Wisconsin Economic Development Corporation **Program Guidelines for Fiscal Year 2020**
Program Name: Qualified New Business Venture Certification/Early Stage Business Investment Program **Program Inception:** 2005 Wisconsin Act 255 **Lead Division:** Entrepreneurship and Innovation ☒**New** ☐**Revised** Click here to enter date ☒**Aid** ☐**Pass-thru Aid** ☐**Technical Assistance**

Program Goal:

The goal of the Qualified New Business Venture (QNBV) program is to incent equity investment in technology-based businesses in the state of Wisconsin.

This program primarily supports the following WEDC Strategic Pillar and Focus Area:

Business Development: Entrepreneurship and Innovation

Program Description:

The program provides tax credits to eligible Angel and Venture Fund investors who make cash equity Investments in qualified early-stage businesses. If all eligibility requirements are met, investors receive a Wisconsin income tax credit equal to 25 percent of the value of the Investment made in the certified company. The Investments incented by this program provide the capital necessary for emerging growth companies to develop new products and technologies, move products to market, and provide high quality jobs in Wisconsin.

Eligibility Requirements:

Definitions:

The following definitions supplement those in §§ 238.15, 71.07(5b) and (5d), 71.28(5b), 71.47(5b), and 76.638, Wis. Stats.

- "Accredited investor" means an individual who invests his or her own funds in a qualified new business venture; and satisfies the U.S. Securities and Exchange Commission Accredited Investor definition at the time of investment.
- "Angel investment network" means an entity comprised of accredited investors organized for the sole purpose of making investment(s) in qualified new business venture(s).
- "Angel investor" means an accredited investor or sophisticated investor who makes a bona fide angel investment.
- "Approved" means acceptable to WEDC.

- "Bona fide angel investment" means a purchase of an equity interest, or any other expenditure, as further defined under "Investment",[1] that is made by any of the following:

    - A partnership or limited liability company that is a non-operating entity, as determined by WEDC, a natural person, or fiduciary who reviews new businesses or proposed new businesses for potential investment of their money.
    - A network of partnerships or limited liability companies that are a non-operating entity, as determined by WEDC, natural persons, or fiduciaries that reviews new businesses or proposed new businesses for potential investment of the network's money.

- "Bona fide liquidity event" means any of the following events: (i) the reorganization, merger, dissolution, or consolidation of the company where substantially all of its assets are distributed or otherwise paid out to shareholders, partners, or beneficial owners; (ii) the sale of all or substantially all of the assets of the company in one transaction or in a series of related transactions to a person who is not affiliated with the company; (iii) the sale of more than 50% of the outstanding equity interests in the company where following such sale the former owners of the outstanding equity interests in the company no longer beneficially control, directly or indirectly, the ability to control management decisions of the company or (iv) the first time the company sells shares of its common or preferred stock to the public on the open market, excluding crowd-funding exchanges.

- "Business" means an entity and all its affiliates.

- "Corporate Headquarters" means the location where the majority of the company's financial, personnel, legal, planning, or other headquarters functions are handled on a divisional, regional, national, or global basis.

- "Crowdfunding" means a legal securities offering conducted in accordance with Wisconsin's Crowdfunding exemption as regulated by the Wisconsin Department of Financial Institutions.

- "Differentiating technology" means a specialized product or process that demonstrates distinct and significant technological differences and advantages over potential competitors.

- "Eligible to claim a credit" means an investor has made an investment that has received tax credits as identified by a verification form issued by WEDC.

- "In operation" means in existence and running a business.

- "Investment" means the investment of cash in a qualified new business venture that is used for legitimate business purposes in exchange for any one of the following:
    - Common stock.
    - Partnership or membership interest.
    - Preferred stock.
    - An equivalent ownership interest in the qualified new business venture approved by the WEDC.

[1] Wis. Stat. § 71.07(5d)(a)1.

- "Kept in a certified business or certified fund manager" means the investment was made in a certified business and the investment is held, or kept, by the angel investor, angel investment network or certified fund manager, in the business or its successor.

- "Legitimate business purposes" means investment proceeds used for normal operations of the business and are not used for activities including refinancing any prior investments, paying dividends to shareholders or other cash distributions to shareholders, stock repurchase, or other uses as determined by WEDC.

- "Qualified New Business Venture" or "QNBV" means a business WEDC has determined meets the requirements established by WEDC and the controlling statutes.

- "Sophisticated Investor" means an individual who has knowledge and experience in financial and business matters, and he or she is capable of evaluating the merits and risks of the prospective investment, or the QNBV reasonably believes immediately prior to making the investment that the undersigned comes within this description.

- "Worthless" means the business has been deemed insolvent as determined by WEDC and by evidence of identifiable events, such as a cessation of business, dissolution, distribution or a sale of substantially all of the company's assets to repay outstanding debts, pay bankruptcy or receivership filings, or to make minimal equity distributions.

This policy has been reviewed and updated in consultation with the Department of Revenue.[2]

Qualified New Business Venture Certification

QNBV Certification allows businesses to offer their equity investors the Angel or Early Stage Seed Income Tax Credits as an incentive for investing in their business. WEDC maintains flexibility in evaluating applications for certification to protect the intent of the QNBV program in focusing on economic development, particularly incentivizing in-state investors, in Wisconsin.

A business may be certified, and may maintain such certification, only if the business satisfies all of the following conditions:

- It has its headquarters in this state.[3]
- At least 51 percent of the employees employed by the business are employed in this state.[4]
- It has the potential for increasing jobs in this state, increasing capital investment in this state, or both, and any of the following apply:
  - It is engaged in, or has committed to engage in, innovation in any of the following:
    - Manufacturing, biotechnology, nanotechnology, communications, agriculture, or clean energy creation or storage technology.
    - Processing or assembling products, including medical devices, pharmaceuticals, computer software, computer hardware, semiconductors, any other innovative

[2] Wis. Stat. § 238.15(3)(d).
[3] Wis. Stat. § 238.15(1)(a).
[4] Wis. Stat. § 238.15(1)(b).

technology products, or other products that are produced using manufacturing methods that are enabled by applying differentiating technology.
        - Services that are enabled by applying differentiating technology.[5]
    - It is undertaking pre-commercialization activity related to differentiating technology that includes conducting research, developing a new product or business process, or developing a service that is principally reliant on applying differentiating technology.[6]
- It is not primarily engaged (being "primarily engaged" means having greater than 50 percent of projected or reported revenue generated from) in real estate development, insurance, banking, lending, lobbying, political consulting, professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants, wholesale or retail trade, leisure, hospitality, transportation, or construction, except construction of power production plants that derive energy from a renewable resource, as defined in § 196.378 (1) (h), Wis Stats.[7]
- It has less than 100 employees at the time of initial certification.[8]
- It has been in operation in this state for not more than 10 consecutive years at the time of initial certification.[9]
- For taxable years beginning before January 1, 2008, it has not received more than $1,000,000 in Investments that have qualified for tax credits under s. 71.07 (5d).[10]
- It has not received aggregate private equity Investment in cash of more than $10,000,000 at the time of initial certification.[11]
- For taxable years beginning after December 31, 2007 and before January 1, 2011, it has not received more than $4,000,000 in Investments that have qualified for tax credits under the program.[12]
- For taxable years beginning after December 31, 2010, and before January 1, 2018, it has not received more than $8,000,000 in Investments that have qualified for tax credits under the program.[13]
- For taxable years beginning after December 31, 2017, it has not received more than $12,000,000 in Investments that have qualified for tax credits under the program. [14]
- Companies whose certification has expired or lapsed due to meeting or approaching $8 million in qualified Investments prior to January 1, 2018 may qualify for additional funds under the following:
    - If the company is within the required three-year reporting period following the receipt of qualifying Investments and in good standing with WEDC, it may be eligible for re-certification in the program under program limits established for tax years after December 31, 2017.
    - If the company is outside its reporting period, the company must go through the full application process.

[5] Wis. Stat. § 238.15(1)(f)1.
[6] Wis. Stat. § 238.15(1)(f)2.
[7] Wis. Stat. § 238.15(1)(g).
[8] Wis. Stat. § 238.15(1)(h).
[9] Wis. Stat. § 238.15(1)(j).
[10] Wis. Stat. § 238.15(1)(k).
[11] Wis. Stat. § 238.15(1)(km).
[12] Wis. Stat. § 238.15(1)(kn).
[13] Wis. Stat. § 238.15(1)(L).
[14] Wis. Stat. § 238.15(1)(Lg).

In addition to the factors outlined above WEDC will evaluate applications based on, but not limited to, the following factors:

- Whether the business is in one of Wisconsin's target industries as determined by WEDC.
- High growth potential of the business.
- Management team experience.
- Financial need.
- Percentage of funds that will be spent in Wisconsin.
- Barriers to entry.

A certified business must provide a statement in its private placement memorandum or equivalent documents indicating that WEDC does not endorse the quality of management of the business and is not liable for damages or losses to an investor.

Each qualified business must be recertified in each taxable year in which it desires certification. If applicable, WEDC will consider the information contained in the company's annual performance report as an application for recertification. The company will also be required to provide a final report when it is determined that the company will not be pursuing recertification or is decertified by WEDC.

Penalties:

The certified company agrees that it will not relocate outside of this state during the 3 years after it receives an Investment under which a tax credit may be claimed and agrees to pay WEDC a penalty if the business relocates outside of this state during that 3-year period. For the purposes of this paragraph, a business relocates outside of this state when the business locates more than 51 percent of any of the following outside of this state:

- The business's employees.
- The business's total payroll.
- The activities of the business's headquarters, as determined by WEDC.[15]

For Investments made after 12/31/2011 the amount of a penalty payment is determined as follows:

- If the relocation occurs less than 12 months after the Investment, 100% of the tax credit that was claimed as the result of the Investment.
- If the relocation occurs 12 months or more after the Investment but less than 24 months after the Investment, 80% of the tax credit that was claimed as the result of the Investment.
- If the relocation occurs 24 months or more after the Investment but less than 36 months after the Investment, 60% of the tax credit that was claimed as the result of the Investment.[16]

A business is not considered to have relocated outside of this state if WEDC determines that Investment and employment levels have not diminished in Wisconsin, regardless of whether a business meets the penalty thresholds shown above for employees or payroll.[17] Companies maintaining certification must continue to meet other program requirements including headquarters location.[18] In

[15] Wis. Stat. § 238.15(1)(m)1.
[16] Wis. Stat. § 238.15(1)(m)2.
[17] Wis. Stat. § 238.15(3)(dm).
[18] Wis. Stat. § 238.15(3)(dm).

addition, the penalty does not apply if WEDC certified a company prior to April 20, 2012, and the company converted a note or bond to an equity interest in reliance upon that certification.[19]

Fund Manager Certification/Qualified Venture Fund (QVF)

A certified fund manager is eligible for Early Stage Seed tax credits when making Investments in QNBV certified companies.[20] An investment fund manager desiring certification for a specific fund shall submit an application to WEDC.

In determining whether to certify an investment fund manager as a QVF, WEDC shall consider:

- The investment fund manager's experience in managing venture capital funds.
- The past performance of investment funds managed by the applicant.
- The expected level of investment in the investment fund to be managed by the applicant.
- Any other relevant factors as determined by WEDC. [21]

WEDC will evaluate fund manager applications in order to protect the intent of the program, QNBV companies and investors.

In addition to the factors outlined above, WEDC will evaluate the following when determining whether to certify an investment fund manager as a QVF:

- The applicant's experience in investing in high growth, early stage businesses.
- The past performance of businesses assisted by the applicant.
- The portion of the investment fund's capital the fund manager expects to invest in Qualified New Business Ventures.
- Geographic distribution of funds.
- Focus on targeted industries or target group members, as determined by WEDC.
- Ability to access follow–on funding.
- Services provided.
- Commitment to Wisconsin.
- Administrative and management fees.

A certified fund manager must provide a statement in its private placement memorandum or equivalent documents indicating that WEDC does not endorse the quality of management of the fund and is not liable for damages or losses to an investor.

Eligibility for Tax Credits:

An Angel, Angel Network, and QVF are each eligible for a 25% tax credit for making Investments in Qualified New Business Ventures.[22] Tax Credit Request Forms can be found on WEDC's website.

Tax Credit qualifications:

- Clearly identifiable as being cash Investments.

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[19] Wis. Stat. § 238.15(1)(m)3.

[20] Wis. Stat. § 238.15(2).

[21] Wis. Stat. § 238.15(2).

[22] Wis. Stat. §§ 71.07(5d)(b)2; 71.07(5b)(b)1; 71.28(5b)(b)1; 71.47(5b)(b)1; 76.638(2).

- Must be in the form of common stock, preferred stock, partnership or membership interest, or equivalent ownership interest.
- Cash exchanged for debt is not eligible unless the debt is later converted into equivalent ownership interest as described above. Note: The amount, in this circumstance, used to calculate tax credits only includes the original cash Investment and does not include accrued interest, unpaid fees, etc.
- 401(k), IRA, Roth IRA or similar tax deferred or tax advantaged accounts are not eligible Investment vehicles for the Angel tax credit programs.
- Investor does not control or is not closely related (spouse, grandparent, parent, sibling, child, stepchild, grandchild) to someone who controls more than 20% of the ownership interest in the company at the time the current Investment round is opened.
- Investments made by certified fund managers, with principal offices based outside of this state, must be made side by side with equity investors based in Wisconsin with a minimum participation by state investors as determined by WEDC.
  Note: As an example, out-of-state fund managers with strong management, a strong history of performance, and a focus on target industries and companies in Wisconsin will have minimal side-by-side Investment requirements. By comparison out-of-state investors with smaller fund size, minimal experience, or a broad fund focus that does not parallel the goals of the program may have larger side-by-side Investment requirements.
- Public funds, including investments made by the State Fund of Funds and Federal State Small Business Credit Initiative programs, may not be used as the basis for claiming credits.

Process for requesting Tax Credits:

The QNBV certified company in cooperation with the investor will complete the necessary forms. The tax credit request forms and required documentation shall be submitted to WEDC no later than 90 days following the end of the taxable year in which Investment was made that qualifies for credits. Upon review and approval of the required forms and documentation, WEDC will issue a verification form to the angel investor, angel investment network or certified fund manager stating the amount and type of tax credits that may be claimed.

Revocation:

Revocation of Certification
WEDC may revoke or withhold the certification of a business or a fund and no new Investment will qualify after revocation if the business or fund (1) supplies false or misleading information to obtain the certification; (2) fails to continue to meet the required conditions or qualifications for obtaining the certification; (3) has violated or is under investigation for violations of state, federal or local laws or regulations related to the conduct of the activities of the business; (4) has had an officer or director arrested for or convicted of a crime substantially related to the activities of the business or fund; (5) is not using the funds for a legitimate business purpose as determined by WEDC; or (6) is in default of WEDC or other State obligations.

Repayment of Tax Credits
WEDC, in cooperation with the Wisconsin Department of Revenue, may revoke credits if an Investment qualifying for tax credits under the program is not kept in a certified business for 3 years except as provided below:

- Upon review, WEDC determines that the Investment becomes worthless prior to the end of the three-year period.
- The Angel, Angel investment network, or certified fund manager has held an Investment for at least 12 months and upon review the WEDC determines that a Bona Fide Liquidity Event has occurred prior to the end of the holding period.[24]

Transfer[25]:

Those eligible to claim a credit under the Early Stage Seed Investment Credit may sell or otherwise transfer the credit (subject to all applicable taxes and fees) no more than once in a 12-month period to another person who is subject to the applicable taxes and fees under Wis. Stat. § 71.02, 71.23, 71.47, or subchapter III of chapter 76.

Credit transfers up to $200,000 will be subject to a five percent fee; transfers in excess of $200,000 will be charged a fee of at least $10,000 or one percent of the credit amount transferred, whichever is greater.

To effectuate a transfer, the fund manager must approve the transfer, then the certified fund manager must notify WEDC and the Department of Revenue of the transfer and must submit the following information to WEDC:

- A transfer form, as provided by WEDC, attesting to the transfer of the tax credit.
- A copy of the transfer documents showing the transfer of tax credits from the seller to the buyer.
- Any other documents as required by WEDC to verify the sale or transfer of tax credits.

Incentives and Available Funding: $30,000,000 allocated for CY19

The aggregate amount of Investment in any one qualified new business venture that may qualify for tax credits under the program is limited to $12,000,000[26] or a different amount determined by WEDC at the time of certification or recertification.

The aggregate amount of Angel and Early Stage Seed tax credits that may be claimed for Investments in businesses is limited to $30,000,000 per calendar year.[27]

Activities & Expected Outcomes:

Certify 40 new businesses, 6 fund managers, and achieve a 4:1 leverage.

Performance Reporting:

Recipients will be required to annually submit a performance report in March documenting investment activities, job creation, job retention, average wages, company financials, eligibility checklist, as well as any other contract deliverable.

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24 Wis. Stat. §§ 71.07(5d)(d)1; 71.07(5b)(d)3; 71.28(5b)(d)3; 71.47(5b)(d)3.
25 Wis. Stat. § 238.15(3)(e).
26 Wis. Stat. § 238.15(1)(Lg).
27 Wis. Stat. § 238.15(3)(d).

Regardless of eligibility status a certified company will be required to provide an annual report for a minimum of three years following the receipt of Investment that qualifies for credits under this program in order to monitor compliance with the penalty provisions. Failure to provide reports may result in WEDC enforcing penalty and/or revocation of tax credit provisions.

WEDC annually selects awards on a sample basis for an audit. All backup to the performance report is required to be maintained for the life of the award.

WEDC may impose additional reporting requirements to evaluate project performance and to ensure compliance with contract deliverables.

Application and Awards Process:

The QNBV program has a continuous application process. Applicants for the QNBV program should complete an application through an Account Manager. The completed application will be assigned to an underwriter and go through the award review process.

For more information on application review, internal process, and award distribution, please refer to WEDC's award administration policies and procedures.

Revision History:

Effective Date	Description of Change
7/1/2017	Added statutory references to clarify eligibility requirements
7/1/2017	Reorganized the penalties and revocation sections for logical consistency
9/23/2017	Pursuant to 2017 Act 59, unused QNBV tax credits can no longer be transferred to the Business Development Tax Credit Program.
4/20/2018	Pursuant to 2017 Act 234, raised the aggregate investment limit from $8 million to $12 million.
7/1/2019	Clarified definitions and eligibility requirements; eliminated obsolete statutory reference; clarified performance reporting requirements

PROGRAM REVIEW:

This document has been reviewed by the following parties (Check all that apply):

✓ Chief Operating Officer
✓ Chief Legal Officer
✓ Chief Financial Officer
____ Other ____

Senior Director of Public Policy: ____________________ **Date** 7/23/19

Division Vice President: ____________________ **Date** 7/23/19

AUTHORIZED APPROVAL:

CEO or Designee: ____________________ **Date** 7/23/19