

**MONTANA DEPARTMENT OF COMMERCE**  
**OPPORTUNITIES IN RURAL ECONOMIES LOAN PARTICIPATION PROGRAM**  
**ECONOMIC DEVELOPMENT ORGANIZATION ENROLLMENT AGREEMENT**

**THIS AGREEMENT** is made and entered into as of **DATE**, by and between Enrolled EDO Legal Entity Name (the “Enrolled Economic Development Organization” or “Enrolled EDO”) and the Montana Department of Commerce (“Commerce”).

**WITNESSETH**

**WHEREAS**, Commerce is an agency of the State of Montana; and

**WHEREAS**, Commerce administers the Opportunities in Rural Economies Loan Participation Program (“ORE LPP” or “Program”), through which Commerce partners with enrolled Economic Development Organizations (Enrolled EDOs) to enhance access to financing for Montana businesses; and;

**WHEREAS**, the Enrolled EDO is a \_\_\_\_\_ duly organized and existing under the laws of the State of Montana; and with its principal office at \_\_\_\_\_; and

**WHEREAS**, Commerce has approved the enrollment of the Enrolled EDO to assist eligible businesses complete Phase One and, as applicable, Phase Two of the application process for a ORE LPP loan; and

**WHEREAS**, the Enrolled EDO must assist eligible businesses apply for ORE LPP loans in accordance with Program requirements and policies;

**WHEREAS**, the Enrolled EDO and Commerce are both authorized to enter into this Agreement for the purpose of defining each party’s rights and obligations under the ORE LPP; and

**WHEREAS**, the Enrolled EDO and Commerce desire to formalize the terms under which the Enrolled EDO will assist, submit, and manage ORE LPP applications in compliance with Program requirements.

**NOW THEREFORE**, in consideration of the foregoing, the mutual covenants and conditions contained herein and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree, and covenant as follows:

### **Section 1. Definitions**

The following words and terms have the following respective meanings:

- 1) "Borrower" means the person or entity to whom a Participation Loan is made by the approved Financial Institution.
- 2) "Collateral" means the Real or Personal Property, which is or at any time becomes subject to a perfected security interest for the benefit of Commerce and Lender as applicable.
- 3) "Commitment Letter" means that written document, originated by Commerce specifying the terms and conditions under which Commerce will participate in a specific loan with the Lender.
- 4) "Enrolled EDO" means an Economic Development Organization that is approved by Commerce through the execution of an Economic Development Organization Enrollment Agreement.
- 5) "Lender" means a Commerce approved bank/financial institution issuing a loan in which Commerce will participate with Program funds.
- 6) "Incentive Commitment" means a written notice issued by Commerce to the enrolled Economic Development Organization following the approval of a Participation Loan application outlining the financial incentive the Enrolled EDO is eligible to receive for its role in supporting the transaction.
- 7) "Loan Agreement" means the agreement between the Borrower and the Financial Institution setting forth the terms and conditions applicable to a Participation Loan.
- 8) "Loan Documents" mean the Security Agreement, the Loan Agreement, the Note, Guarantee(s) and other documents and instruments evidencing, securing, or otherwise pertaining to a Participation Loan, including as applicable, UCC financing statements.

- 9) "Note" means the promissory note executed by a Borrower evidencing a Participation Loan, naming the Lender as payee and setting forth the terms of the obligation, in a form acceptable to Commerce.
- 10) "Loan Participation Certificate" means the certificate executed by the Financial Institution and accepted in writing by Commerce setting forth the amount of a Participation Loan, the Financial Institution's and Commerce's respective shares thereof, according to the terms of the Commitment Letter.
- 11) "Participation Loan" means a loan in which a Participation Certificate has been issued by the Financial Institution and Commerce has accepted the participation in writing.
- 12) "Participation," "Participation Percentage," "Participation Interest" or words of like import mean Commerce's undivided interest in and ownership of a percentage of a Participation Loan as evidenced by the Participation Certificate issued by the Lender with respect to such Participation Loan.
- 13) "Program" means Opportunities in Rural Economies Loan Participation Program administered by the Montana Department of Commerce as authorized by Title 90, Chapter 1, Part 2, MCA.
- 14) "Project" means the Real Property, equipment, fixtures, furnishings, working capital and personal property or any one or more of the foregoing financed by a Participation Loan.
- 15) "Personal Property" means all equipment, machinery, inventory, receivables, tangible and intangible assets, and personal property that may be a part of a Project.
- 16) "Program Guidance" means applicable Loan Participation Program administrative rules, guidance, administrative directives, or procedures that may be established or amended by Commerce.
- 17) "Security Agreement" means an agreement granting a lien or security interest in Collateral for a Participation Loan including a mortgage, trust indenture, or other instrument incentivizing the performance of the Borrower's obligation to repay the Participation Loan.
- 18) "Real Property" means land and any buildings, structures, and equipment permanently attached or fixed to the land.

## **Section 2. Rules of Interpretation**

This Agreement will be governed and interpreted in accordance with Montana law. Any litigation concerning this Agreement must be brought only in the Montana First Judicial District, Lewis and Clark County. Each party must pay its own costs and attorney fees, except as otherwise stated in this Agreement (§ 18-1-401 MCA).

## **Section 3. Purpose**

The purpose of this Agreement is to establish the roles, responsibilities, and obligations of the Enrolled EDO in facilitating the ORE LPP administered by Commerce.

## **Section 4. Processing of Participation Loan**

The Enrolled EDO's role under this Agreement is to facilitate the loan application process, ensure compliance with Program requirements (including reporting obligations), and provide technical assistance to prospective borrowers and Lenders. The Enrolled EDO does not originate, structure, or fund loans but is responsible for working directly with prospective borrowers and Lenders to complete all phases of the Program application process, including but not limited to, a Preliminary Project Review Application and Comprehensive Loan Application, as applicable. The Lender retains full discretion over loan underwriting and structuring, while the Enrolled EDO assists in gathering required documentation, ensuring program compliance, and streamlining communication between all parties.

Commerce requires the Enrolled EDO to operate in a neutral capacity, acting as a liaison between the prospective borrower and the Lender while ensuring that Program requirements are met. The Enrolled EDO must maintain program integrity, facilitate seamless transactions, and provide informed technical assistance without asserting ownership or control over state funds. The Enrolled EDO must promptly communicate with the prospective borrower, Lender, and Commerce as needed to timely facilitate the loan application process. The Enrolled EDO agrees it is not an agent of Commerce. The Enrolled EDO agrees not to represent itself as Commerce.

The Enrolled EDO shall serve as a facilitator throughout the loan application process, assisting prospective borrowers in completing all required phases of the ORE LPP application process. This

includes, but is not limited to, the borrower checklist (when applicable), preliminary project application, and comprehensive loan application. The Enrolled EDO is responsible for ensuring that applications are accurate, complete, and include all necessary supporting documentation, which may require coordinating with the prospective borrower and the Lender. The Enrolled EDO shall submit only complete applications to Commerce. Upon receipt, Commerce will make an initial determination as to whether the application is fully and properly completed and will notify the Enrolled EDO accordingly. The Enrolled EDO is responsible for communicating updates regarding application status, deficiencies, or required revisions to both the prospective borrower and the Lender in a timely manner.

The Enrolled EDO shall not retain or assert control over original loan documents, which remain the responsibility of the Lender, but must facilitate the secure and timely exchange of required documentation between the Lender and Commerce. The Enrolled EDO shall comply with all applicable state and federal laws regarding the protection of Borrower data and confidentiality. Borrower information shall only be disclosed to Commerce and the Lender, unless otherwise required by law. Application materials submitted to Commerce may be subject to the public's right to know (Article II, § 9 of the Montana Constitution) as well as Montana's Public Records Act (§§ 2-6-1001, et seq.).

#### **Section 5. Submission of Information**

The Enrolled EDO shall provide Commerce with all necessary and sufficient information to determine whether the Program application conforms to the policies, rules, and regulations of the Program.

#### **Section 6. Record Separation Requirement**

In transactions where the Enrolled EDO is both an Enrolled EDO and the Participating Lender, the Enrolled EDO shall maintain separate records for its Enrolled EDO facilitation activities outlined by this Agreement from records associated with its lending activities outlined in the Lender Loan Servicing Agreement (LLSA), ensuring transparency in each role.

#### **Section 7. Commitment to Participate**

Upon approval by Commerce of a loan application, a Commitment Letter shall be issued to the Lender, the Enrolled EDO, and the Borrower, setting forth the terms and conditions under which

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Commerce will participate in the loan. The Commitment Letter shall define Commerce's Participation Percentage, the total principal amount of the loan, the terms and conditions of Participation, any required conditions precedent to loan closing, and any applicable compliance, or reporting required beyond this agreement. The issuance of the Commitment Letter does not obligate Commerce to disburse funds until all conditions precedent have been met to Commerce's satisfaction.

In addition to the Commitment Letter, Commerce shall issue an Incentive Commitment solely to the Enrolled EDO. The Incentive Commitment shall specify the principal amount of the loan, the interest rate applicable to Commerce's Participation, and the Enrolled EDO's entitlement to 100% of the interest earned on Commerce's Participation, free and clear of programmatic requirements. Issuance and fulfillment of the Incentive Commitment are contingent upon the Enrolled EDO's continued compliance with this Agreement and all applicable Program Guidance.

The Enrolled EDO shall acknowledge receipt of the Commitment Letter and Incentive Commitment within fifteen (15) business days of issuance. The Enrolled EDO must formally accept the Incentive Commitment in writing before receiving any Program incentives or benefits. Commerce may rescind the Incentive Commitment if the Enrolled EDO fails to meet the terms of this Agreement, if material misrepresentations are identified or in cases of early loan payoff. When applicable, a revised Incentive Commitment will be issued to reflect the updated loan terms.

The Commitment Letter and Incentive Commitment are specific to the approved loan transaction and Borrower and are non-transferable. The Enrolled EDO acknowledges that the Incentive Commitment is contingent upon its continued compliance with this Agreement and all applicable Program policies. The Enrolled EDO further acknowledges that the Incentive Commitment is contingent upon the Borrower making payments in accordance with the terms of the loan, and that Commerce shall have no obligation to disburse any incentive funds if sufficient payments are not received from the Borrower.

## **Section 8. Payment and Delivery of Documents for Loan Participation**

The Enrolled EDO shall collect and review all required loan documents from the Lender to ensure completeness and consistency with the terms outlined in the Commitment Letter. Once verified, the

Enrolled EDO shall submit the full loan document package, including the Participation Certificate furnished by the Lender, to Commerce for final review and execution.

The Enrolled EDO must maintain clear records of all submitted applications and related documentation for the duration of the Participation Loan or five years after the termination of this Agreement, whichever occurs first, and shall provide Commerce access to such records upon request for purposes of monitoring or audit.

Commerce will execute the Participation Certificate upon confirmation that all Program requirements and the Representations and Warranties outlined in Exhibit A have been satisfied. Exhibit A, which is attached hereto, is incorporated herein by reference to this Agreement. If any post-closing items remain outstanding (i.e. final title policy), such items must be submitted to Commerce within one hundred twenty (120) calendar days of closing.

Following execution of the Participation Certificate and confirmation that all conditions precedent have been met, Commerce will disburse its Participation Interest directly to the Lender. The Enrolled EDO is not responsible for managing the loan closing or disbursement process but may assist in ensuring that all documentation is submitted in a timely and complete manner.

The Lender remains solely responsible for executing closing documents, finalizing loan terms, and disbursing funds to the Borrower in accordance with the approved loan and draw schedule. Commerce's disbursement is limited to its Participation Interest and is contingent upon compliance with the Commitment Letter, the Loan Agreement, Program Guidance, and this Agreement.

### **Section 9. Assignability**

(1) The Enrolled EDO shall not assign, transfer, or subcontract its rights or obligations under this Agreement without the prior written consent of Commerce. Such consent shall not be unreasonably or arbitrarily withheld, provided that the assignment is consistent with and subject to all terms and conditions of this Agreement. Any approved assignment or subcontracting shall not relieve the Enrolled EDO of its obligations under this Agreement. For purposes of this Agreement, a merger or change in control of the Enrolled EDO shall not be considered an assignment subject to this paragraph.

(2) Should Commerce assign its rights or obligations under this Agreement, it will notify the Enrolled EDO of such assignment. Such notice shall include the name and address of the assignee and instructions on any required actions or communications under this Agreement.

## **Section 10. Warranties**

The Enrolled EDO represents and warrants as of the date of this Agreement:

- a) The Enrolled EDO is duly organized, validly existing, and in good standing under the laws of its jurisdiction, with the legal authority to fulfill its obligations under this Agreement. The Enrolled EDO shall comply with all applicable state and federal laws, regulations, and Program requirements.
- b) The Enrolled EDO shall perform its responsibilities in accordance with Commerce's Program Guidance and in a neutral and non-preferential manner. The Enrolled EDO shall not engage in loan structuring, credit decision-making, or financial underwriting.
- c) The Enrolled EDO shall exercise due diligence in reviewing and submitting ORE LPP applications, ensuring they are complete and in compliance with Program requirements before submission to Commerce. The Enrolled EDO's role in processing ORE LPP applications shall not be construed as a representation or warranty regarding the enforceability, validity, or accuracy of loan documents.
- d) The Enrolled EDO shall act impartially and avoid actual or perceived conflicts of interest. This includes refraining from prioritizing, delaying, or excluding applications based on personal, financial, industry-based, or organizational preferences. Excluding the Enrolled EDO's right to any Incentive Commitment or Flat Rate Application Incentive, the Enrolled EDO shall not use its role to confer financial benefit to itself, its employees, or any affiliated individuals or entities. The Enrolled EDO must disclose any relationships, affiliations, or circumstances that could reasonably be perceived as a conflict of interest in connection with any application or activity under this Agreement.
- e) The Enrolled EDO shall administer Program documentation and communications in accordance with Commerce's requirements, maintaining transparency in its role as an intermediary. The Enrolled EDO shall not assert ownership over Program funds or represent itself as Commerce in any transaction.



- f) The Enrolled EDO shall ensure that all individuals responsible for administering services or facilitating ORE LPP applications under this Agreement possess the necessary knowledge, experience, and expertise to competently perform duties.

### **Section 11. Incentive Payment to Enrolled EDO**

Upon receipt of Participation Loan payments from the Lender, Commerce shall track and hold the Enrolled EDO's earned interest incentive until remittance. The Enrolled EDO shall be entitled to an incentive made up of 100% of the interest earned on Commerce's Participation Interest, as outlined in the Incentive Commitment. The Enrolled EDO is not entitled to any portion of the principal payments attributable to Commerce's Participation Interest. The Enrolled EDO is not entitled to any portion of the principal repayments or interest attributable to the Lender's Participation Interest.

Commerce shall remit the Enrolled EDO's incentive payment on a quarterly basis, aggregating all earned interest across Participation Loans facilitated by the Enrolled EDO during the quarter. Commerce shall include a report with each remittance of an incentive payment including at a minimum the following details: (i) Borrower's Name, (ii) Commerce Loan Number, (iii) Total Loan Payments Received during the Quarter, (iv) Enrolled EDO's Earned Interest Incentive, and (v) Remaining Commerce Participation Balance.

Commerce may conduct two audits (semiannual) of all quarterly incentive payments to verify accuracy and compliance with Program requirements. If any discrepancies are identified, Commerce shall reconcile the difference in the next scheduled incentive payment.

The Enrolled EDO shall independently review each remittance report and reconcile it with internal records. Any discrepancies must be reported to Commerce in writing within ten (10) business days of receipt. Failure to do so will be deemed acceptance of the remittance report. This reconciliation obligation remains in effect regardless of Commerce's audit activities.

If a Borrower's payment is delinquent or defaulted, the Enrolled EDO's incentive payment shall be adjusted accordingly. No incentive payment shall be made on unpaid, delinquent, or non-performing loan balances.

Commerce reserves the right to rescind, withhold, or adjust the Enrolled EDO's incentive payment if the Enrolled EDO is found to be non-compliant with program requirements, fails to provide required

documentation, or is subject to corrective action under this Agreement or in the cases of early Participation Loan payoff.

### **Section 12. Flat-Rate Application Incentive**

To encourage participation and offset administrative costs for Enrolled EDOs, Commerce shall issue a one-time flat-rate incentive payment of \$750 per comprehensive loan application submitted by the Enrolled EDO and approved by Commerce pursuant to this Agreement. For purposes of this incentive, a submitted and approved application refers to a Comprehensive Loan Application (Phase Two) that results in the execution of a Commitment Letter and Incentive Commitment. The flat-rate incentive shall be disbursed to the Enrolled EDO upon the execution of a Commitment Letter and Incentive Commitment by all applicable parties. This incentive is separate from and in addition to the interest-based incentive described in Section 11. The flat-rate incentive shall not affect the Enrolled EDO's eligibility to receive interest earnings as described therein.

### **Section 13. Participation Loan Repayment**

The Enrolled EDO shall have no ownership or claim to principal or interest repayment proceeds from Participation Loans, aside from any earned incentive payments defined in this Agreement. While the Enrolled EDO is not responsible for loan servicing, it shall remain informed of loan repayment activity for purposes of compliance monitoring and incentive payment reconciliation. Commerce shall provide the Enrolled EDO with periodic reporting on loan repayment status, including notice of any delinquencies or defaults that may affect incentive calculations.

While a Participation Loan remains active and is being repaid, the Lender and the Enrolled EDO shall notify Commerce of any subsequent loan or advancement made to the Borrower. This requirement is further reflected in Schedule B of the Commitment, which establishes the Borrower's obligation to report such financing activity to Commerce. If the Enrolled EDO becomes aware of any subsequent financing extended to the Borrower, it shall promptly report the loan amount and information to Commerce to support the accurate tracking of program metrics and deliverables associated with each transaction.

### **Section 14. Management of Participation Loans**

The Lender's management, servicing, and enforcement of Participation Loans shall be governed by a separate LLSA executed between Commerce and the Lender. The Enrolled EDO shall not be responsible for managing, servicing, enforcing, or modifying Participation Loans.

The Enrolled EDO will remain engaged and responsive to Borrower needs in order to promote positive loan and project outcomes. The Enrolled EDO shall maintain regular communication with Borrowers and monitor project progress throughout the term of each Participation Loan. The Enrolled EDO shall provide technical assistance to Borrowers as needed and coordinate with the Lender to resolve issues that may arise during the life of the Participation Loan. The Enrolled EDO is expected to identify any material changes in Borrower operations, project implementation, or financial condition and report these in accordance with Section 15 of this Agreement.

The Lender shall provide Commerce with timely notice of loan modifications, defaults, enforcement actions, or other material events affecting a Participation Loan. The Enrolled EDO shall be included in such communications as necessary when material compliance issues arise.

Commerce may, at its sole discretion, require periodic reporting from Borrowers related to Participation Loan performance, project status, job creation, or other program compliance metrics. The Enrolled EDO shall assist Borrowers in understanding and complying with such reporting requirements as directed by Commerce but shall not be responsible for verifying Borrower submitted information unless otherwise specified.

### **Section 15. Enrolled EDO Reporting Requirements**

The Enrolled EDO shall submit project progress reports to Commerce for each active Participation Loan as deemed necessary by Commerce. These reports are a critical component of Program oversight and are intended to ensure alignment between the approved application and actual project implementation.

At a minimum, each report must include the following:

- (a) Borrower name and project title;
- (b) A narrative on how current market conditions are affecting the business and/or project;
- (c) Identification of any concerns, delays, or risks impacting project progress;

- (d) A summary of successes, milestones achieved, or positive developments;
- (e) Any additional reporting requirements specified in the project's Commitment Letter.

Reports must begin with general project information and then transition into application-specific details. The report will reflect whether the project is proceeding as proposed in the original application. If deviations have occurred, the Enrolled EDO must describe the nature of those changes and the steps being taken to support project success and mitigate issues.

These reports must not only identify challenges but also highlight progress and celebrate positive outcomes. The Enrolled EDO also agrees to provide any additional information Commerce deems necessary relating to the Program funded participations.

#### **Section 16. Duty to Defend, Indemnify, and Hold Harmless**

The Enrolled EDO shall defend, indemnify, and hold harmless the State of Montana, the Montana Department of Commerce, and their elected and appointed officials, agents, and employees, while acting within the scope of their duties, from and against all claims, demands, causes of action, liabilities, damages, judgments, expenses, or fees, including the reasonable cost of defense and attorney fees, arising from or awarded in favor of the Enrolled EDO's employees, agents, or third parties for bodily or personal injuries, death, damage to property, or financial or other loss resulting in whole or in part from:

- (i) the services performed by the Enrolled EDO under this Agreement, including but not limited to loan application facilitation, technical assistance, and Program compliance activities; or
- (ii) any acts or omissions of the Enrolled EDO, its agents, employees, representatives, assigns, or subcontractors arising out of or related to this Agreement, except to the extent caused by the sole negligence of the State of Montana.

Commerce shall not be liable for any decisions, actions, or representations made by the Enrolled EDO in its role as a loan facilitator. The Enrolled EDO acknowledges that it does not act on behalf of Commerce in a fiduciary or financial capacity and shall not represent itself as having the authority to bind Commerce to any obligations.

## **Section 17. Support in Events of Distress or Deviation**

If a Borrower's project encounters material challenges, delays, or financial hardship, the Enrolled EDO shall coordinate with the Borrower and the Lender to assess the situation and support the identification of potential solutions. The Enrolled EDO shall promptly notify Commerce through a written update or within the project progress report and shall outline any technical assistance being provided. When appropriate, the Enrolled EDO may recommend mitigation strategies or refer the Borrower to resources available through state or federal programs. The Enrolled EDO's role in these situations is to facilitate communication, provide guidance, and support Borrower efforts to resolve issues while upholding program expectations and reporting obligations.

## **Section 18. Enrolled EDO Obligations During Loan Modification or Default**

If a Participation Loan enters default or is subject to modification, the Enrolled EDO shall not participate in enforcement or negotiation efforts, and shall not represent, advise, or advocate on behalf of the Borrower or Commerce. Responsibility for default management and loan modifications lies exclusively with the Lender and Commerce. The Enrolled EDO shall follow direction from Commerce and the Lender and shall not take independent action in relation to the loan resolution process.

During such instances, the Enrolled EDO shall remain informed, respond to information requests from Commerce in a timely manner, and provide relevant background or documentation upon request. The Enrolled EDO shall refrain from direct communication with the Borrower regarding the default unless specifically directed by Commerce. While the Enrolled EDO has a financial interest in successful loan performance through earned incentives, its role during default or modification is limited to supporting Commerce's oversight and assisting in administrative coordination, as needed.

## **Section 19. Required Insurance**

The Enrolled EDO shall maintain, at its own cost and expense, adequate insurance coverage throughout the duration of this Agreement to protect against claims arising from its performance under this Agreement, including those involving its agents, employees, representatives, assigns, or subcontractors. This coverage must include, at a minimum:

- a) General Liability Insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate per year; or, if applicable, the limits established under § 2-9-211, MCA for self-insured public entities.
- b) The Enrolled EDO shall assure that any representatives, assigns, and subcontractors performing professional services under this Agreement purchase professional Liability Insurance (Errors and Omissions) with minimum coverage of \$1,000,000 per wrongful act and \$2,000,000 aggregate per year for any services involving compliance review, facilitation, or technical assistance. Claims-made coverage may be permitted if it includes retroactive coverage to the contract start date and a three-year tail for post-contract claims.
- c) The Enrolled EDO's insurance shall be primary and non-contributory with respect to the State of Montana. The State, including its officers, officials, employees, and volunteers, must be named as additional insureds for any claims arising from the Enrolled EDO's work under this Agreement.
- d) All insurance coverage must be provided by a carrier licensed to do business in the State of Montana with a minimum A- rating by A.M. Best, or through an authorized self-insured public entity pool under Title 2, MCA. Certificates of insurance and applicable endorsements must be submitted to Commerce prior to any activity under this Agreement. The Enrolled EDO must notify Commerce immediately of any material changes to its insurance coverage.

Commerce reserves the right to request and review full copies of the Enrolled EDO's insurance policies, including endorsements, at any time.

## **Section 20. Independent Contractor**

The Enrolled EDO shall be in the status of and act as an independent contractor and shall in no event be considered an agent or employee of Commerce. This Agreement shall not constitute nor be construed to create a partnership or joint venture between the Enrolled EDO and Commerce.

## **Section 21. Enrolled EDO Events of Default**

For purposes of this Agreement, an Event of Default shall occur when the Enrolled EDO materially breaches any term of this Agreement, fails to comply with applicable Program Guidance, or materially fails to uphold requirements associated with an approved Participation Loan. Commerce

shall determine whether a breach constitutes an Event of Default and may take corrective or enforcement action at its sole discretion.

An Event of Default includes, but is not limited to:

- a) Submission of knowingly false or misleading information;
- b) Failure to materially comply with Program Guidance, or this Agreement, as determined by Commerce;
- c) Repeated failure to meet required deadlines, reporting obligations, or Borrower communication standards;
- d) Misuse or misrepresentation of Program or Borrower information;
- e) Refusal to cooperate with Commerce's requests for monitoring, auditing, or Program inquiries;
- f) Any conduct that materially undermines Program integrity, places public funds at risk, or causes significant harm to Borrower projects.

Upon determining that an Event of Default has occurred, Commerce may suspend the Enrolled EDO's participation in the Program, either temporarily or permanently, deny access to future application cycles, require the submission of a corrective action plan or impose additional oversight measures, and may terminate this Agreement for cause with written notice.

Prior to imposing penalties, Commerce will provide written notice describing the breach and allow the Enrolled EDO fifteen (15) business days to submit a corrective action plan. If the breach is not cured or resolved to Commerce's satisfaction within twenty (20) business days from Commerce's written notice, unless extended in writing by Commerce, Commerce may proceed with enforcement as outlined above.

Repeated submission of incomplete applications or failure to comply with Program Guidance may result in suspension or termination of the Enrolled EDO's participation and enrollment in the Program, after the following notice and cure period. Commerce will provide written notice of the compliance issue and a fifteen (15) business day opportunity to cure any noncompliance issues before imposing penalties, suspension, or termination from the Program. Nothing in this section limits

Commerce's ability to take immediate action if a breach poses a threat to Program funds, a Borrower's project, or the integrity of the Program.

In the event Commerce terminates this Agreement for cause due to an Event of Default, the Enrolled EDO's right to receive incentive payments associated with previously approved and funded Participation Loans may be rescinded or modified at Commerce's discretion.

If the Enrolled EDO elects to be removed as a current Enrolled EDO as outlined in Section 22, and is otherwise in good standing with the Program at the time of such request, it shall retain its right to receive any incentive payments earned under this Program for outstanding Participation Loans so long as the Enrolled EDO continues to comply with the requirements outlined in this Agreement.

## **Section 22. Notices and Publication of Contact Information**

All notices which may be required herein shall be in writing and delivered to the parties' liaisons identified herein either by first class mail, electronic mail, or personal service. As an Enrolled EDO during the term of this Agreement, the Enrolled EDO's contact information will be published on Commerce's website and may be distributed to interested parties and the public at large. The Enrolled EDO may request in writing to be removed as a current Enrolled EDO at any time. If Commerce approves the removal of the Enrolled EDO's contact information, the Enrolled EDO will no longer be able to assist new applicants.

**Enrolled EDO** Contact Information and Address:

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and to Commerce at the following address:

***Olivia Kettenring, Business Development Manager***

**Montana Department of Commerce**

**301 S Park Ave**

**P.O. Box 200505**



### **Section 23. Provisions Binding**

The terms and provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

### **Section 24. Waivers, etc.**

Commerce's failure to complain of any act or omission on the part of Enrolled EDO, no matter how long the same may continue, may not be deemed to be a waiver by Commerce of any of its rights hereunder. No waiver by Commerce of satisfaction of condition or nonperformance of an obligation under this agreement will be effective unless it is in writing and signed by Commerce's authorized representative.

### **Section 25. Amendments**

This Agreement may only be amended by a written document executed by authorized representatives of both parties.

Commerce may modify Program Guidance, policies, or procedures outside of this Agreement, including but not limited to the Program Guidance, guidelines, program manuals, or the terms of Commitment Letters or Incentive Commitments. These programmatic documents may be updated from time to time without formal amendment to this Agreement.

### **Section 26. Termination**

This Agreement may be terminated by either party, provided that written notice is given at least ninety (90) calendar days in advance of the intended termination date. Commerce may also terminate this Agreement immediately if federal or state funds are not appropriated, become unavailable, or are reduced in a manner that affects Program delivery.

Commerce may terminate this Agreement for cause if the Enrolled EDO is found to be in material breach of its obligations under this Agreement and fails to cure such breach within a reasonable period, as outlined in Section 21.

If the Enrolled EDO elects to withdraw from participation in the Program, it shall notify Commerce in writing at least ninety (90) calendar days prior to the intended withdrawal date. Upon receipt of such notice, Commerce and the Enrolled EDO shall collaborate to develop and implement a transition plan that ensures the continued support of Borrowers, the proper handoff of active files, and the timely submission of any outstanding reports or documentation. The Enrolled EDO agrees to make a good faith effort to support a smooth and responsible offboarding process, including responding to Commerce's requests for clarification or historical information during the transition.

Termination of this Agreement shall release the Enrolled EDO from its obligations related to Participation Loans facilitated prior to termination, provided that the Enrolled EDO fully complies with the agreed-upon transition plan. If the Enrolled EDO is released from its obligations related to such Participation Loans, the Enrolled EDO's right to continued incentive payments also terminates, unless Commerce approves the continued incentive payment in writing and the Enrolled EDO continues to comply with the transition plan, Commerce written requests, and any continued performance of surviving terms including audit obligations. The Enrolled EDO shall make all reasonable efforts to ensure a complete and orderly transfer of records, borrower files, and outstanding documentation to Commerce or its designee. Failure to do so may result in Commerce pursuing remedies consistent with Section 21 of this Agreement.

Commerce shall not be liable to the Enrolled EDO for any lost opportunities, revenue, or consequential damages resulting from termination of this Agreement.

**IN WITNESS WHEREOF**, the Enrolled EDO and Commerce have caused this agreement to be duly executed on the date first above written.

**ENROLLED EDO**

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Name, Title

Date

Economic Development Organization Name

## COMMERCE

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Mandy Rambo, Deputy Director  
Montana Department of Commerce

Date

EXAMPLE