**Minnesota Department of Employment & Economic Development**

**MASTER LOAN PARTICIPATION AGREEMENT**

THIS MASTER LOAN PARTICIPATION AGREEMENT (the “Agreement”), shall be effective as of July 1, 2024, or the date all necessary signatures have been obtained pursuant to Minn. Stat. § 16C.05, subd. 2, whichever is later, and is between «Lender», a Minnesota nonprofit corporation (the “Lender”), with its principal place of business located at «StreetAddress», «City», «State» «Zip», and the state of Minnesota, acting through the Department of Employment and Economic Development (“DEED”), with its principal place of business located at 180 East 5th Street, Suite 1200, St Paul, MN 55101, as part of the Small Business Loan Participation Program (“SBLPP”) implemented under the Minnesota State Small Business Credit Initiative.

**RECITALS**

1. The State Small Business Credit Initiative Act (“SSBCI”) now part of The American Rescue Plan Act of 2021, Public Law 117–2, sec. 3301, codified at 12 U.S.C. 5701 et seq. was originally established in Title III of the Small Business Jobs Act of 2010 (the “Act”), and appropriated funds to the United States Department of the Treasury (the “Treasury”) to be allocated and disbursed to jurisdictions that have created programs to increase the amount of capital made available by private lenders to small businesses and to cover reasonable administrative expenses. Terms and conditions with regard to the Act funds are attached and incorporated into this Agreement as Exhibit E.
2. In order to access a portion of these federal funds, DEED submitted an application to the Treasury on February 11, 2021 (the “SSBCI Application”), which contained descriptions of the credit support programs to be undertaken by the state of Minnesota.
3. As part of the SSBCI Application, DEED proposed the creation of the Small Business Loan Participation Program (“SBLPP”), which would provide small businesses with financial support through participation loans.
4. The application was approved by the Treasury on August 5, 2022. An Allocation Agreement between the state of Minnesota and the Treasury was fully executed on September 23, 2022.
5. The Allocation Agreement requires that a lender, which has been approved to participate in the SBLPP, must enter into an agreement with DEED regarding the receipt, use and repayment of such funds.
6. Pursuant to a Request for Proposal (the “Solicitation”) published on May 13, 2024, the Lender presented DEED with a request for enrollment in the SBLPP indicating its interest in and ability to provide the services requested in the Solicitation.
7. Subsequent to an evaluation in accordance with the terms of the Solicitation and negotiation, DEED approved the Lender’s proposed enrollment and agreed to make the Lender eligible to enroll loans for participation to assist in eligible financing for small businesses under the SBLPP.
8. The State, pursuant to Minn. Stat. § 15.061, is empowered to contract for professional or technical services in connection with the operation of a department or agency.
9. Lender and DEED wish to set forth the terms and conditions upon which DEED will purchase participations in loans made by Lender and for the repayment thereof.

NOW THEREFORE, Lender and DEED agree as follows:

**ARTICLE I**

**Definitions**

**Section 1.01.** **Defined Terms.** In addition to the words and terms defined elsewhere in this Agreement, each of the following words and terms as used in this Agreement shall have the following meaning, unless the context or use clearly indicates another or different meaning or intent, and such definition shall be equally applicable to both the singular and plural forms of the terms as the context may require:

“**Act**” means the State Small Business Credit Initiative Act now part of The American Rescue Plan Act of 2021, Public Law 117–2, sec. 3301, codified at 12 U.S.C. 5701 et seq. originally established in Title III of the Small Business Jobs Act of 2010.

“**Allocation Agreement**” means the agreement executed between DEED and the U.S. Department of the Treasury on September 23, 2022.

“**Application for Participation**” means the sample Application for Participation form attached and incorporated into this document as Exhibit A and any required documentation that the Lender must complete in order to request that DEED purchase a Participation in a Loan.

“**Borrower**” means a business enterprise eligible for assistance under the terms of the Act that is the recipient of a Loan from the Lender for which a Participation Certificate has been or will be issued by the Lender and acknowledged by DEED, and all successors and assigns of such Borrower.

“**Closing Documents**” means all documents executed or delivered by the Borrower or the Lender with respect to a Loan, including without limitation a copy of the Note, the loan agreement, any security agreement, any financing statement or Uniform Commercial Code filing, any guaranty, any mortgage or assignment of rents, any pledge agreements, and any other document that secures repayment of the Loan.

“**Commitment Letter**” means a letter prepared by DEED notifying the Lender that DEED is willing to purchase a Participation interest in a loan and setting forth any special conditions related to the Participation that are binding. All commitments are contingent upon the Lender and Borrower meeting all requirements and providing adequate support documentation sufficient to comply with applicable laws and regulations to allow DEED to obligate and obtain funds. A sample Commitment Letter is attached and incorporated into this Agreement as Exhibit B. The Commitment Letter, together with any approved revisions, will also set forth other terms and conditions specific to an individual Participation which are binding on the Lender and the Borrower.

“**Lender Rate**” means an interest rate set by the Lender, either fixed, adjustable or variable (determined by the Note) used in calculating the amount of interest on a given Loan, which rate shall initially be that referenced in the Commitment Letter related to such Loan. Rate adjustments shall follow minimum National Customer Protection Standards Rate Cap guidelines and must not exceed the interest rate ceiling for loans described in 12 U.S.C. 1757(5)(A)(vi)(I) and set by the NCUA board. Lender may structure the Loan with an acceptable alternative to a traditional interest rate so long as such alternative structure will not result in a cost to Borrower that is higher than the limits imposed herein on a traditional interest-rate bearing Loan.

“**Loan**” means a loan made by the Lender to a Borrower in which DEED has, or will have, a Participation, that meets the criteria set forth in this Agreement and for which the representations and warranties as set forth in Articles II and IV are true.

“**Loan Documents**” means the Closing Documents, the Participation Certificate, the Commitment Letter, and all other documents executed or delivered by the Borrower, guarantor, or Lender with respect to a Loan, including without limitation the Borrower’s application, business plan, and historical and projected financial statements and any financial statements and reports delivered by the Borrower to the Lender on an ongoing basis, the Lender’s financial, repayment and collateral analysis, credit reports, and all periodic reports required to be delivered to DEED by the Lender under this Agreement.

“**Lobbying Activities**” means lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

“**Maximum DEED Participation Amount**” shall have the meaning as ascribed to such term in Section 3.02 of this Agreement.

“**Note**” means the promissory note of the Borrower payable to the order of the Lender evidencing the Loan.

“**Owned and controlled**” means, if privately owned, 51 percent is owned by such individuals; if publicly owned, 51 percent of the stock is owned by such individuals; and in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of such individuals.

“**Participation**” means, with respect to a Loan, DEED’s undivided participation interest in such Loan, the Loan Documents and all of the Lender’s right, title and interest pertaining to the Loan and all proceeds arising therefrom including, without limitation, any collateral for such Loan and any guaranties, mortgages, or other security interests obtained in connection therewith, expressed as a percentage and calculated from time to time by reference to the outstanding principal balance of the Loan.

“**Participation Amount**” means, with respect to a Loan, that portion of the original principal amount of the Loan purchased by DEED from the Lender, minus the aggregate principal amount repaid on that portion of such Loan.

“**Participation Certificate**” means the document evidencing DEED‘s Participation with respect to a Loan made between the Lender and the Borrower. A sample Participation Certificate is attached and incorporated into this Agreement as Exhibit C.

“**Participation Percentage**” means DEED’s undivided participation interest in such Loan divided by the amount of the Loan as set forth in the Commitment Letter and the Participation Certificate.

“**Passive Real Estate Ownership**” means ownership of real estate for the purpose of deriving income from speculation, trade or rental, except that such term shall not include: (a) the ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate; or (b) ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase, as described on the SSBCI 2.0 Treasury guidelines dated November 11, 2021, and as revised from time to time, Passive Real Estate Investment Guidance-12 U.S.C. 5704(e)(7)(A)(i)(I) or any updated SSBCI Frequently Asked Questions.

“**Program Income**” means gross income received by the Lender that is directly generated by an SSBCI-supported activity or earned as a result of an SSBCI allocation during the SSBCI program period. Program Income includes, but is not limited to, income from: fees for services performed that were funded or supported with SSBCI funds, interest earned on loans made using SSBCI funds, and interest earned on any SSBCI funds held by Lender in its SSBCI Program Account. Program Income does not include repayment of principal.

“**Project**” means the entire proposed scope of startup, expansion or other eligible business purposes of the Borrower for which Borrower expects to require financing in a reasonably similar timeframe as the Loan and for which the Loan funds are to be used for one or more eligible business purpose, including without limitation the Loan, any equity or any other funds provided by owners, shareholders, banks, or other financial institutions and which may not exceed $20,000,000.

“**Prompt Payment**” means the time period within which the Lender must forward or remit DEED’s pro rata share of the Borrower’s payment of its Loan to DEED. If DEED has one Participation with Lender, payment is considered timely for this purpose if the Lender remits in immediate funds said payment to DEED within ten business days of the end of each calendar year quarter for all payments received during the quarter. If DEED has more than one Participation with Lender, payment may be combined for all Participations and remitted within ten business days at the end of each calendar year quarter.

“**Purchase Date**” means, with respect to a Participation, the date on which the Participation Certificate is fully executed.

“**Socially and Economically Disadvantaged Individual (SEDI) Owned**” means:

1. business enterprises that certify that they are owned and controlled by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their:
	1. membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;
	2. gender;
	3. veteran status;
	4. limited English proficiency;
	5. physical handicap;
	6. long-term residence in an environment isolated from the mainstream of American society;
	7. membership of a federally or state-recognized Indian Tribe;
	8. long-term residence in a rural community;
	9. residence in a U.S. territory;
	10. residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or
	11. membership of another “underserved community” as defined in Executive Order 13985;
2. business enterprises that certify that they are owned and controlled by individuals whose residences are in Community Development Financial Institutions Program (“CDFI”) Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii);
3. business enterprises that certify that they will operate a location in a CDFI Investment Area, as defined in 12 C.F.R. § 1805.201(b)(3)(ii); or
4. business enterprises that are located in CDFI Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii).

“**SSBCI Program Account**” means a separate bank account where Lender may receive any advances made by DEED as specified by Section 3.05 and any repayments of principal and interest as specified in Sections 5.04 and 5.05.

“**State**” means the State of Minnesota through its Department of Employment and Economic Development.

“**Very Small Business (VSB)**” means a business with fewer than ten employees.

**ARTICLE II**

**Use of Proceeds and Related SSBCI Requirements**

**Section 2.01 Use of Loan Proceeds.** To enroll a loan in the SBLPP, the Lender must obtain and transmit to DEED certification from the Borrower, in the form provided by DEED, that the Loan proceeds will be used for a business purpose.

1. Business Purposes Generally: 12 U.S.C. 5704(e)(7)(A)(i)(I).

A business purpose includes, but is not limited to, start-up costs; working capital; franchise fees; and acquisition of equipment, inventory, or services used in the production, manufacturing, or delivery of a business’s goods or services, or in the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. SSBCI funds may be used to purchase any tangible or intangible assets except goodwill. The term “business purpose” excludes acquiring or holding passive investments in real estate, the purchase of securities, and lobbying activities (as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended).

1. Passive Real Estate Investment Guidance: 12 U.S.C. 5704(e)(7)(A)(i)(I).

Loan proceeds are used for passive real estate investment purposes when the proceeds of the loan are used to invest in real estate acquired and held primarily for sale, lease, or investment. Passive real estate investment includes most real estate development (including construction) in which the developer does not intend to occupy or actively use the resulting real property.

A small business borrower can deliver the assurance that the loan is not being used for passive real estate if the small business borrower occupies and uses at least a specific percentage of the building; the percentage varies depending on whether the project involves the construction of a new building or renovation of an existing building:

* + Construction of a new building. If SSBCI-supported loan proceeds are used in the construction of a new building, the small business must occupy and use at least 60 percent of the total rentable property following issuance of an occupancy permit or other similar authorization.
	+ Renovation of an existing building. If SSBCI-supported loan proceeds are used in the acquisition, renovation, or reconstruction of an existing building, the borrower may permanently lease up to 49 percent of the rentable property to one or more tenants, if the small business occupies and uses at least 51 percent of the total rentable property within 12 months following the acquisition, renovation, or reconstruction.

If a small business chooses to lease an allowable portion of the rentable square footage to a tenant, the jurisdiction may rely on lease agreements, blueprints, or similar documentation in assuring the lease of an allowable portion of the rentable square footage is consistent with these guidelines.

SSBCI-supported loan proceeds may not be used to improve or renovate any portion of a rentable property that is leased to a third party. “Rentable property” means the total square footage of all buildings or facilities used for business operations, which (1) excludes vertical penetrations (e.g., stairways, elevators, and mechanical areas that are designed to transfer people or services vertically between floors) and all outside areas and (2) includes common areas (e.g., lobbies, passageways, vestibules, and bathrooms).

There are two exceptions to the general prohibition on the use of SSBCI-supported loan proceeds for passive real estate investment. An eligible business purpose may include the financing of real estate investments in the following limited circumstances.

(1) Passive company leasing to operating company. A passive company such as a holding company that acquires real property using an SSBCI-supported loan may have an eligible business purpose where 100 percent of the rentable property is leased to the passive company’s affiliated operating companies that are actively involved in conducting business operations. To meet this exception, the following criteria must also be met:

* + - The passive company must be an eligible small business using the affiliate and employee definitions described above;
		- The operating company must be subject to the same sublease restrictions as the owner affiliate;
		- The operating company must be a guarantor or co-borrower on the SSBCI-supported loan to the eligible passive company;
		- Both the passive company and the operating company must execute SSBCI borrower use-of-proceeds certifications and sex-offender certifications covering all principals;
		- Each natural person holding an ownership interest constituting at least 20 percent of either the passive company or the operating company must provide a personal guarantee for the SSBCI-supported loan; and
		- The passive company and the operating company have a written lease with an original term at least equal to the term of the SSBCI-supported loan (which may include options to renew exercisable solely by the operating company).

(2) Construction loan of $500,000 or less. A construction loan with an original principal amount of $500,000 or less may have an eligible business purpose if:

* the building will not serve as a residence for the owner, their relatives, or affiliates;
* the building will be put into service immediately;
* the loan is underwritten and made for the purpose of constructing or refurbishing a structure; and
* the building has not been and will not be financed by another SSBCI-supported loan.

Under this exception, loans that automatically convert into permanent financing, except if the converted loans would no longer rely on SSBCI support. The term “construction loan” means a loan secured by real estate made to finance (1) land development (e.g., the process of improving land, such as laying sewers or water pipes) preparatory to erecting new structures or (2) the on-site construction of industrial, commercial, residential, or farm buildings. For purposes of this paragraph, “construction” includes not only construction of new structures, but also additions or alterations to existing structures and the demolition of existing structures to make way for new structures.

1. Prohibited Loan Purposes: Each Borrower must also certify that the loan proceeds will not be used to:
	* Repay delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority;
	* Repay taxes held in trust or escrow (e.g., payroll or sales taxes);
	* Reimburse funds owned to any owner, including any equity investment or investment of capital for the business’s continuance; or
	* Purchase any portion of the ownership interest of any owner of the business, except for the purchase of an interest in an employee stock ownership plan qualifying under Section 401 of Internal Revenue Code, worker cooperative, or related vehicle, provided that the transaction results in the employee stock ownership plan or other employee-owned entity holding a majority interest (on a fully diluted basis) in the business.
2. Loan Purpose Requirements and Prohibitions for Lenders: Lenders must certify the following with respect to the Loan purpose:
	* The SSBCI-supported loan or investment is not being made in order to place under the protection of the approved program prior debt that is not covered under the approved program and that is or was owed by the Borrower to the Lender or to an affiliate of the Lender.
	* If the SSBCI-supported loan is a refinancing, it complies with all applicable SSBCI restrictions and requirements in [Sections VII.f and VIII.f](https://home.treasury.gov/system/files/136/SSBCI-Capital-Program-Policy-Guidelines.pdf) of the SSBCI Capital Program Policy Guidelines, as revised from time to time, regarding refinancing and new extensions of credit, including that the SSBCI-supported loan is not a refinancing of a loan previously made to the Borrower by the Lender or an affiliate of the Lender. The SSBCI Capital Program Guidelines are available at <https://home.treasury.gov/system/files/136/SSBCI-Capital-Program-Policy-Guidelines.pdf>.
	* The Lender is not attempting to enroll any portion of a Small Business Administration (“SBA”)-guaranteed loan.

**Section 2.02 Relationship to SBA Lending Programs and Other Federal Loans.** Under the SSBCI Program, SBLPP may not enroll any portion of an SBA-guaranteed loan or the unguaranteed portion of any other federal loan. Lender must certify that it is not attempting to enroll any portion of an SBA-guaranteed loan.

If a Borrower receives a loan guaranteed by the SBA’s 7(a) or 504 loan programs or the U.S. Department of Agriculture’s Business and Industry (“USDA”) loan program, SSBCI funds may not be used as credit support to a loan or investment for the same purpose as the SBA- or USDA-guaranteed loan. Lender must ascertain that no SSBCI funds are being used for the same purpose as an SBA- or USDA-guaranteed loan and provide documentation as required by DEED verifying no overlap of purpose for the use of funds. Examples of documentation include the description of the loan purpose in the two loan agreements or promissory notes, copies of checks paid to different vendors from the proceeds from the two loans, or a statement signed by the Lender or Borrower prior to closing the SSBCI-supported transaction indicating the two different uses of the two loans.

**Section 2.03 Borrower Restrictions.** The Lender must affirm that the Borrower is:

1. A corporation, limited liability company, partnership, joint venture, sole proprietorship, state-designated charitable, religious, or other nonprofit or philanthropic institution; government-owned corporation; consumer and marketing cooperative; or faith-based organization, provided the loan is for a “business purpose” as defined above. Permissible borrowers may also include independent contractors, worker cooperatives, and other employee-owned entities, as well as Tribal enterprises, provided that all applicable program requirements are satisfied. Borrower must have five hundred (500) or fewer employees and the loan proceeds will be used for a business purpose in the state of Minnesota; and
2. The Borrower is not:
	1. a business engaged in speculative activities that profit from fluctuations in price, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business or through the normal course of trade;
	2. a business that earns more than half of its annual net revenue from lending activities, unless the business is (1) a CDFI that is not a depository institution or a bank holding company, or (2) a Tribal enterprise lender that is not a depository institution or a bank holding company;
	3. a business engaged in pyramid sales, where a participant’s primary incentive is based on the sales made by an ever-increasing number of participants;
	4. a business engaged in activities that are prohibited by federal law or, if permitted by federal law, applicable law in the jurisdiction where the business is located or conducted (this includes businesses that make, sell, service, or distribute products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the business’s intended market); this category of businesses includes direct and indirect marijuana businesses, as defined in SBA Standard Operating Procedure 50 10 6;
	5. a business deriving more than one-third of gross annual revenue from legal gambling activities, unless the business is a Tribal SSBCI participant, in which case the Tribal SSBCI participant is prohibited from using SSBCI funds for gaming activities, but is not restricted from using SSBCI funds for non-gaming activities merely due to an organizational tie to a gaming business; “gaming activities” for purposes of Tribal SSBCI programs is defined as Class II and Class III gaming under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2703; and
	6. an executive officer, director, or principal shareholder of the financial institution lender; a member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lender; or a related interest or immediate family member of such an executive officer, director, or principal shareholder of the financial institution lender.

For purposes of these three Borrower restrictions, the terms “executive officer,” “director,” “principal shareholder,” “immediate family,” and “related interest” refer to the same relationship to a financial institution lender as the relationships described in 12 C.F.R. part 215.

* 1. Lender must also obtain an assurance from the Borrower affirming that no principal of the borrowing entity has been convicted of a sex offense against a minor (as such terms are defined in Section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. § 16911)). For purposes of this certification, “principal” is defined as if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association, development company, or other entity, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

**Section 2.04 Lender Assurances.** Upon request for a new loan participation approval, DEED will obtain from the Lender an assurance affirming:

1. The SSBCI-supported loan is not being made in order to place under the protection of the approved program prior debt that is not covered under the approved program and that is or was owed by the borrower to the financial institution lender or to an affiliate of the financial institution lender.
2. The SSBCI-supported loan is not a refinancing of a loan previously made to the borrower by the financial institution lender or an affiliate of the financial institution lender and complies with all applicable SSBCI requirements related to refinancing, described forth below.
3. No principal of the financial institution lender has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. § 16911)). For the purposes of this certification, “principal” is defined as if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association, development company, or other entity, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

**Section 2.05 Lender Assurances: Refinancing and New Extensions of Credit.**

1. New Lenders. Under the SSBCI statute, a lender is not prohibited from enrolling or refinancing loans previously made by another, non-affiliated financial institution. Accordingly, a lender may refinance a borrower’s existing loan, line of credit, extension of credit, or other debt originally made by an unaffiliated lender so long as the proceeds of the transaction are not used to finance an extraordinary dividend or other distribution. The Lender must provide DEED with evidence sufficient for DEED to make a determination that the transaction is beneficial to the small business borrower. For purposes of the eligible business purpose and certification requirements the eligible business purpose of the new loan is generally determined by the purpose of the underlying funding being refinanced.
2. New Extensions of Credit by Existing Lenders. Financial institution lenders are generally prohibited from refinancing an existing outstanding balance or previously made loan, line of credit, extension of credit, or other debt owed by a small business borrower already on the books of the same financial institution (or an affiliate) into the SSBCI-supported program.
3. The limitation on refinancing does not prohibit institution lenders from originating new loans under an SSBCI-approved program and subsequently refinancing the same loan under any approved program.

**Section 2.06 Minimum National Customer Protection Standards.** SSBCI funds are intended to benefit small businesses by making capital available for lending and investment. To promote program integrity and ensure that SSBCI transactions primarily benefit small businesses, SSBCI programs must conform to the minimum national customer protection standards, which apply to small businesses that are SSBCI borrowers, set forth herein. Many state programs and program participants (such as financial institutions) are subject to separate state or federal requirements related to customer protection; these standards do not affect a lender’s obligation to adhere to those other applicable requirements.

1. Rate cap. The interest rate for each individual loan, at the time of obligation, may not exceed the National Credit Union Administration’s (“NCUA”) interest rate ceiling for loans made by federal credit unions as described in 12 U.S.C. § 1757(5)(A)(vi)(I) and set by the NCUA board. The NCUA’s permissible interest rate ceiling supports its mission to protect credit unions and its consumers.
2. Exclusion of certain features. SSBCI-supported transactions may not include any of the following: (1) confessions of judgment; (2) prepayment or “double-dipping” fees; or (3) upfront fees or charges paid by the small business, excluding fees to the state program, that exceed two percent (2%) percent for loans greater than $25,000 or $500 for loans under $25,000. Contract clauses requiring confessions of judgment often take away small business borrowers’ legal defenses without any due process and, thus, tend to be harmful to these borrowers. Mechanisms of prepayment and “double-dipping” fees are often used by creditors to hide costs to borrowers and charge fees that can be detrimental to the borrower. By disallowing these mechanisms, Treasury aims to ensure greater transparency for small business borrowers and to ensure that small businesses that participate in SSBCI receive loans that are economically beneficial to them. Treasury’s establishment of the cap on upfront fees or charges also furthers these aims. The two percent (2%) cap on these fees for loans greater than $25,000 is based on the SBA’s two percent (2%) limit on loan closing fees pursuant to 13 C.F.R. § 107.860(c). The $500 cap on these fees for loans under $25,000 is reasonable because the fixed underwriting costs per loan often exceed two percent (2%) of the loan amount for loans under $25,000. Setting the cap at $500 for all loan amounts under $25,000 would likely facilitate lending from financial institutions to very small businesses that need a small loan.
3. Disclosure of Terms. SSBCI-supported transactions must include disclosure by the Lender of all key terms in an easy-to-understand manner. Such disclosures should include, for example, the total amount of the loan; payment obligation and schedule; any terms giving the lender control over the Borrower’s cash balances or other assets, cash flows, or ownership (including personal guarantees); any conversion rights and future rights to purchase equity; and any fees or extra costs (including any prepayment fees). This minimum standard applies across all SSBCI programs; however, these standards do not supersede disclosure requirements that may apply under other applicable law. All applicable federal and state securities and lending disclosure laws, rules, and regulations continue to apply.

**Section 2.07. Completion of the Project.** Lender shall undertake reasonable monitoring efforts to ensure Borrower completes the Project as proposed and that Borrower uses the Loan proceeds for the purpose described in the Application for Participation, as well as in compliance with the terms of the Act, this Agreement, and all applicable federal, state and local laws, regulations and ordinances, including but not limited to all environmental laws and regulations. This includes loans that may extend payments beyond Treasury oversight period and contract maturity.

**Section 2.08. Capital at Risk.** Lender shall have a meaningful amount of its capital resources at risk for each Loan enrolled in the Program. Lender is considered to have a meaningful amount of capital resources at risk if it bears twenty (20) percent or more of the risk of loss in any transaction. If Lender sells a participation interest in the Loan to one or more additional parties, Lender must retain an interest equal to or greater than (20) percent of the Loan. Any participation interest purchased by another public entity is excluded from the calculation of the SSBCI transaction, including for the purpose of calculating Lender capital at risk. Borrower’s funds, including borrower contributions to the transaction (also known as borrower equity), do not qualify towards the twenty (20) percent threshold.

**ARTICLE III**

**Conditions to Enroll Loans in the SBLPP**

**Section 3.01 Loans; Loan Applications.** A Participation under this Agreement may be made with such interest rate, fees, and other terms and conditions as the Lender and Borrower may agree and which are not otherwise prohibited by state or federal law, or the terms of this Agreement. Subject to Section 6.02 of this Agreement, loans may be made on a subordinate basis to prior loans made by the Lender, provided that the prior loan was not made more than six (6) months in advance, or financing provided by other financial institutions or private (non-equity) investors.

The Lender shall accept applications from prospective Borrowers and, if found creditworthy by the Lender and meeting the SBLPP requirements, the Lender shall complete the SBLPP Application for Participation and SSBCI Certifications forms in Exhibit A, as amended from time to time, provide all supporting documents, and provide the details of the proposed Loan in a form satisfactory to DEED, for DEED's review and purchase approval. DEED expressly reserves the right, in its sole discretion, to accept or reject any Borrower and/or Loan. Once the Lender receives a Commitment Letter, it may consummate the Loan and shall sell a Participation therein to DEED, pursuant to the terms and conditions set forth herein. No loan closed prior to issuance of a Commitment Letter shall be approved.

**Section 3.02 Maximum DEED Participation Amount.** The Lender shall sell, assign and transfer, and DEED shall purchase and accept, subject to the terms and conditions of this Agreement, a Participation in Loans up to 25%, or up to 30% for Loans to SEDI-Owned businesses. Total participation amounts will be no less than $10,000, and no more than $250,000. Minimum and maximum participation amounts are per Loan; however, DEED will purchase no more than $250,000 in Loans made to a single Borrower. Actual Participation Percentage and the Participation Amount may be adjusted by DEED based on the availability of SSBCI funds. DEED’s Participation is computed by dividing DEED’s principal balance by the Loan’s principal balance. The Lender is responsible for monitoring and ensuring that, at any given time, DEED’s Participation never exceeds its Participation Percentage. In the event DEED’s Participation is ever greater than DEED’s original Participation Percentage, the Lender must immediately pay DEED the excess principal to bring DEED’s Participation into compliance with the Commitment Letter.

**Section 3.03 Maximum Loan Term.** In no case shall the term of the Loan be longer than ten (10) years; however, the Loan may be amortized for a longer period, not to exceed twenty (20) years, unless an authorized designee of DEED documents in writing that it is in the best interests of the State to waive the above limitations. Generally, DEED expects the term of the Loan to match the use of proceeds. If a longer term is required, DEED will require an explanation for the deviation. For lines of credit (“LOC”), the maximum term is three (3) years, and DEED’s Participation is not renewable beyond the term. As the SBLPP is projected to be a ten-year program, no loan enrolled in the SBLPP may have a term that extends beyond September 30, 2035.

**Section 3.04 Application for Participation; DEED Commitment.** Upon receipt from the Lender of an Application for Participation with the applicable documents, DEED, in its sole discretion, shall determine whether it will purchase a Participation interest in the loan. DEED shall make reasonable efforts to make its determination within thirty (30) days of receipt of the Application for Participation and applicable documents. If DEED approves the Application for Participation, it will issue and send, via electronic communication, a Commitment Letter to the Lender, which shall remain in effect for thirty (30) days. The Lender shall, within thirty (30) days after the Commitment Letter is issued, return the signed Commitment Letter to DEED or the Commitment Letter shall expire. If the Lender does not close the Loan within one hundred twenty (120) days after the Commitment Letter is issued, DEED’s commitment will expire, unless a written extension of time is granted by DEED. DEED, in its sole discretion, and subject to the availability of funds for the SBLPP, may grant an extension of time provided that no material change has occurred in the proposed terms, the scope of the Project, nor the financial condition of the Borrower (including guarantors) or the Borrower’s ability to repay the Loan as originally approved. If DEED declines the Application for Participation, it will make reasonable efforts to advise the Lender within thirty (30) days of receipt of the application.

**Section 3.05 Purchase and Funding of Participation.** Upon the closing of a Loan for which the Lender has received a Commitment Letter, the Lender shall notify DEED’s authorized representative of the closing and shall deliver the Participation Certificate, attached as Exhibit C, and all Closing Documents to DEED within fifteen (15) business days of the closing. If the Participation and Closing Documents are not received within the outlined time period, DEED’s Participation shall be void, unless the fifteen-day period is waived or extended in writing by DEED. DEED shall acknowledge the Participation Certificate by having its authorized designee execute the Participation Certificate and return it to the Lender. DEED shall process the Participation Certificate and any other documents necessary to fund its Participation, and then simultaneously or as soon as practicable shall initiate the actions to cause delivery of its Participation Amount to the Lender. The Participation will be considered funded on the date DEED funds are transferred to the Lender by automated clearing house (“ACH”) transfer to the Lender’s SSBCI Program Account. Interest will begin to accrue on the date of closing. The Lender will be responsible for the timely movement/distribution of DEED funds to the Borrower.

For any term loan with a draw feature, Loan Documents shall indicate the period during which draws may be made by the Borrower. Any undrawn funds must be returned to DEED on a pro rata basis and will not be considered repayments under Section 5.04 of this Agreement.

**Section 3.06 Document Delivery and Reporting Requirements.** Upon execution of this Agreement, and in addition to the document delivery requirements set forth in Section 3.05 above, the Lender shall prepare and deliver to DEED any Loan Documents determined by DEED to be required to evaluate the Application for Participation. Upon closing on a Loan, the Lender shall also be required to furnish to DEED such other documents, agreements, certificates, due diligence material and reports pertaining to the Loan, as may be requested by DEED, including, without limitation, periodic financial information required to be delivered to the Lender which the Lender has in its possession from time to time. In addition and for each quarter and year end, the Lender is required to submit to DEED quarterly and annual reports containing the information, on the respective due dates, in the form provided by DEED. Failure to submit such reports in a timely fashion may delay approval of Applications for Participation. Notwithstanding the foregoing, DEED expressly reserves the right to supplement the quarterly and annual reports and/or to require interim reports as may be required for DEED.

**Section 3.07 Enrollments/Acceptance of Applications from Lender.** DEED, in its sole discretion, may terminate its obligation under this Agreement with the Lender to accept loans for Participation under the SBLPP upon written notice to the Lender by DEED. Such termination shall not apply to any Loan which is made on or before the date on which the notice of termination is received by the Lender. However, if DEED is terminating the ability to make Application for Participation of eligible Loans not merely for the Lender, but instead for all participating lenders under the SBLPP and/or all other Minnesota SSBCI Programs, then and in such event, DEED shall provide written notice of at least thirty (30) days to the Lender. Any terminations under this Section shall be prospective only, and shall not apply to any Loans for which a Commitment Letter has been executed and delivered by DEED. Nothing herein provided is intended, nor shall it be construed, to modify, limit or restrict DEED's termination rights and remedies under Sections 3.09 and 7.19 hereof, or upon the occurrence of an event of a default (as provided herein), which provisions shall expressly control.

**Section 3.08. Lender's Withdrawal from Program.** The Lender may withdraw from the SBLPP at any time with written notice to DEED at least 30 days prior to the effective date of withdrawal. Such withdrawal shall be applicable on the effective date specified in the written notice of withdrawal, except that such withdrawal shall not apply to any Loan made on or before the date on which the notice of withdrawal is received by DEED. Any withdrawals under this Section shall be prospective only and shall not apply to any Loan for which a Commitment Letter has been executed and delivered by DEED. If Lender withdraws from the SBLPP prior to program sunset, DEED reserves the right to require Lender to return any repayments as described in Section 5.07 below. Reporting Requirements listed in Section 3.06 shall continue so long as any DEED Participation remains outstanding regardless of Lender’s withdrawal.

**Section 3.09. Term and Termination of Availability.** Subject to earlier termination as provided in, among others, Sections 3.07 and 7.19 herein, this Agreement shall terminate on the date that funds are no longer available; provided, however, that in all cases it shall remain effective and its terms and conditions shall remain applicable to any Participation purchased during the time this Agreement was effective (including, but not limited to, the reporting and inspection requirements set forth herein).

**Section 3.10. Acknowledgments and Agreements of the Parties Relating to Loans.** As a material inducement to the Parties entering into this Agreement and consummating the transactions contemplated hereby, DEED and the Lender each hereby acknowledge and agree with respect to each Loan that:

1. The Lender is expected to exercise due diligence in determining (i) the accuracy of any statement, warranty, representation or certification made by the Borrower and/or any guarantors in, or in connection with, any document relevant to the Loan, and (ii) the financial condition of the Borrower and any guarantor with respect to the Loan or the performance or observance of any obligations by the Borrower or any guarantor with respect to the Loan.
2. The sale of a Participation does not constitute the sale of a “security” under or as defined in the Securities Act of 1933 and the Securities Exchange Act of 1934.
3. The relationship between the Lender and DEED is and shall be that of a seller and purchaser of a property interest and not a debtor-creditor relationship.
4. DEED is relying upon the Lender to undertake, on behalf of DEED, the review and approval of the credit, collateral valuation, security documentation and determination of eligibility of the Borrower.

**ARTICLE IV**

**Representations, Covenants and Warranties**

**Section 4.01 Representations by the Lender**. With respect to any loan for which the Lender sells a participation hereunder, the Lender makes the following representations and warranties as of the time of each such filing:

1. The Lender has obtained from the Borrower the representations and warranties contained in Exhibit A (Application for Participation and SSBCI Certifications), and based on knowledge that the Lender has, after reasonable inquiry, no substantial reason to believe that such representations and warranties are not true.
2. That the Lender is and shall at all times remain in compliance with the requirements of Section 103.121 of Title 31, U.S.C., which regulation, at a minimum, requires financial institutions, as that term is defined in Section 5312 (a)(2) and (c)(1)(A) of Title 31, U.S.C., to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable, maintain records of the information used to verify the person’s identity, and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency, as applicable to the Lender.
3. That the Lender has disclosed to the Borrower information concerning the SBLPP (or any other Minnesota SSBCI Programs) as may be specified by DEED.
4. That the Lender will exercise its standard due diligence in applying underwriting criteria and evaluating underwriting results for purposes of determining whether the Loan or Loans shall be made by the Lender to the Borrower.
5. That the Lender has complied or will comply with all State, federal and local laws, rules and regulations pertaining to the making of the Loan or Loans, including 31 C.F.R. § 103.121, as applicable to the Lender.
6. That the Lender will not sell a participation under this Agreement for SBA guaranteed or other federally guaranteed loans.
7. The Lender will retain a portion of the Loan sufficient to meet the twenty (20) percent capital at risk requirements set forth in Section 2.08. of this Agreement and will exclude any interest it sells or assigns to another public entity from the calculation of its capital at risk requirements.
8. That the Lender is familiar with all of the laws, rules and regulations applicable to the Minnesota SSBCI Programs (particularly the SBLPP) and shall use diligent, reasonable efforts to remain familiar with all such rules and regulations applicable to the Minnesota SSBCI Programs (particularly the SBLPP), including, but not limited to, the SSBCI statute (12 U.S.C. § 5701 et seq.), and any subsequent amendments, and any other current or future SSBCI regulations, guidance, frequently asked questions, or other requirements issued by Treasury, including but not limited to the SSBCI Capital Program Guidelines as dated November 11, 2021 and as revised from time to time.
9. That the Lender is a nonprofit corporation validly existing and in good standing under the laws of the State of Minnesota, is duly qualified and in good standing to transact business in the State, and possesses all requisite authority, power, licenses, permits and franchises to conduct any and all business contemplated by this Agreement and to accept the duties hereunder and comply with its obligations under the terms of this Agreement. It further certifies, covenants and represents that the execution and delivery and performance of this Agreement by the Lender has been duly authorized by all necessary corporate action.
10. That the Lender shall perform its obligations under this Agreement in accordance with the commercially reasonable standards of care, skill and diligence in Lender’s industry, trade, or profession, and in accordance with the specifications set forth in this Agreement, to the satisfaction of the State.
11. That this Agreement, and all documents and instruments contemplated hereby, which are executed and delivered by it, when duly authorized, executed and delivered by all other parties thereto, will constitute valid, legal and binding obligations of the Lender, enforceable against it in accordance with their respective terms, except as the enforcement thereof may be limited by applicable debtor relief laws.
12. That the execution and delivery of this Agreement by the Lender and the performance and compliance with the terms herein will not violate (i) its articles of incorporation or bylaws, or (ii) any laws which could have any material adverse effect whatsoever upon the validity, performance or enforceability of any of the terms of this Agreement or any financing documents applicable to the Lender, and will not constitute a material default (or an event which, with notice or lapse of time, or both, would constitute a material default) under, or result in the breach of, any material contract, agreement or other instrument to which the Lender is a party or which may be applicable to it or any of its assets.
13. That the execution and delivery of this Agreement by the Lender and the performance and compliance with the terms herein do not require the consent or approval of any governmental authority, or if such consent or approval is required, it has been obtained.
14. That the Lender, in the performance of its duties hereunder, will comply with the applicable non-discrimination provisions of the Civil Rights Act of 1964, and the regulations promulgated thereunder, and Executive Order 11246, Equal Employment Opportunity.
15. That no information or statement furnished in writing or report required hereunder delivered to DEED (or any of their respective agents or designees) has or will, to the knowledge of the Lender, contain any untrue statement of a material fact or omit a material fact necessary to make the information, statements or report not misleading.
16. That on the date hereof, there is no pending, or to Lender's knowledge, threatened litigation or administrative proceedings against Lender, which, if adversely determined, would materially affect Lender and its assets or its ability to perform the services contemplated in this Agreement.
17. That the Lender's services, programs, and activities contemplated under this Agreement are and will continue to be in compliance with the Americans with Disabilities Act (ADA) (42 U.S.C. 12101 et seq.) and the regulations thereunder (28 CFR 35.130), which prohibit discrimination against persons with disabilities, whether directly or through contractual arrangements, in the provision of any aid, benefit, or service. The Lender further certifies that all facilities utilized by it in the performance of this Agreement comply with State accessibility laws.
18. That the Lender is in compliance with the requirements of the federal Drug Free Workplace Act.
19. That the Lender shall monitor any construction undertaken as part of a Project to assure that necessary contractor's or contractors’ affidavits and waivers of mechanics liens are obtained prior to release of Loan funds to contractor(s) and subcontractor(s), if applicable.
20. The Borrower is ready to implement the Project and has the financial ability to carry out the Project.
21. The Borrower is responsible and creditworthy.
22. The Loan is protected by security, which may include, as available, business assets, first or second mortgage positions on real or personal property, royalty payments on sales of products or services, or any other security satisfactory to the Lender to secure repayment of the Loan. Personal notes or guaranties may have been executed by persons owning twenty percent (20%) or more of the business, unless a waiver has been granted.
23. The Loan Documents are in an amount and form, and contain such terms and provisions with respect to property insurance, repairs, alterations, payment of taxes and assessments, delinquency charges, default remedies, additional security, and other matters, adequate to protect the State’s interest in ensuring repayment.
24. Guarantor(s) are responsible and creditworthy. Guarantors’ assets have been verified and will undergo periodic review both to ensure their continuing capacity to provide performance guaranties in the amounts required to ensure repayment, and to ensure that the same assets have not been pledged or are supporting other loans or guaranties unless approved by DEED in writing.

**Section 4.02 Lender's Covenants with Respect to the Loans.** The Lender hereby covenants with respect to each Loan that it shall not, without DEED’s prior written consent or approval:

1. consent to or accept any cancellation, termination, revision, or settlement of any Loan Document, or agree to any transfer or termination of any instrument now or hereafter assigned to it as security for the Loan;
2. release, partially or fully, any collateral given as security for the Loan or any guarantor of the Loan;
3. extend the maturity date of the Loan or the date of any interest or principal payment thereunder without the express authorization from DEED;
4. reduce the amount of any payment of principal or the applicable Lender Rate;
5. increase the maximum amount of the Loan or the obligations of the Lender or DEED pursuant to any Loan Document;
6. require the acceptance of a new note evidencing the Loan, in substitution for the Note;
7. waive or consent to the modification of any Loan Document that would cause the Loan to no longer be in compliance with the requirements of Article III; or
8. consent to any amendment or modification to a Loan Document that would be, in the judgment of a prudent financial manager, material to the Loan.

In the event that the Lender breaches any of the above enumerated covenants, it agrees that it shall purchase DEED’s outstanding Participation as of the date of the breach.

In the event that Lender seeks DEED’s consent or approval for any of the matters enumerated above, DEED shall attempt to respond to the Lender's request within ten (10) business days after such request, which will not be unreasonably withheld. Such response may be by telephone, to be confirmed in writing promptly thereafter.

Upon the occurrence of any default by the Borrower or guarantor under any of the Loan Documents, the Lender shall consult in good faith with DEED. Notwithstanding the foregoing, if such a default is caused by the nonpayment of principal or interest, by the bankruptcy of the Borrower or a guarantor, or by the occurrence of an event that would have a material adverse effect on the repayment of the Loan or the collateral securing the Loan (in the Lender's reasonable judgment), the Lender shall not waive such default without the written consent of DEED.

**Section 4.03 Subordination after Default.** The Lender and DEED may agree to the subordination of amounts (both principal and interest) owed to DEED under certain circumstances, and only in the event of default. If the Lender and DEED so agree, the amounts owed by the Lender to DEED with respect to a Participation shall be subordinated to amounts owed by the Borrower to the Lender from and after the occurrence of all of the following events: (i) the occurrence of any default under any of the applicable Loan Documents; (ii) notice thereof to DEED; (iii) acceleration of the applicable Loan; and (iv) commencement and continuation of foreclosure proceedings and other collection efforts, which shall include enforcing all guaranties with respect thereto.

However, in any foreclosure proceeding where the Lender is the successful bidder at the foreclosure sale and the sale results in a loss to either the Lender and/or DEED, or if Lender otherwise acquires title to such property in lieu of a foreclosure, such as by a deed in lieu of foreclosure, and in any such case the Lender subsequently sells the foreclosed or otherwise acquired property within twelve (12) months thereafter for a gain in excess of the value of the loan, the Lender is obligated to remit a pro rata share of said net gain after expenses or profit equal to DEED’s Participation Amount within thirty (30) calendar days thereafter. This also applies to any situation where the Lender takes judicial or non-judicial ownership of collateral assets for subsequent disposition.

Breach of any of the covenants or requirements specified in Sections 4.03 (i), (ii) and (iii) renders all subordination null and void as of the date of the breach. Unless a new subordination agreement is executed in writing by the Lender and DEED, any amounts recovered upon the Borrower’s default are to be distributed on a pro rata basis equal to DEED’s Participation Amount, plus recovered interest and fees if any.

**ARTICLE V**

**Repayments, Reporting and Ongoing Administration of Loans**

**Section 5.01 Loan Administration.** Upon DEED’s request, the Lender shall provide DEED with any additional documents arising out of, or related to, the Loan Documents. The Lender shall disclose to the Borrower in accordance with Section 4.01(C) DEED's role in facilitating any Loan included in the SBLPP in connection with Lender's making of such Loan and the restrictions and limitations placed upon such Loan arising out of the SSBCI program. The Lender shall exercise the same degree of care and discretion in servicing a Loan included in the SBLPP as the Lender would take in servicing and collecting payments on loans made with non-SSBCI funds for the Lender's own account.

The Lender shall promptly notify DEED in writing (and describe in reasonable detail) any of the following:

1. should the Lender receive any written request by the Borrower or any co-maker, guarantor, endorser, or other debtor or obligor of any Loan included in the SBLPP for any change in the terms and conditions of such Loan, or any of the Loan Documents, including, without limitation, any request for the release, substitution, or exchange of collateral for such Loan or the release of any of their personal obligations under such Loan;
2. should the Lender commence any collection proceeding against any Borrower or any co-maker, guarantor, endorser, or other debtor or obligor of any Loan included in the SBLPP; and
3. should the Lender seize, sell, transfer, assign, foreclose or attempt to exercise against any collateral securing any Loan included in the SBLPP.

**Section 5.02 Reporting.**

1. **Annual Reports.** Per federal government requirements, Lender agrees to submit by January 31 of each year an annual report for the prior calendar year ending December 31. This information shall include, but not be limited to, business information, business performance, loan status, job creation and additional financing obtained by the Borrower using forms designated by DEED, which shall be provided by DEED.
2. **Quarterly Loan Activity Reports.** Lender further agrees to submit within 20 days of the end of each calendar quarter a loan activity report indicating the amount of principal and interest paid on each loan, as well as delinquency information including, but not limited to, days and amount of delinquency.
3. **Quarterly Administrative Reporting.** Lender agrees to submit a report on its administrative costs as outlined in Section 5.05 and bank statements for its SSBCI Program Account to DEED within 20 days of the end of each calendar quarter. Lender is required to track and report the use of any interest earned on Participations and funds held in the SSBCI Program Account.

A sample Quarterly Report is attached and incorporated into this Agreement as Exhibit D. Additional reporting may be required on a quarterly or annual basis for the SSBCI Program Account, Program Income and loan statuses, or as required by DEED or the U. S. Department of the Treasury.

**Section 5.03 Annual Review by DEED.** The Lender acknowledges and agrees that DEED may annually review its financial condition and performance. As and to the extent DEED reasonably determines that the Lender's performance or financial condition is unsatisfactory, the Lender shall be deemed in default of this Agreement.

**Section 5.04 Repayments.** As Lender receives repayment of DEED’s portion of enrolled Loans, it will be required to keep the funds in a separate SSBCI Program Account within that organization to receive repayments from the Loans, interest income, and earned income. Repayments will be accrued and kept by the Lender on DEED’s portion of the Loans until the Lender has recouped up to $750,000, prior to September 30, 2030. At the time Lender has recouped $750,000 in repayments, or on September 30, 2030, whichever occurs first, all repayments of DEED’s portion of the Loans must be remitted to DEED on a quarterly basis following the Prompt Payment requirements defined herein. Funds in the SSBCI Program Account may not be used for re-lending through the SBLPP until authorization has been received from DEED that Lenders may begin recycling of funds.

Payments are to be made by ACH transfer to DEED from the Lender’s account. In accordance with Treasury guidelines payments must be made by what is considered “real money” under Treasury standards. A quarterly report must be completed and submitted with each and every payment remitted to DEED. If DEED has more than one Participation Loan with the Lender, the Lender may make one ACH transfer combining payments into one remittance. The quarterly report shall disclose information, including but not limited to, the date the Lender received payment from or on behalf of each Borrower, the manner in which the Lender apportioned said payment between interest and principal between the Lender and DEED, and the outstanding balance of the Loan. In the event that a Borrower fails to remit a scheduled payment to the Lender, the Lender, nevertheless, must submit the monthly report to DEED indicating either that no payment was received, or that no payment was due and owing to DEED.

**Section 5.05 Interest retention on DEED’s Participation.** Lender will be allowed to keep the interest earned on DEED’s purchased portion of the enrolled Loan and on the SSBCI Program Account (Program Income). The interest earned is categorized as Program Income and may be used for eligible administrative expenses incurred by the Lender to make or service the Loans, or as recycled lending capital for the SBLPP if authorized by DEED. Funds may not be recycled for additional purchased Participations without approval by DEED.

If funds are used by the Lender for allowable administrative expenses, SSBCI administrative costs are defined and governed by the Uniform Cost Principles in 2 C.F.R. Part 200 Subpart E (“Uniform Cost Principles”). The Uniform Cost Principles contain criteria that must be used to establish chargeable administrative costs and specific information on allowable costs in various cost categories. Lenders will be required to report on their administrative costs on a quarterly basis.

**Section 5.06 Recycling of Funds.** SSBCI 2.0 funds may be used more than once prior to Program sunset. Lender must obtain approval from DEED for each Participation purchased with recycled funds, regardless of whether funds are maintained by DEED or in Lender’s SSBCI Program account. Once DEED has begun authorizing recycling of Program funds, the Lender should make every reasonable effort to make additional Loans that would utilize recycle funds that are returned and maintained in Lender’s Program account prior to Program sunset.

**Section 5.07 Post program sunset retention of repayments.** After the SSBCI 2.0 program sunsets or on September 30, 2030, whichever is later, Lender will be allowed to keep up to $750,000 of repayments of principal from DEED’s purchased portion of enrolled Loans, interest earned on DEED’s purchased Participation, and interest earned on the SSBCI Program Account. Following federal regulations, once SSBCI 2.0 formally sunsets, funds that have been expended as part of a DEED lending program and have been repaid, as well as associated Program Income, are no longer subject to federal SSBCI regulations and may be used by Lender to support additional small business lending.

**ARTICLE VI**

**Events of Default and Rights and Remedies**

**Section 6.01 Default by a Borrower under Loan Enrolled in Loan Participation Program**. Upon the occurrence of an event of default by the Borrower under the Loan Documents, including, without limitation, the failure to pay any principal of, or interest on, the Loan:

1. the Lender shall, within ten (10) business days thereafter, notify DEED in writing of the existence and nature of the event of default;
2. the Lender shall copy DEED with all notices to the Borrower; and
3. the Lender shall diligently pursue the collection of all amounts owed by the Borrower under the Loan Documents until the Loan is brought current, collected in full, reduced to a judgment, settled, or upon the reasonable judgment of the Lender, other action is required.

**Section 6.02 Existing Banking Relationships; Other Loans by Lender with Loans Enrolled in Loan Participation Program.** DEED acknowledges that the Lender and its affiliates may accept deposits from, lend money to, extend other financial accommodations to, or for the benefit of, any Borrower, and may act as trustee under the indentures for, and generally engage in, any kind of business with any Borrower, any person who may do business with any Borrower, or any affiliate of any Borrower. DEED further acknowledges that the Lender may have existing loans with a Borrower that were made prior to the date of any Loan made by Lender which is participating in the SBLPP (“Prior Loans”) and may, in the future, make additional loans to the Borrower that are not participating in the SBLPP (“Future Loans”). After an event of default by a Borrower with respect to any Prior Loans, the Loan for which DEED has a Participation Interest under the SBLPP, or any Future Loans, then in any collection proceeding or legal action taken by the Lender against a Borrower to collect amounts due under Prior Loans, the Loan for which DEED has a Participation Interest under the SBLPP or Future Loans, any proceeds collected by the Lender shall be applied in the following order:

1. First, to reimburse the Lender for the reasonable costs of any such collection action;
2. Second, to pay interest, fees and principal with respect to the Prior Loans;
3. Third, to pay interest, fees and principal with respect to loans or other financings to which the Loan is subordinated;
4. Fourth, to pay interest, fees and principal with respect to the Loan; and
5. Fifth, to pay interest, fees and principal with respect to the Future Loans (to the extent the Loans have not been expressly subordinated thereto).

The foregoing provisions shall not in any way limit the obligations of the Lender to take action against the Borrower after the occurrence of an event of default.

**Section 6.03 Default by the Lender.** The occurrence of any one or more of the following events or conditions shall constitute an event of default by the Lender under this Agreement (which defaults may be determined by DEED acting in its sole discretion):

1. any representation, warranty, certification, assurance or any other statement of fact contained in this Agreement, or any representation or warranty set forth in any document, report, certificate, financial statement or instrument now or hereafter delivered to DEED in connection with this Agreement, is found to be knowingly inaccurate, false, incomplete or misleading when made, in any material respect;
2. any breach by Lender whereby the Lender materially fails to observe, comply with, meet or perform any term, covenant, agreement or other provision contained in this Agreement including, but not limited to, the failure to submit complete and timely reports, or the Lender ceases to use the SSBCI funds to undertake the activities authorized in this Agreement, or the Lender fails an annual performance and compliance review performed by DEED;
3. any other material breach by the Lender of any duty or obligation of the Lender under this Agreement, including, without limitation, the failure to reasonably pursue all legal action against a Borrower related to a Loan in the SBLPP;
4. the appointment of a receiver or custodian over a material portion of the Lender's assets, which receiver or custodian is not discharged within sixty (60) days following its appointment;
5. any voluntary bankruptcy or insolvency proceedings as commenced by the Lender; or
6. any involuntary bankruptcy or insolvency proceedings as commenced against the Lender, which proceedings are not set aside within sixty (60) calendar days from the date of institution thereof.
7. Lender refuses to allow the Legislative Auditor, the State Auditor for the state of Minnesota, or the Inspector General for Treasury at any reasonable time and upon prior written notice, to inspect, audit, copy or abstract, any and all books referred to in Section 7.04 below.
8. Lender refuses to allow DEED, at any reasonable time and upon prior written notice, to inspect, audit, copy or abstract, any and all of its books, records, papers or other documents relevant to the Loan.

**Section 6.04 Remedies to DEED upon Lender's Default.** Upon the occurrence of any one or more events of default by the Lender as set forth in Section 6.03 hereinabove, DEED shall be entitled, acting in their sole discretion, to pursue any or all of the following remedies, plus any additional rights and remedies available to such parties, whether such remedies are based in law or in equity:

1. withhold future Participations under this Agreement or any related commitment pending the Lender's correction of the default; or
2. wholly or partly reduce, suspend, or terminate the commitment to purchase Participations from the Lender under this Agreement; or
3. the right to require the Lender's books and records related to any Loan participating in the SBLPP to be separately audited by an independent certified public accountant selected by DEED, at DEED's sole cost and expense; provided however, in the event the audit reveals that a breach of this Agreement has occurred, the Lender shall reimburse DEED for the fees and expenses incurred to perform the audit.

**Section 6.05 Specific Events of Default.** In the event of an audit finding of either:

1. intentional or reckless misuse of SSBCI funds by the Lender; or
2. the Lender having intentionally made misstatements in any report issued to DEED (directly or indirectly) under the Agreement;

DEED shall find the Lender to be in default.

**Section 6.06 Mandatory Remedies.** If DEED finds the Lender to be in default under Section 6.05 of this Agreement, DEED shall take the following actions, as applicable:

1. in the case of an event of default under Section 6.05(A), recoup any misused SSBCI Funds that have been disbursed to the Lender; or
2. in the case of an event of default under Section 6.05(B), DEED shall terminate the commitment to make disbursements to the Lender under this Agreement.

**Section 6.07 Remedies Not Exclusive.** No remedy is intended to be the sole and exclusive remedy in case any event of default by the Lender under this Agreement shall occur and each remedy shall be cumulative and in addition to every other provision or remedy now or later existing in law, in equity, by statute or otherwise. The Lender shall pay all costs and expenses, including, without limitation, reasonable attorney’s fees and expenses incurred by DEED in enforcing any obligation of the Lender arising from or under any Loan enrolled by the Lender in the SBLPP or the Loan Documents.

**Section 6.08 No Waiver.** No delay or failure by DEED in the exercise of any right, power, or remedy accruing upon the occurrence of any event described in Section 6.03 or Section 6.05 herein shall impair any such right, power, or remedy, or be construed to be a waiver of, or acquiescence in, such event, nor shall any abandonment or discontinuance of steps taken to exercise any right, power or remedy preclude any further exercise thereof.

**Section 6.09 Prior Notice to Exercise of Remedies.** The Lender acknowledges that, prior to exercising or imposing any remedy contained in Section 6.04 other than a withholding of a disbursement(s), DEED, to the maximum extent practicable, shall provide the Lender with written notice of the event(s) described in Section 6.03 and Section 6.05 hereof and the proposed remedy. DEED’s written notice will give the Lender twenty (20) calendar days from the date of the notice to respond. DEED may, in its sole discretion, also afford the Lender thirty (30) calendar days from the date of the notice to correct the event. DEED (or its designee) shall provide the Lender with any such notice as soon as practicable. If the Lender fails to correct the event within either the twenty (20) calendar day response time or, if applicable, the thirty (30) calendar day correction or cure period, DEED may, in its sole discretion, impose or exercise the remedy or remedies set forth in its written notice. Moreover, if the Lender fails to respond timely to DEED’s written notice, DEED may impose or exercise the remedy or remedies set forth in its written notice, effective as of the date specified in such notice. Nothing in this Agreement, however, will provide the Lender with any right to any formal or informal hearing or comparable proceeding not otherwise required by law.

**Section 6.10 Compensation to the Lender.** The Borrower shall pay interest to the Lender at the rate agreed upon between the Lender and the Borrower. All application and origination fees collected by the Lender, with respect to the Loan, will be retained by the Lender. Interest accrued on DEED’s purchased Participation in the Loan will be retained by the Lender and may be used as outlined in Section 5.05 herein. All compensation referenced in this Section 6.10 shall be reported quarterly as Program Income.

**Section 6.11 DEED's Undivided Interest.** Upon DEED’s purchase of a Participation in a Loan, and pursuant to the provisions of Article III, DEED shall, without the necessity of any written instrument of assignment or other document, become vested with an undivided equitable ownership interest (proportional to such Participation from time to time) in: (i) the Loan; (ii) the Loan Documents; and (iii) any other rights and claims of the Lender with respect to the Loan. If the Lender acquires any security interests or liens granted by any of the Loan Documents, DEED shall have an undivided interest in such security interest or lien equal to its Participation in the Loan, notwithstanding the fact that the security interest or lien is in the name of, and/or possession is maintained by, the Lender.

**Section 6.12 The Lender as Trustee.** All Loan Documents and the rights conveyed by them executed and delivered in connection with the Loan shall be held by the Lender in trust for the pro rata benefit of the Lender and DEED, and as servicing agent for DEED. The Lender is authorized to retain the Note and the Loan Documents in the Lender's name and to deal with parties other than DEED as though the Lender were an absolute owner of the Loan and the Loan Documents. Any person, firm or corporation may deal with the Lender concerning the Loan in the same manner as if the Participation was not outstanding and the Lender was the sole owner of the Loan, as limited by Section 6.13 of this Agreement. The Lender may perform any of its obligations hereunder by or through its agents, employees or attorneys.

**Section 6.13 Limits of DEED's Interest.** Although the Lender holds for DEED’s proportional benefit all collateral securing performance and payment of a Borrower's obligations and liabilities under and in connection with any Loan, DEED shall have no interest in any other property taken as security for any other credit, loan or financial accommodation made or furnished to the Borrower by the Lender in which DEED has no Participation. This shall include any property now or hereafter in the Lender's possession or under the Lender's control or in any deposit held that may be or may become security for performance or payment of a Borrower's or guarantor's obligations and liabilities under and in connection with other indebtedness owing to Lender by reason of the general description contained in any other instrument held by the Lender or by reason of any right of setoff, counterclaim, banker's lien or otherwise; provided, however, if such property, deposit, indebtedness or the proceeds thereof shall be applied to the payment or reduction of principal, interest, fees or any other amounts owing by a Borrower or guarantor in connection with a Loan, then DEED shall be entitled to its pro rata share of such payment. All collateral securing performance and payment of a Borrower's obligations and liabilities under and in connection with any Loan may be used by Lender in connection with other indebtedness owing to Lender, but only if the Loan is specifically subordinate to indebtedness.

**Section 6.14 Lender’s Right of Offset.** To the extent that at any time a Borrower, guarantor or any other party makes any payment under the relevant Loan Documents to the Lender by exercise of a right of offset of any kind, including any right applying to deposits, accounts, moneys or other property of such Borrower or guarantor deposited at or held by the Lender (but excluding any property securing the Loan pursuant to the Loan Documents), such payments shall be applied to reduce the Loan. Immediately thereafter, the Borrower’s outstanding balance shall be automatically readjusted to reflect such payment, and the Lender shall purchase from DEED as much of the Participation Amount so as to return the Lender's and DEED's respective interests to the percentages existing prior to the offset.

**ARTICLE VII**

**Miscellaneous**

**Section 7.01. Tax Identification Number.** Pursuant to the requirement contained in Minn. Stat. § 270C.65, Lender represents and warrants that the following information is true and correct:

 «FEIN»

This information may be used in the enforcement of Federal and State tax laws. Supplying these numbers could result in an action to require Lender to file State tax returns and pay delinquent State tax liabilities. This Agreement will not be approved unless these numbers are provided. Lender acknowledges that such information may be made available to Federal and State tax authorities, and State personnel involved in the payment of State obligations.

**Section 7.02.** **Indemnification by Lender.** Lender shall bear all loss, expense (including, but not limited to, reasonable attorneys' fees), and damage in connection with, arising out of, incidental to, or in connection with the Loan (excluding, however, damages directly attributed to negligence or breach of statutory duty of DEED, its employees, servants or agents), whether or not due to any act of omission or commission, including negligence, of the Lender, or any contractor, their employees, servants or agents. Lender further agrees to indemnify and hold harmless DEED, its DEED members, agents, servants and employees from all claims, demands and judgments made or recovered against DEED, its DEED members, agents, and employees, because of bodily injuries, including death, at any time resulting therefrom, or because of damages to property of DEED or others (including loss of use) from any cause whatsoever in connection with or arising from such activities. Lender's liability hereunder shall not be limited to the extent of insurance carried by or provided by the Lender, or subject to any exclusion from coverage in any insurance policy. The obligation of the Lender under this Section 7.02 shall survive the repayment of the Loan.

**Section 7.03.** **Amendments and Modifications.** This Agreement may not be orally amended, changed or modified, and any such amendment, change and/or modification must be in writing and executed by the party or parties against whom it is to be enforced.

**Section 7.04.** **Books, Records, and Financial Statements.** Lender agrees as follows with respect to its books and records relating to its business and affairs:

1. To maintain proper accounts, records and books regarding its business, in which full and correct entries shall be made in accordance with generally accepted accounting principles.
2. To permit, upon receipt of written notice from DEED, the State Auditor, or the Legislative Auditor for the State of Minnesota, or their designated employees, agents or representatives, to inspect such accounts, records and books during normal business hours, subject to and in accordance with the provisions and requirements of Minnesota Statutes 16C.05 subd. 5, for a minimum of six years after receipt of final loan payment, or September 30, 2033, whichever is later.
3. To make available to the United States Treasury Inspector General all books and records related to the use of the Loan funds provided to the Lender through this Agreement, subject to the Right to Financial Privacy Act (12 U.S.C. § 3401 et seq.), including detailed loan records, as applicable.

**Section 7.05.** **Data Privacy Disclosure.** The data which Lender is required to provide pursuant to this Agreement, including, but not limited to, the information required under Section 7.04, will be used by DEED to assess Lender's financial status, make any reports required by Chapter 116J of Minnesota Statutes, and enforce the provisions contained in this Agreement and any other document referred to herein. Lender acknowledges that there is a possibility that the general public may classify such data as “public data” under Chapter 13 of Minnesota Statutes the “Minnesota Government Data Practices Act” which would be available for examination, and that failure to provide the required data may constitute an event of default hereunder.

Lender will keep all confidential, proprietary, private, trade secret, etc. data pursuant to the Minnesota Government Data Practices Act. To the extent that Lender has access to the private, nonpublic or confidential data of an eligible business, Lender will agree to comply with the requirements of the Minnesota Government Data Practices Act in providing services under this Agreement. Lender agrees to indemnify, save, and hold the State of Minnesota, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision of this Agreement.

If Lender receives a request to release the data referred to in this clause, the Lender must immediately notify and consult with the State’s Authorized Representative as to how the Lender should respond to the request. The Lender’s response to the request shall comply with applicable law.

**Section 7.06.** **Covenant Against Discrimination.** Lender, its officers, employees, and agents shall not unlawfully discriminate against any person performing any service required by this Agreement, or against any application for employment because of sex, race, creed, color, religion, national origin, age, marital status, handicap or reliance on public assistance. In addition, Lender in its own employment and promotional and fund-raising activities, if any, shall take affirmative measures to promote equality for persons of all sexes, races, creeds, colors, religions, national origins, ages, marital status, handicaps or reliance on public assistance, and remedy, insofar as feasible, effects of any unlawful discrimination by Lender against any such persons. Lender further agrees that it shall, if requested by DEED, furnish whatever information DEED may request regarding this subject matter.

**Section 7.07.** **Compliance with Law.** In the operation of its business, Lender shall at all times comply with all zoning, pollution, sanitary and safety laws, and with such rules and regulations thereunder, as under applicable law (either statutory or common) shall be binding upon it. Upon notice of noncompliance, Lender shall take action to remedy such noncompliance within 30 business days. Provided, however, Lender shall not be required to comply with any such law, rule or regulation so long, but only so long, as it shall contest in good faith the validity, existence or applicability by appropriate legal proceedings.

**Section 7.08.** **Change of Place of Business.** Lender shall immediately notify DEED of any changes in its place of business.

**Section 7.09. DEED’s Authorized Representative.** DEED’s authorized representative for this SBLPP Agreement is Tiffany Fettig, Program Administrator – Principal, 180 East 5th Street, Suite 1200, St. Paul, MN 55101, 651-259-7446, tiffany.fettig@state.mn.us, or her successor and has the responsibility to monitor the Lender’s performance and administer this Agreement, and any other document referred to herein related to the Participation.

**Section 7.10. Lender’s Authorized Representative.** The Lender’s authorized representative for this SBLPP Agreement is «ARName», «ARTitle», «StreetAddress», «City», «State» «Zip», «ARPhone», «AREmail», or his/her successor. If the Lender’s Authorized Representative changes at any time during this Agreement, the Lender must immediately notify the State.

**Section 7.11.** **Governing Law and Venue.** The interpretation and enforcement of this Agreement and any other document referred to herein, shall be governed by the laws of the state of Minnesota, and any litigation regarding or arising out of any such document shall be commenced in the District Court for the County of Ramsey, State of Minnesota.

**Section 7.12.** **Entire Agreement.** This Agreement contains the entire agreement of the parties on the matters covered herein, and supersedes any and all other agreements which may have previously been made by such parties.

**Section 7.13.** **Addresses for Notices.** All notices to be given by either party to the other hereunder shall be in writing and deemed to have been given when delivered personally or when deposited in the United States Mail, registered, certified or regular, postage prepaid, addressed as follows:

 To the Lender at:

«Lender»

«StreetAddress»

«City», «State» «Zip»

 To DEED at:

Minnesota Department of Employment and Economic Development

SSBCI Unit

180 East 5th Street, Suite 1200

Saint Paul, MN 55101

or addressed to any such party at such other address as such party shall hereafter furnish by notice to the other party. Any notice delivered personally to Lender shall be delivered to an officer of Lender, and any notice delivered personally to DEED shall be delivered to the commissioner of DEED or such person as the commissioner may designate.

**Section 7.14.** **Binding Effect and Assignment.** This Agreement shall be binding upon and inure to the benefit of the Lender and DEED and their respective successors and assigns, except that the Lender may not transfer or assign its rights hereunder, except to wholly-owned subsidiaries of Lender, without the prior written consent of DEED.

**Section 7.15.** **Headings.** The headings in this Agreement are for convenience only, and shall not be used to interpret or construe any provisions contained herein.

**Section 7.16.** **Severability.** In the event that any provision or clause of this Agreement shall conflict with applicable law, such conflict shall not affect the other provisions herein, which can be given effect without the conflicting provision, and to this end the provisions of the Agreement are declared to be severable.

**Section 7.17. Survivability**. The following clauses survive the expiration or cancellation of this Agreement: 7.02 Indemnification; 7.04 Books, Records and Financial Statements; 7.05 Data Privacy Disclosure; 7.11 Governing Law and Venue; and 7.01 Tax Identification Number. Any other Agreement term that expressly states or by its nature shall survive, shall survive.

**Section 7.18.** **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

**Section 7.19.** **Termination for Insufficient Funding.** DEED may immediately terminate this Agreement if it does not obtain funding from the U.S. Department of the Treasury, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered herein. Termination must be in writing and mailed or faxed to the Lender. The State is not obligated to pay for any services that are provided after the notice and the effective date of termination.

# Section 7.20. Force Majeure. Neither party shall be responsible to the other or considered in default of its obligations within this Agreement to the extent that performance of any such obligation is prevented or delayed by acts of God, war, riot, disruption of government, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party relying on this provision to excuse performance must provide the other party prompt written notice of the inability to perform and take all necessary steps to bring about performance as soon as practicable.

*[Remainder of page intentionally left blank. Signature page follow.]*

**IN WITNESS WHEREOF,** the parties hereto have set their hands to this Minnesota Department of Employment and Economic Development Master Loan Participation Agreement on the day and year specified immediately below their respective signatures.

|  |  |  |
| --- | --- | --- |
| **1. State Encumbrance Verification*Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15***  |  | **3. STATE OF MINNESOTA*With delegated authority*** |
| Print name: |  |  | Print name: |  |
| Signature: |  |  | Signature: |  |
| Title: |  | Date: |  |  | Title: |  | Date: |  |
| SWIFT Contract No.: |  |  |  |

|  |  |  |
| --- | --- | --- |
| **2. LENDER*The Lender certifies that the appropriate person(s) have executed the Agreement on behalf of the Lender as required by applicable articles, bylaws, resolutions, or ordinances.*** |  | **4. Commissioner of Administration*As delegated to The Office of State Procurement*** |
| Print name: |  |  | Print name: |  |
| Signature: |  |  | Signature: |  |
| Title: |  | Date: |  |  | Title: |  | Date: |  |

**Exhibits**

**Exhibit A – Sample Application for Participation and SSBCI Certifications**

**Exhibit B – Sample Commitment Letter**

**Exhibit C – Sample Participation Certificate**

**Exhibit D – Sample Quarterly Report**

**Exhibit E – The American Rescue Plan Act of 2021 Funding Terms and Conditions**