Future Industries Accelerator

Infrastructure Access Scheme Agreement

This Agreement between the University of South Australia (**UniSA**) and the party described in the section titled ‘Application Details’, will commence when it is executed on behalf of UniSA and a copy is provided to the party.

The Agreement consists of the this document and the FIA Infrastructure Access Scheme Terms and Conditions, also available from <https://fii.unisa.edu.au/engage-with-us/fia/applications/>

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| **1. APPLICATION DETAILS** |
| **Project Number** : |       |
| Name of Company : |
| Company Contact : | Position :      |
| Postal Address :      | Email address :      |
| Phone Number :      | Mobile Number :      |
| ABN :      | ACN :      |
| Website : |
| **UniSA Contact:** |

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| **2. PROJECT SCOPE** |
| **Outline the scope of work to be undertaken and the anticipated deliverables**  |
| **Outline how this work will lead to benefits to, and make an impact for, the party?**  |
| **Specific infrastructure required**  |
| **Access period (anticipated start and completion dates)** |

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| **3. ACKNOWLEDGMENT AND ACCEPTANCE** |
| I……………………………………………..(*insert name*) being an authorised officer of………………………………………………………………………………(*insert name of company*)acknowledge and accept that if this application is accepted it will be subject to the terms and conditions of the Infrastructure Access Scheme, which are attached and which I have reviewed and accept. **Signature:****Position/Office:****Date:****SIGNED IN THE PRESENCE OF****Witness signature:****Name:****Date:** |

**INFRASTRUCTURE ACCESS SCHEME**

**TERMS & CONDITIONS

Definitions**In this Agreement, unless the context requires otherwise:

"**Access Period**" has the meaning given in Attachment 1.

"**Confidential Information**" means:

1. the terms and existence of this Agreement, or the negotiations leading up to it;
2. any information relating to this Agreement or the Purpose;
3. any information relating to the operations or affairs of a party; or
4. any other information of a confidential nature provided under or in connection with this Agreement.

"**Funding Agreement**" means the agreement dated 22 September 2016 between UniSA and the Minister for Science and Information Economy.

"**Infrastructure**" has the meaning given in Attachment 1.

"**Purpose**" has the meaning given in Attachment 1.

"**UniSA**" means the University of South Australia, a statutory corporation as specified in this Agreement.

“**you**” means the recipient party of the access as specified in this Agreement.

**Interpretation**
In this Agreement, unless the context requires otherwise:

1. the singular includes its plural and vice versa;
2. words denoting any gender include all genders;
3. where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
4. headings are for convenience only and do not affect interpretation;
5. words such as including or for example do not limit the meaning of the words preceding them;
6. an obligation or liability assumed by, or a right conferred on, 2 or more parties binds or benefits all of them jointly and each of them severally;
7. nothing in this Agreement is to be interpreted against a party solely on the ground that the party or its advisers drafted it;
8. a reference to:
	1. a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
	2. any agreement (including these terms and conditions) or document is to the agreement or document as amended, supplemented, novated or replaced from time to time;
	3. this Agreement includes any schedules, attachments and annexures to these terms and conditions;
9. unless expressed to the contrary, if the day on or by which a party must do something under this Agreement is not a business day, the party must do it on or by the next business day.

**Access to Infrastructure**Subject to your compliance with this Agreement, UniSA agrees to provide you with access to the Infrastructure, and you agree to access and use the Infrastructure, in accordance with this Agreement.

**Access Period**You may access the Infrastructure during the days and times specified in this Agreement (as may be amended by UniSA from time to time by notice to you) during the Access Period.

**Access requirements**You must:

1. only use the Infrastructure:
	1. for the Purpose and not any other purpose;
	2. in a manner that does not place the any person or property or the environment at risk of injury, illness or damage; and
	3. safely and strictly in accordance with applicable laws (including all environmental, and occupational health and safety laws);
2. comply with any reasonable direction or instruction from UniSA in relation to the access to the Infrastructure;
3. comply with any policies, procedures, rules, regulations, or by-laws of UniSA (including in relation to occupational health and safety) as may be provided from time to time;
4. comply with any reasonable access procedure or requirements of UniSA before entering or using the Infrastructure;
5. take all reasonable steps to ensure the safety and security of all persons and property in the Infrastructure;
6. ensure that the Infrastructure is kept in a state of cleanliness and good working order and condition; and
7. not (and must ensure that any of your employees, agents, other contractors):
	1. use any other rooms or venues of UniSA (except public common areas on the UniSA premises and designated means of access or bathroom facilities) other than the Infrastructure;
	2. disturb or disrupt the activities of any other person, cause any public nuisance or make unreasonable levels of noise;
	3. bring onto UniSA premises any dangerous or hazardous equipment, machinery, substances, or other materials without prior written consent;
	4. display any advertising or promotional material, or erect any signage or notice on, in, or outside UniSA premises without UniSA's prior written consent;
	5. conduct any dangerous, illegal, or offensive activities on UniSA premises;
	6. smoke or consume any alcohol or illicit substances on the Premises;
	7. modify or alter any part of the Infrastructure without UniSA’s prior written consent; and
	8. assign, transfer, mortgage, charge, lease, license, let, on rent, or otherwise on-hire, or encumber any part of the Infrastructure or allow any other encumbrance or security interest to be made or exist in respect of any part of the Infrastructure.

**Reporting and provision of Information**
You must comply with the reporting requirements set out in this Agreement.

Without limiting the above, on request you must provide any other information or reports requested by UniSA in the format requested by UniSA, including in relation to:

1. your access to the Infrastructure and details of your use of the Infrastructure;
2. your progress in achieving the Purpose;
3. any significant changes to the nature and/or scope of the activities conducted by you; and
4. the performance of your undertakings and obligations under this Agreement.

At the end of the Access Period, you must provide a report to UniSA in a format requested by UniSA describing the activities you conducted while using the Infrastructure, and the benefits and outcomes achieved using the Infrastructure.

If requested by UniSA from time to time, you must provide management accounts, annual reports, financial statements, and any other information or documents relevant to your operations to UniSA.

**Incidents**
You must notify UniSA immediately upon becoming aware of any hazard, danger, or risk to person or property, or any major incident (including in relation to health or safety, environmental harm, personal injury or property damage), defect or fault in the Infrastructure, and provide all requested information in relation to the hazard, danger, risk, incident, defect or fault.

**Inspection**
You must allow any officer or person authorised by UniSA to enter the Infrastructure, or your premises and have access to and inspect your operations (including your equipment, premises, accounting records, documents and information), and to interview your employees, on matters pertaining to your operations and your obligations under this Agreement.

**No other interests**
You agree that UniSA retains possession of the Infrastructure and is entitled to access them at all times upon giving reasonable notice.

Your interest in the Infrastructure under this Agreement is a contractual right to use the Infrastructure in accordance with this Agreement, and you have no other right, title or interest in the Infrastructure, including no right to exclusive possession.

**As is condition**
You agree that the Infrastructure is being used by you on an 'as is' basis, and UniSA is not liable if the Infrastructure is not fit for the Purpose, not suitable in any respect for your use, or otherwise not in the condition or state necessary for use by you.

**Invitees, and goods and materials**
You are responsible for all of your invitees to the Infrastructure (or UnSA premises) and for any property brought onto in the Infrastructure (or UniSA premises) by your or your invitees.

**Removal of persons**
UniSA may direct any person in the Infrastructure to be removed from the Infrastructure (or UniSA premises) at its discretion, including due to any non compliance by that person with any obligation on you in this agreement, and you must comply with any such direction.

**Access is personal to you**
You agree this Agreement is personal to you, and you must not assign, subcontract, transfer or encumber any of your rights or obligations under this Agreement, without UniSA's prior written consent.

**Insurance**
Each Party must take out and maintain during the Access Period appropriate insurances, including but not limited to Public Liability and Workers Compensation, to cover its obligations and liabilities under this Agreement.

You must note the interests of UniSA in the insurances required under this Agreement.

You must provide a copy of the certificate of insurance for an insurance policy required under this Agreement if required by UniSA.

**Indemnities**
Each Party agrees to indemnify the other party against any liability, loss or claim arising in respect of any breach of this Agreement, bodily injury or property damage against the indemnified Party as a consequence of the negligent act, error or omission of indemnifying Party or their employees. A Party’s liability to indemnify the other Party will be reduced proportionately to the extent that the other Party’s negligent act, error or omission contributed to the loss or damage.

**Intellectual Property**All intellectual property rights created by you as a result of this Agreement in connection with the Infrastructure or Purpose will vest in you. You grant to UniSA an irrevocable, transferable non exclusive, perpetual, royalty free licence to use, reproduce, publish, adapt and otherwise deal with such intellectual property rights for research and teaching purposes.

You warrant that any such intellectual property is owned by you and that you have the right to license such intellectual property to UniSA under this Agreement.

You indemnify UniSA for any claim, loss or damage incurred by UniSA in connection with any claim that any such intellectual property infringes the rights of any third party.

Your use or access to any UniSA intellectual property rights is subject to prior written agreement between the parties on commercial terms.

**Confidential Information**

The parties agree to keep confidential the Confidential Information of the other. The parties must not (and must ensure that their representatives do not) use, reproduce or disclose the Confidential Information of the other for any purpose except to the extent necessary to perform their respective obligations under this Agreement.

The obligations of the parties under this clause do not apply to the extent the Confidential Information is in the public domain (other than due to a breach of this Agreement), the disclosure is required by law (or by the Minister for Science and Information Economy, including any disclosures required to be made by UniSA under the Funding Agreement), or disclosure to professional advisors in connection with this Agreement who are subject to duties of confidentiality.

**Termination**
This Agreement will terminate if the 'Funding Agreement' dated 22 September 2016 between UniSA and the Minister for Science and Information Economy is terminated.

UniSA may terminate this Agreement by notice:

1. where UniSA reasonably believes you have breached this Agreement and UniSA considers the breach cannot be rectified;
2. you have breached this Agreement and you do not rectify the breach within 10 business days after UniSA gives notice;
3. you have provided false or misleading statements, warranties, or representations to UniSA;
4. if you fail to implement the Purpose or cease the implementation of the Purpose;
5. you use the Infrastructure for purposes other than the Purpose;
6. you have become bankrupt or insolvent, entered into a scheme of arrangement with creditors, or come under any form of external administration;
7. you have, in relation to this Agreement, breached a law of the Commonwealth, or of a state or territory; or
8. UniSA forms the opinion that you will not be able to comply with your obligations pursuant to this Agreement.

 **Termination for convenience**

Even though you are not in default, UniSA may terminate this Agreement by written notice. You agree on receipt of a notice of termination or reduction under this clause to stop or reduce the performance of your obligations as specified in the notice and take all available steps to minimise loss resulting from that termination or reduction.

In the event of termination or reduction under this clause UniSA will be liable only to reimburse any reasonable expenses you unavoidably incur that relate directly to the termination or reduction. UniSA's liability to pay any amount under this clause is subject to your compliance with this Agreement.

**Force majeure**
UniSA is relieved of its liability for failing to comply with an obligation under this Agreement to the extent that it is prevented from or delayed in complying with that obligation by an event or circumstance beyond its reasonable control.

**Exclusion of implied liabilities**
To the extent permitted by law all implied warranties, guarantees, and representations in connection with this agreement and the access to the Infrastructure are excluded. The liability of UniSA for a breach of any such warranties, guarantees, and representations or liability which by law cannot be excluded, restricted or modified, is limited, at UniSA’s option, to in respect of any goods, the repair of the goods or the cost of having the goods repaired, or resupplying the goods or paying the costs for equivalent goods, and in respect of any services, the re-performance of the services, or paying the costs for equivalent services.

**Exclusion of consequential loss**
Despite any other provision in this Agreement, to the extent permitted by law UniSA will not be liable to you for any consequential or indirect loss, including loss of profit or revenue, loss of use of the any sites, loss of business, loss of reputation, loss in connection with any late delivery or performance, loss of opportunity arising out of, in relation to, or in connection with, this agreement, or breach of third party contracts or arrangements.

**General**
This Agreement may be varied in writing only, signed by both parties.

The parties agree that this Agreement is the entire agreement and supersedes all prior negotiations, discussions and correspondence between the parties in connection with its subject matter.

The relationship between the parties is that of independent contractors. Nothing in this Agreement will be deemed to create the relationship of principal and agent, partnership, employer and employee or joint venture between the parties.

This Agreement will be governed by the laws of South Australia.

Each party will do all things necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

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| **3. INFRASTRUCTURE ACCESS CALCULATIONS – INTERNAL USE ONLY** |
| **Estimated Instrument cost(s):**

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| --- | --- |
| **Instrument:** | **COST ESTIMATE ($)** |
|       |       |
|       |       |
|       |       |
|       |       |
| **TOTAL ($)**  |       |

 |
| **Estimated staff required for analysis**:

|  |  |  |
| --- | --- | --- |
| **Staff member:** | **Staff Time (Hours)** | **COST ESTIMATE ($)** |
|       |       |  |
|       |       |  |
|       |       |  |
|       |       |  |
| **TOTAL (Hours and $)** |       |  |

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| **Consumable(s) required for analysis:**

|  |  |
| --- | --- |
| **Consumable(s):** | **COST ESTIMATE ($)** |
|       |       |
|       |       |
|       |       |
|       |       |
| **TOTAL ($)**  |       |
| **SUMMARY COST ESTIMATE ($)** |  |

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| **Risk Assessment Required:** | Yes 🗆 | No 🗆 |
| **Estimated Start Date:** |

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| **4. NOTES – INTERNAL USE ONLY** |
| **Any other relevant commentary, including details regarding the partnership, management of Conflicts of Interest and Intellectual Property arrangements.** |

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| **5. APPROVAL OF APPLICATION – DIRECTOR: FII** |
| **Signed:****Name:****Date:** |