

MARYLAND TECHNOLOGY DEVELOPMENT CORPORATION – Seed Program Practical and Legal Considerations for Investments

Maryland Technology Development Corporation (TEDCO) is a corporation that is also an instrumentality of the State of Maryland. TEDCO invests in businesses either directly or through its affiliated investing entities. An investment by TEDCO or one of its entities involves public funds from government sources aimed at promoting economic development in Maryland. Accordingly, various Maryland laws apply to the investment.

Your lawyer should expect to work with the Assistant Attorneys General who staff TEDCO's transactions. The following are a list of contractual investment provisions and requirements that are typical for TEDCO-related investments. The list, however, may not be exhaustive for a specific transaction. Some Maryland investment programs, for example, have additional requirements, such as matching funds. Some transactions may require specific representations, warranties, and covenants.

PLEASE NOTE, IF AN INVESTMENT ROUND HAS COMPLETED ITS INITIAL CLOSING, AND TEDCO OR ONE OF ITS AFFILIATES IS INVESTING IN AN EXTENSION OR OTHERWISE, THE INVESTMENT DOCUMENTS WILL STILL BE REQUIRED TO CONTAIN THE MARYLAND-SPECIFIC PROVISIONS BELOW, EITHER THROUGH A SIDE LETTER OR AMENDMENT OF THE INVESTMENTS DOCUMENTS AND, IF APPLICABLE, ENTITY GOVERNING DOCUMENTS. ANY SIDE LETTER WILL NEED TO BE EXECUTED BY THE PROPORTION OF INVESTORS NECESSARY TO APPROVE SUCH AMENDMENTS.

- **Sovereign Immunity.** As an instrumentality of the State of Maryland, TEDCO and its investing entities do not: (1) consent to the jurisdiction of courts outside of Maryland; (2) agree to any form of binding arbitration; (3) submit to the law of another state that would implicate sovereign immunity; or (4) agree to blanket powers-of-attorney, proxies, or similar documents.
- **Limitations on Future Financial Commitments.** Because investment dollars and related public funds are generated through the Maryland General Assembly's appropriations process, TEDCO and its investing entities cannot agree to future financial commitments (such as indemnification, contribution obligations, or "prevailing party" legal expenses) outside of that appropriations process.
- **Maryland Public Information Act.** TEDCO and its investing entities are subject to the Maryland Public Information Act. Generally, "confidential financial" or "confidential commercial" information is protected from disclosure. But, a court may ultimately make the determination of what may or may not be disclosed. TEDCO and its investing entities will commit to provide to a portfolio business notice of a request for public information involving one of its portfolio businesses so that the business may take action to block disclosure.
- **Defaults.** TEDCO and its investing entities reserve the right to unilaterally declare a default in most circumstances, including if the business no longer satisfies the requirements of a qualified business under Maryland law.
- **Amendments, waiver, and termination provisions.** Prior written consent of TEDCO or the investing entity is required before any Maryland-specific contractual provisions are amended, waived, or deleted, or any rights exclusive to TEDCO or the investing entity are otherwise impaired. TEDCO's Maryland-specific provisions also must be included in future investment agreements.
- **Securities Repurchase Agreement (SRA).** All businesses receiving funding from TEDCO or its investment entities are required to execute a five-year SRA or similar claw-back, which requires the business to repurchase the securities if: (i) the business no longer meets the requirements of a "qualified business" under Maryland law; or (ii) the business or any of its executive officers are convicted of a felony. If the business' charter or certificate of incorporation establishes voting rights for a stock repurchase or

distribution, the charter or certificate will need to be amended to carve out the SRA from those voting rights. Enforcement of the SRA is in the discretion of TEDCO or its investing entity.

- **Observation/Information/Inspection Rights.** In furtherance of its public purposes, TEDCO and its investing entities require full board observation, information, and inspection rights.
- **Closing Deliveries.** The business will be required to provide closing deliveries typical of transactions in the private sector (certificate of secretary with supporting corporate approvals and governing documents, and good standing certificates for Maryland and state of formation). In some cases, additional closing deliveries will be required.
- **Maryland-specific representations, warranties and covenants** related to the business' relationship with the State of Maryland and compliance with all federal, Maryland and local laws (taxation, regulatory, etc.).