

# StartUp Central Victoria Accelerator Program

## Participation Agreement

Date        /        / 20

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### Parties

|            |  |
|------------|--|
| Name       | <b>Greater Bendigo City Council ABN 74 149 638 164</b> |
| Address    | 15 Hopetoun Street, Bendigo VIC 3550                   |
| Contact    | Kerry Anderson – StartUp Central Victoria Project      |
| Email      | k.anderson@bendigo.vic.gov.au                          |
| Short name | <b>City</b>  |

|            |                    |
|------------|--------------------|
| Name       | <b>##TBC]</b>      |
| Address    | <b>##TBC]</b>      |
| Contact    | <b>##TBC]</b>      |
| Email      | <b>##TBC]</b>      |
| Short name | <b>Participant</b> |

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### Recitals

- A. The City is conducting the Program.
- B. The Participant wishes to participate in the Program.
- C. The City has agreed for the Participant to participate in the Program in accordance with the terms and conditions of this Agreement.

### The parties agree

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#### 1. Definitions

In this Agreement:

**Agreement** means this agreement, including any schedules or annexures to this agreement.

**Background Intellectual Property** means Intellectual Property in any materials owned or controlled by a party that have been developed independently of the Program (before or after its commencement) and are made available for the Program.

**Business Day** means any day (other than a Saturday or a Sunday) on which banks are open for general banking business in Bendigo.

**Confidential Information** means all information that is by its nature confidential, is designated by a party as confidential, or the party in receipt of such information knows or ought to know is confidential.

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

**New Intellectual Property** means Intellectual Property in any materials other than Background Intellectual Property brought or required to be brought into existence by the Participant as part of or for the purposes of the Program.

**Program** means the StartUp Central Victoria Accelerator Program as described Appendix A. Headings in Appendix A are used as defined terms throughout this Agreement and refer to the relevant section of Appendix A.

**Team Members** means the Participant's team members advised by the Participant to the City from time to time.

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## 2. Commencement

This Agreement will commence on the date that it is signed by both parties.

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## 3. Program

- 3.1 The City will conduct the Program at the times and in the manner described in the Details and agrees to:
- 3.1.1 lead the Program and provide the City Contribution; and
  - 3.1.2 appoint the City's Program Contact who will act as the primary point of contact for the Participant.
- 3.2 The City may at its discretion engage other parties to deliver any aspect of the Program, provided that the City remains ultimately responsible for the delivery of the Program in accordance with this Agreement.
- 3.3 The Participant acknowledges that the City has engaged La Trobe University to deliver aspects of the Program.

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#### **4. Participation**

- 4.1 The Participant agrees to make available its Team Members to attend and participate in the Program for the Program Period and to:
- 4.1.1 make its Participant Contribution in a timely manner;
  - 4.1.2 conduct and ensure its Team Members conduct themselves in a professional manner;
  - 4.1.3 comply with any reasonable direction of the City; and
  - 4.1.4 notify the City of any potential or perceived conflict of interest and take such steps as reasonably required by the City to deal with the potential or perceived conflict.
- 4.2 The Participant warrants that each Team Member is an employee of the Participant, or where a Team Member is not an employee, the Participant has entered into a written agreement with that Team Member consistent with the terms of this Agreement.
- 4.3 The Participant and each of Team Member must when using the City's premises, facilities or equipment comply any reasonable directions of the City as notified by the City or as might reasonably be inferred from the use to which the premises, facilities or equipment are being put.
- 4.4 the City may at any time require the Participant to remove or replace any Team Member that fails to comply with any term of this Agreement.

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#### **5. Confidential Information**

- 5.1 Each party agrees that Confidential Information provided by or obtained from another party pursuant to this Agreement will be treated as confidential and must not be disclosed to any third party or used for any purpose other than for the purpose of participation in the Program, without the prior written consent of the other party.
- 5.2 The obligation to maintain confidentiality under this clause does not apply to information that:
- 5.2.1 is or becomes public knowledge other than by breach of this Agreement or by any unlawful means;
  - 5.2.2 is in the possession of a party without restriction in relation to disclosure before the date of receipt from the other party as established by the prior written records of that party;
  - 5.2.3 was created independently by a party having no knowledge of the disclosure or information provided under this Agreement; or
  - 5.2.4 is required by law to be disclosed.

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#### **6. Intellectual Property**

- 6.1 The ownership of Background Intellectual Property will not be altered, transferred or assigned merely by virtue of its use for the purposes of this Agreement or the Program.

- 6.2 Intellectual Property in any improvements to Background Intellectual Property created or developed by a party in the course of, or as a result of participating in, the Program will vest in the owner or owners of the relevant Background Intellectual Property.
- 6.3 Intellectual Property in any New Intellectual Property created by the Participant in the course of or as a result of participating in the Program shall be owned by the Participant.
- 6.4 The Participant grants a non-transferable, non-exclusive, royalty-free right to the City (and any person authorised by the City) to use any Background Intellectual Property or New Intellectual Property for the purposes of delivering the Program only.
- 6.5 If the City makes available to the Participant any material of the City or a third party, the City may notify the Participant of any conditions attached to the use of such material, and the Participant agrees to comply with and only use such material in accordance with those conditions.

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## **7. Use of Program materials**

- 7.1 The Participant acknowledges that it:
  - 7.1.1 uses any materials, advice or information made available to it or its Team Members under this Agreement at their own risk and must use their own judgement as to the applicability and fitness for purpose of those materials, advice or information; and
  - 7.1.2 exercise any right to use, exploit or commercialise any materials or Intellectual Property at its own risk and must make its own inquiries in that regard.
- 7.2 The Participant warrants that any material provided by them for the purpose of the Program will not infringe any third party's Intellectual Property or other rights when used by the City or its personnel in accordance with the terms of this Agreement.

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## **8. Insurance and liability**

- 8.1 The Participant must on and from the Commencement Date effect and maintain appropriate insurance coverage for operational and business risks related to the activities and requirements contemplated by this Agreement.
- 8.2 the City does not guarantee the Program will be uninterrupted, error free or fit for the purposes of the Participant and accepts no liability for any loss, cost, damage or expense to the Participant or any third party arising from or as a result of:
  - 8.2.1 the Participant's participation in the Program;
  - 8.2.2 any materials or information provided or created by the Participant that may be incorrect, incomplete, misleading or infringe any Intellectual Property or other rights of any third party;
  - 8.2.3 the Participant using or providing to any third party any materials, information or advice provided by the City or on behalf of the City during the course of the Program; or

- 8.2.4 the Participant's failure to comply with any terms of this Agreement or any requirements of the Program.
- 8.3 the City will not be liable to the Participant or any third party for any special, indirect or consequential damages, loss of anticipated profits, loss of data or loss of revenue, arising from or in relation to this Agreement.
- 8.4 The Participant releases and indemnifies the City and its employees, officers, agents and subcontractors against all losses, damages, costs and expenses (including legal costs) that the City may incur as a result of any claim, demand, action or proceeding by any third party arising as a result of:
- 8.4.1 a negligent act of omission of the Participant or its employees, officers, agents and subcontractors;
  - 8.4.2 the Participant's use or provision to any third party of or any information, materials or advice provided by or on behalf of the City during the Program; and
  - 8.4.3 the City's use of the Participant's Background Intellectual Property or New Intellectual Property in accordance with the terms of this Agreement,

provided that this indemnity and release will be reduced to the extent the relevant loss, damage, cost or expense is directly attributable to a negligent act or omission of the City or its employees, officers, agents and subcontractors.

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## **9. Cancellation and termination**

- 9.1 The Participant may cancel their participation in the Program by providing not less than 30 days' written notice to the City.
- 9.2 the City may in its absolute discretion cancel, vary or reschedule the Program or terminate this Agreement:
- 9.2.1 prior to commencement, if insufficient participants have been received by the City;
  - 9.2.2 if the Participant is or is resolved to be wound up, ceases or is unable to pay any debt, or a receiver, receiver and manager, administrator, liquidator or similar is appointed to the Participant or any assets;
  - 9.2.3 at any time in the event an issue of health, safety or security occurs, or due to any other events outside the City's control (in its sole discretion); or
  - 9.2.4 at any time if the Participant or any Team Member fails to comply with the terms of this Agreement.
- 9.3 the City may cancel, vary or reschedule the Program or terminate this Agreement (in whole or in part) at any time by providing 7 days' written notice to the Participant.

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## **10. General**

- 10.1 Each party shall always during this Agreement co-operate with each other and act in good faith to resolve any dispute or disagreement concerning this Agreement or the parties' respective obligations under it.

- 10.2 All notices required to be given under this Agreement shall be in writing sent to the party's email address as set out in the Parties section of this Agreement. Notices sent by email, are deemed to be served at the time of receipt as specified in section 13A of the *Electronic Transactions (Victoria) Act 2000*.
- 10.3 The Agreement does not set up or create any employer-employee relationship or a partnership of any kind.
- 10.4 This Agreement may only be varied by the further written agreement of the parties.
- 10.5 Any provisions of this Agreement which are held to be illegal or otherwise in conflict with any laws, statutes or regulations shall be deemed to be severed from the remainder of the Agreement and the validity of the remaining provisions shall not be affected.
- 10.6 A party to this Agreement shall not assign any right under this Agreement without the prior written consent of the other party.
- 10.7 This Agreement may be executed in counterparts, which may be exchanged and relied on by the recipient in the form of a facsimile or digital scan.
- 10.8 This Agreement shall be governed by the laws of Victoria.

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## Signing

### Executed as an agreement

Signed for and on behalf of **Greater Bendigo** )  
**City Council ABN 74 149 638 164** by its )  
authorised officer: )  
)

.....  
Signature of authorised officer

.....  
Name of authorised officer (please print)

Signed for and on behalf of the Participant by its )  
authorised officer: )  
)

.....  
Signature of authorised person

.....  
Name of authorised person (please print)

**Appendix A – The Program** (under development)

|                                 |  |
|---------------------------------|--|
| <b>Program Description</b>      |  |
| <b>Program Location</b>         | The Program will be delivered online and in Bendigo as advised and according to COVID-19 restrictions at the time.   |
| <b>Program Period</b>           | 25 October 2021 to 1 April 2022.   |
| <b>City Contribution</b>        | <p>The City will make available to each Participant for the Program Period:</p> <ul style="list-style-type: none"> <li>• access to the SCVAP Program delivery partners noted in the Program Description</li> <li>• access to the SCVAP Program facilitators for coaching, connections and capability</li> </ul> <p>If Participants wish to work with facilitators outside of the Program, this additional work falls outside the scope of this Agreement and the City will not be liable for any fees or costs payable to the facilitators or otherwise any loss or liability that the Participants may otherwise incur for services or work that falls outside the scope of this Agreement.</p> |
| <b>Participant Contribution</b> | At least two Team Members of the Participant must be available to actively participate in the Program, which will consist one-on-one coaching, participation at a delivery partners event/s, participation at an La Trobe Innovation & entrepreneurship event/s during the period of the Program.  |