

information associated with the infrastructures hardware, software and/or any other intellectual property supplied to, or otherwise made available by, DEP to NAME. Certain data systems may contain proprietary and confidential material of the State of New Jersey and are protected by United States and international copyright laws and international treaties. The systems, software, data and related documentation may not be used, reproduced or disclosed in any manner except as expressly authorized under this agreement. All other uses are strictly prohibited.

“Confidential Information” shall also include but is not limited to pre-decisional information related to a Nuclear Regulatory Commission inspection of nuclear generating facilities.

5. DEP anticipates that NAME will encounter or work with Confidential Information while performing Subject Activities. To the extent, however, any Confidential Information is discovered, encountered, or disclosed during NAME's performance of the Subject Activities, NAME agrees to be bound by the terms and conditions set forth in this Agreement with respect to the treatment, duty of care, protection, and disclosure of Confidential Information. NAME shall require its employees and subcontractors to comply with the provisions of this Agreement.

6. Confidential Information shall not include any information that NAME can demonstrate: (a) is publicly known through no wrongful act or breach of obligation of confidentiality; (b) was lawfully known by NAME prior to the time it was disclosed to or learned by NAME during the term of this Agreement; (c) was received by NAME from a third party not known by NAME to be in breach of any obligation of confidentiality; (d) is shown through written documentation that NAME independently developed without the use of any Confidential Information DEP communicated to NAME; or (d) was produced in response to a subpoena or valid order issued by a court of competent jurisdiction or other governmental entity, and is not subject to a protective order, or was necessary to establish the rights of NAME or DEP under this Agreement. Further, if a demand is made by a third party for the disclosure of Confidential Information by subpoena, court or government order or any similar legal or administrative process, NAME shall provide DEP with notice of the same so that DEP may seek a protective order or other appropriate remedy.

7. NAME therefore agrees to hold in trust any and all Confidential Information, and further agrees that it shall use its best efforts and utmost diligence to safeguard all Confidential Information and to protect against its disclosure, misuse, loss, and theft until such time as specified by the DEP. NAME shall also use its best efforts and utmost diligence to protect the State of New Jersey's intellectual property should copies of databases be requested by subpoena, court or government order or any similar legal or administrative

process.

8. Within thirty (30) days of executing this Agreement, NAME shall submit documentation of written procedures for protecting the confidentiality of Confidential Information in accordance with this Agreement. Upon approval of the NJDEP, this documentation shall become part of this Agreement, and failure by NAME to comply with the procedures will be considered a violation of this Agreement. Such documentation and procedures should address, but are not limited to, the following:

- A. Establish a listing of individuals by title who will be working on the Subject Activities, their functions, and reasons for inclusion on the team.
- B. Confirmation that these individuals receive a confidentiality briefing to include discussion of the following:
 - 1. Be advised that unauthorized disclosure, retention or negligent handling of the information could cause damages.
 - 2. Be advised not to disclose information without verification that the recipient of DEP Confidential Information has been approved for access.
 - 3. Be advised not to discuss DEP Confidential Information outside of the work site.
 - 4. Be advised not to reveal their computer password.
 - 5. Be advised not to remove DEP Confidential material off site.
 - 6. Be advised of the approved method of on-site storage of Confidential Information.
 - 7. Ensuring that these individuals are fully aware of the importance of vigilance and reporting suspicious activities (e.g., receiving unusual inquiries from people or companies asking about things related to this project or DEP activities) and security breaches to corporate security (or equivalent) and for corporate security (or equivalent) to refer all such reported activities to law enforcement officials.
- C. Limiting and/or prohibiting, consistent with applicable law, the distribution of personal information.
- D. To the extent permitted by law, limiting access to information containing individual names, home addresses and other information.

E. Controlling and storing documents/data (both paper and electronic) in secure locations that prevent unauthorized or inadvertent disclosure, which shall require restricting access to NAME's computers, firewall protection, intrusion detection systems, and other security.

9. NAME shall notify DEP immediately upon the discovery of any unauthorized use or disclosure of any Confidential Information or any other breach of this Agreement on its part, and will cooperate with DEP in every reasonable way to assist DEP in regaining possession of the Confidential Information, and prevent further unauthorized use or disclosure.

10. NAME agrees that during the term of this Agreement, and at all times thereafter, without the prior written consent of the DEP, it shall not use, for its benefit, or the benefit of any other person, any Confidential Information, except to the extent such use or disclosure is required in connection with the Panel. NAME agrees that it shall comply with the provisions of this Agreement.

11. NAME further agrees not to release or provide any Confidential Information to any third party, including any subcontractor, that is not a party to this Agreement, unless or until such time that DEP authorizes such release and such third party or subcontractor executes a Confidentiality Agreement with the DEP which requires the party to abide by the terms of this Agreement. To the extent that NAME is required by a court to release or provide any Confidential Information, such release or provision of this Confidential Information shall be regulated by orders of the court.

12. Any Confidential Information received by NAME from the DEP may not be reproduced or redistributed for use by anyone without first obtaining written permission from the DEP. NAME further agrees that any use, copying, distribution, sale or offering of Confidential Information in any form, for purposes not associated with the Panel, by NAME, without prior express written authorization from the DEP, will be considered a violation of this Agreement. In addition, such conduct may be prosecuted to the maximum extent allowed by law.

13. Any Confidential Information, including permitted copies, shall be deemed to be the exclusive property of the DEP. NAME further agrees to abide by the following provisions with respect to the treatment, duty of care, protection, and disclosure of Confidential Information: (a) only use Confidential Information as provided by this Agreement; (b) only disclose the Confidential Information to its employees or legal representatives who have a need to know, and are advised by, NAME of the obligations of this Agreement; (c) treat the Confidential Information with the same degree of care that it would afford to its own Confidential Information of a similar nature, but no less than reasonable care; (d) have no right, title, or interest in the Confidential Information except as provided for in this Agreement;

(e) notify the DEP within twenty-four hours after its discovery of any loss or unauthorized disclosure or use of the Confidential Information; (f) not remove, modify or obliterate any confidentiality, privilege, copyright, trademark, or other proprietary rights notice from the Confidential Information; and (g) return any and all Confidential Information to DEP, which may be in NAME's possession immediately upon termination of this Agreement.

14. NAME acknowledges that any disclosure or use of any Confidential Information in violation of this Agreement may cause the DEP irreparable harm, the amount of which is difficult to estimate, making any remedy at law or in damage inadequate. Therefore, NAME agrees that the DEP has the right to obtain, from any court of competent jurisdiction, specific performance or other temporary or permanent injunctive relief for any breach or threatened breach of this Agreement. Any use, copying, distribution, sale or offering of this data in any form by NAME, or any individual or entity in NAME's charge or employ for purposes not connected with this Agreement, will be considered a violation of this Agreement and may result in Agreement termination and NAME's suspension or debarment from State contracting. In addition, such conduct may be reported to the State Attorney General for criminal prosecution to the extent allowed by law. This right shall be in addition to any other remedies available to the DEP in law or in equity.

15. Upon termination of the purpose for which the Confidential Information was learned by, or disclosed to, NAME, or upon earlier request by the DEP, NAME shall promptly return by hand delivery, or a delivery method approved by DEP, all the Confidential Information and any copies of documents, papers or other material that may contain or be derived from the Confidential Information that is in its possession to: DEP, Attention: _____, 401 East State Street, PO Box _____ Trenton, NJ 08625. NAME shall not retain and shall delete or destroy all Confidential Information in its possession at the conclusion of the Panel once directed by DEP to the extent such Confidential Information cannot otherwise be returned to DEP as provided herein. At DEP's request, NAME shall certify that it has satisfied its obligations under this paragraph.

16. Any notice required or permitted to be given under this Agreement shall be given in writing, and shall be effective from the date sent by registered or certified mail, by hand, facsimile, or overnight courier, to the addresses set forth in paragraph 15 above.

17. NAME agrees that the obligations delineated under this Agreement shall survive until such time as specified by the DEP. This Agreement shall not be changed, modified, or amended except by a writing signed by the parties. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Furthermore, this Agreement shall be binding upon any and all of NAME's subsidiaries and permitted subcontractors. NAME shall not assign or otherwise subcontract

this Agreement without the prior written consent of the DEP.

18. The obligations with respect to Confidential Information created by, or obtained pursuant to, this Agreement shall survive until such time as the Confidential Information becomes publicly known through action by DEP, court order, statute, or regulation.

19. NAME further agrees that notwithstanding its obligations under this Agreement concerning Confidential Information, it also shall ensure the protection and proper use of all non-confidential information it obtains from DEP's data sources.

20. NAME further agrees that under this Agreement, it shall maintain all Confidential Information as well as non-confidential Information in a manner consistent with DEP records retention schedules, and if applicable, any litigation hold requirements. NAME understands that it may be called upon by DEP to provide documents/data in response to Open Public Records Act requests received by DEP or in related litigation matters that may occur.

21. NAME further agrees that any compilations, arrays or data sources it creates pursuant to the Agreement shall be made available to DEP in a format DEP can utilize for its purposes.

22. NAME further agrees that DEP may at its sole discretion require that NAME personnel, prior to gaining access to certain Confidential Information or other types of information deemed sensitive by DEP for Homeland Security or other purposes, obtain security clearances of a level to be determined by DEP.

23. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof and merges and supersedes all prior discussions, agreements and understandings of any kind and every nature between them.

24. The individual executing this Agreement on behalf of NAME hereby represents and warrants that he or she is duly authorized to execute this Agreement on behalf of NAME.

25. If a provision of this Agreement is held invalid under any applicable law, such invalidity will not affect any other provision of the Agreement that can be given effect without the invalid provision.

26. This Agreement shall be governed in all respects by the laws of the State of New Jersey without giving effect to conflicts of laws principles. Any litigation NAME arising out of, or in connection with, this agreement shall take place in a state or federal court of competent jurisdiction in New Jersey.

27. This Agreement shall be deemed effective as of DATE.

New Jersey Department of Environmental Protection

DATE: _____ By: _____
Name and Title of Officer

DATE: _____ By: _____
Name and Title of Officer

NAME

DATE: _____ By: _____
Name and Title of Officer