

MASTER LENDER AGREEMENT

by and among

[FULL LEGAL NAME OF LENDER],
as Lender

and

NEW YORK CITY ENERGY EFFICIENCY CORPORATION,
as Administrator and as Paying Agent.

Dated as of [_____] [____], 20[24]

New York City Commercial PACE Program

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Schedule I - Effective Projects

MASTER LENDER AGREEMENT

This **MASTER LENDER AGREEMENT** (together with each exhibit and schedule attached hereto, this “Agreement”) is made and entered into as of the [_____] day of [_____] , 20[___], by and among **New York City Energy Efficiency Corporation** (“NYCEEC”), a New York not-for-profit corporation, having an office at 1359 Broadway, 19th floor, New York, New York 10018 (together with its successors and permitted assigns, as “Administrator” and as “Paying Agent”), and [**LENDER**], a [STATE] [ENTITY TYPE], having an office at [_____] (together with its successors and permitted assigns, the “Lender”).

RECITALS

1. WHEREAS, pursuant to Section 119-gg of the New York General Municipal Law, the legislative body of any municipal corporation may, by local law, establish a sustainable energy loan program pursuant to which such program may make loans to owners or lessees of real property located within the municipal corporation to finance the installation of renewable energy systems and energy efficiency improvements, related energy audits and renewable energy system feasibility studies and the verification of the installation of such systems and improvements.

2. WHEREAS, pursuant to Section 30-02, Chapter 30, Title 11 of the New York City Administrative Code, the City has established such a program known as the NYC Accelerator PACE Financing Program (the “Program”) that will provide for commercial PACE loans and has appointed NYCEEC as Administrator of the Program to implement the Program in accordance with the Administration Agreement.

3. WHEREAS, financing for each Effective Project identified in Schedule I attached hereto (as such Schedule I may be amended from time to time by Administrator as projects are added or deleted) will be provided to the applicable Borrower by Lender in accordance with the PACE Financing Documents. With respect to each such Effective Project, this Agreement is entered into among Administrator, Paying Agent and Lender to provide for (among other things) certain terms related to the repayment of the applicable Loan.

4. WHEREAS, Lender desires to be a Qualified Lender under the Program and, pursuant to the letter from Administrator to Lender dated [_____] [___], 20[___], Lender has satisfied all applicable requirements necessary to become a Qualified Lender and upon this Agreement becoming effective Lender will be a Qualified Lender.

5. WHEREAS, Lender desires to designate NYCEEC as its Paying Agent for the collection and distribution of Loan payments received from the City from time to time.

Now therefore, NYCEEC (in its capacity as Administrator and as Paying Agent) and Lender do hereby agree as follows:

ARTICLE I
DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions. Whenever used in this Agreement the following terms shall have the meanings specified in this Section 1.1.

“Additional Lender Terms and Conditions” has the meaning set forth in Section 6.1.

“Administrator” has the meaning set forth in the preamble hereof.

“Administration Agreement” means the agreement, dated [DATE]¹, between the City and NYCEEC, pursuant to which, among other things, the City has appointed NYCEEC (along with its successors and permitted assigns) to implement and manage certain aspects of the Program on behalf of the City.

“Administration Fee” means, with respect to each Loan (and the Effective Project to which such Loan relates) the upfront administration fee payable by Lender to Administrator on the Closing Date of such Loan in the amount calculated by Administrator pursuant to the Program Guidelines.

“Affiliate” means, with respect to any given Person: (a) any other Person that is directly or indirectly Controlled by, under common Control with, or Controls such Person; or (b) any other Person owning beneficially, or Controlling, twenty percent (20%) or more of the shares, interests, participations and/or rights in or other equivalents (however designated, whether voting or nonvoting, ordinary or preferred) in the equity or capital of such Person.

“Amendment of PACE Charge Payment Schedule” has the meaning set forth in Section 6.6(c).

“Approved Project” means a Proposed Project for which Lender has provided to Administrator all deliverables in accordance with Section 5.1 herein, and that Administrator determines has satisfied all of the requirements set forth in this Agreement and the Program Guidelines, including the technical and underwriting assessments.

“Assignment and Assumption Agreement” means each Assignment and Assumption Agreement entered into between Lender and each Qualified Transferee in the form available on the Program website (or in such other form as may have been provided by Administrator) and otherwise in form and substance acceptable to Administrator and the City.

“Bank” means (a) JPMorgan Chase Bank, N.A.; (b) any Affiliate thereof that is acceptable to Paying Agent following consultation with the City and Lender; or (c) any other FDIC insured depository institution acceptable to Administrator (in consultation with the City).

¹ NOTE TO FORM: Conform this to the date of the effective Administration Agreement between the City and Administrator.

“Borrower” means a Person meeting all Borrower Eligibility Requirements.

“Borrower Eligibility Requirements” means, with respect to a given Person as of a given date of determination, each of the following criteria: (a) such Person is the Property Owner of the parcel of real property for which a Loan is being made or such Person holds a leasehold interest in such Property pursuant to an Eligible Lease; (b) such Person is not an Affiliate of Lender; (c) such Person is not delinquent in the payment of any taxes, civil penalties, or other debt to the City, or any water or sewer charges to the New York City Water Board, or the City’s Department of Environmental Protection at the time the Loan is made; and (d) such Person is not a Prohibited Person.

“Borrower Payment Default” has the meaning set forth in Section 2.1(h).

“Business Day” means the hours between 9:00 a.m. – 4:00 p.m., Eastern time, Monday through Friday, other than the following days: (a) New Year’s Day, Dr. Martin Luther King, Jr. Day, Lincoln’s Birthday, Washington’s Birthday (celebrated on President’s Day), Memorial Day, the day before Independence Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans’ Day, the day before and after Thanksgiving Day, Thanksgiving Day, Christmas Eve, Christmas Day and New Year’s Eve; (b) a legal holiday in the State of New York; and (c) any other day on which the U.S. Federal Reserve Bank or commercial banks in New York State are authorized or required by applicable law to close. For purposes hereof, if any day listed above as a day on which Administrator is closed falls on a Sunday, such day is celebrated on the following Monday. If any day listed above as a day on which a bank is closed falls on a Saturday, such day is celebrated on the preceding Friday.

“Certificate of Completion” means, with respect to a given Effective Project, a Certificate of Completion for such Project executed by duly authorized Representatives of Lender, Borrower and the primary Project contractor(s) and delivered to Administrator pursuant to the Guidelines and Section 5.5(c) substantially in the form available on the Program website (or in such other form as may have been provided by Administrator) and otherwise in form and substance acceptable to Administrator.

“Change of Control” means the consummation of any transaction or series of transactions as a result of which there occurs any material change in either (a) the Person or Persons who, as of the date hereof, own, beneficially and of record, directly or indirectly, for any reason, at least [fifty-one percent (51%)] of the aggregate economic and voting power of Lender or Guarantor, as applicable (on a fully-diluted basis); or (b) the Person or Persons who, as of the date hereof, have Control of Lender or Guarantor, as applicable.²

² NOTE TO FORM: This definition is subject to be modified, as appropriate, upon NYCEEC’s and the City’s consent based on a review of relevant organizational documents of the Lender who will be the counterparty to this Agreement.

“City” means the City of New York, a New York municipal corporation, and any agency (including DOB and DOF) or department thereof.

“City Fiscal Year” means July 1 of each calendar year through and including June 30 of the succeeding calendar year.

“Closing Date” means, with respect to a given Loan closing, the date on or as of which: (a) all definitive Loan documents, including all applicable PACE Financing Documents, have been fully executed; (b) the related Project is an Effective Project; and (c) the initial disbursement of Funds under the Loan has been made by Lender.

“Collection Account” means, collectively, one or more general or other deposit account(s) opened and maintained by Paying Agent as the beneficial owner of such account(s), on behalf of Lender and all other Qualified Lenders pursuant to Section 4.2, with the Bank.

“Collection Agreement” means the PACE Charge Collection Agreement executed in connection with a given Project by the City, Administrator and Paying Agent, and by Lender and each Borrower upon execution of a Program Financing Agreement, providing for the collection by the City of a PACE Charge, the remittance of such PACE Charge by the City to Administrator, and the subsequent remittance of such PACE Charge by Administrator or Paying Agent to Lender.

“Construction Completion” means, with respect to a given Project financed under the Program (a) all Project Equipment has been properly and fully installed (and where required or otherwise applicable, satisfactorily performance tested) and all related work, other than immaterial “punch list” items (as determined by Administrator) under the contract(s) between the applicable Borrower and the primary Project contractor(s), has been fully completed in accordance with the terms of such contract(s); (b) as required or otherwise applicable, all Project Equipment has been commissioned, brought on-line and has commenced regular operation; (c) all necessary approvals, permits, and consents needed from Governmental Authorities having jurisdiction in order to use or operate the Project Equipment that are material (as determined by Administrator), have been obtained, and if required or otherwise applicable, temporary or permanent certificate(s) of occupancy in respect of the Project and/or the Property have been issued by the relevant Governmental Authorities; and (d) all approvals, permits and consents needed from such Governmental Authorities in order to undertake the Project, including all relevant construction, building, work and other permits (if any), have been properly closed out; and (e) except to the extent Lender or the applicable Borrower is contesting payment(s) in a diligent and prudent manner and in accordance with applicable law, the primary Project contractor(s) and all other contractors, subcontractors, vendors, suppliers, consultants and service providers who performed Project work or provided any Project Equipment have all been paid in full for their work related to the Project and/or such Project Equipment, or have otherwise agreed that payment obligations owed to them have been satisfied.

“Control” means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a given Person, whether through the ownership of stocks, shares, partnership, membership or other equity interests or voting securities, by contract or otherwise.

“Default” means any event or occurrence which, upon the giving of notice or lapse of time, or both, would constitute an Early Termination Event.

“DOB” means the City’s Department of Buildings.

“DOF” means the City’s Department of Finance.

“Early Termination Event” has the meaning set forth in Section 11.3.

“Effective Project” means an Approved Project for which Administrator has provided the City with the deliverables required in Section 5.2 herein, and for which Administrator, Paying Agent and the City have duly executed and delivered the Collection Agreement, and if applicable, the Master Transfer and Remittance Agreement, which is identified on Schedule I attached hereto or any updated version thereof as may be provided by Administrator from time to time.

“Eligible Costs” has the meaning set forth in Section 6.3(a).

Eligible Lease” means any written, fully executed and binding agreement under which the Property Owner of a given Property is the lessor, a given Borrower is the lessee or tenant, and with respect to which (a) such Borrower has long term leasehold interest in such Property with a remaining base or primary term (not including extensions) which, from the Closing Date of the applicable Loan, continues or shall continue through at least the term of the Loan to which such Borrower is or will be a party; (b) such Borrower’s leasehold interest in the Property has been (or is eligible under applicable law to be) recorded, by such Borrower, in the real property records of the Property with the Office of the City Register or the County Clerk’s Office for Richmond County, New York; (c) either such Borrower or the Property Owner (which is the lessor under such agreement) is the recipient of record to whom the Statement of Account is to be delivered, as designated in the systems and records maintained by DOF; (d) the Property conveyed thereunder, which constitutes the leased premises, comprises the entirety of the lot and as such there is a single borough, block and lot number (BBL) for such Property, and such conveyance is of a leasehold interest in and to at least the entirety of the underlying real property associated with such BBL.

“Eligible Site” means any real property with respect to which all of the following requirements are satisfied: (a) the Borrower is the owner of record of such property or has a leasehold interest in such property pursuant to an Eligible Lease; (b) such property is located in one of the five boroughs of New York City; and (c) a such property is not a one- or two-unit residential building.

“Energy Data” means, with respect to a given Project (and the Property related thereto) (a) data and other information concerning the expected energy performance of such Project and/or such Property, as estimated prior to Construction Completion; and (b) monthly data and other information concerning the actual energy performance of such Project and/or such Property after such Project achieves Construction Completion.

“Estimated Completion Date” means, with respect to each Project financed by Lender hereunder that is not a Retroactive Project, the outside date stated on Schedule I hereto by which Lender and Borrower reasonably estimate (as of the Closing Date for such Project) that

Construction Completion will have been achieved, as such date may be updated from time to time pursuant to Section 5.6(b).

“Excusable Delay” means a delay (a) to the extent caused by an event of Force Majeure, the occurrence of which event was not reasonably foreseeable as of the Closing Date; or (b) to the extent caused by any other event or circumstance determined by Administrator to be beyond the reasonable control of the applicable Borrower or Lender and not reasonably foreseeable as of the Closing Date.

“Force Majeure” means any event beyond the reasonable control of the affected Person, including (a) act of God; (b) restriction, stay, judgment, order or decree imposed or issued by a Governmental Authority (other than Administrator); (c) explosion, fire, radiation, chemical contamination, or other casualty; (d) war declared by the United States Congress, act of terrorism, sabotage, revolution, riot, insurrection, strike, work stoppage, labor or materials shortage, blockade, embargo; or (e) pandemic, epidemic or shutdown (whether in connection with the order of a Governmental Authority or the health recommendations of local, state or federal officials, or of local, state, or federal agencies (including public health agencies)).

“Funds” has the meaning set forth in Section 4.2(c).

[“Guarantor” means [insert full legal name of entity that will execute the Guaranty].]³

[“Guaranty” means the Guaranty Agreement, dated as of [] [__], [20__], among Guarantor, Administrator and Paying Agent in form and substance acceptable to Administrator and the City.]⁴

“Governmental Authority” means the United States of America; any state, local, municipal or other political subdivision thereof and any agency or department of any of the foregoing; any public authority; any court of competent jurisdiction; any commission; any board; and any public utility; which has jurisdiction over the Program, Administrator, Paying Agent, Lender, any Project and/or any Borrower.

“Lender” has the meaning set forth in the preamble hereof.

“Lender Certification” means a Lender Certification for a given Effective Project delivered to Administrator pursuant to Section 5.1(h) and the Program Guidelines, in the form available on the Program website (or in such other form as may have been provided by Administrator) and otherwise in form and substance acceptable to Administrator.

³ NOTE TO FORM: include this definition only if applicable. If not applicable, globally remove concept from this Agreement.

⁴ NOTE TO FORM: include this definition only if applicable. If not applicable, globally remove concept from this Agreement.

“Loan” means, with respect to each Effective Project, the commercial PACE financing provided by Lender to the Borrower under the Program that is to be repaid through a separate charge on the Borrower’s Statement of Account and that is made pursuant to a Program Financing Agreement between Lender and such Borrower.

“Loan Collections” means (a) any and all PACE Charge payments or other Funds received by Administrator or Paying Agent from the City with respect to each Loan made by Lender hereunder that are actually deposited into or credited to the Collection Account; and (b) any and all Loan prepayments or other Funds that may be received by Administrator or Paying Agent from time to time pursuant to Section 6.7 that are actually deposited into or credited to the Collection Account.

“Low Carbon Building” means a building that is designed, engineered, developed, constructed, operated and maintained such that any device, machinery, equipment, component, system or element installed or used in such building that causes or otherwise results in the combustion within or upon such building of any substance emits no more than 25 kilograms of carbon dioxide per million British thermal units of energy, as determined by the United States energy information administration, provided that such limitation shall not apply to any of the following:

- a. Any device installed or used in such building that (1) has no connection to the gas supply line or fuel oil piping system of such building; (2) is used on an intermittent basis; and (3) is not used to supply such building, or any portion of such building, with heat or hot water; or
- b. Any building in which the combustion within or upon such building of a substance that results in the emission of 25 kilograms or more of carbon dioxide per million British thermal units of energy, as determined by the United States energy information administration, is necessary: (1) for a manufacturing use or purpose; (2) for the operation of a laboratory, laundromat, hospital, crematorium, or commercial kitchen as defined in section 202 of the New York City fire code; (3) to provide emergency or standby power; or (4) for any use allowed pursuant to a rule promulgated by the Department of Buildings in accordance with exception 9 of section 28-506.1 of the Administrative Code, provided that any such emission in excess of 25 kilograms of carbon dioxide per million British thermal units of energy allowed pursuant to this definition be limited to the emission necessary for the use or purpose described in subparagraphs 1 through 4 of this paragraph.

“Major Renovation” means any renovation, retrofit or other capital improvement project involving construction in an existing building that: (a) increases the floor surface area of such building by more than 110% and (b) is consistent with criteria set forth in the Program Guidelines.

“Master Transfer and Remittance Agreement” means a Master Transfer and Remittance Agreement, if any, entered into among the City, Administrator, the NYCTL 1998-2 Trust, and Lender which establishes terms for (i) the collection and remittance of PACE Charge Liens that are transferred to and collected by the NYCTL 1998-2 Trust on behalf of Lender and remitted to Administrator (or its designee) for payment to Lender or (ii) alternatively, the sale of PACE Charge Liens by Lender to the NYCTL 1998-2 Trust.

“Material Adverse Effect” means, with respect to a given Person (a) such Person has incurred any liabilities, direct or contingent, including any losses or interference with its business from fire, explosion, flood, earthquake, pandemic, accident or other calamity or any other act of god, whether or not covered by insurance, or from any strike, labor dispute or any action, order or decree of any Governmental Authority, that are material, individually or in the aggregate, to such Person, taken as a whole; or (ii) there has occurred any material adverse change in the properties, business, prospects, operations, earnings, assets, liabilities or condition (financial or otherwise) of such Person.

“Material Legal Issue” means, with respect to a given Person (a) the initiation or pendency of any criminal, financial (including tax-related), or regulatory action, suit or proceeding against (or primarily focused on) such Person before or by any Governmental Authority; or (b) such Person is in violation of (or is under investigation by any Governmental Authority for a potential violation of) any law, rule, regulation, statute, writ, order, judgment, injunction, decree or determination applicable to such Person; in either case, where such action, suit, proceeding, violation or potential violation has (or could reasonably be expected to have) a Material Adverse Effect on such Person.

“Merger or Consolidation” means, with respect to a given Person, any direct or indirect corporate or organizational restructuring, reorganization, consolidation, merger, acquisition, or any other similar transaction or series of transactions impacting or otherwise involving such Person.

“Mortgage Holder Consent” means, with respect to each Approved Project and the related Property, that certain mortgage lender disclosure form and consent setting forth an amount not less than the financing amount of the Approved Project, requesting confirmation from the related mortgage lender (providing mortgage finance with respect to such Property) that the levy of the PACE Charge shall not trigger an event of default or the exercise of any remedies under the related mortgage loan documents, and providing notice to such mortgage lender that such PACE Charge shall be collected in installments on the related Statement of Account in the same manner as and subject to the same penalties, remedies and lien priorities as real property taxes, signed by such mortgage lender, in the form available on the Program website (or in such other form as may have been provided by Administrator) and otherwise in form and substance acceptable to Administrator.

“New Construction” means any project for which a new building permit is required pursuant to item 1 of section 28-105.2 of the Administrative Code. Any work subject to section 28-101.4.5 of the Administrative Code shall not be considered “New Construction”.

“Notice to Commence Levy and Collection of PACE Charge” means a document provided by Administrator to the City pursuant to the Administration Agreement that triggers the City’s obligations to levy and collect PACE Charges and disburse collected PACE Charges to Administrator.

“NYCEEC” has the meaning set forth in the preamble hereof.

“NYCTL-1998-2 Trust” means the NYCTL 1998-2 Trust, a not-for-profit trust organized under the laws of the State of Delaware, or another trust as determined by the City of New York.

“Owner Consent” means, with respect to each Approved Project in which the Borrower is not the Property Owner, that certain owner consent requesting confirmation from the related Property Owner/lessor that the levy of the PACE Charge and the implementation of the Project shall not trigger an event of default or the exercise of any remedies under the Eligible Lease to which they are a party (or under any other agreement to which they are a party), and providing notice to such Property owner/lessor that such PACE Charge shall be collected in installments on the related Statement of Account in the same manner as and subject to the same penalties, remedies and lien priorities as real property taxes, signed by such Property owner/lessor, in the form available on the Program website (or in such other form as may have been provided by Administrator) and otherwise in form and substance acceptable to Administrator.

“PACE Charge” means the amount due on a Statement of Account, pursuant to the Program Financing Agreement, in furtherance of repayment of the Loan or otherwise in connection with the financing of a given Project under the Program.

“PACE Charge Lien” means a lien upon the Property benefitted by a Loan due to the non-payment of a PACE Charge on a Statement of Account.

“PACE Charge Payment Schedule” has the meaning set forth in Section 6.6.

“PACE Charge Submission Deadline” means May 1 and November 1 of each City Fiscal Year.

“PACE Financing Documents” means, with respect to each Loan, this Agreement, [the Guaranty,⁵ the related Program Financing Agreement(s) to which Lender is a party, the Collection Agreement, the Master Transfer and Remittance Agreement (if applicable), each Mortgage Holder Consent (as applicable), each Owner Consent (as applicable), the Technical Certification, the Technical Certification Workbook, the Lender Certification, the TIPLA, the Technical Certificate of Completion, the Certificate of Completion, each wire or similar instruction provided to Administrator or Paying Agent pursuant to any Collection Agreement, and any and all other agreements, instruments and other documents evidencing and securing or executed in connection with each Loan, including such additional documents as may be referenced in the Program Guidelines.

“PACE Loan Notice” means a notice of PACE financing in the form attached to the Collection Agreement.

“PACE Local Law” means §§11-3001 *et seq.* of the New York City Administrative Code.

“PACE Minimum Underwriting Standards” has the meaning set forth in Section 6.4.

⁵ NOTE TO FORM: include or omit the terms “Guarantor” and “Guaranty” globally in this document as applicable.

“Patriot Act” means the USA PATRIOT Act, Title III of Pub. L. 107-56, signed into law October 26, 2001.

“Paying Agent” means NYCEEC, in its capacity as Paying Agent hereunder and under the other PACE Financing Documents or any agent acting on behalf of NYCEEC for such purposes, or any successor agent who may be appointed or otherwise succeed to the role of Paying Agent in accordance with Section 4.6.

“Person” means any individual, corporation, partnership, joint venture, association, limited liability company, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

“Program” has the meaning given in the recitals to this Agreement.

“Program Administrator Indemnitee” has the meaning set forth in Section 13.1.

“Program App.” means the online/internet-based software application, having a login page entitled “NYC Accelerator PACE Financing”, accessible by Qualified Lenders having valid login credentials; or such other software application or system as may be selected by Administrator for administration of the Program.

“Program Financing Agreement” means any loan, credit, financing or other similar agreement between a Borrower and Lender providing for the terms and conditions of a Loan by Lender to such Borrower.

“Program Guidelines” means the Program Guidelines governing the Program published by the City, as such Program Guidelines may be amended, restated, modified or supplemented from time to time by the City.

“Program Requirements” means, collectively, all requirements established by Section 119-gg of the New York General Municipal Law; the PACE Local Law; the rules promulgated by DOF to implement the PACE Local Law; and the Program Guidelines.

“Prohibited Person” means any Person (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 have been under investigation by any Governmental Authority for any potential violation of the Bank Secrecy Act, the 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 an Affiliate of any Person identified in clauses (a) - (d) of this definition.

“Project” means, as applicable, a Proposed Project, Approved Project or Effective Project.

“Project Equipment” means all equipment, devices, machinery, materials, building supplies, and/or systems installed within or otherwise implemented or undertaken at a given Property in connection with an Effective Project undertaken or to be undertaken on such Property.

“Project Sources and Uses Statement” means, with respect to a given Project and Loan, a “sources and uses” statement, in form and substance acceptable to Administrator, providing acceptable detail on the Total Project Costs and the Eligible Costs for such Project, the sources for paying such costs, and such other information as Administrator may request.

“Property” means, with respect to each Loan, the real property owned by the applicable Borrower, which is identified in the applicable Program Financing Agreement and the applicable Collection Agreement, and which meets the requirements of being an Eligible Site.

“Property Owner” means, with respect to any given Property, the Person who is the owner of such Property as indicated in the real property records maintained by the Office of the City Register or the County Clerk’s Office for Richmond County, New York and by such additional evidence, title reports, or other documentation as may be requested by Administrator.

“Proposed Project” means a project for which, pursuant to Section 2.1(b): (a) a preliminary application has been submitted in accordance with the Program Guidelines; (b) Lender has certified to Administrator and the City that all applicable eligibility requirements have been satisfied; and (c) Administrator has confirmed that such eligibility requirements have been satisfied.

“Qualified Lender” means any Person which has satisfied (and continues to satisfy) the eligibility requirements for becoming a lender qualified to make commercial PACE loans under the Program and which is party to an effective Master Lender Agreement with NYCEEC (as Administrator and as Paying Agent).

“Qualified Transferee” means any corporation, partnership, joint venture, association, limited liability company, joint stock company, or trust that is, as of any given point in time, either (i) another Qualified Lender under the Program other than Lender; or (ii) an entity (A) that is in good standing in the jurisdiction in which it was formed and is in good standing and qualified to do business in the State of New York; provided, that a statutory trust need not be qualified to do business in the State of New York if it has duly designated the New York State Secretary of State as its agent for service of process pursuant to Section 18 of the New York State General Associations Law; (B) that is a U.S. Person; (C) that is not a Prohibited Person; (D) with respect to which there exists no Material Legal Issue; and (E) that is not delinquent in the payment of any taxes, civil penalties, or other debt to the City, or any water or sewer charges to the New York City Water Board, or the City’s Department of Environmental Protection.

“Representative” means, with respect to any given Person, any director, officer, official, employee, agent, contractor or other representative of such Person.

“Required Completion Date” means, with respect to each Effective Project that is not a Retroactive Project, the date that is the first anniversary of the Estimated Completion Date for such Project, as such date is to be set forth on Schedule I hereto.

“Retroactive Project” means each Project for which Construction Completion was or will have been achieved prior to the Closing Date for the Loan for such Project.

“Servicing Fee” means, with respect to each Loan (and the Effective Project to which such Loan relates) the semi-annual servicing fee payable by Lender to Administrator, pursuant to the Program Guidelines and Section 9.1(b) of this Agreement, in the amount calculated by Lender (and confirmed by Administrator) and memorialized in the PACE Charge Payment Schedule for such Loan (as such PACE Charge Payment Schedule may be replaced from time to time).

“Statement of Account” means the property tax bill issued to a Property by DOF.

“Sub-Account” has the meaning set forth in Section 4.2(b).

“Submittals” has the meaning set forth in Section 10.1(r).

“Term” has the meaning set forth in Section 11.1.

“Technical Certification” means a Technical Certification for a given Effective Project delivered to Administrator pursuant to the Program Guidelines in the form available on the Program website (or in such other form as may have been provided by Administrator) and otherwise in form and substance acceptable to Administrator.

“Technical Certification Workbook” means the Technical Certification Workbook for a given Effective Project delivered to Administrator pursuant to the Program Guidelines in the form available on the Program website which includes, attaches thereto, or incorporates by reference, descriptions or other information acceptable to Administrator on such Effective Project’s scope of work, estimated energy savings or renewable energy system generation, useful life of the energy measures, estimated cost savings, and the savings to investment results.

“Technical Certificate of Completion” means a Technical Certificate of Completion for a given Effective Project delivered to Administrator pursuant to the Program Guidelines and Section 5.5(c) in the form available on the Program website (or in such other form as may have been provided by Administrator) and otherwise in form and substance acceptable to Administrator.

“TIPLA” means a Truth-in-PACE-Lending Acknowledgment for a given Effective Project, delivered to Administrator pursuant to the Program Guidelines and Section 10.1(w) in the form available on the Program website (or in such other form as may have been provided by Administrator) and otherwise in form and substance acceptable to Administrator.

“Total Project Costs” has the meaning set forth in Section 6.3(b).

“U.S. Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended.

1.2 Other Definitional Provisions and Rules of Interpretation.

(a) All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein.

(b) As used in this Agreement and in any certificate or other document made or delivered pursuant hereto or thereto, accounting terms not defined in this Agreement or in any such certificate or other document, and accounting terms partly defined in this Agreement or in any such certificate or other document to the extent not defined, shall have the respective meanings given to them under generally accepted accounting principles. To the extent that the definitions of accounting terms in this Agreement or in any such certificate or other document are inconsistent with the meanings of such terms under generally accepted accounting principles, the definitions contained in this Agreement or in any such certificate or other document shall control.

(c) The words “hereof”, “herein”, “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; Article, Section, Schedule and Exhibit references contained in this Agreement are references to Articles, Sections, Schedules and Exhibits in or to this Agreement unless otherwise specified; and the term “including” shall mean “including without limitation”.

(d) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

(e) Any agreement, instrument, statute, law, rule or regulation defined or referred to herein or in any instrument or certificate delivered in connection herewith means such agreement, instrument, statute, law, rule or regulation as from time to time amended, modified, supplemented or replaced and includes (i) in the case of agreements or instruments, references to all attachments thereto and instruments incorporated therein, and (ii) in the case of statutes, laws, rules or regulations, any successor statutes, laws, rules or regulations; references to a Person are also to its permitted successors and assigns.

(f) Except as may otherwise be expressly provided herein, the following additional rules of interpretation shall apply to this Agreement: (i) the word “or” is not exclusive; (ii) in the event of any conflict between the provisions of this Agreement (exclusive of the Exhibits and Schedules hereto) and any Exhibit or Schedule hereto, the provisions of this Agreement shall control; (iii) references to “days” shall mean calendar days, unless the term “Business Day” is used; (iv) references to a time of day shall mean such time in New York, New York, unless otherwise specified; and (v) Article, Section and other headings are used in this Agreement as a matter of convenience for reference only, are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

ARTICLE II

PROJECT QUALIFICATION AND FINANCING PROCESS

2.1 Qualification and Financing Process. As described in more detail in Article V and Article VI and other applicable sections of this Agreement, the process for origination, funding

and administration of Loans and the relationship between and among the City, Administrator, Paying Agent, Lender and each applicable Borrower shall be as follows:

(a) With respect to each project for which Lender desires to provide a Loan, Lender shall first submit to Administrator, for Administrator's review, such information, materials, and/or documents concerning such project as are required under the Program Guidelines in order for the project to become a Proposed Project.

(b) If, pursuant to the Program Guidelines, such project satisfies the preliminary Program eligibility requirements necessary to become a Proposed Project (including the requirements that the proposed Borrower must meet all Borrower Eligibility Requirements and that the proposed Property must be an Eligible Site), and Lender certifies to Administrator and the City (with such certification being in form and substance acceptable to Administrator) that such requirements are satisfied, the project shall then become a Proposed Project as of the date specified in a written confirmation provided by Administrator by email (or by another method permitted hereunder); provided, that in all cases Administrator shall have the right to conduct its own review to confirm that all applicable requirements have been satisfied. Upon becoming a Proposed Project, Lender, on behalf of the Borrower, may then submit a full application for the Proposed Project pursuant to the Program Guidelines.

(c) In order for a Proposed Project to qualify as an Approved Project, Lender, on behalf of the Borrower, must submit to Administrator all documentation required for the full application for the Proposed Project, as described in the Program Guidelines and Section 5.1 of this Agreement. Administrator shall have no obligation to review any information or materials related to a given Proposed Project until Administrator determines that such full application is complete and that all required documents and supporting materials have been submitted.

(d) Upon receipt of a satisfactory full application and all other deliverables required in Section 5.1, Administrator shall review the application and such other deliverables to determine whether the Proposed Project meets all applicable technical, underwriting and other criteria which must be satisfied in order to qualify as an Approved Project. If Administrator determines that a Proposed Project meets all such criteria, Administrator shall notify Lender of such determination by email (or by another method permitted hereunder) and the Project shall then become an Approved Project as of the date specified in such notice.

(e) In order for an Approved Project to qualify as an Effective Project, the conditions-precedent set forth in Section 5.2 must be satisfied. Upon Administrator determining that all such conditions-precedent have been satisfied, as set forth under Section 5.2, Administrator shall notify Lender of such determination by e-mail (or another method permitted hereunder) and the Project shall then become an Effective Project as of the date specified in such notice.

(f) Commencing on the Closing Date for each Loan, from time to time Lender may disburse funds to the related Borrower in accordance with the related Program Financing Agreement.

(g) Pursuant to the terms of each Collection Agreement, the applicable Borrower who is a party thereto will thereafter make PACE Charge payments according to the PACE Charge

Payment Schedule and the regular Statement of Account billing schedule to DOF, which will remit payment to Paying Agent in accordance with such Collection Agreement and the Administration Agreement. Paying Agent (or its designee) shall then remit payment to Lender in accordance with such Collection Agreement and this Agreement.

(h) If any Borrower fails to make any given PACE Charge payment when due in accordance with the PACE Financing Documents to which the Borrower is a party (each, a “Borrower Payment Default”), the applicable provisions of the applicable Collection Agreement and the provisions of Article VII shall apply.

Notwithstanding the foregoing or any contrary provision set forth herein, Administrator shall have no obligation to take any action pursuant to Sections 2.1(b) - (e) if any Default or Early Termination Event has occurred and is ongoing.

ARTICLE III **ADMINISTRATOR OBLIGATIONS**

3.1 Administrative Responsibilities. Administrator shall review each deliverable submitted by Lender or the related Borrower (or the Borrower’s agent) with respect to a Proposed Project, and upon determining that all applicable Program Requirements are satisfied, provide approval to a Proposed Project as further set forth in Article II above and pursuant to the terms and provisions of the Administration Agreement and the Program Guidelines. In making such determination, without independent investigation or verification Administrator may rely on the application, statements and signatures contained therein, and all other information and deliverables submitted to Administrator in connection with such Proposed Project.

3.2 Administrator Audit Rights. At any time during the Term, Administrator shall have the right to contact Lender regarding application materials submitted by Lender, or to request additional information or materials as Administrator may consider appropriate. Lender shall promptly provide all information and materials reasonably requested by Administrator. In addition, Lender shall ensure that Administrator and its Representatives have the right to audit, inspect and make copies of the books and records related to each Project and Administrator and any Representatives of Administrator may, upon reasonable advance notice to Lender and related Borrower, inspect each such Project.

3.3 Administrator and Paying Agent Determinations. Unless expressly stated otherwise herein or in any other PACE Financing Document, in all instances where Administrator, Paying Agent or the City is required or has the right to make any type of determination, assessment, evaluation, election, to grant any consent or to otherwise exercise its judgment in connection with performing its obligations hereunder or under any other PACE Financing Document, such determination, assessment, evaluation, election or other exercise of judgment shall in all cases be in Administrator’s, Paying Agent’s or the City’s sole and absolute discretion.

3.4 Use of Agents. NYCEEC, in its capacity as Administrator, may perform any of its obligations under this Agreement or any other PACE Financing Document by or through its contractors, subcontractors, agents or attorneys-in-fact, and shall be entitled to the advice of counsel concerning all matters pertaining to its rights and obligations hereunder or under any other

PACE Financing Document. The Administrator shall not be responsible for the negligence or misconduct of any contractors, subcontractors, agents or attorneys-in-fact selected by it with reasonable care.

3.5 Standard of Performance. Administrator undertakes to perform such duties and only such duties as are specifically set forth herein and no implied covenants or obligations shall be read into this Agreement against Administrator. In performing its obligations hereunder, Administrator shall use the same level of care as it uses for similar transactions but shall not be liable to Lender for any action taken or omitted to be taken by it hereunder or pursuant hereto, except for Administrator's failure to make sums remitted to Administrator by DOF available to Lender as required under this Agreement and the other applicable PACE Financing Documents. The duties of Administrator shall be administrative in nature and Administrator shall not have, by reason of this Agreement, a fiduciary relationship with Lender, any Borrower or any other Person (and no implied covenants, functions or responsibilities shall be read into this Agreement or otherwise exist against Administrator). Administrator shall not be required to take any action if Administrator reasonably believes that such action is contrary to applicable law, the advice of counsel, the Program Guidelines or any other Program Requirements, the terms and provisions of this Agreement, the Administration Agreement, or any other PACE Financing Document. As to any matters not expressly provided for by this Agreement, Administrator shall not be required to exercise any discretion, ascertain anything or take any action and in case of any question concerning its rights and duties hereunder, Administrator may request written instructions (which may be delivered by e-mail) from Lender and refrain from taking action until it receives written instructions from Lender (which may be delivered by e-mail). Administrator shall be fully protected and have no liability to any Person for acting or refraining from acting hereunder in accordance with such written instructions of Lender; provided, that Administrator shall not be required in any event to act, or to refrain from acting, in any manner which is contrary to any PACE Financing Documents, the Administration Agreement, the Program Guidelines, any Program Requirements, advice of any legal counsel (including counsel for Lender) or applicable law. Administrator shall, in the absence of actual knowledge to the contrary, be entitled to rely on any written notice, instruction or request (including those delivered by e-mail) believed in good faith to be genuine and correct and to have been signed or otherwise duly issued by an authorized Representative of Lender or of any applicable Borrower. Administrator shall be under no duty to inquire into or investigate the validity, accuracy or content of any such notice, instruction or request. Administrator and the City shall also be entitled to rely on all certifications delivered by Lender hereunder, and the statements made therein, without any duty of inquiry or independent investigation or verification.

ARTICLE IV **PAYING AGENT**

4.1 Appointment of Paying Agent.

(a) Lender hereby irrevocably appoints and authorizes Paying Agent (and Paying Agent hereby accepts such appointment) to act as the agent of Lender hereunder, with such powers as are expressly delegated to Paying Agent by the terms of this Agreement, together with such other powers as are reasonably incidental thereto. In performing its functions and duties under this Agreement, Paying Agent shall act solely as agent for Lender and, except in such capacity,

does not assume and shall not be deemed to have assumed any relationship of agency or trust with or for any Person.

(b) There shall at all times be a Paying Agent hereunder which shall either be NYCEEC, acting as Paying Agent, or a successor appointed in accordance with Section 4.6. Unless otherwise agreed to in one or more instruments signed concurrently by the City, Administrator, and all Persons who are Qualified Lenders as of the effective date of such instrument or instruments (as the case may be), there shall only be a single Paying Agent for the Program at any given time.

4.2 Paying Agent Obligations.

(a) Paying Agent shall open and maintain the Collection Account with the Bank on behalf and for the benefit of Lender and all other Qualified Lenders. Until disbursed in accordance with sub-clause (e) below, all Loan Collections actually received and deposited into or credited to the Collection Account shall be held in the Collection Account (in the custody of Paying Agent), on behalf and for the benefit of Lender. All such Loan Collections shall at all times be considered to be owned by and the property of Lender, and neither Paying Agent nor Administrator shall have any right, title or interest in or to such Loan Collections except to the extent expressly provided herein or in any other PACE Financing Document.

(b) Paying Agent may, at its discretion, establish and create sub-accounts within the Collection Account (and Lender hereby consents to such establishment and creation). In the event that, in accordance with any PACE Financing Document or the Administration Agreement, Paying Agent is required to further segregate certain monies in the Collection Account from any other amounts on deposit in such account pending application in accordance with any given PACE Financing Document, Paying Agent shall either (i) hold such monies in the Collection Account for use solely for such application; or (ii) at the option of Paying Agent, or if requested by the City, create a separate sub-account for such purpose. Any sub-account established in accordance with this sub-clause (b) shall hereinafter be referred to as a “Sub-Account”.

(c) No portion of the funds, monies, cash, instruments, investment property or other financial assets (collectively, “Funds”) at any time on deposit in or credited to the Collection Account or any Sub-Account shall be used by Paying Agent (or any agent, subcontractor, appointee or designee thereof) to make any investment of any kind and Lender shall not direct Paying Agent or Administrator to make any such investment. To the extent any interest may accrue on any Funds at any time on deposit in or credited to the Collection Account or any Sub-Account, such interest shall first be applied by Paying Agent toward any fees, costs or expenses paid or payable by Paying Agent or Administrator to other Persons (including any agent, subcontractor, appointee or designee selected by Paying Agent) in performing their respective obligations hereunder. To the extent the Funds at any time on deposit in or credited to the Collection Account or any Sub-Account exceed insurance or other protections afforded by the FDIC, Paying Agent shall not have any obligation hereunder or under any other PACE Financing Documents to collateralize or otherwise secure such Funds with any additional insurance or collateral of any type.

(d) Paying Agent shall not pledge, collaterally assign, hypothecate, transfer or grant to any Person any type of lien on or security interest in or to, any of its right, title or interest in and to (i) the Collection Account or any Sub-Account (if any), or (ii) any Funds at any time on deposit in or credited to the Collection Account or any Sub-Account.

(e) Paying Agent shall disburse all Loan Collections in accordance with the express terms and provisions of the applicable Collection Agreement, the Master Transfer and Remittance Agreement (if any), this Agreement and the Administration Agreement, but neither Administrator nor Paying Agent shall have any obligations with respect to the collection of delinquent payments owed under any given Loan, or any other servicing or special servicing duties under this Agreement.

(f) Subject to Article VIII, Paying Agent and Administrator in their respective individual capacities or any other capacity may deal with Lender, any Borrower or any other Person in financing or other transactions with the same rights they would have if they were not Paying Agent and/or Administrator.

(g) Funds at any time on deposit in or credited to the Collection Account or any Sub-Account shall be solely related to Program loans made by Lender and other Qualified Lenders, and such Funds on deposit therein or credited thereto shall not be commingled with any other Funds of Paying Agent or Administrator. Paying Agent may hold any Funds or other property received or held by it in connection with its duties as Paying Agent hereunder, or under any other Master Lender Agreement, in collective accounts held by it for other Persons (which may include Lender); provided, that such accounts are under the sole control of Paying Agent, and Paying Agent maintains adequate records indicating the ownership of all such Funds or property and the portions thereof held for the account of or credit to Lender and each other Qualified Lender.

(h) Paying Agent may establish reasonable rules and set reasonable requirements for its functions performed hereunder and Lender shall observe all such rules and/or requirements (if any).

(i) The Collection Account and all Sub-Accounts shall at all times be in the exclusive possession of, and under the exclusive domain and control of, Paying Agent, as agent for Lender and the other Qualified Lenders.

4.3 Exculpatory Provisions.

(a) Paying Agent undertakes to perform such duties and only such duties as are specifically set forth herein and no implied covenants or obligations shall be read into this Agreement against Paying Agent. The duties of Paying Agent shall be administrative in nature and Paying Agent shall not have, by reason of this Agreement, a fiduciary relationship with Lender, any Borrower or any other Person.

(b) Neither Paying Agent nor Administrator shall in any way be held liable for any insufficiency of Funds at any time on deposit in or credited to the Collection Account or any Sub-Account except to the extent it is determined by a final and non-appealable judgment or court order binding on Administrator or Paying Agent that such insufficiency was the result of acts or omissions constituting gross negligence or willful misconduct of Administrator or Paying Agent.

(c) As to any matters not expressly provided for by this Agreement, Paying Agent shall not be required to exercise any discretion, ascertain anything or take any action and in case of any question concerning its rights and duties hereunder, Paying Agent may request written instructions (which may be delivered by e-mail) from Lender and refrain from taking action until it receives written instructions from Lender (which may be delivered by e-mail). Paying Agent shall be fully protected and have no liability to any Person for acting or refraining from acting hereunder in accordance with such written instructions of Lender; provided, that Paying Agent shall not be required in any event to act, or to refrain from acting, in any manner which it determines is contrary to applicable law, the advice of any legal counsel (including counsel for Lender), the Administration Agreement, the Program Guidelines or any other Program Requirements, the terms and provisions of this Agreement or of any other PACE Financing Document.

(d) Paying Agent shall, in the absence of actual knowledge to the contrary, be entitled to rely on any written notice, instruction or request (including those delivered by e-mail) believed in good faith to be genuine and correct and to have been signed or otherwise duly issued by an authorized Representative of Lender or of any applicable Borrower. Paying Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such notice, instruction or request. Paying Agent shall also be entitled to rely on all certifications delivered by Lender hereunder, and the statements made therein, without any duty of inquiry or independent investigation or verification.

(e) Paying Agent shall be entitled to rely upon the advice of counsel with respect to its performance hereunder as Paying Agent and shall be without liability for any action taken in good faith pursuant to such advice.

(f) Paying Agent shall not be liable for an error of judgment made in good faith unless it shall be finally proved by a court of competent jurisdiction in a final, non-appealable judgment or court order binding on Paying Agent, that Paying Agent was grossly negligent in ascertaining the pertinent facts.

(g) Paying Agent shall not be liable with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with the Program Guidelines or any other Program Requirements, this Agreement, the Administration Agreement, or any other PACE Financing Document or in accordance with direction as provided for in this Agreement in exercising or omitting to exercise any power conferred upon Paying Agent under this Agreement.

(h) Paying Agent shall not be liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by the Program Guidelines or any other Program Requirements, this Agreement, the Administration Agreement, or any other PACE Financing Document.

(i) Paying Agent shall not be required to expend or risk its own funds or otherwise incur financial liability for the performance of any of its duties hereunder or the exercise of any of its rights or powers if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not assured to it.

(j) Paying Agent shall have no duty (i) to see to any recording, filing, or depositing of this Agreement or any agreement referred to herein or any financing statement or continuation statement evidencing a security interest, or to see to the maintenance of any such recording or filing or depositing or to any rerecording, refiling or redepositing of any thereof, (ii) to see to any insurance, or (iii) to see to the payment or discharge of any tax, assessment, or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied in connection with this Agreement.

(k) The right of Paying Agent to perform any discretionary act enumerated in this Agreement shall not be construed as a duty and Paying Agent shall not be answerable for an act in accordance with this Agreement except in the case of its fraud, gross negligence or willful misconduct in the performance of such act (as determined by a court of competent jurisdiction in a final, non-appealable judgment or court order that is binding on Paying Agent).

(l) Paying Agent may execute any of the powers hereunder or perform any duties or obligations hereunder either directly or by or through agents, attorneys or custodians, and Paying Agent shall not be responsible for any misconduct or negligence on the part of any such agent, attorney or custodian appointed by Paying Agent with due care; provided, that the use of such agents, attorneys or custodians shall not relieve Paying Agent of its obligations to perform hereunder. Paying Agent shall not be responsible for delays or failures in performance resulting from forces beyond its control (including acts of God, natural disasters, global pandemics, strikes, work stoppages, accidents, severe weather, nuclear or natural catastrophes, lockouts, riots, civil or military disturbances, acts of war or terrorism, any provision of any present or future law or regulation or any act of any Governmental Authority, and loss or malfunction of utilities, communications, computer services (software or hardware) or Federal Reserve Bank wire service).

(m) No provision of this Agreement or any other related document shall be deemed to impose any duty or obligation on Paying Agent to take or omit to take any action, or suffer any action to be taken or omitted, in the performance of its duties or obligations under this Agreement or any other related document, or to exercise any right or power thereunder, to the extent that taking or omitting to take such action or suffering such action to be taken or omitted would violate applicable law binding upon it. Paying Agent shall promptly notify Lender if it is determined not to take any such action.

(n) To help the U.S. government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. When an account is opened, Administrator or Paying Agent will ask for information that will allow Administrator or Paying Agent to identify relevant parties. Lender acknowledges such information disclosure requirements and agree to comply with all information disclosure requests from time to time from Administrator or Paying Agent necessary to ensure compliance with such laws.

4.4 Taxes. Administrator is relying on Lender's representation and warranty, given under Section 10.1(s), that Lender is a U.S. Person. Accordingly, except to the extent required by applicable law, Paying Agent and Administrator shall have no obligation to withhold any Federal, state or local taxes from any Loan Collections disbursed to or for the account of Lender or any Qualified Transferee (if any) under any PACE Financing Documents. [Except to the extent

required by applicable law, Paying Agent and Administrator shall have no obligation to prepare for Lender, any Qualified Transferee (if any), or any other Person, including any payee or recipient of any Loan Collections disbursed under any PACE Financing Documents, any Federal, state or local tax information returns, forms or notices (including IRS Forms 1099-INT and/or 1042-s) with respect to such disbursements.]⁶

4.5 Compensation. Except for the semi-annual Servicing Fees payable in accordance with Section 9.1, no additional fees shall be due or payable to Paying Agent with respect to its performance of its regular duties hereunder as Paying Agent.

4.6 Delegation and Use of Agent. Pursuant to Section 14.1, without the written consent of any Person, Paying Agent may perform all or any portion of its duties hereunder through one or more designees, agents, subcontractors or any other Person appointed or otherwise selected by it, and may assign and/or delegate to any Person appointed or otherwise selected by it all or any portion of its rights and/or obligations hereunder; provided, that Paying Agent shall not be responsible or otherwise liable for the misconduct or negligence of any such designee, agent, subcontractor or other Person appointed or otherwise selected by it with due care.

4.7 Removal or Resignation of Paying Agent.

(a) Subject to sub-clause (d) below, Paying Agent may at any time resign by giving no less than sixty (60) days' prior notice to Administrator (if Paying Agent is not also serving as Administrator), Lender and the City; provided, that such resignation shall only take effect upon the appointment of a successor Paying Agent selected in accordance with sub-clause (c) below.

(b) Paying Agent may only be removed from serving in the capacity as Paying Agent at such time as (i) the Person that is Paying Agent ceases to serve as Administrator of the Program pursuant to Section 11.2 of this Agreement or Section 9(c)(ii) of each Collection Agreement; (ii) the Person selected as the successor Paying Agent is appointed, and accepts such appointment, in accordance with sub-clause (d) below; and (iii) the predecessor Paying Agent who was removed has delivered to the City or the successor Paying Agent (as the case may be) such information, books, records, schedules, and other documents as the City or such successor may reasonably require in connection with such successor's assumption of the duties and obligations of Paying Agent for the Program.

(c) If Paying Agent resigns or is removed, a successor may be appointed by the City by an instrument or instruments in writing signed concurrently by or among the City, NYCEEC, Lender and all other Persons who are Qualified Lenders as of the effective date of such instrument or instruments (as the case may be). Such instrument or instruments (as the case may be) must be in form and substance acceptable to the City and reasonably acceptable to all other parties thereto. Each such successor Paying Agent who is so appointed must be acceptable to the City and must be reasonably acceptable to Lender and all other Persons who are Qualified Lenders as of the

⁶ NOTE TO FORM: Omit, include and/or modify this bracketed sentence depending on relevant information provided by the Lender that will be the counterparty to this Agreement.

effective date of the appointment instrument or instruments (as the case may be). If any such appointment is the result of Paying Agent's voluntary resignation, the successor Paying Agent must also be reasonably acceptable to such resigning Paying Agent. If no successor Paying Agent has been appointed and an instrument of acceptance by a successor Paying Agent has not been delivered to the resigning Paying Agent within ninety (90) days after the giving of such notice of resignation, the resigning Paying Agent may petition any court of competent jurisdiction for the appointment of a successor Paying Agent.

(d) Every successor Paying Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor, the City, and Lender, an instrument in writing accepting such appointment hereunder, whereupon such successor, without any further act, deed or conveyance, shall become fully vested with all rights, powers, duties and obligations of its predecessor. Such predecessor shall, nevertheless, on the written request of its successor, the City or Lender, execute and deliver an instrument transferring to such successor all the rights and powers of such predecessor hereunder.

4.8 Survival. The terms and provisions set forth in this Article IV shall survive the expiration of the Term and any early termination of this Agreement.

ARTICLE V

LENDER OBLIGATIONS

5.1 Approved Project Deliverables. For each Proposed Project to become an Approved Project, Administrator shall have received from Lender all of the following with respect to such Project, in form and substance determined by Administrator to be satisfactory:

(a) all application materials, including those required under the Program Guidelines, and those necessary to satisfy the requirements of the technical assessment (including the Technical Certification, the Technical Certification Workbook, backup and/or supporting documentation substantiating the energy savings and other assumptions made in the Technical Certification and/or the Technical Certification Workbook, and backup and/or supporting technical, financial and other documentation substantiating the "Other Savings" described in the Technical Certification and/or the Technical Certification Workbook), as certified to in the Lender Certification;

(b) a certified true, complete and correct copy of the duly executed Program Financing Agreement substantially in the form previously approved by Administrator (or otherwise in form and substance acceptable to Administrator) which complies with the applicable requirements set forth herein, the minimum criteria of the Program as set forth in the Program Guidelines, and is otherwise consistent with all applicable Program Requirements;

(c) certified true, complete and correct copies of (i) the duly executed construction contract(s) between the Borrower and the primary Project contractor(s) to undertake the Project, and any and all amendments, change-orders or other similar modifications thereto (if any); (ii) plans, specifications and design drawings for the Project showing the improvements, measures and/or systems incorporated into the final Project design; (iii) the duly executed and recorded deed (or other instrument) pursuant to which the Property Owner came to be the owner of record of the

Property on which the Project has been or will be undertaken, together with a recent title report on the Property (if available); (iv) the most recent Statement of Account for such Property; and (v) if applicable, the duly executed lease agreement which constitutes the Eligible Lease, and under which the Borrower has a leasehold interest in the entirety of the BBL(s) related to such Property, and any and all amendments thereto (if any);

(d) a Project Sources and Uses Statement for the Project and supporting evidence of the Eligible Costs and Total Project Costs of the Project;

(e) if applicable, a true and correct copy of the form of Mortgage Holder Consent, in form and substance acceptable to Administrator, as is required to make the Loan, which complies with the applicable requirements set forth herein, the minimum criteria of the Program as set forth in the Program Guidelines, and is otherwise consistent with all applicable Program Requirements;

(f) if a given Borrower is not the Property Owner, a true and correct copy of the form of Owner Consent, in form and substance acceptable to Administrator, as is required to make the Loan, which complies with the applicable requirements set forth herein, the minimum criteria of the Program as set forth in the Program Guidelines, and is otherwise consistent with all applicable Program Requirements;

(g) a certified true and correct copy of the Collection Agreement, duly executed by an authorized Representative of Lender and the applicable Borrower, and any other PACE Financing Documents;

(h) if applicable, a certified true and correct copy of the Master Transfer and Remittance Agreement duly executed by an authorized Representative of Lender;

(i) the PACE Charge Payment Schedule for the related Loan;

(j) a copy of the Lender Certification duly executed by an authorized Representative of Lender;

(k) if the applicable Project is a Retroactive Project (or will be a Retroactive Project as of the Closing Date for such Project) (i) true, complete and correct copies of the duly executed Certificate of Completion for such Project and the duly executed Technical Certificate of Completion, each delivered in accordance with Section 5.5(d) below and the applicable Collection Agreement, and (ii) “as built” plans, specifications and design drawings (if available) for the Project;

(l) if the applicable Project constitutes New Construction or a Major Renovation, all plans, specifications and design drawings, as requested by Administrator, demonstrating that such Project is or will upon completion be a Low Carbon Building;

(m) a true, complete and correct copy of the TIPLA for such Project, duly executed by an authorized Representative of the applicable Borrower, delivered pursuant to Section 10.1(w) below and in accordance with the applicable Collection Agreement;

(n) if a given Borrower is an individual, a true, complete and correct copy of an appraisal of the applicable Property acceptable to Administrator prepared by an appraisal firm acceptable to Administrator; and

(o) all other documents, information and materials that Administrator determines are necessary or appropriate.

5.2 Effective Project.

(a) After each Proposed Project becomes an Approved Project, Administrator shall notify the City by e-mail of such Approved Project and deliver to the City (i) a copy of the executed Program Financing Agreement; (ii) a copy of the Collection Agreement executed by Lender and Borrower and, if applicable, a copy of the Master Transfer and Remittance Agreement executed by Lender; and (iii) a Notice to Commence Levy and Collection of PACE Charge in accordance with the Administration Agreement and the Collection Agreement. After each Proposed Project becomes an Approved Project, Administrator shall deliver to Lender a notarized PACE Loan Notice, executed by Administrator on the form attached to the Collection Agreement applicable to the Project.

(b) Following (i) the delivery of such notice and such documents to the City; (ii) Administrator's and the City's execution and delivery of the Collection Agreement and, if applicable, the Master Transfer and Remittance Agreement; (iii) receipt by Administrator of satisfactory evidence that, in accordance with the Collection Agreement, Lender has duly submitted the PACE Loan Notice for recording with the Office of the City Register (or the County Clerk's Office in the County of Richmond) in the real property records of the Property on which the Project is being undertaken; (iv) if applicable, receipt by Administrator of a certified true and correct copy of each duly executed Mortgage Holder Consent, in form and substance acceptable to Administrator, as is required to make the Loan, which complies with the minimum criteria of the Program as set forth herein and/or in the Program Guidelines, and is otherwise consistent with the Program Requirements; (v) if applicable, receipt by Administrator of a certified true and correct copy of each duly executed Owner Consent, in form and substance acceptable to Administrator, as is required to make the Loan, which complies with the minimum criteria of the Program as set forth herein and/or in the Program Guidelines, and is otherwise consistent with the Program Requirements; (vi) receipt by Administrator and the City of evidence, acceptable to the City and Administrator, documenting how the Loan proceeds disbursed by Lender on or as of the Closing Date shall be used or otherwise applied; and (vii) delivery by Administrator of an updated version of Schedule I to this Agreement which identifies such Project as an Effective Project, such Approved Project shall become an Effective Project as of the date specified in the notice given pursuant to Section 2.1(e).

5.3 Compliance with Law. Lender shall comply with the applicable provisions of federal, state and local laws, rules and regulations. Lender shall not by act or omission permit itself to be an Affiliate of any Prohibited Person.

5.4 Insurance. Lender shall procure and maintain (or cause to be procured and maintained) in full force and effect at all times liability and other appropriate insurance protecting Lender against such risks as are customarily insured by other companies engaged in the same or

similar businesses similarly situated. All such insurance policies shall be issued by a financially sound and responsible carrier admitted in the State of New York with an A.M. Best rating of not less than A- VIII; provided, however, that insurance policies may be issued by financially sound and responsible carriers with an A.M. Best rating of not less than A- VIII that are not admitted in the State of New York if, in Administrator's reasonable discretion, Lender has made a reasonable good faith effort to obtain insurance from carriers admitted in the State of New York. Lender shall provide at least thirty (30) days' notice to Administrator prior to cancellation, reduction in policy limits or other material change in coverage. Within five (5) Business Days of the date first set forth above, and from time to time at Administrator's request, Lender shall deliver or cause to be delivered to Administrator a signed broker's certification (on Administrator's current form); certificates of insurance, copies of insurance policies with relevant endorsements, and/or other evidence acceptable to Administrator showing that the insurance required hereunder is in full force and effect.

5.5 Project Construction and Construction Monitoring.

(a) In accordance with the Collection Agreement applicable to a given Effective Project, if such Project is not a Retroactive Project, Lender shall (i) include a covenant in the applicable Financing Agreement pursuant to which the applicable Borrower is obligated to achieve Construction Completion of the Project by the Required Completion Date (as such date may be extended by reason of Excusable Delay) applicable to such Project; and (ii) otherwise use commercially reasonable efforts (which, for the avoidance of doubt, shall not require Lender to initiate any litigation or arbitration, to violate any laws and/or to commit any act which could reasonably result in claims of Lender liability) to cause the applicable Borrower to cause Construction Completion for such Project to be achieved by the Required Completion Date (as such date may be extended by reason of Excusable Delay) applicable to such Project. Notwithstanding the foregoing, in no event shall Lender be required hereunder to cause Construction Completion of any Project. Administrator acknowledges that in the event that a Borrower defaults in its obligations to Lender to cause Construction Completion of a Project, Lender may, in its sole and absolute discretion and in accordance with the PACE Financing Documents, elect to itself cause Construction Completion, but in such an event, Lender shall not be deemed to have assumed the obligations of Borrower to cause Construction Completion of such Project (or of any other Borrower to complete any other Project) and Lender may abandon any such efforts to cause Construction Completion at any time and for any reason or no reason in its sole and absolute discretion.

(b) With respect to each Effective Project, until the date as of which Construction Completion is achieved for such Project, if requested by Administrator from time to time, Lender shall promptly convene in-person or virtual/video meetings and/or telephone/conference calls (during regular business hours) among appropriate Representatives of Administrator, Lender, the Borrower, the primary Project contractor(s), and such other Persons as may be reasonably requested by Administrator.

(c) With respect to each Effective Project that is not a Retroactive Project, promptly after such Project achieves Construction Completion Lender shall give notice to Administrator and shall deliver to Administrator the Certificate of Completion for such Project and the Technical

Certificate of Completion for such Project, in each case in accordance with the Collection Agreement applicable to such Project.

5.6 Notices.

(a) Within five (5) Business Days following the Closing Date of a given Loan, Lender shall notify Administrator of the date as of which the Closing Date occurred.

(b) With respect to each Effective Project that is not a Retroactive Project, if any event, circumstance or other development should arise prior to Construction Completion which will cause (or could reasonably be expected to cause) Construction Completion for such Project to occur after the Estimated Completion Date for such Project, Lender shall notify Administrator within five (5) Business Days of gaining knowledge of such event, circumstance or other development.

(c) With respect to each Effective Project that is not a Retroactive Project, promptly after such Project achieves Construction Completion Lender shall give notice to Administrator in accordance with Section 5.5(c).

(d) With respect to each Loan, from time to time if Administrator exercises its right under Section 6.6(b)(ii) to request that Lender confirm (whether through the Program App. or otherwise) the amount of a given PACE Charge to be collected in respect of a given semi-annual pay period, if the amount of such PACE Charge is not correct, Lender shall notify Administrator within five (5) Business Days of receipt of such confirmation request from Administrator.

(e) If any given Loan is prepaid in whole or in part, Lender shall notify Administrator in accordance with Section 6.7.

(f) In accordance with Section 7.2 Lender shall notify Administrator if: (i) Lender has actual knowledge of any Borrower Payment Default or any other event of default under any Program Financing Agreement; (ii) the occurrence of any judicial proceeding(s) against any Borrower, or in respect of any Property, to enforce the applicable Program Financing Agreement, any other applicable PACE Financing Documents, and/or any PACE Charges levied against such Property (including foreclosure actions, breach of contract actions and/or any other suit on the debt); (iii) any event or circumstance resulting in a Borrower ceasing to meet all Borrower Eligibility Requirements.

(g) If any Default, any Early Termination Event or any Material Legal Issues arise with respect to Lender, Lender shall notify Administrator in accordance with Section 11.3.

(h) Lender shall notify Administrator and Paying Agent no less than sixty (60) days in advance of any Merger or Consolidation or any Change of Control, in either case that will or could reasonably be expected to result in Lender ceasing to be a U.S. Person or that could otherwise reasonably be expected to have a material impact on Paying Agent's obligations under Section 4.4.

(i) If any Merger or Consolidation or any Change of Control occurs with respect to Lender (other than any Merger or Consolidation or any Change of Control for which notice is required under Section 5.5(h) above, Lender shall notify Administrator within thirty (30) Business Days following the occurrence of such Merger or Consolidation or such Change of Control.

(j) If Lender becomes aware of any taxes or claims (whether pending or threatened) that are the subject of indemnification under Article XIII, Lender shall notify Administrator in accordance with Section 13.3.

(k) With respect to each Property owned by a given Borrower to whom Lender makes a Loan, if such Property is sold, conveyed or otherwise transferred by such Borrower to any other Person, Lender shall notify Administrator within five (5) Business Days of gaining knowledge of such sale, conveyance or other transfer.

(l) With respect to each Property leased to a given Borrower to whom Lender makes a Loan, Lender shall notify Administrator within five (5) Business Days of gaining knowledge of any of the following: (i) if the Eligible Lease to which such Borrower is a party is terminated or otherwise ceases to be in full force and effect; or (ii) if such Borrower assigns or otherwise transfers its interest in such lease such that such Borrower is no longer the tenant or lessee thereunder.

5.7 Merger or Consolidation of Lender; Change of Control. Without the prior written consent of Administrator and Paying Agent (which shall not be unreasonably withheld, conditioned or delayed), Lender shall not undertake nor permit itself to be the subject of any transaction involving any Merger or Consolidation or any Change of Control that will or could reasonably be expected to result in Lender ceasing to be a U.S. Person.

ARTICLE VI **FINANCING GUIDELINES**

6.1 The Program Financing Agreement. Lender agrees to make commercially reasonable efforts to execute a Program Financing Agreement with each Borrower for each related Approved Project. Lender shall cause each such Program Financing Agreement to satisfy the requirements of applicable law, the Program Guidelines and the other Program Requirements, and the requirements specified in this Article VI. Lender may develop and include in the Program Financing Agreements to which it is a party additional terms and conditions it considers necessary or appropriate given the specific facts and circumstances surrounding any specific Approved Project and the related Borrower (the "Additional Lender Terms and Conditions"); provided, that such Additional Lender Terms and Conditions comply with applicable law, the Program Guidelines, the other Program Requirements and this Agreement. With the exception of such changes as are acceptable to Administrator, Lender shall cause each Program Financing Agreement to be substantially in the form previously approved by Administrator (or otherwise in form and substance acceptable to Administrator). Prior to the execution of each Program Financing Agreement, Administrator reserves the right to review and confirm that the form of Program Financing Agreement is substantially in the form previously approved by Administrator (or is otherwise in form and substance acceptable to Administrator) and that such Program Financing Agreement and the related PACE Charge Payment Schedule proposed by Lender both satisfy the requirements of this Article VI and all other applicable Program Requirements.

6.2 Interest Rate. Lender shall set a fixed rate of interest for the repayment of the principal amount of each Loan at the time such Loan is made. In addition to such fixed rate of interest, Lender may charge default interest on each Loan; provided, that such interest is at a rate equal to the rate charged by the City in the ordinary course in connection with delinquent tax liens.

The Program Financing Agreement for each Loan shall set forth such fixed rate and such default rate charged by the City. Lender shall not amend or modify the rate of interest in any Program Financing Agreement for any Approved Project without the prior written consent of Administrator.

6.3 Amount of Financing.

(a) With respect to each Approved Project financed by Lender that does not constitute New Construction or a Major Renovation, subject to all other requirements of applicable law and the Program Requirements, the original principal amount of the Loan provided by Lender under the applicable Program Financing Agreement may be in (and in any case shall not exceed) an amount equal to 100% of the properly documented Eligible Costs. As used herein, the term “Eligible Costs” shall mean: (a) the costs of any and all “Eligible Improvements” (as defined in the Program Guidelines) for the Project; (b) any fees (as set forth in Article IX) payable in connection with the closing of the Loan (including the Administration Fee); and (c) any other fees, costs or expenses payable in accordance with the PACE Financing Documents, including capitalized interest and Servicing Fees, to the extent each of which is reasonable and may be financed under the Loan in accordance with the Program Requirements.

(b) With respect to each Approved Project financed by Lender that constitutes New Construction or a Major Renovation, subject to all other requirements of applicable law and the Program Requirements, the original principal amount of the Loan provided by Lender under the applicable Program Financing Agreement may be in (and in any case shall not exceed) an amount equal to the lesser of (i) 100% of the properly documented Eligible Costs, and (ii) the percentage of the properly documented Total Project Costs specified in the Program Guidelines. As used herein, the term “Total Project Costs” shall mean, with respect to a given Approved Project to be financed by Lender, all documented and reasonable hard and soft costs to complete such Project, not including any costs arising in connection with the acquisition of the Property upon which such Project has or will be undertaken.

6.4 Underwriting Standards.

(a) Lender shall utilize, as a minimum, the underwriting standards set forth in the Program Guidelines and other applicable Program Requirements (the “PACE Minimum Underwriting Standards”). Prior to the execution of each Program Financing Agreement, Administrator reserves the right to determine whether such PACE Minimum Underwriting Standards have been satisfied. Lender may develop and apply additional underwriting standards that comply with applicable law, the Program Guidelines and other applicable Program Requirements (including the PACE Minimum Underwriting Standards) and this Agreement.

(b) From time to time Administrator, in consultation with the City where appropriate, may determine that modifications to the PACE Minimum Underwriting Standards are necessary or appropriate and in such cases, Administrator may promulgate such modifications. Any such modifications to the PACE Minimum Underwriting Standards shall apply only to Approved Projects for which the related notice of approval given under Section 2.1(d) was issued after the effective date of such modifications.

(c) Following any material modifications to the PACE Minimum Underwriting Standards, Administrator shall promptly provide written notice to Lender of such modifications to the PACE Minimum Underwriting Standards.

6.5 Credit Evaluation and Independent Investigation.

(a) Lender agrees that, with respect to each Borrower undertaking a Proposed Project, Lender shall, independently and without reliance upon Administrator, Paying Agent or any Representative of Administrator or Paying Agent (i) conduct its own credit evaluation of such Borrower, and review such information as it deems adequate and appropriate in determining whether to execute a Program Financing Agreement with such Borrower; and (ii) conduct its own evaluation to confirm that the Borrower meets all Borrower Eligibility Requirements. Lender acknowledges and agrees that Administrator's approval of a Proposed Project as an Approved Project does not constitute an endorsement of or recommendation to finance such Approved Project or that any given Borrower meets all Borrower Eligibility Requirements.

(b) Lender agrees that, with respect to each Project, Lender shall not rely upon any investigation or analysis conducted by advice or communication from, nor any warranty or representation by, the City, Administrator, Paying Agent or any Representative of the City, Administrator, or Paying Agent, express or implied, concerning the financial condition of such Borrower or such Project or concerning the Borrower's satisfaction of all Borrower Eligibility Requirements.

(c) Lender acknowledges that Administrator and Paying Agent take no responsibility for the accuracy, correctness or completeness of any information or documents regarding any Borrower, Loan or Project furnished to Administrator or Paying Agent by Lender.

6.6 PACE Charge. With respect to each Effective Project, and in accordance with the related Program Financing Agreement, Lender shall create a schedule of PACE Charge payments, pursuant to which a PACE Charge shall be scheduled to be paid semi-annually (each, a "PACE Charge Payment Schedule") and shall deliver such PACE Charge Payment Schedule to Administrator pursuant to Section 5.1. Pursuant to the Program Guidelines, the semi-annual Servicing Fees payable to Administrator shall be included in each such PACE Charge Payment Schedule (as part of each PACE Charge identified therein) and each such PACE Charge Payment Schedule shall meet all additional requirements as set forth in the Program Guidelines. A PACE Charge will be placed by the City on each Statement of Account with a due date of January 1 or July 1, as applicable, of any City Fiscal Year. Administrator shall set the amount of the PACE Charge to appear semi-annually on the related Borrower's Statement of Account based on such PACE Charge Payment Schedule, as further provided in the related PACE Financing Documents.

(a) It is expected that, in accordance with the applicable Collection Agreement, the initial PACE Charge to be levied against a given Property, as such amount is reflected in the PACE Charge Payment Schedule, should appear on the related Borrower's first applicable Statement of Account following the Closing Date; provided, that if such Closing Date is less than thirty (30) days prior to the applicable PACE Charge Submission Deadline for such Statement of Account, then such amount may appear on the following Statement of Account.

(b) Except with respect to the initial PACE Charge to be levied against the Property, in accordance with the applicable Collection Agreement, it is expected that each PACE Charge will be levied and collected semi-annually by the City, pursuant to the following process:

(i) prior to the PACE Charge Submission Deadline for a given semi-annual pay period, Administrator shall determine the amount of the PACE Charge to be collected in respect of such period by reference to the then current PACE Charge Payment Schedule provided by Lender

(ii) in connection with such determination, Administrator shall have the right (but no obligation) to request in writing (including by e-mail) that Lender and/or the applicable Borrower confirm that the amount of the PACE Charge to be collected in respect of the applicable semi-annual pay period is correct;

(iii) after determining the amount of the PACE Charge to be collected in respect of a given semi-annual pay period, in accordance with the applicable Collection Agreement Administrator shall notify the City of such amount by no later than the PACE Charge Submission Deadline for the applicable period; and

(iv) upon receipt of such notice from Administrator by the applicable PACE Charge Submission Deadline, the PACE Charge shall be placed by the City no later than by the date on which DOF issues the Statement of Account for the Property for the applicable period.

(c) Lender may from time to time submit to Administrator an amended PACE Charge Payment Schedule with respect to amounts due under a given Program Financing Agreement (an “Amendment of PACE Charge Payment Schedule”). Each Amendment of PACE Charge Payment Schedule (if any) shall be duly acknowledged in writing by Borrower and submitted by Lender to Administrator no less than thirty (30) days prior to the PACE Charge Submission deadline for the applicable period. Each Amendment of PACE Charge Payment Schedule shall be submitted to Administrator by uploading it into the Program App. and shall accurately and correctly include all Servicing Fee payments to be paid to Administrator in accordance with this Agreement and the Program Guidelines and shall meet all additional requirements for PACE Charge Payment Schedules as set forth in the Program Guidelines. Subject to the applicable Collection Agreement to which each given Amendment of PACE Charge Payment Schedule relates, each Amendment of PACE Charge Payment Schedule shall constitute the then current PACE Charge Payment Schedule and the prior PACE Charge Payment Schedule shall be replaced thereby in all respects.

6.7 Prepayment. With respect to each Effective Project, the parties hereto hereby agree that the related Borrower may voluntarily prepay the Loan and the related PACE Charge(s) at any time in whole or in part. Lender shall ensure that all prepayment amounts are paid either: (i) directly to Administrator, Paying Agent (or to such other Person as Administrator or Paying Agent may direct); or (ii) directly to Lender, in which case Lender shall notify Administrator of such prepayment within five (5) Business Days of receipt of the payment. Subject to applicable law, any prepayment restrictions and premiums are at the discretion of Lender; provided, that in no event shall any Borrower be required to make a mandatory prepayment of all or any portion of a Loan, except if provided for in the Financing Agreement and solely with the proceeds of; (i)

insurance payments received in connection with a fire or other casualty that destroyed or damaged all or substantially all of the applicable Property; or (ii) compensation for the taking of the applicable Property by a Governmental Authority through eminent domain. Promptly following any partial prepayment, Lender shall provide an Amendment of PACE Charge Payment Schedule to Administrator within five (5) Business Days of the date of prepayment. If any Loan is prepaid in full, within five (5) Business Days of the date of prepayment Lender shall notify Administrator and shall file a notice of release of the Loan in accordance with the Collection Agreement.

6.8 Loan Modifications. With respect to each Effective Project financed by Lender hereunder, after delivery to Administrator of the Program Financing Agreement for such Project, Lender shall not amend, amend and restate, modify, supplement or otherwise change (nor permit to occur any amendment, amendment and restatement, modification, supplementation, or other change) which would cause such Program Financing Agreement to fail to satisfy any requirements of applicable law, the Program Guidelines, the other Program Requirements, or any of the other requirements specified in this Article VI. If any such Program Financing Agreement is amended, amended and restated, modified, supplemented or otherwise changed, Lender shall deliver to Administrator a true, complete and correct copy of the definitive fully executed documents memorializing such amendment, amendment and restatement, modification, supplementation, or other change within five (5) Business Days of the effective date thereof.

ARTICLE VII

BORROWER DEFAULTS AND LENDER REMEDIES

7.1 Limitations on Lender Remedies. With respect to any given Loan, if any Borrower Payment Default occurs and is ongoing, the remedies available to Lender are subject to the terms and conditions set forth in Section 4 of the Collection Agreement and, if applicable, the Master Transfer and Remittance Agreement. In addition to the terms and conditions set forth in the Collection Agreement and, if applicable, the Master Transfer and Remittance Agreement, if a Borrower Payment Default occurs and is ongoing, Lender may exercise any and all other remedies available to it by contract (including the applicable Program Financing Agreement) at law or in equity; provided, that all such remedies are consistent with applicable law and all other Program Requirements.

7.2 Notice of Event of Default. If either party hereto has actual knowledge of any Borrower Payment Default or any other event of default under any Program Financing Agreement, it shall promptly notify the other party thereof. In addition, Lender shall promptly notify Administrator of (a) any judicial proceeding(s) against the Borrower or in respect of the Property to enforce the Program Financing Agreement, any other PACE Financing Documents and or any PACE Charges levied against the Property, including foreclosure actions, breach of contract actions and/or any other suit on the debt; (b) any event or circumstance resulting in a Borrower ceasing to meet all Borrower Eligibility Requirements.

ARTICLE VIII
EXCLUSIVITY

8.1 Exclusivity. With respect to each Proposed Project for which Lender has provided to Administrator a letter of intent or memorandum of understanding, executed by and between Lender and Borrower, or other, similar evidence of Lender's good faith commencement of a Proposed Project that is reasonably satisfactory to Administrator, then for a period of one-hundred and eighty (180) days (measured from the date of execution of such letter of intent or memorandum of understanding or other applicable date of commencement), Administrator and Paying Agent shall not, and shall ensure that their respective Representatives do not, (a) consummate or close any commercial PACE financing or any other type of financing with the Borrower that is related to the Proposed Project; nor (b) undertake any type of financing origination or loan development activities with such Borrower, except if such Borrower separately requests NYCEEC financing for a materially different project on the same Property, in which case NYCEEC, as lender, and the Representatives of NYCEEC may undertake financing origination or development activities with the Borrower in respect of such other project.

ARTICLE IX
PROGRAM FEES & EXPENSES

9.1 Fees. Pursuant to Section 8 of the Program Guidelines, with respect to each Loan made by Lender, Lender shall pay (or cause to be paid) to Administrator the Program fees set forth below.

(a) The Administration Fee payable in respect of each such Loan shall be due and payable by Lender to Administrator on the Closing Date of such Loan in accordance with Section 9.3(a). Lender may cause the Program Financing Agreement for such Loan to expressly contemplate the payment of the applicable Administration Fee by the Borrower.

(b) Each semi-annual Servicing Fee payment shall be due and payable by Lender to Administrator, in arrears, on January 1 and July 1 of each year during the term of such Loan in accordance with Section 9.3(a); provided, that if the then current PACE Charge Payment Schedule for such Loan contemplates that Administrator or Paying Agent shall be deducting any given Servicing Fee payment out of the proceeds of any given PACE Charge payment to be collected from the Borrower, then such Servicing Fee payment to Administrator shall not be considered to be late or otherwise overdue, under Section 9.3(b) or otherwise, if the amount of such PACE Charge payment made by Borrower is in an amount sufficient to cover the full amount of the Servicing Fee payment then due to Administrator, and; provided further, that if such PACE Charge payment is not made on time and in full, by Borrower, in accordance with the applicable Collection Agreement, then Lender shall pay to Administrator an amount equal to such Servicing Fee (or, if applicable, the unpaid portion of such Servicing Fee) in accordance with Section 9.3(a), by the date that is ten (10) days after receipt of written request therefor from Administrator; and the related PACE Charge Lien arising from such late and/or partial payment is subsequently sold or otherwise transferred by Lender pursuant to a Master Transfer and Remittance Agreement to which such PACE Charge relates, then upon remittance to Administrator of any funds collected by the City, the NYCTL 1998-2 Trust or any other Person in respect of such PACE Charge Lien. Lender shall cause the Program Financing Agreement for each Loan to expressly contemplate that if a

PACE Charge payment is due and payable by the Borrower on any given January 1 or July 1, that such payment by the Borrower shall also include the applicable Servicing Fee. If any given PACE Charge payment is not made on time and in full by Borrower in accordance with the applicable Collection Agreement, and the related PACE Charge Lien arising from such late and/or partial payment is subsequently transferred or sold by Lender pursuant to a Master Transfer and Remittance Agreement to which such PACE Charge relates, then upon remittance to Administrator of any funds collected by the City, the NYCTL 1998-2 Trust or any other Person in respect of such PACE Charge Lien, Administrator shall not deduct any Servicing Fee payments out of the proceeds of such remitted funds; provided, that the applicable Servicing Fee included as a part of the underlying PACE Charge has previously been paid in full by Lender in accordance with this Section 9.1.

9.2 Additional Expenses. No provisions of this Agreement shall require Administrator or Paying Agent to (i) expend or risk its own funds except as necessary in the ordinary course of business as the administrator of the Program or to perform its respective obligations under this Agreement, or (ii) otherwise incur any financial liability in the performance of any of its duties hereunder. Any costs or expenses incurred by Administrator or Paying Agent in connection with any actions with respect to this Agreement or relating to any of the transactions contemplated by this Agreement which Lender has requested, shall be borne by Lender and Lender shall reimburse Administrator or Paying Agent (as the case may be) for any such out-of-pocket costs and expenses incurred by Administrator or Paying Agent within ten (10) days of written demand therefor.

9.3 Payment Terms.

(a) Lender shall make each payment required to be made by it hereunder to Administrator or Paying Agent by the time expressly required (or, if no such time is expressly required, before 12:00 noon), on the date when due, in United States dollars, by wire transfer or by permitting Administrator to make an “ACH withdrawal”, in either case in good funds, without set-off, counterclaim, withholding or deduction of any kind whatsoever. Any amount received after such time and date may, in Administrator’s or Paying Agent’s discretion, be deemed to have been received on the following day. If any payment hereunder is due on a date that is not a Business Day, then such payment shall be due and payable on the Business Day that immediately follows such due date.

(b) Any payments or portions thereof due from Lender hereunder that are not paid when due may, at Administrator’s option, accrue interest at a rate of eighteen percent (18%) per annum or the maximum applicable legal rate, if less, calculated on the total number of days the payment is delinquent. Such interest shall be calculated monthly by Administrator on the basis of a 360-day year consisting of twelve 30-day months. Notwithstanding anything to the contrary set forth herein, absent demonstrable error, all calculations by Administrator of such interest shall be conclusive and binding for all purposes hereunder.

ARTICLE X
REPRESENTATIONS AND WARRANTIES

10.1 Representations and Warranties. Lender hereby represents and warrants to Administrator, Paying Agent, and the City that, as to itself as a Qualified Lender under this

Agreement, as of the date first set forth above; as of the Closing Date of each Loan; as of the date of each related Collection Agreement; as of the date each Loan Collection is disbursed to Lender by Paying Agent pursuant to any PACE Financing Document; and with respect to any given Qualified Transferee, as of the effective date of the applicable Assignment and Assumption Agreement between Lender and such Qualified Transferee:

(a) (i) Lender (A) is duly incorporated or organized, validly existing and in good standing under the laws of its state of incorporation or organization, and (B) has full power and authority, and all licenses necessary, to own its properties to carry on its business as now being conducted and has full power and authority to enter into this Agreement and any other PACE Financing Documents to which it is a party, and to carry out the terms and conditions contained herein and therein; and (ii) the execution of this Agreement and each other PACE Financing Document to which it is a party, and its participation in the transactions specified herein and therein is in the ordinary course of its business and within the scope of its existing corporate authority;

(b) there is no action, suit or proceeding pending against Lender before or by any court, administrative agency or other Governmental Authority which brings into question the validity of, or might in any way impair, the execution, delivery or performance by Lender of its obligations under this Agreement or any other PACE Financing Document to which it is a party;

(c) except as expressly disclosed in writing to Administrator, no notice to, registration with, consent or approval of or any other action by any relevant Governmental Authority or any other Person shall be required for Lender to execute, deliver, and perform its obligations under this Agreement or any PACE Financing Documents to which Lender is or will become a party;

(d) the execution, delivery and performance by Lender of this Agreement and any PACE Financing Documents and the performance by Lender hereunder and thereunder, (i) do not contravene any provisions of law applicable to Lender; (ii) will not result in a breach or violation of any provision of (A) Lender's organizational documents, (B) any statute, law, writ, order, rule or regulation of any Governmental Authority applicable to Lender, or (C) any judgment, injunction, decree or determination of any Governmental Authority applicable to Lender; and (iii) do not conflict and are not inconsistent with, and will not result (with or without the giving of notice or passage of time or both) in the breach of or constitute a default or require any consent under any contract, agreement or other instrument to which Lender is a party, by which Lender may be bound, or to which Lender or its property may be subject;

(e) this Agreement and any PACE Financing Documents constitutes the legal, valid and binding obligation of Lender, enforceable against Lender in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization moratorium or similar laws affecting the enforcement of creditors' rights generally, and by applicable laws (including any applicable common law and established equitable principals) and judicial decisions which may affect the remedies provided herein.

(f) Lender has independently and without reliance upon Administrator or Paying Agent, or any Representative of Administrator or of Paying Agent (i) conducted its own credit evaluation of each Borrower to which it wishes to make a Loan, reviewed such information as it has deemed adequate and appropriate and made its own analysis of the PACE Financing

Documents, and (ii) conducted its own investigation to determine that (A) each Borrower to whom Lender is extending a Loan satisfies all Borrower Eligibility Requirements, (B) each Project financed by Lender meets all applicable Program Requirements, and (C) each Property that is the subject of a Loan from Lender satisfies all requirements of being an Eligible Site;

(g) Lender has not relied upon any investigation or analysis conducted by, advice or communication from, nor any warranty or representation by, the City, Administrator, Paying Agent or any Representative of the City, Administrator or Paying Agent, express or implied, concerning the financial condition of or tax or economic benefits of an investment in any Project or the PACE Financing Documents;

(h) Lender has had (or acknowledges by its execution of this Agreement that Lender will prior thereto have had) access to all financial and other information that it deems necessary to evaluate the merits and risks of an investment in the PACE Financing Documents including the opportunity to ask questions, receive answers and obtain additional information from any such Borrower necessary to verify the accuracy of information provided;

(i) Lender acknowledges that Administrator and Paying Agent take no responsibility for any financial or other information regarding any Borrower furnished to Lender by Administrator or Paying Agent, and Lender and its Representatives acting on its behalf have such knowledge and experience in business and financial matters necessary to evaluate the merits and risks of an investment in each Project financed by Lender and in the PACE Financing Documents;

(j) Lender is experienced in making investments in energy upgrade projects similar to the Projects or substantially similar investments and that it is financially able to undertake the risks involved in such investments;

(k) each Program Financing Agreement entered into to-date by Lender satisfies the requirements of applicable law, the Program Guidelines and the other Program Requirements as of the date of each such Program Financing Agreement, and the requirements specified in Article VI;

(l) Lender acknowledges that the PACE Financing Documents as well as any other documents signed by any Borrower to whom Lender is making a Loan that are required by Administrator or Paying Agent in connection with such Loan were executed by a duly authorized Representative of such Borrower;

(m) Lender and the related Borrower have obtained an executed Mortgage Holder Consent from all existing mortgage holder(s) which hold any mortgage secured by the related Property;

(n) if the related Borrower holds a leasehold interest in the Property, such Borrower has obtained an executed Owner Consent from the Property Owner;

(o) Lender has received satisfactory documentation and other information required by applicable Governmental Authorities or as otherwise required under applicable “know your customer” and anti-money-laundering rules and regulations, including the Patriot Act; and Lender has independently and without reliance upon Administrator, Paying Agent or any Representative

of Administrator or Paying Agent, satisfied itself that the Borrower is not a Prohibited Person and is not owned or controlled by a Prohibited Person;

(p) neither Lender nor any of the Representatives of Lender is a Prohibited Person and Lender is not an Affiliate of a Prohibited Person or the Borrower;

(q) Lender is a U.S. Person and, pursuant to Section 4.3, Lender has delivered to Administrator and Paying Agent a true, properly completed and correct IRS Form W-9 for Lender, duly signed by an authorized Representative of Lender, and the information provided on such W-9 form is true, correct and not misleading; and Lender acknowledges that Administrator and Paying Agent are relying on this representation and warranty in determining their obligations (if any) under applicable law to engage in backup withholding or otherwise withhold any taxes from amounts disbursed to Lender pursuant to Section 6.6;

(r) Lender is a Qualified Lender in good standing under all applicable Program Requirements, including the requirement that Lender not be delinquent in the payment of any taxes, civil penalties, or other debt to the City, or any water or sewer charges to the New York City Water Board, or the City's Department of Environmental Protection;

(s) none of the documents, applications, agreements, spreadsheets, exhibits, schedules or any other written information (other than projections, pro formas, financial models, budgets, forecasts or other information of a general economic or forward-looking nature) submitted or made available to Administrator, Paying Agent or the City by or on behalf of Lender in connection with the Program or any PACE Financing Documents (collectively, the "Submittals"), taken as a whole, contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were or are made, taken as a whole, not misleading in any material respect as of the date such information is dated or made; provided, that, to the extent any Submittal was based upon or constitutes a projection, pro forma, financial model, budget, forecast or other information of a general economic or forward-looking nature, Lender represents only that it acted in good faith and utilized assumptions believed by it to be reasonable at the time made;

(t) subsequent to the respective dates on which the Submittals were provided or made available to Administrator or Paying Agent, except as otherwise disclosed to Administrator in writing, no event has occurred that has had a Material Adverse Effect on Lender, or to Lender's knowledge, any given Borrower; and to the knowledge of Lender, after due inquiry, there is no event that is reasonably likely to occur, which if it were to occur, would, individually or in the aggregate, have a Material Adverse Effect on Lender or any given Borrower;

(u) except as otherwise disclosed to Administrator in writing, no event or circumstance has occurred and is ongoing which constitutes a Default or an Early Termination Event;

(v) all premiums in respect of all insurance maintained by or on behalf of Lender pursuant to Section 5.4 have been paid; Lender has determined, acting reasonably, that the insurance maintained by or on behalf of it is adequate; and all such insurance policies have been issued by a carrier admitted in the state of New York and with an A.M. Best rating of not less than A-VIII or as otherwise specified herein;

(w) With respect to each Project financed by Lender hereunder that is not a Retroactive Project, appropriate Representatives of Lender have discussed all matters believe to be pertinent with such third parties as they deemed appropriate and have made such inspections, site visits, reviews, examinations and investigations as they believed were reasonably necessary; and on the basis of such discussions, inspections, visits, reviews, examinations and investigations, and on the understanding and belief that such Representatives have been provided true, correct and complete information; Lender has concluded that as of the Closing Date of each such Project, the Estimated Completion Date for such Project (as certified to by Lender in the Lender Certification delivered to Administrator by Lender for the Project) represents a reasonable good faith estimate of the date by which Construction Completion of such Project will be completed, taking into account all relevant information available to Lender as of the Closing Date for such Project.

(x) With respect to each Project financed by Lender hereunder, Lender has used information and data certified to in the Technical Certification for such Project (and in the Technical Certification Workbook for such Project) to complete all relevant fields in the TIPLA and, having provided such completed TIPLA to appropriate Representatives of the applicable Borrower, Lender has (i) given such Representatives the opportunity to meet and/or has actually held meetings with such Representatives in-person or through virtual/video means and/or telephone/conference calls (during regular business hours), with Lender, to ask questions related to such Borrower's Project, the performance and other risks involved in such Project, as described in the TIPLA; and (ii) Lender has otherwise endeavored, in good faith (and has made reasonable efforts to ensure that) appropriate Representatives of such Borrower understand the matters covered in such TIPLA and are aware of all relevant risks posed by the Project; and based on such meetings and endeavors, to the best of Lender's knowledge, such Borrower has executed and delivered the TIPLA and understands the matters described therein.

(y) With respect to each Project financed by Lender hereunder that constitutes New Construction or a Major Renovation, Lender has independently and without reliance upon Administrator, Paying Agent or any Representative of Administrator or Paying Agent, conducted its own investigation to determine that each such Project is or will upon completion be a Low Carbon Building.

(z) With respect to all Loan Collections disbursed or to be disbursed to Lender (or its designee, if any) by Paying Agent or Administrator pursuant to any PACE Financing Documents, to the best of the Lender's knowledge after due inquiry (including after consulting with Lender's accountants and other appropriate advisors) no backup withholding or other taxes are or should be payable by Paying Agent or Administrator or should need to be retained by Paying Agent or Administrator under applicable law.

ARTICLE XI

TERM AND TERMINATION

11.1 Term. The term of this Agreement (the "Term") shall commence as of the date first set forth above and, unless terminated early pursuant to Section 11.2, shall end on the second (2nd) anniversary of such date.

11.2 Early Termination. If Administrator determines that any Early Termination Event has occurred, and Administrator elects to terminate this Agreement, then, subject to Section 11.4, this Agreement shall terminate before the end of the Term on or as of the date specified in a notice from Administrator related thereto. Subject to Section 11.4, this Agreement shall automatically terminate before the end of the Term on or as of the date upon which NYCEEC otherwise ceases to act as Administrator and as Paying Agent and where there is no successor Program administrator and Paying Agent. Subject to Section 11.4, the parties hereto may mutually agree in writing to terminate this Agreement prior to the end of the Term.

11.3 Early Termination Events. Upon Administrator's determination that any one or more of the following events has occurred (each, an "Early Termination Event") Administrator shall promptly notify Lender, and Administrator shall have the immediate right, but not the obligation, to terminate this Agreement prior to the end of the Term without penalty, and to avail itself of all or any of the other remedies specified in Article XII:

(a) a final judicial or legislative determination that any Loan, PACE Charge or PACE Charge Lien is not valid and/or enforceable under the law, or any unstayed injunctive relief is granted by any court having appropriate jurisdiction, the effect of which is or would be to prevent servicing or collection of any PACE Charge or enforcement of any PACE Charge Lien;

(b) the occurrence of any event or circumstance in which (i) Lender [or Guarantor] commences (or has commenced against it) any case, proceeding or other action relating to bankruptcy, insolvency, reorganization or other relief of debtors; (ii) Lender [or Guarantor] is unable (or admits in writing its inability) to generally pay its debts as they become due; or (iii) the Lender [or Guarantor] is dissolved in connection with any such event or circumstance;

(c) a breach of this Agreement or any other PACE Financing Document by Lender that has had or could reasonably be expected to have a material adverse effect on Lender's ability to comply with this Agreement or any other PACE Financing Document;

(d) with respect to Lender or any Qualified Transferee there occurs any Merger or Consolidation or any Change of Control that will or could reasonably be expected to result in Lender or any Qualified Transferee (as the case may be) ceasing to be a U.S. Person and where Administrator and Paying Agent have not each granted prior consent to such transaction in accordance with Section 5.7;

(e) Lender fails at any time to satisfy the requirements necessary to be a Qualified Lender in good standing in accordance with all applicable Program Requirements;

(f) a failure by Lender to pay any amounts owed to Administrator in accordance with any PACE Financing Document (including any Administration Fee and/or Servicing Fee payment);

(g) a change of law ending the Program or removing Administrator as administrator of the Program and where there is no successor Program administrator;

(h) any event of Force Majeure or similar change of circumstance which make (i) the ability or likelihood of continued funding by Lender infeasible or (ii) the remittance of Loan Collections by Administrator or Paying Agent impracticable;

(i) if applicable, an Event of Default (as defined in the Guaranty) occurs under the Guaranty;

(j) Administrator determines that any event has occurred that has had a Material Adverse Effect on Lender [or Guarantor]; and/or

(k) with respect to each Effective Project that is not a Retroactive Project, Construction Completion of such Project is not achieved by the Required Completion Date applicable to such Project.

11.4 Survival. Notwithstanding the expiration of the Term or any early termination of hereof, this Agreement shall continue in full force and effect with respect to all outstanding Loans and shall not terminate until all such Loans, and all obligations, fees and expenses are paid and performed in full (including the terms and conditions set forth in Article IX of this Agreement) and all of Administrator's and Paying Agent's obligations under this Agreement are terminated. All representations and warranties and all provisions herein for indemnity of Administrator, of Paying Agent and all other Program Administrator Indemnitees (and any other provisions herein specified to survive) shall survive payment in full, satisfaction or discharge of the obligations, fees and expenses and any release or termination of this Agreement or any other PACE Financing Documents. Any provision of this Agreement that by its nature would survive termination of this Agreement shall remain in effect after the Term has ended and after the effective date of an early termination hereof; provided, that, notwithstanding anything to the contrary set forth herein or in any other PACE Financing Documents, if NYCEEC ceases to act as Administrator and as Paying Agent, and in connection therewith this Agreement terminates early pursuant to Section 11.2, then effective on or as of the date upon which NYCEEC ceases to act in such capacities, NYCEEC shall have no further obligations to Lender hereunder or under any other PACE Financing Documents.

ARTICLE XII **REMEDIES**

12.1 Revocation of Qualified Lender Status. Upon the occurrence of any Early Termination Event, in addition to the right to terminate this Agreement in accordance with Section 11.2, Administrator shall have the immediate right (but not the obligation) to revoke or temporarily suspend Lender's status as a Qualified Lender and/or to immediately suspend the review and qualification of Projects under Articles II and V. If Lender's status as a Qualified Lender is revoked or suspended, Administrator shall notify Lender within five (5) Business Days of the date Administrator decided to revoke or suspend such status.

12.2 Other Remedies. Upon the occurrence of any Early Termination Event, in addition to Administrator's rights as set forth in Section 12.1, Administrator and Paying Agent are each entitled to any and all other remedies available in law or equity, including the right to institute, or cause to be instituted, proceedings for the collection of all amounts then payable on or under this

Agreement or any other PACE Financing Documents, enforce any judgment obtained, and collect all monies adjudged due. All rights and remedies granted to Administrator and Paying Agent hereunder and under any other PACE Financing Document, or otherwise available at law or in equity, shall be deemed concurrent and cumulative, and not alternative remedies, and Administrator and Paying Agent may each proceed with any number of remedies at the same time until Lender's obligations are indefeasibly satisfied in full. The exercise by Administrator or Paying Agent of any one right or remedy shall not be deemed a waiver or release of any other right or remedy.

12.3 Notice and Survival. Lender hereby covenants and agrees to promptly notify Administrator of the occurrence of any Default, any Early Termination Event or if any Material Legal Issue arises with respect to Lender. The terms and provisions set forth in this Article XII shall survive the expiration of the Term and any early termination of this Agreement.

ARTICLE XIII **TAXES; INDEMNITIES AND LIMITATION OF LIABILITY**

13.1 Taxes. With respect to this Agreement, Lender shall be solely responsible for, and to the fullest extent permitted by applicable law shall indemnify, protect, defend, save and keep harmless, Administrator, Paying Agent and the City, and their respective officers, officials, directors, employees and agents (each, a "Program Administrator Indemnitee") from and against any and all federal, state and local taxes (including withholding and backup withholding taxes), in each such case, to the extent any of the same are attributable to or otherwise assessed or imposed on or asserted against Lender, any Borrower or any Property with respect to the period subsequent to the date first set forth above, together with any assessments, penalties, fines, additions to tax or interest related thereto, by any federal, state, local or foreign Governmental Authority (including any taxing authority) in connection with or relating to any of the transactions contemplated by this Agreement or any other PACE Financing Document.

13.2 Indemnification. To the fullest extent permitted by applicable law, Lender agrees to indemnify, defend and hold harmless each Program Administrator Indemnitee from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, taxes or disbursements of any kind or nature whatsoever (including attorneys' fees, costs and expenses) which may be imposed on, incurred by or asserted against any of them in any way relating to or arising out of (i) this Agreement or any other PACE Financing Documents, any Project or any Loan, or (ii) any action taken or omitted by any Program Administrator Indemnitee in the performance of its obligations under and the transactions contemplated in this Agreement or in any other PACE Financing Documents; provided, that, Lender shall not be liable to Administrator or Paying Agent for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting directly from the gross negligence or willful misconduct of Administrator or any Program Administrator Indemnitee as determined in a final non-appealable judgment or court order of a court of competent jurisdiction that is binding on Administrator or Paying Agent.

13.3 Notice of Claims. Each of Administrator, Paying Agent and Lender agrees to notify the other parties promptly after becoming aware of any taxes or claims, whether pending or threatened that are the subject of indemnification pursuant to this Article XIII; provided, however,

that the failure by either such party to so notify the other party shall not in any manner affect such other party's obligations under this Article XIII, except to the extent, if any, the other party shall have been materially and adversely prejudiced by such failure.

13.4 Limitation of Liability. ADMINISTRATOR AND PAYING AGENT SHALL NOT HAVE ANY LIABILITY TO LENDER (WHETHER SOUNDING IN TORT, CONTRACT, EQUITY OR OTHERWISE) FOR LOSSES SUFFERED BY LENDER IN CONNECTION WITH, ARISING OUT OF, OR IN ANY WAY RELATED TO THE TRANSACTIONS OR RELATIONSHIPS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER PACE FINANCING DOCUMENT, OR ANY ACT, OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH, UNLESS IT IS DETERMINED BY A FINAL AND NON-APPEALABLE JUDGMENT OR COURT ORDER BINDING ON ADMINISTRATOR OR PAYING AGENT THAT THE LOSSES WERE THE RESULT OF ACTS OR OMISSIONS CONSTITUTING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ADMINISTRATOR OR PAYING AGENT. LENDER HEREBY WAIVES ALL FUTURE CLAIMS AGAINST ADMINISTRATOR AND PAYING AGENT FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES.

ARTICLE XIV **MISCELLANEOUS PROVISIONS**

14.1 Transfer or Assignment of this Agreement. Except with respect to those certain obligations of Lender arising hereunder (as expressly set forth in each Assignment and Assumption Agreement) which may be delegated to a Qualified Transferee in connection with the sale and/or transfer of a given Loan in accordance with Section 14.2 below, Lender shall not assign or delegate its respective rights or obligations hereunder (in whole or in part) without the prior written consent of Administrator. Subject to the foregoing, this Agreement inures to the benefit of, and is binding upon, the successors and permitted assigns of Lender. Aside from the City, there is no third-party beneficiary of this Agreement. In consultation with the City but without the written consent of any Person, Paying Agent may assign or delegate all or any portion of its rights and/or obligations hereunder to any Person selected by it in accordance with Section 4.6.

14.2 Transfer of Loans.

(a) Lender shall not sell, assign, pledge, hypothecate, or otherwise transfer any Loan made by it hereunder (in whole or in part) or any interest therein, without the prior written consent of Administrator; provided, that at any time after the Closing Date of each Loan, without the consent of Administrator, Lender may sell and/or transfer all of its right, title and interest in and to each such Loan to any other Person if:

(i) no Default and no Early Termination Event has occurred and is ongoing, as of the effective date of the sale and/or transfer of the Loan;

(ii) the Person that is the purchaser and/or transferee of the Loan is a Qualified Transferee, as of the effective date of the sale and/or transfer;

(iii) a true, complete and correct copy of an Assignment and Assumption Agreement, duly executed by authorized Representatives of Lender and of the Qualified Transferee, is delivered to Administrator and the City within five (5) Business Days of the effective date of such Assignment and Assumption Agreement;

(iv) the Qualified Transferee executes and delivers to Administrator and the City an acknowledgment letter, in the form attached to the Assignment and Assumption Agreement (and otherwise in form and substance acceptable to Administrator and the City) within five (5) Business Days of the effective date of the Assignment and Assumption Agreement; and

(v) the Qualified Transferee and/or Lender promptly delivers to Administrator such additional information and documents as are required under (or as may be requested by Administrator pursuant to) the Assignment and Assumption Agreement.

(b) Notwithstanding anything herein to the contrary, Lender may sell to any financial institution or other entity (such financial institution or entity, a “Participant”) a participation interest in (a “Participation”), or may pledge or rehypothecate, an interest in a portion of any Loan made by Lender. The prior consent of Administrator will not be required for any such Participation, pledge or rehypothecation. No Participant, pledgee or recipient of any rehypothecation shall be considered to be Lender hereunder. No Participant, pledgee or recipient of any rehypothecation shall have any direct rights under this Agreement or any other PACE Financing Document and such Participant’s, pledgee’s or recipient’s rights in respect of such Participation, pledge or rehypothecation shall be solely through Lender as set forth in the participation agreement, pledge agreement or rehypothecation executed by and between Lender and such Participant, pledgee or recipient. No Participation, pledge or rehypothecation shall relieve Lender from its obligations hereunder or under any other PACE Financing Document and Lender shall remain solely responsible for the performance of its obligations hereunder.

(c) Notwithstanding any other provision set forth in this Agreement, Lender may at any time create a security interest in all or any portion of its rights under this Agreement; provided, that no such security interest or the exercise by the secured party of any of its rights thereunder shall release Lender from its obligations hereunder.

(d) Any purported or attempted sale, assignment, pledge, hypothecation, or other transfer of any Loan, or any portion of or interest in any Loan, that violates this Section 14.2 shall be null and void.

14.3 Applicable Law. THIS AGREEMENT AND ALL OTHER PACE FINANCING DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

14.4 Forum Selection. ADMINISTRATOR, PAYING AGENT AND LENDER HEREBY IRREVOCABLY (A) SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY NEW YORK STATE OR FEDERAL COURT SITTING IN THE COUNTY OF NEW YORK OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING

TO THIS AGREEMENT OR ANY OTHER PACE FINANCING DOCUMENTS, (B) WAIVE ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT, (C) WAIVE ANY CLAIM THAT SUCH PROCEEDINGS OR ACTIONS HAVE BEEN BROUGHT IN AN INCONVENIENT FORUM, AND (D) WAIVE THE RIGHT TO OBJECT, WITH RESPECT TO SUCH ACTION OR PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY.

14.5 Jury Trial Waiver. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ADMINISTRATOR, PAYING AGENT AND LENDER EACH HEREBY IRREVOCABLY AND EXPRESSLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY OR THE ACTIONS OF ADMINISTRATOR, PAYING AGENT OR LENDER IN THE NEGOTIATION, ADMINISTRATION OR ENFORCEMENT THEREOF.

14.6 Amendments and Waiver. No modification, consent, amendment or waiver of any provision of this Agreement, or consent to any departure by Lender therefrom, shall be effective unless the same shall be in writing and signed by an authorized Representative of Lender, Administrator and Paying Agent, and then shall be effective only in the specified instance and for the purpose for which given.

14.7 Course of Dealing. Any delay or failure by Administrator or Paying Agent at any time or times in enforcing its rights under the provisions set forth in this Agreement in strict accordance with their terms shall not be construed as having created a course of dealing or performance modifying or waiving the specific provisions of this Agreement.

14.8 Severability. The unenforceability or invalidity of any provision of this Agreement shall not affect the enforceability or validity of any other provision herein and the invalidity or unenforceability of any provision of this Agreement with respect to any particular transaction, Person or circumstance shall not affect the enforceability or validity of such provision as it may apply to other transaction, Persons or circumstances.

14.9 Marketing and Publicity. Administrator and the City may, in their discretion, promote or market Lender's role in the Program, including details of the Loan, the energy measures and the Energy Data of any Effective Project, by using Marketing Material developed by or for Administrator or Lender's Marketing Material, that includes the copyrighted, trademarked or registered names or logos of Lender for the purposes of publicly promoting the Program, in any medium, now or hereafter derived, during the period in which Lender is a Qualified Lender. Lender shall not promote, market or otherwise utilize the names or logos of Administrator, the City or the Program in any Marketing Material or otherwise, without the prior written consent of Administrator (such consent not to be unreasonably withheld, conditioned or delayed). As used herein, the term "Marketing Material" means each advertisement, media interview, press or public statement, marketing material, signage, banner, report, white paper, information on websites and any other material developed by or prepared for any Lender or for Administrator for any marketing, sales, advertising, publicity, public relations or other purposes.

14.10 Energy Data. Lender hereby agrees to cause each Borrower to share with Administrator (and the City) Energy Data on each Project and the Property related thereto (including such data as required in the “Measurement and Verification” section of the Program Guidelines) and to grant Representatives of Administrator and/or the City access to the Property of each Borrower as contemplated in the following sentence. Lender further agrees that each of Administrator and the City has the right to (a) monitor, verify, and assess such Energy Data, including the right, with reasonable prior notice to Borrower, for Representatives of Administrator and/or the City to physically enter the related Property on a Business Day during regular business hours in order to inspect the Project; (b) such additional information or documents as is reasonably necessary to ascertain and/or verify such Project’s performance and such Energy Data; and (c) report information on the energy measures undertaken or to be undertaken in a given Effective Project and such Energy Data as contemplated herein, and to other third parties on a portfolio and anonymized basis.

14.11 No Construction Against Drafter. Each party hereto represents and warrants to the other party that it, together with its counsel, has had the opportunity to review and participate in the drafting and negotiation of this Agreement. As such, this Agreement shall be deemed to be the product of each of the parties hereto and any rules of construction relating to interpretation against the drafter of an agreement shall not apply to this Agreement and are expressly waived to the maximum extent permitted by applicable law.

14.12 Conflicts. Except as otherwise provided in this Agreement and except as otherwise provided in other PACE Financing Documents by a specific reference to the applicable provisions of this Agreement, to the extent there is a conflict between the terms and provisions of this Agreement and any other PACE Financing Document or the Program Guidelines, the Collection Agreement shall control, followed by the Master Transfer and Remittance Agreement (if applicable), followed by this Agreement.

14.13 No Partnership, Etc. Administrator and Paying Agent have no fiduciary or other special relationship with or duty to Lender and none is created by any PACE Financing Documents related to a Loan. Nothing contained in any PACE Financing Documents, and no action taken or omitted pursuant to such PACE Financing Documents, is intended or shall be construed to create any partnership, joint venture, association, or special relationship between or among Administrator, Paying Agent and Lender. In no event shall the rights and interests of Administrator or Paying Agent under any PACE Financing Documents be construed to give the right to control or be deemed to indicate that Administrator or Paying Agent is in control of, the business, properties, management or operations of Lender. Any inspection or audit of the books and records of Lender, or the procuring of documents and financial or other information, by or on behalf of Administrator or Paying Agent shall be for the protection of Administrator and Paying Agent only and shall not relieve Lender of any of its obligations hereunder.

14.14 City Not a Party. Under this Agreement there exists no privity of contract between Lender and the City, and neither Lender nor any of its Representatives is or shall be an agent, servant or employee of the City by virtue of this Agreement or by virtue of any approval, permit, license, grant, right or other authorization given by the City, Administrator, Paying Agent or any of their respective Representatives. The City shall incur no liability under this Agreement,

including by virtue of any act, omission, negligence or obligation of Administrator or Paying Agent to Lender.

14.15 Further Assurances. From time to time Lender shall promptly upon request and as applicable execute, acknowledge and/or deliver to Administrator or Paying Agent any information, confirmation, acknowledgement, affidavit, schedule, certificate, contract, agreement, amendment, instrument, or other document as Administrator or Paying Agent may reasonably request from time to time in connection with this Agreement or any other PACE Financing Document, any Project financed by Lender, any Borrower receiving a Loan from Lender, or any Qualified Transferee to whom any such Loan is sold or otherwise transferred.

14.16 USA Patriot Act Notice. Administrator and Paying Agent hereby notify Lender that pursuant to the requirements of the Patriot Act, Administrator and Paying Agent expect to obtain, verify and record information that identifies Lender and each Borrower, which information includes the name and address of such parties and other information that will allow Administrator and Paying Agent to identify such parties and undertake Administrator's and Paying Agent's customary "know your customer" compliance evaluations.

14.17 Confidentiality. If applicable, the rights and obligations of the parties hereto with regard to the protection of confidential information shall be as set forth in a separate confidentiality, non-disclosure or other agreement (if any) which may be entered into on or around the date first set forth above.

14.18 Freedom of Information Law. Notwithstanding anything to the contrary set forth herein or in any other agreement or instrument, Lender hereby acknowledges and agrees that information provided to Administrator or Paying Agent may be subject to disclosure under New York's Freedom of Information Law, Article 6 of the Public Officers Law ("FOIL") when the information requested is not subject to an exception from disclosure under FOIL, which determination shall be made by Administrator or Paying Agent.

14.19 Addresses for Notices; Effective Date of Notices; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone or through the Program App. (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by electronic mail ("e-mail"), and all notices and other communications expressly permitted hereunder to be given shall be made to the address, e-mail address or telephone number specified for such Person on its signature page. Notices sent by overnight courier service shall be deemed to have been given one (1) Business Day after the date such notice or other communication was deposited with such service. Notices mailed by certified or registered mail, shall be deemed to have been given five (5) Business Days after the date such notice or other communication was deposited with the U.S. postal service. Notices delivered by hand shall be deemed to have been given on the date of receipt. Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Lender, Administrator or Paying Agent may, in their respective discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided, that approval of such procedures may be limited to particular notices or communications. Unless Administrator otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, return e-mail or other written acknowledgment); provided, that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day, and (ii) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Unavailability of Program App. If the Program App. is at any time unavailable for any reason, to the extent this Agreement contemplates that any given notice, other communication or document is to be delivered through the Program App., such notice, other communication or document shall, during the period of such unavailability, be given by one of the other delivery methods contemplated in this Section 14.19.

14.20 Entire Agreement. This Agreement constitutes the entire contract among the parties hereto relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

14.21 Effectiveness. When this Agreement has been executed by Administrator and Paying Agent, and when Administrator and Paying Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, then this Agreement shall become effective as of the date first set forth above.

14.22 Counterparts and Electronic Signatures. This Agreement, and any waiver or amendment hereto, may be executed by the parties hereto in separate counterparts, each of which shall be considered an original, but all of which shall together constitute one and the same instrument. Any signature (including any signature delivered by e-mail transmission in ".pdf" format and any electronic symbol or process attached to, or associated with, this Agreement or any other record related hereto that is adopted or approved by an individual with the intent to sign, authenticate, approve or accept this Agreement for and on behalf of a Party) to this Agreement or to any waiver or amendment hereto, shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based recordkeeping system to the fullest extent permitted by applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state Law based on the Uniform Electronic Transactions Act, and the parties hereto hereby waive any objection to the contrary.

[This space is left intentionally blank. Signature pages follow.]

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

New York City Energy Efficiency Corporation,
as Administrator

By: _____
Name: _____
Title: _____

Address: NYCEEC
1359 Broadway, 19th Floor
New York, NY 10018
Attn: PACE Administrator
Tel: 646-797-4630
E-mail: pace@nyceec.com

New York City Energy Efficiency Corporation,
as Paying Agent

By: _____
Name: _____
Title: _____

Address: NYCEEC
1359 Broadway, 19th Floor
New York, NY 10018
Attn: PACE Paying Agent
Tel: 646-797-4630
E-mail: pace@nyceec.com

[LENDER]

By: _____
Name: _____
Title: _____

Address: [Name of Lender]
[street address]
[city, state and zip code]
Attn: [name]
Email: [email for notices]

SCHEDULE I
to Master Lender Agreement

LIST OF EFFECTIVE PROJECTS⁷

No. [1]	Project Reference ID:	[insert ID number]	Project Location:	[insert full street address]	
	Borrower Name:	[insert full legal name of borrower]		BBL:	[●]
Date Project became an Effective Project:	[insert date]	Project is a Retroactive Project? [yes][no]			
Closing Date:	[insert date]	Loan amount: \$[●]			
Estimated Completion Date:	[insert date]OR["n/a"]	Interest rate: [●]%			
Required Completion Date: ⁸	[insert date]OR["n/a"]	As more fully detailed in the Project Sources and Uses Statement <u>attached</u> hereto, the Project costs are as follows:			
Date first payment is due from Borrower: ⁹	[insert date]	(a) Total Project Costs:			
		(b) Eligible Costs:	\$[●]		

(See next page for Project Sources and Uses Statement)

⁷ List to be updated from time to time by the Administrator pursuant to Section 5.2 as Projects qualify to become Effective Projects.

⁸ Required Completion Date should be first anniversary of Estimated Completion Date provided by Lender pursuant to Section 5.2(j).

⁹ This date should be provided by Lender and should match the PACE Charge Payment Schedule for the Loan.

Project Sources and Uses Statement for Project No [●]

[sources and uses statement to be inserted here]