

# Breakthrough Victoria

## Terms Applying to Applications for Investment Proposal

### TERMS

#### 1 APPLICATION OF TERMS

- 1.1 Capitalised terms used in this document have the meaning set out in clause 8.1.
- 1.2 Participation in the Initial Investment Proposal Process is subject to compliance with these Terms.
- 1.3 The Proponent is deemed, by submitting an Initial Investment Proposal, to accept these Terms.

#### 2 NO CONTRACT

- 2.1 Nothing on the Breakthrough Victoria website, in these Terms nor any act or omission of Breakthrough Victoria inviting, considering, reviewing, evaluating or accepting an Initial Investment Proposals via this website constitutes or implies that Breakthrough Victoria is making an offer to the Proponent capable of acceptance.
- 2.2 No invitation from Breakthrough Victoria to a Proponent to:
  - (a) enter into a non-disclosure agreement (**NDA**);
  - (b) provide further information in connection with an Initial Investment Proposal; or
  - (c) take part in any discussions with Breakthrough Victoria in connection with an Initial Investment Proposal,

gives rise to a contract (express or implied) between the relevant Proponent and Breakthrough Victoria.

- 2.3 No binding agreement, process contract or other understanding (including any form of contractual, promissory, restitutionary or other rights) (**Enforceable Agreement**) will exist between Breakthrough Victoria and any Proponent unless and until Breakthrough Victoria signs a formal written contract with a Proponent.
- 2.4 Breakthrough Victoria is under no obligation to:
  - (a) enter into an Enforceable Agreement with any Proponent or any other person; or
  - (b) provide or not provide support or investment of any kind to a Proponent or an entity or project with which a Proponent is associated.
- 2.5 Breakthrough Victoria may, as a condition of further participation in the Initial Investment Proposal Process, require a Proponent to enter into a NDA or other written contract on such terms as Breakthrough Victoria deems appropriate in its sole and absolute discretion. Failure by the Proponent to do so may result in Breakthrough Victoria informing the Proponent that its Initial Investment Proposal will not be considered further or Breakthrough Victoria terminating the Initial Investment Proposal Process in respect of the relevant Initial Investment Proposal.
- 2.6 Nothing on the Breakthrough Victoria website, in these Terms nor act or omission of Breakthrough Victoria inviting, considering, reviewing evaluating or accepting an Initial Investment Proposal via this website creates any joint venture, partnership, fiduciary, employment, agency or further relationship between Breakthrough Victoria and a Proponent.

#### 3 NO COMMITMENT OR LIABILITY

- 3.1 The Proponent agrees that all costs and Liabilities incurred by the Proponent arising from or in connection with any Initial Investment Proposal, its subject matter and/or the Initial Investment Proposal Process will be borne by the Proponent. This includes, without limitation, any such costs and Liabilities that arise as a result of cancellations, supplements, variations, amendments, clarifications, negotiations, waivers, addenda, suspensions, termination or exclusion made or issued by Breakthrough Victoria in connection with the Initial Investment Proposal Process, except to the extent otherwise agreed in writing by Breakthrough Victoria.
- 3.2 None of Breakthrough Victoria or any person acting on behalf of, or associated with Breakthrough Victoria, will have any Liability arising out of or in respect of or in connection with any Initial Investment Proposal, its subject matter or the Initial Investment Proposal Process, except to the extent otherwise agreed in writing by Breakthrough Victoria, including under any Enforceable

Agreement which may be held to exist between Breakthrough Victoria and a Proponent contrary to clause 2.3.

#### **4 DISCRETION OF BREAKTHROUGH VICTORIA**

4.1 Without limiting any other right under these Terms or at law, Breakthrough Victoria will have the right to:

- (a) enter into or not enter into any written contract with a Proponent in relation to any Initial Investment Proposal;
- (b) progress the whole or any part of any Initial Investment Proposal;
- (c) reject or refuse to consider the whole or part of any Initial Investment Proposal;
- (d) proceed or not proceed with any Initial Investment Proposal or the Initial Investment Proposal Process;
- (e) suspend or terminate at any time any further participation by Breakthrough Victoria in its consideration or evaluation of any Initial Investment Proposal;
- (f) require additional information from any Proponent in connection with any Initial Investment Proposal;
- (g) adopt different procedures for, or methods of, negotiation, discussion or engagement of or with any Proponent, and may alter these procedures and methods at any time;
- (h) permit any Proponent to modify (substantially or otherwise) the subject matter of any Initial Investment Proposal;
- (i) not attribute any reasons for any actions or decisions taken including in respect of the exercise of any or all of the above mentioned rights;
- (j) consider Initial Investment Proposals submitted other than via this website; and
- (k) terminate the Initial Investment Proposal Process in relation to any Initial Investment Proposal at any time, with or without notice to any Proponent.

4.2 The Proponent acknowledges and agreed that Breakthrough Victoria is not bound to consider the whole or any part of any Initial Investment Proposal.

4.3 The Proponent:

- (a) must not enquire into the basis of Breakthrough Victoria's actions or decisions under these Terms or in relation to the Initial Investment Proposal Process; and
- (b) represents and warrants that it has no Claim, and will not bring any Claim against Breakthrough Victoria, arising from or in connection with the exercise or the failure to exercise any of Breakthrough Victoria's rights or discretions under these Terms, in connection with the Initial Investment Proposal Process or in connection with an Initial Investment Proposal.

#### **5 No CONFIDENTIALITY**

5.1 The Proponent should not include in an Initial Investment Proposal any information which it considers (or which it would like to be treated as) confidential, commercial in confidence or is otherwise protected in any way.

5.2 The Proponent acknowledges and agrees that Breakthrough Victoria will not, and will not be under any obligation to, keep or take any particular steps to keep an Initial Investment Proposal confidential or to otherwise treat an Initial Investment Proposal or any information contained in an Initial Investment Proposal as confidential, commercial in confidence or otherwise protected in any way.

5.3 Without prejudice to the generality of the above, the Proponent agrees that Breakthrough Victoria may without notice to the Proponent:

- (a) disclose an Initial Investment Proposal or any or all of the information contained in an Initial Investment Proposal to any third party;
- (b) copy, modify or use an Initial Investment Proposal or any information contained in an Initial Investment Proposal for any purpose without any further consent of the Proponent; and

- (c) distribute, disclose, or disseminate an Initial Investment Proposal in any way to any person including Breakthrough Victoria's officers, servants, employees, agents, contractors, advisors or to any Agency.

## **6 PROPONENT WARRANTIES**

By submitting an Initial Investment Proposal and in consideration for Breakthrough Victoria agreeing to accept the Initial Investment Proposal from a Proponent, the Proponent warrants that:

- (a) in preparing and lodging its Initial Investment Proposal it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of Breakthrough Victoria, its officers, employees, agents or advisers other than any statement, warranty or representation expressly stated on this website;
- (b) it did not use the improper assistance of Breakthrough Victoria employees or information unlawfully obtained from Breakthrough Victoria in compiling its Initial Investment Proposal; and
- (c) it accepts and will comply with these Terms.

## **7 APPLICABLE LAW AND JURISDICTION**

- 7.1 These Terms and the Initial Investment Proposal Process is governed by the laws applying in the State of Victoria.
- 7.2 Each Proponent must comply with all relevant laws in preparing and lodging its Initial Investment Proposal and in taking part in the Initial Investment Proposal Process.

## **8 DEFINITIONS AND INTERPRETATION**

- 8.1 In these Terms unless the context otherwise requires:

**Agency** means any of:

- (a) the Crown in right of the State of Victoria (**State**) and or the Crown in right of the Commonwealth of Australia (**Commonwealth**);
- (b) any Minister of the State or the Commonwealth;
- (c) any Department, agency or authority of the State or the Commonwealth;
- (d) any body corporate owned directly or indirectly by the State or the Commonwealth;
- (e) any subsidiary or trust of a body corporate owned directly or indirectly by the State or the Commonwealth; or
- (f) any officers, servants, employees, agents, contractors and adviser of any of the above.

**Proponent** means a person who submits an Initial Investment Proposal to Breakthrough Victoria.

**Breakthrough Victoria** means Breakthrough Victoria Pty Ltd ABN 81 647 784 772.

**Claim** means any claim, action, demand, suit or proceeding (including by way of contribution or indemnity) made under these Terms, at law or for specific performance, restitution, payment of amounts (including damages), an extension of time or any other form of relief.

**Enforceable Agreement** has the meaning given in clause 2.3.

**Initial Investment Proposal** means any proposal submitted by the Proponent to Breakthrough Victoria to request Breakthrough Victoria to provide support, funding or investment of any kind to a Proponent or an entity or project with which a Proponent is associated together with any further information submitted by the Proponent to Breakthrough Victoria in relation to that request to provide support, funding or an investment of any kind to a Proponent.

**Initial Investment Proposal Process** means the preparation of an Initial Investment Proposal by the Proponent, any invitation to submit an Initial Investment Proposal, the submission of that Initial Investment Proposal to Breakthrough Victoria, the consideration, review, evaluation and acceptance of an Initial Investment Proposal by Breakthrough Victoria and any related discussions, correspondence, engagement or negotiation between Breakthrough Victoria and the relevant Proponent, from the time the Initial Investment Proposal is submitted until the earlier of Breakthrough Victoria informing the relevant Proponent that its Initial Investment Proposal will not

be considered further, Breakthrough Victoria terminating that process in respect of the relevant Initial Investment Proposal or rejecting that Initial Investment Proposal.

**Liability** means any debt, obligation, claim, action, cost, (including legal costs, deductibles or increased premiums) expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), whether it is:

- (a) actual, prospective or contingent; or
- (b) currently ascertainable or not,

and whether under or in any way in connection with these Terms or arising at law.

**NDA** has the meaning given in clause 2.2(a).

8.2 In these Terms, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a party is to a party to Breakthrough Victoria or the Proponent, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (d) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (e) a reference to a clause is to the relevant numbered clause in these Terms;
- (f) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (g) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.

8.3 Headings are for ease of reference only and do not affect interpretation.