

Funding Agreement

MVP Ventures

Parties

The Crown in the right of the State of New South Wales, acting through the Department of Enterprise, Investment and Trade (Agency)

and

<Recipient Name> (Recipient)

as detailed in the Activity Schedule.

Background

The Agency has agreed to provide the Recipient with the Funding for the purpose of carrying out the Activity and furthering the Objectives.

The Recipient has agreed to accept and use the Funding to carry out the Activity in accordance with this Agreement.

Scope of Agreement

This Agreement is made up of the parts stated in the General Terms and Conditions.

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Activity Schedule

Item 1	Agency
Name:	Department of Enterprise, Investment and Trade
ABN:	51 766 912 245
Address for notices:	Level 9, 52 Martin Place, Sydney NSW 2000
Email address for notices:	programs@investment.nsw.gov.au
Agency contact:	Name: Carol Tang
	Position Director, Program Delivery Innovation
	Telephone +61 2 4908 4800
	Email programs@investment.nsw.gov.au

Item 2	Recipient
Name:	<insert full legal recipient name>
Legal entity status:	☐ Company incorporated in Australia (including incorporated by guarantee in Australia)
Trustee of a trust:	The Recipient [is] [is not] entering into this Agreement as a trustee of a trust.
Business Name:	<Insert>
ABN:	<Insert >
Address for notices:	<Insert address for services of notices >
Email address for notices:	<Insert email address for service of notices, if required. The email address for notices should be accessible by more than one person.>
Recipient contact:	Name: <Insert>
	Position <Insert>
	Telephone <Insert>
	Email <Insert>

Item 3	Term
Clause 1.2	
Agreement Start Date:	The date of execution of this Agreement by the last party to execute.
Agreement End Date:	Twenty (20) Business Days after 12 months from the date of executing this Agreement or the date that this Agreement is terminated in accordance with its terms.

Item 4 Clauses 2 and 15.3	Activity Details										
Funding Program:	MVP Ventures										
Activity:	The Activity purpose is to support businesses in the commercialisation of an innovative product or service in NSW and help them progress in the TRL scale. The Recipient must meet the Program Guidelines: https://nsw.gov.au/grants-and-funding/mvp-ventures-program										
Activity Objectives:	The Objective of the Activity is to support the Recipient to successfully complete the project.										
Activity Start Date:	The date of execution of this Agreement by the last party to execute.										
Activity Period:	12 months (unless otherwise agreed in writing)										
Activity Plan:	As set out in Schedule 3 .										
Activity Budget:	The Recipient agrees to use the Grant and any Other Contributions and undertake the Activity consistently in the following table:										
	<table><tr><th>Activity income</th><th>Total \$ (GST excl.)</th></tr><tr><td>Funding from agency (portion of eligible expenditure covered by the grant)</td><td>\$<insert></td></tr><tr><td>Funds from Recipient</td><td>\$<insert></td></tr><tr><td>Funds from other contributors</td><td></td></tr><tr><td>Total Activity income:</td><td>\$<insert></td></tr></table>	Activity income	Total \$ (GST excl.)	Funding from agency (portion of eligible expenditure covered by the grant)	\$<insert>	Funds from Recipient	\$<insert>	Funds from other contributors		Total Activity income:	\$<insert>
Activity income	Total \$ (GST excl.)										
Funding from agency (portion of eligible expenditure covered by the grant)	\$<insert>										
Funds from Recipient	\$<insert>										
Funds from other contributors											
Total Activity income:	\$<insert>										
Activity Risk Assessment:	Not used										

Item 5
Clause 3
Funding and payment

Funding: A grant of up to 50% of the Total Eligible Project Costs to a maximum of \$<amount> GST excl.)

The Recipient agrees to use the Grant consistently with the 'Eligible Expenditure Caps' in the following table:

Eligible Expenditure Caps Category	Total Eligible Project Cost (GST excl.)	Grant Cap – 50% of Total Eligible Project Cost (GST excl)
Wages	\$<insert>	\$<insert>
Consultant Fees	\$<insert>	\$<insert>
Direct Prototyping Materials	\$<insert>	\$<insert>
Equipment	\$<insert>	\$<insert>
Other Direct Cost – Patent filing cost for new IP	\$<insert>	\$<insert>
Other Direct Cost – Workshop or laboratory usage charge outs	\$<insert>	\$<insert>
Other Direct Cost – Travel Costs	\$<insert>	\$<insert>
Total Activity Expenditure	\$<insert>	\$<insert>

Payment: Recipient Created Tax Invoices will not be issued by the Agency in respect of the Funding.

Invoices will need to be provided to the Agency by the Recipient.

Subject to this Agreement, the Funding will be paid by direct transfer to the Recipient's Nominated Account in accordance with Schedule 2.

Nominated Account: Account name: <insert>
BSB number: <insert>
Account number: <insert>
Financial institution: <insert>

Contribution: ☒ Yes ☐ No

The grant must be matched to 50% cash contribution by the company to a minimum amount of \$<amount> GST excl to claim the Funding.

Item 6
Clause 8
Reports
Please refer to **Schedule 2.**

Item 7
Clause 7**Funding Acknowledgement**

The Recipient must acknowledge the Funding in accordance with the Funding Acknowledgement Guidelines for Recipients of NSW MVP Ventures

www.nsw.gov.au/branding/sponsorship-and-funding-acknowledgment-guidelines

Item 8
Clause 1.1**Additional conditions**

AC1

All the provision of Schedule 1.

AC2

Indemnities

- (a) The Recipient must indemnify and keep indemnified the Agency and its officers, employees, and agents from and against any claim, loss or damage arising in connection with this Agreement.
- (b) The Recipient's obligation to indemnify the Agency under this Clause will be reduced proportionally to the extent that any negligent or unlawful act or omission by the Agency, its officers, employees or agents contributed to the relevant loss or damage.

Execution

Executed as an Agreement:

Executed for and on behalf of the Crown in right of the State of New South Wales, acting through the Department of Enterprise, Investment and Trade by its duly authorised officer, <insert authorised officer name and position>, but not so as to incur personal liability.

Signature

In the presence of:

Name of witness

Signature of witness

Date:

Executed by <Recipient name and ABN> in accordance with section 127 of the *Corporations Act 2001* (Cth).

By: <insert name and position of director 1>.

Signature

And by <insert name and position of director 2 or company secretary>.

Signature

Date:

[If sole director/secretary]

Executed by <Recipient name and ABN> in accordance with section 127 of the *Corporations Act 2001* (Cth).

By: <insert name and position of sole director/secretary> who states that s/he is the sole director and sole secretary of <Company name>.

Signature

Date:

General Terms and Conditions

1. Scope of this Agreement

1.1 Parts of this Agreement and priority

- (a) This Agreement consists of the following parts (in order of precedence):
 - (i) These General Terms and Conditions
 - (ii) The Activity Schedule;
 - (iii) The Attachments (if any); and
 - (iv) Any other documents incorporated by reference.
- (b) If there is any inconsistency between these parts, unless expressly stated otherwise it will be resolved by applying the above order of precedence, with (i) taking highest priority.

1.2 Term

This Agreement will be for the Term unless earlier terminated in accordance with its terms.

2. The Activity

The Recipient must, in accordance with this Agreement:

- (a) if required, provide the Agency with a completed Activity Risk Assessment before the Activity Start Date;
- (b) carry out the Activity:
 - (i) within the Activity Period, so as to promote the Objectives;
 - (ii) in accordance with the Activity Plan and any Activity Budget;
 - (iii) using any Specified Personnel for the Specified Personnel Hours (if any);
 - (iv) diligently, to a professional standard and ensuring that any personnel who are engaged on the Activity are appropriately qualified, trained and experienced and hold any required clearances; and
 - (v) in compliance with all applicable laws, Funding Program conditions and any Notified Policies and Standards;
- (c) not sub-contract the conduct of the Activity or any part of it, except to an Approved Subcontractor, without the Agency's prior written consent; and
- (d) hold all necessary licences, consents and approvals that may be required to conduct the Activity.

3. Funding and payment

- (a) The Recipient must:
 - (i) use the Funding only for the Activity and during the Activity Period;
 - (ii) if required, provide the Contribution;
- (b) Subject to this Agreement, if the Recipient meets its obligations under this Agreement to the Agency's reasonable satisfaction, the Agency will pay the Funding to the Recipient in accordance with the following:
 - (i) if the Recipient's Cumulative Obligations for each Instalment have been satisfied during the period to which the Instalment relates, the

- Agency will pay up to the amount specified for that period subject to the Eligible Expenditure Cap.
- (ii) if the Recipient's Cumulative Obligations for each Instalment have not been satisfied during the period to which the Instalment relates then:
 - A. the Agency reserves the right to suspend or withhold payment of a claim in accordance with clause 5
 - B. if the Agency does not exercise its right to suspend or withhold payment of a claim under (A), it will pay on a pro-rata basis with reference to the expenditure evidenced by the Recipient for that period subject to the Eligible Expenditure Cap.
 - (iii) unclaimed funding rolls over from each Instalment.
 - (iv) if the Recipient's Cumulative Obligation is exceeded in Instalment 2, the Agency will allow the Recipient to claim against the excess Eligible Expenditure as part of Instalment 3.
 - (v) the excess Eligible Expenditure incurred in Instalment 2 will be counted towards the cumulative expenditure in Instalment 3.
 - (c) Unless otherwise agreed, payment will be by direct transfer to the Recipient's Nominated Account.
 - (d) Payment of any amount of the Funding is not an admission by the Agency that the Recipient has met its obligations under this Agreement to the Agency's reasonable satisfaction.
 - (e) Any interest earned on the Funding must be spent on the Activity unless otherwise approved.
 - (f) The Recipient must immediately deposit and keep all Funding in its Nominated Account, which must be an account, with an Australian branch of an established bank, building society or credit union, which is solely controlled by the Recipient and allows for the Funding to be separately identified.

4. GST

- (a) The Agency considers the Recipient is not making a taxable supply to the Agency for GST purposes under this Agreement.
- (b) Notwithstanding clause 4(a), clauses 4(c) to 4(g) apply in relation to GST under this Agreement.
- (c) Unless otherwise indicated, all consideration for any supply under this Agreement is exclusive of any GST imposed in relation to the supply.
- (d) If
 - i. despite any other provision of this Agreement, GST is imposed on a supply made under this Agreement; and
 - ii. the recipient of the supply is or will be entitled to receive an input tax credit (as defined in the GST law) in relation to that supply,
 the recipient of the supply will pay an additional amount equal to the GST imposed on that supply, at the time and in the manner specified in this Agreement, provided that the recipient of the supply receives a tax invoice that complies with GST law.
- (e) The Recipient must be registered under the GST Law at the time of making any supply under this Agreement on which GST is imposed.

- (f) If the Recipient is not registered under the GST Law, the Recipient will not be entitled to receive any additional amount as provided under this clause 4 (GST). The Recipient must immediately notify the Agency if its GST registration status changes during the Term.
- (g) If, for any reason, the Agency pays to the Recipient an amount under this clause 4 (GST) which is more than the GST imposed on the supply, the Recipient must immediately repay to the Agency the excess, or the Agency may set off the excess against any other amounts due to the Recipient.

5. Withholding payment and repayment

- (a) The Agency may, by notice, withhold payment of any amount of the Funding if and for so long as it reasonably believes that:
 - (i) the Recipient has not complied with this Agreement;
 - (ii) the Recipient is unlikely to conduct the Activity or administer the Funding in accordance with this Agreement; or
 - (iii) the Recipient's actions will cause damage to the reputation of the Agency or its Funding Program.
- (b) If any amount of the Funding:
 - (i) has been incorrectly claimed or overpaid;
 - (ii) has not been spent in accordance with this Agreement;
 - (iii) has been spent upon a Significant Asset that is disposed of in breach of this Agreement;
 - (iv) is surplus to the requirements of the Activity; or
 - (v) is unspent upon termination or expiry of this Agreement,
 then the Agency may, by notice:
 - (vi) require the Recipient, within no less than twenty (20) Business Days, to repay that amount to, or to otherwise deal with that amount as directed by, the Agency; or
 - (vii) deduct that amount from any future payments of Funding, or other funding, payable by the Agency to the Recipient.
- (c) If the Recipient does not make any required repayment of Funding under this Agreement by the due date for payment the Agency may recover the amount as a debt due to the Agency without the need for further proof.

6. Reduction in Funding

- (a) Without limiting other rights under this Agreement, the Agency may reduce the Funding agreed but not yet paid to the Recipient under this Agreement by giving at least 20 Business Days' notice to the Recipient:
 - (i) **(Loss of Funding)** if the Agency does not receive sufficient funds from the NSW Parliament or the Commonwealth Government to provide the Funding for the Activity; or
 - (ii) **(Change of policy)** if there is a change in NSW Government policy which affects the Funding Program or the Activity.
- (b) If the Funding is reduced under this clause the Agency will:
 - (i) agree with the Recipient any necessary consequent variation to this Agreement, for example, by way of reduction in scope of the Activity; and

- (ii) pay the Recipient's reasonable, substantiated costs (other than loss of profit or income) necessarily and directly incurred as a result of the reduction in the Funding and any consequent variation to the Agreement ("Reduction in Funding Costs"), provided that:
 - A. the Recipient uses its best efforts to minimise its Reduction in Funding Costs; and
 - B. the total amount of Reduction in Funding Costs payable will not exceed the total amount of unpaid Funding forfeited through reduction in the Funding under this clause 6 (Reduction in Funding).

7. Acknowledgement of Funding and publicity

- (a) The Recipient must:
 - (i) ensure that all public statements relating to the Activity or the Funding acknowledge the provision of the Funding by the Agency;
 - (ii) comply with any Agency requirements in respect of the form and content of any acknowledgement of Funding, as specified in the Activity Schedule; and
 - (iii) not use Agency or NSW Government branding or logos except with the Agency's prior consent and in accordance with the NSW Government's Brand Guidelines, currently published at <https://www.nsw.gov.au/branding/sponsorship-and-funding-acknowledgment-guidelines>.
- (b) If requested, the Recipient must use best efforts to ensure the Agency and its Minister are given a reasonable opportunity to participate in media coverage or other promotion of the Activity.
- (c) The Agency may publicise and report on the provision of the Funding to the Recipient, including the amount and purpose of the Funding and the nature and outcomes of the Activity.
- (d) If requested, the Recipient must promptly remove its acknowledgement of the Funding and any Agency or NSW Government logo from any material relating to the Activity if the Agency reasonably requests it (for example, if the Agency determines that the Activity is not consistent with the Activity Objectives).
- (e) If requested, the Recipient must grant the Agency any necessary approval or licence in order for the Agency to be able to use the Recipient's branding, logos and trademarks in connection with the Agency's promotion of this program.

8. Reports and review

8.1 Reports

- (a) The Recipient must provide:
 - (i) the required Reports in relation to its conduct of the Activity, as and when required by this Agreement; and
 - (ii) any additional reports or information that may be reasonably requested by the Agency from time to time, for example to address specific issues of concern, as and when requested.
- (b) If the Agency does not accept a Report as satisfactory, the Recipient must submit a revised Report within ten (10) Business Days of the Agency's request.

8.2 Review

- (a) The Agency will regularly review (either directly or through a third-party contractor acting as the Agency's authorised representative) the Recipient's implementation of this Agreement, including:
 - (i) its conduct of the Activity against the Objectives; and
 - (ii) its expenditure of the Funding and any required Contribution against the Activity Budget and the Activity Plan.
- (b) To facilitate the Agency's review the Recipient must, on reasonable notice:
 - (i) make appropriate personnel available to meet with, and/or discuss, the implementation of the Agreement with the Agency or its authorised representative;
 - (ii) make available to the Agency or its authorised representative, for inspection and the making of copies as appropriate, all relevant Records, including agreements between the Recipient and the Joint Recipient(s) reasonably requested and assist the Agency in that inspection and the obtaining of any requested copies; and
 - (iii) allow the Agency or its authorised representative reasonable access to any site of the Activity to inspect the conduct of the Activity.

9. Records

The Recipient must:

- (a) keep and maintain adequate financial and operational Records in respect of its implementation of this Agreement, including Records of:
 - (i) its conduct of the Activity; and
 - (ii) its receipt and expenditure of the Funding and any required Contribution,
 - (iii) during the Term and for seven (7) years following termination or expiry of this Agreement; and
- (b) provide copies of these Records to the Agency upon request.

10. IP

- (a) Subject to clause 10(b), the Recipient owns the IP in the Activity Material.
- (b) This Agreement does not affect ownership of IP in Existing Material.
- (c) If requested by the Agency, the Recipient must provide the Agency with a copy of any Activity Material in the format reasonably requested.
- (d) The Recipient warrants that the use of Activity Material in accordance with this Agreement will not infringe any third party's IP rights.

11. Confidentiality and privacy

11.1 Disclosure

- (a) Neither Party may disclose the other's Confidential Information without its prior consent unless the disclosure:
 - (i) is required or authorised by law, Parliament, the Agency's responsible Minister or by this Agreement;
 - (ii) is reasonably required by a person, including a contracted auditor of the Agency, for the purpose of performing this Agreement;

- (iii) is required for the Agency to perform a governmental function including research and analysis in respect of the Funding Program, monitoring performance of this Agreement, evaluation of the outcomes of this Agreement and/or the Funding Program and reporting on the Funding Program; or
 - (iv) is to that Party's own professional advisers for the purpose of obtaining advice, or to its insurer for the purpose of claim management.
- (b) Each Party will ensure that any third party to which it discloses Confidential Information under a permitted disclosure is made aware of the confidential nature of the information.

11.2 Compliance with Privacy Legislation

To the extent that it deals with Personal Information in conducting the Activity, the Recipient must:

- (a) comply, and ensure that its Personnel comply, with applicable Privacy Legislation;
- (b) not cause the Agency to breach any obligations imposed by the *Privacy and Personal Information Protection Act 1998* (NSW); and
- (c) immediately notify the Agency if it becomes aware of an actual or potential breach of privacy.

11.3 Disclosure of under the Government Information (Public Access) Act 2009

Under the *Government Information (Public Access) Act 2009*, the Agency or the Recipient may be required to publicly disclose information about this Deed at <https://www.tenders.nsw.gov.au/>. None of the disclosure obligations require the disclosure of:

- (a) commercial-in-confidence provisions of this Agreement;
- (b) any matter that could reasonably be expected to affect public safety or security; or
- (c) information which would be exempt for disclosure if it were the subject of an application under the *Government information (Public Access) Act 2009*.

The Recipient may nominate items the Recipient considers confidential and provide reasons to assist the Agency in determining the items to disclose.

12. Risk Management

12.1 Recipient representations and warranties

The Recipient represents and warrants that, as the date of its execution of this Agreement:

- (a) **(information)** all information provided by it to the Agency is true and correct;
- (b) **(authority)** it has full power and authority to enter into this Agreement and to perform its obligations;
- (c) **(validity)** the execution, delivery and performance of the Agreement by it has been validly authorised;
- (d) **(skills, expertise)** it has the expertise, skills, qualifications and resources required to perform its obligations under the Agreement;
- (e) **(no conflict of interest)** other than those (if any) disclosed in its Funding application, to the best of its knowledge, neither the Recipient nor its Personnel

have any actual, perceived or potential conflicts of interest in relation to the Activity; and

- (f) **(no adverse proceedings)** it is not aware of any circumstances, including any financial circumstances or litigation or other proceedings that are taking place, pending or threatened, which might affect its ability to perform the Agreement.

12.2 Notice of adverse events

- (a) The Recipient must promptly notify the Agency as soon as it becomes aware of:
 - (i) any material change to any representation and warranty given under this Agreement;
 - (ii) any significant delay or suspension of the Activity, including if the Activity is inactive for more than forty (40) Business Days; or
 - (iii) any other matter that is reasonably likely to adversely affect its conduct of the Activity or its performance of this Agreement;and, in consultation with the Agency, take available steps to lessen the impact of any such adverse event.

12.3 Insurance

- (a) The Recipient must procure and maintain, with a reputable insurance company, each of the following policies:
 - (i) Broad form public liability insurance during the Term and for any additional period post termination or expiry post termination as appropriate for the Recipient's business or as required by applicable law.
 - (ii) Workers' compensation in accordance with applicable legislation in respect of all employees of the Recipient.
- (b) The Recipient must, on request, produce evidence satisfactory to the Agency that its required insurance policies are current.

13. Disputes

- (a) The Parties must attempt to settle any dispute in relation to this Agreement in accordance with this clause 13 (Disputes) before resorting to court proceedings or other dispute resolution process.
- (b) A Party claiming that a dispute has arisen, must give written notice of the dispute to the other Party. On receipt of this notice the Parties must within ten (10) Business Days of receipt seek to resolve the dispute.
- (c) If the dispute is not resolved within this ten (10) Business Day period or within such further period as the Parties agree in writing then the dispute is to be referred to the Australian Commercial Dispute Centre ("ACDC") for mediation.
- (d) The mediation shall be conducted in accordance with the ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- (e) If the dispute is not settled within twenty (20) Business Days (or such other period as agreed in writing) after appointment of the mediator, or if no mediator is appointed within twenty (20) Business Days of the referral of the dispute to mediation, the Parties may pursue any other procedure available at law for the resolution of the dispute.

- (f) If the Agency requests it, the Recipient must continue performing this Agreement while a dispute is being dealt with in accordance with this Clause 13 (Disputes), to the extent practicable to do so.
- (g) Nothing in this clause 13 (Disputes) will prevent either Party from seeking urgent interlocutory relief.

14. Termination

14.1 Termination by Agency for cause

Without limiting other rights under this Agreement or at law, the Agency may terminate this Agreement with immediate effect by giving notice to the Recipient, if:

- (a) **(Breach capable of remedy)** the Recipient breaches a provision of this Agreement and fails to remedy the breach within twenty (20) Business Days following receipt of a notice requiring the Recipient to do so (or such longer period as determined by the Agency);
- (b) **(Breach not capable of remedy)** the Recipient breaches a provision of this Agreement and, in the Agency's reasonable opinion, the breach is incapable of remedy;
- (c) **(Inappropriate conduct)** in the Agency's reasonable opinion, the Recipient's actions will cause damage to the reputation of the Agency or its Funding Program;
- (d) **(Change in Control)** there is a Change in Control of the Recipient that, in the Agency's reasonable opinion, renders the Recipient no longer eligible to receive the Funding.

14.2 Termination by Agency without cause

- (a) Without limiting other rights under this Agreement or at law, but subject to the terms of this clause 14.2 (Termination by Agency without cause) the Agency may terminate this Agreement without cause (and without the need to give reasons) by giving at least twenty (20) Business Days' notice to the Recipient.
- (b) If the Agency terminates this Agreement without cause under this clause 14.2 (Termination by Agency without cause) the Agency will pay the Recipient's reasonable, substantiated costs (other than loss of profit or income) necessarily and directly incurred as a result of the termination ("Early Termination Costs"), provided that:
 - (i) the Recipient uses its best efforts to minimise its Early Termination Costs; and
 - (ii) the total amount of Early Termination Costs payable will not exceed the total amount of unpaid Funding forfeited through termination under this clause 14.2 (Termination by Agency without cause).

14.3 On termination

Unless otherwise agreed, the Recipient must, within ten (10) Business Days of termination:

- (a) **(Return unspent Funding)** repay to the Agency, in accordance with its direction, any unspent Funding;
- (b) **(Provide Reports and other Material)** provide to the Agency:
 - (i) any Reports due to, or otherwise reasonably requested by, the Agency; and

- (ii) any Activity Material which is owned by, or licensed to, the Agency under this Agreement, in a format, and with associated explanatory material, which permit the Agency to exercise its IP rights in respect of that Activity Material.
- (c) **(Return Confidential Information)** return any Confidential Information provided by the Agency.

15. General

15.1 Relationship

- (a) The Recipient acknowledges that neither the Recipient nor any of its Personnel are employees, partners or agents of the Agency.
- (b) The Recipient must not, and must ensure that its Personnel do not, represent that the Recipient or a member of its Personnel is an employee, partner or agent of the Agency.

15.2 Variations, consents and waivers

- (a) All requests by the Recipient for variation to this Agreement must be submitted via the SmartyGrants online portal.
- (b) If the Agency decides to accept the variation request, then the Agreement will be varied or replaced:
 - (i) by way of using the Variation Schedule (annexed at Schedule 4) where the variation is determined to be minor by the Agency in its absolute discretion; or
 - (ii) in all other cases, by way of a deed of variation executed by both Parties.
- (c) Where the Agency requests a variation to this Agreement, it may elect to do so by way of either the Variation Schedule or a deed of variation.
- (d) Any variation in accordance with this clause 15.2 only takes effect from the date on which representatives from both Parties have signed the Variation Schedule or, where the deed of variation is used, the date on which the deed has been executed by both Parties.

15.3 Subcontracting and assignment

- (a) The Recipient must not:
 - (i) subcontract any part of the Activity other than to an Approved Subcontractor; or
 - (ii) assign its rights under all or any part of this Agreement, without the prior written consent of the Agency.
- (b) Any consent given by the Agency in accordance with this clause 15.3 (Subcontracting and assignment) does not relieve the Recipient of its obligations under this Agreement.

15.4 Notices

- (a) A notice under this Agreement must be in writing and delivered to the address or email address of the recipient Party as specified in the Activity Schedule or as that Party otherwise directs. A notice under this Agreement will be taken to be delivered:
 - (i) if by hand or by registered post, on delivery to the Party's address for service and a signature is received as evidence of delivery;

- (ii) if by post (other than registered post), on the sixth (6th) Business Day after posting;
 - (iii) if by email, upon receipt by the sender of confirmation of delivery notification from an email server or a written acknowledgement from the recipient).
- (b) Notwithstanding the immediately preceding subclause if a notice is delivered or received on a day that is not a Business Day, or is delivered or received later than 5.00 pm (Sydney, New South Wales time), it will be taken to have been given or made at 9.00 am on the next Business Day.

15.5 Counterparts

This Agreement may be executed in any number of counterparts which taken together will form one Agreement.

15.6 Survival

The following clauses survive termination or expiry of this Agreement: clause 5 (Withholding payment and repayment); clause 8 (Reports and review), clause 9 (Records); clause 10 (IP); clause 11 (Confidential Information); clause 12.3 (Insurance); clause 13 (Disputes); clause 14.2 (Termination by Agency without cause); clause 14.3 (On termination); this clause 15.6 (Survival); clause 15.7 (Governing law and jurisdiction) and any other clause which by its nature is intended to survive this Agreement.

15.7 Governing law and jurisdiction

The Agreement is subject to and must be construed in accordance with the laws for the time being in force in New South Wales and the Parties submit to the non-exclusive jurisdiction of courts of New South Wales.

15.8 Entire Agreement

This Agreement constitutes the entire Agreement and understanding between the Parties as to its subject matter. Any prior arrangements, representations or undertakings as to the subject matter of this Agreement are superseded.

15.9 Waiver and exercise of rights

Failure or omission by the Agency at any time to enforce or require strict or timely compliance with any provision of the Agreement will not in any way affect or impair that provision or the right of the Agency to avail itself of the remedies it may have in respect of any breach of a provision.

15.10 Severability

If any part of this Agreement is prohibited, void, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of the Agreement.

16. Interpretation

16.1 Definitions

In this Agreement, unless the context otherwise dictates, where appearing with a capital letter:

Activity Material means any Material (including the Reports) created or developed by the Recipient in conducting the Activity and/or performing this Agreement and includes any Existing Material that is incorporated in or supplied with the Activity Material.

Activity Period means the period identified as such in the Activity Schedule.

Agency means the entity identified as such in the Activity Schedule.

Agreement means this Agreement as described in clause 1.1.

Activity Schedule means the Activity Schedule forming part of this Agreement.

Attachment means an attachment to this Agreement.

Business Day means any day which is not a Saturday, Sunday or gazetted public holiday in the State of New South Wales.

Change in Control means any change during the Term in any person(s) who directly or indirectly exercise/s effective control over the Recipient (including the ability to determine the outcome of decisions about the financial and operating and other policies of the Recipient) by holding the majority of voting shares, units or other interests in the Recipient or by any other means, but does not include a change in respect of a local council if that change is due to an election.

Claim means all proceedings, applications, actions, claims, suits, demands, losses (including, except to the extent otherwise agreed in writing, costs, damages, expenses and liability, including consequential loss, indirect loss, loss of profit, loss of revenue, damages for loss of opportunity and legal costs), which may be brought against, made upon, or incurred by the Agency, the State or their Personnel.

Confidential Information means any written or oral information of a Party that:

- (a) is by its nature confidential;
- (b) is designated as confidential; or
- (c) the receiving Party knows or ought to know is confidential,

but does not include information which is or becomes public knowledge other than by breach of this Agreement.

Conflict of Interest means a situation where the exercise of a person's duty or decision-making is influenced, potentially influenced, or may appear to be influenced, by a secondary interest, including (but not limited to) a private or business interest.

Contribution means the contribution toward the costs of the Activity, as specified in the Activity Schedule.

Correctly Rendered Tax Invoice means a tax invoice that:

- (a) complies with the requirements of the GST Law;
- (b) sets out details of the Activity undertaken for which the Funding or the relevant Instalment is claimed, applicable GST and the total amount payable; and
- (c) contains any other details and is accompanied by any other supporting information reasonably required by the Agency.

Cumulative Obligation means the Requirements and Supporting Information in Schedule 2.

Eligible Expenditure means one of the types of eligible expenditure listed in the Guidelines.

Eligible Expenditure Cap means the total amount the Recipient must spend on a particular category of Eligible Expense, as shown in the Activity Schedule, Item 5 'Funding' titled "Eligible Expenditure Caps".

Existing Material means Material developed independently of this Agreement by either Party and includes Existing Material that is incorporated in or supplied as part of the Activity Material.

FTE means full time equivalent employees including contractors directly engaged based on a 35-hour week.

i.e.
$$\frac{\text{FTE equals total hours worked for period}}{35 \text{ hours} \times (\text{no. of weeks in the period})}$$

Funding Program means the funding program identified as such in the Activity Schedule.

GST has the meaning given to this term in the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), related legislation and any delegated legislation.

Instalment means an instalment of Funding as set out in Schedule 2.

IP means all industrial and intellectual property rights whether created now or in the future, whether recognised in Australia or overseas, whether or not they are registered or capable of being registered and includes (without limitation), the rights in patents, knowhow, copyright, designs, semi-conductor or circuit layout rights, trademarks, trade secrets, plant breeder's rights, business or company names or other proprietary rights.

Material includes all forms of works and subject matter in which IP may subsist, created or stored by any means, including (without limitation) documents, equipment, designs, templates, computer programs, software and applications, products, processes, devices, technologies, information and data.

Parties means the parties to this Agreement and **Party** means either one of them.

Party's Representative means, in relation to each Party, the person named as such in the Activity Schedule or such other person as the Party may, from time to time, nominate in writing.

Personal Information has the meaning contained in the *Privacy and Personal Information Protection Act (1998)* (NSW).

Personnel means any person employed or engaged by a Party.

Agency means the entity identified as such in the Activity Schedule.

Privacy Legislation means the *Privacy and Personal Information Protection Act 1998 (NSW)*, *Health Records and Information Privacy Act 2002 (NSW)* and the *Privacy Act 1988 (Cth)* and includes any directions, regulations, codes of practice and principles made under these Acts.

Recipient means the entity identified as such in the Activity Schedule.

Records includes documents, information and data stored by any means and all copies and extracts of the same.

Reports means the reports specified in the Activity Schedule.

State means the Crown in right of the State of New South Wales.

Supply has the meaning given to this term by the GST Law.

Term means the duration of this Agreement as specified in the Activity Schedule or until the date on which this Agreement is terminated, whichever occurs first.

TRL means Technology Readiness Level.

Variation Schedule means Variation Schedule in Schedule 4.

16.2 Construction

Except where the context otherwise requires:

- (a) A reference to a statute, regulation, ordinance or by-law will be deemed to extend to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing that law from time to time.
- (b) A reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable.
- (c) Where a word or phrase is given a defined meaning in this Agreement, any other part of speech or other grammatical form in respect of such word or phrase shall unless the context otherwise requires have a corresponding meaning.
- (d) No rule of construction operates to the detriment of a Party only because that Party was responsible for the preparation of this Agreement or any part of it.
- (e) Where there occurs a reference to the doing of anything by the Agency including giving any notice, consent, direction or waiver, this may be done by any duly authorised officer of the Agency.
- (f) Where the Recipient is comprised of more than one person, each obligation of the Recipient will bind those persons jointly and severally and will be enforceable against them jointly and severally.
- (g) The headings and contents list in this Agreement are for convenience only and do not affect the interpretation of this Agreement.
- (h) Where the Agency is required to act reasonably in the performance of this Agreement, that shall be read as a requirement to act as would a Party in the position of the Agency which is acting reasonably in its own best interests.
- (i) A reference to a group of persons is a reference to all of them collectively and to any two or more of them collectively and to each of them individually.
- (j) Persons will be taken to include any natural or legal person.

SCHEDULE 1 ADDITIONAL CONDITIONS

1. Introduction

The Recipient must comply with the additional conditions set out in this Schedule 1 (Additional Conditions).

2. Additional Definitions

Unless the context requires otherwise, the following terms have the following meanings in this Schedule and elsewhere in this Agreement:

Declaration means a declaration signed by an officer of the Recipient's organisation or the Recipient's CEO, managing director or equivalent, in the form attached at Attachment 1 (or in any other form required by the Agency from time to time) declaring that the Recipient has satisfied all the Milestones and otherwise satisfies all Eligibility Criteria and provisions of this Agreement to receive the grant as applicable.

3. Eligibility Criteria

All eligible criteria must be satisfied in accordance with the MVP Ventures guidelines. Please see <https://nsw.gov.au/grants-and-funding/mvp-ventures-program>

4. Guidance on eligibility

For detailed guidance on eligible and ineligible expenditures, please see <https://nsw.gov.au/grants-and-funding/mvp-ventures-program> MVP Ventures Guidelines, Appendix A and B respectively.

SCHEDULE 2 PAYMENT PLAN

The funding is payable in three (3) Instalments. The table specifies the Instalments for the grant payment and Supporting Information that must be satisfied for each Instalment. All reports to be signed by Recipient's Managing Director/Chief Executive Officer or equivalent. Report to be submitted via the SmartyGrants platform. Please note the Agency may request additional reports or information that may be reasonably required for assessment from time to time.

Instalment			Requirements	Supporting Information
Amount (excl GST)	Trigger payment	Date		
1. \$<insert>	Payable following execution of this Agreement.	Date of execution of this Funding Agreement.	The Recipient must satisfy section 3 and 4 of Schedule 1.	To claim the first Instalment of the grant payment, the Recipient must provide all attachments required as part of the application and correctly rendered tax invoice for instalment 1 to the Agency.
2. \$<insert>*	Payable following satisfactory completion of the Milestone(s) outlined in Schedule 3.	Must be from 3 to 6 months from first instalment. <insert>	The Recipient must provide: 1. a report on progress of the Activity to date with reference to the activities and deliverables achieved in line with eligible expenditures. 2. the report to show the Recipient has substantially completed their obligations under milestones 1 and 2 in Schedule 3. 3. itemised receipts or paid invoices for Eligible Expenditure up to 60% of the Activity. 4. correctly rendered tax invoice for the second instalment.	To claim the second Instalment of the grant payment, the Recipient must provide: (a) all paid invoices and receipts for eligible expenditures for the first and second instalment grant (b) satisfactory progress report (c) any information required for an application under the Guidelines that has not previously been provided the Recipient; and (d) any other information requested by the Agency relating the Recipient's compliance with this Agreement.

Instalment			Requirements	Supporting Information
Amount (excl GST)	Trigger payment	Date		
3. \$<insert>, including any unclaimed funding which has rolled over.	Payable following satisfactory completion of the Milestone(s)	From 3 to 6 months from Instalment 2 <insert>	The Recipient must provide: 1. a final completion report outlining activities and deliverables achieved in line with eligible expenditures 2. the report to show the Recipient has substantially completed their obligations under milestones 3 in Schedule 3 3. a completed signed EVE form 4. itemised receipts or paid invoices for Eligible Expenditure up to 100% of the Activity 5. correctly rendered tax invoice for the final amount.	To claim the last Instalment of the grant, the Recipient must provide: (a) all invoices paid for eligible expenditures for the final grant funding invoices (b) any other information requested by the Agency relating to the Recipient's compliance with this Agreement.

SCHEDULE 3 ACTIVITY PLAN

Milestone	Date	Activity	Deliverable
1.	Funding Agreement execution date		
2.			
3.			

SCHEDULE 4 VARIATION SCHEDULE

The Parties acknowledge and agree that the following terms to this Agreement may be varied by agreement between the Parties as evidenced by signature by each party's authorised officer next to the relevant variation in the table below:

1. [x];
2. [x]

Variations

Description of Variation	Signature of Agency's Authorised Officer	Signature of Recipient's Authorised Officer
	Dated:	Dated: