STATE SMALL BUSINESS CREDIT INITIATIVE

ALLOCATION AGREEMENT

FOR

PARTICIPATING STATES

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ALLOCATION AGREEMENT dated as of _____, between the **United States Department of the Treasury**, an executive department of the United States Government ("Treasury"), and the _____ (the "Participating State").

RECITALS

WHEREAS, many companies, particularly small businesses, have found it increasingly difficult to get new loans to keep their businesses operating and banks are tightening requirements or cutting off existing lines of credit even when the businesses are up-to-date on their loan repayments;

WHEREAS, in the State Small Business Credit Initiative Act of 2010 (title III of the Small Business Jobs Act of 2010, Public Law 111-240, 124 Stat. 2568, 2582) (the "Act"), Congress appropriated funds to Treasury to be allocated and disbursed to States that have created programs to increase the amount of capital made available by private lenders to small businesses, and to cover Treasury's reasonable administrative expenses;

WHEREAS, in order to be considered for an allocation (as hereinafter defined), States must submit an Application (as hereinafter defined) to Treasury for review and evaluation in a noncompetitive selection process; and

WHEREAS, based on a review and evaluation of the Participating State's Application, the Participating State has been approved to receive an allocation, subject to the satisfaction of the terms and conditions contained in this Agreement (as hereinafter defined);

THEREFORE, in consideration of the premises and mutual covenants, conditions and agreements hereinafter set forth, the parties hereto hereby agree as follows:

ARTICLE I
DEFINITIONS AND RULES OF INTERPRETATION

Section 1.1 Definitions. Terms used in this Agreement that are not defined shall have the same meaning as in the Act. When used in this Agreement, the following terms shall have the respective meanings specified in this Section 1.1, unless the text clearly requires otherwise.

Allocated Funds. "Allocated Funds" shall mean the funds awarded to the Participating State on account of this Allocation.

Allocation. "Allocation" shall mean the award of Federal funds by the Treasury to the Participating State in accordance with the allocation formula contained in the Act.

Allocation Time Period. "Allocation Time Period" shall have the meaning ascribed to such term in Section 2.3 of this Agreement.

Application. "Application" shall mean the State Small Business Credit Initiative Application dated _____, including any written information in connection therewith and any attachments, appendices and/or written supplements thereto, submitted by the Participating State to Treasury.

Approved State Program. "Approved State Program" means the _____ approved by Treasury as eligible for Federal contributions to, or for the account of, the State program.

Authorized State Official. "Authorized State Official" means the Participating State official having oversight responsibility for the Approved State Program.

Disbursement. "Disbursement" shall mean a transfer of Allocated Funds by Treasury to the Participating State under this Agreement.

Principal. "Principal" shall mean, for purposes of Section 4.9, an officer, director, owner, partner, principal investigator, or other individual within a private entity with management or supervisory responsibilities related to the Allocated Funds, and a consultant or other individual, whether or not employed by the private entity or paid with Allocated Funds, who is in a position to influence or control the use of Allocated Funds.

Program Income. "Program Income" shall mean gross income received by the Participating State that is directly generated by an Allocation-supported activity or earned as a result of this Allocation during the Allocation Time Period. Program Income includes, but is not limited to, income from: fees for services performed that were funded or supported with Allocated Funds; and interest earned on loans made using Allocated Funds. Program Income does not include interest on Allocated Funds, the receipt of principal on loans made using Allocated Funds, rebates, credits, discounts, or refunds, or interest earned on any of them.

Schedule. "Schedule" shall have the meaning ascribed to such term in Section 4.2 and Annex 3 of this Agreement.

Subawardee. "Subawardee" shall mean the legal entity to which a Subgrant is awarded and which is accountable to the Participating State for the use of Allocated Funds provided.

Subgrant. "Subgrant" shall mean an award of Allocated Funds by the Participating State to an eligible Subawardee. The term does not include procurement purchases.

This Agreement. "This Agreement" or "this Agreement" shall mean this Allocation Agreement dated as of _____, together with the Annexes attached hereto, and the Assurances (Non-Construction) submitted by the Participating State as part of its Application, as the foregoing may be amended or modified from time to time in accordance with their respective terms.

Section 1.2 Rules of Interpretation. Unless the context shall otherwise indicate, the terms defined in Section 1.1 of this Agreement shall include the plural as well as the singular and the singular as well as the plural. The words "herein,"

"hereof," and "hereto," and words of similar import, refer to this Agreement as a whole.

ARTICLE II
THIS ALLOCATION

Section 2.1 **The Allocation Commitment**. Subject to all of the terms and conditions hereof and in reliance upon all representations, warranties, assurances, certifications, covenants and agreements contained herein, Treasury will provide to the Participating State, an Allocation in the aggregate amount not to exceed _____ (_____).

Section 2.2 **Purpose of this Allocation**. The purpose of this Allocation is to carry out the Approved State Program as described in Annex 1 attached hereto, which is incorporated herein by reference.

Section 2.3 **Allocation Time Period**. The effective date of this Allocation shall be the date of this Agreement. The expiration date of this Allocation is March 31, _____. The period of time between the effective date and the expiration date is the Allocation Time Period. The Participating State may charge to this Allocation allowable costs incurred, in accordance with Section 4.2 hereof, during the Allocation Time Period. Costs incurred prior to the Allocation Time Period are not allowable unless authorized in writing by Treasury. After the Allocation Time Period, the Participating State may charge to unobligated Allocated Funds in its possession allowable costs incurred in accordance with Section 4.2 hereof.

ARTICLE III
DISBURSEMENTS AND CONDITIONS PRECEDENT TO DISBURSEMENTS

Section 3.1 **Disbursements of Allocated Funds**. Subject to the terms and conditions hereof, Treasury will make

Disbursements of Allocated Funds via electronic funds transfer to a Participating State account designated in advance by the Participating State. Treasury will make Disbursements to the Participating State in accordance with Annex 2, attached hereto, which is incorporated herein by reference.

Section 3.2 Opinion of Participating State Counsel. Before Treasury's initial Disbursement of all or a portion of the Allocated Funds, Treasury shall have received, from counsel for the Participating State, a favorable opinion satisfactory in scope, form, and substance to Treasury, with respect to the matters stated in Sections 5.1, 5.2, 5.3, 5.4, 5.5, and 5.6 hereof. Such opinion shall also cover such other matters incident hereto as Treasury may require.

Section 3.3 Conditions Precedent for Disbursements. In addition to the prerequisite set forth in Section 3.2 hereof, the Participating State shall provide before each successive Disbursement following the initial one-third Disbursement a certification signed by the Authorized State Official that the Participating State has performed and complied with all applicable agreements and conditions contained herein, and that the representations and warranties set forth in this Agreement and in the Assurances (Non-Construction) contained as part of the Application shall be true and correct in all material respects. The form of the certification is in Exhibit 2-1 of Annex 2 attached hereto. If any condition or prerequisite specified herein or in any document connected herewith shall not have been fulfilled to the satisfaction of Treasury, Treasury may, in its sole discretion, elect not to make a Disbursement until such time as such condition or prerequisite shall be fulfilled to the satisfaction of Treasury.

ARTICLE IV
COVENANTS AND AGREEMENTS OF THE PARTICIPATING STATE

The Participating State shall duly perform and observe each and all of the following covenants and agreements unless the text clearly requires a different duration:

Section 4.1 **Compliance with Government Requirements.** In carrying out its responsibilities pursuant to this Agreement, the Participating State shall comply with the Act, Treasury regulations or other requirements prescribed by Treasury pursuant to the Act, and applicable provisions of the grants management common rule referenced in the attachment to OMB Circular A-102 ("Grants and Cooperative Agreements with State and Local Governments"), which are incorporated herein by reference. The Participating State also shall comply with all applicable Federal, State, and local laws, regulations, ordinances, and OMB Circulars, including, but not limited to, the regulations at 31 C.F.R. Part 21, related to lobbying.

Section 4.2 **Authorized Uses of Allocated Funds/Allowable Costs.** The Participating State shall only use the Allocated Funds for the purposes and activities specified in this Agreement including, but not limited to, the Schedule contained in Annex 3 attached hereto, which is incorporated herein by reference, and for paying allowable costs of those purposes and activities in accordance with the cost principles set forth in OMB Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments) and codified in 2 C.F.R. Part 225.

Section 4.3 **Authorized Uses of Program Income.** The Participating State shall add Program Income to the Allocated Funds, and shall use such Program Income for the same purposes and under the same conditions as the Allocated Funds.

Section 4.4 **Restrictions on the Use of Allocated Funds Funds and Program Income.**

(a) The Participating State shall not use any Allocated Funds in a manner other than as authorized hereunder, without the prior written approval of Treasury.

(b) The Participating State shall not use any Allocated Funds to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or Local Government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or Local Government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. § 1352.

(c) No member of or delegate to the United States Congress or resident U.S. Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise herefrom.

(d) The Participating State shall not use any Allocated Funds to pay any costs incurred in connection with (i) any defense against any claim or appeal of the United States Government, any agency or instrumentality thereof (including Treasury), against the Participating State, or (ii) any prosecution of any claim or appeal against the United States Government, any agency or instrumentality thereof (including Treasury), which the Participating State instituted or in which the Participating State has joined as a claimant.

(e) The Participating State shall not use any Allocated Funds for loans used to finance, in whole or in part, business activities prohibited by Treasury regulations, including Treasury regulations promulgated after the date of this Allocation Agreement.

Section 4.5 **Commencement of Performance**. The Participating State shall be fully positioned within 90-days of the date of this Agreement to act on providing the type of credit support that the Approved State Program was established to provide using the Allocated Funds.

Section 4.6 **National Standards and Internal Control and Financial Management System Requirements**.

(a) The Participating State shall comply with the national standards established by Treasury and published by Treasury on its website at **http://www.treas.gov/resource-center/sb-programs/Pages/ssbci.aspx**, including standards established by Treasury after the date of this Allocation Agreement.

(b) The Participating State shall comply with the standards for financial management systems, including

internal control requirements, specified in the grants management common rule at § __.20. Notwithstanding the foregoing, the cash management requirements in § __.20(b)(7) of the grants management common rule shall not apply to the Participating State.

Section 4.7 **Quarterly Reports**. Within 30 days after the end of each quarterly reporting period (excluding the quarterly reporting period ending on the expiration date of this Allocation), the Participating State shall deliver to Treasury a quarterly report, which shall be signed by the Authorized State Official. The reporting period covered by, and the due date for, each quarterly report are listed in Annex 5 attached hereto. Each report shall be in such form as Treasury may, from time to time prescribe, and shall consist of the following information:

(a) a report on the use of Allocated Funds for each Approved State Program on both a quarterly and cumulative basis, including the total amount of Allocated Funds used for direct and indirect administrative costs and the total amount of Allocated Funds used; and

(b) a certification in the form prescribed in Annex 4 attached hereto.

In addition, the Authorized State Official shall attach to each quarterly report, a completed and executed Federal Financial Report, SF-425. The Federal Financial Report shall be on an accrual basis.

Section 4.8 **Annual Report**. By March 31 of each year, beginning March 31, _____, the Participating State shall submit to Treasury an annual report, which shall be signed by the Authorized State Official, in such form as Treasury may from time to time prescribe that contains the following:

(a) the number of borrowers that received new loans originated under the Approved State Program during the Allocation Time Period;

(b) the total amount of such new loans;

(c) breakdowns by industry type, loan amount, annual sales, and date of disbursement;

(d) the zip code of each borrower that received such a new loan;

(e) cumulative loan volumes and growth rate of cumulative loan volumes;

(f) loan volume by zip code;

(g) loan product type by credit risk level (by lender and zip code);

(h) delinquency patterns by credit risk level (by lender and zip code);

(i) loan volume and loan amounts by lender (by zip code);

(j) loan volume and type by credit risk level;

(k) number and percentage of loans (credit products) approved for new businesses (i.e., businesses up to 2 years old) as compared to existing businesses;

(l) loan volume and amount to specific groups (i.e., women-owned businesses, minority-owned businesses, and veteran-owned businesses);

(m) number of employees of each borrower (worldwide and not for any specific locality including state or municipality);

(n) a schedule describing how the Participating State intends to apportion the Allocated Funds among its Approved State Programs; and

(o) for the final annual report due on March 31, _____, a summary of the performance results of this Allocation, including a narrative of how or the extent to which the purpose of this Allocation, as described in Annex 1 attached hereto, was accomplished using Allocated Funds.

In addition, the Authorized State Official shall attach to the Participating State's final annual report a completed and executed Federal Financial Report, SF-425. The due dates for the submission of the annual reports are listed in Annex 5 attached hereto.

Section 4.9 **Access to Records of and Certifications from Financial Institutions.** Before providing any loan, loan guarantee, or other financial assistance using Allocated Funds to a financial institution or any other private entity, the Participating State shall obtain the following:

(a) the binding written agreement of the financial institution or other private entity to make available to the Treasury Inspector General all books and records related to the use of the Allocated Funds, subject to the Right to Financial Privacy Act (12 U.S.C. § 3401 et seq.) as applicable;

(b) a certification from the financial institution that the financial institution is in compliance with the requirements of 31 C.F.R. § 103.121; and

(c) a certification from the private entity, including any financial institution, that the Principals of such entity have not 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)).

Section 4.10 **Notices of Certain Material Events.** The Participating State shall promptly notify Treasury in writing in reasonable detail of any of the following events:

(a) any proceeding instituted against the Participating State in, by or before any court, governmental or administrative body or agency, which proceeding or its outcome could have a material adverse effect upon the operations, assets or properties of the Participating State;

(b) any material adverse change in the condition, financial or otherwise, or operations of the Participating State;

(c) the occurrence of any event described in Sections 6.1 and 6.2 herein (General Events of Default and Specific Events of Default);

(e) problems, delays, or adverse conditions, real or anticipated, that will materially impair the Participating State's ability to accomplish the purpose of this Allocation set forth in Annex 1 attached hereto, with a description of actions taken or contemplated to be taken, and any assistance needed to resolve the situation;

(f) deviations from the annual schedule submitted by the Participating State under Section 4.8(n) apportioning Allocated Funds among its Approved State Programs if the deviations will result in the need for additional funding from any third party to accomplish the purpose of this Allocation set forth in Annex 1 attached hereto; and

(g) favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

Section 4.11 **High Risk**. Notwithstanding the foregoing, Treasury may unilaterally increase the frequency and the scope of Participating State reporting requirements if Treasury finds the Participating State to be high risk in accordance with the grants management common rule at § __.12.

Section 4.12 **Subgrants**. The Participating State shall not make any Subgrants using Allocated Funds without the prior written approval of Treasury.

Section 4.13 **Retention of Records**. The Participating State shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Allocation for a period of three years from the date of submission of the final quarterly report under Section 4.7

herein, except as otherwise provided in the grants management common rule at § __.42.

Section 4.14 **Right to Inspect, Audit and Investigate.** Treasury, the Treasury Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of the Participating State that are pertinent to the Allocation, in order to make audits, investigations, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to the Participating State's personnel for the purpose of interview and discussion related to such documents. This right of access shall last as long as records are retained, except that Treasury's right of access expires on September 27, 2017.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

The Participating State hereby makes each and all of the following representations and warranties:

Section 5.1 **Designation of Eligible Organization.** The Participating State has designated the

_____

to implement the Participating State's Approved State Program. The _____

is a(n) _____ of the Participating State.

Section 5.2 **Authority.** The Participating State has all requisite power and authority under the constitution and the laws of the _____ to execute and deliver this Agreement, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

Section 5.3 **Due Authorization.** The execution and delivery by the Participating State of this Agreement, the consummation by the Participating State of the transactions contemplated hereby, and the performance by the Participating State of its obligations hereunder have been duly authorized by all necessary action on the part of the Participating State.

Section 5.4 **Due Execution and Delivery; Binding Agreement.** This Agreement has been duly executed and delivered by the Participating State, and constitutes the legal, valid and binding obligation of the Participating State enforceable in accordance with its terms.

Section 5.5 **No Conflicts.** The execution and delivery by the Participating State of this Agreement, the consummation by the Participating State of the transactions contemplated hereby, and the performance by the Participating State of its obligations hereunder do not and will not:

(a) conflict with or violate any existing law or administrative regulation, or any existing administrative or judicial decree or order; and

(b) conflict with, result in a breach of, or constitute a default under any existing agreement or other instrument to which the Participating State is subject or by which it is bound.

Section 5.6 **Litigation.** There is no lawsuit or judicial or administrative action, proceeding, or investigation pending or threatened against the Participating State which is likely to have a material adverse effect on the ability of the Participating State to perform its obligations under this Agreement.

Section 5.7 **Disclosure.** Neither this Agreement nor any Annex attached hereto, nor any certification or assurance referenced herein, nor any other document or instrument delivered to Treasury by the Participating State pursuant to this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading. The Participating State has disclosed, in writing, to Treasury all facts that might reasonably be expected to result in a material adverse effect upon the Participating State's ability either to conduct its business or to carry out the purpose of this Allocation. The Participating State has not knowingly and willfully made or used a document or writing containing any false, fictitious or fraudulent statement or entry as part of its correspondence or communication with Treasury.

ARTICLE VI
TERMINATION FOR CAUSE AND OTHER REMEDIES

Section 6.1 **General Events of Default**. In the event that either:

(a) any representation, warranty, certification, assurance or any other statement of fact contained in this Agreement or the Application of the Participating State including, but not limited to, the Assurances (Non-Construction) contained as part of the Application, or any representation or warranty set forth in any document, report, certificate, financial statement or instrument now or hereafter delivered to Treasury in connection with this Agreement, is found to be inaccurate, false, incomplete or misleading when made, in any material respect; or

(b) the Participating State materially fails to observe, comply with, meet or perform any term, covenant, agreement or other provision contained in this Agreement including, but not limited to, the Participating State's failure to submit complete and timely quarterly reports or annual reports, or the Participating State ceases to use the Allocated Funds to undertake the activities authorized in Annex 1 attached hereto;

Treasury, in its sole discretion, may find the Participating State to be in default.

Section 6.2 **Discretionary Remedies**. If Treasury finds the Participating State to be in default under Section 6.1 of this Agreement, Treasury may, in its sole discretion, take any one or more of the following actions, subject to Section 6.6 of this Agreement:

(a) withhold Disbursements pending the Participating State's correction of the default; or

(b) wholly or partly reduce, suspend, or terminate the commitment of Treasury to make Disbursements to the

Participating State under this Agreement, whereupon the commitment of Treasury to make Disbursements to the Participating State under this Agreement will be reduced, suspended, or terminated, as the case may be.

Section 6.3 **Specific Events of Default**. In the event of a Treasury Inspector General audit finding of either:

(a) intentional or reckless misuse of Allocated Funds by the Participating State; or

(b) the Participating State having intentionally made misstatements in any report issued to Treasury under the Act;

Treasury shall find the Participating State to be in default.

Section 6.4 **Mandatory Remedies**. If Treasury finds the Participating State to be in default under Section 6.3 of this Agreement, Treasury shall take the following actions:

(a) in the case of an event of default under Section 6.3(a), recoup any misused Allocated Funds that have been disbursed to the Participating State; or

(b) in the case of an event of default under Section 6.3(b), terminate the commitment of Treasury to make Disbursements to the Participating State under this Agreement, and find the State ineligible to receive any additional funds under the Act, whereupon the commitment of Treasury to make Disbursements to the Participating State under this Agreement will be terminated and the State will be ineligible to receive any additional funds under the Act.

Section 6.5 **No Waiver**. No delay or failure by Treasury in the exercise of any right, power, or remedy accruing upon the occurrence of any event described in Section 6.1 or Section 6.3 herein shall impair any such right, power, or remedy, or be construed to be a waiver of or acquiescence in such event, nor shall any abandonment or discontinuance of steps taken to exercise any right, power or remedy preclude any further exercise thereof.

Section 6.6 **Prior Notice to Participating State of Exercise of Remedies**. Prior to exercising or imposing any remedy contained in Section 6.2 other than a withholding of a Disbursement(s) under Section 6.2(a), Treasury will, to the maximum extent practicable, provide the Participating State with written notice of the event(s) described in Section 6.1 hereof and the proposed remedy. Treasury's written notice will give the Participating State 10 calendar days from the date of the notice to respond. Treasury may, in its sole discretion, also afford the Participating State 20 calendar days from the date of the notice to correct the event. If the Participating State fails to correct the event within either the 10 calendar day response time or, if applicable, the 20 calendar day correction or cure period, Treasury may, in its sole discretion, impose or exercise the remedy or remedies set forth in its written notice. Moreover, if the Participating State fails to respond timely to Treasury's written notice, Treasury may impose or exercise the remedy or remedies set forth in its written notice, effective as of the date specified in such notice. Nothing in this Agreement, however, will provide the Participating State with any right to any formal or informal hearing or comparable proceeding not otherwise required by law.

ARTICLE VII
TERMINATION OF AVAILABILITY

Section 7.1 **Termination of Availability**. Treasury may, upon submitting to the Participating State written notification, terminate the Participating State's Allocation of any portion of the Allocated Funds that Treasury has not disbursed to the Participating State by 2-years from the date of this Allocation Agreement.

ARTICLE VIII
MISCELLANEOUS

Section 8.1 **Notices**. All notices, requests, demands, consents, waivers and other communications given under any provision of this Agreement shall be in writing and shall be delivered by hand, mailed by postage-prepaid first-class mail, delivered by overnight courier service, or transmitted

electronically via facsimile (fax) or email transmission to the addresses indicated below:

if to Treasury:

Department of the Treasury
ATTN: State Small Business Credit Initiative
Main Treasury Building
Room 1310
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Telephone No. (202) 622-0713
Facsimile No. (202) 622-9947
Email address: SSBCIapplications@do.treas.gov

if to the Participating State:

_____
_____
Attention: _____

Telephone No. _____
Facsimile No. _____
Email address: _____

The address, telephone number, email address or facsimile number for either party hereto may be changed at any time and from time to time upon written notice given to the other party.

Section 8.2 **Entire Agreement**. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements or understandings, written or oral, in respect thereof.

Section 8.3 **Amendments**. Unless otherwise expressly provided in this Agreement, no provision of this Agreement may be amended, modified, waived, supplemented, discharged or terminated orally but only by an instrument in writing duly executed by Treasury and the Participating State.

Section 8.4 **Assignment**. The Participating State may not assign or transfer its rights under this Agreement without the prior written consent of Treasury.

Section 8.5 **Successors.** This Agreement shall be binding upon and inure to the benefit of Treasury and the Participating State and their respective successors and permitted assigns.

Section 8.6 **Cumulative Rights.** Each and every right, power, and remedy conferred in this Agreement shall be cumulative and shall be in addition to every other right, power and remedy herein conferred or now or hereafter existing at law or in equity, by statute or otherwise.

Section 8.7 **No Election.** Each and every right, power, and remedy, whether conferred in this Agreement or otherwise existing, may be exercised from time to time and as often and in such order as may be determined by Treasury, and the exercise or the beginning of the exercise of any right, power or remedy shall not be construed to be an election or a waiver of the right to exercise at the same time or thereafter any other right, power or remedy.

Section 8.8 **Rights Confined to Parties.** Nothing expressed or implied herein is intended or shall be construed to confer upon, or to give, any person other than the Participating State or Treasury, and their respective successors and permitted assigns, any right, remedy or claim under or by reason of this Agreement or of any term, condition, representation, warranty, covenant, or agreement contained herein, and all of the terms, conditions, representations, warranties, covenants, and agreements contained herein shall be for the sole and exclusive benefit of the Participating State, and Treasury, and their respective successors and permitted assigns.

Section 8.9 **No Partnership.** Neither this Agreement nor any part or provision hereof, nor the exercise by Treasury of any of its respective rights or remedies hereunder, shall evidence or establish, be construed as evidencing or establishing, any partnership, joint venture, or similar relationship of Treasury with the Participating State.

Section 8.10 **Survival of Representations and Warranties.** All representations, warranties, covenants, and agreements made by the Participating State in this Agreement (including, without limitation, the Application and the Assurances (Non-Construction) submitted by the Participating State as part of

the Application) or in any document, report, certificate, financial statement, note, or instrument now or hereafter furnished in connection with this Agreement shall survive the execution and delivery of this Agreement and the Disbursement of Allocated Funds pursuant hereto.

Section 8.11 **Applicable Law.** This Agreement, and the rights and obligations of the parties hereunder, shall be governed by, and construed and interpreted in accordance with United States Federal law and not the law of any State or locality of the United States. To the extent that a court looks to the laws of any State to determine or define the Federal law, it is the intention of the parties hereto that such court shall look only to the laws of the _____.

Section 8.12 **Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not of itself invalidate or render unenforceable such provision in any other jurisdiction.

Section 8.13 **Headings.** The descriptive headings of the various articles and sections contained in this Agreement were formulated and are for convenience only and shall not be deemed to affect the meaning or construction of the provisions hereof.

Section 8.14 **Counterparts.** This Agreement may be executed in separate counterparts, each of which shall constitute an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

TREASURY: **United States Department of the Treasury**

By: _____
Name: Don Graves Jr.
Title: Deputy Assistant Secretary

PARTICIPATING STATE: _____

By: _____
Name: _____
Title: _____

_____

_____

ANNEX 1

PURPOSE OF THE ALLOCATION

This Annex 1 constitutes an integral part of the Allocation Agreement (the "Allocation Agreement") dated as of _____, between the **United States Department of the Treasury** (the "Treasury") and the _____ (the "Participating State"). Capitalized terms used herein and not defined herein shall have the respective meanings ascribed to them in the Allocation Agreement.

The purpose of the Allocation is to assist the Participating State to increase the amount of capital made available by private lenders to small businesses through its Approved State Program.

To accomplish this, the Participating State will undertake the following activities with the Allocated Funds under its Approved State Program:

CAPITAL ACCESS PROGRAM (CAP)

ANNEX 2

DISBURSEMENT
POLICIES AND PROCEDURES

This Annex 2 constitutes an integral part of the Allocation Agreement (the "Allocation Agreement") dated as of _____, between the **United States Department of the Treasury** (the "Treasury") and the _____ (the "Participating State"). Capitalized terms used herein and not defined herein shall have the respective meanings ascribed to them in the Allocation Agreement.

1. Treasury Disbursement of Initial One-Third of Allocated Funds to the Participating State

Treasury will promptly disburse the first one-third of the Allocation to the Participating State after the Participating State executes the Allocation Agreement and Treasury receives the opinion required by Section 3.2 ("Opinion of Participating State Counsel") of the Allocation Agreement.

2. Subsequent Disbursements of Allocated Funds

Except as provided in paragraphs 2 and 3 herein, Treasury will disburse to the Participating State each successive one-third of the Allocation Funds after the Participating State certifies to Treasury that it has expended, transferred, or obligated 80 percent of the last transferred one-third for federal contributions to, or for the account of, the Approved State Program. The Participating State certification shall be in the form attached hereto as Exhibit 2-1.

3. Authority to Withhold Disbursements Pending Audit

Treasury may withhold the Disbursement of any successive one-third of the Allocated Funds pending the results of a financial audit. Treasury will notify the Participating State of its decision to withhold such Disbursement.

4. Withholding or Suspending Payments

Notwithstanding any other provision contained in the Allocation

Agreement, Treasury may, in its discretion, withhold or suspend making Disbursements to the Participating State for failure to comply with any term, agreement, covenant or condition of the Allocation Agreement. Treasury will generally resume making Disbursements to the Participating State upon the Participating State's subsequent compliance.

5. Cash Depositories

(a) Disbursements shall be deposited and maintained in a United States Government-insured interesting-bearing account whenever possible.

(b) Consistent with the United States Government national goal of expanding opportunities for women-owned and minority-owned business enterprises, Treasury encourages the Participating State to use women-owned or minority-owned depository financial institutions (a depository financial institution which is owned at least 50 percent by women or minority group members).

(c) The Participating State is not required to maintain a separate depository account for receiving Disbursements of Allocated Funds. If the Participating State maintains a single depository account where Allocated Funds are commingled with funds from other sources, the Participating State shall maintain on its books a separate subaccount for the Allocated Funds.

EXHIBIT 2-1

CERTIFICATION OF PERFORMANCE AND REPRESENTATIONS AND WARRANTIES

United States Department of the Treasury
Main Treasury Building, Room 1310
1500 Pennsylvania Avenue
Washington, D.C. 20220

Reference is made to the Allocation Agreement dated as of _____ (the "Allocation Agreement"), between the United States Department of the Treasury ("Treasury") and the _____ (the "Participating State"). Capitalized terms used herein and not defined herein shall have the respective meanings ascribed to them in the Allocation Agreement.

This certification is delivered to Treasury pursuant to paragraph 2 ("Subsequent Disbursement Requests of Allocated Funds") of Annex 2 ("Disbursement Policies and Procedures") attached to the Allocation Agreement.

The undersigned, on behalf of the Participating State, hereby makes the following certifications as of the date of this certification:

1. the Participating State has performed and complied with all applicable terms, covenants, agreements and conditions required by the Allocation Agreement to be performed or complied with by it as of this date;
2. the representations and warranties set forth in the Allocation Agreement and in the Assurances (Non-Construction) contained as part of the Application are true and correct in all material respects;
3. the Participating State has expended, transferred, or obligated 80 percent or more of the last disbursed one-third of Allocated Funds for federal contributions to, or for the account of, the Participating State's Approved State Programs; and
4. the authority of the undersigned to execute and deliver this certification on behalf of the Participating State is valid and in full force and effect.

By: _____

Name: _____

Title: _____

_____

Date: _____

ANNEX 3

SCHEDULE

This Annex 3 constitutes an integral part of the Allocation Agreement (the "Allocation Agreement") dated as of _____ between the **United States Department of the Treasury** (the "Treasury") and the _____ (the "Participating State"). Capitalized terms used herein and not defined herein shall have the respective meanings ascribed to them in the Allocation Agreement.

Limitation on Use of Allocated Funds for Administrative Expenses

The Participating State may use its Allocation to pay both direct and indirect administrative costs incurred in carrying out the Approved State Program subject to the limitations described in the table below.

Allocation	**Maximum Amount Available to Pay for Direct and Indirect Administrative Costs**
First One-Third (33%) or _____	Five Percent (5%) or _____
Second One-Third (33%) or _____	Three Percent (3%) or _____
Third One-Third (34%) or _____	Three Percent (3%) or _____

ANNEX 4

QUARTERLY USE-OF-FUNDS-REPORT

This Annex 4 constitutes an integral part of the Allocation Agreement the "Allocation Agreement")dated as of _____, between the **United States Department of the Treasury** (the "Treasury") and the _____ (the "Participating State"). Capitalized terms used herein and not defined herein shall have the respective meanings ascribed to them in the Allocation Agreement.

As part of its quarterly reporting requirement, the Participating State shall submit a certification in the form attached hereto as Exhibit 4-1.

EXHIBIT 4-1

CERTIFICATION ON USE-OF-ALLOCATED FUNDS

United States Department of the Treasury
Main Treasury Building, Room 1310
1500 Pennsylvania Avenue
Washington, D.C. 20220

Reference is made to:

the Allocation Agreement dated as of _____ (the "Allocation Agreement"), between the United States Department of the Treasury ("Treasury") and the _____ (the "Participating State"). Capitalized terms used herein and not defined herein shall have the respective meanings ascribed to them in the Allocation Agreement.

This certification is delivered to Treasury pursuant to Section 4.7 ("Quarterly Reports") of the Allocation Agreement.

The undersigned, on behalf of the Participating State, hereby makes the following certifications as of the date of this certification:

1. the information provided by the Participating State under Section 4.7 ("Quarterly Reports") of the Allocation Agreement on the use of Allocated Funds is accurate;
2. funds continue to be available and legally committed to contributions by the Participating State to, or for the account of, Approved State Programs, less any amount that has been contributed by the Participating State to, or for the account of, Approved State Programs subsequent to the Participating State being approved for participation in the State Small Business Credit Initiative;
3. the Participating State is implementing its Approved State Program or Programs in accordance with the Act and the regulations or other guidance issued by Treasury under the Act; and
4. the authority of the undersigned to execute and deliver

this certification on behalf of the Participating State is valid and in full force and effect.

By: _____

Name: _____

Title: _____

_____

Date: _____

ANNEX 5

REPORTING SCHEDULE FOR THE _____

Quarterly Report Due Dates	
Report for period covering:	Due Date:

Annual Report Due Date	
Report for period ending on:	Due Date: