

[INSERT NAME OF NMVCC]



**NEW MARKETS VENTURE CAPITAL
PROGRAM
OFFICE OF INVESTMENT
U. S. SMALL BUSINESS ADMINISTRATION
409 Third Street, SW Washington, DC 20416 Tel: (202) 205-6510**

PARTICIPATION AGREEMENT

This Participation Agreement ("Agreement") is between the U.S. Small Business Administration ("SBA"), an agency of the United States Government, and **[INSERT NAME OF NMVCC]** ("Company"), a New Markets Venture Capital Company ("NMVCC") (collectively, "the parties").

WHEREAS, Company is a newly formed, for-profit, venture capital company organized as a **[INSERT BUSINESS FORM]** under the laws of the state of **[INSERT STATE IN WHICH COMPANY IS ORGANIZED]**.

WHEREAS, on **[INSERT DATE UPON WHICH SBA SELECTED COMPANY AS A CONDITIONALLY APPROVED NMVCC]**, SBA selected Company as a Conditionally Approved NMVCC pursuant to section 108.370 of the Regulations, and upon the Effective Date of this Agreement, SBA grants final approval to Company as a NMVCC under section 108.380(a)(1) of the Regulations.

WHEREAS, the objective of SBA's NMVC program is to promote economic development and the creation of wealth and job opportunities in Low-Income Geographic Areas ("LI Areas") and among individuals living in such areas.

NOW, THEREFORE, in consideration of each party's undertakings described in this Agreement and other good and lawful consideration, the sufficiency of which the parties acknowledge, the parties agree as follows:

Section 1. Definitions

The parties agree that unless otherwise specified in this Agreement, all terms with initial capitalization used in this Agreement have the definitions stated in this section 1, as follows:

Act means the Small Business Investment Act of 1958, as amended from time to time.

Application means the following documents submitted by Company to SBA as part of Company's application for designation as an NMVCC, and any attachments and amendments to such documents:

- (1) NMVC Application, SBA Form 2184
- (2) Exhibits to NMVC Application, SBA Form 2185

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- (3) Application for Federal Assistance, Standard Form 424
- (4) any other documents that SBA required Company to submit or that Company submitted in support of its application for designation as an NMVCC.

Articles has the meaning set forth in section 108.50 of the Regulations.

Debentures has the meaning set forth in section 108.50 of the Regulations.

Effective Date of this Agreement is the date upon which SBA executes this Agreement by signing below, which date must be on or after the date upon which Company executes this Agreement by signing below.

Equity Capital Investment has the meaning set forth in section 108.50 of the Regulations.

Financing has the meaning set forth in section 108.50 of the Regulations.

Grant Agreement means the Notice of Award (SBA Form 1222) executed by Company and SBA, which outlines the terms and conditions governing the Operational Assistance grant SBA has awarded to Company, as may be amended from time to time.

Grant Funds has the meaning set forth in the Grant Agreement.

Leverage has the meaning set forth in section 108.50 of the Regulations.

Low-Income Enterprises has the meaning set forth in section 108.50 of the Regulations.

New Markets Venture Capital Company and NMVCC have the meaning set forth in section 108.50 of the Regulations.

OMB Circular A-110 means Circular A-110 of the Office of Management and Budget, entitled "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," as may be amended from time to time.

Operational Assistance has the meaning set forth in section 108.50 of the Regulations and in the terms and conditions of the Grant Agreement.

Portfolio Concern has the meaning set forth in section 108.50 of the Regulations.

Regulations means Part 108 of Title 13 of the Code of Federal Regulations, as amended from time to time.

Smaller Enterprise has the meaning set forth in section 108.50 of the Regulations.

Section 2. Participation in the NMVC Program

a. Company agrees to manage its operations in accordance with the terms of its comprehensive business plan set forth in its Application, including its mission of economic development of LI Areas, its operating plan, investment criteria and strategies, and its plan to provide Operational Assistance. Company's Application is incorporated by reference into this Agreement.

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b. Company agrees to comply with and fulfill the terms and conditions of its Grant Agreement, which is incorporated by reference into this Agreement.

c. Company agrees to comply with and fulfill the terms and conditions of this Agreement.

d. Company agrees to comply with and fulfill the terms and conditions of Debentures issued by Company.

e. Company agrees to comply with and fulfill the terms and conditions of any other agreement or document Company has executed or will execute with or in favor of SBA, all of which are incorporated by reference into this Agreement.

f. Company agrees to comply with the Act, the Regulations, and any written policies and procedures SBA issues pursuant to its administration of the NMVC program.

Section 3. Financing Activities

Company agrees to conduct its Financing activities in compliance with the Act and the Regulations, including but not limited to complying with section 108.710 of the Regulations to extend Financings so that at the close of each of its fiscal years:

a. At least 80% of its Portfolio Concerns are Low-Income Enterprises in which Company has an Equity Capital Investment; and

b. For all Financings Company has extended, Company has invested at least 80% (in total dollars) in Equity Capital Investments in Low-Income Enterprises.

Section 4. Operational Assistance Activities

Company agrees to conduct its Operational Assistance activities in compliance with the Act, the Regulations, and the Grant Agreement, including but not limited to the following requirements:

a. Company must use Grant Funds to provide Operational Assistance to Smaller Enterprises only.

b. Company must provide Operational Assistance, if paid for with Grant Funds, only to Smaller Enterprises to which Company already has made a Financing, or to which it expects to make a Financing.

c. Company must provide Operational Assistance to Smaller Enterprises to which Company has made a Financing or to which it expects to make a Financing, at no cost, for no fee, and with no requirement that such Smaller Enterprises provide consideration, either directly or indirectly, in exchange for the Operational Assistance.

Section 5. Commitment of Leverage

a. Amount. SBA conditionally commits to reserve Leverage in the face amount of **[INSERT TOTAL LEVERAGE AMOUNT]** for Company's future use, subject to the provisions of

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sections 108.1220 - 108.1240 of the Regulations, which are incorporated by reference into this Agreement.

b. **Conditions.** Each issuance by SBA of Leverage to Company is conditioned upon Company's creditworthiness (as determined solely by SBA) and Company's full compliance (as determined solely by SBA) with the Act, the Regulations, this Agreement (including, but not limited to, the terms and conditions of the Debentures issued by Company and the Grant Agreement), and each of the terms and conditions set forth in sections 108.1200 through 108.1240 of the Regulations.

c. **Form.** SBA will provide Leverage only in the form of SBA's guaranty of Debentures issued by Company.

d. **Expiration.** SBA's Leverage commitment described in section 5.a of this Agreement automatically will terminate at 4:00 p.m. Eastern Standard Time on **[INSERT DATE THAT IS 5 YEARS AFTER THE EFFECTIVE DATE--make sure it's a business day for the Federal Government]**.

e. **Draws.** Company must apply to draw down Leverage against SBA's commitment, pursuant to sections 108.1220 - 108.1240 of the Regulations. SBA may limit the amounts that Company may draw each year.

f. **Certifications.** By signature of Company's authorized representative below, Company makes the following certifications:

(1) At the time it executes this Agreement, Company is not in violation of its Articles, the Regulations, or the Act.

(2) Company will use the Leverage conditionally committed by SBA through this Agreement, only for the purposes contemplated by the Act and the Regulations.

(3) There has been no change of ownership or control of Company, no change in Company's investment policy, operations, or capital, and no adverse change in Company's financial condition, since the date(s) upon which Company's business formation and organization documents and Capital Certificate (Exhibit M, Exhibits to NMVC Application, SBA Form 2185) were executed.

Section 6. Events of Default and SBA's Remedies

a. **Noncompliance with terms of Debentures.** Noncompliance with any of the terms of Debentures issued by Company constitutes noncompliance with this Agreement. SBA may take any action permitted under the terms of such Debentures (including but not limited to the remedies set forth in section 108.1810 as in effect on the date the Debenture was issued and incorporated in the Debenture). In addition, SBA may take the actions described in OMB Circular A-110, paragraphs 14 and 62, which include but are not limited to withholding cash payments under the Grant Agreement and placing in the Grant Agreement special terms and conditions that require corrective action by Company. SBA also may consider Company to be not eligible for Leverage pursuant to section 108.1120 of the Regulations. In addition to SBA's remedies as described in this Agreement, SBA also may seek the remedies set forth in sections 363 through 366 of the Act (15 U.S.C. §§ 689l - 689o).

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b. Noncompliance with terms of Grant Agreement. SBA may take certain actions that would affect Company's rights under this Agreement and/or Debentures issued by Company, based on Company's violation of or non-compliance with the Grant Agreement. Such potential enforcement, suspension, and termination actions are outlined in the Grant Agreement. Noncompliance with the terms of the Grant Agreement constitutes noncompliance with this Agreement. In addition to SBA's remedies as described in this Agreement, SBA also may seek the remedies set forth in sections 363 through 366 of the Act (15 U.S.C. §§ 689l - 689o).

c. Noncompliance with Act and/or Regulations. Noncompliance with any provision of the Act and/or the Regulations constitutes noncompliance with this Agreement. SBA may take the actions described in OMB Circular A-110, paragraphs 14 and 62, which include but are not limited to withholding cash payments under the Grant Agreement and placing in the Grant Agreement special terms and conditions that require corrective action by Company. SBA also may consider Company to be not eligible for Leverage pursuant to section 108.1120 of the Regulations. In addition to SBA's remedies as described in this Agreement, SBA also may seek the remedies set forth in sections 363 through 366 of the Act (15 U.S.C. §§ 689l - 689o).

Section 7. Termination

a. Company has no right to terminate this Agreement except as provided in section 108.1900 of the Regulations.

b. Pursuant to section 364 of the Act (15 U.S.C. 689m), SBA may void this Agreement and cause Company to forfeit all of the rights and privileges Company derives from the NMVC program for commission of a violation or failure to comply with any of the provisions of the Act, any regulation promulgated under the Act, or this Agreement.

Section 8. Miscellaneous

a. Amendments. Amendments to or waivers from this Agreement are effective and binding upon the parties only if they are in writing and signed by an authorized representative of each of the parties.

b. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties concerning the matters covered by this Agreement, and supercedes any prior understandings or agreements.

c. Counterparts. The parties may execute this Agreement in counterparts, each of which is deemed an original, and all such counterparts constitute one instrument.

d. Severability. If any provision in this Agreement is invalid, illegal, or unenforceable, all other provisions will remain in effect.

e. Governing law. This Agreement is governed by, and construed in accordance with, Federal law.

f. Reliance. SBA enters into this Agreement in reliance on the written certifications and representations Company made to SBA in connection with the Application and in this Agreement.

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g. Mutual representations. Each of the parties to this Agreement represents and warrants to the other party that the Agreement has been duly authorized, executed, and delivered by such party and constitutes a valid, legal, and binding obligation of such party, enforceable in accordance with its terms.

h. Third party beneficiaries and indemnification. There are no express or implied third party beneficiaries to this Agreement. Company agrees to indemnify and defend SBA from and against, and pay any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, or expenses of any kind or nature arising out of this Agreement.

i. Non-Assignability. Company may not assign this Agreement or transfer its rights under this Agreement in whole or in part without SBA's prior written consent. SBA may assign or transfer its rights and obligations under this Agreement at any time to any agency or entity succeeding to the SBA's obligations under the Act.

The parties have caused their names to be signed by their authorized representatives on the dates stated below.

[INSERT NAME OF NMVCC]:

By:

[INSERT NAME OF AUTHORIZED REPRESENTATIVE]

[INSERT TITLE OF AUTHORIZED REPRESENTATIVE]

Date: _____

U.S. Small Business Administration:

By:

[INSERT NAME OF SBA OFFICIAL]

[INSERT TITLE OF SBA OFFICIAL]

Date: _____