

September, 2014

## Australian Institute of Marine Science (AIMS)/ [External Collaborator] Collaboration Term Sheet

**Note that this Term Sheet applies only to those projects proposed by researchers based at a university or a government funded research institute seeking access to the National Sea Simulator. Parties from commercial entities should contact Research Program Leader, Data and Technology Innovation, Dr. Lyndon Llewellyn, [L.Llewellyn@aims.gov.au](mailto:L.Llewellyn@aims.gov.au) or Operations Manager, SeaSim Precinct, Craig Humphrey, [C.Humphrey@aims.gov.au](mailto:C.Humphrey@aims.gov.au).**

This Term Sheet sets out the principles upon which the parties intend to enter a collaborative agreement and will form the basis for its negotiation.

### **Disclaimer**

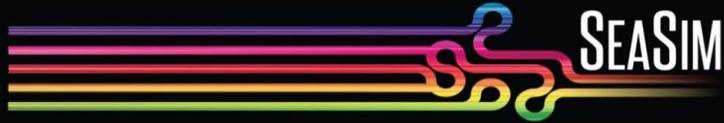
*This Term Sheet is for discussion purposes only. Except as specifically indicated herein, all terms and conditions set forth in this Term Sheet are non-binding and subject to the completion of legal documentation. Any final agreement(s) agreed between the Parties shall include additional terms including, without limitation, terms relating to confidentiality, indemnity, dispute resolution, and choice of law.*

### **Structure**

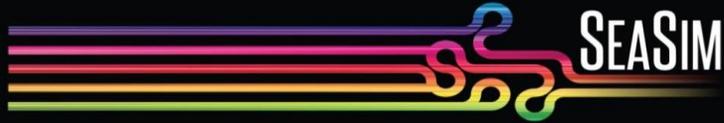
Defined Term	Descriptor
Parties	<ul style="list-style-type: none"> <li>External Collaborator:</li> <li>Australian Institute of Marine Science</li> </ul>
Project	<i>To Be Advised</i>
Objective	<i>To Be Advised</i>
AIMS Responsibilities and Tasks	<ul style="list-style-type: none"> <li>Access to the AIMS Townsville site and to the SeaSim.</li> <li>Provide support (staff and equipment) as approved by the AIMS CEO.</li> <li>Provide necessary induction and training to ensure External Collaborator is in compliance with AIMS Code of Conduct, policies and procedures relevant to carrying out the activities of the collaboration.</li> <li>Provide additional equipment listed in Schedule 1 (derived from proposal form).</li> </ul>



Defined Term	Descriptor
External Collaborator's Responsibilities, Tasks and Resourcing	<ul style="list-style-type: none"> <li>• Design, commission, manage and decommission of its experiments under the guidance of SeaSim technical staff.</li> <li>• All approvals, licences and permits, where relevant, to carry out the activities.</li> <li>• Costs of salaries, travel, accommodation, subsistence and freight to and from SeaSim.</li> <li>• Costs of additional Services specialist consumables and equipment beyond that described in Schedule 1</li> <li>• Abide by AIMS Code of Conduct, policies and procedures, as amended from time to time and notified to the External Collaborator, and follow instructions and directions of AIMS staff especially in relation to health safety and environment matters.</li> <li>• Provide own equipment listed in Schedule 2 (derived from proposal form) which must be of a suitable standard for safe integration into SeaSim systems and processes</li> <li>• Provide specialist consumables (chemicals) required for the Project (as listed in Schedule 2)</li> <li>• Biota for experiments as listed in Schedule 2</li> </ul>
Health, Safety and the Environment (HSE)	<ul style="list-style-type: none"> <li>• External Collaborator will comply with the AIMS HSE policies and procedures, as amended from time to time and notified to the External Collaborator.</li> <li>• External Collaborator will also abide with the SeaSim HSE Management Plan.</li> <li>• AIMS will provide all of the necessary inductions, policies and plans to enable compliance.</li> <li>• For the purposes of HSE, AIMS reserves the right to: <ul style="list-style-type: none"> <li>○ direct the External Collaborator in relation equipment selection, design of experiments and general use and operation in the SeaSim;</li> <li>○ veto the choice of the External Collaborator in relation equipment selection, design of experiments and general use and operation in the SeaSim.</li> </ul> </li> </ul>
Force Majeure	<ul style="list-style-type: none"> <li>• "Force Majeure" means an act of God, fire, lightning, explosions, flood, cyclones, subsidence, insurrection or civil disorder or military operations, act of terrorism, government or quasi-government restraint, expropriation, prohibition, intervention, direction or embargo, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences or authorities, strikes, lock-outs or other industrial disputes of any kind, and any other cause whether similar or not to the foregoing, outside of the affected party's control.</li> <li>• If due to Force Majeure a party is unable to carry out any of its responsibilities and tasks under this Agreement, it must give prompt notice to the other party and during the period of Force Majeure, the first party's obligations to the other party are suspended provided that it must do all things reasonable to remove the Force Majeure as quickly as possible.</li> </ul>



Defined Term	Descriptor
Background Intellectual Property (“BIP”)	Owned by the party contributing the Background IP and licensed (non-exclusive, royalty- free, irrevocable) to the other party for the purpose of the Project.
Project Intellectual Property (“PIP”)	<ul style="list-style-type: none"> <li>• All PIP relating to improvements to SeaSim processes and systems technologies, will vest in AIMS and licensed (non-exclusive, royalty- free, irrevocable) to the External Collaborator for research purposes.</li> <li>• All PIP relating to research findings, will vest in the External Collaborator and licensed (non-exclusive, royalty- free, irrevocable) to AIMS for any purpose except commercial purposes. Terms for use of PIP for commercial purposes shall be negotiated under a separate agreement.</li> </ul>
Publications	<ul style="list-style-type: none"> <li>• The parties will abide by the Australian Code for Responsible Conduct of Research, 2007.</li> <li>• Draft publications will be provided to the other party for comment at least 30 days prior to the date of publication (or submission for publication where applicable).</li> <li>• The other party must within 21 days of receipt of a proposed publication provide their comment, if any and if that party fails to do so, that party is deemed to have consented to the publication.</li> <li>• The External Collaborator must acknowledge the role of AIMS in any publication and, where any significant advice or recommendations have been provided by an employee of AIMS, appropriately acknowledge the authorship of that person in accordance with usual academic practice. Where individual AIMS Personnel are to be named in the publication, the External Collaborator must obtain their prior written consent.</li> <li>• External Collaborator must acknowledge AIMS’ contributions in its publications in the following manner:  <p style="text-align: center;"><b>“This research was enabled by the National Sea Simulator at the Australian Institute of Marine Science”</b></p> </li> <li>• Development of the publication shall be at the publishing party’s expense.</li> </ul>
Scientific Samples	<ul style="list-style-type: none"> <li>• Ownership of scientific samples (including marine biota, water and sediments) collected by External Collaborator in connection with the Project will vest in External Collaborator.</li> <li>• At the completion of the experiments or the Project, the External Collaborator will transfer the scientific samples back to their organization.</li> <li>• The External Collaborator will be responsible for all regulatory compliances including permits and licenses for the transfer of the scientific samples.</li> <li>• Unless advised otherwise by the External Collaborator, any scientific samples remaining at AIMS may be disposed by AIMS within thirty (30) days from the completion of the experiment without further reference to External Collaborator.</li> </ul>
Insurance	<ul style="list-style-type: none"> <li>• Adequate insurance to meet all liabilities under the Agreement and other insurances required by law.</li> </ul>



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	<ul style="list-style-type: none"> <li>• External Collaborator must during the term of this Agreement at its cost take out and maintain all necessary or prudent insurances in undertaking the Project, including public liability, professional indemnity and worker’s compensation insurance (or the equivalent) and such other insurance as specified from time to time.</li> <li>• External Collaborator must at any time on request provide to AIMS written evidence of all insurances required to be taken out (including certificates of currency from the insurer).</li> </ul>
Indemnity	<ul style="list-style-type: none"> <li>• External Collaborator indemnifies AIMS against loss, damage or injury to personnel or equipment during their time on the AIMS Townsville site including the SeaSim.</li> <li>• External Collaborator indemnifies AIMS against direct or indirect loss (including loss of opportunity) or damage as a result of the unfavorable outcome of the Project.</li> <li>• External Collaborator releases and indemnifies AIMS, its officers, employees, Contractors and agents from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with the Contractor and whether at common law, under tort (including negligence), in equity, pursuant to statute or otherwise, in respect of any loss, death, injury, illness or damage (whether personal or property, and whether direct or consequential, including consequential financial loss) arising out of: <ul style="list-style-type: none"> <li>(a) a breach of External Collaborator’s obligations contained in this Agreement;</li> <li>(b) the failure of any officer, employee, contractor or agent of External Collaborator to use reasonable care in carrying out the External Collaborator’s obligations under this Agreement; or</li> <li>(c) the death of or personal injury to persons or property damage, or the breach of Intellectual Property rights of any person, arising out of the collaboration and from and against all damages, reasonable costs and expenses incurred in defending, satisfying or settling any such action, claim, proceeding or demand.</li> </ul> </li> <li>• External Collaborator’s liability in respect of any loss, death, injury, illness or damage (whether personal or property, and whether direct or consequential, including consequential financial loss) will be reduced proportionately to the extent that any negligent act or omission by AIMS contributed to the loss, death, injury, illness or damage (whether personal or property, and whether direct or consequential, including consequential financial loss).</li> </ul>
Warranties and	Neither party warrants or guarantees the outcomes or the success of the

Defined Term	Descriptor
guarantees	experiments/ Project.
Liabilities	<ul style="list-style-type: none"> <li>Each party's liability will be determined on a case-by-case basis depending on the Project.</li> <li>The parties acknowledge the nature of research and development (R&amp;D) is uncertain and accept that neither party whether performing or assisting in the R&amp;D will not be liable for failure of outcomes or results.</li> </ul>
Duration & Termination	<p>Agreement expires <b>[insert timeline/ date]</b></p> <p>Either party may terminate the agreement:</p> <ul style="list-style-type: none"> <li>By giving the other party 1 month notice.</li> <li>by mutual agreement</li> <li>on grounds usually found in this type of agreement such as bankruptcy, material breach without remedial action, etc.</li> </ul>
Expenses	External Collaborator and AIMS will each be responsible for the fees and expenses of its own lawyers, investment bankers, accountants, financial advisors and other parties retained in connection with this transaction.
Closing	It is the intention of the parties to enter into a definitive agreement within 60 days following the signing of this Term Sheet.

This Term Sheet is accepted as of the **xx**th day of **X**, 201**x**.

External Collaborator	AIMS
<hr/> Name: _____  Title: _____	<hr/> Name: _____  Title: _____

**Schedule 1 Services provided by SeaSim Precinct Team during the course of the project**

Additional services that may be required during the project will need to be discussed with Craig Humphrey (Operations Manager, SeaSim Precinct: [C.Humphrey@aims.gov.au](mailto:C.Humphrey@aims.gov.au)); or Dr. Lyndon Llewellyn, (Research Program Leader, Data and Technology Innovation: [L.Llewellyn@aims.gov.au](mailto:L.Llewellyn@aims.gov.au)).

**1. The SeaSim Precinct Team will undertake the following centralised functions:**

Aspect	Examples
General Operations	<ul style="list-style-type: none"> <li>• Facility operations and maintenance</li> <li>• Provision of high quality water to the required specification each experimental location</li> <li>• Regular reports on general water quality conditions</li> <li>• Provision of automated experimental controls via the “supervisory control and data acquisition” (SCADA) system, monitoring and alarming</li> </ul>
Operation of centralised corporate aquaria	<ul style="list-style-type: none"> <li>• Quarantine aquaria</li> <li>• Holding and propagation aquaria</li> <li>• Larval settlement and grow out aquaria</li> <li>• Out of season breeding tanks (plans to be finalised)</li> </ul>
Experimental Equipment Development	Development of experimental technologies (subject to an agreed plan) for areas such as lighting, temperature control, pH and salinity control, water movement control, husbandry.
Experimental equipment management	Management of all experimental equipment not currently in use. This includes a booking system for future use by researchers.

**2. External Collaborators will be provided with the following support during the different phases of a research project:**

Project Development	<ul style="list-style-type: none"> <li>• Design input (including compulsory equipment standards)</li> <li>• CAD drawings of system designs at various stage</li> <li>• Engineering advice and guidance to align with SeaSim standards</li> <li>• Experimental design advice</li> <li>• Identification of required new equipment purchases (i.e. what cannot be provided from the equipment pool)</li> <li>• Where necessary, advice on programmable controls (capabilities, programming needs)</li> <li>• Advice on husbandry</li> <li>• Development of a comprehensive safety plan for the proposed experiment</li> <li>• Final experimental system design approval</li> <li>• Advice on logistics</li> </ul>
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Setup	<ul style="list-style-type: none"> <li>• Construction support for electrical, hydraulic, mechanical, tank, lighting, seawater manipulation systems</li> <li>• System induction</li> <li>• System build quality assurance</li> <li>• Programming of system controls and confirmation of program performance</li> <li>• Assistance with field collections where agreed</li> <li>• Assistance with logistics</li> </ul>
Commissioning	<ul style="list-style-type: none"> <li>• Confirmation of performance with design parameters</li> <li>• Troubleshooting and rectification</li> </ul>
Experiment	<ul style="list-style-type: none"> <li>• Access to up to one hour direct technical support per day during normal business hours (8am – 4:40pm) Monday-Friday</li> <li>• Oversight of automated experimental controls via the (SCADA) system, monitoring and alarming</li> <li>• Troubleshooting and rectification (including a staff member remaining on-call out of normal business hours (8am – 4:40pm) to respond to system alerts and alarms *</li> <li>• Access to and advice on experimental specific measurement systems <ul style="list-style-type: none"> <li>○ Equilibrator with LiCor IR CO2 measuring system</li> <li>○ Buoyant weight</li> <li>○ Respirometry</li> <li>○ Diving PAM, Mini PAM, Imaging PAM</li> <li>○ Water quality sampling and analysis (costs associated)</li> </ul> </li> </ul>
Post experiment & Decommissioning	<ul style="list-style-type: none"> <li>• Logged data of those experimental parameters monitored centrally</li> <li>• Decommissioning controls and electrical systems</li> <li>• Assistance with logistics</li> </ul>

\* A SeaSim staff member remains on-call outside normal business hours and will receive system alerts and alarms. If the staff member has to return to work to fix an experimental system rather than attend to troubleshoot system-wide issue, the External Collaborator project proponent may be asked to contribute to the additional staff costs.

A member of the SeaSim Precinct Team will also be nominated as the single contact point for the life of an experiment to maintain a clear line of communication between the External Collaborator and the SeaSim Precinct Team.

Unless otherwise negotiated and confirmed in writing the SeaSim Precinct Team will not provide support for the general operation and maintenance of individual experiments and associated specialized equipment beyond that indicated in the table above.

### 3. Additional equipment to be provided by AIMS:

Item name	Supporting information

### Schedule 2 Equipment, biota and chemicals proposed by External Collaborator to bring into SeaSim

This list must be comprehensive as the bringing in of items beyond this list without the knowledge of SeaSim Precinct Team/AIMS staff may result in project termination as it may pose a technical or safety risk to SeaSim operations or users. AIMS cannot guarantee support, equipment, biota or chemicals beyond that listed in Schedule 1 or by the External Collaborator

### Scientific equipment

**\* Note that any equipment brought to SeaSim must have an up-to-date Test and Tag label**

Item name	Supporting information

### Biota

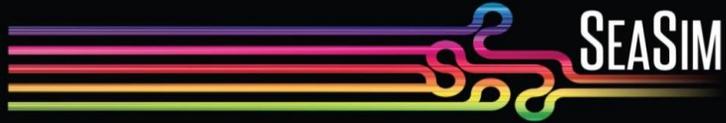
Experimental organism(s)	Quantity

### Chemicals

Chemical	CAS number	Total Amount

**External Collaborators agree to be responsible for funding and implementation of the following aspects of their experiments to be run in SeaSim:**

Aspect	Function
Designing of experimental systems	Specifying research goals and preliminary design of experimental system.
Final design approval	Final approval of the experimental system design rests with the SeaSim Precinct Team and AIMS to ensure a seamless integration within SeaSim and maximise the likelihood of project success
Equipment assessment and approval	The ability to control seawater parameters in SeaSim is unprecedented and achieved through the use of sophisticated technologies and systems. Equipment that External Collaborator provide because SeaSim does not already



	<p>possess it or it is unavailable due to other uses will need to be assessed for its ability to integrate into the control and data logging systems. Equipment quality and safety features must also be assessed.</p>
<p>Construction of experimental systems</p>	<p>The SeaSim Precinct Team will advise External Collaborator of any potential improvements to the External Collaborator provided preliminary designs of experimental systems as well as the most cost-effective means for any construction. Final costs, and their apportionment to the External Collaborator or SeaSim budget, as well as design will be approved by the Program Leader, Data Technology and Innovation after consulting with the SeaSim Precinct Operations Manager and External Collaborator.</p> <p>All construction activities not agreed to be completed by the SeaSim Precinct Team will be undertaken by the External Collaborator and their team.</p> <p>External Collaborator will purchase all new experiment-specific equipment, where required noting that there will be an equipment pool which might be accessed by prior consultation. Some charges may be levied for expensive tailor-made items.</p> <p>On occasion, such equipment may have potential use across other projects in SeaSim or may improve SeaSim capability and SeaSim operating funds may be co-invested into these purchases. This will be decided during the detailed design phase for experimental systems.</p>
<p>Operating Experiments</p>	<p>All general experimental operations, including husbandry, tank maintenance, experiment-specific measurements.</p> <p><i>Funding of all associated labour and variable costs are the responsibility of the External Collaborator.</i></p>
<p>Decommissioning Experiments</p>	<p>All non-electrical and controls decommissioning, unless otherwise agreed with the SeaSim Precinct Team.</p>