



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

WASHINGTON, D.C. 20460

**MUTUAL CONFIDENTIALITY AGREEMENT**

**Between the U.S. Environmental Protection Agency and**

This AGREEMENT is made and entered into by and between

having a principal place of business at

and

on behalf of the U.S. Environmental Protection Agency (“EPA” or the “Agency”)(together, the “PARTIES”).

**WITNESSETH:**

**A. WHEREAS**, the parties to this AGREEMENT are engaged in

(the “PROJECT”);



**B. WHEREAS**, in the course of the PROJECT, \_\_\_\_\_ intends to voluntarily disclose to EPA \_\_\_\_\_

which may reveal patentable subject matter, trade secrets, know-how, business methods or other proprietary information, or which is otherwise confidential information related to \_\_\_\_\_'s business;

**C. WHEREAS**, \_\_\_\_\_ claims that all or part of the information that it will disclose to EPA during the course of the PROJECT is confidential.

**D. WHEREAS**, in the course of the PROJECT, EPA may disclose confidential information (hereinafter referred to as "CONFIDENTIAL INFORMATION");

**E. WHEREAS**, \_\_\_\_\_ wishes to receive and evaluate such CONFIDENTIAL INFORMATION solely for the purpose of carrying out the PROJECT; and

**F. WHEREAS**, EPA has determined that sharing such CONFIDENTIAL INFORMATION with \_\_\_\_\_ for the PROJECT is in the public interest and is consistent with the Agency's mission;

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**NOW THEREFORE**, in consideration of the mutual promises, covenants and conditions herein contained, the PARTIES agree as follows:

1. Identifying Confidential Business Information. EPA agrees to protect information claimed as confidential business information ("CBI") from unauthorized disclosure to the extent permitted by law and consistent with EPA's regulations under 40 C.F.R. Part 2, Subpart B. The foregoing shall not apply to information that is or becomes publicly available or which is disclosed to RECIPIENT without a confidentiality obligation. In asserting a claim for protection, \_\_\_\_\_ must stamp its Research Material as "CLAIMED AS CONFIDENTIAL BUSINESS INFORMATION." Documents that are stamped with "CLAIMED AS CONFIDENTIAL BUSINESS INFORMATION" represent that the \_\_\_\_\_ is asserting a confidentiality claim for a period of three (3) years. Any oral disclosures from \_\_\_\_\_ to EPA, which \_\_\_\_\_ wishes to assert as confidential business information, shall be identified as being confidential business information at the time of

the disclosure and by written notice, stamped in the manner stated above, and delivered to EPA within thirty (30) days after the date of the oral disclosure. EPA may publish or otherwise publicly disclose the results of the Research Project, but if \_\_\_\_\_ has given claimed confidential business information to RECIPIENT, such public disclosure may be made only after \_\_\_\_\_ has had thirty (30) days to review the proposed disclosure to determine if it includes any claimed confidential business information, to the extent such review period is permitted by law.

2. Use of CBI. EPA agrees that, to the extent permitted by law, neither EPA nor any of its branches, divisions, employees, independent contractors, or other persons or organizations over which it has control will, at any time during or after this PROJECT, directly or indirectly use any claimed CBI disclosed to EPA for the PROJECT for any purpose not associated with the PROJECT.
3. Information Not Considered CBI under Applicable Laws. EPA’s obligations under this AGREEMENT do not extend to any information that:
  - a. can be demonstrated to have been in the public domain or publicly known and reasonably obtainable to the trade or the public prior to the date of any possible disclosure;
  - b. can be demonstrated to have been in EPA’s possession or reasonably obtainable by EPA from another source prior to any possible disclosure;
  - c. becomes part of the public domain or publicly known by publication or otherwise, provided such availability is not due to any unauthorized act of EPA;
  - d. is obtained by EPA for enforcement purposes or other purposes that are independent of this PROJECT;
  - e. \_\_\_\_\_ agrees to disclose for any purpose, including promotion of this PROJECT.
4. Disclosures to \_\_\_\_\_. \_\_\_\_\_ agrees to protect information claimed as confidential information from unauthorized disclosure. EPA will clearly and plainly mark as “CONFIDENTIAL” any written information it submits to \_\_\_\_\_ as part of this PROJECT and that it wishes to be treated in accordance with the terms of this AGREEMENT. If EPA discloses information to \_\_\_\_\_ which the Agency orally claims as CONFIDENTIAL INFORMATION, EPA will promptly notify \_\_\_\_\_ in writing if it wants such information treated in accordance with this AGREEMENT.
5. Effect of Other Disclosure Authorities. These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of

authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling. The PARTIES acknowledge that EPA's obligations under this AGREEMENT do not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice where such disclosures are essential to reporting a substantial violation of law.

6. Binding Effect. This AGREEMENT shall be binding on the PARTIES and upon their respective executors, administrators, legal representatives, successors, and assigns.
7. Governing Law. The construction, interpretation, validity, performance, and effect of this AGREEMENT for all purposes shall be governed by the laws applicable to the U.S. Government.
8. Effective Date. This AGREEMENT shall enter into force as of the date of the last signature of the PARTIES.

### **Authorized Representative Signatures**

**FOR THE EPA**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**FOR**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Signed Agreements sent to:

Kathleen Graham  
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