



# Request for Qualifications

for

## Qualified Lenders

for the

## NYC Accelerator PACE Financing Program

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Submission Deadline: Rolling



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## Purpose of Request for Qualifications

Acting on behalf of the City of New York (the “**City**”), the New York City Energy Efficiency Corporation (“**NYCEEC**”) invites all eligible firms to respond to this Request for Qualifications (inclusive of the exhibits and schedules attached hereto, this “**RFQ**”) for “Qualified Lenders” for the NYC Accelerator, PACE financing program (the “**Program**”). In this RFQ: NYCEEC, acting in its capacity as the City’s designated Program administrator, is referred to as the “**Administrator**”; each organization seeking to become a Program lender is called an “**Applicant**” and upon completing the qualification process in accordance with this RFQ, an Applicant will become a “**Qualified Lender**.”

This RFQ provides information about the Administrator, the Program, the role of Qualified Lenders in the Program and the terms and conditions under which Qualified Lenders will participate in the Program, as well as the criteria and process to be used in their qualification.

Additional information on the Program, along with copies of this RFQ, the Program Guidelines and other Program documents, may be found on the Program website at: [nyc.gov/PACE](http://nyc.gov/PACE) (the “**Program Website**”).

Applicants are encouraged to check the Program Website regularly to view Program updates and changes to this RFQ or other Program documents which may occur from time to time.

### 1.1 About the Administrator

Launched in 2011, NYCEEC is a not-for-profit clean energy finance company with 501(c)(3) federal income tax exemption status. NYCEEC’s mission is to deliver financing solutions and advance markets for building clean energy. NYCEEC is an independent company and is not an agency or instrumentality of the City.

As per its engagement by the City, NYCEEC, acting as the Administrator, is responsible for the day-to-day coordination and administration of the Program. These responsibilities include but are not limited to: qualifying Applicants as Qualified Lenders who may offer commercial Property Assessed Clean Energy (“**PACE**”) financing through the Program; receiving all project applications and confirming that the proper documentation has been submitted; verifying project eligibility and confirming that cost-effectiveness calculations have been completed; receiving and distributing Program notices and correspondence; and reporting on the Program to the City. In addition, acting as the Program “Paying Agent”, NYCEEC will also be responsible for receiving PACE Loan payments from the New York City Department of Finance (“**DOF**”) and causing those payments to be transmitted in a timely manner to the appropriate Qualified Lenders (in such capacity, the “**Paying Agent**”).

More information about NYCEEC can be found at [www.nyceec.com](http://www.nyceec.com).



## 2. Program Details

Under the Program, Qualified Lenders will offer PACE financing (“**PACE Loans**”) to owners of eligible buildings located in New York City (“**Borrowers**”). Borrowers will use the PACE Loans to fund energy efficiency improvements and renewable energy systems in their buildings. PACE Loans are repaid through “**Program Charges**” on the related buildings’ City property tax bills. PACE Loans and the associated Program Charges are non-accelerating but remain payable by any successor owner of the subject real property until paid in full. DOF will bill, collect and enforce repayment of Program Charges utilizing the same procedures available for City real property taxes and other property tax bill charges. DOF enforcement of delinquent Program Charges may lead to the assignment of such delinquent Program Charges through tax lien sales. Qualified Lenders will also have available all lawful means to enforce repayment of PACE loans.

The Program will be “open market” in that property owners may borrow from, and negotiate the terms of PACE Loans directly with, any Qualified Lender. No firm will be granted exclusive or preferred status as a Program Qualified Lender. Borrowers retain the right to engage with the Qualified Lender of their choosing. A list of all Qualified Lenders is available on the Program Website, however neither the City nor the Administrator will recommend or refer Borrowers to individual firms. Qualified Lenders will be able to set the terms and conditions of their PACE Loans so long as they comply with the requirements contained in the Program Guidelines, the Master Lender Agreement and other applicable Program documents.

## 3. Legal Requirements and Documentation

Each Qualified Lender’s participation in the Program is subject to all applicable laws, rules and regulations, including, without limitation, the legal requirements contained in New York General Municipal Law Article 5-L (“**Article 5-L**”), Chapter 30 of Title 11 of the Administrative Code of the City of New York and Chapter 58 of Title 19 of the Rules of the City of New York (the “**Program Rules**”). The rights and obligations of each Qualified Lender will be memorialized in the following Program agreements:

- Master Lender Agreement. As detailed in Section 6 below, prior to consummating any PACE Loans, each Applicant must first execute a Master Lender Agreement with the Administrator and the Paying Agent, setting forth their obligations as a Qualified Lender under the Program (“**Master Lender Agreement**”). A copy of the current form of MLA is available on the Program Website (the “**Form MLA**”). The Program Website also contains forms of the other Program agreements to which Qualified Lenders will be a party.
- Financing Agreement. To participate in the Program, the Qualified Lender and related Borrower will be required to execute a financing agreement containing the loan terms and conditions, amongst other items. To make the review and approval process for each PACE Loan more efficient, as part of their Application Package each Applicant is



encouraged to provide the proposed form of financing agreement they expect to use for their PACE Loans.

- Collection Agreement. In accordance with the Program Guidelines, the Master Lender Agreement and other applicable Program documents, for each PACE Loan the Qualified Lender, along with the Borrower, the Administrator, the Paying Agent and the City will be required to execute a “**Collection Agreement**” detailing the billing and collection process for Program Charges.
- Guaranty. In some cases, in order for a given Applicant to meet the Qualification Requirements (defined below), a guaranty may need to be issued by a U.S. based creditworthy parent or other entity acceptable to the Administrator and the City (each, a “**Guarantor**”). In those cases, the guaranty should be issued by the Guarantor substantially in the current form available on the Program Website (the “**Guaranty**”). Each such Guaranty should be executed and delivered at the same time the Qualified Lender enters into their Master Lender Agreement.

The Form MLA and the other form Program documents are subject to further review and updating from time to time. Approval of an Applicant to become a Qualified Lender is subject to, and contingent upon, the Applicant’s execution of a Master Lender Agreement in form and substance substantially similar to the Form MLA and that is otherwise acceptable to the Administrator, and satisfaction of all other applicable requirements. Each Applicant seeking to become a Qualified Lender should review the Form MLA, and the other form Project agreements and be familiar with all of the terms and conditions set forth therein prior to submitting its Application.

The Administrator is not bound to the terms or any other aspect of the Form MLA or any other form Program documents. It is expected that such forms will be used by the Administrator as the basis upon which the Administrator prepares the Master Lender Agreement and the other Program agreements for each Qualified Lender. Legally binding obligations will arise only upon the full execution of an MLA or other applicable Program agreement and will be as set forth therein.

**In general, the terms and conditions set forth in the Form MLA and the other form Program documents are NOT negotiable.**

## **4. Qualified Lender Requirements**

All Applicants who submit a complete Qualified Lender Application (each, an “**Application**”) and all supplemental documents in accordance with Section 5 below; meet the Qualification Requirements as described in Section 4.1 below; and that are qualified according to the process described in Section 6 below, will be registered as a “Qualified Lender”.

Throughout its participation in the Program, a Qualified Lender must continue to meet the Qualification Requirements and perform its obligations as set forth in the Master Lender



Agreement and the other Program agreements to which it is a party. An organization will become a Qualified Lender upon full execution and delivery of the Master Lender Agreement.

## 4.1 Qualification Requirements

Subject to waivers or exceptions that may be approved in accordance with Section 7 below, to become a Qualified Lender an organization must meet all requirements (the “**Qualification Requirements**”) specified in Exhibit A to this RFQ.

As described in Section 6 below, applicants must enter into the Master Lender Agreement with the Administrator and the Paying Agent in order to become a Qualified Lender and participate in the Program. At the expiration of the Master Lender Agreement’s two-year term, organizations wishing to continue making PACE Loans under the Program will be required to renew their Master Lender Agreement and attest that they meet all current Qualification Requirements.

## 4.2 Changes and Updates to Requirements

The Administrator reserves the right to modify or update the Qualification Requirements from time to time in consultation with New York City Mayor’s Office of Climate and Environmental Justice (“**MOCEJ**”).<sup>1</sup> Any such modifications or updates will promptly be included in an updated version of this RFQ.

# 5. Application Submission

## 5.1 Application Package

An “**Application Package**” will consist of a properly completed, signed and dated Application form and all required supplemental documents as listed below. Application Packages will be accepted on a rolling basis.

For the Application form itself, each Applicant must submit their Application using the most recent form which may be downloaded from the Program Website.

### 5.1.1 Required and Optional Documents

For an Application Package to be considered complete, it must include all of the documents indicated below under the heading “Required Documents” and may include all or any of the optional documents indicated below under the heading “Optional Documents.

#### ***Required Documents***

1. Application. Each Applicant must submit their Application using the most recent form which may be downloaded from the Program Website. The Application should be filled

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<sup>1</sup> Pursuant to Executive Order No. 4, as of January 31, 2022 the Mayor’s Office of Climate and Environmental Justice (MOCEJ) succeeded the Mayor’s Office of Climate and Sustainability (MOC&S).



out completely and accurately and properly signed and dated by an authorized representative of the Applicant.

2. Transmittal Letter. (*supplemental document*) A Transmittal Letter must be provided with each Application as a cover letter to the Application Package. The letter must be from an authorized representative of the Applicant and should be written on the Applicant's letterhead, dated, and duly signed by such representative. The letter should confirm the Applicant's interest in participating in the Program and that the person signing the letter has read and understands the terms and conditions of this RFQ. The letter may also be used to summarize key aspects of the Application. Transmittal Letters should be no more than two pages in length.

3. Resumes or CVs of Key Persons. (*supplemental document*) In the Application, each Applicant will be asked to identify at least three key officers, directors, managers and/or other representatives who will have an administrative or oversight role in the Applicant's Program lending operations, or who will have a significant role in the Applicant's day-to-day Program lending operations (each, a "**Key Person**"). At least one of the Key Persons should be an authorized representative with the authority to execute legal documents on behalf of the Applicant. For each Key Person identified in the Application, the Applicant should provide a current and up-to-date resume or curriculum vitae. The Administrator will review the resumes of the Key Persons for demonstration of knowledge, experience and qualifications for operating a commercial PACE lending program. If requested, each Applicant will be expected to provide the home address, date of birth and/or social security number for each Key Person through a secure method. This information may be used by Administrator to perform limited background checks on the Key Persons.

4. Evidence of Good Standing. (*supplemental document*) Evidence of compliance with applicable regulations, licensing, and other requirements. Each Applicant should provide a recent certificate of good standing (or similar evidence) issued by the state in which the Applicant was formed or organized as well as evidence that the Applicant is registered and/or qualified with the New York Secretary of State to do business in New York. Where applicable, Applicant's should also provide comparable evidence from its primary regulator(s) that the Applicant is in good standing with such regulator(s). (All such evidence should be no more than six months old).

5. Withholding Tax Status. It is the expectation of the City and of NYCEEC that NYCEEC, in its capacity as Administrator and as Paying Agent, will not have any obligation to withhold income taxes from the disbursements made to each Qualified Lender as their PACE loans are repaid. Accordingly, each Applicant should be a "U.S. person" for United States income tax purposes and should provide adequate information and documentation (including a properly completed and signed IRS Form W-9) to Administrator to demonstrate such status. If an Applicant is not a "U.S. person" for U.S. income tax purposes and wishes to request a waiver pursuant to Section 7 below, with its Application such Applicant should submit one of a variety of other IRS Form W-8s (e.g., IRS Form W-8BEN-E, IRS Form W-8ECI, etc.) instead of a Form W-9).



6. City of New York’s Procurement and Sourcing Solutions Portal (“PASSPort”). *(supplemental document)* Each Applicant, at the time it submits its Application, must provide proof it has created an account and submitted a vendor enrollment package with PASSPort. To become a Qualified Lender each Applicant must provide proof of a “Filed” (i.e. approved) enrollment status with PASSPort. PASSPort is the City’s digital procurement system, available [here](#).

7. Underwriting Policies and Procedures. *(supplemental document)* Each Applicant should provide documentation describing the following as it relates to the Applicant:

- a. general PACE loan underwriting guidelines and credit standards;
- b. origination procedures, including turnaround times;
- c. construction financing procedures;
- d. finance / loan servicing; and
- e. description of compliance procedures, including but not limited to the customer identification procedures, as described in the Legal Requirements contained in Exhibit A to this RFQ.

8. Expected Financing Terms. *(supplemental document)* Each Applicant should provide documentation describing the following as it relates to the Applicant’s PACE loan product(s):

- a. Basic loan structure, tenors, minimum and maximum sizes, payment schedules, prepayment options, etc.;
- b. Range of typical interest rates; and
- c. Fee pricing.

9. Description of PACE Lending Experience. *(supplemental document)* Each Applicant should provide a document with a narrative description of its experience as a lender generally, including with originating and servicing commercial PACE Loans. The document should include a summary description of energy efficiency and/or renewable energy financing products offered by the Applicant and their structure. The document should also indicate if the Applicant currently provides commercial or residential PACE financings and where. If the Applicant is (or the Key Persons, acting through a different entity, are) qualified to make commercial or residential PACE loans in other jurisdictions, the document should also list each such jurisdiction or program under which the Applicant (or the Key Persons) is/are qualified.

10. Environmental Justice. *(supplemental document)* A goal of the City’s Climate Mobilization Act is “to ensure equitable investment in environmental justice communities”.<sup>2</sup> As such, MOCEJ and Administrator strongly encourage Qualified Lenders to offer PACE Loans to eligible borrowers in environmental justice communities, and as part of its Application Package each Applicant should provide a document with a narrative description of its

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<sup>2</sup> See Section 4 of Local Law 97 of 2019.



experience with making loans to borrowers in such communities and its plans for doing so in New York City.

11. PACE Capital Availability and Assets Under Management. (*supplemental document*) Each Applicant should provide an approximate (non-binding) amount of capital available to make PACE loans under the Program and a description of the type and/or sources of that capital. Each Applicant should also provide documentation describing the total assets under its management with a breakdown of the type of assets under the Applicant's management and the relevant regulatory status of such assets (e.g., RIA, depository institution).

12. Evidence of Insurance Coverage. Each Applicant should provide evidence that it has appropriate/customary insurance coverage (e.g. D&O insurance, commercial general liability, professional liability/errors and omissions coverage, property, and workers' compensation, etc.).

13. Additional Documents for Non-Public Companies. (*supplemental documents*) In addition to the above, Applicants that are not publicly traded companies and/or are not FDIC insured must provide the following additional documents as part of their Application Package:

a. Financial Statements. (*supplemental document*) Each Applicant (or if applicable, its Guarantor) should provide copies of its audited financial statements for a minimum of the previous two years, along with the reports of the auditor. To the extent an Applicant does not have two years of audited financial statements (as in the case of a recently formed subsidiary corporate entity), it may provide unaudited financial statements of the Applicant for the previous year(s), along with audited financial statements of the Applicant's parent corporate entity for a minimum of the previous two years, along with the reports of the auditor. Additionally, in such situations where unaudited financial statements are provided, the Applicant should provide a narrative explanation as to why it does not have two years of audited financial statements and how the assets and/or investment funds under its management are audited. If an Applicant submits unaudited financial statements, they should be accompanied by a certificate duly executed by the Applicant's Chief Financial Officer (or another appropriate officer acceptable to the Administrator) on the form that will be provided by the Administrator upon request.

b. Organizational documentation such as articles of incorporation, certificates of organization or formation and other related corporate or organizational documents, and all amendments thereto.

### ***Optional Documents***

14. Description of Other Financing Products. (*supplemental document*) In its Application Package an Applicant may include a summary description of non-PACE energy



efficiency or renewable energy financing products offered by the Applicant (if any), and their structure.

15. Pipeline of Live Projects. (*supplemental document*) In its Application Package, an Applicant may include a short description of anticipated PACE projects with which it is actively engaged, including relevant information such as: property information, measure type, financing amount, project timeline, etc. The Administrator may, but is under no obligation to, utilize this information to prioritize the processing of Applications.

16. Request for Waiver(s). (*supplemental document*) If an Applicant wishes to request a waiver pursuant to Section 7 below, the Applicant must submit the request in writing by including a clearly labeled "waiver request" in the Application Package at the time they submit their complete Application Package. The request should include the information required under Section 7.

17. Form Financing Agreement. Applicant's are encouraged (but not required) to include, in their Application Package, the proposed form of financing agreement they expect to use for their PACE Loans.

18. Other Information or Documents. (*supplemental documents*) Applicants may submit additional documents containing any additional relevant information that demonstrates their capability and willingness to provide PACE Loans through the Program.

### **5.1.2 Application Package Formatting and Submission**

Before submission, each Applicant should ensure that its Application form is filled out completely and accurately and that the form is properly signed and dated by an authorized representative of the Applicant. Each Applicant should also ensure that all supplemental documents are provided as specified above.

To be considered responsive, each Application Package should be organized and assembled into two separate .pdf files as follows:

- All documents submitted as part of the Application Package should be submitted electronically in ".pdf" format.
- A copy of the completed, signed and dated Application form should be saved and submitted as the first .pdf file using the following naming convention:

"Qualified Lender Application - [*name of Applicant*] ([*date*]).pdf"

- All required and optional supplemental documents should be combined into the second .pdf file. Within the .pdf file, a clearly labeled and numbered cover page should precede each distinct supplemental document that is included in the file. For example, the cover page for the Transmittal Letter should be labeled "*Document 2 - Transmittal Letter*" and a copy of the actual signed/dated Transmittal Letter should follow immediately behind the cover page.



The file should be saved and submitted using the following naming convention:

“Qualified Lender Application--Supplemental Documents - [*name of Applicant*] ([*date*]).pdf”

When an Applicant is ready to submit their Application Package, the Applicant should do so by emailing the documents to [pace@nyceec.com](mailto:pace@nyceec.com) with the subject line “[Lender Name] PACE Qualified Lender Application\_day/month/year”. The Administrator will endeavor to confirm receipt of the Application Package as soon as practicable, however, if an Applicant does not receive an email from the Administrator within two or three business days confirming receipt, the Applicant is encouraged to email the Administrator at [pace@nyceec.com](mailto:pace@nyceec.com) to ensure that the Application Package was received.

## **6. Review and Qualification Process**

The process for becoming a Qualified Lender is based on the Administrator’s review of information submitted in the Application Package from each Applicant in accordance with this RFQ. Upon request, the Administrator may provide limited guidance to Applicants on the application and qualification process and the Qualification Requirements, however, the Administrator will not provide assistance in the development of any Applicant’s actual Application Package.

Upon determining that a given Applicant meets the Qualification Requirements, the Administrator will promptly notify the Applicant. When the Master Lender Agreement has been executed by the Applicant and all other applicable requirements have been satisfied (if any), the Applicant will become a “Qualified Lender.” The Administrator will then add that organization to the list of Qualified Lenders which will be publicly available on the Program Website.

### **6.1 Qualification Process**

The process for becoming a Qualified Lender will consist of the following steps. At any time during the following process, Applicants may contact the Administrator with any questions they may have at [pace@nyceec.com](mailto:pace@nyceec.com).

1. If requested in writing by the Applicant prior to the submission of its Application Package, the Applicant may enter into a Mutual Non-Disclosure Agreement with the Administrator on the Administrator’s then current form prior to submitting the Application Package.
2. Upon receipt of an Application Package, the Administrator will promptly begin an initial review of it.
3. If the initial review indicates that there are deficiencies with the Application Package or the supplemental documentation, the Applicant will be contacted and invited to correct the deficiencies.



4. During the review, the Administrator may contact the Applicant with questions or requests for additional information or documentation. The Applicant should promptly answer any questions the Administrator may have and provide any information or additional documentation as the Administrator may request.

5. During the review, the Administrator may also request one or more in-person or virtual meeting and/or conference calls with the Applicant's Key Persons or other representatives of the Applicant. Such meeting(s) may be requested to discuss the Application Package, the Program, to meet the Key Persons of the Applicant's team that will be working on the Program or for other Program-related purposes.

6. Based on the results of the review, if the Administrator determines that an Applicant meets all applicable Qualification Requirements, the Administrator will issue a contingent approval letter to the Applicant. The Administrator will also prepare and provide the Master Lender Agreement to the Applicant for its review and signature, and if applicable, the Guaranty for the review and signature by the relevant Guarantor.

7. The Applicant will become a "Qualified Lender" only upon executing and delivering the Master Lender Agreement to the Administrator, and if applicable, the Guaranty executed by the Guarantor.

8. The Administrator will create a new account profile for the Qualified Lender in the Program web-portal. The Administrator will provide the Qualified Lender with a username and password with which the Qualified Lender can login and upload project applications.

## **6.2 Review and Turnaround Times**

As the City's designated administrator for the Program, the Administrator is committed to reviewing Applicant submissions and responding to questions in a timely manner. Accordingly, the Administrator will make every reasonable effort to adhere to an expeditious review and turnaround time.

## **7. Non-Disclosure Agreements and Waiver Requests**

### **7.1 Non-Disclosure Agreements**

Applicants may request to enter into a Mutual Non-Disclosure Agreement ("**NDA**") with the Administrator. If an Applicant wishes to enter into an NDA, the Applicant should indicate this desire in writing to the Administrator prior to submitting its Application Package. All NDAs will be on the Administrator's current form, a copy of which may be obtained on the Program Website. All NDAs must in any case be acceptable to the Administrator.

### **7.2 Waiver Requests**

Applicants may request that waivers or exceptions be made to one or more of the Qualification Requirements. To do so, the Applicant must make the request in writing by



including a clearly labeled “waiver request”, in the supplemental documents section of its Application Package.

The Administrator will evaluate all such waiver requests on a case-by-case basis. If a waiver is requested, the Administrator will evaluate the request promptly and reserves the right to collect further information, documentation, etc. from the Applicant. After evaluating the request and collecting and reviewing such additional information, documents, etc. as the Administrator may consider necessary, the Administrator will make a recommendation to MOCEJ.

Decisions on whether to approve or deny waiver requests will be made by MOCEJ in its sole discretion. In evaluating waiver requests, it is expected that MOCEJ may confer with other agencies within the City such as the City Law Department and/or the City’s Office of Management and Budget. After a decision is made, the Applicant that submitted the waiver request as part of its Application Package will receive written notice from the Administrator indicating whether the request was granted or denied.

Applicants understand and acknowledge that the granting of a given waiver request does not constitute an indication of any intent or an obligation on the part of either the Administrator or MOCEJ to grant similar waivers to other Applicants under similar circumstances.

## **8. Additional Terms and Conditions**

This RFQ, and all Applicant submissions made in connection with this RFQ, are subject to the Additional Terms and Conditions attached hereto at Schedule 1. By submitting an Application Package hereunder, each Applicant agrees that it has read and understands the entirety of this RFQ, including all exhibits and schedules attached to it, and that it is subject to all terms contained herein.

\* \* \*



## **Exhibit A**

# **Qualification Requirements**

To be a Qualified Lender, an Applicant must meet the following Qualification Requirements:

### ***Organizational and Operational Requirements***

1. must be a legal entity (e.g. corporation, limited liability company, partnership, etc.) organized under the laws of any state in the United States or under the laws of the District of Columbia;
2. must be organized as a for-profit or a not-for-profit company;
3. the Applicant's headquarters, main "home office", primary place of business or base of operations should be in the United States and appropriate Key Persons should be based in the United States, ideally in the greater New York City metropolitan area;
4. must designate expected Key Persons, and the Applicant's anticipated plans regarding such Key Persons should be appropriate given the Applicant's expected loan originations;
5. the Applicant must have at least three years of organizational lending experience, or, if the Applicant does not have at least three years of organizational lending experience, then it's Key Persons must have qualifications appropriate for operating a commercial PACE lending program and evidence of substantial relevant experience;
6. regarding the Key Persons, the Applicant should have at least three full time employees, including an executive, senior manager or equivalent with signing authority (the existence of at least three employees will indicate that the Applicant is organizationally ready to perform its obligations under the MLA and observe sound loan operational practices, including having a system of checks and balances, and that it will be able to continue operating in the event a staff person leaves);
7. a Qualified Lender may use independent contractors, vendors and advisors in order to conduct its Program lending operations, however the use of contractors, vendors and advisors may not be used to substitute for an adequate full time staff of at least three full time employees (if such staff are employed by an affiliate of the Qualified Lender rather than by the Qualified Lender itself, additional information and/or documents may be requested and further requirements may apply);

### ***Financial Requirements***

8. the Applicant, or its Guarantor (if applicable) should be creditworthy (generally this requirement is satisfied through an evaluation of audited financial statements for the Applicant or Guarantor);<sup>3</sup>
9. must have appropriate/customary insurance coverage (e.g. D&O insurance, commercial general liability, professional liability/errors and omissions coverage, property, unemployment and workers-comp., etc.);
10. must not be delinquent in the payment of any taxes, civil penalties, or other debt to the City, or in any water and sewer charges to the New York City Water Board or the City's Department of Environmental Protection;

### ***Legal Requirements***

11. must be in good standing under the jurisdiction in which the company was formed or organized;
12. must be in good standing with all regulators and other governmental authorities having jurisdiction over the lender (e.g. FDIC, Federal Reserve Board, OCC, etc.).
13. must be qualified to do business in New York State;
14. must be a "U.S. person" for federal income tax purposes;
15. must have the legal and corporate authority to submit the Application in accordance with the RFQ, to enter into the Master Lender Agreement and all other Program agreements to which it will be a party, and perform its obligations thereunder, and to act as a Qualified Lender in accordance with all applicable laws, rules, regulations, Program requirements and Program documents;
16. must pass a standard "know your customer" (a/k/a "KYC") check;
17. must not be on the New York City or New York State "debarment" list;
18. must pass a reference and background check focused on material civil litigation, governmental actions, judgments, criminal claims, etc. (background checks on some or all of the Key Persons may also be performed);
19. must not be a Prohibited Person (as defined below)
20. absence of Questionable Ethical Behavior (as defined below) for all Key Persons;

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<sup>3</sup> As described in more detail in the September 27, 2021 FAQs provided on the Program Website, as of such date creditworthiness is generally evaluated on the basis of several factors including: ability to cover operating expenses, adequacy of equity capitalization, liquidity and leverage. Where an Applicant is FDIC insured, or is a financial institution with an "investment grade" rating from a major rating agency, different factors may apply.



21. must not have been disqualified from acting as a commercial PACE or residential PACE lender in any other program due to Questionable Ethical Behavior (as defined below);
22. no pending or recent history of bankruptcy or insolvency;
23. must enter into a Master Lender Agreement with the Administrator on a form substantially similar to the Form MLA and that is otherwise acceptable to the Administrator;
24. if applicable, a Guarantor that is acceptable to the Administrator and the City must issue a Guaranty in respect of the Applicant on a form substantially similar to the form maintained by Administrator and that is otherwise acceptable to the Administrator and the City; and
25. must adhere to any obligations, including a customer identification program, required or imposed under or pursuant to the Patriot Act or the regulations thereunder, including the regulations contained in 31 C.F.R. 103.121 (as hereafter amended or replaced, the "**CIP Regulations**"), or any other anti-terrorism law, including any programs involving any of the following items relating to or in connection with any Borrower, any representatives of any Borrower or any person or entity who owns or controls any Borrower, any Program financing documents or the transactions hereunder or contemplated hereby: (a) any identity verification procedures, (b) any recordkeeping, (c) comparisons with government lists, (d) customer notices, or (e) other procedures or actions required under the CIP Regulations or any other related or similar laws.

## **Definitions**

**"Prohibited Person"** means any person or entity (a) named on the "Specially Designated Nationals and Blocked Persons" list maintained by the U.S. Department of the Treasury's Office of Foreign Assets Control at its official website; (b) that is otherwise the target of any economic sanctions program currently administered by any federal governmental authority; (c) who has in the prior three (3) years violated, is currently in violation of, or is known to be under investigation by any governmental authority for any potential violation of the Bank Secrecy Act, the USA PATRIOT Act, or any other related or similar U.S. law, rule or regulation governing money laundering activities; (d) with whom a U.S. person may not otherwise conduct business by prohibition of applicable law; or (e) that is owned or controlled by, acting for or on behalf of, or affiliated with any person or entity identified in clauses (a) - (d) of this definition.

**"Questionable Ethical Behavior"** means, any current or historical instance where an individual has previously or is presently engaged in any of the following acts, practices or behavior:

- knowingly misrepresent or make a false statement to any financial institution or governmental or public authority;



- be incarcerated currently; or
- be a convicted felon, or have an adverse final civil judgment, in either case, where the violation involved fraud, breach of trust, or dishonesty (including, without limit, larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, conversion, counterfeiting, willful misapplication or any other fraudulent or dishonest acts resulting in financial loss).

\* \* \*



## Schedule 1

# Additional Terms and Conditions

In addition to those stated elsewhere, this RFQ, and all Applicant submissions made in connection with this RFQ or the Program, are subject to the additional conditions, terms and limitations stated below:

- (a) The approval or rejection of Applicant(s) may be subject to the City's approval.
- (b) The Administrator further reserves the right to make selections under this RFQ without discussion of the submissions received.
- (c) The Administrator will not be responsible for any expenses incurred by any Applicant in conjunction with the preparation or presentation of any submission with respect to this RFQ. The Administrator is not obligated to pay and shall not pay any costs or expenses incurred by any Applicant at any time unless the Administrator has expressly agreed to do so in a signed writing.
- (d) As a "local authority" under New York's Public Authorities Law, the Administrator is subject to disclosure under the New York Freedom of Information Law ("**FOIL**"). As such, Applicants' submissions may be subject to disclosure pursuant to FOIL demands that may be made upon the Administrator. An Applicant may, in writing and at the time of submitting its Application Package, provide a detailed description of specific information contained in the submission it believes, in good faith, constitutes trade secrets or proprietary information that, if disclosed, it believes would substantially harm the Applicant's competitive position. This characterization will not be determinative but will be considered when evaluating the applicability of any exemptions in responses to a FOIL request.
- (e) Firms who have been certified with the New York City Department of Small Business Services as Minority and Women Owned Business Enterprises ("**M/WBE**") are strongly encouraged to apply. To find out more about M/WBE certification visit [www.nyc.gov/getcertified](http://www.nyc.gov/getcertified) .
- (f) At the City and the Administrator's sole discretion, the name and logo of each Qualified Lender may be used for marketing purposes on Program affiliated websites.
- (g) Applicants are expected to be familiar with the applicable laws as they relate to the PACE lending industry generally and to the Program. Reference in this RFQ to any law, rule, regulation, or document, means such law, rule, regulation, or document as it may be amended, amended and restated, modified, supplemented, replaced or superseded from time to time.
- (h) Applicants shall refer all press and other inquiries concerning the Program and this RFQ, without further comment, to the Administrator.
- (i) The Administrator (and its directors, officers, employees, and agents) make no representation or warranty and assume no responsibility for the quality, content, accuracy or completeness of the information set forth in this RFQ. Further, the Administrator hereby disclaims any liability for any claims, technical errors or difficulties of any nature that may arise in connection with the Program Website on which this RFQ is posted, the Program web-



portal or in connection with any other electronic medium utilized by Applicants in connection with or otherwise related to this RFQ or the Program.

(j) The City is not a party to this RFQ, has made no representation to any prospective Applicant or Qualified Lender and shall have no liability whatsoever in connection with this RFQ.

(k) The Administrator reserves the right to take any of the following actions in connection with this RFQ from time to time and without prior notice: subject to the terms of Section 4.2, amend, modify, update, withdraw or cancel this RFQ; subject to the terms of Section 7.2, waive any requirements of this RFQ; require supplemental statements, information and documents from any Applicant; accept or reject any Applications received in response to this RFQ; negotiate or hold discussions with one or more Applicants; permit the correction of deficient Application Packages that do not completely conform with this RFQ; subject to the terms of Section 7.2, waive any conditions or modify any provisions of this RFQ with respect to one or more Applicants; reject any or all Applications and cancel this RFQ, in whole or in part, at any time for any reason or no reason, in the Administrator's sole discretion. The Administrator may exercise such rights at any time, without notice to any Applicant or other parties and without liability to any Applicant or other parties for their costs, expenses or other obligations incurred in the preparation of an Application Package or otherwise in connection with this RFQ.

(l) The Administrator will seek, but is under no obligation, to advise Applicants promptly of any amendments, modifications or updates to this RFQ and any withdrawals or cancellations of this RFQ, by posting an "FAQ" document or other notice on the Program Website or through any other means as the Administrator considers appropriate.

(m) Subject to the terms of any NDA (if any) between the Administrator and any Applicant, all Applicant submissions, including, without limit, all Application Packages, become the property of the Administrator. Additionally, in connection with the Administrator's review of Application Packages, the Administrator may contact administrators of other PACE programs.

(n) The Administrator shall be the sole judge of each Applicant's conformance with the requirements of this RFQ and of the merits of the individual Application Packages.

(o) While the Administrator may from time to time send notices, addenda or other information related to the Program, this RFQ and other Program documents, to Applicants via email alerts or otherwise in writing, such email alerts and other written materials shall be considered courtesy copies only. In the event any conflict exists between any information set forth on the Program Website and any such notices, addenda, or other information, the information set forth on the Program Website will govern and be definitive. The Administrator is not obligated to provide Applicants with any notices, addenda or other information that appears on the Program Website in writing, and the fact that the Administrator may have sent one or more emails, notices, addenda or other written information to an Applicant shall not be deemed to imply that the Administrator has any duty or obligation to continue to do so.

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