



An Australian Government Initiative

AusIndustry

Innovation Investment Fund Program Round Three

Customer Information Guide

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1 About the Innovation Investment Fund Program

1.1 Introduction

The *IIF Program* is designed to promote the commercialisation of Australian research and development, through the provision of venture capital to companies in the seed, start up or early expansion stages of their development. It will also assist to develop new managers in early-stage venture capital investing.

The third round of the *IIF Program* was announced by the *Minister* the Hon Ian Macfarlane MP and the Treasurer, the Hon Peter Costello MP in May 2006. It is delivered by *AusIndustry*, which is the Australian Government's business program delivery division and is part of the *Department of Industry Tourism and Resources*. The program will be overseen by the Industry Research and Development Board (the *Board*).

It is anticipated that two new fund managers will be appointed each year for five consecutive years with \$40 million per annum in Australian Government funding available for the successful fund managers, up to a maximum of \$20 million per fund. The Australian Government funding must be matched dollar for dollar (as a minimum) by the private sector and the *licensed funds* will have a ten year life.

The *Minister* has issued *Program Directions* and *Program Guidelines* which provide a framework for the operation of the *IIF Program* and the functions of the *Board* in relation to the program. The *Program Guidelines* provide the *Program Delegate*, an employee of the *Department*, with the authority to take a number of decisions in relation to the *IIF Program*.

The *Board* has overall non-financial responsibility for the *IIF Program* including assessing applications and making a recommendation to the *Program Delegate* on those applications which should be approved. The information in this *Customer Information Guide* is intended to help potential applicants decide whether to lodge an application.

See [Appendix 1](#) for detailed definitions of key terms used in this document.

1.2 *IIF Program* policy objectives

The *Board* and the *Program Delegate* will have regard to the *IIF Program's* policy objectives, which are:

1. to develop fund managers with experience in the early stage venture capital industry;
2. by addressing capital and management constraints, to encourage the development of new companies which are commercialising research and development;
3. to establish in the medium term a "revolving" or self funding scheme; and

4. to develop a self-sustaining Australian early stage, venture capital industry.

2 Application process

2.1 Publicising Licensing rounds

AusIndustry will publicise any *licensing round* in the manner it determines from time to time. In doing so, it will publicise the closing date for applications, the address for lodging applications, any application fee applicable to the *licensing round*, the information required by the *Board* and the *Program Delegate* to consider an application, and any other information which is considered to be of relevance to potential *applicants*. All information will be set out in the application package for the licensing round.

2.2 Application fees

The *Program Delegate* may levy fees to recover part or all of the costs incurred by the *Board* and *AusIndustry* in assessing *licence* applications.

As indicated in **Appendix 5**, the assessment process will comprise an initial (or Stage one) assessment (for which the fee will be \$5,000 including *GST*) and (where the application proceeds beyond the initial stage, to Stage two) a further and a more detailed assessment (for which the fee will be a further \$5,000 including *GST*).

Those fees will not be refunded to *applicants* under any circumstances. The *Program Delegate* will refuse to consider a *licence* application until the relevant fee is paid.

2.3 Information to be included in applications

The purpose of each *licensing round* is to identify *applicants* with the capacity and experience to manage a *licensed fund* in such a way as to fulfil the objectives of the *IIF Program*.

Applicants should demonstrate their capability to manage a venture capital fund. This may include the demonstration of an understanding of and experience in dealing with issues related to Australian and international investments, products, services and markets. To that end, it is the responsibility of each *applicant* to clearly demonstrate its capacity and experience.

When it publicises a *licensing round*, *AusIndustry* will inform potential applicants of the information required by the *Program Delegate* and the *Board* to consider an application, as set out in the application package that will be released for the *licensing round*.

The *Program Delegate* or the *Board* may request additional information after the lodgement of an application in order to assist them in assessing the application.

2.4 Ownership of applications

Applications become the property of the Commonwealth once lodged. The Commonwealth may copy, extract or otherwise deal with all or any part of an application for the purpose of conducting the assessment.

Nothing in this clause changes the ownership of any intellectual property in an application.

2.5 Confidentiality

The use and disclosure of information provided to the *Department*, *AusIndustry*, the *Board* and the *Program Delegate* (**relevant parties**) by *applicants* (including information provided as part of any application) is regulated by the relevant provisions and penalties of the *Public Service Act 1999*, the *Public Service Regulations*, the *Privacy Act 1988*, the *Crimes Act 1914*, the *Criminal Code Act 1995* and general law.

The relevant parties will use the information provided by *applicants* for the purposes of discharging their respective functions under the *Program Guidelines* and the *Program Directions* and otherwise for the purposes of the *IIF Program* and related uses. The *Department* may also disclose such information:

- for the purposes of any other legitimate *Departmental* business;
- during the application process and the course of the *IIF Program* in order to consult with other Commonwealth agencies about an *applicant's* claims;
- to the *Department's* responsible Minister;
- in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- within the *Department's* organisation, or with another agency, where this serves the legitimate interests of the Commonwealth;
- where the information is authorised or required by law to be disclosed; or
- where the information is in the public domain otherwise than by the *Department's* disclosure.

The *Department* may also engage third parties to review applications to provide technical or financial advice (including auditors) on a contract basis.

The *Department* may also during the application process, publicly announce a shortlist of *applicants*.

Following approval of an application, the broad details of an application (for example, the identity of the successful *applicant* and the size and a brief description of the fund) may be disclosed by the *Department* for purposes such as promoting the *IIF Program*, reporting on its operation and policy development.

3 Eligibility criteria

To determine if an application is an *eligible application* the *Program Delegate* will consider the following eligibility criteria:

- a) whether the application is complete and contains enough information to undertake a merit assessment;
- b) whether the *applicant* is or will be an Australian based fund manager; and
- c) whether the *applicant* has paid the relevant application fee.

The *Program Delegate* is not obliged to consider an application received after the closing time for the *licensing round* specified in the application package, but may decide to do so.

In assessing whether to accept or reject any application received after the closing time, the *Program Delegate* will take into account all relevant factors including:

- a) whether the late applicant is likely to have had an opportunity to obtain some unfair advantage;
- b) how late the application is;
- c) the reasons given for the lateness and any supportive evidence available;
- d) the possibility of the acceptance giving rise to challenges or potential challenges from other *applicants* (whether or not such challenges may or may not be likely to succeed); and
- e) any evidence of unfair practice.

4 Merit criteria and other matters

4.1 Merit criteria

If an application is an *eligible application* (that is, it satisfies the program eligibility criteria listed in Section 3 of this *Customer Information Guide*), then the *Board* will assess it on its technical merit according to the extent to which the application meets the merit criteria, which are:

- a) whether the proposed *applicant* has effective strategies to contribute to training and developing of Australian based staff in all aspects of making venture capital investments in *early stage companies*;
- b) the proposed size of the fund and ratio of *privately sourced capital* to *Commonwealth program capital* (subject to the *Commonwealth program capital* not exceeding a 1:1 ratio to the *privately sourced capital* and the *Commonwealth program capital* being no more than \$20 million);
- c) the level and structure of management fees proposed;

- d) the *applicant's* capacity and experience in early stage equity investing giving particular attention to realising returns from investments, sourcing investment opportunities and managing an investment portfolio;
- e) whether the *applicant* has a balanced management team including relevantly qualified and skilled personnel;
- f) whether the *applicant* has an understanding of, and experience in, dealing with issues related to Australian and international investments, products, services and markets; and
- g) whether the *applicant* has a demonstrated willingness to operate within the intent of the *IIF Program*.

Without limitation, the *Program Delegate* may decide to reject an application at the end of the Stage one assessment.

The *Board* may decide to refuse to provide a merit ranking for an *applicant* if the *Board* is not satisfied with the level of merit of the application in relation to one or more of the merit criteria.

Without limitation, the *Program Delegate* may exclude an application from further consideration at any stage if the *applicant* is found to have made false or misleading claims or statements in its application or elsewhere. *Applicants* should be aware that giving false or misleading information to the Commonwealth is a serious offence under the *Criminal Code Act 1995*.

4.2 Other matters

The *Board* may in its absolute discretion attribute a preference to *applicants* who are *new managers*.

In order to encourage new managers, the *Board* will not require *applicants* to demonstrate their ability to access the required level of *privately sourced capital* until after shortlisting.

The merit criteria are not specified in any order of importance. The *Board* may attribute a higher level of relative importance to one or more of the merit criteria.

Without limiting any other provision of this *Customer Information Guide*, the *Program Delegate* may have regard to the accessibility of an *applicant's* proposal for industry around Australia.

The *Program Delegate* may establish a shortlist from the *eligible applications* received in each *licensing round* comprising those applicants whom the *Board* considers have the highest level of relative merit (further information on assessment is contained in Section 5 of this *Customer Information Guide*). The *Program Delegate* may have regard to additional or varied criteria and undertake other enquiries in order to consider the suitability of *applicants* and decide whether or not to place any *applicant* on any shortlist, invite any offers to take up a *licence*, or accept or reject any offer from shortlisted *applicants* to take up a *licence*. Should

any additional criteria be applied in evaluating applications AusIndustry will notify *applicants* who will be given an opportunity to respond.

The *Program Delegate* may require some or all *applicants* to present the key aspects of their application and clarify information in a presentation to AusIndustry or the *Board*.

A probity adviser has been appointed oversee the process.

5 Assessment

5.1 Role of the Board

The *Board* is an independent statutory body which has non-financial administrative responsibility for the *IIF Program*. The *Board's* functions include:

- the technical assessment and merit ranking of applications in accordance with the *IIF Ministerial Directions*; and
- provision of advice to the *Minister* and the *Department* on the administration of the *IIF Program*.

5.2 Role of the *Program Delegate*

The *Program Delegate* is an officer of the *Department* whose functions relate to the financial administration of the *IIF Program* and include:

- in consultation with the *Board*, making policies in relation to the administration of the *IIF Program*;
- determining the eligibility of applications;
- determining a shortlist of *applicants* to be assessed in Stage two of the process; and
- making the final decision to offer *licences* under each *IIF Program* round.

The *Program Delegate* will seek advice from the *Board* on the following matters:

- new investments by a *licensed fund* beyond the fifth anniversary of the granting of a *licence*;
- changes to the *key personnel* of a *licensed fund*;
- changes in the structure of a *licensed fund*;
- the application of sanctions against a manager or investor;
- the suspension of funding in relation to a *licensed fund*;
- the termination of a *licence*; and
- investee company eligibility.

5.3 Assessment process

Assessment of applications will be undertaken by the *Board* in two stages. Additional fees are payable for applications that reach Stage two, as described in Section 2.2 and **Appendix 5**. Application fees will not be refunded under any circumstances. An application will not be considered for assessment until the relevant fee is paid.

5.3.1 Stage one

At Stage one, the *Program Delegate* will refer each eligible application to the *Board* for technical merit assessment in accordance with the *Program Guidelines*. This will comprise a review of the application against the merit criteria and a detailed assessment of *applicant* claims on all components of the proposed fund.

Applicants will be interviewed prior to the *Board* determining the technical merit of that *applicant's* application. In addition, the *Board* and *Program Delegate* may request additional information from *applicants* after the lodgement of an application in order to assist in ranking and assessing the application.

The *Board's* merit assessments and ranking of *applicants* will be submitted to the *Program Delegate* for consideration. The *Program Delegate* will then determine the shortlist of *applicants*, with two identified as preferred *applicants*. Those *applicants* approved by the *Program Delegate* will progress to Stage two.

Without limitation, the *Program Delegate* may decide to reject an application at the end of this Stage one assessment.

5.3.2 Stage two

At Stage two, the *Board*, *Department* and the *Program Delegate* will undertake further due diligence activities in relation to the relevant *applicants*. These activities may include:

- site visits;
- further referee checks;
- consideration of *applicants'* responses to the governing documents; and
- obtaining further expert reports on the relevant *applicants*.

After undertaking and considering the results of these further due diligence activities, the *Board* will make a recommendation to the *Program Delegate* on the merit ranking of *applicants*.

The *Program Delegate* will in his/her absolute discretion, on the basis of the merit criteria and other matters considered relevant by the *Program Delegate*, invite *applicants* to submit offers for a *licence*. The *Program Delegate* will make the final decision to offer *licences* under

IIF program and any terms and conditions attached to those offers. In making this decision the *Program Delegate* will consider the *Board's* merit ranking of the applications and other advice.

The successful *applicants* will have up to six months from the commencement of the Stage two assessment to confirm the required *privately sourced capital*. If a successful *applicant* fails to raise the required *privately sourced capital* by the end of this period, the *Program Delegate* may in his/her absolute discretion withdraw the offer of a *licence* from that *applicant* and offer it to another *applicant* on the shortlist.

As part of the assessment process, the *Board* may seek advice from external experts on specific areas of an application or on other matters requested by the *Program Delegate*. Those experts will be required to treat information provided to them as confidential.

Background checks, including checks of bankruptcy or criminal records of persons considered by the *Board* to be relevant to assessing an application, may be undertaken as part of the assessment process. *Applicants* must at their cost provide all consents and assistance required by the *Board* in this regard.

The *Program Delegate* is not obliged to:

- shortlist an *applicant* or recommend the awarding of a *licence* because an *applicant* satisfies the merit criteria or for any other reason; or
- recommend the awarding of, or award, a *licence* to any *applicant* in a *licensing round*.

Applications will be assessed as soon as practicable.

5.4 Commonwealth's rights

Notwithstanding any other provision of this *Customer Information Guide*, the *Program Delegate* may, at any time:

- (a) alter, amend or vary this *Customer Information Guide* and the process outlined in it;
- (b) suspend or terminate the application and assessment process or any part of it;
- (c) require additional information or clarification from any *applicant* or anyone else, or provide additional information or clarification to any *applicant* or anyone else;
- (d) negotiate or not negotiate with any one or more *applicants* (including negotiation of the *governing documents*), without reference to other *applicants*, and discontinue negotiations at any time; and
- (e) allow, or not allow, the successful *applicants* to enter into the *governing documents* in the name of a different legal entity from that which lodged the application.

6 Granting of *licences*

The *Program Delegate* may invite *applicants* on the shortlist to submit offers for the granting of a *licence* to operate a venture capital fund under the *IIF Program*. The *Program Delegate* will determine the form and timing of the invitation to submit offers.

An offer must:

- be in writing in the form required by the *Program Delegate* from time to time;
- demonstrate to the *Program Delegate's* satisfaction that the *privately sourced capital* has been committed;
- contain an agreement by the *applicant* to sign the relevant *governing documents* as required by the *Program Delegate*, and to specify any conditions or required amendments to which that agreement is subject; and
- comply with any other requirements notified by the *Program Delegate*.

Different conditions may be imposed on different licensees. These may include conditions relating to the consequences of the failure by the *applicant* to raise their proposed level of capital. For example, the *Program Delegate* may require the *applicant* to close the fund on the basis of the private capital successfully raised by the *applicant*, matched by the Commonwealth on a 1:1 basis (up to a maximum of \$20 million in *Commonwealth program capital*). Such an approach may result in a level of capital for the fund being below that originally proposed in the *applicant's* offer).

The *Program Delegate* may accept or decline an offer to take up a *licence* at its absolute discretion. An invitation to submit an offer to take up a *licence* will lapse if an offer is not submitted within three months of the invitation being made, although the *Program Delegate* may, with the consent of the relevant *applicant*, extend the time during which it may accept an offer if it considers it appropriate to do so.

If in any round an invitation to submit an offer to take up a *licence* is declined, withdrawn or lapses, the *Program Delegate* may invite an offer to take up a *licence* from another *applicant* on the shortlist in the *licensing round* the licensing of whom the *Program Delegate* considers may best achieve the objectives of the *IIF Program*.

The *Program Delegate* may withdraw an invitation to make an offer to take up a *licence* at its absolute discretion. For example, if, at any time before the invitation to make an offer expires, the *Program Delegate* forms the opinion that the person to whom it was made is not making a serious attempt to formulate and submit an offer within the period required by the invitation.

6.1 Power to vary *governing documents*

Without limitation, the *Program Delegate* may propose, or agree to, variations to the *governing documents*, at any stage during the assessment process or during the life of a *licensed fund*.

In making a decision on whether to vary any provision of the *governing documents*, the *Program Delegate* will seek the advice of the *Board* and may seek the advice of other third parties.

6.2 Point of contact

Applicants should direct any questions to IIF3@industry.gov.au or to the following officers of the Department:

Ms Lynne Thomson - 02 6213 6279

Ms Eleanora Holmes - 02 6213 7579

The *Department* may send responses either to the *applicant* who made the enquiry or to all *applicants* on a non attributable basis.

6.3 Unintentional errors of form

If the *Department* considers that there are unintentional errors of form in an application, the *Department* may request the *applicant* to correct or clarify the error, but will not permit any material alteration or addition to the application.

6.4 Statements

Applicants should not:

- furnish any information;
- make any statement; or
- issue any document or other written or printed material

concerning the acceptance of any application for publication in any media without the prior written approval of the *Department*.

The *Department* may exclude an application from further consideration if the *applicant* contravenes this requirement.

6.5 False and misleading claims

The attention of applicants is drawn to Division 137 of the Criminal Code and *applicants* are advised that giving false or misleading information is an offence.

Applicants must not make false or misleading statements in their applications.

6.6 Unlawful inducements

Applicants and their officers, employees, agents or advisers must not have violated and must not violate any applicable laws or *Department* policies regarding the offering of inducements in connection with the preparation of their application.

6.7 Collusive bidding

Applicants, consortium members and their respective officers, employees, agents and advisers must not engage in any collusive bidding, anti competitive conduct or any other similar unlawful conduct with any other applicant or any other person in relation to the preparation or lodgement of their application.

The *Department* may also involve the ACCC to provide assistance to the *Department* in relation to any competition issues concerning an *applicant* or related to an application.

6.8 Improper assistance

Applicants must not use the improper assistance of any *Department* employee or use information obtained unlawfully or in breach of an obligation of confidentiality to the *Department* in preparing their applications.

6.9 Future matters

Information in this *Customer Information Guide* concerning current or past requirements, volumes, location, environment or other relevant matters has been prepared from information available to the *Department* and may not be independently verified. In addition, the *Department* does not guarantee that this information will remain true at any future point in time.

The *Department* will have no liability to any *applicant* should any information or material provided in respect to this *Customer Information Guide* be inaccurate or incomplete or if actual volumes, locations or other relevant matters vary from the *Department's* current expectations.

6.10 No liability

Participation in the *IIF Program*, or in relation to any matter concerning the *IIF Program* will be at each *applicant's* sole risk, cost and expense. The *Department* will not be responsible in any circumstance for any costs or expenses incurred by any *applicant* in preparing or lodging an application or in taking part in the *IIF Program* or taking any action related to the *IIF Program*.

Neither the *Department*, the *Board* nor *AusIndustry* nor their officers, employees or advisers (such as the *Board*) will be liable to any *applicant* or any other person on the basis of any promissory estoppel, quantum meruit or on any other contractual, quasi contractual or restitutionary grounds or any rights with a similar legal or equitable basis whatsoever or in negligence as a consequence of any matter or thing relating or incidental to an *applicant's* participation in the *IIF Program*, including instances where:

- an *applicant* is not successful;
- the *Department* decides not to proceed with the *IIF Program*;
- the *Department* exercises or fails to exercise any of its other rights under or in relation to the *IIF Program*; or
- the *Department* makes information available or provides information to an *applicant* relating to any matter or any possible future arrangements.

7 Control of a *licensed fund*

A *licensed fund* may not be structured as a *Pooled Development Fund*.

7.1 Restrictions on control of *licensed funds*

The Commonwealth will endeavour to establish a model structure (or structures) which is consistent with best practice venture capital investing and seeks within Australian law to establish a venture capital market which is treated consistently between Australia and the rest of the world.

No structure should:

- limit the fund manager's ability to carry out its functions as reflected in the *selection criteria* referred to in this *Customer Information Guide*; or
- risk bringing the Commonwealth or the *IIF Program* into disrepute.

By accepting a structure, neither the Commonwealth, the *Board* nor the *Program Delegate* is endorsing or providing a warranty for the structure in relation to Commonwealth, State or Territory laws either at the present or in the future. The fund manager, the private investors and the fund should seek independent advice regarding the fund structure.

Unless otherwise approved by the *Program Delegate*, an investor in a *licensed fund* must not be:

- in a position to influence the individual investment decisions of the *licensed fund* manager; or
- a shareholder in the *licensed fund* manager, or otherwise be in a position to *control* the *licensed fund* manager.

Nothing in this *Customer Information Guide* prevents *key personnel* from being an investor in a *licensed fund* or a shareholder in the manager of a *licensed fund*.

8 Capital

8.1 Minimum capital for *licensed funds*

Commonwealth program capital will not exceed a 1:1 ratio to the *privately sourced capital* and will be no more than \$20 million per *licensed fund*. The remainder of the capital in the respective *licensed funds* must be *private capital*.

While *State and Territory Government sourced capital* may be contributed to the total *committed capital* of a *licensed fund*, it is not *privately sourced capital* for the purposes of matching *Commonwealth program capital*.

As noted in Section 6 of this *Customer Information Document*, each *licensed fund* will have a set level of *privately sourced capital* approved as part of the selection process. While managers may draw on the investors' capital over the period of the fund, the total investment must be committed in advance.

8.2 Restrictions on entities investing in a *licensed fund*

A *Pooled Development Fund* may not invest in, or provide money to, a *licensed fund*.

8.3 Restrictions on third party debt of *licensed funds*

A *licensed fund* must not raise money in the form of debt, or *equity* with features materially consistent with debt, with the exception of leasing equipment or short term debt for the purpose of maintaining the short term liquidity of the *licensed fund*.

Short term debt must take the form of a borrowing, the features of which are as follows:

- the lender is a bank or other financial institution registered under the *Financial Corporations Act 1974*; or
- the *licensed fund's* total outstanding borrowings do not exceed 5% of its total *committed capital* at any time.

9 Management services and fees

The manager will be paid an annual management fee by the *licensed fund*, to be agreed by the *Program Delegate*.

The management fee is to remunerate the manager for all costs associated with the management and operation of the fund including, if the *licensed fund* is a trust, trustee's fees, but excluding certain limited recoverable expenses and recoverable liabilities, as defined in the *governing documents*. Apart from those recoverable expenses and recoverable liabilities, a *licensed fund* must not reimburse its manager any expenses in excess of the management fee.

Management fees will not be payable beyond the nominal ten year term of a *licensed fund*, even if the term of the fund is extended.

Any management services provided to an *eligible investee company* by the manager or an *associate*:

- must be optional for the company;
- must be available to be provided by persons other than the manager or an *associate*;
- must be provided on terms agreed in writing between the manager or its *associate* and the company;
- may be charged out at no more than commercially reasonable rates; and
- must comply with any other requirements set out in the *governing documents*.

The manager may not charge any fee to or recover any expense from an *eligible investee company*, other than expenses relating to assets of the company (or potential assets), or for services provided directly to the company by a third party.

A *licensed fund* may not require, as a condition of investing in an *eligible investee company*, that the manager receive payment for services provided.

If the *committed capital* of a *licensed fund* is not fully invested by the fifth anniversary of the date of the *licence* for that fund, the annual management fee may be reduced as set out in the *governing documents*.

Management services and fees will be set out in detail in the *governing documents*.

10 Term of a *licensed fund*

Licensed funds must have a term of 10 years. At the end of 10 years, a *licensed fund* must be wound up, although an extension for a period of up to three years may be allowed to permit the orderly and prudent disposal of assets.

The *governing documents* will include provision on the term of the *licensed fund* and provisions for the early liquidation of the *licensed fund*. Those circumstances requiring early liquidation will be set out in full in the *governing documents*. An example of a circumstance which the *Program Delegate* may consider sufficiently significant to warrant the early liquidation of a *licensed fund* is where the net asset value of the fund is a negative amount for a period of at least six months.

Other examples may include where:

- the *licensed fund* is required to be wound up by a court order;
- the *licensed fund* is or becomes insolvent or suffers a substantial loss of capital; and
- the Commonwealth and private investors require the *licensed fund* to be wound up.

11 Investment period

A *licensed fund* may not make any new investments after the fifth anniversary of the granting of the *licence* for the *licensed fund*. Investments may only be made outside this date at the discretion of the *Program Delegate* and provided that:

- the manager of the *licensed fund* can demonstrate that investment negotiations commenced before the fifth anniversary of the granting of the *licence*;
- the manager of the *licensed fund* can demonstrate to the reasonable satisfaction of the *Program Delegate* that agreement on the relevant investment will be reached within a reasonable period; and
- the relevant investment is otherwise in accordance with the requirements of the *governing documents*.

The *Program Delegate* will seek the advice of the *Board* regarding decisions to allow new investment beyond the fifth anniversary of granting of a *licence*.

12 Investment

A *licensed fund*:

- must invest in *eligible investee companies* by means of an *equity* purchase or convertible notes, except for short term loans for temporary measures in circumstances where the *licensed fund* has already invested in the *eligible investee company*. Unless otherwise

approved by the *Program Delegate* the *equity* purchased must be a new issue and any conversion of notes must similarly lead to a new issue;

- may not invest in an *eligible investee company* in such a way that the fund becomes or may become liable for the debts or liabilities of that company or any other entity; and
- must not invest in, or provide finance to, an *eligible investee company* by means of a leveraged buyout, or in a manner consistent with a leveraged buyout, unless the *Program Delegate* otherwise agrees.

For the avoidance of doubt, a *licensed fund* will not be permitted to invest in certain ineligible investee companies, as defined in the *governing documents*.

The *governing documents* will include provisions on how a *licensed fund* must invest in *eligible investee companies*.

See **Appendix 3** for information on reporting requirements and **Appendix 4** for information on making distributions from the sale of investments.

12.1 Pre-licence investment

The *Program Delegate* may make provision in the *governing documents* to recognise investments in *eligible investee companies* by a fund made after the lodgement of an application but prior to the grant of a *licence* in respect of the fund.

12.2 Portfolio diversification

Subject to Section 12.3 of this *Customer Information Guide*, a *licensed fund* must not commit to make, or make, an investment (or other form of funding) of more than 20% of the fund's total *committed capital*, in any one *eligible investee company*.

12.3 Co-investment diversity

Co-investment in an *eligible investee company* with other *licensed funds*, whether licensed under the *IIF Program*, Round One or Round Two of the Innovation Investment Fund Program, REEF Program or PSF Program, is permitted.

However, no more than \$10 million of the total *Commonwealth program capital* for all the funds in the *IIF Program* may be invested in, committed for investment in, or otherwise made or agreed to be made available for, any one *eligible investee company* by *licensed funds*.

12.4 Investments which constitute conflicts of interest

To protect a *licensed fund's* investment, its manager may designate one or more persons (who may be *associates* of the manager) to serve as an officer, director, or other participant in the management of an *eligible investee company*.

The manager must identify any such person in its records available for the *Program Delegate's* review as part of the *licensed fund's* and manager's reporting requirements. Without the *Program Delegate's* prior written approval, the person must not receive any income or anything of value from the *eligible investee company*, with the exception of director's fees, and properly reimbursable expenses incurred by that person in their capacity as a director, or as otherwise permitted in the *governing documents*.

A fund manager may not exercise or concur in exercising any power or discretion it has as manager of the *licensed fund* if the manager or any *associate* of the manager has a direct or indirect personal interest in or arising out of the exercise of that power or discretion.

The *governing documents* will include provisions relating to investments which constitute conflicts of interest.

12.5 Change in activity of an investee company

If an *eligible investee company* ceases to be an *eligible investee company* because of a change in its business activity:

- the fund manager must notify the *Program Delegate* within thirty days of the change in the relevant company's business activities; and
- the *licensed fund* must not make any further investments in the relevant company and must divest its investments in the company within two years, or within any other period agreed by the *Program Delegate*.

12.6 Sale of investments to a *licensed fund's associates*

Except with the *Program Delegate's* prior written approval, a *licensed fund* is not permitted to sell its investments in an *eligible investee company* (including assets acquired in a liquidation) to any *associate* of the manager or the fund (or, if the fund is a trust, of the trustee). As one of the prerequisites to such an approval, a *licensed fund* must satisfy the *Program Delegate* that the proposed terms of disposal are at least as favourable to the fund as the terms reasonably obtainable were the sale to be made at arms' length to a third party, and that the assets are disposed of with the agreement of both the *licensed fund* manager and the *eligible investee company*.

12.7 Restriction on interests obtained by a *licensed fund's* management and employees

A *licensed fund*, its manager and their respective *associates* may hold an interest in an *eligible investee company* only if:

- the *Program Delegate* gives its prior written approval; or
- that interest represents compensation reasonably provided on an arms' length basis for services provided as a member of the board of directors of the *eligible investee company*.

13 Drawdown of capital

The rights and obligations attaching to each unit, share or other *equity* interest (in the case of a *licensed fund* that is a trustee, company or other investment structure respectively) held by an investor in the fund (including the Commonwealth) will generally be the same.

It is envisaged that *drawdown capital* will be invested or expended by the *licensed fund* within 30 days of the date on which the capital is provided. The *Program Delegate* will develop provisions, to be included in the *governing documents* of a *licensed fund*, that deal with the treatment of any *drawdown capital* not invested within that period.

A fund manager may not draw down capital in advance of the *Program Delegate* approving as an *eligible investee company* or as an eligible investment a company or investment (respectively) in relation to which the fund manager has sought and is awaiting the *Program Delegate's* advice as to eligibility.

Where the *Program Delegate* becomes aware that a *licensed fund* has made an investment in, or provided funds to:

- a company which is not an *eligible investee company* at a relevant time; or
- is otherwise ineligible (see **Appendix 2**),

the *Program Delegate* may require the fund manager not to make any drawdowns on capital in respect of its management fees or any further investment in that company.

Drawdown of fees may recommence after 120 days or earlier at the *Program Delegate's* discretion. The management fees payable for the period may be recouped on the first drawdown following recommencement, if the *Program Delegate* so determines.

If at or about the expiry of the 120 day period referred to above, the *Program Delegate* is not satisfied that the *licensed fund* is taking appropriate steps to rectify the breach, the *Program Delegate* may act to terminate the *licence* of the fund manager.

The *governing documents* will include provisions relating to the drawdown of capital for investments and management fees.

13.1 Restriction on investment of idle capital

Drawdown capital not invested in *eligible investee companies*, or otherwise expended, must be held as cash or on deposit at call with any:

- bank;
- financial institution registered under the *Financial Corporations Act 1974*; or
- authorised dealer in the short term money market.

Provisions to this effect must be included in the *governing documents* of the *licensed fund*.

14 Changes to *key personnel*

The *governing documents* will include provisions relating to any changes to or replacement of *key personnel*.

The fund manager must obtain the *Program Delegate's* prior written approval for any changes to or replacement of *key personnel*. That approval is at the discretion of the *Program Delegate*, and the fund manager must satisfy the *Program Delegate* that:

- the *key personnel* have appropriate skills and expertise and meet the requirements for the management team set out in the *selection criteria*;
- the management team will continue to possess an appropriate mix and appropriate levels of skills and expertise; and
- any other matter the *Program Delegate* considers relevant is satisfied.

The *Program Delegate* will seek advice from the *Board* when making a decision on whether to approve changes to or replacement of *key personnel*.

A fee will be payable by a fund manager to cover the *Program Delegate's* costs of assessing the manager's application for approval. That fee at the date of this *Customer Information Guide* is set out in **Appendix 5**. Any time limit within which the *Program Delegate* is required to act will not begin to run until the fee has been paid.

15 Transfer or sale of capital

15.1 Transfer or sale by the *Program Delegate* of Commonwealth interest in *licensed funds*

The Commonwealth may sell, assign, transfer, or otherwise dispose of any *equity* or debt, or other investment or security held by or on behalf of the Commonwealth in connection with a *licensed fund*. In those cases, the private investors in the particular *licensed fund* will have first right of refusal to purchase the Commonwealth's *equity*.

The *governing documents* may include provisions relating to the disposal of interests in a *licensed fund* by the Commonwealth and private investors.

The *Program Delegate* will generally not restrict the sale or transfer of *privately sourced capital* providing the sale or transfer does not:

- reduce the amount of total capital available to the *licensed fund*; or
- alter the composition of the privately sourced capital or private investors in a manner which would be contrary to this *Customer Information Guide* or the *governing documents*.

15.2 *Program Delegate* approval of merger, consolidation, or reorganisation of *licensed fund*

A *licensed fund*:

- must not change its structure without the *Program Delegate's* prior written approval; and
- will be required to pay an application fee in connection with any application for approval by the *Program Delegate* of any change in its structure. The fee at the date of this *Customer Information Guide* is set out in **Appendix 5**. Any time limit within which the *Program Delegate* is required to act will not begin to run until the fee has been paid.

The *Program Delegate* will seek the advice of the *Board* in relation to this issue. The *Program Delegate* may grant or withhold its approval at its discretion, and any approval that it does grant may be granted conditionally.

15.3 Transfer of *licence*

A fund manager may not transfer, sell or otherwise deal with, or mortgage, charge or encumber its *licence*.

15.4 Surrender of *licence*

A fund manager may only retire as manager of the relevant *licensed fund* on giving the notice required by the *licensed fund's governing documents*.

16 Default

The *governing documents* must include default provisions relating to the manager, the trustee and the overall financial position of a *licensed fund*.

The consequences of default may depend on who commits the default and the circumstances in which it arises. For example, if a *licensed fund* manager becomes insolvent, there will be a need to move swiftly to appoint a new manager.

16.1 Underperformance of *licensed funds* - definition and general requirements

Without limitation, a *licensed fund* will be considered to be underperforming if, at any time after the third anniversary of its commencement, the amount remaining after deducting from the total *committed capital* of the fund the aggregate of the following is a positive number which is more than 30% of the total *committed capital* of the fund:

- the current value of all investments held at that date;
- the total of all distributions to investors and managers;
- the amount of any uncalled *committed capital* of the fund; and
- the amounts of paid annual management fees.

An underperforming *licensed fund* may be placed on a watch list with additional conditions of operation. Generally, these additional conditions will include more frequent reporting requirements, but may vary on a case-by-case basis.

If the amount calculated in accordance above is an amount that is more than 50% of the total *committed capital* of a *licensed fund*, the *Program Delegate* may consider replacing the fund manager.

The *Program Delegate* may, but is not obliged to, consult with investors contributing *private capital* (excluding the fund manager and its *associates*) prior to taking action of the kind referred to in this section.

The *governing documents* will include provisions relating to the underperformance of a *licensed fund*.

16.2 Breach of *licence* and remedies

A *licence* may be revoked if the manager or an *associate* breaches its obligations under the *governing documents* which give rise to a termination right. The events giving rise to a right to terminate will be negotiated as part of the licensing process.

The *governing documents* will include provisions on breaches of the *licence* and remedies.

17 Sanctions

The *governing documents* will include provisions for sanctions if operational or contractual requirements are not met.

The *governing documents* may detail certain matters for which a special resolution or similar approval is required from all investors.

The *Program Delegate* will seek the advice of the *Board* before applying sanctions.

18 Evaluation

The *Program Delegate* will be periodically monitoring *licensed funds* to obtain relevant information for evaluation, including as set out in the *governing documents*. *Licensed funds* must facilitate and co-operate in any evaluation of the *IIF Program*.

The facilitation and co-operation expected of *licensed funds* may include, but is not limited to:

- a) facilitation of visits to investee companies by *Board* members, staff from *AusIndustry* or the Innovation Policy Division of the *Department*, or other representatives or consultants;
- b) distribution of information to *eligible investee companies*;
- c) attendance by the fund managers and representatives of *eligible investee companies* at evaluation meetings;
- d) provision of statistical or other information on the activities of *eligible investee companies*; and
- e) provision of the terms and conditions of investment in *eligible investee companies*.

19 Conditions applying to participate in the application process

All costs and expenses incurred by an *applicant* in connection with this *Customer Information Guide*, including (without limitation) preparing and lodging an application, providing further information, attending presentations and participating in any subsequent negotiations, are the sole responsibility of the *applicant*.

Nothing in this *Customer Information Guide* should be construed to give rise to any contractual obligations or rights, express or implied, by the issue of this *Customer Information Guide* or the submission of an application in response to it. No contract will be created until a formal written contract is executed between the Commonwealth and an *applicant*.

20 Feedback on the *IIF Program*

The *AusIndustry Customer Service Charter* outlines *AusIndustry's* commitment to improving our service delivery. It sets out the standards you can expect from *AusIndustry* and how you can help *AusIndustry* to deliver better services. A copy of the charter is available on the *AusIndustry* website www.ausindustry.gov.au.

AusIndustry conducts customer satisfaction surveys through which your feedback is taken into account to improve our business operations and our service. We will ensure that both positive and negative comments are passed on to the appropriate staff.

If you have a complaint, the *AusIndustry* hotline is your first point of contact. The hotline will direct your complaint to the appropriate manager, who will follow up to ensure that the matter is resolved.

The *AusIndustry* hotline may be contacted on **13 28 46** or by email at hotline@ausindustry.gov.au

If you are not satisfied with the complaint resolution procedure, you can contact the:

Executive General Manager of AusIndustry

GPO Box 9839

CANBERRA ACT 2601

Phone: 02 6213 7470

Fax: 02 6213 7344

You may decide to complain to the Commonwealth Ombudsman. There is no fee for making a complaint and the Ombudsman will conduct an independent investigation of your concerns. You should note that the Ombudsman usually prefers customers to first work through relevant internal processes before complaining about a decision.

The Ombudsman has offices in all states and territories. You can contact the Ombudsman on 1300 362 072 or by writing to the relevant contact address specified on the Ombudsman's website at www.ombudsman.gov.au.

Appendix 1: Definition of key terms and phrases

The table below provides definitions on key terms and phrases relating to the *IIF Program* and used throughout this guide.

| Term or phrase | Definition |
|-------------------------------------|--|
| applicant | An entity that makes an application or considers making an application. |
| associate | Will have the meaning given in the governing documents. The <i>Program Delegate</i> will require each document to include detailed and expansive provisions to ensure that relevant degrees of associateship are covered. Examples of associateship will include directors and employees and their relatives, and related companies and trusts. |
| AusIndustry | Means AusIndustry, a business unit within the <i>Department</i> and its successors. |
| Board | The Industry Research and Development Board and includes successors. |
| committed capital | Amounts the Commonwealth or another person undertakes to invest in or provide to a <i>licensed fund</i> , conditionally or unconditionally. |
| Commonwealth program capital | Amounts invested in or provided to a <i>licensed fund</i> by the Commonwealth. |
| control | The possession, directly or indirectly, of decision making powers relating to the management, direction and policies of a <i>licensed fund</i> or other business entity. This can be either through the ownership of voting securities, position on the board, contract or otherwise. |
| Customer Information Guide | Means this document. |
| Department | The Department of Industry, Tourism and Resources and includes successors. |
| drawdown capital | <i>Committed capital</i> that has been invested in or provided to a <i>licensed fund</i> . |
| early stage companies | Means companies at the seed, start-up and early expansion stages (as defined in paragraph 2 of Appendix 2). |
| eligible application | Means an application for a <i>licence</i> under the <i>IIF Program</i> in a form required by the <i>Program Delegate</i> from time to time, that is an application that the <i>Program Delegate</i> has determined is eligible for competitive merit based assessment and ranking by the <i>Board</i> in accordance with Section 3 of this <i>Customer Information Guide</i> . |
| eligible investee company | A company which satisfies the criteria specified in Appendix 2 . |
| equity | Includes any form of debt financing that is approved by the <i>Program Delegate</i> which does not compel the borrower or debtor to pay the interest, coupon or other charge in the nature of interest prior to the end of the term of the debt, except in the event of default. |
| governing documents | In relation to a <i>licensed fund</i> includes: <ul style="list-style-type: none"> (a) the <i>licence</i> with the Commonwealth; (b) the trust deed, constitution or other documents establishing the fund; and (c) any documents between the fund, its manager and the investors (or any of them). |

| Term or phrase | Definition |
|-----------------------------------|--|
| Government sourced capital | Amounts invested in a <i>licensed fund</i> by: <ul style="list-style-type: none"> (a) a person or persons funded directly or indirectly by the Commonwealth; or (b) any person whom the <i>Program Delegate</i> considers is directly or indirectly in receipt of funding from a source or sources which is or are funded directly or indirectly by the Commonwealth to such an extent that, in the opinion of the <i>Program Delegate</i>, it is appropriate to treat any amount invested in or provided to the fund by that person as Government sourced capital; (c) but excludes any amount of that funding that, the <i>Program Delegate</i> considers would be inappropriate to treat as <i>Government sourced capital</i>. |
| GST | The tax imposed or to be imposed under the <i>A New Tax System (Goods and Services Tax) Act 1999 (Clth)</i> and the related imposition acts of the Commonwealth. |
| IIF Program | Means round three of the Commonwealth's Innovation Investment Fund Program. |
| key personnel | In relation to a fund manager, means those individuals determined by the <i>Program Delegate</i> to be key personnel because of their level of technical and managerial expertise, time commitment and their day to day involvement in the management of the relevant <i>licensed fund</i> , and nominated as such in the <i>governing documents</i> . This includes any additions or replacements to that team approved by the <i>Program Delegate</i> . |
| licence | Means the licence to be granted under Part 4 of the <i>Program Guidelines</i> to a successful <i>applicant</i> . |
| licensed fund | A fund whose manager has been granted a <i>licence</i> under the <i>IIF Program</i> in respect of that fund. |
| licensing round | The process of inviting applications for the grant of a licence, shortlisting applicants and inviting offers to take up a <i>licence</i> from shortlisted <i>applicants</i> and awarding <i>licences</i> . |
| long term bond rate | Means the 10 year Commonwealth bond rate for time to time. |
| Minister | Means the Minister for Industry, Tourism and Resources. |
| new manager | An entity: <ul style="list-style-type: none"> (a) which has not previously raised a venture capital investment fund in Australia; and (b) whose management team for a fund in respect of which the entity has applied for a licence under the <i>IIF Program</i> must include either or both: <ul style="list-style-type: none"> i. personnel who are experienced in managing venture capital funds; ii. personnel who do not have significant experience in managing venture capital funds but who have other relevant and contemporary management experience, as determined by the <i>Board</i>. |
| non-profit enterprise | An enterprise whose <i>governing documents</i> prohibit the distribution of profits or other income to its members |

| Term or phrase | Definition |
|----------------------------------|---|
| Pooled Development Fund | Has the meaning given in the <i>Pooled Development Funds Act 1992</i> . |
| private capital | Means amounts invested in or provided to a <i>licensed fund</i> that are not <i>Commonwealth program capital</i> |
| privately sourced capital | Means amounts invested in or provided to a <i>licensed fund</i> that are not, in the opinion of the <i>Program Delegate</i> , <i>Government sourced capital</i> . |
| Program Delegate | Means an employee of the <i>Department</i> who has been empowered by the <i>Minister</i> , or is otherwise duly authorised, to carry out relevant functions in respect of the <i>IIF Program</i> . |
| Program Directions | Means the directions that are made by the <i>Minister</i> to the <i>Board</i> concerning its functions in relation to the <i>IIF Program</i> , as in force from time to time. |
| Program Guidelines | Means the guidelines that are made by the <i>Minister</i> to the <i>Department</i> , as in force from time to time for the delivery of the <i>IIF Program</i> . |
| qualifying enterprise | An enterprise that: <ul style="list-style-type: none"> (a) was established in Australia; and (b) is either: <ul style="list-style-type: none"> i. an institution of higher education specified in section 4(1) of the <i>Higher Education Funding Act 1988</i>; or ii. a wholly-owned Commonwealth, State or Territory enterprise which the <i>Board</i> considers has objects that include: <ul style="list-style-type: none"> (A) carrying out <i>R&D activities</i>; (B) carrying out services, or making facilities available, in relation to science or technology; (C) training, or assisting in the training of, persons in the field of scientific or technological research; or (D) collecting, interpreting or publishing information relating to science or technology; or iii. a non-profit enterprise which satisfies the objectives of the <i>IIF Program</i> as outlined in paragraph 1.2 of this <i>Customer Information Guide</i>.. |
| R&D activities | Systematic investigation or experimentation activities: <ul style="list-style-type: none"> (a) that involve innovation, technology transfer into Australia or technical risk; (b) that are carried out in Australia; and (c) the object of which is new knowledge (with or without a specific practical application) or new or improved materials, products, devices, processes or services. |
| result | In relation to <i>R&D activities</i> , means a result that is capable of being exploited as |

| Term or phrase | Definition |
|---|--|
| | contemplated by the <i>Act</i> |
| selection criteria | Means the eligibility criteria and merit criteria. |
| State or Territory Government source capital | <p>Amounts invested in a <i>licensed fund</i> by:</p> <p>(a) A person or persons funding directly or indirectly by a State or Territory government or body; or</p> <p>(b) Any person whom the <i>Program Delegate</i> considers is directly or indirectly in receipt of funding from a source or sources which is or are funded directly or indirectly by a State or Territory government or body to such an extent that in the opinion of the <i>Program Delegate</i>, it is appropriate to treat any amount invested in or provided to the fund by that person as State or Territory Government sourced capital.</p> |

Appendix 2: Eligible investee companies

1 Definition¹

A *licensed fund* must invest in *eligible investee companies*. For a company to be an *eligible investee company*, it must, subject to the other provisions in this *Customer Information Guide*, be a company which:

- at the time the fund first makes an investment in it is incorporated under the *Corporations Act 2001* and has an Australian Business Number (ABN);
- is commercialising *R&D activities* or will, under the investment arrangement with the *licensed fund*, be required to commercialise *R&D activities*;
- at the time the *licensed fund* first invests in the company, its business activity, which the investment is intended to support and develop, is at the seed, start-up or early expansion stage of its development;
- is providing all of the goods and services it produces through commercialising *R&D activities* to persons who are not *associates*;
- has a majority of its employees (by number) and assets (by value) inside Australia at the time the *licensed fund* first invests in the company, or will use the whole of the initial investment within Australia;
- at the time the *licensed fund* first invests in the company, has an average annual revenue over the previous two years of income that does not exceed \$5 million per year. The calculation of revenue for a year of income will exclude any abnormal items; and
- at the time the *licensed fund* first invests in the company, is not, an *associate* of a company (other than a *qualifying enterprise*) who has an average annual revenue, over the previous two years of income, in excess of \$5 million per year. The calculation of revenue for a year of income will exclude any abnormal items,

but does not include an ineligible investee company as defined in the *governing documents*.

Subsequent to an initial investment in an *eligible investee company* being made by a *licensed fund*, the relevant company may continue to remain an *eligible investee company* even if it ceases its incorporation under the *Corporations Act 2001*, provided that in the reasonable opinion of the manager for that fund:

- the relevant company has been incorporated as a company in another jurisdiction;

¹ The majority of criteria for a company to be an eligible investee company apply only at the date of the initial investment.

- the investment in the relevant company continues to promote the objectives of the *IIF Program*; and
- the *results* of the *R&D activities* to which that investment relates will be exploited on normal commercial terms and in a manner that will be for the benefit of the Australian economy.

All investment decisions will be made by the fund managers. Managers may apply to the *Program Delegate* for a determination as to whether or not the *Program Delegate* considers the company is an *eligible investee company*. The *Program Delegate* will seek the advice of the *Board* regarding the eligibility of a company. The *Program Delegate's* decision is final.

2 Attributes of seed, start-up and expansion stages

Factors indicating that a company is in the seed stage of development include:

- that the initial concept of its business is being formed;
- prototypes or concepts of the company's products or services are being developed; and
- the management team is beginning to form.

Factors indicating that a company is in the start-up stage of development include:

- that the investment is necessary for product development, staffing, initial marketing and other start-up costs;
- the management team is substantially in place; and
- the company is setting itself up to sell its product or service commercially.

Factors indicating that a company is in the early expansion stage of development include that the relevant investment will provide necessary working capital to help launch the manufacture and sale of the company's products or services. Typically, the company is not profitable and frequently will be cash-flow negative

The early expansion stage of development can encompass an established business undertaking the commercialisation of *R&D activities*, the size and scale of which results in the company being at a similar stage of development.

3 Ineligible Investments

The *licensed fund* must not invest in, or provide finance to, companies:

- whose primary business activity involves, directly or indirectly, providing capital to others, purchasing debt obligations or factoring;
- which are passive companies. A passive company is a company:

- which is not undertaking any significant product development or other operations, as determined by the *Program Delegate*;
- which is likely to pass substantially all of the proceeds of the investment to another entity; or
- which proposes to use the investment or finance for purposes other than commercialising *R&D activities*;
- whose business is substantially that of mining;
- which purchase, or will purchase, goods or services from a supplier who is an *associate* of a *licensed fund*, its manager or trustee, except under the following conditions:
 - the amount of goods and services purchased (or to be purchased) from the *associate* with the investment, or with capital released as a *result* of the investment, is (or will be) less than 5% of the total amount of the investment;
 - the price of such goods and services is (or will be) no higher than that charged other customers of the *associate* or market price;
- which is, or is the manager of, another *licensed fund* (or a fund whose manager is licensed under the REEF Program, PSF program, or Round One or Round Two of the Innovation Investment Fund Program);
- which carries on business in the capacity of trustee of a trust or in any nominee or representative capacity;
- which proposes to use all or any part of an investment made by the *licensed fund* to finance the acquisition of land used or intended to be used for agricultural, horticultural or forestry purposes; or
- which is, or is in a class of companies, determined by the *Program Delegate* from time to time to be ineligible.

Appendix 3: Reporting requirements

1 General

All reports and financial statements to be provided to the *Board* must be submitted to:

The Manager

Venture Capital Programs Section

AusIndustry

Department of Industry, Tourism and Resources

In addition to a hard copy, a *licensed fund* must, if required by the *Program Delegate*, submit all required documentation electronically or on disk.

The *governing documents* will include provisions relating to the reporting requirements for a *licensed fund*.

A *licensed fund* must provide to the *Board*:

- a) a copy of the *licensed fund's governing documents* within 30 days of establishment of the *licensed fund*;
- b) a copy of any amendments to the documents referred to in 1(a) of this appendix within 7 days of making the amendment;
- c) a copy of the *licensed fund's* register of investors within 30 days of its establishment;
- d) a copy of any amendment to that register within 7 days of making the amendment;
- e) any report, application or document filed with the Australian Securities and Investments Commission at the same time as it is filed;
- f) a copy of any report it furnishes to its investors, including any prospectus, letter or other publication concerning the *licensed fund's* financial operations or those of any eligible investee company. The copy must be provided at the same time as the report is furnished to the investors;
- g) reports for any litigation or other proceedings relating to the *licensed fund* or its manager describing the proceedings and identifying the other parties involved and the *licensed fund's* or its manager's relationship to them. Such a report must be provided within 30 days of the action being commenced. The proceedings covered by this paragraph include any action by a *licensed fund*, or by a *licensed fund's* security holder in a personal or derivative capacity, against an officer, director, investment adviser or other *associate* of the *licensed fund* for alleged breach of duty, but do not include litigation to which a manager and the Commonwealth are parties in respect of which the manager would otherwise be entitled to claim legal professional privilege;

- h) copies of pleadings and other documents relating to any litigation or other proceedings as the *Board* may specify. If any litigation or proceeding has been terminated by settlement or final judgment, the *licensed fund* must promptly advise the *Board* of the terms. This paragraph does not apply to collection actions by a *licensed fund* or proceedings to enforce the *licensed fund's* ordinary creditor's rights; and
- i) any other reports as directed in writing by the *Board*, including interim financial reports and other *governing documents*.

2 Maintaining accounting records

A *licensed fund* must establish and maintain accounting records using generally accepted Australian accounting principles and practices consistently applied over time. The *Board* may approve variations to those principles and practices generally or in a particular case.

3 Providing access to records

A *licensed fund* must keep and be able to provide the *Board*, and *AusIndustry* or their nominees with access to the following records:

- all accounting and other financial records; and
- all documents and supporting materials related to, explaining or evidencing business transactions.

4 Preservation of records

A *licensed fund* must keep and be able to provide the *Program Delegate*, and *AusIndustry* or their nominees all records for the period required by the *Corporations Act 2001*, Australian Taxation Law and other applicable law, as amended from time to time, which ever is the longer.

5 Required reporting for each investment

A *licensed fund* must provide the following information to the *Board* within 30 days of making an investment:

- a) an eligible investee status declaration, executed by the licensed fund's manager certifying that the investee company is an eligible investee company;
- b) a declaration by the licensed fund's manager of the intended use of the proceeds and certifying that the investment will be used for commercialising R&D activities; and

- c) a declaration by the licensed fund's manager that the nature and structure of the investment complies with the fund's governing documents.

6 Reporting requirements

A *licensed fund* must provide the following information to the *Program Delegate* within 60 days of the end of the *licensed fund's* financial year:

- audited financial statements and any supplementary information for the period of 12 months ending 30 June in that year. The financial statements must be audited by the *licensed fund's* auditor;
- an assessment of the economic impact of each investment over that 12 month period, specifying export and domestic sales, import replacement activities, employment growth (direct and indirect), revenue growth and product development and commercialisation;
- a portfolio valuation report for that 12 month period prepared in accordance with the *Program Delegate's* valuation policy or other policy approved by the *Program Delegate*; and
- details of staff training activities undertaken and movements within the management team of the *licensed fund*.

A *licensed fund* must provide to the *Program Delegate* unaudited financial statements and any supplementary information covering the financial affairs of the *licensed fund* for the period 1 July to 31 December each year, within 45 days of the end of that 6 month period.

A *licensed fund* must provide to the *Program Delegate* quarterly reports for the periods 1 January to 31 March and 1 July to 30 September within 30 days of the end of those periods. Reports should include an update on the *licensed fund* and *eligible investee company* activities.

7 Examinations

The *Program Delegate* will examine all *licensed funds* for the purpose of evaluating compliance with the *Program Guidelines* as and when it considers appropriate.

A *licensed fund* must make all books, records and other documents and materials requested by the *Program Delegate* available for the examination. In addition, the appointment document appointing the *licensed fund's* auditor must provide that any information in the auditor's working papers in respect of the *licensed fund* be made available to the *Board* or its examiner upon request.

A fund manager must obtain any information requested by the *Program Delegate* or its examiner for the purpose of verifying the declarations made in the eligible investee status declarations. In this regard, a *licensed fund's* investment documents must contain provisions requiring eligible investee companies to provide the *Program Delegate* or its examiner access to their books and records for that purpose.

8 *Licensed fund's* adoption of approved valuation policy

Licensed funds must use the valuation policy approved by the *Program Delegate* in determining the value of their investments. Valuations must be consistent with the Australian equivalent International Financial Reporting Standards. Unless the *Program Delegate* determines otherwise, the Australian Private Equity and Venture Capital Association Limited valuation policy is the valuation policy approved by the *Program Delegate*.

Licensed funds must conduct a valuation of their investments as at each quarter.

9 Extension for date of Lodgement

If it is impracticable to submit any required report within the time allowed, a *licensed fund* may apply to the *Program Delegate* for an extension of time. The request for an extension must:

- a) be lodged before the reporting deadline; and
- b) provide reasons for the late lodgment.

Extensions will normally only be allowed in extraordinary circumstances outside the *licensed fund's* control.

The *Program Delegate* may accept or reject a request for an extension of time conditionally or unconditionally.

10 Late Lodgement

In the event of any late lodgement of documentation required under the *Program Guidelines*, the *Program Delegate* may instruct the *licensed fund* manager not to make any drawdowns on capital in respect of management fees without the *Program Delegate's* consent.

Drawdowns in respect of management fees may recommence on lodgement of the documentation in a satisfactory form. The management fees payable for the period may be recouped on the first drawdown following recommencement, if the *Program Delegate* so determines.

11 Disputes

The manager of a *licensed fund* must ensure that the document specifying the terms and conditions of the investment by a *licensed fund* in an *eligible investee company* contains provisions specifying the dispute resolution procedures to be followed in the event of a dispute between the company and the *licensed fund* or the *licensed fund* manager.

Appendix 4: Distributions

A *licensed fund* must make a distribution on the receipt of earnings or the realisation of investments in the following manner:

- a) first, an amount equal to the *licensed fund's* total *committed capital* is to be divided amongst the Commonwealth and private investors pro rata according to the amount subscribed by them (broadly, one-half to the Commonwealth and one-half to private investors), whether or not drawn down;
- b) secondly, each investor (including the Commonwealth) is to be paid an amount equal to the interest on the outstanding balance of the amount from time to time invested in or provided to the *licensed fund* by that investor. Interest is to be calculated in this way until the *committed capital* is “repaid” under paragraph (a). The interest rate is to be the *long term bond rate* prevailing on the date the offer of a *licence* is made by the *Program Delegate* and stipulated in the offer document. Again, interest will, broadly, be paid one-half to the Commonwealth and one-half to private investors;
- c) thirdly, each investor (including the Commonwealth) is to be paid an estimate of a notional amount of interest that investors might otherwise have received on amounts invested in or provided to the *licensed fund* after the *committed capital* is “repaid” under paragraph (a). The estimate will be calculated in the following manner:
 - dividing the undrawn capital into a number of notional drawdowns. The number of notional drawdowns is the number of instalments of the base management fee remaining to be paid after the *committed capital* is returned;
 - calculating interest on each notional drawdown at the *long term bond rate* from the date it is notionally drawn down to the end of the *licensed fund*;
 - calculating the net present value of each of those amounts of interest by applying a discount rate equal to the *long term bond rate*; and
 - the interest estimate is then the sum of those net present values.
- d) Again, the estimate will, broadly, be paid one-half to the Commonwealth and one-half to the private investors.
- e) Future interest is to be estimated at this stage, and a one-off payment made to investors based on that estimate, so that all future distributions can be made in accordance with paragraph (d), without the need to revert to an interest calculation as drawdowns continue to be made and “repaid”; and
- f) fourthly, any surplus is to be divided between the Commonwealth (as to 10%) and the other investors and the *licensed fund* manager (as to 90%).

The Commonwealth has no priority as to distributions.

Applicants should note that, before:

- a) interest at the ten year bond rate is calculated in paragraph (b) or (c); or

b) any surplus is determined in paragraph (d),

the amount referred to in paragraph (a) must first have been paid to investors, irrespective of whether the investors have paid all of their *committed capital* into the *licensed fund*.

Each *licensed fund* will have a set level of *privately sourced capital* approved as part of the selection process. Managers will be required under the *licence* to give the *Board* evidence that the required level of *privately sourced capital* is committed before the Commonwealth first invests in the *licensed fund*. Accordingly, although managers may draw on the investors' capital over the period of the *licensed fund*, the total investment must be committed in advance. For example, if a fund is permitted to have total *committed capital* of \$40 million, the manager must obtain commitments from private investors to contribute \$20 million before the Commonwealth first invests in the *licensed fund*. As described above, an amount equal to the total *committed capital* must be paid to investors before the bond rate return and division of any surplus will occur.

It should also be noted that amounts included in paragraph (b) and (c) do not have the nature of interest, but are a return of earnings on the realisation of investments.

The percentages referred to in paragraph (d) may be changed by agreement between the *licensed fund* manager and the other investors, subject to *Program Delegate* approval. The *licensed fund* will be required to provide written evidence to the *Program Delegate* detailing distribution arrangements.

The *Program Delegate* will not accept any in-specie or other in-kind distributions to the Commonwealth.

The *Program Delegate* will not allow any form of streaming of dividend franking or other credits or income to investors.

The *governing documents* will include provisions on the distribution of earnings or realisation of investments by a *licensed fund*.

Appendix 5: Fees

| Type of application | Fee payable (including GST) |
|--|--------------------------------|
| An application for a <i>licence</i> : <ul style="list-style-type: none"> • Stage one assessment • Stage two assessment | \$5,000 \$5,000 |
| An application for the <i>Program Delegate's</i> approval to the reorganisation of the <i>licensed fund</i> | \$5,000 |
| An application for the <i>Program Delegate's</i> approval to a change in <i>key personnel</i> | \$5,000 |
| An application for the agreement, consent, approval of, or a determination by, the <i>Program Delegate</i> . | \$500 |