

**MULTI-INSTITUTIONAL AGREEMENT  
DEFENCE INNOVATION NETWORK (DIN)**

**DEFENCE INNOVATION NETWORK SEED PROJECT LEVERAGE SCHEME**

**DETAILS**

<b>First Funding Year</b>	2019	
<b>DIN Project Number:</b>	<b>Approved Project Title:</b>	
<b>Administering Organisation</b>	<b>Org: University of Technology Sydney (on behalf of defence Innovation Network)</b>	
<b>Collaborating Organisation and their first named Chief Investigator(s):</b>	<b>Org: University</b> <b>Chief Investigators:</b>	

**BACKGROUND**

- A. The Collaborating Organisations have successfully applied for a DIN Seed Project Leverage Funding.
- B. The Administering Organisation must not allow a Project to commence nor Funding to be expended, until the Collaborating Organisation has entered into a written research agreement, in respect of the Project with the Industry organisations, xxxx

**THE PARTIES AGREE:**

**1. DEFINITIONS**

- 1.1. In this agreement, unless otherwise defined, capitalised terms will have the same meaning as set out in the DIN Research Agreement.
- 1.2. In this agreement:

**DIN Funding Commencement Date** xx-xx-xxxx.

**Background Intellectual Property** means pre-existing or independently developed Intellectual Property, owned or controlled by a Party which it determines, in its discretion, to make available for the carrying out of the Project;

**Collaborating Organisations** means the Organisations that are a Party to this agreement.

**Confidential Information** means and includes any information contributed by a Party (Disclosing Party) to another Party (Receiving Party), that by its nature is confidential, is designated by a Party as confidential, or the recipient knows or ought to know is confidential but does not include information which:

- (a) is or becomes public knowledge other than by breach of this agreement; or
- (b) was properly in the possession of the Receiving Party in written form otherwise than by prior confidential disclosure from the Disclosing Party; or
- (c) was properly available to the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party; or

- (d) is demonstrated by the Receiving Party to be independently developed by an employee or agent of the Receiving Party having no knowledge of such information which is the subject of the disclosure.

**DIN Research Agreement** means the agreement between the Founding University Members of DIN regarding funding for Defence Innovation Network Seed Projects to commence in the first Funding year.

**Force Majeure** means an act, omission or circumstance over which a Party could not reasonably exercise control, and includes, without limitation:

- (a) an act of God, fire, flood, tornado, hurricane or any other form of inclement weather, or conditions resulting from inclement weather; or
- (b) explosion, concussion, collision, radiation, act of the public enemy, act of war (declared or undeclared), insurrection or national emergency (whether in fact or law).

**Intellectual Property** means all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, trade secrets, knowhow, circuit layouts, and all other intellectual property rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Parties** means all parties to this agreement.

**Project** means the project named in the Details and more specifically detailed in the Proposal.

**Project Activity Period** means the period from the commencement date to the end date as set out in Schedule 2.

**Project Intellectual Property or Project IP** means any Intellectual Property created or arising as a direct result of the conduct of the Project excluding copyright in a Student's thesis or work submitted for a higher degree.

**Proposal** means the Seed Projects application submitted by the Collaborating Organisation, to the DIN Funding Committee which describes the Project.

**Specified Personnel** means the people specified in section 5 (Team) of the Proposal.

**Student** means a student of any of the parties who has been approved by the other parties to participate in the Project.

## 2. CONDUCT OF THE PROJECT

### 2.1. The Parties agree:

- (a) that the management of the Project and the Funding will at all times be in accordance with the DIN Research Agreement;
- (b) that they have each received a copy of the Proposal and agree that the roles, budget, contributions, and program of research of each of the Parties in relation to the Project are set out accurately in the Proposal and this agreement;
- (c) to each carry out their roles, contributions and program of research as set out in the Proposal and this agreement;
- (d) perform their obligations under this Agreement in a diligent and competent manner in accordance with the terms of this Agreement and in compliance with all relevant laws and regulations applicable to the conduct of the Project;
- (e) each use reasonable endeavours to carry out the Project within any timeframes specified in the Proposal;
- (f) provide such assistance, information, data, equipment, resources or materials to the other Parties as may be reasonably required to satisfactorily carry out the Project;
- (g) contribute its respective Specified Personnel to conduct the Project; and
- (h) that the Project will conform to the principles outlined in the following and their successor documents (where applicable):
  - i. *the Australian Code for the Responsible Conduct of Research (2007).*

- ii. *as applicable, the National Statement on Ethical Conduct in Human Research (2007, updated 2015);*
- iii. *as applicable, the Australian Code for the care and use of animals for scientific purposes (2013) endorsed by the NHMRC, the DIN, the Commonwealth Scientific and Industrial Research Organisation and UA.*

- 2.2. All Parties shall at all times comply with the requirements of the *Disability Discrimination Act 1992* and the *Racial Discrimination Act 1975* and shall not treat any person or group of people less favourably than another on the grounds of race, colour, religion, ethnicity, sex, age, disability, nationality, marital status or sexual orientation.
- 2.3. The Collaborating Organisation agree not to do or omit to do anything that may cause the Administering Organisation to be in breach of the Administering Organisation's obligations under the DIN Research Agreement.
- 2.4. The Collaborating Organisation agree to abide by the terms and conditions of the DIN Research Agreement and to do all things reasonably required to enable the Administering Organisation to meet its obligations under the DIN Research Agreement regarding reporting and financial management of the Funding.
- 2.5. If a Party's Specified Personnel becomes unavailable to complete its obligations under this Agreement, then that Party must:
  - (a) notify the other Parties immediately; and
  - (b) use best endeavours to appoint another person with sufficient skill, qualifications and time to complete that Party's obligations under this Agreement.
- 2.6. Nothing in this Agreement prevents a Party from pursuing other collaborative opportunities with third parties relating to the subject matter of the Project, provided always that such collaborative opportunities do not create a conflict of interest in the performance of the Project.

### **3. Nature of Research**

- 3.1. The Parties agree that:
  - (a) due to the inherently uncertain nature of research, the actual outcomes and results of the Project cannot be assured, nor does any Party warrant that the outcomes of the Project will be commercially valuable, patentable, reliable, safe or fit for any purpose; and
  - (b) no Party will be liable to another Party for any loss or damage arising by reason of its failure to perform work on time or within estimated costs, provided that such Party has used its reasonable endeavours in all respects in carrying out the Project.

### **4. PROJECT GRANT**

- 4.1. The distribution of funds from the Administering Organisation to the Collaborating Organisation will be in the amount set out in Table 1 of Schedule 2.
- 4.2. The Administering Organisation will only transfer DIN Funding after receiving a notice that the Collaborating Organisation has in place a research agreement with the participating Industry organisations.
- 4.3. The Collaboration Organisation should receive the cash and in-kind contributions as set out in Table 2 of Schedule 2.
- 4.4. The Parties agree that all expenditure of the Funding will be in accordance with the project description contained in the Proposal and within the broad structure of the proposed project cost detailed in the Proposal.
- 4.5. Where the Administering Organisation is transferring the Funding to the Collaborating Organisation, the Collaborating Organisation will:
  - (a) submit relevant tax invoice to the Administering Organisation on providing the notification that a research agreement is in place with the Industry participants.
  - (b) provide a final report which includes a complete financial acquittal to the Administering Organisation by xx-xx-xxxx; and

- (c) when a researcher named on the Proposal leaves the employment of his/ her Collaborating Organisation through his/her transfer to another university or otherwise, and the involvement of the host Collaborating Organisation in the Project also ceases, that host Collaborating Organisation will provide a financial acquittal to the Administering Organisation within 30 days of request, if requested to do so by the Administering Organisation.
- 4.6. The contact details for invoices at the Administering Organisation and Collaborating Organisation are provided at Schedule 1. The contact details for acquittals for the Collaborating Organisation and any relevant Collaborating Organisations are also provided at Schedule 1.
- 4.7. All amounts referred to in this agreement are expressed exclusive of GST unless otherwise stated. For the purpose of this agreement "GST" means a goods and services tax imposed on the supply of goods and services (including intellectual property) under *A New Tax System (Goods and Services Tax) Act 1999* (Cth). The Administering Organisation will, on issue of a complying tax invoice, pay the Collaborating Organisation(s) an amount equal to the GST liability payable by the Collaborating Organisation(s).

## 5. INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

- 5.1. The Parties agree that the ownership of Background Intellectual Property is not affected by this agreement and that all Background Intellectual Property remains the property of the Party that makes it available for the purpose of carrying out the Project.
- 5.2. Subject to clause 5.3 any Project IP will be owned by the originating Party (Project IP).
- 5.3. Where Project IP is jointly developed by two or more Parties (Joint Project IP) it will be jointly owned by those Parties as tenant-in-common in shares proportional to their respective contributions to its development, and the Parties agree the dominant inventive contributing Party (unless otherwise agreed):
  - (a) will coordinate the management and protection (where appropriate) of any Joint Project IP;
  - (b) must not encumber, assign or attempt to encumber or assign any Joint Project IP without the prior written consent of all other joint owner Parties, as applicable; and
- 5.4. Each Party will use its reasonable efforts to obtain from its respective employees and students under their supervision, any waivers or consents in relation to their Moral Rights that may be reasonably necessary for:
  - a) any Research Project;
  - b) any licences; and/or
  - c) the commercialisation of Network IP or Joint Network IP.
- 5.5. The administration and management of the Project Intellectual Property will comply with the *National Principles of Intellectual Property Management for Publicly Funded Research* and/or any successor document. All Collaborating Organisations acknowledge and agree that they are familiar with the current Intellectual Property and patent landscape for the research areas included in the Proposal.
- 5.6. The Parties agree that copyright in a Student's thesis will be owned by the Student but the Party where the Student is enrolled will ensure that the Student enters into written arrangements which are consistent with the terms of clause 5 of this agreement before the Student commences any research activities on the Project.
- 5.7. All Parties are committed to appropriate recognition of contributions to invention and exploitation of Intellectual Property for the benefit of the Australian community.
- 5.8. In relation to the commercialisation of Project Intellectual Property, the Parties who own Project Intellectual Property (as determined in accordance with clause 5.3) will negotiate in good faith and using all best endeavours to agree the terms of any program of commercialisation so as to fairly share in any commercial return associated with the Project and the Project Intellectual Property. The relevant Parties must enter into an agreement prior to the exploitation of the Project Intellectual Property that includes an agreed share of any net commercialisation returns (such share to be negotiated in good faith).

- 5.9. Each Party acknowledges that all Confidential Information disclosed by one Party to the other, whether existing prior to the commencement of the Project or created in the course of the Project, is confidential and shall be kept confidential and shall not be disclosed to any third party without the prior written consent of the Disclosing Party.
- 5.10. Notwithstanding clause 5.9, a Party may disclose Confidential Information of the other Parties:
- (a) as authorised or required by law;
  - (b) to its officers, employees and students who have a need to know for the purpose of undertaking the Project and/or using the Project IP in accordance with this Agreement, where those officers, employees and students have been directed to keep the Confidential Information confidential and are lawfully bound by obligations no less onerous than those set out in clause 5.9;
  - (c) to its professional advisors; or
  - (d) with the written consent of the Disclosing Party.
- 5.11. The obligations in clause 5.9 and 5.10 survive for three years following the completion of the Project.
- 5.12. The Parties acknowledge the obligations of each other Party under their respective statutes to deposit in the library a copy of a Student's completed thesis or work submitted for a higher degree. Nothing in this agreement affects the operation of those statutes or creates any obligations contrary to those statutes.

## **6. PUBLICATIONS**

- 6.1. The Collaborating Organisation agrees to ensure that any publications, for which their Personnel are listed as an author, that result from the Project comply with the obligation to include acknowledgement of the contribution and support of the NSW Department of Industry for Defence Innovation Network.
- 6.2. The Parties are entitled to publish the results of the project subject to clause 6.3.
- 6.3. The publishing Party will provide a copy of the proposed publication to each other Party at least 30 days in advance of submitting for publication. The other Parties may provide comments and/or reasonable amendments to the publication to protect their Confidential Information and/or Intellectual Property, including requesting removal or delay to the inclusion of information which may pre-empt the other Party's publication of its Project Intellectual Property which is not jointly owned with the publishing Party, provided the comments and/or amendments are given to the publishing Party in writing no later than 15 days before the publication is proposed to be submitted. If no such comments or amendments are provided within the 15 day period, the publishing Party can submit the proposed publication, subject to any applicable requirements under the Funding Agreement. Where a Party requests that the material be amended, the publishing Party will use all reasonable efforts to amend the proposed publication accordingly and, if requested, delay submission of the publication for a period not exceeding 6 months to allow appropriate registration of any registrable Intellectual Property.
- 6.4. A Party may not use the name, trade mark or logo of the other Parties without the prior written approval of an authorised representative of that other Party.

## **7. CONFLICT OF INTEREST**

- 7.1. All Parties involved in or associated with a Project are required to disclose to each other any actual or potential Conflict of Interest which has the potential to influence, or appear to influence, the research and activities, publications and media reports, or requests for funding related to the Project.

## **8. TERM AND TERMINATION OF AGREEMENT**

- 8.1. This agreement commences on the later of the DIN Funding Commencement Date or the date that this agreement is fully executed and will terminate on the end date unless otherwise terminated in accordance with this agreement.
- 8.2. The Administering Organisation may terminate this agreement if:

(a) the NSW Department of Industry ceases to provide Funding for DIN or the DIN Research Agreement is terminated for any reason, as per clause 14 of the DIN Research Agreement, in which case the Administering Organisation will promptly notify the Collaborating Organisations; or

(b) the Collaborating Organisation breaches a material term of the DIN Research Agreement and such breach is not rectified within 30 days of receiving notice of the breach by the Administering organisation to the Collaborating Organisation.

8.3. Any Party may terminate this agreement immediately by written notice to the other Parties where:

(a) another Party is in breach of its obligations under this Agreement; and

(b) the Party fails to remedy such breach or to take effective action to remedy such breach within 30 days of a written request by the first Party to do so.

8.4. Obligations contained in clauses 2.3, , 5.2, 5.3, 5.5, 6, 7, 8.2, 9, 10.2 and any other provisions intended by the Parties to survive termination or expiration, will survive termination or expiration of this agreement.

## **9. INDEMNITY AND INSURANCE**

9.1 Each Party ("Indemnifying Party") indemnifies and agrees to keep indemnified each other Party against all loss, damages, costs or expenses, in respect of all claims, demands, actions, proceedings or prosecutions which may be brought, commenced or prosecuted against the other Party to the extent in consequence of, relating to, or arising out of:

(a) negligent act or omission of the Indemnifying Party or its Personnel directly arising from the performance of the Project;

(b) a breach of the Intellectual Property rights, Moral Rights or confidentiality rights of a third party by the Indemnifying Party or its Personnel; or

(c) any injury or death to persons or damage to tangible property caused by the Indemnifying Party or its Personnel during the conduct of the Project.

9.2 Each Party's liability to indemnify the other Party under this clause will be reduced proportionally to the extent that any negligent act or omission or breach of this agreement by the other Party or the other Party's Personnel contributed to the loss or liability.

9.3 No Party is liable to another party for consequential or incidental damages, or loss of profits, revenue, goodwill or opportunities in contract tort, under any statute or otherwise (including negligence) arising from or in any way related to this agreement.

9.4 Each Party will:

(a) maintain adequate professional indemnity insurance or protections, third party liability insurance or protections and workers' compensation insurance or equivalent to cover the Project; and

(b) furnish to the other Party a certificate of currency and renewals of such insurance or protections, if requested to do so.

## **10. FORCE MAJEURE**

10.1. If a Party is wholly or partially precluded from complying with its obligations under this Agreement by Force Majeure:

- (a) as soon as practicable after an event of Force Majeure arises, the affected Party must notify the other Parties of the extent to which it is unable to perform its obligations under this Agreement; and
  - (b) the affected Party's obligations to perform in accordance with this Agreement will be suspended for the period of the delay due to Force Majeure.
- 10.2. If a delay due to Force Majeure exceeds thirty (30) days, the Parties will meet to discuss the matter by giving each other no less than thirty (30) days' notice and attempt to reach a mutually satisfactory resolution to the problem. If a mutually satisfactory resolution cannot be reached, any Party may terminate this Agreement by giving thirty (30) days written notice to the other Parties.
- 11.1. If any dispute or difference arises in connection with this agreement, then the Parties shall negotiate in good faith using their best endeavours to resolve the dispute or difference. If the dispute or difference cannot be resolved in the first instance, the Parties agree to refer the dispute to, as applicable, the Deputy Vice-Chancellors (Research) or Chief Executive Officers, or equivalent, or their nominees.
- 11.2. This agreement may be signed in any number of counterparts which together will constitute one agreement. If this agreement is signed in counterparts, the date of this agreement is the date on which it is signed by the last Party.
- 11.3. If any clause or part thereof is held by a court to be invalid or unenforceable such clause or part thereof shall be deemed deleted from this agreement and this agreement shall otherwise remain in full force and effect.
- 11.4. Each Party may communicate its acceptance of this agreement by successfully transmitting a signed copy of this agreement by facsimile or email to the other Parties.
- 11.5. No addition to or modification of any provision of this agreement shall be binding upon the Parties unless by written instruction signed by each of the Parties.
- 11.6. 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.
- 11.7. This agreement shall be governed by and construed in accordance with the laws for the time being in force in the Australian State or Territory of the Administering Organisation and the Parties agree to submit to the non-exclusive jurisdiction of the courts of that State or Territory.
- 11.8. If a right, duty or an obligation or liability under this agreement applies to more than one Party then each such Party is entitled to the right or liability severally and not jointly, nor jointly and severally in respect of that right, duty, obligation or liability.
- 11.9. This agreement does not create a partnership, agency, fiduciary or other relationship between the Parties and no Party is liable for the acts or omissions of any other Party except as set out in this agreement.
- 11.10. Any notice or other communication under this agreement shall be given in writing and delivered by hand or sent by pre-paid post or facsimile or other form of electronic transmission to the authorised signatory of a Party.
- 11.11. Except as expressly permitted under this agreement, a Party must not assign or otherwise transfer, create any charge, trust or other interest in or otherwise deal in any other way with any of its rights under this agreement without the prior written consent of the other Parties, such consent not to be unreasonably withheld or delayed.

## **12. SPECIAL CONDITIONS**

Any special conditions relating to the Project as set out in the Funding Offer are provided in Schedule 3 of this agreement.

**Agreed to by the following parties:**

Organisation	Name of Investigators on the Proposal	Name and Signature of Authorised Signatory (DVC(Research) or authorised delegate of the Organisation)	Date of signing by Authorised Signatory
Administering Organisation – University of Technology Sydney		<p>-----</p> <p>Martin Lloyd Director, Research and Innovation Office</p>	
Collaborating Organisation –		<p>-----</p> <p>Insert signatory</p>	



## SCHEDULE 1: CONTACT DETAILS

### A. Contact details at Administering Organisation:

Contact details for Invoices and Financial Acquittal:

Management Accountant

University of Technology Sydney

PO Box 123 Broadway NSW 2007

Email: science.finance@uts.edu.au

cc: postaward.grants@uts.edu.au

Contact details for notices

Director

Research and Innovation Office

University of Technology Sydney

PO Box 123 Broadway NSW 2007

Email: rio@uts.edu.au

### B. Contact details at Collaborating Organisation:

Contact details for the person/unit responsible for acquittals at the Collaborating Organisation

Faculty/School Finance Officer (*Insert Name*)

School Address (*insert*)

XXX University

*[insert additional contact details as relevant]*

**SCHEDULE 2: PROJECT DETAILS**

Commencement Date	
End Date	

**Table 1: Distribution of Funding to Collaborating Organisation**

Collaborating Organisation Name	2019
University	\$50,000

**Table 2: Project Funding including cash and in-kind contributions**

Project Participant	Contribution Amount		IP Owing Project Participant Y/N	Indicative Project Share (relevant to IP Owing Project Participants)
	Cash	In-kind		
Industry				
University				
Total				

\*Research Agreement will be negotiated by University with the Industry participants

**SCHEDULE 3: (SPECIAL CONDITIONS)**

(Detail as applicable and/ or attach a screenshot of the Funding Offer)

**ANNEXURE A: PROPOSAL**

(Attach copy of Proposal)