

Attachment A SAMPLE

BACKUP SERVICING AGREEMENT

This BACKUP SERVICING AGREEMENT, dated as of _____ (this “Agreement”) is entered into by and between **New York Energy Research and Development Authority (NYSERDA)**, and _____ (the “Backup Servicer”), with respect to the performance of certain backup servicing functions for unsecured consumer receivables (the “Loans”) (collectively the “Serviced Portfolio”), as set forth herein.

1. Appointment. Backup Servicer and NYSERDA hereby agree that any time during the period beginning on the date hereof and ending on the date on which the First Supplemental Series Indenture of Trust is terminated and all of the obligations thereunder have been paid in full (such period, the “Appointment Period”), at the sole option of NYSERDA following a termination of the initial Servicer as the Servicer under the Servicing Agreement, NYSERDA may appoint the Backup Servicer to act as the successor Servicer thereunder. Within 45 business days of receipt of notice from NYSERDA (the “Appointment Effective Date”) that NYSERDA has appointed Backup Servicer as the successor Servicer, Backup Servicer shall assume the duties and rights of the Servicer under the Servicing Agreement, without any further action by NYSERDA. If requested, Backup Servicer shall deliver at such time such written instruments of acceptance of appointment as successor Servicer under the Servicing Agreement as NYSERDA may require.
2. Term. The initial term of this Agreement shall expire on _____ . .
3. Duties of Backup Servicer.
 - (a) Backup Servicer hereby agrees that in the event that, the Backup Servicer becomes a successor Servicer during the Appointment Period, as stated in paragraph 1 above, Backup Servicer shall be ready, willing and able to assume, and shall assume, the Servicer functional responsibilities under the Servicing Agreement; provided, however, the Backup Servicer shall be entitled to the compensation set forth herein rather than the compensation provided for under the Servicing Agreement. The Backup Servicer further agrees to maintain sufficient servicing and collection staff to commence full servicing upon the transfer of the initial Servicer’s rights and obligations under the Servicing Agreement.
 - (b) In furtherance of its undertaking in paragraph 1 above, from and after the date hereof until the Appointment Effective Date, Backup Servicer agrees to perform the Backup Servicer functions as set forth in Attachment B, attached hereto. On and after the Appointment Effective Date, Backup Servicer shall serve as Servicer under the Servicing Agreement.
 - (c) Except as provided herein, Backup Servicer shall have no obligation to supervise, verify, monitor or administer the performance of the Servicer and shall have no liability for any action taken or omitted by the Servicer. In performing its duties

hereunder, Backup Servicer shall have full power and authority to do or cause to be done any and all things in connection with its duties hereunder which it may deem necessary or desirable in the best interest of NYSERDA, within the terms of this Agreement.

4. Backup Servicer's Fees. In connection with this Agreement, NYSERDA shall pay Backup Servicer, as follows:
5. Consultation Requirements of NYSERDA and initial Servicer. NYSERDA shall consult fully with and shall cause Servicer to consult fully with Backup Servicer as may be necessary from time to time for Backup Servicer to perform or carry out its obligations hereunder.
6. Access to Records.
 - (a) Backup Servicer shall afford to NYSERDA, and its agents, employees, accountants and counsel, reasonable access at reasonable times during normal business hours to books, records, documents and other information concerning the conduct and performance of Backup Servicer of its obligations hereunder.
 - (b) NYSERDA shall cause Servicer to make available at all times from the date hereof to the Backup Servicer its servicing platform showing the servicing data and servicing records in a computer-readable form relating to the servicing activity of the Loans in the Serviced Portfolio, which records shall contain sufficient data to permit the Backup Servicer to assume the duties of the Servicer under the Servicing Agreement without delay on account of the absence of relevant servicing information.
7. Indemnity. NYSERDA will pursue an indemnification claim under the Servicing Agreement for the benefit of Backup Servicer for all claims, damages, losses or expenses reasonably incurred by Backup Servicer, as the case may be (in each case, including reasonable attorneys' fees), in connection with this Agreement and arising out of Servicer's negligent or willful acts, except for any claims, damages, losses or expenses arising from Backup Servicer's own gross negligence or willful misconduct. Backup Servicer will indemnify NYSERDA from and against all claims, damages, losses or expenses reasonably incurred by NYSERDA (including reasonable attorneys' fees), in connection with this Agreement and arising out of Backup Servicer's grossly negligent or willful acts, except for any claims, damages, losses or expenses arising from NYSERDA's own gross negligence or willful misconduct. Further, NYSERDA will indemnify Backup Servicer from and against all claims, damages, losses or expenses reasonably incurred by Backup Servicer (including reasonable attorneys' fees), in connection with this Agreement and arising out of NYSERDA's grossly negligent or willful acts, except for any claims, damages, losses or expenses arising from Backup Servicer's own gross negligence or willful misconduct. The obligations of the parties under this paragraph 7 shall survive the termination of this Agreement, is in addition to and does not supplant any indemnification obligations owed by Backup Servicer on and after Backup Servicer becomes the Servicer under the Servicing Agreement.

8. Limitation of Liability. In conjunction with Backup Servicer's obligations hereunder and any future conversion, Backup Servicer is authorized to accept and rely on all the accounting, records and work of the Servicer, and Backup Servicer shall have no duty, responsibility, obligation, or liability (collectively "Liability") for the acts or omissions of Servicer. The degree of examination of such accounting, records, and work which Backup Servicer deems necessary to complete the conversion and portfolio transfer shall not be construed as a representation by Backup Servicer of the accuracy of such accounting, records, and work. Backup Servicer shall not be liable for any error of judgment made in good faith by an officer or officers of Backup Servicer, unless it shall be conclusively determined by a court of competent jurisdiction that Backup Servicer was grossly negligent in ascertaining the pertinent facts. Backup Servicer shall not be liable, directly or indirectly, for any damages or expenses arising out of the services performed under this Agreement other than damages or expenses that result from the gross negligence or willful misconduct of Backup Servicer or the failure of Backup Servicer to perform materially in accordance with this Agreement.
9. Continued Errors. Except as provided in this Agreement, Backup Servicer may accept and reasonably rely on all accounting, records and work of Servicer without audit, and Backup Servicer shall have no Liability for the acts or omissions of Servicer. If any error, inaccuracy or omission (collectively "Errors") exist in any information received from Servicer, and such Errors should cause or materially contribute to Backup Servicer making or continuing any Error (collectively, "Continued Errors"), Backup Servicer shall have no liability for such Continued Errors; provided, however, that this provision shall not protect Backup Servicer against any Liability which would otherwise be imposed by reason of willful misconduct, bad faith or gross negligence in discovering or correcting any Error or in the performance of its or their duties hereunder or under this Agreement. In the event Backup Servicer becomes aware of Errors or Continued Errors, which, in the opinion of Backup Servicer impairs such entity's ability to perform its services hereunder, Backup Servicer shall promptly notify the Servicer and NYSERDA of such errors and may undertake commercially reasonable data or records reconstruction as it deems appropriate to correct such Errors and Continued Errors and to prevent future Continued Errors. The Backup Servicer as successor Servicer agrees to use its best efforts to prevent Continued Errors.
10. Termination.
- (a) This Agreement may be terminated upon the occurrence of any of the following conditions, and following ninety (90) days notice by the terminating party to the non-terminating party:
- i. The entry with respect to Backup Servicer of a decree or order for relief by a court or agency or supervisory authority having jurisdiction under any present or future federal or state bankruptcy, insolvency or similar law;
 - ii. A conservator, receiver or liquidator is appointed with respect to Backup Servicer in any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings;

- iii. Backup Servicer shall admit in writing its inability to pay its debts generally as they become due, file a petition to take advantage of any applicable insolvency or reorganization statute, make an assignment for the benefit of its creditors or voluntarily suspend payment of its obligations;
 - iv. Any party hereto commits a material breach of this Agreement which has not been cured within sixty (60) days of the terminating party's written notice of said breach; or
 - v. Backup Servicer will be allowed to terminate this Agreement if it does not receive any payment required to be made under the terms of this Agreement, which failure continues unremedied for a period of sixty (60) Business Days after written notice of such failure shall have been given to NYSERDA.
 - vi. This Agreement may be terminated by NYSERDA at any time during the term of this Agreement with or without cause. In such event, payment shall be paid to the Backup Servicer for Work performed and expenses incurred prior to the effective date of termination in accordance with the provisions of Paragraph 4 hereof; provided, however, that upon receipt of any such notice of termination, the Backup Servicer shall cease the performance of work, shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments.
 - vii. NYSERDA specifically reserves the right to terminate this agreement in the event that the certification filed by the Backup Servicer in accordance with State Finance Law Sections 139-j and 139-k is found to have been intentionally false or intentionally incomplete, or that the certification filed by the Backup Servicer in accordance with New York State Tax Law Section 5-a is found to have been intentionally false when made. Terminations under this subsection (b) will be effective upon Notice pursuant to Paragraph 12.
- (b) This Agreement will be automatically and immediately terminated upon the occurrence of any of the following conditions:
- i. All of the obligations under the Loan Agreement have been paid in full; or
 - ii. Backup Servicer becomes a successor Servicer pursuant to paragraph 1
11. Notices. All notices and other communications hereunder to any party shall be in writing and sent by certified or registered mail, return receipt requested, by overnight delivery service, with all charges prepaid, by hand delivery, or by telecopier followed by a hard copy sent by regular mail, to such party's address set forth beneath its signature on the signature page to this Agreement, or at such other address as such party may hereafter specify in a notice given in the manner required under this Paragraph 12. All such

notices and correspondence shall be deemed given (a) if sent by certified or registered mail, three (3) Business Days after being postmarked, (b) if sent by overnight delivery service or by hand delivery, when received at the above stated addresses or when delivery is refused and (c) if sent by telecopier transmission, when such transmission is confirmed.

12. Governing Law; Jurisdiction; Service of Process; Venue.

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF.

13. Amendment. No waiver, amendment or modification of this Agreement shall be effective unless it is in writing, is signed by the party against whom enforcement is sought.

14. Counterparts. This Agreement may be executed in any number of counterparts each of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing any such counterpart.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the parties hereto has duly executed, as of the date first written above, this BACKUP SERVICING AGREEMENT.

NYSERDA

CONTRACTOR

By:_____

NYSERDA Authorized Signatory

Notice Address:

NYSERDA

17 Columbia Circle

Albany, NY 11202

Attention: Treasurer

By:_____

Notice Address:

SAMPLE