

OFFICIAL



HERBERT  
SMITH  
FREEHILLS

# Agreement

## Funding Agreement

---

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

and

Techstars Central LLC

OFFICIAL

ANZ Tower 161 Castlereagh Street Sydney NSW 2000 Australia  
GPO Box 4227 Sydney NSW 2001 Australia

T +61 2 9225 5000 F +61 2 9322 4000  
herbertsmithfreehills.com DX 361 Sydney

Doc ID: f3d354c639789afd297536ecc320bb1ec3042b91



# Contents

## Table of contents

<b>1</b>	<b>Definitions and interpretation</b>	<b>2</b>
1.1	Definitions .....	2
1.2	Interpretation .....	7
<b>2</b>	<b>Objectives</b>	<b>8</b>
<b>3</b>	<b>Techstars Commitments</b>	<b>9</b>
3.1	Accelerator Program Delivery .....	9
3.2	Program Location .....	9
3.3	Participants .....	9
3.4	Participant Investment and Participation in the Accelerator Program .....	9
3.5	Accommodation .....	9
3.6	Managing Director .....	10
3.7	Participation in the startup ecosystem .....	10
<b>4</b>	<b>Key Performance Indicator</b>	<b>11</b>
4.1	KPIs during the Funding Period .....	11
4.2	KPIs post-Funding Period .....	12
<b>5</b>	<b>Milestones</b>	<b>13</b>
<b>6</b>	<b>State Commitments</b>	<b>13</b>
<b>7</b>	<b>Funding and payment</b>	<b>13</b>
7.1	Payment of the Funding .....	13
7.2	GST .....	14
<b>8</b>	<b>Withholding payment and repayment</b>	<b>14</b>
<b>9</b>	<b>Acknowledgement of Funding and publicity</b>	<b>15</b>
<b>10</b>	<b>Reports and review</b>	<b>16</b>
10.1	Reports .....	16
10.2	Records .....	16
10.3	Review .....	16
<b>11</b>	<b>Governance</b>	<b>17</b>
11.1	Screening Committee .....	17
11.2	Project Control Group .....	17
<b>12</b>	<b>Limitations of liability</b>	<b>18</b>
<b>13</b>	<b>Confidentiality and privacy</b>	<b>18</b>
13.1	Confidentiality .....	18
13.2	Compliance with Privacy Legislation .....	19
<b>14</b>	<b>Risk Management</b>	<b>19</b>
14.1	Techstars representations and warranties .....	19



# Contents

14.2	The State representations and warranties .....	20
14.3	Disclaimer of warranties .....	20
14.4	Notice of adverse events .....	20
<b>15</b>	<b>Insurance</b>	<b>21</b>
<b>16</b>	<b>Disputes</b>	<b>21</b>
<b>17</b>	<b>Termination</b>	<b>22</b>
17.1	Termination for Cause .....	22
17.2	Breach of material provision .....	22
17.3	On termination .....	22
<b>18</b>	<b>General</b>	<b>23</b>
18.1	Relationship .....	23
18.2	Variations, consents and waivers .....	23
18.3	Subcontracting and assignment .....	23
18.4	Notices .....	23
18.5	Counterparts .....	24
18.6	Survival .....	24
18.7	Governing law and jurisdiction .....	24
18.8	Entire Agreement .....	24
18.9	Waiver and exercise of rights .....	24
18.10	Severability .....	24
	<b>Schedule 1</b>	
	<b>Funding, payment and repayment</b>	
	<b>Schedule 2</b>	
	<b>Tech Central</b>	<b>31</b>
	<b>Schedule 3</b>	
	<b>Notice Details</b>	<b>32</b>
	<b>Schedule 4</b>	
	<b>Progress Report</b>	<b>33</b>
	<b>Signing page</b>	<b>34</b>



## Funding Agreement

---

Date ► \_\_\_\_\_, 2022

Between the parties

---

The State	<b>The Crown in the right of New South Wales acting through the Department of Enterprise, Investment and Trade</b> of 52 Martin Place, Sydney NSW 2000 <b>(the State)</b>
-----------	---

---

Techstars	<b>Techstars Central LLC</b> of 4845 Pearl East Cir Ste 118, PMB 99696 Boulder, CO 80301-6112, United States of America <b>(Techstars)</b>
-----------	--

---

Recitals	This Agreement sets out the terms on which the State agrees to provide the Funding to Techstars and Techstars agrees to deliver the flagship APAC Program.
----------	--

---

The parties agree as follows:

---



# 1 Definitions and interpretation

---

## 1.1 Definitions

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

Term	Meaning
<b>Accelerator Program</b>	<p>an intense, immersive, mentorship-driven 13 week program in which Participant start-ups work with Techstars to grow their company and technology, focusing on accelerating the best technical and business talent in the tech sector. This includes:</p> <ol style="list-style-type: none"> <li>1 providing mentors to each Participant;</li> <li>2 helping Participants identify production, distribution, marketing, sales, customer support, and other key functions critical to achieving the commercial success of the new product or service;</li> <li>3 assisting with pitch and presentation preparation;</li> <li>4 organising and hosting a Demonstration Day.</li> </ol>
<b>Agreement</b>	this Funding Agreement, including all Schedules and Attachments.
<b>Annual Amount</b>	████████████████████
<b>APAC</b>	the Asia Pacific region including Oceania, South East Asia and North Asia (South Korea and Japan).
<b>Applicant</b>	any entity which applied to Techstars to participate in the Accelerator Program (regardless of whether it was accepted as a Participant).
<b>Business Day</b>	any day which is not a Saturday, Sunday or gazetted public holiday in the State of New South Wales.
<b>Class</b>	the group of Participants in the Accelerator Program each Year.
<b>Commencement Date</b>	the date this Agreement is signed by the last of the parties to sign it.



HERBERT  
SMITH  
FREEHILLS

Term	Meaning
<b>Commitment</b>	each of Commitments 1 – 7 by Techstars as set out in clause 3.
<b>Confidential Information</b>	<p>any written or oral information of a Party that:</p> <ol style="list-style-type: none"> <li>1 is by its nature confidential;</li> <li>2 is designated as confidential; or</li> <li>3 the receiving Party knows or ought to know is confidential,</li> </ol> <p>but does not include information which is or becomes public knowledge other than by breach of this Agreement.</p>
<b>Conflict of Interest</b>	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.
<b>Demonstration or Demo Day</b>	<p>an event organised by Techstars for Participants to present their work following participation in the Accelerator Program, for which Techstars will:</p> <ol style="list-style-type: none"> <li>1 invite selected community members, investors, press and others the technology and entrepreneurial community;</li> <li>2 provide the State with 50 tickets; and</li> <li>3 organise all elements including catering, audiovisual equipment, marketing and promotional materials, and a post-event party,</li> </ol> <p>up to an aggregate maximum of \$35,000 USD or to the extent the event cannot be run in person due to a Force Majeure Event:</p> <ol style="list-style-type: none"> <li>4 invite selected community members, investors, press and others the technology and entrepreneurial community;</li> <li>5 organise all elements required to host an online event.</li> </ol>
<b>Force Majeure Event</b>	<p>each of the following events:</p> <ol style="list-style-type: none"> <li>1 lightning, fire, earthquake, cyclone, bushfire, natural disaster, landslide and mudslide;</li> <li>2 explosion, malicious damage, sabotage, riots or a "terrorist act" (as defined in section 5 of the <i>Terrorism Insurance Act 2003</i> (Cth)); and</li> <li>3 war, invasion, act of a foreign enemy, hostilities between nations (whether war is declared or not), insurrection, civil disturbance, blockade, riot, embargo, epidemic, pandemic, revolution or military or usurped power,</li> </ol>



HERBERT  
SMITH  
FREEHILLS

Term	Meaning
	<p>strikes and other labour conflicts, government action or inaction,</p> <p>which:</p> <p>4 is not caused by and which is beyond the reasonable control of Techstars or its contractors; and</p> <p>5 could not have been prevented, avoided, remedied or overcome by Techstars or its contractors taking those steps, and exercising the standard of foresight, care and diligence, which a prudent, experienced and competent person in their position would have taken.</p>
<b>Fundamental or Material Failure to Achieve a Milestone</b>	a breach or failure to perform a Milestone in a fundamental and material respect.
<b>Funding</b>	[REDACTED]
<b>Funding Period</b>	[REDACTED]
<b>GST</b>	has the meaning given to this term in the GST Law.
<b>GST Law</b>	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth), an Australian law, related legislation and any delegated legislation.
<b>Headquarters</b>	the main offices or centres of control for all managerial, operational and administrative functions, activities and personnel for the Participant.
<b>Instalment</b>	each instalment of the total Funding as specified in Schedule 1 (plus any applicable GST).
<b>KPI</b>	each key performance indicator set out in clauses 4.1 and 4.2.
<b>Milestone</b>	has the meaning given to this term in the table in clause 2.2 of Schedule 1.



HERBERT  
SMITH  
FREEHILLS

Term	Meaning
<b>Milestone Achievement Date</b>	has the meaning given to this term in the table in clause 2.2 of Schedule 1.
<b>Objectives</b>	has the meaning given to this term in clause 2(a).
<b>Office Space</b>	has the meaning given to this term in clause 3.5(a).
<b>Participant</b>	any entity chosen to participate in the Accelerator Program.
<b>Payment Date</b>	each payment date specified in table in clause 2.2 of Schedule 1 for payment of each Instalment of the Funding, as that payment date may be adjusted under clause 2.2 of Schedule 1.
<b>Parties</b>	the parties to this Agreement and <b>Party</b> means either one of them.
<b>Personal Information</b>	has the meaning contained in the <i>Privacy and Personal Information Protection Act (1998)</i> (NSW), a law in New South Wales.
<b>Personnel</b>	any directors, officers, employees, agents or contractors of a Party.
<b>Post-Accelerator Program Activities</b>	<p>the activities undertaken by Techstars following the delivery of the Accelerator Program including:</p> <ol style="list-style-type: none"> <li>1 providing former Participants with access to Techstars' custom platform tools, resources and personal connections to help with funding, business growth, and network connections;</li> <li>2 managing sourcing, selection and investments in former Participants and maintaining those investments; and</li> </ol> <p>supporting former Participants including by using Techstars' portfolio services and network teams to help Participants connect with Techstars' global network of partners and mentors.</p>
<b>Privacy Legislation</b>	the <i>Privacy and Personal Information Protection Act 1998</i> (NSW) and <i>Health Records and Information Privacy Act 2002</i> (NSW), laws in New South Wales, and the <i>Privacy Act 1988</i> (Cth), law in Australia, and includes any directions, regulations, codes of practice and principles made under





HERBERT  
SMITH  
FREEHILLS

Term	Meaning
	these Acts, along with any other privacy laws or regulations that may apply under this Agreement.
<b>Program</b>	<p>the 12 month program delivered annually by Techstars, including:</p> <ol style="list-style-type: none"> <li>1 Program Preparation Activities;</li> <li>2 the Accelerator Program;</li> <li>3 Post-Accelerator Program Activities; and</li> <li>4 any other activities required to manage and deliver the Accelerator Program.</li> </ol>
<b>Program Preparation Activities</b>	<p>the activities undertaken by Techstars prior to delivering the Accelerator Program including:</p> <ol style="list-style-type: none"> <li>1 designing and developing a program plan and curriculum for the Accelerator Program;</li> <li>2 identifying and recruiting potential Participants;</li> <li>3 establishing the Screening Committee to review applications to the Program submitted by Applicants;</li> <li>4 selecting twelve (12) Participants;</li> <li>5 on-boarding and undertaking diligence review of the Participants, including background check on the CEO of each Participant and a basic review of incorporation documents, capitalisation, intellectual property assignments, licenses, and any prior funding.</li> </ol>
<b>Progress Report</b>	a report provided by Techstars to the State substantially in the form set out in Schedule 4, unless otherwise agreed by the parties.
<b>Project End Date</b>	<div style="background-color: black; width: 100%; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100%; height: 15px;"></div>
<b>Records</b>	has the meaning given in clause 10.2.
<b>Related Body Corporate</b>	has the same meaning as in the <i>Corporations Act 2001</i> (Cth), an Australian law.
<b>Repayment Amount</b>	has the meaning given in clause 3 of Schedule 1.



HERBERT  
SMITH  
FREEHILLS

Term	Meaning
<b>Repayment Condition</b>	has the meaning given in clause 3 of Schedule 1.
<b>Repayment Event</b>	has the meaning given in clause 3 of Schedule 1.
<b>Repayment Event Date</b>	has the meaning given in clause 3 of Schedule 1.
<b>Screening Committee</b>	has the meaning given in clause 11.1(a).
<b>Supply</b>	has the meaning given to this term by the GST Law.
<b>Tech Central</b>	the precinct of Sydney, New South Wales, Australia, depicted in Schedule 2, and any other area as notified by the State.
<b>Technology Events</b>	events relating to technology, entrepreneurship or other relevant industries, which build the global brand of Tech Central and Techstars, and assist the NSW technology start up ecosystem to access global networks.
<b>Year</b>	each 12 month period, commencing on the Commencement Date.

## 1.2 Interpretation

In this Agreement, 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.



HERBERT  
SMITH  
FREEHILLS

- (e) Where there occurs a reference to the doing of anything by the State including giving any notice, consent, direction or waiver, this may be done by any duly authorised officer of the State.
- (f) The headings and contents list in this Agreement are for convenience only and do not affect the interpretation of this Agreement.
- (g) Where the State 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 State which is acting reasonably in its own best interests.
- (h) 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.
- (i) Specifying anything in this agreement after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included.
- (j) Persons will be taken to include any natural or legal person.
- (k) Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day.
- (l) A reference to AUD is to Australian currency unless otherwise specified. Any reference to USD means U.S. dollar, the official currency of the United States of America.

## 2 Objectives

---

- (a) Techstars agrees to work with NSW towards the following mutual objectives
  - (1) **Startup Ecosystem:** generate benefits for and grow NSW's tech startup ecosystem, including through knowledge, technology and technical and business skills transfers, increased number and value of investments in the region, increased global reach and connectedness, increased innovation and competition in Sydney's tech sector;
  - (2) **Tech Central:** position Tech Central as a globally renowned technology hub for tech startups and innovation, increase the number of startup founders, talent, investors and mentors located and investing in Tech Central;
  - (3) **Startup Business Assistance:** assist startups in NSW with defining objectives, business planning decisions and capability to execute business ideas;
  - (4) **Startup Opportunities:** provide startups in NSW with investment, exportation, mentoring and networking opportunities;
  - (5) **Early-stage Investment:** reduce undersupply of early-stage investment capital to support startups by helping investors discover and assess the quality, capability, feasibility and value of startup founders and their business proposals;
  - (6) **Economic Benefits:** increase economic benefits for NSW, including increased jobs, value of startups, speed of funds raised, startup survival rate, and speed of revenue and sales growth, and reduced time to be acquired;
  - (7) **NSW Government Priorities:** support government priorities to develop startup ecosystems such as the Tech Central Vision (2020), Entrepreneurship and Innovation Ecosystems Action Plan (2021),



HERBERT SMITH FREEHILLS

future strategies to support emerging technologies, Accelerating R&D in NSW: Turning ideas into jobs (2021) and NSW 2040 Economic Blueprint (2020);

- (8) **Data:** increase quantity and quality of information on startups to inform NSW Government policies and programs,

**(Objectives).**

- (b) In order to work towards achieving the Objectives and delivering a flagship Program in APAC, this Agreement sets out:

- (1) the KPIs, Commitments and Milestones; and
- (2) the process for payment of Funding by the State to enable Techstars to achieve the KPIs, Commitments and Milestones.

### 3 Techstars Commitments

---

#### 3.1 Accelerator Program Delivery

Techstars agrees to deliver the 13-week Accelerator Program for one (1) Class per Year during the Funding Period (totalling three (3) Classes) (**Commitment 1**).

#### 3.2 Program Location

Techstars agrees to deliver the Program in Tech Central, Sydney, New South Wales, Australia, during the Funding Period (**Commitment 2**).

#### 3.3 Participants

Techstars agrees that:

- (a) each Class will comprise twelve (12) Participants; and
- (b) [REDACTED]

#### 3.4

[REDACTED]

#### 3.5 Accommodation

Techstars agrees that it will:



HERBERT  
SMITH  
FREEHILLS

(b) not sub-lease the Office Space without prior written consent of the State (in its absolute discretion),

(Commitment 5).

### 3.6

### 3.7 Participation in the startup ecosystem

In addition to delivering the Program, Techstars agrees to actively participate in the startup ecosystem in NSW, by:

- (a) attending at least two (2) Technology Events, which are hosted or supported by NSW Government, every Year during the Funding Period, including as a panel member, key note speaker, sponsor, workshop facilitator;
- (b) hosting at least two (2) Technology Events every Year during the Funding Period; and
- (c) delivering one (1) custom startup weekend in NSW to support the State's mission of developing NSW's startup ecosystem (**Startup Weekend**). The Startup Weekend will consist of:
  - (1) (**Brand**) Techstars acknowledging funding and undertaking branding in accordance with clause 9;
  - (2) (**Promotion**) Techstars undertaking community promotion and ticketing for the Startup Weekend event including:
    - (A) launching an event website specific to the Startup Weekend event with logos from both parties, details about the event, and a link to purchase tickets;
    - (B) retweet of the State's press release (if any) on Techstars' Startup Weekend Twitter channel leading up to the event;
    - (C) email promotion to past attendees of Startup Weekend events;
  - (3) (**Logistics**) Techstars acquiring and setting up the technical infrastructure associated with the Startup Weekend including coordinating and managing the online technical capacity necessary for the event, and Techstars producing event materials for participants.
  - (4) (**Staffing and Support**) Techstars:
    - (A) sourcing the organising team for the event;
    - (B) coordinating event programming and execution;
    - (C) recruiting mentors from the community and the global network to support the program and theme;
    - (D) assigning a dedicated point of contact to coordinate with all community leaders and organizers;



HERBERT  
SMITH  
FREEHILLS

- (E) dedicating a team member to provide on the ground support for the partner during the event, including a debrief at the end of day;
  - (F) providing the State with the opportunity to nominate three (3) representatives to attend the event as mentors, to work with teams to field questions or help with troubleshooting;
  - (G) providing the State with the opportunity to nominate one (1) representative to attend the event as online judge.
- (5) **(Post Event Reporting)** Techstars providing event performance analysis and reporting thirty (30) days post event including a post-event debrief call and Post-event engagement report containing the following:
- (A) final attendance count;
  - (B) audience professional composition;
  - (C) attendee net promoter score;
- (6) **(Discount)** Techstars creating an opportunity for the State to offer its own special opportunity or incentive to Startup Weekend participants,
- (Commitment 7).**





HERBERT  
SMITH  
FREEHILLS





HERBERT  
SMITH  
FREEHILLS

## 5 Milestones

---

Techstars must achieve the Milestones, as set out in Schedule 1.

## 6 State Commitments

---

The State will use its best endeavours to:

- (a) provide a minimum of ten (10) mentors for each Class.
- (b) provide reasonable, non-financial support and help to any Participants in the Program as requested and to the extent possible.
- (c) provide a logo for use in connection with the name of the Program. The logo will also be used for general promotion of the Program consistent with clause 9 of this Agreement.
- (d) provide a primary point of contact for dealings with Techstars to the Project End Date, set out in Schedule 3, or other primary point of contact as notified by the State.
- (e) participate in the review and give inputs on the twelve (12) companies that Techstars will select for each Class as described in clause 11.1.
- (f) provide any travel costs or expenses for any of the State's mentors and other event attendees, above and beyond what is provided by Techstars.
- (g) provide any additional videography and production costs that are specific to the State's marketing and public relations purposes.

## 7 Funding and payment

---

### 7.1 Payment of the Funding

- (a) The State will pay the Funding to Techstars in the Instalments set out in Schedule 1 within 30 days after receipt of a valid tax invoice from Techstars for each Instalment.
- (b) Techstars may submit an invoice to the State for each Instalment on or after the date specified in Schedule 1 for that Instalment.
- (c) Unless otherwise agreed, payment will be by direct transfer to Techstars' nominated account.
- (d) Payment of any amount of the Funding is not an admission by the State that Techstars has met its obligations under this Agreement to the State's reasonable satisfaction.
- (e) The Funding may only be used by Techstars for the operating costs of the Program, centralised services that support the Program, platform and portfolio services and Techstars' margin.





HERBERT  
SMITH  
FREEHILLS





## 9 Acknowledgement of Funding and publicity

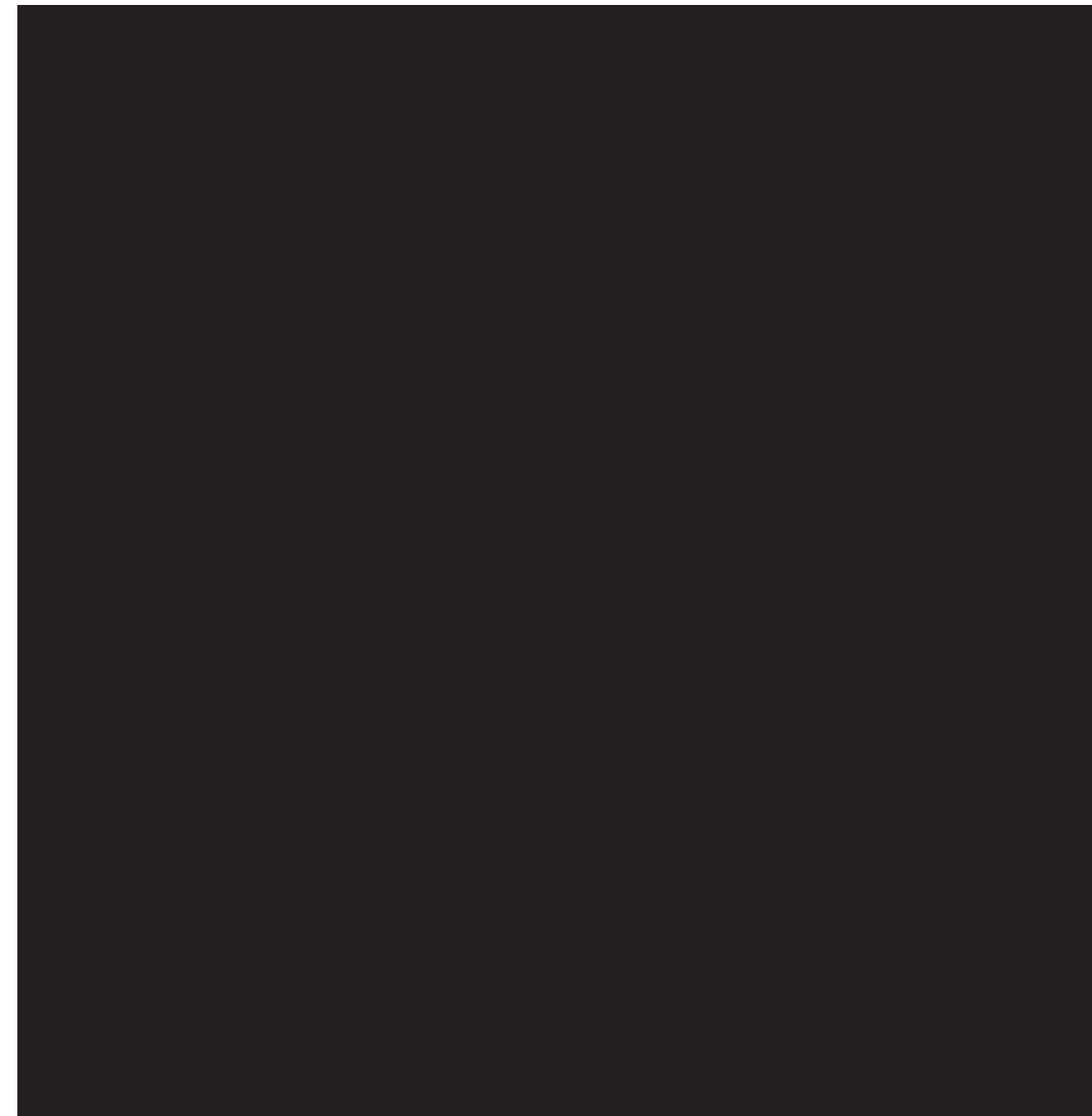
---

- (a) Without limiting clause 13, before either party can make a public statement in relation to other party under this Agreement or the terms of this Agreement, both parties must agree on:
  - (1) the form and content;
  - (2) the time or times for making the public statement, and
  - (3) the proposed public statement.
- (b) Nothing in this Agreement restricts a Minister of the State making public statements about this Agreement, the Program, the Funding, the KPIs or the Commitments.
- (c) Techstars must ensure that all public statements by Techstars relating to the Funding or its Commitments acknowledge the provision of the Funding by the State, including in Program announcements and Demonstration Days. This requirement may be met by referring to the full name of the Program in any announcements, communications or Demonstration Days provided the name of the Program (to be agreed by the parties) is “Techstars Tech Central Sydney powered by the NSW Government”, or otherwise includes a similar reference acknowledging the funding by the NSW Government.
- (d) Neither party may otherwise use the other party’s branding or logos except:
  - (1) with the other party’s prior consent;
  - (2) in the case of Techstars, in accordance with the State’s Sponsorship and Funding Acknowledgement Guidelines, currently published at: <https://www.nsw.gov.au/branding/sponsorship-and-funding-acknowledgment-guidelines>; and
  - (3) in referencing the Program using the agreed upon logo, program accelerator mark, and accelerator name.
- (e) Techstars will collaborate with the State to design program accelerator mark (i.e. logo) that follow Techstars’ brand guidelines. Techstars will deliver to the State the resulting mark in vector and bitmap files for each Class, once per year of the Program.
- (f) Techstars will provide brand and communications support in the launch of the Program, delivered for each Class, once per year of the Program, and additional marketing efforts in service of the operations of the Program and Participants, at the discretion of the Managing Director.
- (g) If requested, Techstars must notify the State and give it a reasonable opportunity to participate in media coverage or other promotion of the Program.



HERBERT  
SMITH  
FREEHILLS

- (h) The State may publicise and report on the provision of the Funding to Techstars in accordance with its public accountability obligations requiring publication of information regarding funding or contracts it enters into, including the amount and purpose of the Funding and the nature and outcomes of the Program.
- (i) If requested and reasonably practicable, Techstars must promptly and within a reasonable time remove its acknowledgement of the Funding and any NSW Government logo from any material relating to the Program, the Funding or the Commitments if the State reasonably requests it (for example, if the State determines that the material is or may be inconsistent with the State's objectives or in any way harmful to the reputation of the NSW Government); provided however the State may not require Techstars to re-add or acknowledge the Funding or any NSW Government logo thereafter.





## 11 Governance

---

### 11.1 Screening Committee

- (a) Techstars will establish a screening committee to assess the applications for participation in the Accelerator Program (**Screening Committee**).
- (b) The State may:
  - (1) have up to four (4) representatives participate in the Screening Committee; and
  - (2) participate in the evaluation and selection of Applicants by providing inputs to the Managing Director regarding which Applicants the State believes Techstars should select as Participants for each Class and providing industry expertise into the application process.

### 11.2 Project Control Group

Each party must ensure that at least one (1) representative of each Party meet at least every six (6) months until the Project End Date, or another date agreed by both parties, to discuss the progress of this Agreement, including:

- (a) Techstars' progress in achieving:
  - (1) the KPIs and Milestones during the Funding Period; and
  - (2) the KPIs from the end of the Funding Period to the Project End Date;
- (b) any issues either party identifies that may cause that party not to be able to achieve any of its obligations under this Agreement; and
- (c) any other questions or issues raised by either party in relation to this Agreement.



HERBERT  
SMITH  
FREEHILLS

## 12 Limitations of liability

---

- (a) The State's liability to Techstars under or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, is limited to payment of the Funding.
- (b) Subject to clause 12(c), Techstars' liability to the State under or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, is limited to repayment of the Funding in accordance with clause 4.
- (c) Clause 12(b) does not in any way limit Techstars' liability:
  - (1) for any loss of, or damage or destruction to, property;
  - (2) for any injury to, illness or death of, any person;
  - (3) to the extent to which Techstars would be entitled and able to recover under any insurances in respect of such a liability, or would have been so entitled and able but for a failure to comply with clause 15;
  - (4) for any loss caused by the reckless, malicious, illegal or fraudulent acts of any Techstars Personnel;
  - (5) for any abandonment of the Program by Techstars; and
  - (6) for any liability that cannot be limited by Law.
- (d) In no event shall either party be liable to the other party for any incidental, consequential, indirect, or punitive damages (including, but not limited to, lost profits) regardless of whether such liability is based on a breach of contract, tort, strict liability, breach of warranties, failure of essential purpose or otherwise and even if advised of the possibility of such damages. The foregoing limitations of liability will not apply to any fees, funding or other amounts due under this Agreement.

## 13 Confidentiality and privacy

---

### 13.1 Confidentiality

- (a) Subject to clause 13.2, neither Party (**Recipient**) may:
  - (1) use the other Party's (**Discloser**) Confidential Information for any purpose other than for the purposes of performing this Agreement; or
  - (2) disclose the Discloser's Confidential Information to a third party without the Discloser's prior consent unless the disclosure:
    - (A) is required or authorised by law, Parliament or a Parliamentary Committee, the State's responsible Minister or that Minister's staff, or expressly by this Agreement;
    - (B) is reasonably required by a person, including a contracted auditor of the State, for the purpose of performing this Agreement;
    - (C) is required for the State to perform a governmental function including research and analysis in respect of the Funding, monitoring performance of this Agreement, evaluation of the



HERBERT  
SMITH  
FREEHILLS

outcomes of this Agreement and/or the Funding and reporting on the Funding; or

- (D) 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) Except to the extent of any disclosure of Confidential Information pursuant to clause 13.1(a)(2)(A) through (D), any such disclosure will not otherwise waive the Recipient's obligations of confidentiality for the disclosed information under clause 13.1(a)(1) and 13.1(a)(2) for any other purposes. 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 and, to the extent permitted, use reasonable efforts to require the third party to keep the Confidential Information confidential without defeating the purpose of the disclosure in clause 13.1(a)(2).

## 13.2 Compliance with Privacy Legislation

- (a) To the extent that it deals with Personal Information in fulfilling the Commitments, KPIs or Milestones, Techstars must:
- (1) comply, and ensure that its Personnel comply, with applicable Privacy Legislation;
  - (2) not cause the State to breach any obligations imposed by the *Privacy and Personal Information Protection Act 1998* (NSW), a law in New South Wales; and
  - (3) immediately notify the State if it becomes aware of an actual or potential breach of privacy relating to the Personal Information.
- (b) The State agrees to comply with all applicable Privacy Legislation.
- (c) Techstars must ensure that it obtains all relevant consents, including from Participants, Applicants and mentors, to comply with its obligations under clause 4.1 in relation to KPI 1.

## 14 Risk Management

---

### 14.1 Techstars representations and warranties

Techstars represents and warrants that:

- (a) **(information)** all information provided by it to the State 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) **(due care and skill)** it will structure, manage and deliver the Program with due care and skill;



HERBERT  
SMITH  
FREEHILLS

- (f) **(rights)** it has all rights (including intellectual property rights) required to perform its obligations necessary to perform its obligations under this Agreement;
- (g) **(no conflict of interest)** other than those (if any) disclosed in to the State in connection with this Agreement prior to the Commencement Date, to the best of its knowledge, neither Techstars nor its Personnel have any actual, perceived or potential Conflicts of Interest in relation to the Commitments;
- (h) **(compliance)** in performing its obligations under the Agreement, Techstars will comply with all applicable Laws including those on child protection, work health and safety, employment screening, privacy, workplace relations and tax; and
- (i) **(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.

## 14.2 The State representations and warranties

The State represents and warrants that:

- (a) it has the right to enter into this Agreement and perform its obligations hereunder;
- (b) the person executing this Agreement on its behalf has been authorized to do so;
- (c) this Agreement constitutes its valid, legal and binding obligation enforceable in accordance with its terms; and
- (d) it will comply in all material respects with all laws and regulations applicable to its activities under this Agreement.

## 14.3 Disclaimer of warranties

Except as expressly set forth in this Agreement, and to the maximum extent permitted by applicable law, the Program and all deliverables are provided “as-is” and Techstars disclaims any representations or warranties, express or implied, regarding the Program or deliverables, including any implied warranty of merchantability, or fitness for a particular purpose.

## 14.4 Notice of adverse events

Without limiting any other clause in this Agreement or any remedy arising out of a breach of any such other clause, Techstars must promptly notify the State as soon as it becomes aware of:

- (a) any material change to any representation and warranty given under this Agreement;
- (b) any actual or anticipated significant delay or suspension of achieving the KPIs, Commitments or Milestones; or
- (c) any other matter that is reasonably likely to adversely affect its achievement of the KPIs, Commitments, Milestones or its performance of this Agreement,

and, in good faith consultation with the State, take steps that are reasonably available to Techstars to lessen the impact of any such adverse event.



## 16 Disputes

---

- (a) The Parties must attempt to settle any dispute in relation to this Agreement in accordance with this clause 16 (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, setting out the nature of the dispute. On receipt of this notice the Parties must within ten (10) Business Days of receipt seek to resolve the dispute through direct negotiation.
- (c) If the dispute is not resolved within the ten (10) Business Day period referred to in clause 16(b) or within such further period as the Parties agree in writing then the dispute is to be referred to mediation or some alternative dispute resolution procedure as agreed between the parties.
- (d) 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.
- (e) If the State requests it, Techstars must continue performing this Agreement while a dispute is being dealt with in accordance with this clause 16 (Disputes), to the extent practicable to do so.
- (f) Nothing in this clause 16 (Disputes) will prevent either Party from seeking urgent interlocutory relief.





HERBERT  
SMITH  
FREEHILLS

## 17 Termination

---

### 17.1 Termination for Cause

Without limiting, and in addition to, any other rights under this Agreement or at law, either Party may terminate this Agreement with immediate effect by giving notice to the other Party, if:

- (a) **(Breach capable of remedy)** the other Party breaches a material provision of this Agreement and fails to remedy the breach within twenty (20) Business Days following receipt of a written notice requiring that other Party to do so (or such longer period as determined by the Party);
- (b) **(Breach not capable of remedy)** the other Party breaches a material provision of this Agreement and the breach is incapable of remedy; or
- (c) **(Inappropriate conduct)** in relation to termination by the State, in the State's reasonable opinion, Techstars or its Personnel have engaged in, or are alleged to have engaged in, unlawful, criminal, fraudulent or dishonest conduct and, as a result will cause damage to the reputation of the State.

### 17.2 Breach of material provision

The parties agree that a material breach of a material provision for the purposes of clause 17.1 includes a material breach of:

- (a) clause 3 (Techstars Commitments);
- (b) clause 5 (Milestones);
- (c) clause 6 (State Commitments);
- (d) clause 7 (Funding and payment);
- (e) clause 8 (Withholding payment and repayment);
- (f) clause 10 (Reports and review);
- (g) clause 13.1 (Confidentiality);
- (h) clause 14.4 (Notice of adverse events);
- (i) clause 15 (Insurance);
- (j) clause 18.3 (Subcontracting and assignment).

### 17.3 On termination

- (a) Unless otherwise agreed, Techstars must, within ten (10) Business Days of termination:
  - (1) **(Provide Reports and other Material)** provide to the State any Progress Reports due to, or otherwise reasonably requested by, the State; and
  - (2) **(Return Confidential Information)** return any Confidential Information provided by the State unless contained within board papers or stored in servers.
- (b) Termination of this Agreement does not affect any rights that may have accrued to a party prior to termination (including any rights that may have accrued for repayment of any Funding under Schedule 1). Otherwise, subject to clause



HERBERT  
SMITH  
FREEHILLS

18.6, all rights and obligations under this Agreement will cease upon the date of termination.

## 18 General

---

### 18.1 Relationship

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

### 18.2 Variations, consents and waivers

All variations to this Agreement and all consents, approvals and waivers must be in writing and variations must be signed by both Parties.

### 18.3 Subcontracting and assignment

- (a) Techstars must not:
  - (1) subcontract any part of its obligations under this Agreement; or
  - (2) assign its rights under all or any part of this Agreement, without the prior written consent of the State.
- (b) Any subcontracting in accordance with this clause 18.3 (Subcontracting and assignment) does not relieve Techstars of its obligations under this Agreement.

### 18.4 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 Schedule 3 or as that Party otherwise directs. A notice under this Agreement will be taken to be delivered:
  - (1) 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;
  - (2) if by post (other than registered post), on the sixth (6th) Business Day after posting;
  - (3) 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 clause 11.4(a), 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.



HERBERT  
SMITH  
FREEHILLS

## 18.5 Counterparts

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

## 18.6 Survival

The following clauses survive termination or expiry of this Agreement: clause 10 (Reports and review); clause 12 (Limitations of Liability); clause 13 (Confidential Information); clause 16 (Disputes); clause 17.3 (On termination); this clause 18.6 (Survival); clause 18.7 (Governing law and jurisdiction) and any other clause which by its nature is intended to survive this Agreement. For the avoidance of doubt, clause 7 (Funding and payment) is not intended to survive termination.

## 18.7 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.

## 18.8 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.

## 18.9 Waiver and exercise of rights

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

## 18.10 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.



HERBERT  
SMITH  
FREEHILLS

## Schedule 1

### Funding, payment and repayment

---

#### 1 Purpose of this Schedule

---

This Schedule sets out:

- (a) the allocation of the Funding against Milestones for Techstars to deliver on each of the Commitments; and



#### 2 Payment for Milestone Achievement

---

##### 2.1 Payment

- (a) Subject to any rights of the State to withhold payment of part or all of the Funding under clause 3 of this Schedule 1, the State will pay the Funding to Techstars in the Instalments within 30 days after receiving a tax invoice from Techstars, which, subject to the evidence of compliance to be provided by Techstars may be issued on or after the dates set out in the table below.
- (b) The Instalments at each Payment Date are set out in the table below.





HERBERT  
SMITH  
FREEHILLS





HERBERT  
SMITH  
FREEHILLS





HERBERT  
SMITH  
FREEHILLS



3





HERBERT  
SMITH  
FREEHILLS







HERBERT  
SMITH  
FREEHILLS





HERBERT SMITH FREEHILLS

# Schedule 2

## Tech Central

# TECH CENTRAL

- Institutions and innovation anchors
- Major government projects
- Immediate development pipeline
- Public Open Space
- Precinct boundary
- Light rail – existing
- Metro station
- Train station
- Light rail station

\* CHERP: Camperdown Health Education and Research Precinct



www.tc.sydney





## Schedule 3

### Notice Details

---

<b>State</b>	
Address	52 Martin Place, Sydney NSW 2000, Australia
Attention	[REDACTED]
Phone	[REDACTED]
Email	[REDACTED]

<b>Techstars Central LLC</b>	
Address	4845 Pearl East Cir Ste 118, PMG 99696, Boulder, CO 80301 U.S.A.
Attention	[REDACTED]
Phone	[REDACTED]
Email	[REDACTED]



HERBERT  
SMITH  
FREEHILLS

## Schedule 4





HERBERT  
SMITH  
FREEHILLS


# Signing page

Executed as an agreement

---

## State

Signed by The Crown in the right of New South Wales acting through the A/Secretary of the Department of Enterprise, Investment and Trade:

*sign here* ▶   
Signature of Acting Secretary of the Department of Enterprise, Investment and Trade

*print name*   
\_\_\_\_\_

in the presence of

*sign here* ▶   
Witness

*print name*   
\_\_\_\_\_

---

## Techstars

Signed by  
**Techstars Central LLC** of 4845  
Pearl East Cir Ste 118, PMB  
99696, Boulder, CO 80301-6112,  
U.S.A by its Chief Executive  
Officer.

by  
*sign here* ▶   
Witness

*print name*   
\_\_\_\_\_

*sign here* ▶   
Chief Executive Officer

*print name*   
\_\_\_\_\_

TITLE	Signature Request for NSW New South Wales
FILE NAME	FINAL CLEAN Techs... 2022.09.14).docx
DOCUMENT ID	f3d354c639789afd297536ecc320bb1ec3042b91
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Signed

Document History

 E-SIGN DISCLOSURE ACCEPTED	<b>06 / 21 / 2022</b> 16:14:48 UTC	[REDACTED] [REDACTED] [REDACTED] GUID: c6633af7debd1633a3b100a9e470191000e38d87
 SENT	<b>09 / 20 / 2022</b> 13:11:37 UTC	Sent for signature to [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 VIEWED	<b>09 / 20 / 2022</b> 14:44:11 UTC	[REDACTED] [REDACTED]
 SIGNED	<b>09 / 20 / 2022</b> 14:44:25 UTC	[REDACTED] [REDACTED]
 COMPLETED	<b>09 / 20 / 2022</b> 14:44:25 UTC	The document has been completed.