

MVM FRAMEWORK | TERMS AND CONDITIONS

PARTIES: **Business Council of Co-operatives and Mutuals Ltd (ACN 148 863 932)** of Suite 2, Level 23, 45 Clarence Street, Sydney NSW 2000 (**BCCM**)

AND: **the Authorised User** means the Eligible Co-operative, Mutual or Member-owned enterprise stated in the Application (see definition of Eligible CME for further information).

1. LICENCE TO USE THE MVM FRAMEWORK

1.1 In consideration for the Fees but subject to the Authorised User complying with these Terms, BCCM grants to the Authorised User a non-exclusive, world-wide, non-transferrable right to use the MVM Framework for the exclusive purpose of measuring and reporting on the Authorised User's total value creation during the Licence Period (**the Licence**).

1.2 The "**Licence Period**" commences on the date these Terms are accepted by the Authorised User and continues for a period of up to three (3) years. The Licence Period may be renewed for further three (3) year periods pursuant to clause 2, and may be terminated early pursuant to clause 6.

1.3 The Authorised User agrees:

- (a) that BCCM is the exclusive owner and/or licensee of the right, title, interest (including Intellectual Property rights) and goodwill in the MVM Framework;
- (b) to only use the MVM Framework for the Authorised User's own measurement and corporate reporting purposes, and not for any other commercial or non-commercial purpose;
- (c) to use the MVM Framework as is intended to be used, with a limited right to make Modifications pursuant to clause 1.4; and
- (d) to follow the reasonable directions of the BCCM as to how to use the MVM Framework.

1.4 The MVM Framework is a set of quantitative and qualitative measures across the six core Dimensions. In order to implement and report on these Dimensions during the Licence Periods only, the parties agree that:

- (a) the Authorised User may embed the Dimensions within a strategic plan, annual report or other corporate reporting documents;
- (b) the Authorised User may develop their own performance indicators against the Dimensions;

- (c) the Authorised User may change the names but not the meaning of the Dimensions to suit their corporate purpose of style;
- (d) the Authorised User may publish and communicate to the public and its members that it is using the MVM Framework and share concepts of the MVM Framework to build the vernacular in the CME community (including through its internal reporting and annual report to members);
- (e) (when using the Dimensions in published materials) the Authorised User must use the copyright symbol and attribute ownership of the Intellectual Property rights in the MVM Framework to the BCCM as follows:

all intellectual property rights in the MVM Framework and related material are owned BCCM and Monash Business School and are protected by copyright.
- (f) the Authorised User must not modify, adapt or create a derivative work of the MVM Framework as a whole; and
- (g) the Authorised User must not use any of the MVM Trade Marks unless they are certified under the Rules to do so.

1.5 To maintain the confidentiality of the MVM Framework:

- (a) the Authorised User agrees that the detail of the MVM Framework cannot be used by, communicated or disclosed to any third party (including a subsidiary or related entity) unless those other entities are listed as an “Authorised User” under this Licence or they have applied for, and been granted, a Licence separately from the BCCM;
- (b) the Authorised User must only work with MVM Licenced Consultants where external help is needed to implement and report on the MVM Framework;
- (c) all information provided by the BCCM pursuant to these Terms or the MVM Accreditation is ‘confidential’ and must not be disclosed except with the BCCM’s consent; and
- (d) any act, omission, negligence or default of the party with whom the Authorised User discloses the MVM Framework (in breach of these Terms or with the consent of the BCCM) will be deemed to be the act, omission, negligence or default of the Authorised User under these Terms.

1.6 Nothing in this Agreement assigns any legal or beneficial title in, or Intellectual Property rights in, the MVM Framework by BCCM to the Authorised User.

1.7 The BCCM may amend the MVM Framework (in its absolute discretion at any time) and the Authorised User must adopt those amendments provided that the BCCM has first given the Authorised User at least one (1) calendar month’s prior written notice.

2. INITIAL TERM AND OPTIONS TO RENEW

2.1 The Authorised User must apply for MVM Accreditation during the first Licence Period then the Licence. If the Authorised User is successful in achieving MVM Accreditation, this Licence will be automatically renewed for a further three (3) years from the date of MVM Accreditation (so the

new Licence Period aligns with the Certification Period under the Rules). No separate Fee is payable for renewal of this Licence. This Licence will continue to be renewed automatically for three (3) year periods for so long as the Authorised User maintains MVM Accreditation.

2.2 If the Authorised User has not obtained MVM Accreditation before the expiry of the first Licence Period, or loses MVM Accreditation at any point, then the Authorised User will not be permitted to renew this Licence.

2.3 All renewals will be on the same terms and conditions as set out in this document, save for any variations allowed pursuant to clause 7.6.

3. FEE

3.1 The Authorised User agrees to pay the Fee to the BCCM in consideration for:

- (a) the grant of the Licence; and
- (b) the BCCM providing updates and amendments to the MVM Framework pursuant to clause 1.7.

3.2 The Fee is payable at the time of the Application.

3.3 Unless GST is expressly included, the consideration to be paid or provided under any clause of these Terms for any supply made or in connection with these Terms excludes GST.

4. AUDIT & REPUTATION

4.1 If the Licence has been terminated but (1) the BCCM receives a complaint from a member of the public or a member of the Authorised User or (2) if there are reasonable grounds to suspect that the Authorised User has breached these Terms, the Rules or the Style Guide (if they are certified to use the Trade Marks) then the BCCM may conduct an audit of an Authorised User.

4.2 In the event of an audit, the Authorised User must:

- (a) provide information which the BCCM reasonably requires to ascertain if there has been compliance with (or a breach of) these Terms, the Rules or the Style Guide;
- (b) provide the BCCM with access to the Authorised User's premises for the purpose of the audit; and
- (c) allow the BCCM to take copies of or extracts from any such accounts, records, information, correspondence or other material.

4.3 The costs of the audit are to be borne by each party. However, BCCM may recoup all costs associated with the audit if the Authorised User is found to have breached these Terms, the Rules or the Style Guide after the audit is conducted.

4.4 The Authorised User must use its reasonable endeavours not to do any act which is likely to damage the reputation of, or adversely affect the interests of, the BCCM or the MVM Framework.

4.5 The Authorised User must indemnify and keep the BCCM indemnified against any claim, demand, damage, loss or liability arising from the use (or misuse) of the MVM Framework or from the Authorised User's breach of these Terms.

4.6 This clause 4 continues to apply after termination of these Terms.

5. DATA SHARING

5.1 BCCM has the right to request (and the Authorised User agrees to give upon request) the Data.

5.2 BCCM has the right to use and maintain the Data gathered under the MVM Accreditation and these Terms to improve the MVM Framework, for education around possible interpretations and applications of the MVM Framework and for research purposes.

5.3 BCCM has the right to share de-identified Data with Monash University for research purposes only.

5.4 BCCM has the right to publish reports to the public and its members using de-identified Data only.

5.5 If BCCM wants to use or share any Data and include the name of, or other identifying details of, the Authorised User, BCCM must only do so with the Authorised Users' prior consent (which may be given or withheld by the Authorised User in their absolute discretion).

5.6 All Data (before it is de-identified) will be treated as confidential information and the BCCM will take all reasonable steps to ensure that the Data remains confidential and securely stored.

6. TERMINATION

6.1 BCCM may terminate these Terms (and therefore the Licence to use the MVM Framework) if the Authorised User:

- (a) breaches these Terms,
- (b) fails to apply for MVM Accreditation within the first Licence Period;
- (c) (if the Authorised User holds MVM Accreditation under the Rules):
 - (i) fails to apply for re-certification by the end of the Certification Period;
 - (ii) breaches the Rules or the Style Guide; or
- (d) becomes Insolvent; or
- (e) was not an "Eligible CME" at the time of the Application, or changes its structure so the Authorised User no longer falls into the category of "Eligible CME"; or
- (f) engages in conduct that prejudices the reputation of the CME sector, the BCCM or the MVM Framework (such prejudice to be determined by the BCCM in its reasonable opinion).

6.2 If the BCCM suspends or revokes the Authorised User's certification to use the Trade Marks that will not automatically terminate the Authorised User's rights to use the MVM Framework under these Terms. Instead, BCCM may allow the Authorised User to continue to use the MVM Framework or may give notice of termination of these Terms.

6.3 Upon termination of these Terms (for whatever reason) the Authorised User must:

- (a) immediately cease using the MVM Framework and any other related Intellectual Property rights; and
- (b) deliver to BCCM or destroy any copy of, or other documents disclosing confidential information or the MVM Framework in its possession or under its control except to the extent that they are required by law to be retained by the Authorised User.

7. MISCELLANEOUS

7.1 Relationship of the Parties

- (a) Nothing in these Terms creates a relationship of agency between the parties or authorises one of them to enter into any contracts or other commitments which bind any other party without their express written approval.
- (b) Nothing in these Terms is intended or to be implied to create a relationship of employment, partnership or joint venture between the parties or any of their respective agents, employees, sub-contractors and assigns.

7.2 No Waiver

- (a) Any delay or failure to enforce any term of these Terms will not be deemed to be a waiver.
- (b) There is no implied waiver by either party in respect of any term of these Terms and any waiver granted by either party shall be without prejudice to any other rights.
- (c) Any waiver must be in writing and does not cover subsequent breaches of the same or a different kind.
- (d) A waiver by a party of its rights under these Terms is only effective in relation to the particular obligation or breach in respect of which it is given.

7.3 No Assignment

The Authorised User must not assign any of its rights under these Terms to any person without the written consent of the BCCM. Any such consent may be given or withheld in the absolute discretion of the relevant party.

7.4 Further Assurance

Each party must promptly do all things (including executing and delivering documents) that may reasonably be required to give full effect to these Terms or to bring these Terms to an end following lawful termination.

7.5 **Governing Law**

These Terms shall be governed by and construed in accordance with the laws of New South Wales and the Commonwealth of Australia and the parties submit themselves to the exclusive jurisdiction of the Courts of those jurisdictions and those that have jurisdiction to hear any appeals from them.

7.6 **Variation**

- (a) BCCM reserves the right to amend these Terms from time to time and at any time. BCCM will provide thirty (30) days' notice of the variation to the Authorised User.
- (b) The Authorised User may terminate these Terms within the thirty (30) day notice period if they do not agree with any variation of these Terms and clause 6.3 will apply and the Authorised User will not be entitled to any refund of any Fee paid for the remainder of the Licence Period.
- (c) If the Authorised User does not terminate these Terms in accordance with clause 7.6(b), the Authorised User is deemed to have agreed to, and be bound by, the variation.

7.7 **Severability**

If any provision of these Terms is void, unenforceable or illegal in the jurisdiction governing these Terms, then:

- (a) it is to be read down so as to be valid and enforceable; or
- (b) if it cannot be read down, the provision (or where possible the offending words), is severed from these Terms and the rest of these Terms remain in force.

7.8 **Non-Merger**

Any provision of these Terms which imposes any obligation or confers a right on a party after termination, or which remains to be performed or is capable of having effect following termination, shall not merge on termination but shall remain in full force and effect.

8. **DEFINITIONS & INTERPRETATION**

8.1 **Specific Definitions**

In these Terms unless the context requires otherwise:

- (a) **Application** means the online application by the relevant Eligible CME to licence the MVM Framework pursuant to these Terms.
- (b) **Certification Period** means the period during which the Authorised User is certified and accredited to use the Trade Marks under the Rules.
- (c) **Co-operatives National Law** or **CNL** means the Law set out in the appendix to the *Co-operatives (Adoption of National Law) Act 2012 (NSW)*, as in force from time to time,

and applying in an Australian State or Territory under the relevant adoption or application legislation and includes the *Co-operatives Act 2009* (WA).

- (d) **Data** means any information relating to:
- (i) the Dimensions or metrics chosen by the Authorised User to apply the MVM Framework; and
 - (ii) the application of the MVM Framework under these Terms or the MVM Accreditation.
- (e) **Eligible CME** means an entity that:
- (i) meets the definition of a “Mutual Entity” as defined by the *Corporations Act 2001* (Cth), and membership, for all or a majority of members, is based on participation in the entity’s business; or
 - (ii) is a co-operative registered under the Co-operatives National Law or equivalent legislation; or
 - (iii) is an entity that meets the definition of a co-operative company under the *Income Tax Assessment Act 1936* (Cth); or
 - (iv) is a not-for-profit health insurance fund or industry superannuation fund; or
 - (v) is an organisation registered outside Australia under legislation for co-operatives or mutuals; or
 - (vi) any other organisation as approved by the BCCM (in its absolute discretion).
- (f) **Fee** means the fee determined by the BCCM and paid by the Authorised User to the BCCM at the time of the Application .
- (g) An organisation or an individual is **Insolvent** when any of the following events occur:
- (i) when it is unable (or indicates that it is unable) to satisfy its debts as and when they fall due;
 - (ii) when a corporation is in liquidation or under administration, or when any steps have been taken to appoint a liquidator, administrator or controller, or, in the case of an individual, when a sequestration order is (or could be) made by the court, or a trustee or similar officer is appointed in respect of that individual and his or her assets;
 - (iii) when the assets of the corporation or individual are controlled by its creditors, whether through an assignment, moratorium, composition, personal insolvency agreement or other arrangement the corporation or individual has entered into, or resolved to enter into, with its creditors;
 - (iv) when a corporation is presumed to be insolvent in accordance with section 459C(2) or section 585 of the *Corporations Act 2001* (Cth), or when an

individual satisfies the definition of an 'insolvent under administration' in section 9 of the *Corporations Act 2001* (Cth); or

- (v) when an event happens in connection with the corporation or individual which is analogous to, or that has a substantially similar effect to, any of the events specified in subclauses above,

a reference to a 'corporation' includes any other 'Eligible CME' and specifically a co-operative by virtue of s.451 of the Co-operatives National Law.

- (h) **Intellectual Property** includes all current and future copyright and intellectual property rights (whether registered or unregistered) of whatever nature, including without limitation all rights in relation to inventions, patents, plant varieties, trade marks (including service marks), designs, discoveries, processes, know how, confidential information and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic or other fields.
- (i) **Licensed Consultants** means third party consultants and advisers, who have been authorised by BCCM to assist Authorised Users use and implement the MVM Framework. BCCM can supply a list of Licensed Consultants upon request.
- (j) **MVM Accreditation** means the process undertaken by an Authorised User to obtain certification and accreditation to use the Trade Marks under the Rules.
- (k) **MVM Framework** means the Mutual Value Measurement Framework which sets out the measurements and standards that can be used by CMEs to demonstrate sufficient mutual value. It includes six key "**Dimensions**" (being Commerciality, Shaping Markets, Member Relationships, Community Relationships, Ecosystem and Reciprocity and Mutual Mindset) as well as implementation guides and templates.
- (l) **Rules** means MVM certification trade mark rules in respect of the Trade Marks.
- (m) **Style Guide** means the guidelines issued by BCCM in respect of the use of the Trade Marks as may be amended from time to time.
- (n) **Terms** mean the agreement between the parties constituted by this document and includes all schedules, appendices, exhibits and annexures to these Terms.
- (o) **Trade Marks** means trade marks 2234116, 2234117 and 2234118.

8.2 Interpretation

In the interpretation of these Terms, unless the contrary intention appears:

- (a) a reference to:
 - (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) an individual or person includes a corporation;

- (iv) a party includes the party's executors, administrators, successors and assigns;
- (v) a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (vi) a recital, clause, paragraph, schedule or annexure is a reference to a recital, clause, paragraph, schedule or annexure of or to these Terms;
- (b) any schedule, attachment or other document referred to in or delivered with these Terms form part of these Terms;
- (c) no provision of these Terms will be construed adversely to a party solely on the ground that the party was responsible for the preparation of these Terms or that provision;
- (d) where words or phrases are given a defined meaning, any other part of speech or other grammatical form of those words or phrases shall have a corresponding meaning;
- (e) a reference to "currency", "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency;
- (f) "including" and similar expressions are not and must not be treated as words of limitation; and
- (g) headings and tables of contents are inserted for convenience only and have no effect on interpretation.