

KANSAS ANGEL INVESTOR TAX CREDIT AGREEMENT - 2019

This Agreement is entered into by and between the Kansas Department of Commerce, 1000 SW Jackson Street, Suite 100, Topeka, Kansas 66612-1354 (hereinafter referred to as “Commerce”) and _____ (hereinafter referred to as “Qualified Kansas Business”).

WHEREAS, Commerce has been empowered by the Kansas Angel Investor Tax Credit Act (the Act), K.S.A. 74-8131 – K.S.A. 74-8137, to certify qualified Kansas businesses to receive Angel Investor Tax Credits; and

WHEREAS, Qualified Kansas Business has applied for certification through the Kansas Angel Investor Tax Credit program.

NOW THEREFORE, the Parties do mutually agree as follows:

I. REPRESENTATIONS OF QUALIFIED KANSAS BUSINESS. Qualified Kansas Business hereby represents that it:

- A. Currently has its headquarters in Kansas and one of the following:
 1. 60% or more of its employees located in Kansas; or
 2. 80% of its production occurs in Kansas.
- B. Will maintain its headquarters and qualifying operations in Kansas for a period of ten (10) years from the date of this Agreement as required by KSA 74-8136(g).
- C. Will provide information necessary to demonstrate to Commerce that it is and will continue to be a qualified Kansas business, according to K.S.A. 74-8131 – K.S.A. 74-8137, through the Term of this Agreement.
- D. Will immediately notify Commerce of any discussions, negotiations, applications to other states for incentives, or plans to move Qualified Kansas Business headquarters operations to a location outside Kansas.
- E. Will provide any additional required documentation of Investors and Cash Investments prior to the Expiration Date in the Determination Letter or subsequent written extension.
- F. Shall not make any representations that Commerce has an opinion as to the advisability of an investment in such business.
- G. Will allow Commerce the right of access to inspect pertinent financial records necessary to administer the Act upon reasonable notice.
- H. Will provide any additional information as the Secretary of Commerce may reasonably require pursuant to the Act.
- I. Acknowledges the Kansas Angel Investor Tax Credit Guidelines which are incorporated herein by reference.

II. REPRESENTATIONS OF COMMERCE. Commerce hereby represents that it will:

- A. Issue a Determination Letter upon finding the company a Qualified Kansas Business.

- B. Upon execution of this Agreement, allocate Kansas Angel Investor Tax Credits in an amount up to _____ Dollars (\$ _____). Commerce reserves the right to reallocate and decrease the actual amount of tax credits under this Agreement if the Qualified Kansas Business fails to continue to meet the requirements of Section I. of this Agreement.
- C. Issue tax credit certificates to eligible Investors who have made a Cash Investment in the Qualified Kansas Business and documented such investment prior to the Expiration Date in the Determination Letter or any subsequent written extension.
- D. Immediately issue a Revocation Letter to a Qualified Kansas Business and cancel all pending transactions if Commerce is aware of any of the items mentioned in Section I. A., B. or C. regarding relocation of the Qualified Kansas Business outside the State of Kansas prior to the end of this Agreement.

III. **TERM.** The term of this Agreement shall commence on the Agreement Date and continue for a period of ten (10) years.

IV. **REPAYMENT.**

- A. In the event Qualified Kansas Business relocates its headquarters and qualifying operations from Kansas to another state during the term of this Agreement, then Qualified Kansas Business shall repay Commerce an amount equal to the amount of Angel Investor Tax Credits it issued under this Agreement. Such repayment shall be payable immediately.

Qualified Kansas Business shall be considered as having relocated its headquarters operations outside of Kansas if Commerce determines its headquarters is not located in Kansas or if either 60% of its employees or 80% of its production are not located in Kansas, regardless of its headquarters location.

- V. **REPORTING.** The Qualified Kansas Business shall report to Commerce on an annual basis. The report shall include: (1) the name, address and taxpayer identification number of each angel investor who has made cash investments in the qualified securities of a qualified Kansas business and has received tax credits for this investment during the preceding year and all other preceding years; (2) the amount of these cash investments by each angel investor and a description of the qualified securities issued in consideration of such cash investments; (3) if available, the name, address and taxpayer identification number of each investor to which tax credits issued pursuant to this act have been transferred by the original angel investor; (4) an estimate of the jobs created or retained by the Angel Investor Tax Credits allocated to the Qualified Kansas Business, the wages associated with those jobs; and any capital investment; and (5) any additional information as the secretary of Commerce may require pursuant to the Act.

Failure to comply with the reporting requirements may result in loss of designation as a Qualified Kansas Business and/or adversely affect program eligibility in future years.

- VI. **MODIFICATIONS.** This Agreement may be modified by written agreement of the parties.

VII. SEVERABILITY. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected, and each provision of this Agreement shall be enforced to the fullest extent of the law.

VIII. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of Kansas. Any litigation resulting from this Agreement shall be brought in the District Court of Shawnee County, Kansas, which shall be considered the only court of competent jurisdiction over this Agreement.

IV. LEGAL COUNSEL; DRAFTING. Each Party acknowledges and agrees that it has had the opportunity to consult with independent legal counsel and has cooperated in drafting and reviewing this Agreement. Therefore, this Agreement shall not be construed against either Party on the basis of that Party being the drafter of such language. Qualified Kansas Business fully understands the provisions of this Agreement, enters into it freely and voluntarily, and has been advised and had ample opportunity to seek independent counsel prior to executing this Agreement.

The undersigned agrees to the above terms.

Phone:
FEIN:

KANSAS DEPARTMENT OF COMMERCE
1000 SW Jackson, Suite 100
Topeka, Kansas 66612-1354
Phone: (785) 296-5298
FEIN: 48-1124839

Qualified Kansas Business Signature

Secretary of Commerce

Print Name and Title

Date

Date