under the Agreement;
 - (f) the Recipient's management of the Funds, including but not limited to the economic and efficient use of resources to achieve the Purpose; and
 - (g) any other matters relevant to the Project, as reasonably required by Defence SA.

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

- 8.2.1 to have access to all accounting records, equipment, documents and information in relation to the Project and the Funds, if required; and
- 8.2.2 to discuss matters pertaining to the Project and the Funds with employees of the Recipient engaged in the conduct of the Project or the management of the Funds.

9. TERMINATION

9.1 If the Recipient fails to comply with its obligations under this Agreement, Defence SA may in its reasonable discretion, do one or more of the following:

- 9.1.1 require the Recipient to repay any portion of the Funds having regard to the nature and extent of the Recipient's failures;
- 9.1.2 withhold any further payments of Funds from the Recipient;
- 9.1.3 pursue any legal rights or remedies which may be available to Defence SA; and
- 9.1.4 terminate this Agreement with immediate effect by notice in writing to the Recipient if the Recipient has not remedied a failure to comply with its obligations under this Agreement within thirty (30) days of a written notice from Defence SA setting out the failure and the remedial action required.

- 9.2 Defence SA may review any decision made pursuant to clause 9.1 if the Recipient is able to satisfy Defence SA that the Recipient has complied with the conditions of this agreement.

10. INSURANCE

- 10.1 The Recipient must comply with any insurance obligations specified in the Schedule.
- 10.2 Defence SA may terminate this Agreement if the Recipient does not comply with the requirements of this clause 10.

11. GST

- 11.1 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.
- 11.2 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**).
- 11.3 If the Funding is payable in instalments, the GST payment will be payable in proportionate instalments.
- 11.4 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.

12. AUDIT

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

13. ADMINISTRATION OF AGREEMENT

- 13.1 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.
- 13.2 Nothing in this clause will prevent the Minister from exercising any of the Minister's powers or rights under this Agreement.

14. 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.

15. PRIVACY

- 15.1 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.

- 15.2 The Recipient must promptly notify the Government Party if it fails to comply with this clause 15 or if it becomes aware of any actual or threatened disclosure of or unauthorised access to Personal Information.
- 15.3 For the purposes of this special condition, "Personal Information" has the same meaning as in the Privacy Act.

16. **PUBLICITY**

- 16.1 Subject to clause 16.2, 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.
- 16.2 Nothing in clause 16.1 derogates from the operation of the *Not-for-profit Freedom Sector to Advocate Act 2013* or operates to restrict the Recipient from engaging in political or policy advocacy.

17. **CONSENT**

If the Recipient requires Defence SA's consent under this agreement, the Minister may, in its reasonable 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.

18. **ENTIRE AGREEMENT**

- 18.1 This Agreement incorporates any schedules and annexures.
- 18.2 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.

19. **RELATIONSHIP BETWEEN THE PARTIES**

- 19.1 The Recipient will not represent itself, and will ensure that its officers, employees and agents do not represent themselves, as being an officer, employee or agent of Defence SA.
- 19.2 The Recipient will not by virtue of the Agreement be or for any purpose be deemed to be an officer, employee or agent of Defence SA, or as having any power or authority to bind or represent the Minister unless explicitly authorised to do so in writing from Defence SA.
- 19.3 The Recipient agrees that there is no contract of any nature in existence between Defence SA and any other person employed or engaged by the Recipient for the purposes of this Agreement.
- 19.4 The Recipient agrees that the Recipient is liable for all remuneration, claim and other entitlements payable to the Recipient's Personnel.

20. PROPER LAW

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

21. JURISDICTION OF COURTS

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

22. 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.

23. NOTICES

- 23.1 A “**notice**” means a notice in writing or a consent, approval or other communication required to be in writing under this Agreement.
- 23.2 Addresses for notices are set out in the Schedule.
- 23.3 A notice must be signed by or on behalf of the sender addressed to the recipient and:
- 23.3.1 delivered to the recipient’s address;
 - 23.3.2 sent by pre-paid mail to the recipient’s address; or
 - 23.3.3 transmitted by email to the recipient’s address.
- 23.4 A notice given to a person in accordance with this clause is treated as having been given and received:
- 23.4.1 on the day of delivery if delivered before 5.00 pm on a Business Day, otherwise on the next Business Day;
 - 23.4.2 if sent by pre-paid mail, on the third Business Day after posting; or
 - 23.4.3 if 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.
- 23.5 A Party may from time to time notify its change of its contact details by written notice to the other Party.

24. WAIVER

- 24.1 Any waiver of any provision of this Agreement is ineffective unless it is in writing and signed by the Party waiving its rights.
- 24.2 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.

25. MODIFICATION

Any modification of this Agreement must be in writing and signed by each Party.

26. SEVERANCE

- 26.1 Each word, phrase, sentence, paragraph and clause of this agreement is severable.
- 26.2 If a court determines that a part of this Agreement is unenforceable, invalid, illegal or void, that part may be severed.
- 26.3 Severance of a part of this Agreement will not affect any other part of it.

27. 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.

28. AUDITOR-GENERAL

- 28.1 Nothing in this Agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).
- 28.2 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).

29. PUBLIC DISCLOSURE

- 29.1 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.
- 29.2 Nothing in this clause derogates from:
 - 29.2.1 the Recipient's obligations under any provision of this Agreement; or
 - 29.2.2 the provisions of the *Freedom of Information Act 1991* (SA).

EXECUTED AS AN AGREEMENT

SIGNED by a duly authorised officer for and)
on behalf of the **MINISTER FOR DEFENCE**)
AND SPACE INDUSTRIES in the presence)
of:)

.....
Witness signature

.....
Authorised officer signature

.....
Witness name

.....
Authorised officer name

.....
Date

EXECUTED by **[THE RECIPIENT]** in)
accordance with section 127 of the)
Corporations Act 2001 (Cth) by two directors)
or by one director and the company)
secretary:

.....
Director signature

.....
Director/Company Secretary signature

.....
Director name

.....
Director/Company Secretary name

.....
Date

SCHEDULE1. **TERM**

The period commencing on the date of execution of this Agreement and ending on [Insert expiry date].

2. **PROJECT TITLE**

[Insert details]

3. **RECIPIENT**

Primary Contact	<insert names and positions or insert "not applicable">
------------------------	---

4. **PURPOSE**

[Insert details]

5. **FUNDS**

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

Payment 1	XX% (\$xxxx) to be paid upon receipt of: <ul style="list-style-type: none"> 1. signed Funding Agreement 2. completed Claim Notice (Annexure A) 3. tax invoice for this amount.
Payment 2	XX% (\$xxxx) – to be paid upon receipt of: <ul style="list-style-type: none"> 1. Completion Report (refer Item 9) within one month of completing the final milestone 2. completed Claim Notice (Annexure A) 3. completed Statement of Income and Expenditure (Annexure B) 4. tax invoice for this amount.
Payment 3	XX% (\$xxxx) to be paid upon receipt of:
Payment 4	XX% (\$xxxx) to be paid upon receipt of:

6. **INSURANCE**

Public Liability Insurance – not less than \$10,000,000

Professional Indemnity Insurance – not less than \$1,000,000

7. **SPECIAL CONDITIONS**

[Nil]

8. **MILESTONES**

Project Milestone	Due Date	Deliverable	Milestone Report
1			Due within two weeks of 'Due Date' Refer Item 9 of this Schedule for more details
2			
3			
4			

9. **REPORTS**Milestone Reports

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

- (a) A Project milestone as detailed within the Agreement is achieved, or
- (b) It is realised that a Project milestone as detailed within the Agreement cannot be met.

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

- (i) Project name;
- (ii) Lead participant details;
- (iii) Title of milestone;
- (iv) Statement of key activities and/or outcomes achieved;
- (v) In the case where an Project 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 Project.

Completion Report

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

- (a) Complete a Completion Report, and
- (b) Support the preparation of a short case study and presentation to highlight the Project 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) Project 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 Project;
 - (vii) Signed copy of the Income and Expenditure Statement as per the DIP CRF Funding Agreement (see Annexure B 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.

10. NOTICES

Defence SA

Name: Sumen Rai
Position: Director, Defence Innovation Partnership
Address: Level 4, 151 Pirie Street, Adelaide SA 5000
Telephone: + 61 (08) 8463 7105
Email: enquiries@defenceinnovationpartnership.com

Recipient

Name:
Position:
Address:
Telephone:
Email:

SAMPLE - Subject to Change

Annexure A**CLAIM NOTICE**

[Proforma to be completed by Recipient]

To: Minister for Defence and Space Industries
 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 Minister for Defence and Space Industries 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 the South Australian Government		\$
Income received from other parties (separate line for each party, including the Grantee)		\$
TOTAL INCOME FOR THE REPORTING PERIOD		\$
EXPENDITURE [South Australian Government funds only]		
		\$
		\$
		\$
		\$
Total Expenditure of Funds (paid by the South Australian Government) for the reporting period		\$
Surplus/Deficit for the reporting period		\$
BALANCE OF FUNDS (paid by the South Australian Government) AS AT 30 JUNE 20??		\$