

NDA: EPA -

Date

## **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 the

having a principal place of business at

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

WITNESSETH:

WHEREAS, The parties to this AGREEMENT are engaged in

(the “PROJECT”);

WHEREAS, in the course of the PROJECT, the Parties intend to voluntarily disclose to each other

which may reveal patentable subject matter, trade secrets, know-how, business methods or other proprietary information, or which is otherwise confidential information of the Parties

AND WHEREAS, the Party disclosing such information (“DISCLOSING PARTY”) may claim that this information is confidential business information (“CBI”) that should be treated accordingly by the party receiving the information (“RECEIVING PARTY”).

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

(1) Disclosures. DISCLOSING PARTY will clearly and plainly mark as “CBI” or “CONFIDENTIAL” any written information it submits to RECEIVING PARTY as part of this PROJECT and that it wishes to be treated as CBI in accordance with the terms of this AGREEMENT. If DISCLOSING PARTY orally claims information as CBI, DISCLOSING PARTY will notify RECEIVING PARTY in writing, within 30 days after the disclosure, if it wants such information treated in accordance with this AGREEMENT.

(2) Use of CBI. RECEIVING PARTY agrees that, to the extent permitted by law, neither the RECEIVING PARTY 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 RECEIVING PARTY for the PROJECT for any purpose not associated with the PROJECT.

(3) Public Disclosure. RECEIVING PARTY agrees not to publicly disclose the information claimed as CBI unless such disclosure is required by law, including the Freedom of Information Act and EPA’s regulations at 40 C.F.R. Part 2, Subpart B.

(4) Effect of Other Disclosure Authorities. The PARTIES acknowledge that EPA's obligations under this AGREEMENT 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.

(5) Information that is Not Considered to be CBI under Applicable Law. RECEIVING PARTY'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 readily available to the trade or the public prior to the date of any possible disclosure;
- b. can be demonstrated to have been in RECEIVING PARTY's possession or readily available to RECEIVING PARTY 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 RECEIVING PARTY;
- d. is obtained by EPA for enforcement purposes or other purposes that are independent of this PROJECT;
- e. DISCLOSING PARTY agrees to disclose for any purpose, including promotion of this PROJECT.

(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.

NDA: EPA -

Date

**U.S. Environmental Protection Agency**

\_\_\_\_\_  
(COOPERATOR)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Typed Title

\_\_\_\_\_  
Typed Title

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

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

Signed Agreements sent to:

Kathleen Graham  
FTTA Program Coordinator  
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FTTA@epa.gov