

# GROWTH LOAN FACILITY AGREEMENT

## PROVIDER OF LOAN FACILITY

Vækstfonden  
 Strandvejen 104 A  
 2900 Hellerup  
 CVR nr. / no 16294675  
 "Vækstfonden"

## VENTURE INVESTOR

[Navn]  
 [Adresse]  
 CVR nr. / no [nr]  
 "Venture Investor"

## 1. OVERALL TERMS

- 1.1 The growth loan scheme is a specific loan scheme aimed at early stage and knowledge intense entrepreneurs (the "Entrepreneurs") who have a relatively high risk profile and who meet with certain criteria cf. below. The purpose of the scheme is to incentivise professional investors, (such as Venture Investors as defined in 1.2 below) to make more investments into such Entrepreneurs. Accordingly, the scheme shall only be available in respect of Entrepreneurs, which - except for certain special situations - have not received financing from professional investors prior to grant of the growth loan.
- 1.2 Growth loans are provided by Vækstfonden to the individual Entrepreneur but the decision to grant a growth loan lies with the venture capital investors (the "Venture Investors") who have entered into a Growth Loan Facility Agreement with Vækstfonden. For that purpose Vækstfonden has established a growth loan facility (the "Facility") which is available for Venture Investors to draw from in connection with an equity investment (the "Equity Investment") made by the Venture Investor. Accordingly, when making an Equity Investment in an Entrepreneur the Venture Investor may supplement its Equity Investment with a growth loan from Vækstfonden – subject to the below terms and conditions.
- 1.3 The provision of a convertible loan from the Venture Investor to the Entrepreneur may also qualify an Equity Investment with respect to this Growth Loan Facility Agreement provided that the convertible loan is subordinated to the growth loan and that Vækstfonden gives its specific, prior approval to the convertible loan in question.

- 1.4 A growth loan can amount to between DKK 2.0 and 7.45 million (maximum EUR 1 million) but can never exceed the amount of the related Equity Investment from the Venture Investor. However, the Venture Investor shall be entitled to form a syndicate with one or more other private investors when making the related Equity Investment as long as the Venture Investor contributes with at least 50 % of the investment.
- 1.5 The abovementioned growth loan limit of DKK 7.45 million (i.e. the maximum, possible growth loan amount) shall be reduced by the total of any and all grants, loans or equity which the Entrepreneur previously has received from public (State) sources, unless the Venture Investor and the Entrepreneur can firmly establish and document to Vækstfonden that such grants, loans or equity has been provided on terms which do not qualify state aid under applicable EU-legislation. The Venture Investor shall be responsible for investigating to what extent the Entrepreneur has received any such payments from public (State) sources.
- 1.6 Each individual Entrepreneur can only be granted one growth loan in its life time. However, if the Venture Investor's simultaneous Equity Investment is divided into tranches then the growth loan may be divided into two tranches. The first tranche of the growth loan must be of at least DKK 1.0 million. The requirement of a matching Equity Investment applies to both tranches. There can be no more than 12 months interval between the first and the second tranche.
- 1.7 A growth loan can only be used if the Entrepreneur has not previously received convertible loans, equity investments or equity based investments for more than a total of DKK 4,300,000 from others than the founders.
- 1.8 Furthermore, a growth loan can only be used in connection with the first investment made in the Entrepreneur by the Venture Investor and provided that such investment is a seed/A-round investment. If the Venture Investor's first investment was made in the Entrepreneur before the time of application, but after 13 January 2011 such first investment may still qualify for a growth loan. The definition of a seed/A-round investment is based on the definition made by the European Private Equity and Venture Capital Association ("EVCA") but with a slight modification building some flexibility into the definition. For the purpose of this Growth Loan Facility Agreement the definition of a seed round investment shall be: *Financing provided to research, assess and develop an initial concept before a business has reached the start-up phase.* The definition of an A-round investment shall be: *Financing provided to companies for product development and initial marketing, and some small scale sales operations such as prototype sale. Companies may be in the process of being set up or may have been in business for a short time, but have not sold their product commercially other than in small scale and for a short period of time.*
- 1.9 Private financing provided as part of first round innovation environment financing (in Danish "Innovationsmiljøernes primære projektfinsiering") shall be disregarded when determining whether the Venture Investor or another professional investor has

made an investment in the Entrepreneur prior to grant of the growth loan, , rf. Clauses 1.1 and 1.8 above. Moreover, first round innovation environment financing shall be regarded as a pre-seed investment and not as a seed/ A-round investment.

## **2. THE FACILITY**

- 2.1 The Facility amounts to a total of DKK 250 million over its lifespan but with an annual maximum of DKK 80 million. If the annual maximum amount has not been drawn in a given year the residual amount may be transferred to the following year.
- 2.2 Subject to the above monetary limits and the below terms and conditions the Venture Investor is entitled to draw from the Facility as often and to the extent it makes investments in qualified Entrepreneurs.
- 2.3 The Facility is shared by all Venture Investors. This implies that no fixed amount or any minimum amount is allocated or reserved to one, individual Venture Investor. Accordingly, Vækstfonden is under no obligation to ensure that there is available capital under the Facility when the Venture Investor wishes to draw on the Facility (except when a reservation of growth loan is made, cf. clause 6).

## **3. REQUIREMENTS FOR VENTURE INVESTOR**

- 3.1 By signing this Growth Loan Facility Agreement the Venture Investor confirms that all the information provided in its application to Vækstfonden is still true and valid, cf. Appendix 1 – Venture Investor Application. The Venture Investor undertakes to inform Vækstfonden immediately if it ceases to fulfil or comply with the objective criteria for qualifying a Venture Investor, cf. Appendix 1.
- 3.2 Further, immediately prior to drawing on the Facility the Venture Investor must document to have at least DKK 25 million of available capital to potentially invest as Equity Investment in the Entrepreneur receiving a growth loan. If the Venture Investor has already drawn on the Facility with respect to one or more other Entrepreneurs then the Venture Investor must also document that it has at least DKK 25 million of available capital to potentially invest as Equity Investment in each of the said other Entrepreneurs – however deducted what the Venture Investor has already invested as Equity Investments in the other Entrepreneurs. Notwithstanding the before mentioned, Vækstfonden may at its own discretion decide to waive the capital requirements in relation to investments in Entrepreneurs which the Venture Investor can document have been valued at DKK 0 in its internal accounts and reporting.
- 3.3 For the purpose of this clause 3 “available capital” shall mean capital (i) which the Venture Investor is legally mandated to invest as Equity Investments in Entrepreneurs qualifying growth loans and (ii) which is available through (a) legally binding commitments from one or more investors (e.g. a limited partnership construction), (b) a bank account, (c) a bank guarantee, or (d) liquid securities.

- 3.4 In addition to the obligations stipulated elsewhere in this Growth Loan Facility Agreement the Venture Investor undertakes the following obligations for as long as the Venture Investor holds shares in the Entrepreneur having received growth loan and the growth loan is not fully repaid:
- a) To use its best endeavours to ensure that the Entrepreneur uses the proceeds in accordance with the activities eligible for growth loan financing.
  - b) To use its best endeavours to ensure that the Entrepreneur does not pay out any dividends or by other ways distributes proceeds to its owners (including but not limited to capital decreases), without prior written consent from Vækstfonden.
  - c) To immediately notify Vækstfonden in writing if proceeds are distributed to the owners despite the best endeavours to the contrary from the Venture Investor.
  - d) To immediately notify Vækstfonden in writing of any important events that may influence the repayment of the growth loan.
  - e) To submit bi-annual reports to Vækstfonden in accordance with Appendix 2 – Reporting.

#### **4. REQUIREMENTS FOR ENTREPRENEURS**

- 4.1 Growth loans are reserved for a certain target group only. The target group covers Danish Entrepreneurs that meet the criteria stipulated in the block exemption regulation, as introduced by the EU Commission in August 2008, i.e. Regulation no. 800/2008 of 6 August 2008 on declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty ("General block exemption Regulation").
- 4.2 Article 35 of the regulation stipulates the conditions that need to be met in order to qualify for aid to young innovative enterprises:
- Aid can be granted up to the amount of EUR 1 million to a small enterprise that has been in existence for less than 6 years at the time when the aid is granted. The research and development costs of the beneficiary shall represent at least 15 % of its total operating costs in at least one of the three years preceding the granting of the aid or, in the case of a start-up enterprise without any financial history, in the audit of its current fiscal period, as certified by an external auditor.*
- 4.3 Growth loans cannot be granted to crisis-stricken enterprises as defined by the General block exemption Regulation.
- 4.4 Special rules may apply to enterprises within the following industries: fisheries and aquaculture, agriculture, coal, steel, shipbuilding and synthetic fibres.
- 4.5 Growth loans cannot be used to repay loans or for the refinancing of existing loans. Further, growth loans cannot be used to finance activities which have already been carried out.

## 5. THE GROWTH LOAN

- 5.1 The growth loan is provided by Vækstfonden. The growth loan will be subject to non-negotiable standard terms and conditions cf. Appendix 3 – Growth Loan Note. Vækstfonden reserves the right to adjust and amend the Growth Loan Note from time to time. The latest and valid Growth Loan Note from time to time will be available for download on Vækstfonden's homepage [www.vf.dk](http://www.vf.dk).
- 5.2 The Venture Investor is aware of the fact that during the loan period of any growth loan Vækstfonden will not enter into any negotiations regarding the terms and conditions of the growth loan, including regarding its size, interest rate and its repayment, except potentially in connection with a formal or informal reconstruction of the Entrepreneur in question and always provided that all significant creditors take part in such reconstruction on even terms.

## 6. THE GROWTH LOAN PROCEDURE

- 6.1 When the Venture Investor wishes to draw on the Facility the Venture Investor must submit the completed form attached as Appendix 4 – Loan Request Notice duly signed by the Venture Investor and a completed Growth Loan Note (cf. Appendix 3) duly signed by authorized signatories from the Entrepreneur (see clause 6.4 below with regard to second tranche of growth loans with two tranches).
- 6.2 Vækstfonden reserves the right to adjust and amend the Loan Request Notice from time to time. The latest and valid Loan Request Notice from time to time will be available for download on Vækstfonden's homepage [www.vf.dk](http://www.vf.dk).
- 6.3 Upon receipt of the abovementioned documentation Vækstfonden will within 10 working days notify the Venture Investor whether the conditions for the requested growth loan are fulfilled and whether there is still available capital under the Facility. In the affirmative, Vækstfonden's notification will include the Growth Loan Note duly signed by Vækstfonden.
- 6.4 It is a condition for the release of the growth loan to the Entrepreneur that Vækstfonden no later than 15 working days from the date of Vækstfonden's signature of the Growth Loan Note has received documentation of the Venture Investor's – and possibly other syndicating private investors' – related Equity Investment in accordance with the terms set out in the submitted Loan Request Notice (the "Registration Documentation"). If the Registration Documentation is submitted to Vækstfonden in due time then Vækstfonden undertakes to pay out the growth loan within 10 working days from receipt of the Registration Documentation.
- 6.5 If the Venture Investor has already facilitated a growth loan which is divided into tranches and now wishes to draw on the Facility for the second tranche then the Venture Investor is not required to submit a new Loan Request Notice. Instead, the Venture Investor is required to submit a statement to Vækstfonden – duly signed by the Venture Investor – confirming that the Venture Investor deems that the conditions for

the second tranche have been fulfilled. Accordingly, with regard to the second tranche the 15 working days respite in clause 6.4 above shall be calculated from the date of the abovementioned written statement from the Venture Investor (and not from the date of Vækstfonden's signature of this Growth Loan Note).

- 6.6 If the Venture Investor fails to submit the Registration Documentation in due time then Vækstfonden shall have no obligation to pay out the growth loan. The Venture Investor, however, shall be entitled to initiate a new procedure.

## **7. RESERVATION OF GROWTH LOAN**

- 7.1 As an alternative to initiating the procedure set out in clause 6 above the Venture Investor may send a notice to Vækstfonden requesting a reservation of capital for a growth loan ("Reservation Notice"). The Venture Investor may not hold capital reservations for more than two Entrepreneurs at the time. The Reservation Notice must include the relevant Entrepreneur's name and CVR no. and the requested loan amount. If there is sufficient capital left under the Facility at the date of Vækstfonden's receipt of the Reservation Notice, Vækstfonden shall reserve the requested growth loan amount for 20 working days. If the Reservation Notice is not followed up by a Loan Request Notice – in accordance with clause 6 above – within the said 20 working days reservation period, the reservation shall automatically lapse. If a reservation has lapsed, no further growth loan reservations can be made for the Entrepreneur(s) in question. However, the procedure set out in clause 6 may be initiated at any given time.

## **8. OPTION TO PURCHASE**

- 8.1 The Venture Investor may at any point in time purchase from Vækstfonden one or more growth loans facilitated by the Venture Investor. Vækstfonden is obliged to transfer to the Venture Investor all rights and obligations under the growth loan in question no later than 10 working days upon receipt of the Venture Investor's written request and full payment of the growth loan including accrued interest.

## **9. TERMINATION AND AMENDMENTS**

- 9.1 The loan facility is valid until 31 December 2015 or such earlier date when the Facility is fully drawn.
- 9.2 Irrespective of the above, Vækstfonden reserves the right to terminate the Growth Loan Facility Agreement or amend the terms of the Growth Loan Facility Agreement giving at least 30 days written notice to the Venture Investor.
- 9.3 In the event of the Venture Investor's breach of this Growth Loan Facility Agreement Vækstfonden shall be entitled to terminate this Growth Loan Facility Agreement with immediate effect.
- 9.4 Furthermore, Vækstfonden is entitled to terminate the Growth Loan Facility Agreement or amend the terms of the Growth Loan Facility Agreement with immediate effect by

written notice to the Venture Investor provided that Vækstfonden also terminates or amends – as applicable – any and all Growth Loan Facility Agreements which Vækstfonden has entered into with other venture investors.

## 10. BREACH

10.1 It shall be deemed a material breach of this Growth Loan Facility Agreement if the Venture Investor (non-exhaustive):

- No longer meets the objective Venture Investor criteria, cf. Appendix 1.
- Does not fulfil the Venture Investor requirements stipulated in clause 3.
- Draws on the Facility without fulfilling all criteria and conditions stipulated in this Growth Loan Facility Agreement.
- Submits misleading or wrongful information of relevance for this Growth Loan Facility Agreement.
- Otherwise materially breaches its obligations pursuant to this Growth Loan Facility Agreement.

## 11. NOTICES

11.1 Any communication or notice made under this Growth Loan Facility Agreement shall be submitted to the other party by ordinary post to the registered address and/or e-mail and for the attention of the individual set out below:

To the Venture Investor:

Address: [ ]

E-mail: [ ]

To the Vækstfonden:

Address: [ ]

E-mail: [ ]

## 12. MISCELLANEOUS

12.1 The Venture Investor is not entitled to assign any rights or obligations pursuant to this Growth Loan Facility Agreement without the prior written consent from Vækstfonden.

12.2 The Venture Investor undertakes to keep confidential the existence – and hence the terms and conditions as well – of the growth loan(s) granted or requested granted under this Growth Loan Facility Agreement.

12.3 The Venture Investor acknowledges and agrees that Vækstfonden may publicly announce that the Venture Investor and Vækstfonden have concluded this Growth Facility Agreement. Further the Venture Investor shall co-operate with Vækstfonden with a

view to agreeing with the Entrepreneurs that Vækstfonden may publicly announce the names of the Entrepreneurs that have been granted a growth loan.

12.4 The Venture Investor undertakes to comply with applicable law on data protection.

### **13. LAW AND VENUE**

13.1 This Growth Loan Facility Agreement shall be governed by and construed in accordance with the laws of the Kingdom of Denmark and disregarding its rules on choice of law.

13.2 Any dispute arising out of or in connection with this Growth Loan Facility Agreement, including any disputes regarding the existence, validity or termination, shall be settled by arbitration arranged by the Danish Institute of Arbitration in accordance with the rules of arbitration procedure adopted by the Danish Institute of Arbitration and in force at the time when such proceedings are commenced.

For and on behalf of Vækstfonden:

For and on behalf of the Venture Investor:

---

---

---

---