

**STATE SMALL BUSINESS CREDIT INITIATIVE 2.0  
LOAN PARTICIPATION AND SERVICING AGREEMENT  
BETWEEN  
THE MICHIGAN STRATEGIC FUND  
AND  
LENDER**

This **LOAN PARTICIPATION AND SERVICING AGREEMENT** (the "Participation Agreement"), dated **MONTH XX, 20XX**, is between the Michigan Strategic Fund (the "MSF"), whose address is 300 North Washington Square, Lansing, Michigan 48913 and **Lender** (the "Lender"), whose address is **XXX**. As used in this Participation Agreement, the MSF and the Lender are, individually, a "Party" and, collectively, the "Parties".

**RECITALS**

A. WHEREAS, the American Rescue Plan of 2021 reauthorized and amended the Small Business Jobs Act, 12 USC 5701, et. seq. ("SSBCI") and appropriated additional funding to the United States Department of Treasury to be allocated and disbursed to approved states to strengthen programs that support private financing to small businesses in accordance with the SSBCI.

B. On January 25, 2022, the MSF Board approved: (i) the creation of the SSBCI 2.0-Michigan Business Growth Fund (the "MBGF"), an SSBCI program created by the MSF to disburse SSBCI funds in accordance with the SSBCI, and (ii) as part of the MBGF, the creation of a loan participation program designed to facilitate financing of projects for commercial borrowers (the "SSBCI-MLPP").

C. On May 18, 2022, the US Department of Treasury approved the State of Michigan, through the MSF, to receive and disburse SSBCI funds within the SSBCI programs created by the MSF.

D. Under the direction and control of the MSF, the Michigan Economic Development Corporation ("MEDC"), a public body corporate, provides administrative services for the MSF for the SSBCI-MLPP.

E. The Borrower (defined below) desires to obtain a loan from the Lender to **(explain Project)** (the "Project").

F. The MSF and the Lender desire to sign this Participation Agreement to provide for the sale by the Lender and purchase by the MSF of the MSF Share (as defined on Appendix A) of the Loan (as defined below) under the SSBCI-MLLP.

NOW, THEREFORE, in consideration of the recitals and mutual agreements in this Participation Agreement, the Parties agree as follows:

**Section 1. The Loan; Participation Amounts; and Repayment.**

(a) **The Loan.** Borrower, a Michigan/Delaware corporation/limited liability company (the "Borrower"), is receiving a loan from the Lender, dated on or about the date of this Participation Agreement, in the amount set forth on Appendix A (the "Loan"). The Loan shall be disbursed in accordance with loan documents among the Borrower, any co-maker, guarantor, endorser, other debtor or obligor of the Loan, and the Lender, which include without limitation, a loan agreement, note, security agreement(s), and as applicable, other hypothecations, guarantees, and other ancillary and related documents (the foregoing, and this Participation Agreement, including all Appendices, and applicable schedules made a part thereof, and any permitted amendments thereto, collectively, the "Loan Documents").

(b) **Participation Amounts.** The Lender shall cause the applicable Loan Documents to reflect, in addition to other normal and customary loan provisions: (i) at least the Lender Share (as defined on Appendix A), the MSF Share, the MSF Grace Period (as defined on Appendix A), the fees, and other essential terms of the Loan, including those which are described on Appendix A (the "Summary of Terms"), and (ii) provisions specifying the term of the Loan, payment due dates, amortization schedule, the respective principal and interest components and application of the scheduled payments on each of the Lender Share and MSF Share. This Participation Agreement constitutes a sale by the Lender to the MSF of the percentage of ownership interest in the Loan and related security and documents in the amount referenced as the MSF Share in the Summary of Terms. It is not, however, an extension of credit by the MSF to the Lender. The MSF shall be considered for all purposes the legal and equitable owner of the MSF Share, and all security and documents relating to the MSF Share of the Loan. Subject to the terms and conditions of this Participation Agreement, including the MSF's receipt of the Loan Documents as provided herein, the MSF will disburse the MSF Share to the Lender on or about the closing of the Loan Documents. No portion of the Loan shall be disbursed by the Lender to the Borrower without the Borrower's full execution of all of the Loan Documents.

(c) **Repayment.** The Lender shall collect from Borrower all payments made under the Loan. **DESCRIBE PAYMENT SCHEDULE TO MATCH TYPE AND APPLICABLE DATES OF PAYMENTS, I.E., INTEREST ONLY, ON DEMAND, OTHER INSTALLMENTS; EXAMPLE -** The Lender shall require that the Borrower repay the loan in **XXX (XX)** monthly installments of principal and interest commencing **MONTH XX, 20XX** and continuing on the first day of each consecutive month, concluding with a final payment of all outstanding principal and interest on the Loan on **MONTH XX, 20XX**. The Lender shall provide all detail reasonably requested by the MSF regarding the breakdown of individual payments, including without limitation, itemization of the principal and interest billed to the Borrower and received by the Lender. The Lender and the MSF shall each share all principal and interest payments and other collections under the Loan in proportion to their respective percentage interests in the Loan as set forth in the Summary of Terms, with appropriate provisions made for any differences in interest rates and payment schedules of the Lender and the MSF. The Lender shall pay the MSF upon the terms and conditions as described in this Participation Agreement, including that the Lender shall, upon receipt of payment on the Loan from the Borrower, remit the principal and interest amounts due the MSF no less frequently than on a **monthly/quarterly** basis. Remittance by the Lender to the MSF shall be paid in any one of the following methods, to be determined by agreement of the Parties: (i) EFT Transfer; (ii) by check made payable to the State of Michigan and mailed to the MEDC, 300 North Washington Square, Lansing, Michigan 48913, or (iii) other form of conveyance acceptable to the Parties.

**Section 2. Fees, Interest Rates.**

(a) MSF Closing Fee. At the closing of the Loan Documents, in addition to any other fees that may be charged to the Borrower by the Lender, a closing fee of [1% to 2%]X and X/10 percent (X%) (the "MSF Closing Fee") of the MSF Share shall be charged to (or deducted from the Loan proceeds) the Lender. The MSF Closing Fee shall be paid by the Lender to the MSF within thirty (30) business days after the closing of the Loan Documents.

**Include this Section 2(b) if part of the transaction, otherwise indicate INTENTIONALLY OMITTED**

(b) MSF Annual Fee. An annual fee equal to [1% to 2%]X and X/10 percent (X%) of the then outstanding principal balance of the MSF Share shall be charged to the Borrower by the Lender (the "MSF Annual Fee") beginning on the first day of the twelfth (12th) month following the end of the MSF Grace Period, and continue on the first day of each successive twelfth (12th) month thereafter until the Loan is paid in full. The Lender shall pay the MSF Annual Fee to the MSF within thirty (30) business days after receipt from the Borrower.

(c) Reduced Interest Rates or Principal Payments. In no event shall there be any reduced interest rate on the MSF Share or reduced principal payments on all or any portion of the MSF Share, or any other advantageous terms to the Borrower, or any combination thereof, extend beyond the expiration of the MSF Grace Period. For purposes of this section, "reduced" or "advantageous terms" means as such is compared to the respective interest rate, principal payment requirements, or other terms applicable to the Lender Share.

(d) Equal Late Fees and Penalties. Any and all fees and penalties (including but not limited to late fees and forbearance fees) assessed to the Borrower by the Lender shall be assessed on the same terms and conditions for the benefit of the Lender and the MSF, on a pro-rata basis.

(e) Pre-Payment Fee. The Lender shall charge to, and collect from the Borrower, a pre-payment fee of X and X/10 percent (X%) of the MSF Share in the event that the MSF Share is paid by the Borrower in full prior to the one (1) year anniversary date of the Loan (the "Pre-Payment Fee"), but the requirement to pay such prepayment fee may be waived by the Chairperson of the MSF Board or MSF Fund Manager, in the Chairperson's or MSF Fund Manager's sole discretion.

**Section 3. Administration of the Loan.**

(a) Except as otherwise provided by this Participation Agreement, the original Loan Documents shall be retained by the Lending Institution, provided however, upon closing of the Loan, the Lender must forward to the Loan Manager the copy of this Participation Agreement, signed by the Lender, including the Borrower Acknowledgment signed by the Borrower and made a part hereof, along with the Borrower Assurances made part of Appendix C, and any applicable schedules made a part thereof, all signed by the required parties therein. Further, unless the Chairperson of the MSF Board or MSF Fund Manager provides written authorization to exempt one or more specific documents (under the terms and conditions acceptable to him or her), copies of all Loan Documents shall be forwarded to the MSF upon execution. [In addition, to the extent Borrower is a real estate holding company using the proceeds of the Loan to acquire and hold real or personal property and subsequently leasing the real or personal property to a related operating company, Lender shall deliver to the MSF a fully executed copy of the "Operating

Company Certification” in the form of Appendix D attached to this Agreement, and the applicable schedules thereto, upon execution. **ADD ONLY FOR HOLDING COMPANY DEALS**

(b) The Lender shall disclose the existence of this Participation Agreement to the Borrower, and any co-maker, guarantor, endorser, other debtor or obligor of the Loan. The Lender shall exercise the same degree of care and discretion in servicing the Loan and collecting payments from the Borrower as it would take in servicing the Loan and collecting payments solely for its own account.

(c) The Lender may amend the terms and conditions of the Loan Documents without the consent of the MSF, provided however, the Lender may not, without the express prior written approval of the Chairperson of the MSF Board or MSF Fund Manager, by amendment or otherwise: (i) increase the amount of the Loan; (ii) change any of the essential terms of the Loan which are summarized on Appendix A, or change any terms of the Borrower Acknowledgment made a part hereof, or change any terms on Appendix B or Appendix C, and any applicable schedules made a part of any of the foregoing (iii) to the extent applicable and made part of this Agreement, change any of the terms on Appendix D or any applicable schedules thereto, or (iv) waive or release any claim against any Borrower or any co-maker, guarantor, endorser, debtor or other obligor of the Loan; or (v) consent to any release, substitution, or exchange of collateral, except (a) sales of inventory in the ordinary course of business or (b) sales, substitution and exchange of worn or obsolete equipment in the ordinary course of business; or (iv) effectuate any of the circumstances in Section 3(c)(i) through Section 3(c)(v).

(d) The Lender shall provide to the MSF the internal risk rating assigned by the Lender to the Loan, and promptly provide the MSF with written notice of any change by the Lender to the internal risk rating.

**Section 4. Representations and Warranties of the Lender.** The Lender represents and warrants the terms and conditions in Appendix B, and further represents and warrants that:

(a) The only recipient of the Loan is the Borrower identified and described in this Participation Agreement;

(b) the Lender shall perform all of its obligations and duties under the Loan Documents and this Participation Agreement, including all obligations and duties set forth in Appendix B;

(c) the Lender has performed a credit analysis of the Borrower satisfactory to Lender;

(d) upon closing of the Loan, the Lender shall have good and marketable title to the Loan subject to no encumbrance or disability, and except as created by this Participation Agreement and the Loan Documents, to the actual or constructive knowledge of the Lender, no party to the Loan shall have any defense or claim against the Lender arising out of the Loan;

(e) the Loan is for the Project and shall be in accordance with applicable Federal and State laws, including but not limited to, laws governing types of loans, interest rates and priority of security; and

(f) to the extent required under law, the security documents for the Loan are, or will be, properly recorded in order to validly perfect and maintain a security interest in the

collateral securing the Loan, and the Lender will take whatever additional actions may be necessary to validly perfect and maintain a security interest in the collateral securing the Loan.

**Section 5. Additional Obligations of Lender.** The Lender shall promptly notify the MSF in writing (and describe in reasonable detail):

(a) of any breach of any representation or warranty of the Lender in this Participation Agreement, or any breach of any representation or warranty in any of the Loan Documents;

(b) of the Lender's receipt of any request by the Borrower, or any co-maker, guarantor, endorser, or other debtor or obligor of the Loan, for any change in the terms and conditions of the Loan, or any of the Loan Documents, including without limitation, any request for the release, substitution, or exchange of collateral for the Loan or the release of any of their personal obligations under the Loan;

(c) should the Lender commence any collection proceeding against any Borrower or any co-maker, guarantor, endorser, or other debtor or obligor of the Loan; and

(d) should the Lender seize, sell, transfer, assign, foreclose, or attempt to exercise against any collateral securing the Loan.

**Section 6. Representations and Warranties of the MSF.** The MSF represents and warrants that:

(a) the MSF is a public body corporate and politic within the Department of Labor and Economic Opportunity of the State of Michigan ("State"). The MSF has the power and authority to enter into and perform its obligations under this Participation Agreement; and

(b) except as disclosed in writing to the Lender or provided by law, no consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Participation Agreement by the MSF or the performance of any of its obligations under this Participation Agreement.

**Section 7. Other Loans by Lender.** The MSF acknowledges that the Lender may have other existing loans with the Borrower that were made prior to the date of the Loan (the "Prior Loans") and may, make other additional loans to the Borrower coincident with the Loan that do not include support from the MSF (the "Coincidental Loans"), and in the future, may make additional loans to the Borrower (the "Future Loans"). The Prior Loans, the Loan, Coincidental Loans and Future Loans shall be collectively referred to as "Borrower Loans". After an event of default by the Borrower with respect to the Loan, any of the Borrower Loans, then in any collection proceeding or legal action taken by the Lender against the Borrower to collect amounts due under the any of the Borrower Loans, any proceeds collected by the Lender, other than proceeds derived from one or more guarantees provided specifically for, and limited to, the Loan, including USDA, SBA or any other source (the "Loan Specific Guaranty"), shall be applied in the following order:

(a) first, to reimburse the Lender for the costs of any such collection action;

(b) second, the proceeds of collateral directly securing repayment of each of the Borrower Loans shall be applied to pay the interest, fees and principal of the respective Borrower

Loans in accordance with their respective valid interests; with any such proceeds applicable to the Loan being applied on a pro-rata basis to Lender Share and the MSF Share;

(c) third, to pay any remaining interest, fees and principal with respect to the Prior Loans;

(d) fourth, to pay any remaining interest, fees and principal with respect to the Loan, with all such payments being applied on a pro-rata basis to the Lender Share and the MSF Share; and

(e) fifth, to pay any remaining interest, fees and principal with respect to the Coincidental Loans and Future Loans, in the order determined by the Lender.

All proceeds derived from any Loan Specific Guaranty shall be applied first to interest, fees, and principal with respect to the Loan, with all such payments being applied on a pro-rata basis to the Lender Share and the MSF Share. The foregoing provisions in this Section 7 shall not in any way limit the obligations of the Lender in this Participation Agreement to take action against the Borrower after the occurrence of an event of default.

**Section 8. Default by the Borrower.** Upon the occurrence of an event of default (or similar phrase or term under the Loan Documents) by the Borrower (which is not cured after the expiration of any applicable opportunity to cure) under the Loan Documents:

(a) the Lender shall copy the MSF with all notices to the Borrower, and further provide the MSF written notice describing in reasonable detail the circumstances of the event of default; and

(b) 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 desired (collectively, the "Legal Action").

**Section 9. Default by the Lender.** The occurrence of any one or more of the following events or conditions shall constitute an Event(s) of Default by the Lender under this Participation Agreement, unless upon written approval of the Chairperson of the MSF Board or MSF Fund Manager, a written waiver of the Event(s) of Default is provided by the MSF to the Lender:

(a) any representation or warranty made by the Lender in this Participation Agreement is incorrect in any material respect;

(b) any material breach by the Lender of any duty or obligation of the Lender under this Participation Agreement, including without limitation, the failure to reasonably pursue all Legal Action against the Borrower, which is not cured by the Lender to the satisfaction of the MSF within forty-five (45) calendar days after written notice thereof by the MSF to the Lender;

(c) 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) calendar days of such appointment; and

(d) any voluntary bankruptcy or insolvency proceedings are commenced by the Lender; or any involuntary bankruptcy or insolvency proceedings are commenced against the

Lender, and any such proceedings are not set aside within sixty (60) calendar days from the date of institution thereof.

Upon the occurrence of any one or more Event(s) of Default by the Lender under this Participation Agreement, the MSF shall be entitled to pursue any or all of the following remedies, plus any additional rights and remedies available to the MSF, legal or equitable, including without limitation, the right of recoupment, and: (i) the right to require the Lender's books and records related to the Loan, Loan Documents and this Participation Agreement to be separately audited by an independent certified public accountant selected by the MSF, at the MSF's sole cost and expense; provided however, in the event the audit reveals that a breach of this Participation Agreement has occurred, the Lender shall reimburse the MSF for the fees and expenses incurred to perform the audit, (ii) the right to require the Lender to repurchase from the MSF the MSF Share, within thirty (30) calendar days of the MSF's written request, at a purchase price equal to the principal amount of the MSF Share, plus all accrued and unpaid interest, penalties and fees thereon on a "non-recourse basis", and (iii) the right to require the Lender to assign and transfer to the MSF all original Loan Documents and any collateral in the possession of the Lender securing any part of the Loan, together with such other documents, files, and records as may be necessary, in the opinion of the MSF and/or the Michigan Department of Attorney General, to permit the MSF to institute appropriate legal proceedings, including the collection and/or foreclosure proceedings under the Loan and the collateral securing the Loan to enable the MSF to directly enforce all aspects of the Loan Documents against the Borrower (and any co-maker, guarantor, endorser or other debtor or obligor under the Loan Documents) and to collect the indebtedness due with respect to the MSF Share, to enforce and foreclose upon the security for the Loan, and to preserve the rights and interests of the MSF. To that end, any amounts collected by the MSF shall first be applied to satisfy all outstanding amounts attributable to the MSF Share, including all unpaid principal, and all accrued and unpaid interest, penalties and fees thereon. Any amounts that may be collected by the MSF in excess of the amounts due to the MSF shall be applied to the outstanding amounts attributable to the Lender Share.

In addition to other remedies, in the event a correction action directive or similar regulatory requirement, decree or order is issued against or with respect to the Lender, under any applicable Federal or State banking law or regulation, and for so long as such directive, decree or order remains in effect, the MSF shall have the right, but not the obligation, upon written notice to the Lender, to purchase the Lender's interest in the Loan, all Loan Documents and the collateral securing the Loan, at a purchase price equal to the then outstanding balance of the Lender Share (including accrued and unpaid interest through the date of the MSF purchase), and the Lender shall execute all documents as may be necessary, in the opinion of the MSF and/or the Michigan Department of Attorney General, to permit the MSF to exercise this right. The sale of the Lender's interest in the Loan to the MSF under this paragraph shall be on a "recourse" basis.

No remedy is intended to be the sole and exclusive remedy in case any Event(s) of Default by the Lender under this Participation Agreement shall occur and each remedy shall be cumulative and in addition to every other provision or remedy now or later existing at law, in equity, by statute or otherwise. The Lender shall pay all costs and expenses, including, without limitation, reasonable attorneys fees and expenses incurred by the MSF in enforcing any obligation of the Lender arising from or under the Loan or any of the Loan Documents.

**Section 10. Right to Purchase.** The Lender shall have the right to purchase, at its sole option, the MSF Share of the Loan at any time. The purchase price shall be equal to the MSF Share of the Loan, as then outstanding, plus all accrued and unpaid interest, penalties and fees thereon, if any, through the date of the Lender purchase, plus an amount equal to the pre-payment

fee, if any, set forth in Section 2(e). Nothing in this section shall, however, be construed as obligating the Lender to purchase the MSF's interest in the Loan. The sale of the MSF's interest in the Loan to the Lender under this paragraph shall be on a "non-recourse" basis.

**Section 11. Termination.** Except as provided elsewhere in this Participation Agreement with respect to the survival of certain rights and obligations, this Participation Agreement shall terminate upon the payment in full of the MSF Share, plus all applicable interest, fees, costs and expenses, to the MSF.

**Section 12. Notices.** Any notice or other communication under this Deposit Agreement shall be in writing and e-mailed, or mailed by first class mail, postage prepaid, or sent by express, overnight courier to the respective Party at the address listed below or such other last known addresses or e-mail accounts, and shall be deemed delivered one business day after the delivery or mailing date.

If to the Lender: XXXXXXXX  
XXXXXXXXXX  
XXXXXX, Michigan, XXXX  
Attention: XXXXXXXX  
Email: XXXXXXXX

If to the MSF: Michigan Strategic Fund  
c/o Michigan Economic Development Corporation  
Capital Access Team  
300 North Washington Square  
Attention: XXXXXXXXXX  
Email: XXXXXXXXXX

**Section 13. Counterparts; Facsimile/Pdf Signatures.** This Participation Agreement may be signed in counterparts and delivered by facsimile or by pdf, and in any such circumstances, shall be considered one document and an original for all purposes.

**Section 14. Severability.** All of the clauses of this Participation Agreement are distinct and severable and, if any clause shall be deemed illegal, void or unenforceable, it shall not affect the validity, legality or enforceability of any other clause or provision of this Participation Agreement.

**Section 15. Captions.** The captions or headings in this Participation Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Participation Agreement.

**Section 16. Governing Law.** This Participation Agreement is a contract made under the laws of the State of Michigan, and for all purposes shall be governed by, and construed in accordance with, the laws of the State of Michigan.

**Section 17. Relationship between Parties.** The Lender, and its officers, directors, agents and employees shall not describe or represent themselves as agents of the State of Michigan, the MSF, or the MEDC to any person, firm or entity for any purpose.



**Section 18. Successors and Assigns.** Except as otherwise provided by law, any rule of law or regulation (including without limitation, any Executive Order of the State of Michigan), the MSF may not pledge, sub-participate, assign, or otherwise transfer its rights, duties or obligations in this Participation Agreement or the Loan Documents without the express prior written approval of the Lender. The Lender may not pledge, sub-participate, assign or otherwise transfer its ownership interest in the Loan, or its rights, duties or obligations under this Participation Agreement or the Loan Documents without the express prior written approval of the Chairperson of the MSF Board or MSF Fund Manager. The terms and conditions of this Participation Agreement shall bind the permitted successors and permitted assigns of the Parties.

**Section 19. Waiver.** A failure or delay in exercising any right under this Participation Agreement will not be presumed to operate as a waiver unless otherwise stated in this Participation Agreement, and a single or partial exercise of any right will not be presumed to preclude any subsequent or further exercise of that right or the exercise of any other right.

**Section 20. Amendment.** Neither this Participation Agreement nor, except as otherwise permitted in Section 3(c) of this Participation Agreement, the Loan Documents may not be modified or amended without the express prior written approval of the Chairperson of the MSF Board or MSF Fund Manager. Any amendment of this Participation Agreement shall be pursuant to a written instrument signed by the Parties.

**Section 21. Publicity.** At the request and expense of the MSF or the MEDC, the Lender will cooperate with the MSF or the MEDC to promote the Project through one or more of the placement of a sign, plaque, media coverage or other public presentation at the project or other location acceptable to the Parties.

*(remainder of page intentionally left blank)*

**LENDER**

\_\_\_\_\_  
Authorized Signer  
Title

Date: \_\_\_\_\_

**MICHIGAN STRATEGIC FUND**

\_\_\_\_\_  
Valerie Hoag  
Fund Manager

Date: \_\_\_\_\_

(LENDER AND MSF SIGNATURE PAGE TO LOAN PARTICIPATION AGREEMENT)

DRAFT

## BORROWER ACKNOWLEDGMENT

The undersigned has the requisite authority and power to sign below on behalf of the Borrower, and Borrower acknowledges, and accepts, the terms and conditions set forth in this Participation Agreement and acknowledges, consents to, and affirms all the terms and conditions on Appendix C.

Borrower acknowledges and accepts that Lender may provide any information or knowledge the Lender may have about the Borrower or about any matter relating to the Loan or the Loan Documents to the U.S. Department of the Treasury, the MEDC and/or the MSF or their successors, and as otherwise set forth on Appendix C.

Borrower shall take all action necessary to cause the terms and conditions in this Participation Agreement to be satisfied in all respects **INSERT THE REMAINDER OF THIS SENTENCE ONLY IF A SEDI DEAL**, including submitting to the Lender the completed and signed Schedule C-1.

Borrower may also complete, and request its principal owners to complete, Schedule C-2 and if completed, Borrower shall submit each of the Borrower's and the principal owners completed portions of Schedule C-2 and provide to the Lender for purposes of the SSBCI.

**Borrower acknowledges the SSBCI Privacy Notice and Privacy Act Statement, below, and affirms a copy of the SSBCI Privacy Notice and Privacy Act Statement will be provided by the Borrower to any principal owners of the Borrower choosing to complete Schedule C-2.**

### **SSBCI Privacy Notice and Privacy Act Statement**

#### **Privacy Notice:**

*Information collection in connection with the Loan will be shared with the U.S. Department of the Treasury (Treasury). Treasury has published a Privacy and Civil Liberties Impact Assessment that describes what Treasury will do with the information your business provides in connection with the Loan. It can be found on the Treasury website. If you have any questions about this document, please email [Privacy@Treasury.gov](mailto:Privacy@Treasury.gov).*

#### **Privacy Act Statement for Sole Proprietorships:**

*The Privacy Act of 1974 (Privacy Act) protects certain information that the federal government has about "individuals" (United States citizens and lawfully admitted permanent residents). The Privacy Act does not generally apply to businesses, but some federal courts have found that this law applies to sole proprietors (they are deemed "individuals" under the Privacy Act). If you, as the applicant, are a sole proprietor, you may have rights under the Privacy Act.*

*Authority: Small Business Jobs Act of 2010 (SBJA), Title III, 12 U.S.C. § 5701 et seq., as amended by the American Rescue Plan Act of 2021 (ARPA), section 3301; Executive Order No. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 Fed. Reg. 7009 (January 25, 2021); and Interim Final Rule, State Small Business Credit Initiative; Demographics-Related Reporting Requirements, 87 Fed. Reg. 13628 (March 10, 2022).*

*Purpose: Information in connection with the Loan will be shared with Treasury. This information will be shared with Treasury so it can conduct oversight to ensure compliance with federal law, including requirements related to nondiscrimination and nondiscriminatory uses of federal funds.*

Treasury also receives this information (including any demographic information provided) to comply with reporting requirements under the authorities listed above and to advance fairness and opportunity in underserved communities in the allocation of federal resources.

Routine Uses: The information you furnish may be shared in accordance with the routine uses outlined in Treasury .013, Department of the Treasury Civil Rights Complaints and Compliance Review Files; Treasury .015, General Information Technology Access Account Records; and Treasury .017, Correspondence and Contact Information. For example, one routine use under Treasury .013 is to disclose pertinent information to appropriate agencies when Treasury becomes aware of a potential violation of civil or criminal law. Under this routine use, Treasury may disclose demographic information to the appropriate agencies if Treasury becomes aware of a violation of applicable antidiscrimination laws. More information about this and other routine uses can be found in the System of Records Notices (SORNs) listed above, which are posted on Treasury's website.

Disclosure: Providing this information is voluntary. **However, failure to furnish the requested information on the attached Appendix C and its Schedules, as applicable (except for the demographic information requested in Schedule C-2) may result in the denial of the Loan. Providing the demographic information in Schedule C-2 is optional. If you decline to provide this information, it will not adversely affect the Loan.**

**NAME OF BORROWER**

\_\_\_\_\_  
**Authorized Signer**  
**Title**

Date: \_\_\_\_\_

(BORROWER SIGNATURE PAGE TO LOAN PARTICIPATION AGREEMENT)

**APPENDIX A  
SUMMARY OF LOAN TERMS**

Borrower: \_\_\_\_\_

Lender: \_\_\_\_\_

Loan Type: \_\_\_\_\_

Loan Term: \_\_\_\_\_

Principal Loan Amount: \$XXXX

Lender Share: \$XXXX or \_\_\_\_% of the Loan Amount

MSF Share: \$XXXX or \_\_\_\_% of the Loan Amount

MSF Grace Period: \_\_\_\_\_ (NTD: CANNOT EXCEED 36 MONTHS)

Fees: Tier \_\_\_\_: MSF Closing Fee: \_\_\_\_\_ at Closing  
MSF Annual Fee: \_\_\_\_\_ annually thereafter  
Fees may be financed

Other: Loan Covenants of Borrower to Lender to include:  
i. \_\_\_\_\_  
ii. \_\_\_\_\_

## APPENDIX B LENDER ASSURANCES

### A. STATE OF MICHIGAN REQUIREMENTS

1. **Auditor General, etc.** To ensure compliance with the terms of this Participation Agreement and the Michigan Strategic Fund Act, MCL125.2001 et. seq.:
  - (a) the Lender shall permit the Auditor General of the State of Michigan (the "Auditor General"), the MSF, the MEDC, and the Chief Compliance Officer of the MSF (the "CCO"), and any representative, member, employee or agent of the foregoing to visit the Lender and any other location where the books and records of the Lender are normally kept to inspect the books and records, including financial records and all other information and data, relevant to the Loan, the Loan Documents and the terms of this Participation Agreement;
  - (b) the Lender shall permit the Auditor General, the MSF, the MEDC, the CCO, and any member, employee or agent of the foregoing to make copies or extracts from information and to discuss the affairs, finances and accounts of the Lender and Borrower related to the Loan, the Loan Documents and this Participation Agreement; and
  - (c) the Lender shall cooperate with the CCO, if contacted.

This Section shall survive for a period of three years from the effective date of termination of the Participation Agreement.

2. **Criminal and Civil Matters.** To the best of Lender's knowledge, neither Lender nor any of its affiliates, subsidiaries, officers, directors and any person who, directly or indirectly, holds a pecuniary interest in the Lender of 20% or more: (i) have any criminal convictions incident to the application for or performance of a state contract or subcontract, and (ii) have any criminal convictions or have been held liable in any civil proceeding that negatively reflects on the person's business integrity, including without limitation, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or violation of state or federal antitrust statutes.
3. **Indemnification and Hold Harmless.** The MSF, the State of Michigan, the CCO, the MEDC, its Executive Committee and their respective directors, participants, officers, agents and employees (collectively, the "Indemnified Person(s)") shall not be liable to the Lender for any reason arising out of or related in any way to the Loan, the Loan Documents or this Participation Agreement. The Lender shall indemnify and hold the MSF, the State of Michigan, and the MEDC and other Indemnified Person harmless against all claims asserted by or on behalf of any individual person, firm or entity (other than an Indemnified Person), arising or resulting from, or in any way connected with, the Loan, Loan Documents, this Participation Agreement or any act or failure to act by the Lender, including all liabilities, costs and expenses, including reasonable counsel fees, incurred in any action or proceeding brought by reason of any such claim. The Lender shall also indemnify the MSF, the MEDC and other Indemnified Person from and against all costs and expenses, including reasonable counsel fees, lawfully incurred in enforcing any obligation of the Lender arising from or under the Loan, Loan Documents or this Participation Agreement. The Lender shall have no obligation to indemnify an Indemnified Person under this Section if a court with competent jurisdiction finds that the liability in question was solely caused by the willful misconduct or gross negligence of the MSF, the MEDC or other Indemnified Person, unless the court finds that despite the adjudication of liability, the MSF, the MEDC or other Indemnified Person is fairly and

reasonably entitled to indemnity for the expenses the court considers proper. The MSF, the MEDC and the Lender agree to act cooperatively in the defense of any action brought against the MSF, the MEDC or another Indemnified Person to the greatest extent possible. Performance of the Lender's activities contemplated under this Participation Agreement is within the sole control of the Lender and its employees, agents and contractors, and an Indemnified Person shall have no liability in tort or otherwise for any loss or damage caused by or related to the actions or failures to act, products and processes of the Lender, its employees, agents or contractors. This Section shall survive termination of the Participation Agreement indefinitely.

4. **Jurisdiction.** The Lender agrees that it shall make a good faith effort to resolve any controversies that arise regarding this Participation Agreement. If a controversy cannot be resolved, the Lender agree that any legal actions concerning this Participation Agreement shall be brought in the Michigan Court of Claims or, as appropriate, Ingham County Circuit Court in Ingham County, Michigan. This Section shall survive termination of the Participation Agreement indefinitely.
5. **Non-Discrimination and Unfair Labor Practices.** In connection with this Participation Agreement, the Lender agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex (including sexual orientation and gender identity or expression as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, physical or mental disability, or genetic information (as defined in Executive Directive 2019-09) that is unrelated to the individual's ability to perform the duties of the particular job or position. The Lender further agrees that every subcontract or sub-recipient agreement entered into for performance of this Agreement will contain a provision requiring nondiscrimination in employment, as specified in this Agreement, binding upon each subcontractor. This covenant is required, as applicable under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and is consistent with Executive Directive 2019-09, and any breach thereof may be regarded as a material breach of this Agreement.

Under 1980 PA 278, MCL 423.321, *et seq.*, the State shall not award a contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. The United States Labor Relations Board compiles this information. The Lender shall not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any contract if, subsequent to the award of the contract, the name of the Lender as an employer, or the name of a subcontractor, manufacturer, or supplier of the Lender appears in the register.

## **B. SSBCI PROGRAM REQUIREMENTS**

1. **Qualified Financial Institution.** The Lender is a "Financial Institution". Financial Institution means any insured depository institution, insured credit union, or community development financial institution, as those terms are each defined in section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702).
2. **Patriot Act.** The Lender shall perform all of its obligations and duties as required under the Patriot Act of 2001, as amended, including without limitation, the provisions relating to the Customer Identification Program (CIP) and anti-terrorism, and the MSF may so rely on the

Lender's performance of any such requirements, including that the Lender is in compliance with the requirements of 31 CFR 103.121 (relative to anti-money laundering programs); and Lender acknowledges the aforesaid obligations and duties, and further certifies it is in compliance thereunder, including relative to implementation of 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 a person's identity and determine whether the person appears on any lists of known or suspected terrorist organizations provided to the Lender by any government agency.

3. **Treasury Inspector General.** The Lender shall make available to the federal Department of Treasury, the Treasurer Inspector General, and their respective employees, agents or contractors ("Federal Treasury"), all books and records related to the Loan and this Participation Agreement, subject to the Right to Financial Privacy Act, 12 U.S.C § 3401, et. seq., including detailed Loan records. In accordance with SSBCI guidelines, this Section shall survive until the later of (i) July 31, 2031 or (ii) as otherwise required by 2 CFR §220.334. Lender shall cooperate with the Federal Treasury in any enforcement or compliance review activities of the Federal Treasury in any way related to this Agreement or the laws and regulations in connection therewith. Such enforcement or compliance review may include investigation, arbitration, mediation, litigation, and monitoring, and further, as may be required by Federal Treasury, the Lender shall comply with information requests, on-site compliance reviews and all required reporting.
4. **No Conviction of Sex Offense.** No principal of the 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 or a development company, or any 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% or more of the ownership stock or stock equivalent of the entity".
5. **Civil Rights/LEP Services/Access.** The Lender shall comply, and shall require by contract that any applicable sub-grantee, contractor, subcontractor, successor, transferee, and assignee of Lender shall also comply, with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and other pertinent federal Executive Orders such as federal Executive Order 13166; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 C.F.R. part 28; Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq., and the Department's implementing regulations at 31 C.F.R. part 23, which are herein incorporated by reference and made a part of this Agreement.

Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement. Lender acknowledges federal Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Lender



understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Lender shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Lender understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Lender's programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

6. **Borrower Size.** The Loan has not been extended to support any Borrower that has more than 750 employees.

7. **Loan Purpose and Other Standards:**

(a) The Loan has not been made in order to place under the protection of the approved SSBCI-MLPP prior debt that is not covered under the approved SSBCI-MLPP and that is or was owed by the Borrower to the Lender or to an affiliate of the Lender;

(b) The Loan is a new extension of credit to the Borrower by the Lender:

i) and, if the Loan is to refinance the Borrower's existing loan, line of credit, extension of credit, or other debt originally made by an unaffiliated lender:

- (1) the Loan is at least 150 percent of the previous outstanding refinanced balance; and
- (2) the Loan results in a 30 percent reduction in the fee-adjusted APR contracted for the term of the Loan; and
- (3) the proceeds of the Loan are not used to finance an extraordinary dividend or other distribution, or

ii) if the Loan is a refinancing of a loan previously made to the Borrower by the Lender or an affiliate of the Lender:

- (1) the amount of the Loan is at least 150 percent of the outstanding amount of the matured loan. A matured loan or line of credit only includes such that have matured according to their terms and does not include a loan or line of credit that has been accelerated to maturity; and
- (2) the Loan is based on a new underwriting of the small business's ability to repay the Loan and a new approval by the Lender; and
- (3) the prior loan has been paid as agreed and the Borrower was not in default of any financial covenants under the prior loan for at least the previous 36 months (or since origination, if shorter); and
- (4) the proceeds of the Loan are not used to finance an extraordinary dividend or other distribution.

(c) The Loan does not exceed the principal amount of \$20 million;

(d) The interest rate for the Loan 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 (See for reference, the National Credit Union Administration, Letter to Federal Credit Unions, "Permissible Loan Interest Rate Ceiling Extended," August 2021).

(e) The Loan Documents may not include any of the following provisions: (1) confessions of judgment; (2) prepayment or “double-dipping” fees (“double dipping” occurs when a lender issues new credit to refinance prior credit without forgiving a portion of the fee already paid and results in the Borrower paying a fee on top of a fee); or (3) upfront fees or charges paid by the small business, excluding fees to the state program, that exceed 2 percent for loans greater than \$25,000 or \$500 for loans under \$25,000.

(f) The Loan Documents must include disclosure by the Lender of all key terms in an easy-to-understand manner. In addition to all other applicable federal and state securities and lending disclosure laws, rules and regulations which continue to apply and are not superseded by the following, such Lender disclosures should include, for example, the Loan amount; payment obligation and schedule; any terms giving the Lender control over the Borrower’s cash balances, cash flows or ownership; any conversion rights and future rights to purchase equity; and any fees or extra costs; and

(g) The Loan shall not be used for the development of a stadium or arena for use by a professional sports team or development of a casino or property associated or affiliated with the operation of a casino as prohibited by the Act (see MCL 125.2088c(3)(a) and (b)), or to induce the Borrower, a qualified business, or small business to leave the State of Michigan, or to contribute to the violation of internationally recognized workers’ rights, of workers in a country other than the US, or to fund an entity incorporated in a tax haven country, as prohibited by the Act (see MCL 125.2088c(4)(c), (d), and (e)).

**(h) NTD: MUST USE EITHER OF THE BELOW**

The Lender shall at all times retain the percentage ownership of the Loan in the amount of no less than the greater of: (x) the Lender Share or (y) 50.1% of the total balance of the Loan. **OR**

**USE THE FOLLOWING IF THE BORROWER IS ALSO PROVIDING ANOTHER LOAN NOT SUPPORTED BY THE SSCBI-MLPP.** To the extent the Borrower, is at the same time as closing the Loan, also closing another loan from an otherwise eligible third-party lender that is not supported by the MSF under the SSBCI-MLPP (“Non-Program Loan”), the Lender shall at all times retain the percentage ownership of the Loan in the amount of no less than the greater of: (x) the Lender Share or (y) 20% of the total balance of the Loan provided all the following is met:

- (a) The principal balance of the Loan is \$500,000 or less, and such principal balance of the Loan amount is less than the principal balance of the Non-Program Loan; and
- (b) the Loan will reach maturity at or before the date of the maturity of the Non-Program Loan; and
- (c) the Non-Program Loan must close at the same time as the Loan.

**8. SBA loan.** The Lender is not attempting to enroll any portion of an SBA guaranteed loan without obtaining the MSF’s express prior written consent.

**9. Borrower [and Operating Company] Assurances, SEDI, and Demographic Data.** As part of this Agreement, the Lender shall require the Borrower to certify all of the Borrower Assurances set forth on Appendix B, [and the Operating Company to certify all of the Operating Company Assurances set forth on Appendix D].

**IF A SEDI DEAL:** Lender shall also require the Borrower [and the Operating Company], to provide the responses as required and applicable to the Socially and Economically Disadvantaged

Individuals (SEDI) made a part of Schedule C-1 as to the Borrower, [and Schedule D-1, as to the Operating Company, respectively].

Lender shall also provide the Borrower and its principal owners [and the Operating Company and its principal owners], the opportunity to complete the Demographic-Related Data made a part of Schedule C-2, and Schedule D-2, respectively.

Lender shall submit to the MEDC, the Participation Agreement, acknowledged by the Borrower, along with Borrower's fully signed Appendix B and the attached Schedule B-1 [[and the fully signed Operating Company's Assurances set forth on Appendix D, and the attached Schedule D-1], and if completed and returned to Lender, Lender shall submit to the MSF each of the Borrower's and its principal owners', and the Operating Company and its principal owners' completed portions of Schedule C-2 and Schedule D-2, respectively.

**10. SSBCI Reporting.** The Lender shall cooperate with the MSF, the MEDC, and any of their representatives, to provide information necessary for the MSF to ensure effective administration of the program by providing the MSF no later than January 31 of each year through the termination of this Participation Agreement with the following information for each such Loan, in such form as the from time to time prescribe:

- (a) the census tract and zip code of the Borrower's principal location in the State of Michigan;
- (b) the Lender's Employer Identification Number (EIN);
- (c) the Lender's Regulatory Identification Number;
- (d) the total principal amount of each such Loan loaned/authorized as a line of credit, and of that amount, the portion that is from non-private sources;
- (e) the date of the initial disbursement of the Loan;
- (f) the Borrower's annual revenues in its last fiscal year;
- (g) the Borrower's Full Time Equivalent employees;
- (h) the Borrower's Employer Identification Number (EIN);
- (i) the 6-digit North American Industry Classification System (NAICS) code for the Borrower's industry;
- (j) the year the Borrower was incorporated or, as applicable, organized;
- (k) the estimated number of jobs created or retained as a result of each Loan;
- (l) the amount of additional private financing occurring for or on behalf of the Borrower after the closing of the Loan Documents; and
- (m) any other information from time to time requested by the MSF.

**[ADD THIS SECTION 11 ONLY FOR HOLDING COMPANY DEALS]**

## **11. PASSIVE REAL ESTATE INVESTMENT EXCEPTION**

To the extent Borrower is a real estate holding company using the proceeds of the Loan to acquire and hold real or personal property and subsequently leasing the real or personal property to a related operating company, the Lender represents and warrants the following:

- (a) [OPERATING COMPANY NAME] is a co-borrower or a guarantor of the Loan, as applicable;
- (b) Both the Borrower and [OPERATING COMPANY NAME] have executed all required certifications, including those contained on Appendix B and Appendix C, as applicable;
- (c) Each natural person holding an ownership interest constituting at least twenty percent (20%) of the Borrower and the [OPERATING COMPANY NAME] has provided a personal guaranty in favor of the Lender for the Loan; and
- (d) Borrower and [OPERATING COMPANY NAME] have a written lease with a term at least equal to the term of the Loan, including options to renew exercisable solely by [OPERATING COMPANY NAME].

### C. OTHER FINANCIAL COVENANTS

As part of the Lender's Loan Documents, the Lender shall require the Borrower to represent and warrant that:

- (a) XXX
- (b) XXX
- (c) XXX

## APPENDIX C BORROWER ASSURANCES

### 1. STATE OF MICHIGAN REQUIREMENTS

1. **Michigan Operations.** So long as any portion of the Loan is outstanding, 100% of any assets being financed by the Loan shall be located in Michigan, the Borrower shall maintain substantially all of its employees for the Project (exclusive of sales staff) or operations for the Project within the State of Michigan.
2. **Criminal and Civil Matters.** Neither the Borrower nor or any of its affiliates, subsidiaries, officers, directors and any person who, directly or indirectly, holds a pecuniary interest in the Borrower of 20% or more: (i) have any criminal convictions incident to the application for or performance of a state contract or subcontract, and (ii) have any criminal convictions or have been held liable in any civil proceeding that negatively reflects on the person's business integrity, including without limitation, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or violation of state or federal antitrust statutes.

### 2. SSBCI PROGRAM REQUIREMENTS

1. **Borrower Size.** Borrower does not have more than 750 employees (as an aggregate when also including all employees of the [OPERATING COMPANY NAME]) and to the extent Borrower is a real estate holding company using the proceeds of the Loan to acquire and hold real or personal property and subsequently leasing the real or personal property to a [OPERATING COMPANY NAME].
2. **Business Purpose.** The Loan proceeds must be used for a "business purpose." A business purpose includes, but is not limited to, startup 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 service, as well as the purchase, construction, renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes, and any tangible or intangible assets except goodwill. The definition of business purpose excludes acquiring or holding passive investments in real estate, such as commercial real estate ownership, 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.
3. **Prohibited Use of Loan.** The Loan proceeds will not be used:
  - (a) for any impermissible purpose under the SSBCI or the SSBCI-MLPP, including any impermissible purposes set forth in Appendix B, Section B.7;
  - (b) to repay delinquent Federal or State income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;
  - (c) to repay taxes held in trust or escrow, e.g. payroll or sales taxes;
  - (d) to reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance;
  - (e) to 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 the 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; or

(f) for the development of a stadium or arena for use by a professional sports team or development of a casino or property associated or affiliated with the operation of a casino as prohibited by the Act (see MCL 125.2088c(3)(a) and (b)), or to induce the Borrower, a qualified business, or small business to leave the State of Michigan, or to contribute to the violation of internationally recognized workers' rights, of workers in a country other than the US, or to fund an entity incorporated in a tax haven country, as prohibited by the Act (see MCL 125.2088c(4)(c), (d), and (e)).

4. **Borrower Affiliations.** The Borrower is not:

- (a) an executive officer, director, or principal shareholder of the Lender;
- (b) a member of the immediate family of an executive officer, director, or principal shareholder of the Lender; or
- (c) a related interest of any such executive officer, director, principal shareholder, or member of the immediate family.

For the purposes of the above 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 relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

5. **Borrower Business.** The Borrower is not:

- (a) a business engaged in speculative activities that develop profits 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 normal risk of trade;
- (b) a business that earns more than half of its annual net revenue from lending activities; unless the business is (1) not a depository institution or a bank holding company certified as a Community Development Financial Institution, or (2) a tribal enterprise lender that is not a depository institution or a bank holding company ;
- (c) 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;
- (d) 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 in connection with the illegal activity, unless such use can be shown to be completely outside of the business's intended market; this includes direct and indirect marijuana businesses, as defined in the SBA Standard Operating Procedure 50 10 6, Lender and Development Company Loan Programs (effective October 1, 2020) or

(e) a business engaged in gambling enterprises, unless the business earns less than 33% of its annual net 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<sup>19</sup>; “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.

6. **SSBCI Reporting.** The Borrower shall cooperate with the Lender, the MSF, the MEDC, and any of their representatives, and provide the information described in Appendix B, Sections B.3 and B.10 to the Lender and any other information required from time to time by the MSF related to this Participation Agreement.
7. **Treasury Inspector General.** The Borrower shall make available to the federal Department of Treasury, the Treasurer Inspector General, and their respective employees, agents or contractors (“Federal Treasury”), all books and records related to the Loan and the use of the Loan, subject to the Right to Financial Privacy Act, 12 U.S.C § 3401, et. seq.), including detailed Loan records. In accordance with SSBCI guidelines, this Section shall survive until [the later of (i) July 31, 2031 or (ii) as otherwise required by 2 CFR §220.334. Borrower shall cooperate with the Federal Treasury in any enforcement or compliance review activities of the Federal Treasury in any way related to this Agreement or the laws and regulations in connection therewith. Such enforcement or compliance review may include investigation, arbitration, mediation, litigation, and monitoring, and further, as may be required by Federal Treasury, the Borrower shall comply with information requests, on-site compliance reviews and all required reporting.
8. **No Conviction of Sex Offense.** No principal of the Borrower 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 or a development company, or any 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% or more of the ownership stock or stock equivalent of the entity”.

**[ADD THIS SECTION 9 ONLY FOR HOLDING COMPANY DEALS]**

**9. PASSIVE REAL ESTATE INVESTMENT EXCEPTION**

To the extent Borrower is a real estate holding company using the proceeds of the Loan to acquire and hold real or personal property and subsequently leasing the real or personal property to a related operating company, the Borrower represents and warrants the following:

- (a) [OPERATING COMPANY NAME] is a co-borrower or a guarantor of the Loan, as applicable;
- (b) Both the Borrower and [OPERATING COMPANY NAME] have executed all required certifications, including those contained on Appendix B and Appendix C, as applicable;
- (c) Each natural person holding an ownership interest constituting at least twenty percent (20%) of the Borrower and the [OPERATING COMPANY NAME] has provided a personal guaranty in favor of the Lender for the Loan; and

(d) Borrower and [OPERATING COMPANY NAME] have a written lease with a term at least equal to the term of the Loan, including options to renew exercisable solely by [OPERATING COMPANY NAME], and [OPERATING COMPANY NAME] is subject to the same sublease restrictions as Borrower.

(e) Borrower and [OPERATING COMPANY NAME] are affiliated.

INCLUDE SECTION 10 ONLY IF SEDI DEAL, OTHERWISE INSERT "INTENTIONALLY OMIT" FOR THIS SECTION 10

- i. **SEDI REQUIREMENTS.** Borrower shall complete the Socially and Economically Disadvantaged Individuals questions set forth on Schedule C-1 attached.
- ii. **DEMOGRAPHIC-RELATED DATA.** Borrower, and each of its principal owners, may complete the Demographic-Related Data questions made part of Schedule C-2 attached.

**C. OTHER FINANCIAL COVENANTS**

Borrower represents and warrants to the MSF and Lender:

1. XXX
2. XXX
3. XXX



**Schedule C-1**

**[ADD THIS SCHEDULE B-1 ONLY FOR SEDI DEALS, OTHERWISE INSERT  
"INTENTIONALLY OMIT FOR THIS SCHEDULE C-1"]**

**Borrower Certification Related to Business Enterprises Owned and Controlled by Socially and Economically Disadvantaged Individuals (SEDI-Owned Businesses)**

This transaction is supported with funding provided through the State Small Business Credit Initiative (SSBCI), a federal program that supports small business lending and investment programs in states, the District of Columbia, territories, and Tribal governments (collectively known as participating jurisdictions). SSBCI programs are designed to expand access to capital, promote economic resiliency, and create new jobs and economic opportunity. SSBCI provides funding for participating jurisdictions to support businesses owned and controlled by socially and economically disadvantaged individuals (SEDI-owned businesses)<sup>1</sup>. This certification provides documentation that an SSBCI loan or investment supported a SEDI-owned business. The information collected from this certification can only be used for purposes of the SSBCI program and must not be used for any other purposes (e.g., marketing, sale to third parties). The information collected must also not be used in a manner that violates any applicable antidiscrimination laws, including, but not limited to, the laws specified in Section IX.b of the Capital Program Policy Guidelines (Compliance with Civil Rights Requirements).

The Borrower is required to provide this certification. The Borrower shall identify all categories in groups (1) through (3) below that apply, including all subcategories in group (1) that apply.

The Borrower hereby certifies to the MSF and the Lender that it is a:

(1) Business enterprise that is owned and controlled<sup>2</sup> by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their:

- membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;
- gender;
- veteran status;
- limited English proficiency;
- disability;
- membership of a federally or state-recognized Indian Tribe;

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<sup>1</sup> SSBCI funds count toward fulfilling the "expended for" requirement for the \$1.5 billion SEDI allocation and toward qualifying for initial eligible amounts under the \$1.0 billion SEDI incentive allocation if the SSBCI funds have been expended for loans, investments, or other credit or equity support to any of the four groups of businesses set forth in Section IV.a of the SSBCI Capital Program Policy Guidelines. While a participating jurisdiction may reasonably identify group (4) businesses (i.e., those located in Community Development Financial Institution (CDFI) Investment Areas) based on businesses' addresses from the relevant loan, investment, and credit or equity support applications, certification is required with regard to groups (1) through (3).

<sup>2</sup> The term "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 of which the institution services is predominantly comprised of such individuals.

- long-term residence in a rural community;
- residence in a U.S. territory; or
- membership of another underserved community.<sup>3</sup>

(2)  Address of primary residence of all individuals with 20% or greater ownership of the Borrower:

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(3)  Project property address (new construction projects only):

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<sup>3</sup> “Underserved communities” are populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the definition of equity. Equity is consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

The undersigned is an authorized representative of the Borrower.

**NAME OF BORROWER**

\_\_\_\_\_  
Authorized Signer  
Title

Date: \_\_\_\_\_

(BORROWER SIGNATURE PAGE TO SEDI REQUIREMENTS-SCHEDULE C-1)

DRAFT

## Schedule B-2 BORROWER AND ITS PRINCIPAL OWNERS' DEMOGRAPHIC-RELATED DATA

This transaction is supported with funding provided through the State Small Business Credit Initiative (SSBCI), a federal program that supports small business lending and investment programs in states, the District of Columbia, territories, and Tribal governments (collectively, "participating jurisdictions"). SSBCI programs are designed to expand access to capital, promote economic resiliency, and create new jobs and economic opportunity. Filling out this form and providing demographic information is optional; applicants are not required to provide the requested information but are encouraged to do so. The entity collecting this information cannot discriminate on the basis of whether an applicant provides this information or based on any information provided on this form. If you decline to provide this information, it will not adversely affect your application. The demographics-related information collected can only be used for purposes of the SSBCI program and must not be used for any other purposes (e.g., marketing, sale to third parties). The information collected must also not be used in a manner that violates any applicable anti-discrimination laws, including, but not limited to, the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d-1 et seq., and Treasury's implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 et seq., and Treasury's implementing regulations, 31 C.F.R. part 28; the Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq., and Treasury's implementing regulations at 31 C.F.R. part 23. If you believe you were discriminated against in connection with the provision of the information provided on this form, contact: Director, Office of Civil Rights and Diversity, U.S. Department of the Treasury, 1500 Pennsylvania Ave, N.W., Washington, DC 20220, or by email at [crcomplaints@treasury.gov](mailto:crcomplaints@treasury.gov). PAPERWORK REDUCTION ACT NOTICE - OMB Control Number 1505-0227 An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

**Section A below is for collection of Borrower data, and Section B below is for collection of data for each principal owner of the Borrower.**

A. **Borrower Data.** The Borrower is encouraged to answer all of the questions below. This information is being collected to help ensure that communities' small business credit needs are being fulfilled and allow SSBCI to analyze the populations that SSBCI funding is benefiting.

### 1. Minority-owned or controlled business status

For purposes of this form, minority individual means a natural person who identifies as American Indian or Alaska Native; Asian American; Black or African American; Native Hawaiian or Other Pacific Islander; Hispanic or Latino/a; or one or more than one of these groups. For purposes of this form, a business is a minority-owned or controlled business if the business meets one or more of the following:

- (1) if privately owned, 51 percent or more is owned by minority individuals;
  - (2) if publicly owned, 51 percent or more of the stock is owned by minority individuals;
  - (3) 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 minority individuals;
- or
- (4) one or more minority individuals have the power to exercise a controlling influence over the business.

**Is the Borrower a minority-owned or**       Yes                       No                       Prefer not to respond

**controlled  
business?**

**2. Women-owned or controlled business status**

For purposes of this form, a business is a women-owned or controlled business if the business meets one or more of the following:

- (1) if privately owned, 51 percent or more is owned by females;
- (2) if publicly owned, 51 percent or more of the stock is owned by females;
- (3) 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 females; or
- (4) one or more individuals who are females have the power to exercise a controlling influence over the business.

**Is the Borrower a  
women-owned or  
controlled  
business?**

Yes

No

Prefer not to  
respond

**3. Veteran-owned or controlled business status**

For purposes of this form, a business is a veteran-owned or controlled business if the business meets one or more of the following:

- (1) if privately owned, 51 percent or more is owned by veterans;
- (2) if publicly owned, 51 percent or more of the stock is owned by veterans;
- (3) 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 veterans; or
- (4) one or more individuals who are veterans have the power to exercise a controlling influence over the business.

**Is the Borrower a  
veteran-owned or  
controlled  
business?**

Yes

No

Prefer not to  
respond

**NAME OF BORROWER**

\_\_\_\_\_  
**Authorized Signer  
Title**

Date: \_\_\_\_\_

(BORROWER SIGNATURE PAGE TO DEMOGRAPHIC-RELATED DATA-SCHEDULE C-2)

**B. Principal Owner Data. Each principal owner of the Borrower is encouraged to answer the questions below.**

This information is being collected to help ensure that communities' small business credit needs are being fulfilled and allow SSBCI to analyze the populations that SSBCI funding is benefiting. For purposes of this form, a principal owner of the business is a natural person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity of the business. If a trust owns, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of the business, the trustee is a principal owner.

For each principal owner of the Borrower, indicate which of the following categories the principal owner identifies with. **Submit a separate copy of this table for each principal owner of the Borrower (up to four).**

**1. Ethnicity**

- Hispanic or Latino/a    Not Hispanic or Latino/a    Prefer not to respond

**2. Race (select all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> American Indian or Alaska Native | <input type="checkbox"/> Black or African American                 |
| <input type="checkbox"/> Asian                            | <input type="checkbox"/> Native Hawaiian or Other Pacific Islander |
| <input type="checkbox"/> Indian                           | <input type="checkbox"/> Guamanian or Chamorro                     |
| <input type="checkbox"/> Chinese                          | <input type="checkbox"/> Native Hawaiian                           |
| <input type="checkbox"/> Filipino                         | <input type="checkbox"/> Samoan                                    |
| <input type="checkbox"/> Japanese                         | <input type="checkbox"/> Pacific Islander (Other)                  |
| <input type="checkbox"/> Korean                           | <input type="checkbox"/> White                                     |
| <input type="checkbox"/> Vietnamese                       | <input type="checkbox"/> Prefer not to respond                     |
| <input type="checkbox"/> Asian (Other)                    |  |

**3. Middle Eastern or North African Ancestry**

- Middle Eastern or North African    Not Middle Eastern or North African  
 Prefer not to respond

**4. Gender**

- Female    Male    Nonbinary  
 Prefer to self-describe: \_\_\_\_\_  
 Prefer not to respond

**6. Veteran Status**

- Veteran    Non-veteran    Prefer not to respond

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name of Principal Owner

Date: \_\_\_\_\_

(OWNER SIGNATURE PAGE TO DEMOGRAPHIC-RELATED DATA-SCHEDULE C-2)

**APPENDIX D**  
**OPERATING COMPANY CERTIFICATION**  
**[ADD THIS APPENDIX C ONLY FOR HOLDING COMPANY DEALS]**

In connection with that certain loan from **LENDER** (the “Lender”) to **BORROWER** (the “Borrower”), dated on or about the date of this Participation Agreement (the “Loan”), and in furtherance of the State Small Business Credit Initiative (the “SSBCI”), Michigan Loan Participation Program (the “SSBCI-MLPP”) operated by the Michigan Strategic Fund (the “MSF”), for the benefit of the Lender and the Borrower and in accordance with the SSBCI, **OPERATING COMPANY NAME** represents and warrants to the Lender and the MSF:

1. **Business Purpose.** The Loan proceeds must be used for a “business purpose.” A business purpose includes, but is not limited to, startup 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 service, as well as the purchase, construction, renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes, and any tangible or intangible assets except goodwill. The definition of business purpose excludes acquiring or holding passive investments in real estate, such as commercial real estate ownership, 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.

2. **Prohibited Use of Loan.** The Loan proceeds will not be used:

(a) for any impermissible purpose under the SSBCI or the SSBCI-MLPP, including any impermissible purposes set forth in Appendix A, Section B(4) of the Participation Agreement;

(b) to repay delinquent Federal or State income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;

(c) to repay taxes held in trust or escrow, e.g. payroll or sales taxes;

(d) to reimburse funds owed to any owner, including any equity injection or injection of capital for the business’ continuance;

(e) to purchase any portion of the ownership interest of any owner of the business; or

(f) for the development of a stadium or arena for use by a professional sports team or development of a casino or property associated or affiliated with the operation of a casino as prohibited by the Act (see MCL 125.2088c(3)(a) and (b)), or to induce the Borrower, a qualified business, or small business to leave the State of Michigan, or to contribute to the violation of internationally recognized workers’ rights, of workers in a country other than the US, or to fund an entity incorporated in a tax haven country, as prohibited by the Act (see MCL 125.2088c(4)(c), (d), and (e)).

3. **Affiliations.**

(a) **OPERATING COMPANY NAME** is not:

i. an executive officer, director, or principal shareholder of the Lender;

ii. a member of the immediate family of an executive officer, director, or principal shareholder of the Lender; or

iii. a related interest of any such executive officer, director, principal shareholder, or member of the immediate family.

For the purposes of the above 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 relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

(b) [OPERATING COMPANY NAME] is an affiliate of the Borrower, and together with Borrower’s employees, does not have an aggregate of more than 750 employees.

4. **Business.** [OPERATING COMPANY NAME] is not:

(a) a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, 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;

(b) a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company certified as a Community Development Financial Institution;

(c) 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;

(d) a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); or

(e) a business engaged in gambling enterprises unless the business earns less than 33% of its annual net revenue from lottery sales.

5. **No Conviction of Sex Offense.** No principal of the [OPERATING COMPANY NAME] 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 or a development company, or any 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% or more of the ownership stock or stock equivalent of the entity”.

**INCLUDE SECTION 5 ONLY IF SEDI DEAL, OTHERWISE INSERT “INTENTIONALLY OMIT” FOR THIS SECTION 6**

6. **SEDI REQUIREMENTS.** [OPERATING COMPANY NAME] shall complete the Socially and Economically Disadvantaged Individuals questions set forth on Schedule D-1 attached.

7. **DEMOGRAPHIC-RELATED DATA.** [Operating Company Name] and each of its principal owners, may complete the Demographic-Related Data questions made part of Schedule D-2 attached



**OPERATING COMPANY NAME**

\_\_\_\_\_  
Authorized Signer  
Title

Date \_\_\_\_\_

(OPERATING COMPANY SIGNATURE PAGE TO APPENDIX D)

DRAFT

**Schedule D-1**

**[ADD THIS SCHEDULE D-1 ONLY FOR SEDI DEALS, OTHERWISE INSERT  
"INTENTIONALLY OMIT FOR THIS SCHEDULE D-1"]**

**[OPERATING COMPANY NAME] Certification Related to Business Enterprises Owned and  
Controlled by Socially and Economically Disadvantaged Individuals  
(SEDI-Owned Businesses)**

This transaction is supported with funding provided through the State Small Business Credit Initiative (SSBCI), a federal program that supports small business lending and investment programs in states, the District of Columbia, territories, and Tribal governments (collectively known as participating jurisdictions). SSBCI programs are designed to expand access to capital, promote economic resiliency, and create new jobs and economic opportunity. SSBCI provides funding for participating jurisdictions to support businesses owned and controlled by socially and economically disadvantaged individuals (SEDI-owned businesses)<sup>4</sup>. This certification provides documentation that an SSBCI loan or investment supported a SEDI-owned business. The information collected from this certification can only be used for purposes of the SSBCI program and must not be used for any other purposes (e.g., marketing, sale to third parties). The information collected must also not be used in a manner that violates any applicable antidiscrimination laws, including, but not limited to, the laws specified in Section IX.b of the Capital Program Policy Guidelines (Compliance with Civil Rights Requirements).

The **[OPERATING COMPANY NAME]** is required to provide this certification. The **[OPERATING COMPANY NAME]** shall identify all categories in groups (1) through (3) below that apply, including all subcategories in group (1) that apply.

The **[OPERATING COMPANY NAME]** hereby certifies to the MSF and the Lender that it is a:

(1) Business enterprise that is owned and controlled<sup>5</sup> by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their:

- membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;
- gender;
- veteran status;
- limited English proficiency;

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<sup>4</sup> SSBCI funds count toward fulfilling the "expended for" requirement for the \$1.5 billion SEDI allocation and toward qualifying for initial eligible amounts under the \$1.0 billion SEDI incentive allocation if the SSBCI funds have been expended for loans, investments, or other credit or equity support to any of the four groups of businesses set forth in Section IV.a of the SSBCI Capital Program Policy Guidelines. While a participating jurisdiction may reasonably identify group (4) businesses (i.e., those located in Community Development Financial Institution (CDFI) Investment Areas) based on businesses' addresses from the relevant loan, investment, and credit or equity support applications, certification is required with regard to groups (1) through (3).

<sup>5</sup> The term "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 of which the institution services is predominantly comprised of such individuals.

- disability;
- membership of a federally or state-recognized Indian Tribe;
- long-term residence in a rural community;
- residence in a U.S. territory; or
- membership of another underserved community.<sup>6</sup>

(2)  Address of primary residence of all individuals with 20% or greater ownership of the Borrower:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3)  Project property address (new construction projects only):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The undersigned is an authorized representative of the **[OPERATING COMPANY NAME]**

**[OPERATING COMPANY NAME]**

\_\_\_\_\_  
Authorized Signer  
Title

Date: \_\_\_\_\_

**([OPERATING COMPANY NAME])** SIGNATURE PAGE TO SEDI REQUIREMENTS-SCHEDULE C-1)

<sup>6</sup> “Underserved communities” are populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the definition of equity. Equity is consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

## Schedule D-2 DEMOGRAPHIC-RELATED DATA

This transaction is supported with funding provided through the State Small Business Credit Initiative (SSBCI), a federal program that supports small business lending and investment programs in states, the District of Columbia, territories, and Tribal governments (collectively, “participating jurisdictions”). SSBCI programs are designed to expand access to capital, promote economic resiliency, and create new jobs and economic opportunity. Filling out this form and providing demographic information is optional; applicants are not required to provide the requested information but are encouraged to do so. The entity collecting this information cannot discriminate on the basis of whether an applicant provides this information or based on any information provided on this form. If you decline to provide this information, it will not adversely affect your application. The demographics-related information collected can only be used for purposes of the SSBCI program and must not be used for any other purposes (e.g., marketing, sale to third parties). The information collected must also not be used in a manner that violates any applicable anti-discrimination laws, including, but not limited to, the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d-1 et seq., and Treasury’s implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 et seq., and Treasury’s implementing regulations, 31 C.F.R. part 28; the Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq., and Treasury’s implementing regulations at 31 C.F.R. part 23. If you believe you were discriminated against in connection with the provision of the information provided on this form, contact: Director, Office of Civil Rights and Diversity, U.S. Department of the Treasury, 1500 Pennsylvania Ave, N.W., Washington, DC 20220, or by email at [crcomplaints@treasury.gov](mailto:crcomplaints@treasury.gov). PAPERWORK REDUCTION ACT NOTICE - OMB Control Number 1505-0227 An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

**Section A below is for collection of [OPERATING COMPANY NAME] data, and Section B below is for collection of data for each principal owner of the [OPERATING COMPANY NAME]**

A. [OPERATING COMPANY NAME] Data. The [OPERATING COMPANY NAME] is encouraged to answer all of the questions below. This information is being collected to help ensure that communities’ small business credit needs are being fulfilled and allow SSBCI to analyze the populations that SSBCI funding is benefiting.

### 1. Minority-owned or controlled business status

For purposes of this form, minority individual means a natural person who identifies as American Indian or Alaska Native; Asian American; Black or African American; Native Hawaiian or Other Pacific Islander; Hispanic or Latino/a; or one or more than one of these groups. For purposes of this form, a business is a minority-owned or controlled business if the business meets one or more of the following:

- (1) if privately owned, 51 percent or more is owned by minority individuals;
- (2) if publicly owned, 51 percent or more of the stock is owned by minority individuals;
- (3) 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 minority individuals; or
- (4) one or more minority individuals have the power to exercise a controlling influence over the business.

Is the [OPERATING COMPANY NAME] a minority-owned or controlled business?

Yes

No

Prefer not to respond

## 2. Women-owned or controlled business status

For purposes of this form, a business is a women-owned or controlled business if the business meets one or more of the following:

- (1) if privately owned, 51 percent or more is owned by females;
- (2) if publicly owned, 51 percent or more of the stock is owned by females;
- (3) 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 females; or
- (4) one or more individuals who are females have the power to exercise a controlling influence over the business.

Is the [OPERATING COMPANY NAME] a women-owned or controlled business?

Yes

No

Prefer not to respond

## 3. Veteran-owned or controlled business status

For purposes of this form, a business is a veteran-owned or controlled business if the business meets one or more of the following:

- (1) if privately owned, 51 percent or more is owned by veterans;
- (2) if publicly owned, 51 percent or more of the stock is owned by veterans;
- (3) 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 veterans; or
- (4) one or more individuals who are veterans have the power to exercise a controlling influence over the business.

Is the [OPERATING COMPANY NAME] a veteran-owned or controlled business?

Yes

No

Prefer not to respond

[OPERATING COMPANY NAME]

\_\_\_\_\_  
Authorized Signer  
Title

Date: \_\_\_\_\_

([OPERATING COMPANY NAME]) SIGNATURE PAGE TO  
DEMOGRAPHIC-RELATED DATA-SCHEDULE D-2)

**B. Principal Owner Data. Each principal owner of the [OPERATING COMPANY NAME] is encouraged to answer the questions below.**

This information is being collected to help ensure that communities' small business credit needs are being fulfilled and allow SSBCI to analyze the populations that SSBCI funding is benefiting. For purposes of this form, a principal owner of the Business is a natural person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity of the business. If a trust owns, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of the business, the trustee is a principal owner.

For each principal owner of the [OPERATING COMPANY NAME], indicate which of the following categories the principal owner identifies with. **Submit a separate copy of this table for each principal owner of the [OPERATING COMPANY NAME] (up to four).**

**1. Ethnicity**

- Hispanic or Latino/a    Not Hispanic or Latino/a    Prefer not to respond

**2. Race (select all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> American Indian or Alaska Native | <input type="checkbox"/> Black or African American                 |
| <input type="checkbox"/> Asian                            | <input type="checkbox"/> Native Hawaiian or Other Pacific Islander |
| <input type="checkbox"/> Indian                           | <input type="checkbox"/> Guamanian or Chamorro                     |
| <input type="checkbox"/> Chinese                          | <input type="checkbox"/> Native Hawaiian                           |
| <input type="checkbox"/> Filipino                         | <input type="checkbox"/> Samoan                                    |
| <input type="checkbox"/> Japanese                         | <input type="checkbox"/> Pacific Islander (Other)                  |
| <input type="checkbox"/> Korean                           | <input type="checkbox"/> White                                     |
| <input type="checkbox"/> Vietnamese                       | <input type="checkbox"/> Prefer not to respond                     |
| <input type="checkbox"/> Asian (Other)                    |  |

**3. Middle Eastern or North African Ancestry**

- Middle Eastern or North African    Not Middle Eastern or North African    Prefer not to respond

**4. Gender**

- Female    Male    Nonbinary  
 Prefer to self-describe: \_\_\_\_\_  
 Prefer not to respond

**5. Veteran Status**

- Veteran    Non-veteran    Prefer not to respond

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name of Principal Owner

Date: \_\_\_\_\_

(OWNER SIGNATURE PAGE TO DEMOGRAPHIC-RELATED DATA-SCHEDULE D-2)