

QUALIFIED CAPITAL PROVIDER PARTICIPATION AGREEMENT

THIS QUALIFIED CAPITAL PROVIDER PARTICIPATION AGREEMENT ("Agreement") is entered into on this ____ day of _____, 20__, by and between the New Jersey Economic Development Authority, a public body corporate and politic of the State of New Jersey (the "Authority"), and _____, a _____ (together with its successors and assigns, the "Capital Provider") (the Authority and the Capital Provider, together, the "Parties", and each, a "Party").

WHEREAS, the Authority has established the Garden State C-PACE Program (the "Program"), and developed the Garden State C-PACE Program Guidelines and Supplemental Guidelines (as may be amended from time to time, collectively the "Program Guidelines"), pursuant to and in accordance with P.L. 2021, c. 201 (N.J.S.A. 34:1B-374 et seq.) (as may be amended, the "C-PACE Act"), to facilitate private and other loan financing for clean energy and resiliency-related improvements to commercial and certain other types of properties (each, a "C-PACE Project"); and

WHEREAS, the Capital Provider submitted an application to the Authority to become designated as a Qualified Capital Provider under the C-PACE Program; and

WHEREAS, the Authority approved the Capital Provider's application and designated Capital Provider as a Qualified Capital Provider; and

WHEREAS, the Program Guidelines require that any Qualified Capital Provider must enter into this form of Agreement; and

WHEREAS, in consideration for the Capital Provider being designated a Qualified Capital Provider, the Capital Provider and the Authority agree to the terms and conditions set forth in this Agreement.

1. DEFINITIONS

Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Program Guidelines.

The following terms as used herein shall have the following meanings:

- a. "Borrower" shall mean an Eligible Owner that has received a determination from the Authority that the Eligible Owner's proposed project is a C-PACE Project and that obtains Direct Financing for its C-PACE Project from the Capital Provider, the repayment of which shall be secured by a C-PACE Assessment on the Eligible Property.
- b. "C-PACE Program Website" means the website maintained by the Authority for the C-PACE Program that can be accessed via <https://www.njeda.gov/>.

2. CAPITAL PROVIDER'S REPRESENTATIONS

Capital Provider represents, as of the date on which it has executed this Agreement, that it satisfies the eligibility criteria for Qualified Capital Providers in the Program Guidelines and that:

a. Capital Provider is

☐ an accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 (17 C.F.R. 230.501 through 230.508) or Rule 144A (17 C.F.R. 230.144A) of the federal "Securities Act of 1933" (15 U.S.C. 77a et seq.), as amended

☐ the trustee or custodian of a trust or custody arrangement which provides that each beneficial owner of interests shall be an accredited investor or qualified institutional buyer

☐ a special purpose securitization vehicle for the sale and transfer of securities, which is restricted to the first two categories in this subsection a.

☐ a commercial lending institution chartered by _____
_____;

b. Capital Provider is duly organized, validly existing, and in good standing under the laws of _____, is not in violation of any provision of any of the agreements, instruments, or documents that formed or govern Capital Provider, has full power, and all licenses necessary, to carry on its business as now being conducted, and has full power, and all consents, authorizations, and approvals of governmental bodies or agencies, to enter into this Agreement, carry out the terms and conditions contained herein, and provide Direct Financing to Eligible Owners under the Program;

c. Capital Provider is authorized and in good standing to conduct business in the State of New Jersey;

d. This Agreement constitutes the legal, valid, and binding obligation of Capital Provider, enforceable against Capital Provider in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally, by applicable laws (including any applicable common law and equity), and judicial decisions which may affect the remedies provided herein;

e. There is no action, suit, or other proceeding pending or threatened against Capital Provider before any court, administrative agency, or other governmental authority which calls into question the validity of, or might in any way impair, the execution, delivery, or performance by Capital Provider of this Agreement; and

f. There is no action, suit, or other proceeding pending or threatened against Capital Provider before any court, administrative agency, or other governmental authority in connection with Capital Provider's participation (or proposed participation) in any other C-PACE financing activity in any jurisdiction which, if adversely determined

against Capital Provider, would result in a materially adverse effect against Capital Provider.

3. CAPITAL PROVIDER'S ACKNOWLEDGEMENTS

Capital Provider acknowledges and agrees that:

- a. Pursuant to the Act, Capital Provider is required to comply with the Program Guidelines, which are inclusive of the Uniform Assessment Documents, developed by the Authority for the financing of C-PACE Projects in accordance with the Act. A copy of the current Program Guidelines, as in effect on the date hereof, can be found on the Authority's C-PACE Program Website. The Authority may, from time to time and at its discretion, revise the Program Guidelines, including one or more of the Uniform Assessment Documents. In the event that the Program Guidelines are revised, the revised Program Guidelines shall be effective and applicable to all C-PACE Projects financed by Capital Provider upon their publication on the Authority's C-PACE Program Website but shall not apply retroactively to any prior applications, actions, or fees for C-PACE Projects that were previously approved.
- b. In reviewing a potential Borrower's application for Direct Financing, Capital Provider acknowledges that it shall not rely upon any investigation or analysis conducted by, advice or communication from, the Authority or any agent or employee of the Authority, express or implied, nor does the Authority provide any warranty or representation concerning any potential Borrower, C-PACE Project, or Direct Financing. Capital Provider acknowledges that the Authority shall take no responsibility for the accuracy, correctness, or completeness of any information or documents related to any C-PACE Project furnished by the Authority to the Capital Provider.
- c. The Garden State Program Agreement between the Authority and the Participating Municipality shall determine whether the Capital Provider or the Participating Municipality is responsible for recording in the applicable county recording office the relevant Uniform Assessment Documents, and amendments thereto, in accordance with the time provided in the Program Guidelines.
- d. The Act and the Program Guidelines authorize the Authority and the Participating Municipalities to charge Borrower certain fees. The fees charged by Participating Municipalities shall be set forth in the Participating Municipality's Garden State Program Agreement.
- e. The Authority has the right to review any proposed Direct Financing Agreement to be entered into between Capital Provider and a Borrower, prior to its execution, to ensure that the terms and conditions of the Direct Financing Agreement are consistent with, and meet all requirements of, the Act and the Program Guidelines.

- f. For any proposed C-PACE Project for which a Borrower applies to the Authority, Capital Provider shall complete the relevant portions of the Qualified Capital Provider/Technical Reviewer Certification Letter required by the Program Guidelines. Capital Provider acknowledges that the Authority shall rely on the information contained in the Qualified Capital Provider/Technical Reviewer Certification Letter.
- g. Pursuant to the Act, the lien created by C-PACE Assessments shall be a single, continuous first lien upon the real estate described in the assessment, paramount to all prior or subsequent alienations and descents of the real estate or encumbrances thereon, except subsequent taxes, charges, or assessments. If the Property Owner is delinquent on a C-PACE Assessment as well as delinquent on taxes, charges, or other assessments, any payments shall be applied towards any and all such other delinquencies before being applied to any delinquent C-PACE Assessment.
- h. Pursuant to the Act, if any payment of a C-PACE Assessment is not made when that payment shall have become due, or later, consistent with any grace period provided or extended by a Participating Municipality for the payment of property tax bills as may be permitted or required by law, interest thereon shall be imposed by the applicable Participating Municipality at the same rate as may be imposed upon unpaid property taxes in the Participating Municipality. Notwithstanding any other provision of law, such statutory interest shall be in addition to any accrued interest and any amount fixed as a penalty for delinquency pursuant to the Direct Financing Agreement between the Borrower and Capital Provider. Any statutory interest on a delinquent C-PACE Assessment shall be retained by the Participating Municipality. Any accrued interest, or any amount fixed as a penalty for delinquency, pursuant to the Direct Financing Agreement between the Borrower and Capital Provider shall be remitted to Capital Provider.

4. CAPITAL PROVIDER COVENANTS

- a. Capital Provider shall continue satisfying the eligibility requirements in the Act and the Program Guidelines for a Qualified Capital Provider for the duration of its participation in the Program. Capital Provider shall submit such information or documentation pertaining to C-PACE Program eligibility that the Authority may require, from time to time, including, but not limited to, an updated legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2.
- b. Capital Provider shall ensure that every Borrower's C-PACE Project and the Direct Financing are eligible under the Act and the Program Guidelines.
- c. Capital Provider shall collect the Closing Fee from the Borrower and remit such Closing Fee to the Authority.
- d. Capital Provider shall timely provide to the Authority all reports and status updates required under the Program Guidelines, including, but not limited to, the C-PACE Portfolio

Status Update Reports and Project Completion Certification required in Section 4.05 of the Program Guidelines.

- e. With respect to any Direct Financing which Capital Provider provides to a Borrower, Capital Provider agrees that the Capital Provider and the Borrower shall ensure that the C-PACE Project remains eligible to participate in the C-PACE Program pursuant to the Program Guidelines. No project change shall be allowed if the change results in an increase to the Direct Financing that exceeds 20% of the original amount; a new Project Application shall be required in that event.
- f. With respect to any Direct Financing which Capital Provider may provide under the Program, Capital Provider agrees that, in the event that it becomes aware that any C-PACE Assessment payment is late beyond the applicable grace period, or any Eligible Property that is subject to such Direct Financing is the subject of a tax foreclosure sale, it will notify the Authority no later than thirty (30) calendar days after it becomes aware of such event.
- g. Capital Provider shall timely provide to the Authority all executed or recorded C-PACE Project documents as required by the Program Guidelines, including but not limited to any documents pertaining to a project change.

5. EVENTS OF DEFAULT

The occurrence of any one or more of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall constitute an “Event of Default”:

- a. Any representation or warranty made by Capital Provider in its application to the Authority or any other submission to the Authority is false, misleading, or inaccurate in any material respect as of the date made;
- b. Capital Provider ceases to meet the C-PACE Program’s qualification requirements;
- c. Capital Provider fails to timely submit any required report, certification, or project or program update and such failure shall have continued for thirty (30) days;
- d. Capital Provider fails to collect or remit any Closing Fee due to the Authority from a Borrower at the Borrower’s closing of the Direct Financing and such failure shall have continued for thirty (30) days;
- e. Capital Provider and Borrower institute a change to the C-PACE Project resulting in an increase to the Direct Financing that exceeds 20% of the original amount without submitting a new C-PACE Project application;
- f. Capital Provider fails to timely submit any executed or recorded C-PACE Project documents as required by the Program Guidelines and such failure shall have continued

for thirty (30) days;

- g. Capital Provider has been debarred, disqualified, or suspended by the Authority pursuant to N.J.A.C. 19:30-2;
- h. Capital Provider fails to observe or perform in any other material respect any other term, covenant, or condition of a Qualified Capital Provider under the Act, the Program Guidelines, or this Agreement, and such failure shall have continued for thirty (30) days after the earlier of (1) delivery to Capital Provider of written notice thereof from the Authority or (2) Capital Provider's actual or constructive knowledge of such failure; provided, however, that if such failure is capable of cure, but cannot be cured by payment of money or by diligent efforts within such thirty (30) day period, but such diligent efforts are properly commenced within the cure period and Capital Provider is diligently pursuing, and shall continue to pursue diligently, remedy of such failure, the cure period shall be extended for an additional period of time, not to exceed an additional forty five (45) days and in no case to extend beyond the expiration of this Agreement.

6. REMEDIES

- a. Upon the occurrence of any Event of Default by Capital Provider, at any time hereafter, the Authority may, so long as such Event of Default is continuing and, with regard solely to an Event of Default under Section 5(h) above, is not cured, do one or more of the following as the Authority in its sole discretion shall determine, without limiting any other right or remedy the Authority may have on account of such Event of Default:
 - i. Revoke Capital Provider's designation as a Qualified Capital Provider, provided that such revocation shall not relieve or terminate Capital Provider's rights, duties, obligations, and responsibilities it may have with respect to any Direct Financing of a C-PACE Project to which it is already contractually committed, whether under this Agreement, or any other agreement or writing to which it is party.
 - ii. Terminate this Agreement.
 - iii. Without prejudice to the rights and remedies otherwise available to the Authority, the Authority shall be entitled to equitable relief by way of injunction or specific performance, or otherwise, if Capital Provider breaches or threatens to breach any of the provisions of this Agreement, and Capital Provider shall not plead in defense thereto that there would be an adequate remedy at statutory or common law.
- b. All the Authority's rights and remedies shall be cumulative and may be exercised separately or concurrently.
- c. No failure by the Authority to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon any Event of

Default by Capital Provider hereunder shall be considered or taken as a waiver or relinquishment of the future of the right to insist upon and to enforce by mandatory injunction, specific performance, or other appropriate legal remedy a strict compliance by Capital Provider with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Event of Default by Capital Provider be continued or repeated. To the fullest extent permitted by law, no waiver of any Event of Default shall affect or alter this Agreement, and this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Event of Default.

- d. The rights and remedies of the Authority under this Agreement shall be in addition to any criminal or civil penalties to which Capital Provider and the respective officers of Capital Provider may be subject.

7. INDEMNITY

Capital Provider covenants and agrees to indemnify and hold harmless the Authority and its officers, directors, members, employees, and agents (each, an "Authority Indemnitee") from and against any and all liabilities, obligations, losses, damages (including consequential damages), penalties, actions, judgment, suits, costs, expenses, taxes, or disbursements of any kind or nature whatsoever (hereinafter referred to as a "Loss" or "Losses"), which may be imposed on, incurred by, or asserted against any of them, and to reimburse each Authority Indemnitee for any reasonable and customary fees or other out-of-pocket expenses (including all reasonable out-of-pocket litigation costs and reasonable attorneys' fees), caused by, related directly or indirectly to, or arising out of or in connection with this Agreement by the Capital Provider, its representatives, and or successors; provided, however, that Capital Provider shall not be liable to the Authority for any portion of such Losses resulting from the gross negligence or willful misconduct of any Authority Indemnitee.

8. PUBLIC RECORDS ACTS

- a. Capital Provider acknowledges that the Authority is a public agency subject to New Jersey state laws, regulations, policies, and applicable case law that could result in the disclosure of information (including, but not limited to, information that Capital Provider may consider confidential) regarding Capital Provider that is provided to the Authority, including, without limitation, the Open Public Records Act (N.J.S.A. 47:1A-1 et seq.), the common law right of access, and the Open Public Meetings Act (N.J.S.A. 10:4-6 et seq.) (together, including all applicable regulations and policies and applicable case law, the "Public Records Acts").
- b. Notwithstanding anything else in this Agreement, Capital Provider shall not make any claim against the Authority if, pursuant to the Public Records Acts, the Authority makes available to the public any information received by the Authority from Capital Provider; provided that the Authority will use its reasonable efforts (subject to the Authority's obligations under the Public Records Acts, including without limitation, the obligation to comply with required time frames) to notify Capital Provider of any Public Records Acts disclosure requests for confidential information and will provide such additional

cooperation as the Authority reasonably determines is appropriate and as is consistent with applicable law, including the Public Records Acts, with any efforts by the Capital Provider to protect such confidential information so that Capital Provider may seek a protective order or other appropriate relief from such request or requirement to disclose such confidential Information. If in the absence of a timely protective order or other relief, the Authority determine that disclosure of any information is compelled, the Authority may disclose such information without liability.

9. AUDITS, INSPECTIONS, AND RECORDS

- a. At any time during normal business hours upon written notice and as often as the Authority may reasonably deem necessary, Capital Provider shall make available to the Authority, any other State agency, or their duly authorized representative for examination all of Capital Provider's respective evidence and documentation supporting the Capital Provider's application, designation as a Qualified Capital Provider, and participation in the C-PACE Program, and shall permit the Authority, any other State agency, or their duly authorized representative to audit, examine, and make excerpts or transcripts from such evidence and documentation.
- b. The Authority reserves the right to conduct reasonable site inspections of any C-PACE Project, with coordination of the Borrower, for which the Capital Provider provided Direct Financing at any time during or after the C-PACE Project.
- c. In addition to any other period of time required by law, the Capital Provider shall establish and maintain during the term of this Agreement and for five (5) years thereafter, such records as are required in subsection (a) above and all relevant supporting documentation. Records with respect to any questioned costs, litigation, or dispute between the Authority and Capital Provider arising out of this Agreement shall be maintained for the time needed to resolve any such issue. If for any reason the Authority, any other State agency, or their duly authorized representative shall require a review of the records related to this Agreement, Capital Provider shall, at its own cost and expense, provide all such records to the Authority. Capital Provider shall maintain and organize its records related to this Agreement in such form so that, in case of a review of its records or audit, it is able to verify and document the information it has provided any submission to the Authority. Capital Provider agrees to be subject to review and audit by the Authority, the Office of the State Comptroller, and any other agency or department of the State in relation to the subject matter of this Agreement.

10. QUALIFIED CAPITAL PROVIDER LIST

The Authority shall maintain on the C-PACE Program Website a listing of all Qualified Capital Providers, together with contact information for such Qualified Capital Providers (as provided by such Qualified Capital Providers). The Authority's sole response to all inquiries seeking to identify a Qualified Capital Provider to finance a proposed C-PACE Project shall be to direct the person or entity to the C-PACE Program Website listing.

11. GOVERNING LAW

This Agreement is made subject to and shall be construed and enforced under the laws of the State of New Jersey, without giving regard to conflict of laws or choice of law principles.

12. FORUM AND VENUE

All actions related to the matters which are the subject of this Agreement shall be forumed and venued in a court of competent jurisdiction in the County of Mercer and State of New Jersey.

13. CONTRACTUAL LIABILITY ACT

The rights and remedies of Capital Provider under this Agreement shall be subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., the provisions of which are hereby incorporated herein by reference.

14. TORTS CLAIMS ACT

The rights and remedies of Capital Provider under this Agreement shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., the provisions of which are hereby incorporated herein by reference.

15. PUBLICITY

All media releases, public announcements, and other public disclosures by Capital Provider relating to its participation in the C-PACE Program as a Qualified Capital Provider or its Direct Financing of C-PACE Projects, including promotional or marketing material, shall be coordinated with and approved by the Authority prior to release, provided that if the Capital Provider's designation is not revoked, the Capital Provider does not need prior approval from the Authority for the factual statement, in any document or disclosure, that the Capital Provider is a participating in the C-PACE Program.

16. PARAGRAPH CAPTIONS

The captions of the paragraphs and sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

17. INTEGRATION AND AMENDMENTS

This Agreement and its exhibits and any documents referred to herein constitute the complete understanding of the Parties and merge and supersede any and all other discussions, agreements, and understandings, either oral or written, between the Parties with respect to the subject matter of this Agreement. Any amendments to this Agreement must be in writing and be signed by both Parties.

18. SEVERABILITY

Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

19. NOTICES

Unless otherwise specifically required by a provision of this Agreement, any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient.

If to the Authority, to:

New Jersey Economic Development Authority
36 West State Street (FedEx, UPS, etc. delivery),
P.O. Box 990 (USPS mail only)
Trenton, NJ 08625-0820
Attn: Director, Clean Energy

If to Capital Provider, to:

Attn: _____

20. NO ENDORSEMENT; NO LIMITATION ON DESIGNATING QUALIFIED CAPITAL PROVIDERS

Nothing in this Agreement shall constitute an endorsement by the Authority of any particular C-PACE Project or Direct Financing, nor does this Agreement constitute an endorsement of the Capital Provider. The Capital Provider understands and agrees that the Authority may designate as many Qualified Capital Providers as it deems appropriate, in its sole discretion.

21. NO THIRD-PARTY BENEFICIARIES

This Agreement has been entered into solely by and among the Parties that have executed this Agreement; except as otherwise expressly provided in this Agreement, this Agreement will not be deemed to create any rights in third parties or create any obligations of any party hereto to any such third parties.

22. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon successors and assigns. Notwithstanding this provision, Capital Provider shall not assign this Agreement without the prior written consent by the Authority.

23. TERMINATION OF AGREEMENT BY CAPITAL PROVIDER; SURVIVAL

- a. Capital Provider may terminate this Agreement at any time upon 30 days' written notice to the Authority. From and following any such termination Capital Provider shall no longer be a Qualified Capital Provider.
- b. Sections 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, and 14, together with this Section, shall survive the termination of this Agreement by either Party for any reason. In addition, no termination by Capital Provider of this Agreement shall operate to release Capital Provider from any obligations it may have with respect to any Direct Financing of a C-PACE Project to which it is already contractually committed, whether under this Agreement, or any other agreement or writing to which it is party.

24. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. This Agreement may be delivered by telecopier, e-mail, PDF or other facsimile transmission all with the same force and effect as if the same were a fully executed and delivered original manual.

25. ELECTRONIC SIGNATURES

Electronic signature on this Agreement shall be deemed to be valid execution and delivery as though an original ink. The Parties explicitly consent to the electronic delivery of the terms of the transaction evidenced by this Agreement and affirm that their electronic signatures indicate a present intent to be bound by the electronic signatures and the terms of the Agreement. The electronic signature can be done either by ADOBE Acrobat or any other similar signature software that can be used for electronic signatures or by printing, manually signing, and scanning.

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

By: _____
Name:
Title:

New Jersey Economic Development Authority

By: _____
Name:
Title: