



FEMALE FOUNDERS CO-INVESTMENT FUND FINANCIAL INCENTIVE AGREEMENT

Made Between:

State of Queensland through the Department of Tourism, Innovation and Sport
(ABN 83 481 966 722) ('the Department')

and:

Insert Recipient (ABN) ('the Recipient')

BACKGROUND:

- A. The Department administers the Female Founders Co-Investment Fund ("the Fund"). The Fund aims to increase the number and value of investments flowing to Queensland female founded businesses, by providing grants to innovative female owned businesses who secure pre-seed or seed level investment in the form of an Eligible Investment Method from an Eligible Investment Entity.
- B. The Recipient wishes to carry out the Project and has sought assistance from the Department.
- C. The Department has agreed to provide the Funding to the Recipient to carry out the Project on the terms of this Agreement.

AGREED TERMS:

1. Recipient Obligations

- 1.1 The Recipient agrees to perform the Project in accordance with this Agreement.
- 1.2 In performing the Project, the Recipient must:
 - (a) exercise reasonable diligence, care and skill;
 - (b) ensure the Investor Contribution is provided to the Recipient;
 - (c) provide the required information and reports specified in this Agreement;
 - (d) perform the relevant Project milestone activities, outcomes and deliverables specified in Item 9 of Schedule 1;
 - (e) not novate, assign, transfer or subcontract its obligations without the prior written consent of the Department;
 - (f) notify the Department of any breach of these terms, any changes to the Investor Contribution, or any matter that may affect the performance of the Project;
 - (g) comply with all relevant laws;
 - (h) comply with the Funding Guidelines; and
 - (i) communicate with the Department's contact and provide information as reasonably required by the Department.

2. Acknowledgements

- 2.1 The Recipient agrees to acknowledge the Department's support in Material published in connection with this Agreement.
- 2.2 The Department may publicly disclose the Recipient, Funding and Project details and outcomes (subject to notified commercial in confidence restrictions).

- 2.3 The Parties agree to make their officers available for media opportunities.

3. Notices

- 3.1 The Parties agree to notify each other of anything reasonably likely to affect the performance of the Project or otherwise required under this Agreement.
- 3.2 A notice under this Agreement must be in writing, and sent to the Party at their address specified in Item 11 of Schedule 1.

4. Relationship between the Parties

- 4.1 A Party is not by virtue of this Agreement the employee, agent or partner of the other Party and is not authorised to bind or represent the other Party.

5. Payment

- 5.1 The Department agrees to pay the Funding to the Recipient in accordance with Item 8 of Schedule 1 upon the Recipient:
 - (a) providing the Department with all necessary documents and evidence of the Investor Contribution;
 - (b) completing the relevant Project milestone activities, outcomes and deliverables;
 - (c) providing any relevant due report;
 - (d) providing the Department with a valid tax invoice, and
 - (e) complying with this Agreement;to the Department's reasonable satisfaction.
- 5.2 The Department may by notice withhold payment of any amount where it reasonably believes the Recipient has not complied with this Agreement or is unable or unwilling to undertake the Project.
- 5.3 A notice under clause 5.2 will contain the

reasons for any payment being withheld and the steps the Recipient can take to address those reasons.

- 5.4 The Department will pay the withheld amount once the Recipient has satisfactorily addressed the reasons contained in a notice under clause 5.2.
- 5.5 The Department may defer or reduce the amount of a payment where a Project report or Financial Acquittal Statement reveals that the Recipient holds unspent Funding. The Department will pay the deferred or remaining amount upon receiving evidence of expenditure of the unspent Funding.
- 5.6 The Recipient agrees that any request for changes to the Recipient organisation details, including Australian Business Number and bank account details, must be made in writing within 20 Business Days of the change taking effect and that it will assist the Department in undertaking any required verification of the new details.

6. Spending the Funding

- 6.1 The Recipient agrees to only spend the Funding for the purpose of undertaking the Project and in accordance with this Agreement.

7. Repayment

- 7.1 If any of the Funding has been spent other than in accordance with this Agreement or any amount of the Funding is unspent or additional to the requirements of the Project, the Recipient agrees to repay that amount to the Department.
- 7.2 The amount to be repaid under clause 7.1 may be deducted by the Department from subsequent payments of the Funding.

8. Reporting, Record keeping, access and audit

- 8.1 The Recipient agrees to:
 - (a) hold the Funding in an account in the Recipient's name and in the Recipient's sole control;
 - (b) maintain records of the expenditure of the Funding;
 - (c) provide each required Progress Report by the due date specified in Item 8 of Schedule 1;
 - (d) provide an update report, at the Department's request, up to 12 months after the Project End Date;
 - (e) provide any information reasonably requested by the Department; and
 - (f) allow the Department's employees, contractors and agents to access the premises and inspect records and Project documentation and/or audit the performance of the Agreement, upon

reasonable notice;
to the satisfaction of the Department.

9. Intellectual Property

- 9.1. Nothing in this Agreement affects ownership of Intellectual Property in Material created prior to, or independently of the Project.
- 9.2. The Recipient owns the Intellectual Property Rights in Project Material created in undertaking the Project.
- 9.3. The Recipient grants the Department a non-exclusive, royalty-free, perpetual licence (including right of sublicense) to use, adapt, reproduce and publish the reports for non-commercial purposes.

10. Privacy

If the Recipient collects or has access to Personal Information in performing the Project the Recipient must comply with Parts 1 and 3 of Chapter 2 of the Information Privacy Act 2009 (Qld) in relation to the discharge of its obligations under this Agreement (including its obligations regarding reports), as if the Recipient was the Department.

11. Confidentiality

The Parties agree not to disclose each other's Confidential Information without prior written consent, unless required or authorised by law or Parliament.

12. Insurance

The Recipient agrees to maintain adequate insurance, (including public liability insurance, and workers compensation insurance) for the duration of this Agreement and provide the Department with proof when requested.

13. Indemnities

- 13.1 Subject to clause 13.3, the Department's liability in connection with this Agreement is limited in aggregate to the Funding amount.
- 13.2 The Recipient is liable for and indemnifies the Department against any claim, loss or damage arising in connection with:
 - (a) the Project;
 - (b) the Recipient's and its employees, contractors and agents act or omission; or
 - (c) the Recipient's breach of the Agreement.
- 13.3 The Recipient's obligation to indemnify the Department will reduce proportionally to the extent any act or omission involving fault on the part of the Department contributed to the claim, loss or damage.
- 13.4 The Parties will not in any circumstances be liable for any loss of, revenue, profit, opportunity, goodwill, reputation or any indirect or consequential loss in connection with the Agreement.

14. Dispute resolution

- 14.1 The Parties agree not to initiate legal proceedings in relation to a dispute unless they have tried and failed to resolve the dispute by negotiation.
- 14.2 The Parties agree to continue to perform their respective obligations under this Agreement while a dispute exists.
- 14.3 The procedure for dispute resolution does not apply to action relating to termination or urgent interlocutory relief.

15. Termination for default

- 15.1 The Department may terminate this Agreement immediately by notice where it reasonably believes the Recipient:
- (a) has breached this Agreement, if the Department reasonably considers such breach is not capable of remedy;
 - (b) has submitted information in support of the Application or in the Application itself which is found to have been false or misleading in a material particular;
 - (c) has failed to maintain satisfactory progress towards completion of the Project;
 - (d) has become ineligible for Funding;
 - (e) has withdrawn from the Project;
 - (f) has not received, or has not confirmed receipt of, the Investor Contribution within 10 Business Days of Agreement Start Date;
 - (g) has breached the relevant Eligible Investment Method terms and conditions securing the Investor Contribution, or had the Investor Contribution withdrawn or returned to the Investor during the Project period;
 - (h) has become bankrupt or insolvent, entered into a scheme of arrangement with creditors, or come under any form of external administration.
- 15.2 The Department may immediately terminate the Agreement by notice, if a Party has failed to remedy a breach of the Agreement within 15 Business Days of service of a notice upon that Party detailing the breach.
- 15.3 Upon termination or expiration of the Agreement, the Recipient must (within 20 Business Days):

- (a) deliver all reports to the Department that are due under this Agreement at the date of termination or expiration; and
- (b) repay any unspent or legally uncommitted Funding, or Funding not spent in accordance with this Agreement, which will be a debt due to and recoverable by the Department.

16. Termination for convenience

- 16.1 The Department may terminate this Agreement by 15 Business Days' notice, for any reason, including due to a change in government policy.
- 16.2 The Recipient agrees on receipt of a notice of termination under clause 16.1, to stop the performance of its obligations as specified in the notice, and take all available steps to minimise loss resulting from that termination.
- 16.3 In the event of termination under clause 16.1, the Department will be liable only to:
- (a) pay any part of the Funding due and owing for activities satisfactorily performed, to the Recipient under this Agreement at the date of the notice; and
 - (b) reimburse any reasonable expenses the Recipient unavoidably incurs that relate directly to the termination and are not covered by 16.3(a), and would not have been incurred if the Agreement continued to expiry.
- 16.4 The Department's liability to pay any amount under clause 16.3 is subject to:
- (a) the Recipient's compliance with this Agreement; and
 - (b) the total amount of the Funding.

17. Survival

Clauses 2, 7, 8, 9, 10, 11, 12, 13, 15, 16 and 17 survive termination or expiry of this Agreement.

18. GST

- 18.1 Unless otherwise stated, all amounts payable are exclusive of GST.
- 18.2 A Party need not make a payment for a taxable supply until it receives a tax invoice (or adjustment note) for that supply.
- 18.3 The Parties agree to use all reasonable endeavours to assist each other in meeting their lawful obligations under the GST law.

19. General

- 19.1 Governing Law** – The Agreement is governed by the law of the State of Queensland and the Parties agree to submit to the non-exclusive jurisdiction of the courts of the State of Queensland.
- 19.2 Entire Agreement** – The Agreement constitutes the entire agreement between the

Parties and supersedes all communications and negotiations (oral or written) between the Parties.

19.3 Waiver – No right under the Agreement will be deemed to be waived except by notice in writing agreed by the waiving Party. A failure by a Party to enforce any provision of the Agreement will not constitute a waiver of that Party's rights.

19.4 Severability – The invalidity or unenforceability of any provision of the Agreement does not invalidate the remaining provisions. Any illegal or invalid provision will be severable and all other provisions will remain in effect.

19.5 Variation

(a) Subject to clause 19.5(b), this Agreement may only be varied in writing with the agreement of both Parties.

(b) If this Funding is administered using an online grants administration system, then this Agreement may also be varied in accordance with the following process:

- (i) the Recipient submits to the Department a variation request and declaration, in the form required by the Department, through the online grants administration system; and
- (ii) the Department approves that variation request, by written notice to the Recipient.

(c) For clarity, the Parties each agree that any variation requested and approved in accordance with clause 19.5(b) is legally binding and is made for valuable consideration.

19.6 Term – The Term of this Agreement is the period from the Agreement Start Date and concluding on the Agreement End Date, unless terminated earlier in accordance with this Agreement.

19.7 Counterparts - This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Agreement, and all together constitute one Agreement.

19.8 Electronic Signing

(a) Each party consents to this document and any variations of this document being signed by electronic signature by the methods set out in this clause.

(b) Subject to law, this clause applies regardless of the type of legal entity of the parties. If this document or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.

(c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this document and any variation of it:

- (i) insertion of the person's name on to the document; or
- (ii) use of a stylus or touch finger on a touch screen to sign the document,

provided that in each of the above cases - words to the effect of 'Electronic signature of me, [NAME], affixed by me on [DATE]' are also included on the document;

(iii) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the document; or

(iv) as otherwise agreed in writing (including via email) between the parties.

(d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this document and that electronic signing of this document by or on behalf of a party indicates that party's intention to be bound.

(e) A signed copy of this document transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this document for all purposes.

20. Definitions

20.1 In this Agreement, unless the contrary appears:

- **Agreement** means this deed document and any schedules or attachments to it;
- **Agreement End Date** means the date on which this Agreement will end as specified in

Item 4 of Schedule 1;

- **Agreement Start Date** means the date this Agreement is signed by the last Party to sign this Agreement;
- **Application** means the proposal documentation submitted by the Recipient to the Department for approval, for the provision of Project Funding, as attached at Schedule 2;
- **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Brisbane, Queensland.
- **Confidential Information** means information of a Party relating to this Agreement or the Project that by its nature is confidential, or the recipient knows or ought to know is confidential; and excludes information which is publicly known, other than by breach of this Agreement;
- **Converting Investment Method** means an Eligible Investment Method that is an instrument that converts to equity at a future event, such as a convertible note or Simple Agreement for Future Equity ("SAFE").
- **Eligible Expenditure** means the permitted expenditure of the Funding, as specified in the Funding Guidelines (if any).
- **Eligible Investment Entity** means the permitted party of the Funding, as specified in the Funding Guidelines and item 10 of Schedule 1.
- **Eligible Investment Entities** means multiple Eligible Investment Entity who are participating on the same and equal Eligible Investment Method terms and conditions, represented by a lead Eligible Investment Entity.
- **Eligible Investment Method** means the permitted investment transaction types, as specified in the Funding Guidelines and detailed in Schedule 2,
- **Financial Acquittal Statement** means a report regarding the Recipient's expenditure of the Funding in performing the Project.
- **Funding** means the money, or any part of it, payable by the Department to the Recipient as specified in Item 7 of Schedule 1;
- **Funding Ratio** means the proportion of Funding to Investor Contribution, as specified in the Funding Guidelines.
- **Guidelines** means the Female Founders Co-Investment Fund Guidelines published by the Department and attached as Schedule 3;
- **Ineligible Expenditure** means the unpermitted expenditure of the Funding, as specified in the Funding Guidelines (if any).
- **Intellectual Property Rights** means all copyright, patents, registered and unregistered

trademarks (including service marks), registered designs, and other rights resulting from intellectual activity (other than moral rights under the *Copyright Act 1968*).

- **Investor** means party as specified in Item 10 of Schedule 1.
- **Material** includes documents, equipment, software (including source code and object code versions), goods, information and data stored by any means including all copies and extracts of them.
- **Progress Report** means a report on Project progress during the relevant Project milestone including activities undertaken, outcomes achieved, deliverables provided and expenditure incurred as contained in a Financial Acquittal Statement, in a format specified by the Department using its online grants management system.
- **Investor Contribution** means the cash contribution that an Eligible Investment Entity or Eligible Investment Entities provide in accordance with the Eligible Investment Method terms and conditions as specified in Item 10 of Schedule 1
- **Party** means the Recipient or the Department, as the context requires, and **Parties** means both of them.
- **Personal Information** has the same meaning as in the *Information Privacy Act 2009 (Qld)*.
- **Project** means the project activities described in the Application and item 1 & 2 of Schedule 1.
- **Project End Date:** means the date that the Project activity will end as set out in Item 6 of Schedule 1.
- **Project Start Date:** means the date that the Project will start as set out in Item 5 of Schedule 1.
- **Special Conditions** means the special conditions specified at item 12 of Schedule 1, which prevail over the other terms of this Agreement to the extent of any inconsistency.

20.2 In this Agreement, except where the context otherwise requires:

- (a) a reference to a Party, includes the Party's executors, administrators, successors, and substitutes;
- (b) a reference to a Party, includes where relevant, its officers, employees, contractors and agents;
- (c) the meaning of general words is not limited by specific examples;
- (d) a reference to a government entity includes any successor or replacement government entity;
- (e) a reference to a document includes the

document as altered, amended or replaced from time to time;

- (f) a rule of construction does not apply to the disadvantage of a Party because that Party drafted the Agreement provision;
- (g) where an obligation must be performed on a day that is not a Business Day, the obligation must be performed on or by the next Business Day.

SCHEDULE 1 – PROJECT DETAILS

1	Project Title:	[insert title]			
2	Project Description:	[insert short Project description]			
3	Agreement Start Date:	The date this Agreement is signed by the last Party to do so.			
4	Agreement End Date:	[3 months after Project End Date]			
5	Project Start Date:	[insert closing date of investment transaction]			
6	Project End Date	[Twelve months after Project Start Date]			
7	Funding (GST exclusive):	[\$insert amount]			
8	Payments:	Payment Number	Deliverable	Due Date	Amount (GST exclusive)
		1	Execution of this Agreement and evidence that funds have been received from the independent Investor at a minimum 3:1 ratio	[Agreement Commencement Date]	[\$insert amount] 80% of agreed funding amount
		2	Submission of: (a) Interim Report addressing status of project milestone activities and outcomes achieved	6 months into the project	Nil
		3	Submission of: (b) Final Report addressing status of project milestone activities and outcomes achieved (c) Financial Acquittal Statement detailing total project funds received and eligible project expenditure incurred.	[12 months into the project]	[\$insert amount] 20% of agreed funding amount
9	Milestones:	Milestone Number	Milestone Activities, Outcomes and deliverables	Milestone due date	
		1	Activities <ul style="list-style-type: none"> Completion of investment round Outcomes and deliverables <ul style="list-style-type: none"> Evidence of full receipt of investment funds. Lodgement of all appropriate filings, (ASIC update, ATO ESIC share issuance, etc). 	[insert date]	
		2	Activities <ul style="list-style-type: none"> Adoption of investment best practices Outcomes and deliverables <ul style="list-style-type: none"> Regular investor updates (monthly or quarterly) Establishment of advisory board or board of directors with non-founder appointments 	[insert Project End Date]	

		3	<p>Activities</p> <ul style="list-style-type: none"> • Review of future capital needs <p>Outcomes and deliverables</p> <ul style="list-style-type: none"> • Financial acquittal. • Financial budget for next 12 months. • Capital raising plan (if appropriate). 	[Insert Project End Date]
10	<p>Investor Contribution (GST exempt):</p> <p>Investor (“the Investor”) Entity Details:</p>	<p>[\$Insert.]</p> <p>[Insert Investor investment entity. Insert Investor name. Insert Investor contact name (if applicable). Insert Investor phone. Insert Investor email.]</p>		
11	Contact Officers:	<p>For the Recipient: [insert Name & Position Street Address Postal Address Phone: Email]</p>	<p>For the Department: [insert name and position] Department of Tourism, Innovation and Sport Level 3, Terrica Place, 140 Creek Street, Brisbane QLD 4000 PO Box 15168, City East QLD 4002 Phone: [insert phone] email@dtis.qld.gov.au</p>	

12	Special Conditions	<p>1. Investor Contribution</p> <p>1.1 The parties acknowledge and agree that the payment of Funding is conditional upon the Department accepting evidence of full receipt of the Investor Contribution by the Recipient at or before Agreement Start Date equal to the Target Raise Amount as specified in Schedule 2 or otherwise agreed.</p> <p>1.2 In addition to the Department’s rights under clause 5.2, the Department has the right to withhold Funding if unsatisfied with evidence provided of Investment Contributions and may seek independent verification, at its own cost, from other sources (such as an ASIC extract).</p> <p>1.3 In addition to the Department’s rights under clause 7 and 15 if, at any time during the Term, the Investor Contribution is revoked, terminated, reduced, returned, or is subject to buy-back of interests resulting in a reduction in Investor Contribution, the Recipient must refund the difference to the Department to satisfy the minimum Funding Ratio within 10 Business Days of receipt of written notice to do so.</p> <p>1.4 In addition to the Recipient’s obligations under clause 1.2(f), the Recipient must notify the Department within 10 Business Days if at any time during the Term, the terms and conditions to the Eligible Investment Method have been amended or the conversion event of a Converting Investment Method has occurred.</p> <p>2. Recipient Contact</p> <p>2.1 The Department may contact the Recipient beyond the Agreement End Date to seek information on the progress of the Recipient’s activity or outcomes for program evaluation and design purposes.</p>
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SCHEDULE 2 – APPLICATION

SCHEDULE 3 – GUIDELINES

Executed as an agreement

Signed for and on behalf of the **State of Queensland** acting through the **Department of Tourism, Innovation and Sport ABN 83 481 966 722** by

(full name and position)

a person duly authorised to act in that behalf in the presence of:

Signature of Witness

Name of Witness in full

Signature

Date

*Option 1: if the Recipient is a company signing under section 127 ****Delete if inapplicable**** OR*

Executed by **insert Recipient and ABN/ACN** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of Director/Sole Director

Name of Director/Sole Director in full

Date

Signature of Director/Secretary

Name of Director/Secretary in full

Date

Executed by **insert Recipient and ABN/ACN** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of Director/Sole Director

Name of Director/Sole Director in full

Date

Signature of Director/Secretary

Name of Director/Secretary in full

Date

*Option 2: if the Recipient is another entity ****Delete if inapplicable**** OR*

Signed for and on behalf of **insert Recipient** by

(full name and position)

in the presence of:

Signature of Witness

Name of Witness in full

Signature

Date