

PACE CAPITAL PROVIDER AGREEMENT

This PACE CAPITAL PROVIDER AGREEMENT ("Agreement") is entered into by and between The Illinois Energy Conservation Authority NFP, an Illinois not-for-profit corporation ("PA"), and _____, a _____ ("PCP" and together with PA, the "Parties", and each a "Party").

RECITALS

WHEREAS, PA is the Program Administrator for the PACE Program (as defined below) and is operating the PACE Program within the jurisdictions of Participating Communities (as defined below); and

WHEREAS, PCP has completed an application for and desires to become a qualified "PACE Capital Provider" for one or more energy efficiency, renewable energy, alternative energy or water conservation improvement projects (each a "PACE Project") through the PACE Program (as defined below); and

WHEREAS, PA seeks to designate PCP as a qualified "PACE Capital Provider" in the PACE Program pursuant to the terms and conditions of this Agreement and any other requirements, terms or conditions PA may set forth related to "PACE Capital Providers" for the PACE Program;

WHEREAS, in consideration with being provided PACE Project data and related information to formulate a financing proposal to an owner of certain real property ("Property Owner") applying to access financing through the PACE Program, PCP and PA agree to the terms and conditions set forth in this Agreement.

AGREEMENT

1. Definitions.

- a. "Confidential Information" shall mean all confidential or proprietary written, recorded, electronic, visual information or data (including without limitation energy, structural research, developmental, engineering, manufacturing, technical, marketing, sales, financial, operating, performance, cost, pricing, business and process information or data, trade secrets, discoveries, ideas, designs, data,) provided to one Party or its Representatives by the other Party or its Representatives, regardless of whether such confidentiality or proprietary status is indicated or the specific words "confidential" or "proprietary" are used in the course of the exchange of such information or data. Without limiting the aforesaid, the existence of discussions between the Parties regarding the PACE Project shall constitute Confidential Information hereunder.
- b. "PA" shall mean the Illinois Energy Conservation Association in its capacity as program administrator of the IECA PACE.
- c. "PACE Program" shall mean the Property Assessed Clean Energy Program operated by the Illinois Energy Conservation Association.
- d. "PACE Statute" shall mean Illinois Property Assessed Clean Energy Act, as codified at 50 ILCS 50 (the 'PACE Act'), as amended.
- e. "Participating Community" shall mean an Illinois Local Unit of Government that has adopted an ordinance to establish a PACE Area and joined the IECA PACE Program.

- f. "Person" shall be broadly interpreted to include, without limitation, any corporation, limited liability company, partnership, limited partnership, governmental agency, or other legal entity or individual.
- g. "Program Guidelines" means that certain IECA PACE Program Guidelines approved by the Participating Community for operation of the PACE Program.
- h. "PACE Project" shall have the meaning set forth in the Recitals.
- i. "Representatives" shall mean as to any Person, its directors, officers, employees, agents, potential or actual direct or indirect investors and advisors (including, without limitation, financial advisors, attorneys, accountants, engineers, technicians and vendors) and in the case of Participating Community its PA and its Representatives.

2. Confidentiality and Non-Use. In consideration of its receipt of Confidential Information, the PCP and PA agree as follows:

- a. Confidentiality. The Parties shall (a) keep all Confidential Information confidential and not disclose or reveal any Confidential Information to any Person other than their Representatives, credit rating agencies, potential or actual third party participants in the PACE Project or potential or actual third party assignees or transferees of all or any portion of the disclosing Party's interest in the PACE Project who are actively and directly participating in the Receiving Party's evaluation of a PACE Project or who otherwise need to know the Confidential Information for the purpose of evaluating or consummating a transaction related to a PACE Project, (b) use the Confidential Information only for the purpose of evaluating or consummating a transaction related to a PACE Project, and (c) not disclose to any Person any information about a PACE Project or the terms or conditions or any other facts relating thereto, including, without limitation, the fact that discussions are taking place with respect thereto or the status thereof or the fact that Confidential Information has been made available to the receiving Party or its Representatives, except that the receiving Party may disclose such information to those of its Representatives or credit rating agencies who are actively and directly participating in its evaluation of a PACE Project or potential direct or indirect investors and potential or actual third party participants in the PACE Project or third party assignees or transferees of all or any portion of the PACE Project or who otherwise need to know such information for the purpose of evaluating or consummating a transaction related to a PACE Project.
- b. Compliance by Representatives. Any failure by any of the receiving Party's Representatives to comply with this Agreement, or any act or omission by any of the receiving Party's Representatives that, if committed by the receiving Party, would constitute a breach of this Agreement, shall be deemed to be a breach of this Agreement by the receiving Party for which the receiving Party shall be responsible.
- c. Return or Destruction of Confidential Information. The receiving Party shall return or destroy all Confidential Information (including all copies thereof) within ten (10) days of receipt of a written request made by the disclosing Party, except for one record copy that may be maintained by the receiving Party in its legal archives. Further, the receiving Party shall delete all Confidential Information contained in electronic files. Notwithstanding the foregoing, the Parties may retain copies of any computer records and files containing Confidential Information that have been created pursuant to their automatic electronic archiving and back-up procedures until such computer records and files have been deleted in the ordinary course. Any copies retained as

described shall be maintained as Confidential Information in accordance with the terms of this Agreement

- d. In addition to the foregoing, neither Party will use the Confidential Information for any purpose other than directly in connection with the PACE Project and as expressly authorized in writing by the disclosing Party or, if the Confidential Information is the property of the Property Owner, by the Property Owner.

3. Exceptions to the Confidentiality and Non-Use Obligations. The obligations imposed by Section 2 hereof shall not apply, or shall cease to apply, to any Confidential Information if or when, but only to the extent that, such Confidential Information:

- a. was known to the receiving Party or was already in its lawful possession prior to the receipt of the Confidential Information;
- b. was or becomes, through no breach of the receiving Party's obligations hereunder, known to the public;
- c. becomes known to the receiving Party from sources other than the disclosing Party or its representatives under circumstances not involving any breach of any confidentiality or non-use obligation; and/or,
- d. is independently developed by the receiving Party, as evidenced by written records thereof.

Confidential Information, as a whole, shall not be deemed to be in the public domain merely because any part of said Confidential Information is embodied in general disclosures or because individual features, components or combinations thereof are now or become known to the public.

Notwithstanding the provisions of Section 2(a) above, the receiving Party may disclose Confidential Information and/or the information described in Section 1(a) at such times, in such manner and to the extent such disclosure is required by applicable law, provided that the receiving Party (a) provides the disclosing Party with prior written notice, to the extent permissible, of such disclosure so as to permit the disclosing Party to seek a protective order or other appropriate remedy, (b) limits such disclosure to what is strictly required, and (c) attempts to preserve the confidentiality of any such Confidential Information so disclosed.

4. No Further Agreements Hereunder. The PA shall be not under any obligation to enter into any further agreements with the PCP of any nature whatsoever as a result of this Agreement. The PA hereto reserves the right, in its sole discretion, to decline, to retract, or to reject at any time any proposal which has not yet become legally binding by execution of a written agreement between the Parties with respect thereto, or with respect to any further agreements or business arrangements with the other Party hereto, its parents, subsidiaries or affiliates and to terminate all further discussions and negotiations. Nothing in this Agreement shall obligate the PA or its Representatives to provide any specific information, including Confidential Information, that the PA or its Representatives otherwise desire to withhold.

5. No Representations and Warranties. No representations or warranties express or implied, of any kind with respect to the Confidential Information, including without limitation with respect to the suitability, accuracy or completeness of the same, exist under this Agreement. Any representations or warranties shall be made thereby, if at all, only in a separate definitive written agreement that may be entered into between the PCP and the PA. The Parties specifically acknowledge and agree that the PA and its Representatives shall not be liable to the PCP or its Representatives whether in contract, tort or

otherwise for loss of profits, consequential, special or punitive damages, based on the accuracy of the Confidential Information, unless expressly set forth in a separate definite written agreement to the contrary.

6. **Costs.** PCP shall be responsible for all of its own costs and expenditures incurred in the application process and during any period during which the PCP maintains its PCP status with the PA and Participating Community. PCP shall have no right to make any claim(s) whatsoever under this Agreement for reimbursement of costs for any efforts expended.
7. **Program Fee and Annual Fee.** PA charges certain program fees in conjunction with its operation and administration of the PACE Program, as set forth in the Program Guidelines. PCP understands that these fees are non-negotiable, shall be collected from the parties and in the methods as set forth in the Program Guidelines and any final PACE Assessment Contract and Bond Agreement (as defined in the Program Guidelines), and are subject to change as set forth in subsequent updates to the Program Guidelines, as approved by the PA and Participating Community.
8. **Non-Circumvention.** PCP and its Representatives shall, not directly or indirectly interfere with, circumvent or attempt to circumvent, avoid, by-pass, or obviate the IECA PACE or the PA, or their respective relationships with the Property Owners, their respective other contractors, and their respective affiliates, to change, increase or avoid directly or indirectly, payment or issuance of, established or to be established fees, commissions, investment or ownership interest or continuance of pre-established relationship or intervene in non-contracted relationships with any third parties, or initiate transactional relationships that by-pass the IECA PACE or PA in connection with any on-going or future transaction or PACE Project. In furtherance and not in limitation of the foregoing, PCP agrees not to contact the Property Owner, its tenants, their respective owners and Capital Providers and Representatives, nor, in connection with submitting proposals for the PACE Project, other PACE Capital Providers as identified by the PA without its express prior written permission.
9. **Exclusivity.** For any Property Owner that submits an Application to PA designating PCP as the PACE Capital Provider, a different PACE Capital Provider shall not enter into a PACE Assessment Contract and Bond Agreement with such Property Owner for the same PACE Project for a period of six months (measured from the date of submission of all required documents outlined in the Program Guidelines) without written notice from the Property Owner to PCP that Property Owner has chosen to seek additional financing term sheets from other PACE Capital Providers. Further, neither PA or its Representatives nor IECA PACE or its Representatives may share any information contained in an application submitted by PCP or a Property Owner designating PCP as its PACE Capital Provider with any other PACE Capital Provider. This section does not apply if 1) the same Property Owner requests funding or financing for a materially different PACE Project or 2) PCP fails to submit all required documents pursuant to the Program Guidelines within a commercially reasonable time.
10. **No Endorsement; No Exclusivity.** Nothing in this Agreement shall constitute an endorsement by PA of PCP for any particular PACE Project or financing, nor shall this Agreement obligate PA to endorse or recognize PCP for any purpose other than to recognize PCP as a “PACE Capital Provider” in the PACE Program, subject to the terms and conditions of this Agreement. PCP understands that PA may recognize as many applicants as “PACE Capital Providers” as it deems appropriate and in its sole discretion. Notwithstanding the foregoing, in the event that there is any conflict or inconsistency between the terms and conditions of this Section 10 and Section 9 of this Agreement, the terms and conditions of Section 9 shall control and govern the rights and obligations of the Parties.

- 11. Compliance with Program Guidelines.** PCP has been provided with a copy of the Program Guidelines and understands its terms. PCP agrees to offer its financing and other products in accordance with the terms and conditions of the Program Guidelines. PCP understands that the Participating Community or PA may approve revisions or updates to the Program Guidelines and shall provide notice to PCP of the same.
- 12. Governing Law.** This Agreement is made subject to and shall be construed and enforced under the laws of the State of Illinois, without giving regard to conflict of laws or choice of law principles. The state courts and federal courts of the State of Illinois shall have exclusive jurisdiction to resolve any disputes with respect to this Agreement or the Confidential Information with each Party irrevocably consenting to the jurisdiction thereof for any actions, suits or proceedings arising out of, or relating to, this Agreement or the Confidential Information, and each Party irrevocably waives its rights to jury trials with respect thereto.
- 13. Right to Rescind.** Any time and in its sole discretion, the PA reserves the right to rescind or revoke the “PACE Capital Provider” status of the PCP. Notice of the PA’s determination to revoke or rescind the PCP status shall be given in writing by the PA to the PCP in accordance with Section 19 below. If PCP’s “PACE Capital Provider” status is so rescinded, PA and the IECA PACE shall have no further obligations to the PCP hereunder or under the PACE Program and PCP shall have no further right to hold itself out as a “PACE Capital Provider” for the PACE Program.
- 14. Remedies.** Without prejudice to the rights and remedies otherwise available to either Party, each Party shall be entitled to equitable relief by way of injunction or specific performance, or otherwise if the PCP or any of its Representatives breach or threaten to breach any of the provisions of this Agreement the PCP shall not plead in defense thereto that there would be an adequate remedy at statutory or common law. All of the Party's rights and remedies shall be cumulative and may be exercised separately or concurrently.
- 15. Non-Publicity.** All media releases, public announcements and other disclosures relating to any PACE Project including promotional or marketing material, but excluding announcements intended solely for internal distribution or to meet legal or regulatory requirements, shall be coordinated with and approved by the PA prior to release. In addition, the PCP shall refrain from removing, overprinting or defacing any notices of copyright, trademark, logo or other proprietary identifications or notices of confidentiality, from any originals or copies of the PA's or the Property Owner's Confidential Information.
- 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 Amendment.** This Agreement represents the entire and integrated agreement between the PA and the PCP and supersedes all prior negotiations, representations, or agreements, either written or oral. 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.

- 20. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes.

[SIGNATURE PAGES FOLLOW]

PACE CAPITAL PROVIDER:

_____ a,

Signature: _____

Name: _____

Title: _____

Address: _____

Phone: _____

Email: _____

PA:

IECA PACE

**THE ILLINOIS ENERGY CONSERVATION
AUTHORITY NFP**, an Illinois not-for-profit
corporation

Signature: _____

Name: _____

Title: _____

Address: _____

Phone: _____

Email: _____