

# **DRAFT**

## **OTHER AGENCIES**

### **NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

#### **Authority Assistance Programs**

##### **Evergreen**

#### **Specially Adopted and Concurrently Proposed New Rules: N.J.A.C. 19:31-25**

Specially Adopted and Concurrently Proposed New Rules Authorized: April \_\_, 2022, by Tim Sullivan, Chief Executive Officer, New Jersey Economic Development Authority.

Filed: April \_\_, 2022, as R.2022 d.\_\_\_\_.

Authority: P.L. 2020, c. 156 and P.L. 2021, c. 160.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Concurrent Proposal Number: PRN 2022-\_\_\_\_.

Effective Date: April \_\_, 2022 [Date Filed].

Expiration Date: October \_\_, 2022 [180 Days from Effective Date].

Submit written comments by July 15, 2022, to:

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In accordance with P.L. 2020, c. 156 and P.L. 2021, c. 160, the New Jersey Economic Development Authority (“NJEDA” or “Authority”) has adopted the following new rules to implement the provisions of the New Jersey Economic Recovery Act of 2020, establishing the New Jersey Innovation Evergreen Act (Act), sections 20 through 34 of P.L. 2020, c. 156.

The new rules became effective on April \_\_, 2022, upon acceptance for filing by the Office of Administrative Law. The specially adopted new rules shall be effective for a period not to exceed 180 days from the date of filing, that is, until October \_\_, 2022.

Concurrently, the provisions of the new rules are being proposed for re-adoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act,

N.J.S.A. 52:14B-1 et seq. The adopted amendments will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-6.4(f)) if filed on or before the 180-day expiration date from the date of filing.

The specially adopted and concurrently proposed new rules follow:

### **Summary**

The following paragraphs summarize the contents of each section of the new rules implementing the New Jersey Innovation Evergreen Act:

The New Jersey Economic Development Authority (“NJEDA” or “Authority”) is proposing rules to establish a tax credit sale process, innovation ecosystem engagement platform and investment program pursuant to the New Jersey Innovation Evergreen Act (Act), sections 20 through 34 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 (N.J.S.A. 34:1B-288 through 34:1B-302).

The New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160, creates a package of tax incentive, financing, and grant programs that will address the ongoing economic impacts of the COVID-19 pandemic and build a stronger, fairer New Jersey economy.

The New Jersey Innovation Evergreen Act is created to foster an ecosystem of innovation and investment in early-stage businesses as a component of economic development. The Act authorizes the Authority to sell up to \$300 million of corporate tax credits through the auction of no more than \$60 million of tax credits annually for the entirety of the seven-year program. In exchange for the tax credits, the New Jersey Innovation Evergreen Fund (“Evergreen Fund” or “Fund”) will receive capital from the tax credit purchasers along with strategic commitments to support early-stage businesses and the innovation ecosystem in the State. The Evergreen Fund will serve as a source of capital to co-invest with qualified professional venture capital investment firms in early-stage businesses based in New Jersey, helping to foster innovation in the State.

Any dividends and returns to the Evergreen Fund resulting from qualified investments will be reinvested from the Fund in perpetuity by design, or until the Fund capital is exhausted. Once the Fund has received total deposits from dividends and returns from qualified investments equaling \$500 million, the Authority shall pay 50 percent of any return on investment that exceeds two times the amount invested for that qualified investment to the General Fund of the State. The Authority will utilize 75 basis points of the total funding amount in the Evergreen Fund to establish and administer additional programs that support the growth of innovation in the State.

To be eligible to purchase tax credits, a potential tax credit purchaser must meet criteria including, but not limited to:

- Specify the requested amount of tax credits the potential tax credit purchaser proposes to purchase, which shall not be less than \$500,000;
- Specify the percentage amount the potential tax credit purchaser proposes to pay in exchange for the requested amount of tax credits, which shall not be less than 75 percent of the requested dollar amount of credits;
- Specify and quantify the nature and cost of its strategic commitment, including but not limited to, mentorship hours, internship offerings, sales, and distribution pipeline access;
- Commit to serve on the New Jersey Innovation Evergreen Advisory Board for one-year from the time of tax credit approval; and
- Provide a refundable deposit for 10 percent of the tax credit purchase offer, not to exceed \$500,000, at the time of application.

The Authority shall evaluate and score each completed bid application received before the application period has closed. If the amount of tax credits requested for purchase exceeds the total amount available for purchase, the Authority may pro rate the amount of tax credits allocated to each tax credit purchaser. In no event shall any tax credit purchaser receive less than \$500,000 of tax credits. If the proration were to result in any tax credit bidder receiving less than \$500,000, the Authority shall award tax credits only to the highest scored bidders that would result in a proration of at least \$500,000 to each bidder. Failure by the tax credit purchaser to meet the commitments identified in its auction bid will make the bidder ineligible in future competitive auctions unless the bidder makes a monetary payment equal to the dollar value of the unmet strategic commitment.

In order to invest the Evergreen Fund monies, the Authority shall establish an application process through which a venture firm may apply for certification as a qualified venture firm. Approval will enable the qualified venture firm to apply for funding from the Fund to make qualified investments in early-stage New Jersey businesses. To be eligible to become a qualified venture firm, a venture firm must meet various eligibility criteria, including but not limited to:

- Not less than \$10 million in any combination of one or more of the following: net assets of the funds managed by the qualified venture firm, equity capitalization of the funds managed by the qualified venture firm, or written commitments of cash or cash equivalents on the date the determination that the certification is made;
- At least two principals or persons employed to direct the qualified investment capital, each of which shall have at least five years of significant angel investment experience or professional money management experience in the venture capital or private equity sectors; and
- Additional weighted evaluation criteria, which may be amended by the Authority, including: the management structure of the applicant, the applicant's investment strategy, the location of the venture firm, and the applicant's proposed structure and policy of investments in qualified businesses.

The agreement with the qualified venture firm will contain language that will require the qualified venture firm to, in summary:

- Make qualified investments in an amount equal to or greater than that provided by the Fund in qualified businesses as the manager of uniquely created special purpose vehicles;
- Cause an audit of the qualified venture firm’s books and accounts of the Evergreen special purpose vehicle holding qualified investments and other reporting requirements;
- Consent to specific application and reporting information disclosures in the interest of transparency; and
- Agree that the qualified venture firm will publicize its participation in the New Jersey Innovation Evergreen Fund.

If a qualified venture firm fails to continue to meet the requirements for certification as a qualified venture firm, the venture firm shall no longer be eligible to make qualified investments, but it will retain the management of the existing qualified investments for which the qualified venture firm was initially approved. Further, certain actions by the qualified venture firm, such as failure to submit the required annual reports for two consecutive years or making a material misrepresentation, may result in the disassociation of the qualified venture firm from the qualified investment and the forfeiture of any associated management fees, direct expenses, or carried interest.

Upon the approval by the Authority of applications from qualified venture firms for a qualified investment into a qualified business, the Authority shall transfer money from the Evergreen Fund for the qualified investment. The Authority shall evaluate the qualified venture firm’s proposed investment and shall approve a qualified investment into a qualified business that, at minimum, among other possible criteria:

- Is registered to do business in New Jersey with the Director of the Division of Revenue and Enterprise Services in the Department of Treasury;
- Has principal business operations in the State;
- Is engaged in a targeted industry;
- Employs fewer than 250 full-time employees; and
- Meets the definition of a high-growth business.

Individual initial qualified investment amounts shall be considered on a ratio of no greater than one-to-one with the initial investment from the qualified venture firm active fund, but shall not be less than \$100,000 or greater than \$5,000,000, unless permitted under specified conditions. A qualified investment may be an amount of up to \$6,250,000 if the qualified business is a New Jersey university spin-off, utilizes intellectual property developed at a New Jersey university that is core to its business model, or is certified by the State as a “minority business” or a “women’s business” pursuant to P.L. 1986, c. 195 (N.J.S.A. 52:27H-21.17 et seq.). The Authority shall have a goal for 25 percent of the Fund money allocated to qualified venture firms to be reserved for investment in qualified businesses located in qualified opportunity zones. The Authority shall have the right to make a follow-on investment from the Fund into the qualified business in the same ratio as the qualified venture firm’s follow-on investment relative to the qualified venture firm’s initial investment. The maximum follow-on investment from the Fund into a qualified business shall not exceed the lesser of: i. the cap on the qualified investment (\$5,000,000 or \$6,250,000) on an aggregate basis of follow-on investments in a twelve-month period; ii. 15 percent of invested plus uninvested capital of the Fund; and iii.

15 percent of the total invested with the qualified venture firm by all of its investors, including investments in any Evergreen special purpose vehicles (total assets under management).

A qualified venture firm shall report the following annually after certification, within 120 days of the qualified venture firm's tax year:

- All qualified investments made during the preceding calendar year;
- The number and wages of full-time employees of each qualified business at the time the venture firm made the qualified investment and as of the end of the qualified venture firm's tax year (or at the time of investment termination) and information relating to full-time employees located in New Jersey;
- Financials, audited by a certified public accountant, who is licensed in accordance with the "Accountancy Act of 1997," P.L. 1997, c. 259 (N.J.S.A. 45:2B-42 et seq.), or the laws of another state, of the qualified venture firm active fund and the Evergreen special purpose vehicle; and
- Any other information the Authority requires to ascertain the impact of the program on the economy of the State.

During the qualified business compliance period, the qualified business must maintain a place of business in New Jersey and must maintain one of the following: its principal business operations in New Jersey (which is defined as two tests in relation to the employee's residency), at least 50 percent of its full-time employees filling a position in New Jersey, or at least 50 percent of wages paid to employees filling a full-time position in New Jersey. If qualified business fails to do so for two consecutive years, the Authority may exercise its right of redemption and require the qualified business to redeem the Evergreen Fund investment for an amount equal to the greater of the qualified investment or the fair market value of the qualified investment at the time of the redemption demand. If the qualified venture firm or any other investor offers to purchase such qualified investment for the same amount as set forth above, the Authority may accept such purchase instead of redemption.

The following paragraphs summarize the contents of each section of the new rules implementing the New Jersey Innovation Evergreen Act:

N.J.A.C. 19:31-25.1 Applicability and scope – Addresses the statutory authority for the program and summarizes the scope and purpose of the program, which is to auction tax credits to establish and maintain a dedicated fund to be known as the New Jersey Innovation Evergreen Fund to catalyze investment in the innovation economy, pursuant to sections 20 through 34 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160.

N.J.A.C. 19:31-25.2 Definitions – Incorporates terms defined at P.L. 2020, c. 156 pertaining to the program, clarifies statutory terms, and defines additional terms included in the implementation of the program.

N.J.A.C. 19:31-25.3 New Jersey Innovation Evergreen Fund – Establishes the New Jersey Innovation Evergreen Fund to receive funding from the auctioned sale of tax credits,

make investments with the funds, and provide for administrative and operating expenses of the Fund and programs to support the innovation ecosystem.

N.J.A.C. 19:31-25.4 Sale of tax credits – Authorizes the sale of tax credits through a competitive auction application consisting of a tax credit purchase offer, strategic commitment, and refundable deposit, to be evaluated, scored, and awarded.

N.J.A.C. 19:31-25.5 Tax credit purchaser contract – Requires a purchaser contract with the Authority including payment information with credit to the Fund and the commitments made by the purchaser in its auction bid, as well as assurance of no undue financial advantage to purchaser.

N.J.A.C. 19:31-25.6 Tax credit transfer certificate – Allows the purchaser of a credit, upon application to and approval by the Division of Taxation in the Department of the Treasury and the Chief Executive Officer of the Authority, to sell its credit, for not less than 85 percent of the transferred credit amount and pay ten percent of the sale to the General Fund of the State.

N.J.A.C. 19:31-25.7 Qualified venture firm application, certification, and agreement – Establishes an application process, minimum qualifications, good standing requirements, weighted evaluation criteria, and approval of a qualified venture firm.

N.J.A.C. 19:31-25.8 Qualified business and qualified investments – Creates an application and evaluation process that allocates funding to make up to two qualified investments per qualified venture firm per year; establishes a goal of up to 25 percent of the allocation for qualified businesses in qualified opportunity zones; and, based on the findings of the disparity study, authorizes the Authority Board to institute a set-aside plan for investments in women- and minority-owned business enterprises in this State.

N.J.A.C. 19:31-25.9 Qualified venture firm annual report – Imposes annual reporting requirements on the qualified venture firm, and outlines the actions the Authority may take if the qualified venture firm fails to comply with such reporting requirements.

N.J.A.C. 19:31-25.10 Recapture, Decertification and Redemption – Identifies conditions for payment for strategic commitments and recapture of tax credit discount from a tax credit purchaser; decertification and repayment from qualified venture firms; and redemption from a qualified business.

N.J.A.C. 19:31-25.11 Affirmative action and prevailing wage – Provides for when affirmative action and prevailing wage apply under this program.

N.J.A.C. 19:31-25.12 Fees – Provides that third party retention cost will be paid by tax credit purchaser, venture firm or business if necessary, and no fees will be charged to program applicants.

N.J.A.C. 19:31-25.13 New Jersey Innovation Evergreen Advisory Board – Establishes the New Jersey Innovation Evergreen Advisory Board in, but not of, the Authority for the purposes of providing guidance and networking opportunities to qualified businesses.

N.J.A.C. 19:31-25.14 Appeal Process – Outlines the requirements for an applicant to appeal an action of the Authority Board and the process by which the Authority shall consider each appeal in a timely manner.

N.J.A.C. 19:31-25.15 Reports on implementation of program – Details the provisions of P.L. 2020, c. 156 establishing requirements for a report every two years to the Governor and Legislature.

N.J.A.C. 19:31-25.16 Severability – States that if any portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of the subchapter are severable and shall not be affected by that determination.

As the Authority has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The proposed new rules, which establish the New Jersey Innovation Evergreen Fund and encourage venture capital investment into early-stage businesses in New Jersey, are intended to have a positive social impact.

The Fund is a key component of the State's broader economic development plan. Investments from the Fund balances economic impact; for example, accelerating the growth of venture capital investment in New Jersey, with a focus on increasing equity and opportunity for all. This strategy is clearly demonstrated in the New Jersey Economic Recovery Act of 2020's overall approach, which establishes or amends 15 different programs with varying development objectives. The Act is primarily focused on providing resources to help foster innovation in New Jersey by increasing the availability of venture capital to early-stage businesses, and facilitating a collaborative environment between these early-stage businesses and existing corporations operating in New Jersey. Similar to other programs, the program established by the Act and these rules also focuses on maintaining employment in New Jersey.

Fostering innovation in New Jersey helps create an environment in which innovative ideas in high-wage, high-growth sectors can be developed and scaled into significant businesses. These businesses will become future economic drivers for New Jersey, contributing tax revenues and employing New Jersey residents. The New Jersey Innovation Evergreen Fund also supports investment in diverse entrepreneurs, reflective of New Jersey's rich cultural makeup.

### **Economic Impact**

The proposed new rules are intended to bolster the State's economy by providing resources to drive investment into high-wage, high-growth innovation sectors that best support

New Jersey's long-term economic future. The New Jersey Innovation Evergreen Fund will grow the availability of venture capital investment in New Jersey, which is the key resource needed to commercialize, test, and scale research and ideas that can positively impact New Jersey's economy. The resulting investments from the Fund into early-stage New Jersey businesses will support their continued growth, which will lead to economic benefits in the form of tax revenues and employment opportunities in high-wage, high-skill industries. Additionally, the New Jersey Innovation Evergreen Fund will provide resources, beyond financial resources, for engagement and interaction between existing corporations and early-stage businesses.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed new rules are not subject to any Federal requirements or standards.

### **Jobs Impact**

As the core focus of this program is encouraging investment in high-wage, high-growth sectors, this program will result in job creation driven by business growth enabled through Fund investments in early-stage businesses. This includes the creation of high-skill, high-wage jobs needed to perform specific technical functions. Prior to implementation, it is not possible to accurately forecast the number of jobs that will be supported by the New Jersey Innovation Evergreen Fund.

### **Agriculture Industry Impact**

The proposed new rules may have a positive impact on the agricultural industry, which includes aquaculture and fisheries, through the targeted inclusion of the non-retail food and beverages industry. Specifically, an investment from the New Jersey Innovation Evergreen Fund may be made within the agricultural industry through involvement with research and development activities that advance agricultural food innovation technologies. As a result, new or advanced technologies may benefit the State's agricultural industry operations for the production, processing, preservation, and distribution of raw agricultural goods into consumer food products.

### **Regulatory Flexibility Analysis**

The proposed new rules may impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; however, any costs will be minimal and fully offset by the amount of equity infusion received by the businesses.

### **Housing Affordability Impact Analysis**

The proposed new rules will not impact the amount or cost of housing units, including multi-family rental housing and for sale housing in the State. The proposed new rules implement the New Jersey Innovation Evergreen Act which authorizes the sale of tax credits, the proceeds

of which will be used to capitalize the New Jersey Innovation Evergreen Fund that will invest in early-stage New Jersey businesses.

### **Smart Growth Development Impact Analysis**

The proposed new rules will not impact the number of housing units or result in any increase or decrease in the average cost of housing in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed new rules implement the New Jersey Innovation Evergreen Fund which authorizes the sale of tax credits, the proceeds of which will be used to capitalize the Fund that will invest in early-stage New Jersey businesses.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The proposed new rules will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

**Full text** of the specially adopted and concurrently proposed new rules follows:

## **SUBCHAPTER 25. EVERGREEN**

### **19:31-25.1 Applicability and scope**

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement the provisions of the New Jersey Economic Recovery Act of 2020 establishing the New Jersey Innovation Evergreen Act (Act), sections 20 through 34 of P.L. 2020, c. 156, as amended. Under the Act, the Authority shall administer a program to invest in innovation as a catalyst for economic growth and to advance the competitiveness of the State's businesses in the global economy. The Authority shall auction corporate business tax credits and will deposit the amounts received in a dedicated fund to be known as the New Jersey Innovation Evergreen Fund (Fund). The Authority shall use the money in the Fund to carry out the purposes enumerated in this subchapter.

### **19:31-25.2 Definitions**

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Act” means the New Jersey Innovation Evergreen Act, sections 20 through 34 of P.L. 2020, c. 156, as amended (N.J.S.A. 34:1B-288 to 34:1B-302).

“Affiliate” means an entity that directly or indirectly controls, is under common control with, or is controlled by, another entity. Control exists in all cases in which the entities are members of a controlled group of corporations, as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563), or the entities are an organization in a group of organizations

under common control, as defined pursuant to subsection (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414).

“Authority” means the New Jersey Economic Development Authority established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

“Director” means the Director of the Division of Taxation in the Department of the Treasury.

“Evergreen special purpose vehicle” means an entity controlled by or under common control with a qualified venture firm that is formed solely by the qualified venture firm for the purpose of the fund investing in a qualified business alongside the investment from the qualified venture firm active fund.

“Evergreen special purpose vehicle manager” means the managing member or general partner of an Evergreen special purpose vehicle.

“Follow-on investment” means a subsequent investment in a qualified business made by the fund, through an Evergreen special purpose vehicle, corresponding to the additional investment made by a qualified venture firm which has a previous qualified investment in such qualified business.

“Filling a position in New Jersey” means filling a position with a full-time employee whose primary office is in New Jersey and who spends at least 80 percent of the employee’s time in New Jersey, or any other period of time generally accepted by custom or practice as full-time employment at a location, as determined by the Authority.

“Full-time employee” means a person who is in a position in the United States that is employed by a qualified business on a permanent or indefinite basis for consideration for at least 35 hours a week, or any other standard of service generally accepted by custom or practice, as determined by the Authority, as full-time employment, or who is a partner of a qualified business who works for the partnership for at least 35 hours a week, or any other standard of service generally accepted by custom or practice, as determined by the Authority, as full-time employment. A “Full-time employee” shall not include any person who works as an independent contractor or on a consulting basis for qualified business; any person who works as an intern, as a temporary employee, or in a temporary position; or any employee in a position that is primarily engaged in final point-of-sale retail.

“Fund” means the “New Jersey Innovation Evergreen Fund” established by section 23 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-291).

“High-growth business” means a business that is growing significantly faster than the average growth rate of the economy or, in the absence of historic data necessary to verify the business’s past operations, is a start-up business that is investing in developing a product or new business model that will allow it to grow significantly faster than the average growth rate of the economy within the next three to five years. The Authority shall establish and publish on its website metrics for determining the growth rate of the economy and the relative rate of growth of

businesses, which may be based on revenues, number of customers, or valuation and may take into consideration the growth rate of the industry of the high-growth business.

“Incentive area” means an area in this State: designated pursuant to the “State Planning Act,” P.L.1985, c.398 (C.52:18A-196 et seq.), as Planning Area 1 (Metropolitan); or that has been designated as a qualified opportunity zone pursuant to 26 U.S.C. s.1400Z-1.

“Innovation ecosystem” means funding, programs, and events that support the establishment and expansion of high-growth business in targeted industries. Examples of such funding, programs, and events include, but are not limited to, mentoring programs for start-ups, meet-up or networking events, funding for locating a business in a collaborative workspace, programs that provide business services, and entrepreneurial education to businesses.

“Intellectual property” means property protected by patent pending, patent awaiting approval, approved patent, registered copyright or intellectual property licensed from a college or university in New Jersey. For purposes of this definition, “licensed” means intellectual property used pursuant to an agreement that states therein that it is granting an exclusive license that authorizes the licensee to control aspects of the development of the protected proprietary intellectual property.

“New Jersey S corporation” means the same as the term is defined in section 12 of P.L. 1993, c. 173 (N.J.S.A. 54A:5-10).

“Opportunity zone” means a federal population census tract in this State that was eligible to be designated as a qualified opportunity zone pursuant to 26 U.S.C. s.1400Z-1 as may be amended.

“Partnership” means an entity classified as a partnership for federal income tax purposes.

“Principal business operations” means at least 50 percent of the business’s full-time employees reside in the State, or at least 50 percent of the business’s payroll for full-time employees is paid to individuals living in this State. For purposes of this definition, payroll shall mean wages.

“Program” means the New Jersey Innovation Evergreen Program established by section 22 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-290).

“Qualified business” means a high-growth business that, at the time of the first qualified investment in the business and throughout the qualified business compliance period, is registered to do business in this State with the Director of the Division of Revenue and Enterprise Services in the Department of the Treasury; has its principal business operations located in the State and intends to maintain its principal business operations in the State after receiving a qualified investment under the program; is engaged in a targeted industry; and employs fewer than 250 full-time employees at the time of the qualified investment.

“Qualified business compliance period” means the period starting with the qualified investment in a qualified business and ending on the sale or other disposition of all shares of stock of the qualified business from the Evergreen special purpose vehicle, including any distribution of the shares to the Authority. If the distribution of the shares of stock from the Evergreen special purpose vehicle to the Authority occurs in less than five years after the qualified investment, the qualified business compliance period shall be five years or such other shorter qualified business compliance period determined by the Authority, which may be based on factors including, but not limited to, the number of the qualified business full-time employees filling a position in New Jersey.

“Qualified business side agreement” means the agreement entered into by the Authority, the qualified venture firm, and the qualified business relating to the qualified investment in the qualified business.

“Qualified investment” means the direct investment of money by the fund, through an Evergreen special purpose vehicle, corresponding with a qualified venture firm’s initial investment in a qualified business for the purchase of shares of stock, which may include option or warrant rights, and the right to make a follow-on investment at a later date, all of which is matched by the initial investment by a qualified venture firm. The exercise of the option or warrant, or the decision to make a follow-on investment, shall be in the discretion of the Authority.

“Qualified venture firm” means a venture firm that is certified by the Authority as a qualified venture firm pursuant to section 29 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-297) and N.J.A.C. 19:31-25.7.

“Qualified venture firm active fund” means the entity managed by the qualified venture firm or an affiliate of the qualified venture firm from which the qualified venture firm invests in a qualified business alongside the qualified investment.

“Qualified venture firm agreement” means the agreement entered into by the Authority and the qualified venture firm regarding the participation of the qualified venture firm in the program.

“Qualified venture firm managing individual” means the individual with the authority to execute and bind the qualified venture firm to agreements.

“Reserves” means capital in the fund which has been reserved for the purposes set forth in N.J.A.C. 19:31-25.3(e).

“Strategic commitment” means the commitment by the tax credit purchaser to strengthen the State's innovation ecosystem, which may include, but is not limited to, providing mentorship, networking, sales and distribution pipeline access, and collaboration opportunities to qualified business that receive qualified investments.

“Targeted industry” means any industry identified from time to time by the Authority that shall initially include advanced transportation and logistics, advanced manufacturing, aviation, autonomous vehicle and zero-emission vehicle research or development, clean energy, life sciences, hemp processing, information and high technology, finance and insurance, professional services, film and digital media, non-final point of sale retail food and beverage businesses, including food innovation, and other innovative industries that disrupt current technologies or business models. A qualified business shall be considered to be in a targeted industry if the business is engaged primarily in a targeted industry. The Authority may consider whether a qualified business is engaged primarily in another innovative industry that disrupts current technologies or business models, by assessing factors including, but not limited to, whether businesses in the industry are offering products or services that significantly improve current market offerings on the basis of price or other performance levels, whether the new industry creates opportunities for new businesses to enter and redefine the supply chain or value chain of an industry, or whether the industry utilizes new technology or business processes that allow New Jersey-based businesses to collect a share of revenues that were traditionally only available to companies in other geographies.

“Tax credit bid” means the submission of the strategic commitment, the tax credit purchase offer, and all other documents required pursuant to N.J.A.C. 19:31-25.4(e) for a bid for tax credit as part of the tax credit auction.

“Tax credit purchase offer” means the specific cash dollar amount offered by a potential tax credit purchaser to purchase a specific amount of tax credits.

“Tax credit purchaser” means an entity registered to do business with the Director of the Division of Revenue and Enterprise Services in the Department of the Treasury, subject to tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), and that purchases an allocation of tax credits under the program.

“University spin-off business” means a business whose primary function is to commercialize proprietary intellectual property developed at a New Jersey-based college or university, or a business that was created by a then current faculty member or then currently enrolled student utilizing the facilities and/or resources of such college or university. To be a “university spin-off business,” the business must have been formed less than 10 years prior to the date of the qualified investment application. Formation shall be based on the earliest use of the intellectual property of a predecessor entity, irrespective of the corporate structure or tax status of the business.

“Venture firm” means a partnership, corporation, trust, or limited liability company that invests cash in a business during the early or expansion stages of a business in exchange for an equity stake in the business in which the investment is made. Venture firm may include a venture capital fund, a family office fund, or a corporate investor fund, provided that a professional manager administers the venture firm.

### **19:31-25.3 New Jersey Innovation Evergreen Fund**

(a) The Authority shall establish and maintain a dedicated fund to be known as the New Jersey Innovation Evergreen Fund. The Authority shall use the money in the fund to carry out the purposes enumerated in the Act and this subchapter.

(b) The Authority shall credit the fund with money paid by tax credit purchasers from the sale of tax credits pursuant to N.J.A.C. 19:31-25.4; distributions from payments or repayments made to the Authority in accordance with subsection c. of section 31 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-299) and N.J.A.C. 19:31-25.8(l); earnings received, if any, from the investment or reinvestment of money credited to the fund; money received pursuant to payments, repayments, or redemptions required by N.J.A.C. 19:31-25.10 except for the recapture of tax credits pursuant to N.J.A.C. 19:31-25.10(b); and any money which, from time to time, may otherwise become available for the purposes of the Fund.

(c) Subject to availability of funds, the Authority shall allocate the money in the fund to qualified venture firms to make qualified investments in qualified businesses through an Evergreen special purpose vehicle in accordance with section 30 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-298) and N.J.A.C. 19:31-25.8 and to pay the administrative, legal, and auditing expenses of the Authority incurred in the administration of the program. In addition, the Authority shall use 75 basis points of the total amounts deposited in the fund, calculated on an annual basis, for programs administered by the Authority that create an innovation ecosystem that supports and promotes high-growth businesses in the State.

(d) The Authority shall deposit into the Fund dividends and returns on investments paid to the Authority by or on behalf of a qualified business. Upon the Fund receiving total deposits from such Fund dividends and returns from qualified investments of \$500,000,000, the Authority shall pay 50 percent of any return on investment in excess of twice the original and follow-on investment to the General Fund of the State.

(e) The Authority shall account for, and calculate reserves for, follow-on investments and qualified venture firm management fees and direct expenses as set forth in N.J.A.C. 19:31-25.8(k); programs that support the State's innovation ecosystem pursuant to (c) above; and administrative, legal, and auditing expenses of the Authority in administering the program, plus such other amounts as shall be determined by the Authority. The Authority may also reserve such amounts as it considers necessary to achieve the goal set forth in N.J.A.C. 19:31-25.8(b) and any goals that may be developed pursuant to the disparity study completed and performed in accordance with N.J.A.C. 19:31-25.8(c). The Authority shall not include these reserves when calculating the amount in the Fund available for new qualified investments.

#### **19:31-25.4 Sale of Tax Credits**

(a) The Authority shall auction up to \$300,000,000 in tax credits against State tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) in annual amounts not to exceed the limitations set forth in section 98 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-362). The Authority shall not undertake an auction if, exclusive of all reserves pursuant to N.J.A.C. 19:31-25.3(e), more than \$15,000,000 is available to the Authority, from moneys received from any prior auction of tax credits pursuant to the program, to allocate to qualified venture firms.

(b) The Authority shall sell the tax credits authorized pursuant to section 22 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-290) and subsection (a) above to tax credit purchasers through a competitive auction process. Except when the amounts in the fund exceeds the minimum as provided in section 22 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-290) and subsection (a) above, the Authority shall hold one competitive auction per calendar year.

(c) The Authority may contract with an independent third party to conduct the competitive bidding process through which State tax credits issued by the Authority may be sold.

(d) Prior to a competitive auction, the Authority shall establish the dates for the competitive auction and the weighted criteria the Authority will utilize to evaluate tax credit bids. The Authority shall base the criteria on the price offered to purchase the tax credits and the quality of the commitment to mentorship and networking opportunities and other support of the State's innovation ecosystem. The Authority may also determine whether to request a best and final offer process. The Authority shall provide public notice of the dates and weighted criteria through its website in advance of the competitive auction.

(e) To be considered for an award of a tax credit under the program, a potential tax credit purchaser shall submit a tax credit bid application which shall include the following information in an application format prescribed by the Authority:

1. The name, secondary or doing business as name(s), address, entity form, country and state of formation, date of formation, federal and state tax identification number, phone number, and website address of the potential tax credit purchaser;

2. The name, title, email, address, and phone number of the primary point of contact authorized by the potential tax credit purchaser to submit the application to the Authority;

3. The name, title, email, address, and phone number of any legal counsel, accountant, and consultant assisting the potential tax credit purchaser with the tax credit bid application;

4. Description of the potential tax credit purchaser and its business;

5. Legal structure of the potential tax credit purchaser;

6. The names of all venture firms managed by potential tax credit purchaser; all venture firms of which the potential tax credit purchaser beneficially owns, through rights, options, convertible interests, or otherwise, more than 15 percent of the voting securities or other voting ownership interests; and all venture firms for which the potential tax credit purchaser controls the direction of investments;

7. The tax credit purchase offer consisting of:

- i. The requested amount of tax credits, which shall not be less than \$500,000;

ii. The percentage amount the potential tax credit purchaser will pay in exchange for the requested amount of tax credits, which shall not be less than 75 percent of the requested dollar amount of tax credits;

8. Commitment to serve on the New Jersey Innovation Evergreen Advisory Board, established pursuant to section 32 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-300) and N.J.A.C. 19:31-25.13(a), if appointed, and to comply with the requirements of such appointment as set forth in N.J.A.C. 19:31-25.13(b), along with the name, title, phone number, address, and email of the proposed tax credit purchaser representative to the New Jersey Innovation Evergreen Advisory Board;

9. The strategic commitment, which shall specifically describe each activity and provide the financial cost to the potential tax credit purchaser of each activity;

10. A tax clearance certificate from the New Jersey Division of Taxation pursuant to P.L. 2007, c.101, which shall also satisfy the requirement for registration to do business in this State;

11. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

12. An agreement by the potential tax credit purchaser that, subject to the terms of the program, its tax credit bid application and terms contained therein shall be binding on the potential tax credit purchaser for 120 days following submitting its tax credit bid application;

13. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities with which the potential tax credit purchaser is associated with or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The potential tax credit purchaser shall also submit a written certification by the chief executive officer, or equivalent officer for North American operations, stating that the potential tax credit purchaser satisfies the criteria at N.J.A.C. 19:31-25.7(e) to be in substantial good standing, or if a compliance issue exists, has entered into an agreement, with the respective department with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;

14. A list of all the development subsidies, as defined at P.L. 2007, c. 200, that the potential tax credit purchaser is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;

15. A certification by the chief executive officer, or equivalent officer for North American operations, of the potential tax credit purchaser that the officer has reviewed the tax credit bid application information submitted and that the information contained in the application is true and accurate under penalty of perjury; and

16. Any other information that the Chief Executive Officer of the Authority determines is necessary to review a tax credit bid application under this program.

(f) To be considered a complete tax credit bid application under the program, the potential tax credit purchaser shall remit to the Authority via wire transfer of immediately available funds a refundable deposit in an amount equal to the lesser of ten percent of the tax credit purchase offer or \$500,000.

(g) A potential tax credit purchaser shall not be eligible absent extenuating circumstances or written consent by the Authority, if:

1. In the prior twelve months, it was previously approved for the purchase of tax credits and failed to timely make the full payment required to receive the tax credits;

2. It previously received tax credits and has not complied with prior strategic commitments unless it has repaid the amount due under N.J.A.C. 19:31-25.10(a); or

3. In the prior twelve months it has been appointed to the New Jersey Innovation Evergreen Advisory Board and has not complied with the requirements of such appointment as set forth in N.J.A.C. 19:31-25.13(b).

(h) The Authority shall evaluate and score each complete tax credit bid application.

1. If the aggregate amount of tax credits requested for purchase by all potential tax credit purchasers exceeds the total amount available for purchase, the Authority may pro rate the amount of tax credits allocated to each tax credit purchaser, rounded down to the nearest dollar amount, based on factors including, but not limited to, the tax credit purchaser's score or percentile rank, provided that in no event shall prorations result in an tax credit bid to purchase less than \$500,000 of tax credits. If the proration were to result in any potential tax credit purchaser receiving less than \$500,000 of tax credits, the Authority shall award tax credits only to the highest scored potential tax credit purchasers that would result in a proration with at least \$500,000 of tax credits to each potential tax credit purchaser.

2. If the aggregate amount of tax credits requested for purchase is less than the total amount available for purchase, the Authority may offer the tax credit purchasers the opportunity to request additional amounts, on the same or better terms as in the tax credit purchaser's tax credit purchase offer, provided that the aggregate request does not exceed the total tax credit available for purchase.

3. A potential tax credit purchaser that submits a bid for tax credits under this section shall receive a written notice from the Authority indicating whether the Authority has approved it as a tax credit purchaser of tax credits and, if so, the amount of tax credits approved.

(i) Prior to awarding tax credits to a potential tax credit purchaser, the Authority shall confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the potential tax credit

purchaser is in substantial good standing, or if a compliance issue exists, has entered into an agreement, with the respective department as set forth in N.J.A.C. 19:31-25.7(e). The Authority may contract with an independent third party to perform a background check on the potential tax credit purchaser.

(j) A tax credit purchaser shall apply a credit awarded pursuant to this section against the State tax liability due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) of the tax credit purchaser for the current privilege period as of the date of the approval of the award of the tax credit. A tax credit purchaser may carry forward an unused credit resulting from the limitations of (k) below, if necessary, for use in the seven privilege periods next following the privilege period for which the credit is awarded.

(k) The Director shall prescribe the order of priority of the application of the credits awarded under this program and any other credits allowed by law. The amount of a credit applied under this Act and this program against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) for a privilege period, together with any other credits allowed by law, shall not reduce the tax liability of the tax credit purchaser to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5).

(l) Credits awarded to a partnership or a New Jersey S corporation shall be passed through to the corporate partners, corporate members, or corporate owners, respectively, pro-rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director accompanied by any additional information as the Director may prescribe consistent with any rule, guidance, or other publication issued by the Division of Taxation.

(m) The Authority shall publish on its Internet website the following information concerning each tax credit award approved by the Authority pursuant to this section:

1. The name of the tax credit purchaser;
2. The face value of the tax credit purchase;
3. That the tax credit may be applied against State tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); and
4. The price paid by the tax credit purchaser.

### **19:31-25.5 Tax Credit Purchaser Contract**

(a) A tax credit purchaser that submits a successful bid for the purchase of tax credits pursuant to section 24 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-292) and N.J.A.C. 19:31-25.4 shall enter into a contract with the Authority that includes payment information and the strategic commitment. The tax credit purchaser contract shall include, but shall not be limited to, the following:

1. The face-value of the purchased tax credits and the price paid by the tax credit purchaser in exchange for such awarded tax credits;
2. The privilege period in which the tax credit purchaser may apply the awarded tax credit;
3. A detailed description of the tax credit purchaser's strategic commitment approved by the Authority in awarding any tax credits under the program;
4. A requirement that the tax credit purchaser comply with the strategic commitments made in its auction bid and a provision requiring the tax credit purchaser to repay all or part of the value of the strategic commitment as set forth in N.J.A.C. 19:31-25.10(a);
5. A requirement for the tax credit purchaser to report annually on the status of each component of the strategic commitments made in its auction bid until the component is completed and to provide, within 30 days of completion of the component, verification that the tax credit purchaser completed the activities for that component;
6. An ongoing requirement to provide the Authority with information that will enable the Authority to administer the program;
7. An agreement that the refundable deposit provided pursuant to N.J.A.C. 19:31-25.4(f) shall become non-refundable on the effective date of the tax credit purchaser contract;
8. An agreement to remit, within thirty (30) business days of the effective date of the tax credit purchaser contract, to the authority via wire transfer of immediately available funds the balance of its tax credit purchase offer;
9. An agreement to provide a representative to serve on the New Jersey Innovation Evergreen Advisory Board, established pursuant to section 32 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-300) and N.J.A.C. 19:31-25.13(a), and to provide the name, title, phone number, address, and email of the proposed tax credit purchaser representative to the New Jersey Innovation Evergreen Advisory Board;
10. A covenant by the tax credit purchaser that during the twelve-month period after the approval of the award of tax credits, the tax credit purchaser shall not manage; beneficially own, through rights, options, convertible interests, or otherwise, more than 15 percent of the voting securities or other voting ownership interests; or control the direction of investments of a qualified venture firm that applies for a qualified investment;
11. A provision permitting an audit of the records of the tax credit purchaser supporting the strategic commitment activities, from time to time, as the Authority deems necessary;
12. A provision permitting the Authority to amend the agreement;
13. A provision establishing the conditions under which the Authority, the tax credit purchaser, or both, may terminate the agreement;

14. Indemnification and insurance requirements;

15. Default and remedies, including, but not limited, to a default if a tax credit purchaser made a material misrepresentation on its application or if the Authority debars or disqualifies the tax credit purchaser under N.J.A.C. 19:30-2; and

16. Such other provisions as shall be required by the Authority.

(b) A potential tax credit purchaser that submits a successful tax credit bid for the purchase of tax credits pursuant to section 24 of P.L.2020, c.156 (N.J.S.A. 34:1B-292) and N.J.A.C. 19:31-25.4 shall pay by wire transfer of immediately available funds, within thirty (30) business days of the tax credit purchaser contract being fully executed, the balance of the tax credit purchase offer. The balance of the tax credit bid due to the Authority shall be an amount equal to the amount specified in its tax credit purchase offer to the Authority less the deposit remitted by the tax credit purchaser upon submitting its tax credit bid application. Upon receipt thereof, the Chief Executive Officer shall notify the Director to issue tax credits in the amount approved. If the tax credit purchaser fails to timely pay the balance, the Authority may offer the tax credits for purchase to other approved tax credit purchasers in the order of score on the same or better terms as in that tax credit purchaser's tax credit purchase offer.

(c) The Authority shall credit to the Fund any money paid to the Authority by a tax credit purchaser for an allocation of tax credits under the program. The deposit shall be credited to the Fund on the effective date of the tax credit purchaser contract in accordance with (a)7 above.

(d) No undue financial advantage shall inure to a tax credit purchaser due to its participation in this program. During the twelve-month period after the approval of the award of tax credits to a tax credit purchaser, the Authority shall not approve a qualified investment or follow-on investment to a venture firm that is managed; beneficially owned, through rights, options, convertible interests, or otherwise, more than 15 percent of the voting securities or other voting ownership interests; or whose direction of investments are controlled by a tax credit purchaser. The Chief Executive Officer of the Authority shall certify that the Authority is monitoring the activities of such tax credit purchasers and has taken appropriate steps to ensure no undue financial advantage inures to the tax credit purchasers.

#### **19:31-25.6 Tax credit transfer certificate**

(a) A tax credit purchaser may apply to the Authority and the Director for a tax credit transfer certificate, in the privilege period during which the Director allows the tax credit purchaser a tax credit pursuant to N.J.A.C. 19:31-25.5(b), in lieu of the tax credit purchaser being allowed to apply any amount of the tax credit against the tax credit purchaser's State tax liability. A tax credit may be sold or assigned, in full or in part, to another person that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), in an amount not less than \$100,000. The tax credit transfer certificate provided to the tax credit purchaser shall include a statement waiving the tax credit purchaser's right to claim the credit that the tax credit purchaser has elected to sell or assign. If all or part of a tax credit sold or assigned is subject to recapture,

then the Authority shall pursue recapture from the initial tax credit purchaser and not from the subsequent purchaser or assignee of the tax credit transfer certificate.

(b) The tax credit purchaser shall not sell or assign a tax credit transfer certificate allowed under this section for consideration received by the tax credit purchaser of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. The tax credit transfer certificate issued to a tax credit purchaser by the Director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to section 26 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-294), this subchapter, and any other terms and conditions that the Director may prescribe, including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.

(c) A buyer or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate.

(d) Ten percent of the consideration received by a tax credit purchaser from the sale or assignment of a tax credit transfer certificate pursuant to this section shall be remitted to the Director prior to the issuance of the tax credit transfer certificate. The Director shall deposit the funds in the General Fund of the State.

(e) The Authority shall publish on its Internet website the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:

1. The name of the transferor;
2. The name of the transferee;
3. The value of the tax credit transfer certificate;
4. That the tax credit may be applied against State tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); and
5. The consideration paid by the transferee, identified as the consideration received by the transferor and the amount paid to the State pursuant to (d) above.

### **19:31-25.7 Qualified venture firm application, certification, and agreement**

(a) The Authority shall establish an application process and determine the form and manner through which a venture firm may make and file an application for certification as a qualified venture firm. The Authority may accept applications on a rolling basis or on a date set by the Authority.

(b) Each applicant venture firm shall first submit an application for certification as a qualified venture firm including the following information and supporting documentation in an application format prescribed by the Authority:

1. The name of the venture firm, address, entity form, country and state of formation, date of formation, federal and state tax identification number, phone number, and website address of the venture firm;

2. The name, title, email, address, and phone number of the primary point of contact of the venture firm;

3. The name, title, email, phone number and address of the consultant assisting with the application, if applicable, and of the legal counsel and the accountant for the venture firm;

4. The name of any company managing the venture firm; the list of all companies beneficially owning, through rights, options, convertible interests, or otherwise, more than 15 percent of the voting securities or other voting ownership interests of the venture firm; and all companies controlling the direction of investments of the venture firm;

5. The limited partnership or limited liability company agreement for the venture firm active fund(s) that the qualified venture firm anticipates will co-invest alongside the Fund;

6. The most recent annual audited financial statement, a list of all funds managed or controlled by the venture firm, the most recent quarterly financial statement for all such funds, the assets under management of the venture firm, and any other documentation demonstrating that the venture firm is not excluded from eligibility pursuant to (d)1 below, all of which must be current as of the date of its application. The venture firm shall agree to submit to the Authority any valuations of the equity capitalization and net assets completed subsequent to the valuation included in its most recent financial statements and through the date the determination for certification is made and as may be required by the Authority;

7. Any current and past organizational charts of the venture firm, which shall list of all principals, managers, and any other employees of the venture firm that will direct qualified investment; if the firm does not have any current or past organizational charts, current and past lists of such principals, managers, and employees; a description of the professional experience, including, but not limited to, the number of years of investment experience in the venture capital or private equity sectors, detailed work history, and employment references, of the senior management team of the venture firm and of the principals, managers, and employees that will direct qualified investment; and any other documentation demonstrating that the venture firm is not excluded from eligibility pursuant to (d)2 below, all of which must be current as of the date of its application. The venture firm shall agree to report any change to the organizational chart and list of principals, managers, and employees through the date the determination for certification is made and as may be required by the Authority;

8. Any current and past policies or plans for diversity, equity and inclusion for the venture firm's internal operations, including, but not limited to, hiring, and for the venture firm's investments, and information and documentation evidencing the venture firm's compliance with such policies;

9. A tax clearance certificate from the New Jersey Division of Taxation pursuant to P.L. 2007, c.101, which shall also satisfy the requirement for registration to do business in this State;

10. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities with which the venture firm is associated with or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The venture firm shall also submit a written certification by the qualified venture firm managing individual stating that the venture firm satisfies the criteria at (e) below to be in substantial good standing, or if a compliance issue exists, has entered into an agreement, with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;

11. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

12. Agreement and consent for the Authority to publicize the venture firm's participation in the program, once qualified, and to publicize the qualified venture firm's approved qualified investments into qualified businesses;

13. A list of all office locations, and associated lease agreements, the qualified venture firm has in the State, if applicable;

14. The name of any businesses with a place of business in the State in which the venture firm has invested during the five calendar years prior to the date of application, and the dates of investment(s), location of business headquarters, and documents as shall be required by the Authority to evidence such investments;

15. A description of any regional investment policy of the venture firm that includes the State;

16. An investor pitch deck for the intended qualified venture firm active fund or, if not yet available, the most recent investor pitch deck prepared by the venture firm;

17. If a venture firm proposes to agree to dedicate a greater portion of qualified investments into qualified businesses located within incentive areas as set forth in (c)4 below, the list of all investments in the past five years in businesses located within incentive areas;

18. A certification by the qualified venture firm manager that the information contained in the application is true and accurate under the penalty of perjury; and

19. Any other relevant information as determined by the Authority for a specific application.

(c) The Authority shall certify or refuse to certify a venture firm as a qualified venture firm based on the criteria for certification set forth in section 28 and subsections b. and c. of section

29 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-296), (d) and (e) below, and the weighted criteria by which the Authority will evaluate all venture firms applying in the same calendar year. The Authority shall establish, and provide public notice through its website, of the weighted criteria and a minimum acceptable score. The weighted criteria shall include, but not be limited to:

1. The management structure of the venture firm, including, but not limited to:

i. The quality of the leadership of the venture firm in the innovation ecosystem in the State, including, but not limited to, the venture firm's willingness to work with the Authority to support targeted industries and the innovation ecosystem in the State and to locate in the State;

ii. The investment experience of the principals and the venture firm with qualified businesses;

iii. The knowledge, experience, and capabilities of the venture firm in subject areas of its investment focus relevant to high-growth businesses in the State;

iv. The tenure and turnover history of principals and senior investment professionals of the venture firm;

v. Whether the State's approved maximum aggregate qualified investments with the venture firm under this program, if the State were to approve up to two such qualified investments, would exceed 15 percent of the total invested with the venture firm by all of its investors, including investments in any Evergreen special purpose vehicles;

vi. The venture firm's stage of fundraising for their proposed qualified venture firm active fund; and

vii. Whether management fees, carried interest, expenses, and the remuneration of the general partner or manager for their proposed qualified venture firm active fund is similar to those of peer venture firm investors;

2. The venture firm's investment strategy, including, but not limited to:

i. The venture firm's track record of investing in high-growth businesses;

ii. Whether the investment strategy of the venture firm's proposed qualified venture firm active fund is focused on high-growth businesses, including the percentage of the investment identified to be invested in New Jersey or surrounding geographic areas; and

iii. The performance history of the general partner or fund manager and the venture firm based on a review of investment returns on individual funds on an absolute basis and relative to peers;

3. The venture firm's business location(s), with preference given to venture firms that are located in incentive areas; and

4. The venture firm's proposed structure and policy of investments in qualified businesses, with preference given to venture firms that agree to dedicate a greater portion of qualified investments into qualified businesses located within incentive areas compared to past investments made by the venture firm.

(d) The Authority shall not certify a venture firm as a qualified venture firm if the venture firm:

1. Has less than \$10 million in any combination of one or more of the following: equity capitalization of funds managed by the qualified venture firm or an affiliate of the qualified venture firm, net assets of funds managed by the qualified venture firm or an affiliate of the qualified venture firm, or written commitments of cash or cash equivalents. The evaluation of such equity capitalization and net assets shall be the included in the most recent financial statement reported by the venture firm, which must be dated within 150 days prior to the date the determination for certification is made. The value of equity capitalization and net assets shall be the lesser of the value included in the most recent financial statement or subsequent valuation prior to the date the determination for certification is made. The written commitments must be executed and in effect on the date the determination for certification is made;

2. Has fewer than two principals or persons employed to direct the qualified investment with at least five years of money management experience, which shall be either professional money management experience or significant angel investment experience. Professional money management experience shall include, but is not limited to, operational and investment oversight, in the venture capital or private equity sectors, including but not limited to, investment firms, investment bank, asset management or similar investment management institution or family office fund. To be significant, angel investment experience shall consist of \$100,000 of aggregate investments and two investments per year. The experience shall be met as of the date the determination for certification is made; or

3. Is not in compliance with the requirements of any agreement, whether related to the program or otherwise, with the Authority.

(e) Prior to certifying a venture firm as a qualified venture firm, the Authority shall confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the venture firm is in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the venture firm has entered into an agreement with the respective department that includes a practical corrective action plan as applicable.

1. Substantial good standing shall be determined by each department and mean, at a minimum, that the venture firm:

i. As to the Department of Labor and Workforce Development and the Department of Environmental Protection:

(1) Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective department that apply to the venture firm; and

(2) Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and

ii. As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.

2. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates, or issues, its own more stringent rule or standard defining the term “substantial good standing,” the respective department shall use such rule or standard to determine whether a venture firm is in substantial good standing.

3. The Authority may contract with an independent third party to perform a background check on the venture firm.

(f) The Authority shall provide written notification to each venture firm that is certified as a qualified venture firm by the Authority and shall provide written notification to each venture firm that the Authority refuses to certify as a qualified venture firm, communicating in detail the grounds for the Authority’s refusal.

(g) The Authority shall provide the qualified venture firm with a qualified venture firm agreement. Absent extenuating circumstances or prior written consent by the Authority, the Authority’s approval of certification shall expire if the qualified venture firm does not execute and return the qualified venture firm agreement within the time prescribed by the Authority. The qualified venture firm agreement shall include, but not be limited to, the following:

1. The amount of capital allocated to the qualified venture firm from the Fund to make a qualified investment in the qualified business, which shall be subject to the availability of funds in the Fund and the requirements in N.J.A.C. 19:31-25.8. An allocation of funds shall not reserve funds;

2. A requirement for the qualified venture firm to make investments in qualified businesses that equal or exceed the amount of capital that the qualified venture firm receives from the Fund under the program;

3. A requirement that the qualified venture firm cause an audit of the qualified venture firm’s books and accounts of any Evergreen special purpose vehicle holding qualified investments, which a certified public accountant, licensed in accordance with the “Accountancy Act of 1997,” P.L. 1997, c. 259 (N.J.S.A. 45:2B-42 et seq.), or licensed in accordance with the laws of another state, shall conduct at least once in each year in which the qualified venture firm is in receipt of Fund money or in which the qualified venture firm is responsible for the management of Fund money allocated to the qualified venture firm by the Authority;

4. A requirement that the qualified venture firm enter into a qualified business side agreement, either directly or as the Evergreen special purpose vehicle member, with each qualified business that receives a qualified investment, which agreement shall, at a minimum, require the qualified business to:

i. Use the qualified investment to support its business operations in this State by maintaining a place of business in the State and by:

(1) Maintaining its principal business operations in this State;

(2) Having at least 50 percent of its full-time employees filling a position in New Jersey; or

(3) Having at least 50 percent of wages paid to employees filling a full-time position in New Jersey;

ii. Provide the information pertaining to the qualified business necessary for the qualified venture firm to submit the annual report required under section 31 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-299) and N.J.A.C. 19:31-25.9(a);

iii. Permit the Authority to exercise the remedies as set forth in N.J.A.C. 19:31-25.10(h), (i), and (j) for the events set forth in those subsections;

iv. Adhere to an ongoing requirement to provide the qualified venture firm and the Authority with information that will enable the Authority to administer the program;

v. Accept indemnification and insurance requirements;

vi. Comply with a provision permitting an audit of the records of the qualified business related to the qualified business's requirements under the program, including, but not limited to, use of the qualified investments and employee information, from time to time, as the Authority deems necessary; and

vii. Agree with default and remedies, including, but not limited, to a default if the qualified business made a material misrepresentation to the Authority or if the Authority debar or disqualifies the qualified business under N.J.A.C. 19:30-2;

5. A requirement that the qualified venture firm, upon the identification of a qualified investment and approval by the Authority of the qualified investment, create an Evergreen special purpose vehicle, utilizing such forms of agreement as shall be approved by the Authority, for the qualified investment of the Fund. The Evergreen special purpose vehicle shall be managed by the qualified venture firm or the same affiliate of the qualified venture firm that manages the qualified venture firm active fund. The Authority, at its own discretion, may determine that the qualified investment shall be made through the same Evergreen special purpose vehicle as other qualified investments with the same qualified venture firm active fund;

6. A requirement that the qualified venture firm, upon the identification of a qualified investment and approval by the Authority of the qualified investment, indicate the amount of follow-on investment the qualified venture firm shall reserve, and periodically, but no less frequently than annually through the annual report required pursuant to N.J.A.C. 19:31-25.9(a) below, provide updates concerning this amount;

7. Agreement by the qualified venture firm that it shall charge an Evergreen special purpose vehicle only management fees, carried interest, and direct expenses necessary solely to comply with this program; that the Authority shall transfer funds to an Evergreen special purpose vehicle for payment of management fees and direct expenses only upon a capital call; and that the management fees, carried interest, and direct expenses that the qualified venture firm may charge shall be no greater than the maximum established by the Authority from time to time, and published on the Authority's website, based on management fees and carried interest charged by peer venture firms and on reasonable costs of direct expenses;

8. A requirement that the qualified venture firm notify the Authority of any follow-on investment by the qualified venture firm active fund as set forth in N.J.A.C. 19:31-25.8(j) and agree to fund follow-on investments from the Evergreen special purpose vehicle;

9. Agreement and consent by the qualified venture firm that the Authority may publicly disclose the qualified venture firm on the list of qualified venture firms participating in the program and publicize any qualified investment and follow-on investment by the qualified venture firm from the Fund;

10. Agreement to provide to the Authority, and consent that the Authority may publicly disclose, any tax expenditure information as described in paragraph (8) of subsection b. of section 1 of P.L. 2009, c. 189 (N.J.S.A. 52:27B-20a) and any information necessary for the report required pursuant to N.J.S.A. 34:1B-301 and N.J.A.C. 19:31-25.15;

11. Agreement by the qualified venture firm that once funds are allocated and received for a qualified investment, such qualified investment must be made within 90 days of the approval of the qualified investment unless the Authority gives prior written consent to an extension;

12. A requirement to provide all fully executed agreements evidencing all qualified venture firm active fund investments in the qualified business, including any follow-on investments by the qualified venture firm active fund;

13. A requirement to provide all fully executed agreements evidencing the qualified investment and any follow-on investment in the qualified business;

14. An ongoing requirement to provide the Authority with information that will enable the Authority to administer the program;

15. A provision authorizing the Authority to withhold or cease paying management fees and direct expenses as set forth in N.J.A.C. 19:31-25.9(d), forfeiting the carried interest as set forth in

N.J.A.C. 19:31-25.9(e), and permitting the Authority to exercise the remedies as set forth in N.J.A.C. 19:31-25.10(c), (d), (e), (f), and (g) for the events set forth in those subsections;

16. Representations that the qualified venture firm is in substantial good standing or meets the agreements requirements set forth in (e) above;

17. A provision permitting an audit of the records of the qualified venture firm related to the qualified venture firm's participation in the program, including, but not limited to, the management of all Evergreen special purpose vehicles and any qualified investment into a qualified business, from time to time, as the Authority deems necessary;

18. A provision permitting the Authority to amend the agreement;

19. A provision establishing the conditions under which the Authority, the qualified venture firm, or both, may terminate the agreement;

20. Indemnification and insurance requirements;

21. Default and remedies, including, but not limited, to a default if the qualified venture firm made a material misrepresentation on its application or if the Authority debar or disqualifies the qualified venture firm under N.J.A.C. 19:30-2; and

22. Such other provisions as shall be required by the Authority.

### **19:31-25.8 Qualified businesses and qualified investments**

(a) The Authority shall allocate and transfer money credited to the Fund to one or more qualified venture firms for qualified investments as set forth in this subsection; provided that no more than two qualified investments shall be made with each qualified venture firm in a calendar year.

(b) The Authority shall have a goal for 25 percent of the Fund money that is allocated to qualified venture firms to be reserved for investment in qualified businesses located in opportunity zones. A qualified business shall be considered as located in an opportunity zone if the qualified business has its primary business location in an opportunity zone. For purposes of this subsection, a primary business location is the location of a qualified business that has the most full-time employees, provided that if two business locations have the same number of full-time employees and each such location has more full-time employees than all other locations, then either of such locations shall qualify as a primary business location.

(c) The Authority shall undertake a disparity study of investment by venture firms in women- and minority-owned business enterprises in this State. Based on the finding of the disparity study, the Authority, following Authority Board approval, may institute a set-aside plan to ensure that Fund money allocated to qualified venture firms is reserved for investment in women- and minority-owned business enterprises in this State.

(d) Any venture firm that has been decertified pursuant to N.J.A.C. 19:31-25.10(c) shall not be approved for a qualified investment unless and until the venture firm reapplies and is approved for certification pursuant to N.J.A.C. 19:31-25.7.

(e) The Authority shall establish an application process and determine the form and manner through which a qualified venture firm may make and file an application for a qualified investment. The Authority may accept applications on a rolling basis or on a date set by the Authority, provided that the Authority shall not accept an application based on a qualified venture firm initial investment made more than 90 days prior to the submission of the completed application. The Authority shall provide public notice of the dates for the submission of applications on its website in advance of the initial date for applications. The qualified venture firm shall provide the following information in an application format prescribed by the Authority:

1. With regard to the qualified venture firm and the proposed qualified investment:

i. Information requested pursuant to N.J.A.C. 19:31-25.7(b);

ii. Size of proposed qualified investment requested by the qualified venture firm in the proposed business and the amount invested or proposed to be invested by the qualified venture firm;

iii. Executed stock purchase agreement for the co-investment from the qualified venture firm active fund, or most recent draft term sheet if the co-investment has not yet been made; the limited partnership agreement or equivalent agreement for the qualified venture firm active fund; and the executed subscription documents for the qualified venture firm active fund;

iv. The amount of the reserve set aside by the qualified venture firm for future investments in the proposed business and any related reserve policy applicable to such reserve;

v. The name of any company managing the venture firm; the list of all companies beneficially owning, through rights, options, convertible interests, or otherwise, more than 15 percent of the voting securities or other voting ownership interests of the venture firm; and all companies controlling the direction of investments of the venture firm;

vi. Investment analysis for the qualified venture firm's investment in the qualified business and supporting documentation, and a certification from the qualified venture firm managing individual that any projections or forecasts provided to the Authority are prepared in good faith and are based upon assumptions which the qualified venture firm managing individual concludes, in light of the circumstances in which they are made, are reasonable. If the proposed business has not yet recorded twelve months of revenues or customers and has not raised third-party capital, the investment analysis shall include qualified venture firm's prepared base case future projections with projected revenues, customers, or fundraising for the next three to five years;

vii. Names of individuals or entities with ownership, through rights, options, convertible interests, or otherwise, of the venture firm; that manage the venture firm; or that have rights to control the direction of investments of the venture firm; and

viii. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

2. With regard to the proposed business:

i. The name, address, entity form, country and state of formation, date of formation, copy of formation documents and New Jersey registration, federal and state tax identification number, phone number, and website address of the proposed business;

ii. The name, title, email, address, and phone number of the primary point of contact for the proposed business;

iii. A description of the proposed business, including, but not limited to, how the proposed business is engaged in a targeted industry, the primary existing or expected revenue streams, and the primary existing or expected expenses;

iv. Capitalization table of the proposed business;

v. One or more of the following to substantiate that the proposed business is a high-growth business if the business has recorded twelve months of revenues or customers or has raised third-party capital:

(1) Current and past audited, reviewed, or management prepared income statements of the proposed business;

(2) Current and past customer lists of the proposed business if the proposed business has customers;

(3) Executed term sheet and stock purchase agreement of the prior priced round of equity fundraising of the qualified business;

vi. If the qualified venture firm is applying for the proposed business to be a university spin-off business, a copy of the certificate of incorporation or formation for the proposed business and its earliest predecessor entity, documentation evidencing the proposed business's intellectual property, and an explanation of how the proposed business is a university spin-off business;

vii. If the qualified venture firm is applying for the proposed business under (g)5i below, documentation evidencing the proposed business's intellectual property, how the intellectual property is core to the proposed business, and how the intellectual property was developed at a New Jersey-based college or university;

viii. If the qualified venture firm is applying for the proposed business as a “minority business” or “women’s business” under (g)5iii below, the certification from the State of the proposed business as such a business;

ix. Tax clearance certificate from the New Jersey Division of Taxation for the proposed business pursuant to P.L. 2007, c. 101, which shall also satisfy the requirement for registration to do business in this State;

x. A completed legal questionnaire completed by the proposed business disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

xi. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities with which the proposed business is associated with or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The proposed business shall also submit a written certification by the chief executive officer, or equivalent officer for North American operations, stating that the proposed business satisfies the criteria at N.J.A.C. 19:31-25.7(e) to be in substantial good standing, or if a compliance issue exists, has entered into an agreement, with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;

xii. All locations of the proposed business in New Jersey, the number of full-time employees in each such location, and a copy of the deed, lease agreement, or other agreement evidencing each location;

xiii. A list of all full-time employees, including, but not limited to, employee residency, payroll records, a copy of New Jersey WR-30 and Federal Form 941 for the most recent quarter, and offer letters for all full-time employees hired after the filing of such forms;

xiv. If the qualified venture firm has made its initial investment in the proposed business, certification from each of the qualified venture firm and proposed business that there has been no material adverse change in the business, finances, or operations of the proposed business since the date of such investment;

xv. Acknowledgement and consent by the proposed business that the Authority will publicly disclose the qualified investment into the proposed business once a qualified investment is approved and any information necessary for the report required pursuant to N.J.S.A. 34:1B-301 and N.J.A.C. 19:31-25.15; and

xvi. Certification by the chief executive officer of the proposed business, or equivalent officer for North America, that all information provided by the proposed business to allow the Authority to evaluate the proposed business is true and accurate under the penalty of perjury;

3. Certification by the qualified venture firm managing individual that all information provided pertaining to the qualified venture firm is true and accurate under the penalty of perjury; and

4. Any other information relevant to the evaluation of the qualified investment and the qualified business as determined by the Authority.

(f) The Authority shall evaluate the proposed business to determine if such business is a qualified business as defined under the program and satisfies the requirement that such business meets the definition of a high-growth business.

(g) The Authority shall approve a qualified investment into the qualified business if, absent extenuating circumstances or the Authority's prior written consent, the qualified venture firm is in compliance with the requirements of the qualified venture firm agreement and this program, including, but not limited to, the annual report pursuant to N.J.A.C. 19:31-25.9, and the proposed business is a qualified business, based on the following:

1. The Authority shall not make a qualified investment in an amount exceeding the funds available and not reserved in the Fund;

2. The Authority shall not make a qualified investment that exceeds the maximum amounts of investment established from time to time by the Authority based upon the aggregate amount of qualified investments into a single qualified business, into a single targeted industry, or as determined by other categories or factors based on diversification of funds or the investment policies and goals of the State. The Authority shall publish these maximum amounts on its website;

3. The Authority shall not make a qualified investment if the Authority determines that a qualified investment would create an undue financial advantage pursuant to N.J.A.C. 19:31-25.5(d);

4. The Authority shall invest the amount of funds requested for a qualified investment by a qualified venture firm in an amount equal to the qualified venture firm's initial investment, subject to all other restrictions in the Act and this subchapter;

5. The maximum amount of a qualified investment in a qualified business and any affiliates of the qualified business shall not exceed \$5,000,000, except that such \$5,000,000 limit shall be increased to \$6,250,000 if the qualified business:

i. Utilizes intellectual property that is core to its business model and was developed at a New Jersey-based college or university;

ii. Is considered a university spin-off business, as determined by the Authority; or

iii. Is certified by the State as a "minority business" or a "women's business" pursuant to P.L. 1986, c. 195 (N.J.S.A. 52:27H-21.17 et seq.);

6. If a qualified venture firm requests to make a qualified investment in the qualified business in the same round of equity fundraising for which the Authority has previously approved a qualified investment by a different qualified venture firm, the Authority shall approve the later request provided that the aggregate qualified investments in the qualified business does not exceed the maximum in 5 above;

7. In no event shall the Authority make a qualified investment of less than \$100,000 per qualified investment;

8. The Authority shall not make a qualified investment if the Authority determines that the qualified venture firm or the proposed business is not in substantial good standing or if a compliance issue exists, has entered into an agreement, as set forth in N.J.A.C. 19:31-25.7(e);

(h) The Authority shall provide written notification to the qualified venture firm of the approval or declination of the application for a qualified investment and, if approved, the amount allocated for the qualified investment.

(i) A qualified venture firm that has made and entered into a qualified venture firm agreement is authorized to make qualified investments in one or more qualified businesses approved by the Authority from Fund money allocated to the qualified venture firm by the Authority at the times, in the amounts, and subject to the terms and conditions that the qualified venture firm determines to be necessary and appropriate, subject to the terms and conditions of the qualified venture firm agreement, the Evergreen special purpose vehicle governing agreement, the qualified business side agreement, this subchapter, and the Act.

(j) A qualified venture firm shall provide written notice to the Authority within 30 days after the date the qualified venture firm decides to make a follow-on investment from a qualified venture firm active fund in a qualified business. A qualified venture firm will be considered to have decided if there is an agreed upon or executed term sheet with the qualified business. The Authority shall determine whether to make a follow-on investment based on the following:

1. The Authority shall not make a follow-on investment if the Authority determines that the qualified venture firm or the qualified business is not in substantial good standing, or if a compliance issue exists, has not entered into an agreement, as set forth in N.J.A.C. 19:31-25.7(e). The Authority may require updated information from the qualified venture firm or the qualified business to make this determination;

2. A completed legal questionnaire completed by the qualified venture firm and qualified business disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

3. The Authority shall not make a follow-on investment in an amount exceeding the funds available in the Fund that are not reserved or are reserved for a follow-on investment with the qualified venture firm into the qualified business;

4. The Authority shall have the right to make a follow-on investment from the Fund through the corresponding Evergreen special purpose vehicle into the qualified business in the same ratio to the qualified venture firm's follow-on investment as the ratio of the qualified investment to the qualified venture firm's initial investment;

5. At its discretion, the Authority may decline to make a follow-on investment if the qualified venture firm is decertified or is not in compliance with the requirements of the qualified venture firm agreement, the Evergreen special purpose vehicle governing agreement, and this program, including, but not limited to, the annual report pursuant to N.J.A.C. 19:31-25.9, or if the qualified business is not in compliance with the requirements of the qualified business side agreement or any requirement of the program;

6. Notwithstanding any provision in this subchapter to the contrary, the maximum follow-on investment from the Fund into a qualified business shall not exceed the lesser of:

i. The amount remaining after reducing the maximum amount allowed for the qualified investment by the aggregate of all follow-on investments in the qualified business through any Evergreen special purpose vehicle in the previous twelve months;

ii. The amount that would cause the aggregate amount invested from the Fund in the qualified business and any affiliates of the qualified business to exceed a percentage of the total amount in the Fund plus all capital currently invested as established by the Authority from time to time, but in no event greater than 15 percent; and

iii. The amount that would cause the aggregate amount invested from the Fund through any Evergreen special purpose vehicle managed by the qualified venture firm, or an affiliate of the qualified venture firm, in any qualified business to exceed 15 percent of the total invested in such qualified business by all funds managed by the qualified venture firm and any affiliates of the qualified venture firm, including investments through any Evergreen special purpose vehicles.

(k) The Authority shall reserve the following amounts for each qualified venture firm in relation to a qualified business as follows:

1. For follow-on investments, an amount in the same ratio to the reserve to which the qualified venture firm has certified in its annual report pursuant to N.J.A.C. 19:31-25.9(a)6 as the ratio of the qualified investment to the qualified venture firm's initial investment;

2. The Authority shall reserve the amount equal to the lesser of the projected management fees payable to the Evergreen special purpose vehicle manager or the maximum management fees allowed by the Authority pursuant to N.J.A.C. 19:31-25.7(g)7; and

3. The Authority shall reserve the amount equal to the lesser of the expenses projected by the qualified venture firm or the maximum direct expenses allowed by the Authority pursuant to N.J.A.C. 19:31-25.7(g)7;

(l) Unless the Authority otherwise gives prior written consent, within 30 days of receipt of dividends or proceeds from the sale, redemption, or other disposition of the shares of stock or other security comprising a qualified investment or any follow-on investments, the Evergreen special purpose vehicle manager shall cause such funds to be transferred to the Authority. The Evergreen special purpose vehicle manager may not reinvest such funds without the approval of the Authority. Not later than 60 days after the sale, redemption, or other disposition of the shares of stock or other security comprising a qualified investment or any follow-on investments, the qualified venture firm shall provide to the Authority a report on the amount of the stock or other security sold, redeemed, or disposed of and the consideration received for the sale, redemption, or disposition. The report shall detail the cumulative effect of sequentially introduced positive or negative values and include the gross income and details of any offsetting fees, including, but not limited to, carried interest, that reduce the net distribution. Any dividend or proceeds received by the Authority for the sale, redemption, or other disposition of the shares of stock or other security shall be deposited into the Fund and used in accordance with section 23 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-291) and this subchapter.

### **19:31-25.9 Qualified venture firm annual report**

(a) A qualified venture firm shall submit an annual report to the Authority with respect to a qualified investment within 120 days following the conclusion of the qualified venture firm's tax privilege period. The annual report shall include, but not be limited to, the following:

1. The amount of the qualified investment, if any, uninvested at the end of the preceding calendar year;
2. All qualified investments made during the preceding calendar year;
3. For each qualified business with shares of stock held by an Evergreen special purpose vehicle managed by the qualified venture firm or an affiliate of the qualified venture firm, a list of all full-time employees as of the end of the preceding calendar year, including, but not limited to, employee residency, payroll records, a copy of New Jersey WR-30 and Federal Form 941 for all quarters, and offer letters for any new full-time employee hired after the filing of such forms. For any qualified investment in which the qualified venture firm no longer has a position as of the end of the calendar year, the information must be provided as of the date the investment was terminated;
4. Certification by the chief executive officer, or equivalent officer for North America, of any qualified business with shares of stock held by an Evergreen special purpose vehicle managed by the qualified venture firm or an affiliate of the qualified venture firm, that all factual information provided by the qualified business is true and accurate under the penalty of perjury;
5. Financial statements, audited by a certified public accountant, who is licensed in accordance with the "Accountancy Act of 1997," P.L. 1997, c. 259 (N.J.S.A. 45:2B-42 et seq.), or licensed in accordance with the laws of another state, of each qualified venture firm active fund, if any, and each Evergreen special purpose vehicle, if any. For the Evergreen special purpose vehicle, the financial statement shall include a consolidated summary of the

performance, specifying the total value to paid-in capital ratio, and distribution to paid-in capital ratio. Any information about the performance of an individual business, including the qualified business, shall be considered confidential and not subject to the requirements of P.L. 1963, c. 73 (N.J.S.A. 47:1A-1 et seq.);

6. Certification by the qualified venture firm managing individual as to the qualified venture firm's reserve policy as it relates to each qualified investment, if any;

7. If applicable, evidence that the qualified venture firm has made best efforts to comply with its commitment to dedicate a greater portion of qualified investments into qualified businesses located within incentive areas;

8. Any updates to the policies or plans submitted pursuant to N.J.A.C. 19:31-25.7(b)8 and evidence that the qualified venture firm has made best efforts to comply with its current policies or plans;

9. Any update to the information provided as part of the venture firm's application for certification pursuant to N.J.A.C. 19:31-25.7(b) pertaining to the criteria in N.J.A.C. 19:31-25.7(d), and a certification by the qualified venture firm managing individual that all other information pertaining to that criteria remains true and accurate under the penalty of perjury;

10. Certification by the qualified venture firm managing individual that all factual information provided to the Authority pertaining to the qualified venture firm is true and accurate under the penalty of perjury, including, but not limited to, information contained in the application for certification, the qualified venture firm agreement, any amendment to that agreement, and any other information submitted by the qualified venture firm to the Authority pursuant to the Act, this subchapter, and the qualified venture firm agreement; and

11. Any other information the Authority requires to evaluation compliance with the program by the qualified venture firm and by any qualified business with shares of stock held by an Evergreen special purpose vehicle managed by the qualified venture firm; and

12. Any other information the Authority requires to ascertain the impact of the program on the economy of the State.

(b) With respect to the information required under paragraphs (a)1 through a11 above, the report shall include a statement prepared by an independent certified public accountant, who is licensed in accordance with the "Accountancy Act of 1997," P.L. 1997, c. 259 (N.J.S.A. 45:2B-42 et seq.), or licensed in accordance with the laws of another state, certifying that the accountant has reviewed the report and that the information and representations contained in the report are accurate.

1. The certification shall be made pursuant to an "agreed upon procedures" letter acceptable to the Authority.

2. The Authority may qualify certified public accountants for certification of paragraph (a)3 above. If the Authority qualifies any certified public accountants, the Authority shall provide to the qualified venture firm the list of qualified certified public accountants and the information provided under paragraph (a)3 shall be certified by a qualified certified public accountant. Notwithstanding this paragraph, the qualified venture firm may select an independent certified public accountant that is not on the Authority's list of qualified certified public accountants if the qualified venture firm demonstrates an extenuating circumstance prohibiting the qualified venture firm from retaining a qualified certified public accountant. Such circumstances include, but are not limited to, the unavailability of any of the qualified certified public accountants to timely complete the certification or none of the qualified certified public accountants are independent to the qualified venture firm.

(c) A qualified venture firm shall, as required at the discretion of the Authority, submit to the Authority satisfactory evidence supporting the information detailed in the annual report.

(d) Absent extenuating circumstances or prior written consent by the Authority, if a qualified venture firm fails to comply with the reporting requirements of this section, the Authority shall withhold the management fees and direct expenses due to such qualified venture firm or an affiliate of the qualified venture firm for any Evergreen special purpose vehicle managed by the qualified venture firm or affiliate. If the qualified venture firm submits the complete annual report within 120 days from the date the annual report was due, the Authority shall pay the management fees and direct expenses withheld and resume payment of management fees and direct expenses. If the qualified venture firm fails to comply with the reporting requirements after the additional 120 days, the qualified venture firm shall forfeit all management fees and direct expenses due for a period of a year.

(e) If a qualified venture firm is not in compliance with the reporting requirements of this section at the time that any distribution is made by a qualified business to the Evergreen special purpose vehicle holding a qualified investment, whether as a result of a sale or public registration of securities of the qualified business or for any other reason, no distribution of cash or equity for carried interest shall be made to the qualified venture firm or affiliate, provided that if the qualified venture firm comes into compliance with such reporting requirement within 120 days of the date of such distribution, the Evergreen special purpose vehicle shall make the distribution for carried interest to the qualified venture firm or affiliate.

### **19:31-25.10 Recapture, Decertification, and Redemption**

(a) Absent extenuating circumstances or written consent by the Authority, if a tax credit purchaser fails to fund at least 80 percent of any component of its strategic commitment, the Authority shall require the tax credit purchaser to pay to the Fund the amount equal to the difference between the value of such strategic commitment component, as set forth in the tax credit purchaser contract, and the actual amount funded by the tax credit purchaser.

(b) If, at any time, the Authority determines that a tax credit purchaser made a material misrepresentation on the tax credit purchaser's tax credit bid application or any submissions to the Authority under this program, the Authority may recapture any or all of all tax credits

awarded under the program, which shall be in addition to any other remedies in the incentive award agreement and any criminal or civil penalties to which the tax credit purchaser and the respective officer may be subject. Any such recapture amount may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture amount, including, but not limited to, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation to determine the recapture amount.

(c) The Authority shall review each qualified venture firm's annual report for the disqualifying criteria set forth in N.J.A.C. 19:31-25.7(d) or other reasonable industry-accepted standards as determined by the Authority. The Authority shall publish any such standards on its website. Upon such review, if the qualified venture firm does not satisfy the criteria or standards, the Authority shall decertify a qualified venture firm. If the annual report does not demonstrate best efforts to comply with the diversity policies or plans submitted pursuant to N.J.A.C. 19:31-25.7(b)8 or, for a qualified venture firm that proposed to dedicate a greater portion of qualified investments into qualified businesses located within incentive areas, best efforts to achieve such greater portion of qualified investments compared to the investment information provided pursuant to N.J.A.C. 19:31-25.7(b)17, then the Authority shall reduce the qualified venture firm's evaluation score by the weight for such criteria. If the reduced evaluation score is below the minimum, the Authority shall decertify the qualified venture firm. Decertification shall not affect any previously made qualified investment or the Fund's commitment to make a follow-on investment in a qualified business.

(d) If a qualified venture firm fails to timely submit the completed annual report pursuant to N.J.A.C. 19:31-25.9 for two consecutive years, the Authority shall decertify the qualified venture firm and may remove the qualified venture firm from the Evergreen special purpose vehicle or require the qualified venture firm to terminate the Evergreen special purpose vehicle.

(e) If a qualified venture firm fails to comply with the requirements of the qualified venture firm agreement or Evergreen special purpose vehicle governing agreement other than the failure to submit a complete annual report, or if the qualified venture firm or affiliate of the qualified venture firm is removed from the qualified venture firm active fund, the Authority may withhold or cease paying management fees and direct expenses, decertify the qualified venture firm, remove the qualified venture firm from the Evergreen special purpose vehicle, or require the qualified venture firm to terminate the Evergreen special purpose vehicle.

(f) If, at any time, the Authority determines that a qualified venture firm made a material misrepresentation on the qualified venture firm's application for certification, application for a qualified investment, annual report, or any submissions to the Authority under this program, the Authority shall cease paying management fees and direct expenses. The Authority shall decertify the qualified venture firm and may demand repayment of all management fees and direct expenses previously paid, remove the qualified venture firm from the Evergreen special purpose vehicle, or require the qualified venture firm to terminate the Evergreen special purpose vehicle. The actions by the Authority pursuant to this subsection shall be in addition to any other remedies in the qualified venture firm agreement or the Evergreen special purpose vehicle

governing agreement and any criminal or civil penalties to which the qualified venture firm and the respective officer may be subject.

(g) If an Evergreen special purpose vehicle is terminated pursuant to (d), (e), or (f) above, the qualified venture firm shall transfer the shares of stock to the Authority. The Authority may, at its discretion, accept payment of an amount equal to the greater of the qualified investment and all follow-on investments or the fair market value of the qualified investment at the time of the demand. Upon such termination, the Authority may require the qualified venture firm to forfeit any carried interest.

(h) If a qualified business fails to support its business operations in this State as set forth in N.J.A.C. 19:31-25.7(g)4i, or fails to provide the necessary documentation to demonstrate its compliance, during two consecutive years during the qualified business compliance period, the Authority may require the qualified business to redeem the shares of stock purchased with the qualified investment and any follow-on investment for an amount equal to the greater of the aggregate amount of the qualified investment and follow-on investments or the fair market value of the shares of stock at the time of the redemption demand. The Authority may, at its discretion, accept the offer to purchase the shares of stock by the qualified venture firm or any other investor in lieu of redemption.

(i) If a qualified business fails to comply with any requirement under this program other than the failure set forth in (h) above, the Authority may determine not to make any follow-on investments or may demand a redemption as set forth in (h) above.

(j) If, at any time, the Authority determines that a qualified business made a material misrepresentation on the qualified venture firm's application for certification, application for a qualified investment, annual report, or any submissions to the Authority under this program, the Authority may determine not to make any follow-on investments or may demand a redemption as set forth in (h) above. The actions by the Authority pursuant to this subsection shall be in addition to any other remedies in the incentive award agreement and any criminal or civil penalties to which the qualified business and the respective officer may be subject.

(k) In determining whether to require the termination of an Evergreen special purpose vehicle or the redemption of the shares of stock of a qualified business, the Authority may consider if retaining the Evergreen special purpose vehicle or the shares of stock of the qualified business furthers the purposes of the program, including, but not limited to, the likelihood of an increase in value of the shares of stock and the continued employment of full-time employees filling a position in New Jersey.

#### **19:31–25.11 Affirmative action and prevailing wage**

The Authority's affirmative action requirements at N.J.S.A. 34:1B–5.4 and N.J.A.C. 19:30–3.1 et seq. and prevailing wage requirements at N.J.S.A. 34:1B–5.1 and N.J.A.C. 19:30–3.2 shall apply only to the management fees and direct expenses received by the qualified venture firm.

#### **19:31–25.12 Fees**

(a) A tax credit purchaser, venture firm, or business shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews or other analyses by a third party retained by the Authority, if the Authority deems such retention to be necessary.

(b) No fees shall be charged from tax credit purchasers, venture firms, or businesses.

### **19:31-25.13 New Jersey Innovation Evergreen Advisory Board**

(a) The New Jersey Innovation Evergreen Advisory Board is established in but not of the Authority for the purposes of providing guidance and networking opportunities to qualified businesses. The members of the New Jersey Innovation Evergreen Advisory Board shall serve in a voluntary capacity, to be appointed through a process to be determined by the Chief Executive Officer of the Authority from among tax credit purchasers and other strategic partners identified by the Chief Executive Officer, to support the State's innovation ecosystem. The terms of the voluntary members so appointed, after the initial appointments, shall be one year, and each member may be reappointed thereafter if the tax credit purchaser purchases tax credits in the following year's tax credit auction or if the tax credit purchaser consents.

(b) The members of the New Jersey Innovation Evergreen Advisory Board shall also be required to attend at least the majority of meetings and events that the Authority schedules each year for participation by the members.

### **19:31-25.14 Appeal Process**

(a) The Authority Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

(b) An applicant may appeal the Authority Board's action by submitting in writing to the Authority, within 20 calendar days from the effective date of the Authority Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Appeals that are timely submitted shall be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Authority Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria, provided that if the Authority decision was based on a competitive process, the Authority cannot consider any new evidence or information about the application other than evidence or information that would demonstrate that the applicant met all of the application criteria by the application deadline.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Authority Board containing the hearing officer's finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

3. The Authority Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Authority Board shall issue a final decision on the appeal.

4. Final decisions rendered by the Authority Board shall be appealable to the Superior Court of New Jersey, Appellate Division, in accordance with the New Jersey Rules of Court.

#### **19:31-25.15 Reports on implementation of program**

Beginning in 2022 and every two years thereafter, the Authority shall prepare a report on the implementation of the program, and submit the report to the Governor, and, pursuant to section 2 of P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature. Each biennial report required under this section shall include the names and locations of qualified businesses receiving capital including whether they are located in an opportunity zone; the amount of each qualified investment; a report by a certified public accountant, who is licensed in accordance with the "Accountancy Act of 1997," P.L. 1997, c. 259 (N.J.S.A. 45:2B-42 et seq.), or licensed in accordance with the laws of another state, of the consolidated performance of the Fund; the cumulative amount of capital committed by tax credit purchasers; the rate and amount of management fees and carried interest charged by each qualified venture firm, including performance-based earnings and carried interest; the classification of each qualified business, according to the targeted industry and the size of the qualified business; the State's return on investment; the total number of jobs created in the State by the qualified business after the qualified investment; the average wages paid for the jobs; and any other metrics the Authority determines are relevant based upon national best practices.

#### **19:31-25.16 Severability**

If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.