

## **REIMBURSEMENT AGREEMENT**

**REIMBURSEMENT AGREEMENT** (this “*Agreement*”) dated as of August 1, 2013, by and between the NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY (the “*Issuer*”), a body corporate and politic constituting a public benefit corporation, established and existing under the laws of the State of New York, and NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION (the “*Guarantor*”), a body corporate and politic constituting, a public benefit corporation, established and existing under the laws of the State of New York.

### **W I T N E S S E T H:**

**WHEREAS**, the Issuer has or will issue its Residential Energy Efficiency Financing Revenue Bonds (Federally Taxable), Series 2013A (the “*Bonds*”) pursuant to the Indenture of Trust, dated as of August 1, 2013 between the Issuer and The Bank of New York Mellon, as trustee (the “*Trustee*”), as supplemented by the First Supplemental Series Indenture of Trust dated as of August 1, 2013 (as supplemented, the “*Indenture*”) for the purpose of financing and refinancing low interest loans for energy efficiency projects to meet New York State’s energy reduction and greenhouse gas mitigation measures; and

**WHEREAS**, energy efficiency projects aid in reducing atmospheric deposition that is a source of water quality impairment; and

**WHEREAS**, the Guarantor will issue its Guarantee Agreement to the Trustee, substantially in the form set forth in Annex A to this Agreement (the “*Guarantee*”) guaranteeing the payment of the principal of, interest on and redemption premium, if any, on the Bonds subject to the terms and limitations of the Guarantee in order to improve the credit access of the Bonds; and

**WHEREAS**, the Guarantee, by improving the credit access of the Bonds that are being issued to finance and refinance energy efficiency projects that reduce atmospheric deposition that is a source of water quality impairment is intended to assist in the implementation of New York State’s program established under Section 319 of the federal Clean Water Act; and

**WHEREAS**, to induce the Guarantor to issue the Guarantee, the Issuer has agreed to pay an administrative fee and to pledge certain collateral to the Guarantor for such Guarantee; and

**WHEREAS**, the Guarantor shall be reimbursed for all payments made by the Guarantor under the Guarantee as provided in this Agreement; and

**WHEREAS**, the Issuer understands that the Guarantor expressly requires the delivery of this Agreement as part of the consideration for the execution by the Guarantor of the Guarantee; and

**NOW, THEREFORE**, in consideration of the premises and of the agreements herein contained and of the execution of the Guarantee, the Issuer and the Guarantor agree as follows:

**ARTICLE I  
DEFINITIONS; GUARANTEE**

**Section 1.01**     ***Definitions.***   Except as otherwise expressly provided herein or unless the context otherwise requires, the terms which are capitalized herein shall have the meanings specified in *Annex B* hereto.

**Section 1.02**     ***Guarantee.***

(a)     ***Issuance.***   The Guarantor will issue the Guarantee upon the delivery of the Bonds.

(b)     ***Guarantee Limit.***   The maximum liability of the Guarantor under the Guarantee and the coverage and term thereof shall be subject to and limited by the terms and conditions of the Guarantee.

**Section 1.03**   ***Fee.***   In consideration of the Guarantor agreeing to issue the Guarantee hereunder and so long as the Guarantor has not defaulted in its obligations under the Guarantee, the Issuer hereby agrees to pay or cause to be paid annually in advance commencing on the Closing Date, and on each September 1 thereafter, an annual administrative fee equal to .25% of the outstanding principal amount of the Bonds. The initial administrative fee due on the Closing Date will cover the period from the Closing Date through August 31, 2014.

**ARTICLE II  
REIMBURSEMENT OBLIGATIONS AND SECURITY THEREFOR**

**Section 2.01**   ***Reimbursement for Payments Under the Guarantee and Expenses; Indemnification.***

(a)     ***Subrogation, Reimbursement, Interest, and Guarantor's Costs.***   In the event that the Guarantee is drawn in accordance with its terms, the Issuer agrees to reimburse the Guarantor for all Guaranteed Payments (as defined in the Guarantee), to pay interest on all Guaranteed Payments at the Late Payment Rate until repaid, and to pay or reimburse the Guarantor for all costs incurred by the Guarantor in enforcing the obligations of the Issuer hereunder.

“Late Payment Rate” means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in the City of New York, as its prime or base lending rate (“Prime Rate”) (any change in such Prime Rate to be effective on the date such change is announced by JPMorgan Chase Bank) plus 3%, and (ii) the then applicable highest rate of interest on the Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event JPMorgan Chase Bank ceases to announce its Prime Rate, the prime Rate shall be the prime or base lending rate of such national bank as the Guarantor shall designate. If the interest provisions of this Section 2 shall result in an effective rate of interest which, for any period, exceeds the limit of the usury or any other laws applicable to the indebtedness created herein, then all sums in excess of those lawfully collectible as interest for the period in additional interest for any later periods of time when amounts are outstanding hereunder to the extent that

interest otherwise due hereunder for such periods plus such additional interest would not exceed the limit or the usury or such other laws, and any excess shall be applied upon principal immediately upon receipt of such moneys by the Guarantor, with the same force and effect as if the Issuer had specifically designated such extra sums to be so applied and the Guarantor had agreed to accept such extra payment(s) as additional interest for such later periods. In no event shall any agreed-to or actual exaction as consideration for the indebtedness created herein exceed the limits imposed or provided by the law applicable to this transaction for the use or detention of money or for forbearance in seeking its collection.

Notwithstanding anything to contrary contained in this Agreement, to the extent that the Guarantor is reimbursed for any Guaranteed Payment on the same day such Guaranteed Payment is made, whether from the Collateral Reserve Account or from the Issuer's own funds, then no interest on the Guaranteed Payments shall be due.

To the extent that any payment has been made to a Bondholder with funds provided by a Guaranteed Payment for which the Guarantor has not been reimbursed pursuant to this Agreement, the following provisions shall apply notwithstanding any other provision of the Indenture to the contrary. The Guarantor shall be subrogated to the rights of such Bondholder. Any such payment shall not extinguish any payment obligation to the Bondholder, but shall effect a purchase by the Guarantor of the payment right of the Bondholder, and the Guarantor shall be considered a Bondholder with respect thereto. To the extent that any such payment is made to pay principal on a Bond, such Bond shall be registered in the name of the Guarantor on the registration books of DTC, with respect to Book-Entry Bonds, or shall be registered in the name of the Guarantor and delivered to the Guarantor or an agent designated by the Guarantor.

**(b) Indemnity.** The Issuer agrees to indemnify the Guarantor, to the extent permitted by State law, against any and all liability, claims, loss, costs, damages, fees of attorneys and other expenses which the Guarantor may sustain or incur by reason of or in consequence of a default by the Issuer under the terms of the Indenture.

**(c) Manner of Payment to Guarantor.** All payments made to the Guarantor under this Agreement shall be paid in lawful currency of the United States in immediately available funds at the address below, or at such other place as shall be designated by the Guarantor:

New York State Environmental Facilities Corporation  
625 Broadway, Albany, New York 12207-2997  
Attn: Deputy Director of Finance  
Telephone: (518) 402-6985  
Full Name and Account Number:  
Bank Name: M&T Bank  
ABA # 022000046  
A/C # 3088001950200  
A/C Name: Trust Division  
FFC 185008224 CW Equity Account  
Fef.: Jennifer Wieszcholek  
Phone: (716) 842-2364  
Fax: (716) 842-4474

(d) ***Liability of Issuer under this Agreement.*** The obligations of the Issuer hereunder shall not be general obligations of the Issuer, and shall not constitute an indebtedness of or a charge against the general credit of the Issuer. The liability of the Issuer under this Agreement shall be enforceable only to the extent provided herein and in the Indenture, and such liability shall be payable solely from the Pledged Revenues and any other funds held by the Trustee under the Indenture and available for such payment thereunder and from the Collateral Reserve Account. Such liability shall not be a debt of the State of New York and the State of New York shall not be liable thereon.

**Section 2.02 *Allocation of Payments; Notice to Trustee.*** The Guarantor and the Issuer hereby agree that each repayment received by the Guarantor from or on behalf of the Issuer as a reimbursement to the Guarantor as required by Section 2.01(a) hereof shall be applied, first, to reimburse the Guarantor for all costs incurred by the Guarantor in enforcing the obligations of the Issuer hereunder; second, toward repayment of overdue interest on all Guaranteed Payments at the Late Payment Rate until repaid; and third, toward repayment of the applicable Guaranteed Payments made by the Guarantor and not yet repaid.

**Section 2.03 *Security for Payments; Instruments of Further Assurance.***

(a) ***Collateral Reserve Account.***

(i) ***Initial Deposit.*** By Federal Funds Closing on the Bond Issuance Date, the Issuer shall deliver to the Collateral Agent the sum of \$8,512,581.00 U.S. Dollars (Eight Million Five Hundred Twelve Thousand Five Hundred Eighty One U.S. Dollars by wire transfer of immediately available funds to be held by the Collateral Agent in an account entitled the “Collateral Reserve Account” for the benefit of the Guarantor pursuant to the Custody Agreement. The Collateral Reserve Account shall be segregated by the Collateral Agent from other assets of the Collateral Agent and invested as provided in Section 2.03(b)(1) below, with interest accruing in the Collateral Reserve Account. The Issuer hereby grants to the Guarantor a lien on the amounts on deposit in the Collateral Reserve Account as security for its payment obligations hereunder and pledges the Collateral Reserve Account to the Guarantor as security for its payment obligations hereunder.

(ii) ***Collateral Reserve Account Valuation.*** The Collateral Agent shall value the Collateral as of each March 31, June 30, September 30 and December 31, commencing September 30, 2013 (each, a “Valuation Date”) and provide notice of such valuation to the Issuer and the Guarantor no later than 20 calendar days following the Valuation Date. If the Collateral is valued at less than the Collateral Requirement then the Issuer shall, as soon as practicable following notice thereof, deliver to the Trustee additional performing Loans meeting the criteria set forth in Section 3.03 of the Indenture to provide sufficient Pledged Loan Payments so as to make up the deficiency in the Collateral Requirement. If, on any Valuation Date, the Collateral is valued at less than Maximum Annual Debt Service, then, upon direction from the Guarantor, the Issuer shall, as soon as practicable following notice thereof, pledge the Loans from which the Pledged Loan Payments are derived to the Trustee pursuant to Section 3.01(c) of the Indenture as additional security for its obligations under the Indenture. In addition, if, on any Valuation Date, the Collateral is valued at less than Maximum Annual Debt Service or the Servicer, in the reasonable opinion of the Guarantor, is not performing its obligations under the Servicing

Agreement, then the Guarantor shall have the right to require that the Authority appoint a new Servicer within 90 days of such written notice, and the Guarantor shall have the right to approve the proposed successor Servicer.

(iii) *Withdrawal of Collateral.* The Guarantor shall, upon one (1) Business Day's telephonic notice (such notice to be confirmed in writing) to the Collateral Agent, be entitled to withdraw the amounts on deposit in the Collateral Reserve Account to reimburse itself for a Guaranteed Payment that has not otherwise been reimbursed on the date of such Guaranteed Payment by the Issuer.

(iv) *Collateral Agent Fees.* The Issuer agrees to pay the reasonable fees and expenses of the Collateral Agent in accordance with a fee schedule separately agreed upon between the Issuer and the Collateral Agent, as such schedule may be modified from time to time upon agreement of the Issuer and the Collateral Agent.

(v) As soon as practicable but no later than 20 calendar days following each Valuation Date the Issuer shall deliver to the Guarantor an Officer's Certificate certifying that the Coverage Test was satisfied on such Valuation Date. If the Collateral is valued at greater than the Collateral Requirement, the excess funds shall be transferred to the Issuer at its direction.

**(b) *Management of Collateral.***

(i) *Investments.* Amounts on deposit in the Collateral Reserve Account shall be invested at the direction of the Guarantor in securities permitted under Section 7.03 of the Indenture.

(ii) *Return of Collateral Upon Discharge.* In addition to the Collateral Agent's obligation to deliver to the Issuer amounts on deposit in the Collateral Reserve Account in excess of the Collateral Requirement pursuant to the Custody Agreement, if the Bonds are no longer outstanding under the Indenture or the Guarantee has been terminated pursuant to the Guarantee, then the lien and pledge of the amounts on deposit in the Collateral Reserve Account hereunder shall be released and the Collateral Agent shall promptly pay over and deliver and transfer to the Issuer all of the amounts on deposit in the Collateral Reserve Account.

(iii) *Successor Collateral Agent.* The Issuer may appoint, with the prior written consent of the Guarantor, a successor custodian, and upon such appointment such new collateral agent shall be the Collateral Agent as such term is used herein and shall assume all the rights and obligations of the Collateral Agent hereunder.

**Section 2.04 *Certain Financial Covenants.***

(a) *Additional Pledged Loan Payments.* As and to the extent that the Projection provided in Section 2.05(a) below does not show compliance with the Coverage Test, by no later than 30 days following the delivery of the Projection, the Issuer shall cause additional Loans meeting the criteria set forth in Section 3.03 of the Indenture to be included as Pledged Loan Payments under the Indenture so that Projected Net Revenues, together with amounts held in the

Revenue Fund and Debt Service Fund, will at least equal 110% of Maximum Annual Debt Service.

“Coverage Test” means that Projected Net Revenues, together with amounts held in the Revenue Fund and Debt Service Fund, are expected to be at least equal to 110% of Maximum Annual Debt Service, all as determined by the Issuer and evidenced by an Officer’s Certificate.

(b) ***Substitution of Pledged Loans.*** So long as no Event of Default has occurred under the Indenture, the Issuer shall have the right to substitute up to 25% of the initial outstanding principal balance of Loans in aggregate over the life of the Bonds with Loans meeting the criteria set forth in Section 3.03 of the Indenture. Any substitution with Loans that have a weighted average age which is 20% less the average age of the Loans based on the age of the original loan portfolio is subject to the veto by the Guarantor. Substitution of greater than 25% of the initial outstanding principal balance of Loans in aggregate over the life of the Bonds is subject to veto by the Guarantor so long as the Guarantee is in effect.

(c) ***Sale of Non-Pledged Loans.*** If Projected Net Revenues, together with amounts held in the Revenue Fund and Debt Service Fund under the Indenture, do not equal at least 120% of Maximum Annual Debt Service, the Issuer agrees not to sell or otherwise dispose of non-pledged Loans without the prior written consent of the Guarantor.

(d) ***Excess Funds.*** On each date on which a Projection is delivered to the Guarantor pursuant to Section 2.05(a) hereof, all or any portion of moneys in the Revenue Fund determined by the Issuer to be in excess of 120% of Maximum Annual Debt Service may be transferred to or at the direction of the Issuer; provided, however, that such transfer shall not occur if, as a result of such transfer, the Projected Net Revenues, together with amounts held in the Revenue Fund and Debt Service Fund, in the aggregate in any Bond Year, will be less than 120% of Maximum Annual Debt Service, unless the Guarantor otherwise consents in writing.

(e) ***Additional Indebtedness.*** So long as the Guarantee is in effect, the Issuer agrees not to issue any additional indebtedness (whether junior, parity or senior to the Bonds) secured by the Pledged Revenues without the prior written consent of the Guarantor.

(f) ***Prefunding.*** The Issuer hereby agrees to use Bond proceeds not applied to refinance Loans or used to pay costs of issuance of the Bonds and/or contributed funds in an aggregate principal amount of at least \$1,480,000 to originate additional Loans under the Indenture meeting the criteria set forth in Section 3.03 of the Indenture. Such amount will not be counted as Pledged Revenues unless such amount has been transferred to the Debt Service Fund under the Indenture and used to pay Debt Service on the Bonds.

(g) ***Green Jobs Green New York Program.*** For so long as the Guarantee is in effect, the Issuer agrees to maintain the GJGNY Fund in accordance with the Green Jobs-Green New York Act of 2009 establishing such fund.

## **Section 2.05      *On-going Information Obligations of Issuer.***

(a) ***Projection.*** The Issuer shall on or before each Valuation Date prepare a projection (the “Projection”), of Pledged Revenues, Administrative Expenses, Debt Service, and

Projected Net Revenues for each Bond Year during which Bonds are then expected to be Outstanding. The Projection shall be based upon Pledged Net Revenues as of the close of the preceding month and shall not include Pledged Loan Payments under Loans that are delinquent for 120 days or more. A copy of the Projection shall be furnished to the Guarantor.

**(b) *Notices Under the Indenture, this Agreement and the Servicing Agreement.*** The Issuer will provide to the Guarantor and the Collateral Agent immediate notice of any Event of Default under the Indenture or this Agreement and any other notice required to be given or received by the Issuer under the Indenture, this Agreement and the Servicing Agreement.

**(c) *Payment Reports.*** The Issuer will provide to the Guarantor within 45 days of the close of each quarter a report summarizing beginning account balances, revenues/receipts, expenses/disbursements, and ending balances covering all fund balances under the Indenture, the Collateral Reserve Account, and the GJGNY Revolving Loan fund and any additional information regarding loan performance requested by the Guarantor in a format satisfactory to the Guarantor.

**(d) *Federal Subsidy Payments.*** The Issuer will make such filings with the Internal Revenue Service (“IRS”) or other federal department or agency, and take any such other actions, as are required to receive payments of the credit described in Section 6431 of the Code with respect to the Bonds and to provide (i) copies of such filings to the Guarantor no later than 60 days prior to each interest payment date on the Bonds, or (ii) notice to the Guarantor that the Issuer has failed to make such filings by such time. In addition, the Issuer shall provide the Guarantor copies of any other documentation that is material to the status of the Bonds as Qualified Energy Conservation Bonds as defined in Section 54 of the Code.

**(e) *Access to Books and Records.*** The Issuer will make available to the Guarantor, at reasonable times and upon reasonable notice, all books and records relative to the Bonds and to the Green Jobs Green New York Program. The Issuer authorizes the Guarantor to provide such information to the Environmental Protection Agency, Commissioner of Environmental Conservation and the State Comptroller in connection with its administration of the CWSRF Program.

**(f) *Green Jobs Green New York Program Oversight.*** The Issuer shall operate the Green Jobs Green New York Program in accordance with applicable requirements of State and Federal law. The Issuer shall provide for competent and adequate selection, construction and inspection of projects funded through the Green Jobs Green New York Program with financial assistance from the CWSRF. The Issuer shall permit reviews, audits and inspections of such projects as determined to be reasonable and necessary by the Guarantor or the Department of Environmental Conservation.

**(g) *SEQRA/SERP.*** The Issuer certifies that it shall continue to notify DEC and the Guarantor of all actions proposed for complying with the environmental review requirements imposed by SERP and approved by EPA for CWSRF projects.

**(h) *NEPA.*** If the Commissioner determines that, in addition to all such requirements of SEQRA and SERP, there are additional requirements associated with a National

Environmental Protection Act (“NEPA”) environmental review, the Issuer shall comply with those additional requirements.

(i) ***Procurement, Suspension and Debarment.*** The Issuer shall further ensure that no subaward, contract or agreement for the purchase of goods or services shall be made with any debarred or suspended party under 2 CFR Part 180 and 2 CFR 1532 or with a party determined to be ineligible to bid under Section 316 of the Executive Law.

(j) ***Covenant Against Discrimination.*** The Issuer will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religion, national origin, age, sex, marital status, disability or political beliefs in any manner prohibited by the laws of the United States of America or of the State.

### **ARTICLE III CONDITIONS PRECEDENT**

**Section 3.01 Conditions Precedent to the Closing Date.** As a condition precedent to the execution and delivery of this Agreement, the Guarantor shall have received the following items on or before the Closing Date, each in form and substance satisfactory to the Guarantor and its counsel:

(a) ***Coverage Test.*** An Officer’s Certificate of the Issuer evidencing that the Coverage Test is expected to be satisfied after all proceeds of the Bonds are disbursed as provided in the Supplemental Indenture.

(b) ***Issuer Documents.*** Receipt by the Guarantor of counterparts of the Issuer Documents signed by the Issuer, with such changes as consented to by the Guarantor.

(c) ***Opinion of Counsel for the Issuer.*** Opinion(s), upon which the Guarantor may rely, of counsel for the Issuer as to the enforceability of the Issuer Documents and covering such other matters described in Exhibit A.

(d) ***Opinion of Bond Counsel.*** Opinion of Hawkins Delafield & Wood LLP, bond counsel for the Issuer, dated the Closing Date, which shall include such matters as the Guarantor may reasonably request, in the form attached hereto as Exhibit B.

(e) ***Regulatory Approvals.*** Receipt by the Guarantor of certified copies of all approvals, authorizations or consents of, or notices to or filings or registrations with, any Governmental Authority required for the Issuer to execute, deliver or perform the Issuer Documents.

(f) ***Incumbency Certificates.*** Receipt by the Guarantor of a certificate of the Secretary or an Assistant Secretary of the Issuer, dated the Closing Date, attaching certified copies of the Issuer documents and certifying as to the names and true signatures of officers of the Issuer authorized to execute the Issuer Documents and any other document to be delivered by the Issuer hereunder, in form and substance satisfactory to the Guarantor.



(g) **Acknowledgement of Servicer.** Receipt by the Guarantor of a Servicer Acknowledgement, dated the Closing Date, in the form attached hereto as Exhibit C.

(h) **Closing Certificate.** Receipt by the Guarantor of an Officer's Certificate of the Issuer, dated the Closing Date, certifying that (i) each of the Issuer's representations and warranties contained in the Issuer Documents is true and correct on and as of the Closing Date and (ii) no Default has occurred and is continuing.

(i) **Fees.** Payment of the reasonable fees and expenses of the Guarantor incurred in connection with negotiation, execution and delivery of this Agreement.

(j) **Other Documents.** Such other documents, instruments, approvals and, if requested by the Guarantor, certified duplicates of executed copies thereof, and opinions as the Guarantor may reasonably request.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES**

The Issuer represents and warrants to the Guarantor as follows:

**Section 4.01 Bond Purchase Agreement.** The representations of the Issuer contained in the Bond Purchase Agreement dated July 31, 2013 (the "Bond Purchase Agreement") between the Issuer and the underwriters named therein relating to the Bonds are true and correct in all material respects on as of the date hereof.

**Section 4.02 Existence and Power.** The Issuer is a body corporate and politic constituting a public benefit corporation established under the laws of the State of New York, and has full power and authority and all material governmental licenses, authorizations, consents and approvals required to carry on its activities as now conducted except for such licenses, authorizations, consents and approvals the lack of which does not have and will not have a material adverse effect on the business, financial position, results of operations or prospects of the Issuer.

**Section 4.03 Corporate and Governmental Authorization; Contravention.** The execution, delivery and performance by the Issuer of the Issuer Documents are within its powers, have been duly authorized by all necessary action, require no action by or in respect of or filing with any governmental body, agency or official and do not contravene, or constitute a default under, any provision of applicable law or regulation or of the Issuer's bylaws, or of any agreement, judgment, injunction, order, decree or other instrument binding upon the Issuer or any of its assets or result in the creation or imposition of any Lien on any asset of the Issuer except as provided in in the Indenture.

**Section 4.04 Valid and Binding Agreements.** Each of the Issuer Documents constitutes a valid and binding agreement of the Issuer, enforceable against the Issuer in accordance with its terms.

**Section 4.05 Litigation.** Except as has been disclosed in the Official Statement as of the Closing Date, there is no action, suit or proceeding pending against or, to the knowledge of

the Issuer, threatened against or affecting the Issuer before any court or arbitrator or any other Governmental Authority in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business, financial position or results of operations of the Issuer or that in any manner draws into question the validity or enforceability of any of the Issuer Documents.

**Section 4.06 *Official Statement.*** The Official Statement (other than information relating to the Guarantor) and all other information, reports and other papers and data with respect to the Issuer furnished to the Guarantor were, at the time the same were so furnished, complete and correct in all material respects, to the extent necessary to give the Guarantor a true and accurate knowledge of the subject matter. The Official Statement (other than information relating to the Guarantor) and the other documents furnished or statements made by the Issuer in connection with the negotiation, preparation or execution of the Issuer Documents do not contain any untrue statement of a fact material to its creditworthiness or omit to state a material fact necessary in order to make the statements contained therein not misleading as of the date of the statement.

**Section 4.07 *Initial Pledged Loan Payments.*** The Loans from which the initial Pledged Loan Payments are derived meet the criteria set forth in Section 3.03 of the Indenture.

**Section 4.08 *Procurement and Suspension Debarment.*** The Issuer is not a debarred or suspended party under 2 CFR Part 180 and 2 CFR 1532. Further, neither the Issuer nor any of its contractors have contracted with any debarred or suspended party under 2 CFR Part 180 and 2 CFR 1532 or with any party that has been determined to be ineligible to bid under Section 316 of the Executive Law.

**Section 4.09 *Restrictions on Lobbying.*** The Issuer represents that it has not expended appropriated federal funds to pay any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, officer or employee of Congress or any employee of any Member of Congress in connection with any grant or financing which exceeds \$100,000 in accordance with the provisions of 40 CFR Part 34.

## ARTICLE V AMENDMENTS TO DOCUMENTS

**Section 5.01 *Compliance.*** So long as this Agreement is in effect, the Issuer will observe and perform each and every covenant and warranty on its part contained in the Indenture.

**Section 5.02 *Amendments.*** So long as this Agreement is in effect, the Issuer agrees that it will not amend or agree to amend the Indenture, the Servicing Agreement or the Issuer's Investment Guidelines, Operative Policy and Instructions dated June 2013, in any material respect without the prior written consent of the Guarantor.

**Section 5.03 *Substitution of Servicer, Trustee or Collateral Agent.*** So long as this Agreement is in effect, the Issuer agrees that it will not replace the Servicer, the Trustee or the Collateral Agent without the prior written consent of the Guarantor.

## ARTICLE VI EVENTS OF DEFAULT; REMEDIES

**Section 6.01 *Events of Default.*** The following events shall constitute Events of Default hereunder:

(a) ***Payment Default:*** the Issuer shall fail to pay to the Guarantor when due any amount payable under Section 2.01(a) or Section 2.01(b) hereof;

(b) ***Material Misrepresentation:*** any material representation or warranty made by the Issuer hereunder or under the Indenture or any statement in the application for the Guarantee or any report, certificate, financial statement or other instrument provided in connection with the Guarantee or herewith shall have been materially false at the time when made;

(c) ***Covenant Default:*** except as otherwise provided in this Section 6.01, the Issuer shall fail to perform any of its other obligations under this Agreement, provided that such failure continues for more than thirty (30) days after receipt by the Issuer of notice of such failure to perform;

(d) ***Voluntary Insolvency Proceeding:*** the Issuer shall (i) voluntarily commence any proceeding or file any petition seeking relief under the United States Bankruptcy Code or any other Federal, state or foreign bankruptcy, insolvency or similar law, (ii) consent to the institution of, or fail to controvert in a timely and appropriate manner, any such proceeding or the filing of any such petition, (iii) apply for or consent to the appointment of a receiver, paying agent, custodian, sequestrator or similar official for the Issuer or for a substantial part of its property, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due or (vii) take action for the purpose of effecting any of the foregoing; or

(e) ***Involuntary Insolvency Proceeding:*** an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of the Issuer, or of a substantial part of its property under the United States Bankruptcy Code or any other Federal, state or foreign bankruptcy, insolvency or similar law or (ii) the appointment of a receiver, paying agent, custodian, sequestrator or similar official for the Issuer or for a substantial part of its property; and such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall continue unstayed and in effect for thirty (30) days.

An Event of Default hereunder shall constitute an Event of Default under the Indenture upon receipt of written notice to the Trustee from the Guarantor.

**Section 6.02 *Remedies.*** If an Event of Default shall occur and be continuing, then the Guarantor may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due under this Agreement or any related instrument, and enforce any obligation, agreement or covenant of the Issuer under this Agreement; provided, however, that the Guarantor may not take any action to accelerate the maturity of the Bonds or adversely affect the rights under the Indenture of the Trustee, the

Owners of the Bonds or any other beneficiary of the lien of the Indenture. All rights and remedies of the Guarantor under this Section 4.02 are cumulative and the exercise of any one remedy does not preclude the exercise of one or more of the other available remedies.

## **ARTICLE VII MISCELLANEOUS**

**Section 7.01 *Exercise of Rights.*** No failure or delay on the part of the Guarantor to exercise any right, power or privilege under this Agreement and no course of dealing between the Guarantor and the Issuer or any other party shall operate as a waiver of any such right, power or privilege, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which the Guarantor would otherwise have pursuant to law or equity. No notice to or demand on any party in any case shall entitle such party to any other or further notice or demand in similar or other circumstances, or constitute a waiver of the right of the other party to any other or further action in any circumstances without notice or demand.

**Section 7.02 *Amendment and Waiver.*** Any provision of this Agreement may be amended, waived, supplemented, discharged or terminated only with the prior written consent of the Issuer and the Guarantor. The Issuer hereby agrees that upon the written request of the Trustee, the Guarantor may make or consent to issue any substitute for the Guarantee to cure any ambiguity or formal defect or omission in the Guarantee which does not materially change the terms of the Guarantee nor adversely affect the rights of the Owners, and this Agreement shall apply to such substituted Guarantee. The Guarantor agrees to deliver to the Issuer and to the company or companies, if any, rating the Bonds, a copy of such substituted Guarantee.

### **Section 7.03 *Successors and Assigns; Descriptive Headings.***

(a) ***Parties Bound and Benefited.*** This Agreement shall bind, and the benefits thereof shall inure to, the Issuer and the Guarantor and their respective successors and assigns; provided that the Issuer may not transfer or assign any or all of its rights and obligations hereunder without the prior written consent of the Guarantor.

(b) ***Headings.*** The descriptive headings of the various provisions of this Agreement are inserted for convenience of reference only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

**Section 7.04 *Termination of Guarantee.*** If the Guarantor shall procure any other credit enhancement to support the Guaranteed Bonds (as defined in the Guarantee), the Guarantor will have the right to terminate the Guaranty subject to rating agency verification that there is no adverse effect on the current ratings on the Bonds.

**Section 7.05 *Waiver.*** The Issuer waives any defense that this Agreement was executed subsequent to the date of the Guarantee, admitting and covenanting that such Guarantee was executed pursuant to the Issuer's request and in reliance on the Issuer's promise to execute this Agreement.

**Section 7.06 Notices; Requests; Demands.** Except as otherwise expressly provided herein, all written notices, requests, demands or other communications to or upon the respective parties hereto shall be deemed to have been given or made when actually received, or in the case of telex or telecopier notice sent over a telex or a telecopier machine owned or operated by a party hereto, when sent, addressed as specified below or at such other address as either of the parties hereto or the Trustee or Collateral Agent may hereafter specify in writing to the others:

If to the Issuer: New York State Energy Research and  
Development Authority  
17 Columbia Circle  
Albany, New York 12203-6399  
Attention: Treasurer  
Facsimile: (518) 862-1091  
Facsimile: (562) 570-5250

If to the Trustee: The Bank of New York Mellon  
101 Barclay Street – 7W  
New York, New York 10286  
Attention: Miriam Moraca  
Facsimile: (212) 815-5595

If to the Guarantor: New York State Environmental Facilities Corporation  
625 Broadway, Albany, New York 12207-2997  
Attention: Comptroller and Chief Financial Officer  
Facsimile:

If to the Collateral Agent: The Bank of New York Mellon  
101 Barclay Street – 7W  
New York, New York 10286  
Attention: Miriam Moraca  
Facsimile: (212) 815-5595

**Section 7.07 Survival of Representations and Warranties.** All representations, warranties and obligations contained herein shall survive the execution and delivery of this Agreement and the Guarantee.

**Section 7.08 Governing Law.** This Agreement and the rights and obligations of the parties under this Agreement shall be governed by and construed and interpreted in accordance with the laws of the State.

**Section 7.09 Counterparts.** This Agreement may be executed in any number of copies and by the different parties hereto on the same or separate counterparts, each of which shall be deemed to be an original instrument. Complete counterparts of this Agreement shall be lodged with the Issuer and the Guarantor.

**Section 7.10 Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 7.11 *Survival of Bonds.*** Notwithstanding anything to the contrary contained in this Agreement, the obligation of the Issuer to pay all amounts due hereunder and the rights of the Guarantor to pursue all remedies shall survive the payment of the Bonds.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Title: Treasurer

**NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION**

Attest: \_\_\_\_\_  
Title: Assistant Secretary

By: \_\_\_\_\_  
Title: President and Chief Executive Officer

Acknowledged and Agreed:

THE BANK OF NEW YORK MELLON,  
as Trustee under the Indenture

By: \_\_\_\_\_  
Title: Vice President

THE BANK OF NEW YORK MELLON,  
as Collateral Agent under the Custody Agreement

By: \_\_\_\_\_  
Title: Vice President

**ANNEX A**  
**FORM OF GUARANTEE**



## **ANNEX B** **DEFINITIONS**

“Administrative Expenses” shall have the meaning provided in Section 1.01 of the Indenture.

“Bonds” shall have the meaning provided in the Recitals to the Reimbursement Agreement.

“Bond Year” shall have the meaning provided in Section 1.01 of the Indenture.

“Business Day” means any day on which the Collateral Agent is open for business and banks are not required or authorized by law to close in New York, New York.

“Closing Date” shall mean the initial date of delivery of the Bonds.

“Collateral” means the cash and securities on deposit in the Collateral Reserve Account pursuant to the Reimbursement Agreement and the Custody Agreement.

“Collateral Requirement” means as of any date of calculation, an amount equal to the product of \$8,512,581.00 and the fraction where the numerator is the principal amount of the Bonds Outstanding and the denominator is the amount of original Bonds issued; provided, however, that in no event shall the Collateral Requirement be less than Maximum Annual Debt Service.

“Collateral Reserve Account” means the Collateral Reserve Account created pursuant to Section 2.03(a) of the Reimbursement Agreement.

“Collateral Agent” means The Bank of New York Mellon, or any other independent third party acceptable to the Guarantor and the Issuer that the Guarantor may appoint as its agent to hold the Collateral.

“Coverage Test” shall have the meaning provided in Section 2.04(a) of the Reimbursement Agreement.

“Custody Agreement” means that certain Custody Agreement, dated August 13, 2013, between the Issuer and the Collateral Agent and accepted and agreed to by the Guarantor.

“Debt Service” shall have the meaning provided in Section 1.01 of the Indenture.

“Debt Service Fund” shall have the meaning provided in Section 1.01 of the Indenture.

“Guarantee” shall have the meaning provided in the Recitals to the Reimbursement Agreement.

“Guarantee Limit” shall have the meaning provided in Section 1.02(b) of the Reimbursement Agreement.

“Guaranteed Payments” shall have the meaning provided in Section 1(a) of the Guarantee.

“Indenture” shall have the meaning provided in the Recitals to the Reimbursement Agreement.

“Issuer Documents” means the Indenture, the Reimbursement Agreement, the Servicing Agreement, the Tax Compliance Document, the Custody Agreement and the Continuing Disclosure Agreement of the Issuer.

“Late Payment Rate” shall have the meaning provided in Section 2.01 of the Reimbursement Agreement.

“Maximum Annual Debt Service” means as of any date of calculation the maximum annual Debt Service due in the current or any future Bond Year.

“Officer’s Certificate” shall have the meaning provided in Section 1.01 of the Indenture.

“Outstanding” shall have the meaning provided in Section 1.01 of the Indenture.

“Pledged Loan Payments” shall have the meaning provided in Section 1.01 of the Indenture.

“Pledged Revenues” shall have the meaning provided in Section 1.01 of the Indenture.

“Projected Net Revenues” shall have the meaning provided in Section 1.01 of the Indenture.

“Projection” shall have the meaning provided in Section 2.05(a) of the Reimbursement Agreement.

“Revenue Fund” shall have the meaning provided in Section 1.01 of the Indenture.

“Scheduled Credit Facility Fees” shall have the meaning provided in Section 1.01 of the Indenture.

“Servicer” shall have the meaning provided in Section 1.01 of the Indenture.

“Servicing Agreement” shall have the meaning provided in Section 1.01 of the Indenture.

“Trustee” shall have the meaning provided in the Recitals to the Reimbursement Agreement.

“Valuation Date” shall have the meaning provided in Section 2.03(a)(ii) to the Reimbursement Agreement.

**Form of Opinion of Counsel for the Issuer**

August \_\_, 2013

New York State Environmental  
Facilities Corporation  
625 Broadway  
Albany, NY 12207

Ladies and Gentlemen:

In my capacity as General Counsel of the New York State Energy Research and Development Authority, a public benefit Authority duly created and existing under the laws of the State of New York (the “Authority”), I have acted as counsel to the Authority in connection with the issuance and sale of the captioned bonds (the “Bonds”) by the Authority and in connection with the execution and delivery of the NYSERDA Transaction Documents (as defined below).

The Bonds are being issued pursuant to an Indenture of Trust, dated as of August 1, 2013, between the Authority and The Bank of New York Mellon, as trustee (the “Trustee”), as supplemented by the First Supplemental Series Indenture dated as of August 1, 2013, between the Authority and the Trustee (collectively, the “Indenture”). The Bonds are being sold by the Authority and purchased by the Underwriters pursuant to a Bond Purchase Agreement, dated July \_\_, 2013 (the “Bond Purchase Agreement”), between Authority and the Underwriters named therein, including CitiGroup Global Markets Inc. I have examined or supervised the examination of:

(a) The New York State Energy Research and Development Authority Act, as amended, (Title 9 of Article 8 of the Public Authorities Law (the “Act”), the By-Laws and corporate records of the Authority.

(b) Resolution No. \_\_\_\_\_ adopted by the Authority on June 17, 2013, relating to the Bonds;

(c) A copy of the Indenture of Trust relating to the Bonds, dated as of August 1, 2013, as supplemented by the First Supplemental Series Indenture of Trust dated as of August 1, 2013 (as so supplemented, the “*Indenture*”), in each case between the Authority and The Bank of New York Mellon, as trustee (the “*Trustee*”), pursuant to which the Bonds are outstanding and are secured;

(d) A copy of the Official Statement of the Authority, dated July \_\_, 2013, relating to the Bonds, excluding the Appendices thereto (the “*Official Statement*”);

- (e) A copy of the Bond Purchase Agreement;
- (f) A copy of the Authority Tax Certificate, relating to the Bonds, dated \_\_\_\_\_, 2013 (the “*Authority Tax Certificate*”);
- (g) A copy of the Reimbursement Agreement, dated as of August 1, 2013 between the Authority and the Guarantor (the “*Reimbursement Agreement*”);
- (h) Copies of the servicing agreement and agreements with subservicer utilities related to the Portfolio Loans (the “*Servicing Agreements*”);
- (i) Forms of the agreements providing for the Portfolio Loans (the “*Loan Documents*”);
- (j) A copy of the Authority’s Continuing Disclosure Undertaking relating to the Bonds, dated \_\_\_\_\_, 2013 (the “*Authority’s Continuing Disclosure Undertaking*”);
- (k) A copy of the Reimbursement Agreement, dated as of August 1, 2013, between the Authority and the Guarantor (the “*Reimbursement Agreement*”);
- (l) A copy of the opinion of Bond Counsel addressed to the Authority and the Underwriters and dated the date hereof;
- (m) A copy of the Custody Agreement, dated as of August 1, 2013, between the Authority and The Bank of New York Mellon, as Collateral Agent, and accepted and agreed to by the Guarantor (the “*Custody Agreement*,” and together with the Indenture, the Bond Purchase Agreement, the Authority Tax Certificate, the Reimbursement Agreement, the Servicing Agreements and the Authority’s Continuing Disclosure Undertaking, the “*NYSERDA Transaction Documents*”); and such further documents, and have made such further investigation, as I have deemed necessary to render the opinions set forth below. As to various questions of fact material to this opinion, I have relied on certificates of officers of the Authority.

All capitalized terms used herein without definition having the respective meanings assigned to them in the Bond Purchase Agreement.

I have assumed, with your consent, for the purposes of the opinions expressed in this letter that the NYSERDA Transaction Documents have been duly authorized, executed, and delivered by each party thereto, other than the Authority. I have assumed, with your consent, for the purposes of the opinions expressed in this letter, that the Loan Documents have been duly authorized, executed, and delivered by each party thereto, and that the executed agreements providing for the Portfolio Loans have not been modified materially from the Loan Documents presented for my review.

Members of the legal department of the Authority have participated in the preparation of the Official Statement. Such participation in the preparation of the Official Statement’s preparation involved, among other things, discussions and inquiries concerning various legal and related subjects, and reviews of and reports on certain documents and proceedings. We also participated in conferences with representatives of the Authority, the

Guarantor and its counsel and representatives of the Underwriters and their counsel, during which the contents of the Official Statement and related matters were discussed and reviewed. Based upon such participation, I am of the opinion that the summaries contained in the Official Statement under the captions “THE AUTHORITY,” “GREEN JOBS-GREEN NEW YORK PROGRAM,” “THE AUTHORITY’S RESIDENTIAL ENERGY EFFICIENCY LOAN PROGRAM,” “THE PORTFOLIO LOANS,” “LITIGATION,” and “CONTINUING DISCLOSURE UNDERTAKINGS OF THE AUTHORITY” accurately and fairly present in all material respects the information purported to be set forth in such summaries.

I advise you, as a matter of fact but not opinion, that, in my capacity as General Counsel to the Authority, no facts have come to my attention that caused me to believe that the Official Statement (excluding therefrom financial statements and other financial information, statistical data, forecasts, numbers, charts, estimates, projections, assumptions and expressions of others’ opinion, information relating to The Depository Trust Company and its book-entry system, information relating to the Guarantor and the Guarantee, and information under the captions entitled “GUARANTOR AND THE SERIES 2013A GUARANTEE,” “DESCRIPTION OF THE INDENTURE,” “CONTINUING DISCLOSURE UNDERTAKINGS OF THE GUARANTOR” and “TAX MATTERS”) as to all of which, with your permission, I express no opinion or belief), contained as of the date thereof or contains as of the date hereof any untrue statement of a material fact or omitted or omits to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

Based on the foregoing, it is my opinion that:

(1) The Authority is a body corporate and politic constituting a public benefit corporation, is duly created and validly existing under the Constitution and laws of the State of New York, including particularly the Act.

(2) The Authority has the statutory power and authority to enter into, and to perform its obligations under, the NYSEDA Transaction Documents.

(3) The Loan Documents have been duly authorized by the Authority.

(4) Each of the NYSEDA Transaction Documents has been duly authorized, executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority enforceable against the Authority in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally or by general equitable principles (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(5) The execution and delivery by the Authority of the NYSEDA Transaction Documents, and the performance by the Authority of its obligations thereunder, (i) do not constitute a violation of any provision of law or any order, regulation or decree of any court or agency of government applicable to the Authority, the Act, the By-Laws of the Authority, or any indenture, mortgage, deed of trust, agreement or other instrument known to me to which the Authority is a party or by which it or any of its property is subject to or bound and

(ii) are not in conflict with, nor will they result in a breach of or constitute (with due notice or lapse of time or both) a default under, any such indenture, mortgage, deed of trust, agreement or other instrument.

(6) Upon due inquiry, to the best of my knowledge, except as disclosed in the Official Statement, no litigation is pending or, to the best of my knowledge, threatened against the Authority wherein an unfavorable ruling, decision or finding would adversely affect the validity or enforceability of the NYSERDA Transaction Documents or any of the transactions contemplated thereby.

(7) All consents, approvals, and authorizations, if any, of any governmental authority required to be obtained on the part of the Authority in connection with the execution and delivery of the NYSERDA Transaction Documents, have been duly obtained.

The opinions set forth above are qualified to the extent that (i) the issuance, offering and sale of the Bonds, in certain states, may require the obtaining of consents, orders or approvals under the “Blue Sky” or other securities laws of such states, and no opinion is expressed herein as to the need for, or the obtaining of, any such consents, orders or approvals, and (ii) no opinion is expressed herein, in connection with the issuance, offering and sale of the Bonds, as to the necessity of registering the Bonds or the Indenture under the Trust Indenture Act of 1939, as amended.

This opinion is furnished by me to you solely for your benefit and may not be relied upon by any other person or entity other than the addressee, except as may be expressly authorized by me in writing.

This opinion is being delivered to you in connection with the transactions contemplated by the NYSERDA Transaction Documents to enable the Authority to satisfy Section 3.01(c) of the Reimbursement Agreement and is not intended to create and does not create an attorney-client relationship with New York State Environmental Facilities Corporation.

I assume no obligation to update, revise or supplement this opinion to reflect any action hereafter taken or not taken, or any facts or circumstances that may hereafter come to my attention, or for any other reason.

I am a member of the Bar of the State of New York and express no opinion as to any laws other than the laws of the State of New York and the federal laws of the United States applicable to this transaction. I assume no responsibility as to the applicability of the laws of any other jurisdiction to the subject transactions or the effect of such laws thereon.

Very truly yours,

HAL BRODIE  
General Counsel

**Form of Opinion of Hawkins Delafield & Wood LLP**

August \_\_, 2013

New York State Energy Research  
and Development Authority  
17 Columbia Circle  
Albany, New York 12207

New York State Environmental  
Facilities Corporation  
625 Broadway  
Albany, New York 12207

Ladies and Gentlemen:

In connection with the issuance of \$\_\_\_\_\_ aggregate principal amount of Residential Energy Efficiency Financing Revenue Bonds, Series 2013 A (Federally Taxable) (the “*Bonds*”) issued by the New York State Energy Research and Development Authority (the “*Authority*”), a body corporate and politic constituting a public benefit corporation created by the State of New York, which Bonds are being purchased by the Underwriters pursuant to a Bond Purchase Agreement, dated July \_\_, 2013 (the “*Bond Purchase Agreement*”), with the Authority, and which Bonds are guaranteed by the New York State Environmental Facilities Corporation (the “*Guarantor*”), in our capacity as Bond Counsel to the Authority we have examined:

(a) A copy of the Indenture of Trust relating to the Bonds, dated as of August 1, 2013, as supplemented by the First Supplemental Series Indenture of Trust dated as of August 1, 2013 (as so supplemented, the “*Indenture*”), in each case between the Authority and The Bank of New York Mellon, as trustee (the “*Trustee*”), pursuant to which the Bonds are outstanding and are secured;

(b) A copy of the Official Statement of the Authority, dated July \_\_, 2013, relating to the Bonds, excluding Appendix B thereto (the “*Official Statement*”);

(c) A copy of the Bond Purchase Agreement;

(d) A copy of the Authority Tax Certificate, relating to the Bonds, dated \_\_\_\_\_, 2013 (the “*Authority Tax Certificate*”);

(e) A copy of the Authority’s Continuing Disclosure Undertaking relating to the Bonds, dated \_\_\_\_\_, 2013 (the “*Authority’s Continuing Disclosure Undertaking*”);

(f) A copy of the Reimbursement Agreement, dated as of August 1, 2013, between the Authority and the Guarantor (the “Reimbursement Agreement”);

(g) A copy of the Custody Agreement, dated as of August 1, 2013, between the Authority and The Bank of New York Mellon, as Collateral Agent, and accepted and agreed to by the Guarantor (the “*Custody Agreement*,” and together with the Indenture, the Bond Purchase Agreement, the Authority Tax Certificate, the Authority’s Continuing Disclosure Undertaking, the Reimbursement Agreement and the Loan Agreements, the “NYSERDA Documents”);

(h) the opinion of the General Counsel of the Authority addressed to the Underwriters and dated the date hereof;

and such documents, proceedings and matters of law which we have considered necessary to enable us to render this opinion. We have assumed but have not independently verified that the signatures on all documents and certificates that we have examined were genuine. We have further assumed for the purposes of the opinions expressed below that the NYSERDA Documents have been duly authorized, executed and delivered by each party thereto, other than the Authority.

In our capacity as Bond Counsel to the Authority, such participation involved, among other things, discussions and inquiries concerning various legal and related subjects, and reviews of and reports on certain documents and proceedings. We also participated in meetings and conference calls with representatives of the Authority, the Guarantor and its counsel and representatives of the Underwriters and their counsel, during which the contents of the Official Statement and related matters were discussed and reviewed.

Based upon such participation, we are of the opinion that the summaries contained in the Official Statement relating to the Bonds under the captions entitled “THE AUTHORITY,” “PLEGGED INTEREST SUBSIDIES,” “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2013A BONDS,” “THE SERIES 2013A BONDS” (including all sections contained therein, but with the exception of the information therein under the subheading “Securities Depository”), “DESCRIPTION OF THE INDENTURE,” “STATE PLEDGE AND AGREEMENT,” “LEGALITY FOR INVESTMENT AND DEPOSIT” “CONTINUING DISCLOSURE UNDERTAKINGS OF THE AUTHORITY,” “TAX MATTERS,” “APPROVALS” and “APPENDIX A – SELECTED DEFINITIONS AND SUMMARY OF THE INDENTURE” accurately and fairly present in all material respects the information purported to be set forth in such summaries.

While we are not passing upon, and do not assume responsibility for, the accuracy, completeness or fairness of the statements contained in the Official Statement except as set forth above, based upon our limited review of documents and participation in meetings and conference calls as aforesaid, without having undertaken to verify independently such accuracy, completeness or fairness, and subject to all of the foregoing in this opinion including the qualifications respecting the scope and nature of our engagement, we advise you, as a matter of fact but not opinion, that, during the course of our engagement as Bond Counsel to the Authority with respect to the Official Statement, no facts have come to the attention of the attorneys of our firm rendering legal services in connection with this matter that caused them to believe that the



Official Statement (excluding therefrom financial statements and other financial information, statistical data, forecasts, numbers, charts, estimates, projections, assumptions and expressions of others' opinion, information relating to The Depository Trust Company and its book-entry system, information relating to the Guarantor and the Guarantee, and the information under the captions, "THE AUTHORITY'S RESIDENTIAL ENERGY EFFICIENCY LOAN PROGRAM," "THE PORTFOLIO LOANS," "GUARANTOR AND THE SERIES 2013A GUARANTEE," and "CONTINUING DISCLOSURE UNDERTAKINGS OF THE GUARANTOR," and under the subheading "Regulatory Approvals," as to all of which, with your permission, we express no opinion or belief), contained as of the date thereof or contains as of the date hereof any untrue statement of a material fact or omitted or omits to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

We are further of the opinion that:

(1) The Authority has the right and power under the New York State Energy Research and Development Authority Act (Title 9 of Article 8 of the Public Authorities Law of New York, as amended) to enter into and perform its obligations under the NYSERDA Documents, and the NYSERDA Documents have been duly authorized, executed, and delivered by the Authority and constitute valid and binding obligations on the part of the Authority in accordance with their terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other laws or judicial decisions or principles of equity relating to or affecting the enforcement of creditors' rights or contractual obligations generally.

(2) The Bonds are exempted securities within the meaning of Section 3(a)(2) of the Securities Act of 1933, as amended, and Section 304(a)(4) of the Trust Indenture Act of 1939, as amended.

(3) It is not necessary in connection with the offering and sale of the Bonds to the public to register any security under the Securities Act of 1933, as amended, or to qualify the Indentures under the Trust Indenture Act of 1939, as amended.

This opinion is furnished by us to you solely for your benefit and may not be relied upon by any other person or entity other than the addressees, except as may be expressly authorized by us in writing. This opinion is not to be used, circulated, quoted or otherwise referred to in connection with the offering of the Bonds, except that reference may be made in any list of closing documents pertaining to the issuance of the Bonds.

This opinion is being delivered to New York State Environmental Facilities Corporation in connection with the transactions contemplated by the NYSERDA Documents to enable the Authority to satisfy Section 3.01(d) of the Reimbursement Agreement and is not intended to create and does not create an attorney-client relationship with New York State Environmental Facilities Corporation with respect to the transactions contemplated by the NYSERDA Documents.

We assume no obligation to update, revise or supplement this opinion to reflect any action hereafter taken or not taken, or any facts or circumstances that may hereafter come to our attention, or for any other reason.

We further advise New York State Environmental Facilities Corporation that it is entitled to rely upon our approving opinion related to the issuance of the Bonds delivered on the date hereof, as though the same were addressed to you.

Very truly yours,

**SERVICER ACKNOWLEDGEMENT**

**WHEREAS**, the New York State Energy Research and Development Authority (the “*Issuer*”) has or will issue its \$24,300,000 Residential Energy Efficiency Financing Revenue Bonds (Federally Taxable), Series 2013A (the “*Bonds*”) pursuant to an Indenture of Trust, dated as of August 1, 2013 between the Issuer and The Bank of New York Mellon, as trustee (the “*Trustee*”), as supplemented by the First Supplemental Series Indenture of Trust dated as of August 1, 2013 (as supplemented, the “*Indenture*”) for the purpose of financing and refinancing loans (collectively, the “*Portfolio Loans*”) made by the Issuer to fund energy efficiency improvements in one-to-four family residential structures for eligible applicants as a part of the Issuer’s Green Jobs – Green New York Program; and

**WHEREAS**, the Guarantor will issue its Guarantee Agreement (the “*Guarantee*”) to the Trustee guaranteeing the payment of the principal of, interest on and redemption premium, if any, on the Bonds subject to the terms and limitations provided therein in order to improve the credit access of the Bonds; and

**WHEREAS**, to induce the Guarantor to issue the Guarantee, the Issuer has agreed pursuant to the Reimbursement Agreement, dated as of August 1, 2013, between the Issuer and Guarantor (the “*Reimbursement Agreement*”) to reimburse the Guarantor for all payments made by the Guarantor under the Guarantee; and

**WHEREAS**, the Issuer has entered into a servicing agreement with Concord Servicing Corporation (the “*Servicer*”) to service the Portfolio Loans;

**WHEREAS**, the Issuer has agreed in the Reimbursement Agreement that it will not replace the Servicer or amend or agree to amend the Servicing Agreement in any material respect without the prior written consent of the Guarantor.

**NOW, THEREFORE, BE IT RESOLVED BY THE UNDERSIGNED SERVICER THAT:**

1. The Servicer hereby acknowledges the terms of the Reimbursement Agreement granting the Guarantor the right to consent to any successor servicer and agrees not to amend the Servicing Agreement in any material respect without the prior written consent of the Guarantor; and

2. The undersigned is an authorized representative of the Servicer and is duly authorized to execute this Acknowledgement on behalf of the Servicer.

*[The remainder of this page intentionally left blank.]*

IN WITNESS WHEREOF, I have signed my name officially, this 13<sup>th</sup> day of August, 2013.

**CONCORD SERVICING CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_