



Attachment A

EPP CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This EPP Confidentiality and Nondisclosure Agreement (this “**Agreement**”) is dated this ____ day of _____, 20__ (“**Effective Date**”), between NY Green Bank, a division of New York State Energy Research and Development Authority, a New York public authority and public benefit corporation (“**NYGB**”), and [COUNTERPARTY], a [STATE OF ORGANIZATION AND TYPE OF ENTITY] having a principal office and place of business at [ADDRESS] (“**Counterparty**”). Each of NYGB and Counterparty may be referred to as a “**Party**” or collectively as the “**Parties**.”

WHEREAS, pursuant to NYGB’s Request for Proposals #21, issued and effective as of June 3, 2022, (the “**RFP**”), NYGB has invited investors to submit proposals to be admitted to a pool (the “**Eligible Purchaser Pool**” or “**EPP**”) of investors that will be eligible to submit bids to NYGB to purchase NYGB-originated loans, investments, or portfolios thereof (“**Investments**”) as NYGB identifies them for sale from time to time (any investors so admitted to the EPP, “**Eligible Purchasers**”);

WHEREAS, Counterparty has applied to NYGB for admission to the EPP and NYGB has determined that Counterparty satisfies the EPP Eligibility Criteria, as set forth in the RFP;

WHEREAS, in order to be admitted to the EPP as an Eligible Purchaser, Counterparty is required to enter into this Agreement with NYGB;

WHEREAS, each Party disclosing information (the “**Disclosing Party**”) wishes to preserve the confidentiality and prevent the unauthorized disclosure and use of any non-public or proprietary information disclosed to the other Party (the “**Receiving Party**”) or its Representatives (as defined below).

NOW THEREFORE, in consideration of the mutual covenants herein, and as a condition to such information being disclosed by or on behalf of the Disclosing Party, the parties agree as follows:

1. **Confidential Information.** “**Confidential Information**” as used in this Agreement shall mean any non-public or proprietary information, whether in tangible or intangible form, disclosed after the Effective Date by or on behalf of the Disclosing Party to the Receiving Party or its Representatives, whether or not marked, designated or otherwise identified as “confidential”, including but not limited to all: (a) information concerning the Disclosing Party’s past, present and future business affairs; (b) unpatented inventions, ideas, methods and discoveries, trade secrets, know-how and other confidential intellectual property; (c) any third-party confidential information included with, or incorporated in, any information provided by, or on behalf of, a Disclosing Party; and (d) all notes, analyses, compilations, summaries, interpretations and other materials prepared by or on behalf of a Disclosing Party that contain, reflect or are derived from, in whole or in part, any of the foregoing.

2. **Exclusions.** Confidential Information does not include information that:

a) is, or after the Effective Date becomes, generally available or known to the public other than as a result of, directly or indirectly, a breach of this Agreement or another written agreement by and between Receiving Party and Disclosing Party to maintain such information in confidence;

b) was known to, or was in the possession of, the Receiving Party prior to the Effective Date as can be reasonably established by the Receiving Party through written records;

c) was independently developed and prepared by the Receiving Party not through reference to, or use of, in whole or part, any Confidential Information disclosed pursuant to this Agreement; or

d) was lawfully received from a third party on a non-confidential basis, provided that such third party was not prohibited from disclosing such Confidential Information.

3. Required Disclosures. The Receiving Party may provide access to Confidential Information as follows:

a. In order to comply with applicable law, regulation or a valid order or request issued by any court, governmental agency, or regulatory authority of competent jurisdiction;

b. If such information is aggregated and anonymized by NYGB for use and disclosure in public reports or in accordance with NYGB's and regulatory requirements; and

c. In the case of NYGB, pursuant to Section 4 below.

4. NY FOIL. Notwithstanding anything to the contrary set forth herein, NYGB may provide access to Confidential Information if it is required to be disclosed by NYGB pursuant to a valid request under the New York Freedom of Information Law ("**FOIL**"), as set forth in New York Public Officers Law, Article 6, and 21 NYCRR Part 501. Notwithstanding the foregoing, pursuant to Section 87(2)(d) of FOIL, NYGB may deny access to records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise" ("**Trade Secret Information**"). Accordingly, at the time of submission to NYGB, the Counterparty should fully identify and plainly label any records "confidential" or "proprietary" that it considers to be Trade Secret Information. By so marking such information, the Counterparty represents to NYGB that such records constitute Trade Secret Information. For the avoidance of doubt, any record that is subject to an exclusion set forth in Section 2 above will not be considered Trade Secret Information for purposes hereof. In the event of a valid FOIL request, it is NYGB's current policy to consider any records labeled "confidential" or "proprietary" pursuant to the trade secret exemption procedure set forth in 21 NYCRR Section 501.6 and any other applicable law or regulation; provided, however, that NYGB cannot guarantee that it will deny access to such records in response to a valid FOIL request.

5. Use; Ownership. A Receiving Party shall protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would use to protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care. All Confidential Information shall be used solely for the purposes of evaluating or implementing the potential business relationship contemplated by this Agreement, and shall remain the exclusive property of the Disclosing Party. The Receiving Party shall not disclose any Confidential Information to any person or entity, except the Receiving Party's officers, directors, employees, affiliates, agents, advisors, investors and lenders; collectively "**Representatives**") who (a) need to know the Confidential Information to assist the Receiving Party in evaluating or supporting the business relationship contemplated by this Agreement, (b) are informed by the Receiving Party of the confidential nature of the Confidential Information and (c) are subject to confidentiality duties or obligations to the Receiving Party that are no less restrictive than the terms and conditions of this Agreement. The Receiving Party shall be responsible for any breach of this Section caused by any of its Representatives as if such act or omission was performed by the Receiving Party. The Receiving Party shall have no rights, by license or otherwise, to use Confidential Information except as expressly provided herein. The Disclosing Party makes no representation or warranty, express or implied, with respect to any Confidential Information disclosed under this Agreement.

6. Return or Destruction of Confidential Information. At any time during or after the term of this Agreement, at the Disclosing Party's written request, the Receiving Party shall promptly return and shall require its Representatives to return to the Disclosing Party all copies, whether in written, electronic

or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed. Notwithstanding the foregoing, the Receiving Party may retain any copies of Confidential Information (a) required to comply with the Receiving Party's internal record-keeping policies or any applicable federal, state or local law, regulation or regulatory authority to which it is subject; or (b) maintained as archive copies on the Receiving Party's information technology backup systems so long as such copies are destroyed on the normal expiration of such backup files. With respect to any retained Confidential Information, the Receiving Party shall continue to be bound by the terms and conditions of this Agreement in accordance with its terms.

7. No Obligation. Nothing in this Agreement shall impose any obligation upon either Party to consummate any transaction or enter into any business relationship, to enter into any discussion or negotiations with respect thereto, or to take any other action not expressly agreed to herein. Nothing in this Agreement shall prohibit the Disclosing Party from providing the same or similar information to third parties, or from entering into discussions or agreements with third parties, or constitute a joint venture, partnership, or agency relationship between the Parties.

8. Term. Unless extended by a written instrument executed by each Party, this Agreement, and the Receiving Party's obligations with respect to the Confidential Information, shall expire two (2) years from the date of this Agreement.

9. Non-Solicitation. Without the prior written consent of the other Party, no Party, any of its affiliates or any of their respective officers, directors or employees (each, a "**Restricted Person**") may, during the term of this Agreement solicit for employment or otherwise induce, influence, or encourage to terminate employment with the other Party, or employ or engage as an independent contractor, any employee or independent consultant of the other Party (each, a "**Covered Employee**"), except (i) pursuant to a general solicitation through the media or by a search firm, in either case, that is not directed specifically to any Covered Employee, unless such solicitation is undertaken as a means to circumvent the restrictions contained in or conceal a violation of this Section 9 or (ii) if the other Party terminated the employment of such Covered Employee before the Restricted Person having solicited or otherwise contacted such Covered Employee or discussed the employment or other engagement of the Covered Employee. Either Party agrees that the duration, scope and geographical area of the restrictions contained in this Section 9 are reasonable. Upon a determination that any term or provision of this Section 9 is invalid or unenforceable, a court may modify this Section 9 to substitute the maximum duration, scope and geographical area legally permissible under such circumstances to the greatest extent possible to effect the restrictions originally contemplated by the Parties.

10. Cyber Security Threats. Each Party recognizes and agrees that Confidential Information may be e-mailed to its Representatives in the course of dealing. Notwithstanding anything contained herein to the contrary, each Party agrees that so long as the Receiving Party has used reasonable practices to protect its data against breach by third parties, such Party will not be liable for disclosure of Confidential Information caused by a "cyberattack", "hack" or any other unintended data breach performed by a third party.

11. Assignment. This Agreement shall inure to the benefit of and be binding upon each Party and its successors and permitted assigns. Neither Party may assign this Agreement or any provision hereof, in whole or in part, without the prior written consent of the other Party. Nothing in this Agreement, express or implied, is intended to confer upon anyone other than the Parties or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

12. Equitable Relief. Each Party acknowledges and agrees that remedies at law may be inadequate to protect the other Party against any actual or threatened breach of this Agreement by the other Party or its Representatives, and, without prejudice to any other rights and remedies otherwise available to the other Party (including, without limitation, monetary damages), each Party agrees to the granting of specific performance and injunctive or other equitable relief in the other Party's favor without

proof of actual damages and each Party further agrees to waive, and to use all reasonable efforts to cause its Representatives to waive, any requirement for the securing or posting of any bond in connection with any such remedy. Neither Party shall be liable (in contract, tort, or under any other legal or equitable theory) for lost profits or any consequential, punitive or exemplary damages whatsoever with respect to any breach of this Agreement.

13. Governing Law; Jurisdiction. This Agreement shall be construed in accordance with the laws of the State of New York. Each Party agrees that any and all disputes between the Parties under or relating to the terms and conditions of this Agreement shall be fully and finally adjudicated in the state courts of the State of New York.

14. Presumptions; Advice of Counsel. In construing the terms of this Agreement, no presumption shall operate in either Party's favor as a result of its counsel's role in drafting the terms or provisions hereof. Each Party understands the legally binding nature of this Agreement and acknowledges it has been advised to review the terms of this Agreement with legal counsel of its choice and that it has been given reasonable opportunity to seek such legal advice.

15. Amendment and Waiver. Any term of this Agreement may only be amended with the written consent of each Party. Any amendment or waiver effected in accordance with this Section shall be binding upon each Party and its successors and permitted assigns. No failure or delay in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other further exercise or the exercise of any other right, power or privilege hereunder.

16. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by email (with written confirmation of receipt), (b) when delivered by hand (with written confirmation of receipt); (c) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by a Party from time to time in accordance with this Section).

17. Entire Agreement. This Agreement expresses the full and complete understanding of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous proposals, agreements, representations and understandings, whether written or oral, with respect to its subject matter, and the terms and conditions of this Agreement shall apply in lieu of and notwithstanding any specific legend or statement associated with any particular Confidential Information disclosed.

18. Severability; Captions; Counterparts; Facsimile and Electronic Signatures. If any provision of this Agreement is adjudicated to be invalid under applicable law, such provision shall be inapplicable to the extent of such invalidity without affecting the validity or enforceability of the remainder of this Agreement which shall be given effect so far as possible. The captions in this Agreement are intended for convenience and reference only and shall not affect the meaning or interpretation of the Agreement. This Agreement may be executed in one or more counterparts (which, taken together, as applicable, shall constitute one and the same instrument) and by electronic transmission (such as PDF format), which such signatures shall be considered original executed counterparts. Each Party agrees that it will be bound by its own facsimile and electronic signature and that it accepts the facsimile and electronic signature of each other Party. The words "execution," "signed," "signature," and words of like import herein shall be deemed to include electronic signatures, which shall be of the same legal effect, validity or enforceability as a manually executed signature to the extent and as provided for in the New York Electronic Signatures and Records Act and any applicable federal law.

[Signature Page Follows]

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by its authorized representatives on the date first above written.

**NY GREEN BANK, a division of NEW YORK STATE
ENERGY RESEARCH AND DEVELOPMENT
AUTHORITY**

By: [NAME]
Title: Managing Director

[COUNTERPARTY]

By: [NAME]
Title: [TITLE]