

**DATA USE AGREEMENT**

**Between the U.S. Environmental Protection Agency and [full name of company, association, etc.]**

This AGREEMENT is made and entered into by and between [**full name of company, association, etc.] (also provide abbreviated name, e.g., Battelle instead of “Battelle Memorial Institute”, or initials, e.g. “GM” instead of “General Motors”(“XXX”)**) (“Provider”), which has a principal place of business at [insert street address, name and ZIP code] and [the laboratory, center, or program office] on behalf of the **U.S. Environmental Protection Agency** (“**EPA**” **or “Agency”**) (together, the “**Parties**”). The Parties hereby agree as follows:

1. This Agreement establishes a formal data access and data use relationship between EPA and [Provider]. [Provider] agrees to provide the data described below (“**Data**”) to the Agency. EPA must only use the Data for the Agency’s project entitled [Title of research project] (“**Research Project**”), as further described below. The Parties shall abide by all applicable Federal and State laws, rules, and regulations including, without limitation, all patient confidentiality and medical record requirements and any applicable Institutional Review Board (“IRB”) requirements.

**Description of Data Set:**

[Describe data set to be provided in detail, including the data fields, data source, the owner of the data, and how frequently the data will be transferred (i.e. one time, daily, weekly, etc.). If the data set will be linked to other data sets, provide similar information on the other data sets, how they will be linked, and how the final linked data set will be used.]

**Description of the research project:**

[Provide a description of the project for which the data set will be used, including the period of time for which the data will be used, any public health significance and what the results of the project will be used for. If an IRB has approved the study, attach a copy of the approved IRB application and approval letter.]

**Transfer of data:**

[Provide a description of the process by which the data will be sent to the Agency, including how the data will be securely shared and how and where the data will be stored upon receipt.]

1. To the extent permitted by law, EPA agrees to protect information claimed as confidential business information 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 EPA without a confidentiality obligation. In asserting a claim for protection, Provider must mark its written information as “CLAIMED AS CONFIDENTIAL BUSINESS INFORMATION.” Documents that are marked as “CLAIMED AS CONFIDENTIAL BUSINESS INFORMATION” represent that Provider is asserting a confidentiality claim for a period of three (3) years. Any oral disclosures from Provider to EPA containing information that Provider wishes to assert as confidential business information shall be identified as such at the time of the disclosure and by written notice, marked in the manner stated above, delivered to EPA within thirty (30) days after the date of the oral disclosure.
2. [Provider] agrees that EPA may disclose the Data including Data claimed as confidential business information under paragraph 2 above, to its collaborators, provided that the collaborators are bound by confidentiality obligations no less restrictive than the terms of this Agreement. [Provider] reserves the right to distribute the Data to others and to use it for its own purposes.
3. EPA’s obligations under this provision 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.
4. EPA may publish or otherwise publicly disclose the results of the Research Project, but if Provider has given claimed confidential business information to EPA, such public disclosure may be made only after Provider has had fifteen (15) working 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, including but not limited to EPA’s regulations at 40 C.F.R. Part 2, Subpart B.
5. This Agreement shall be effective upon full execution by both parties (“**Effective Date**”) and shall expire after [insert length of time (negotiable)] years, unless terminated earlier by either Party after thirty (30) days advance notice to the other Party. Upon completion of the Research Project, or upon expiration or earlier termination of this Agreement, whichever occurs first, EPA will destroy or return the Data as mutually agreed by EPA and Provider, except that EPA may retain any copies necessary to retain in order to meet its Federal record retention obligations under applicable law, including but not limited to, the Federal Records Act (44 U.S.C. chs. 21, 29, 31 & 33), the Freedom of Information Act (5 U.S.C. § 552) and EPA’s regulations at 40 C.F.R. Part 2, Subpart B.
6. The Data is provided as a service to the research community. IT IS BEING SUPPLIED TO EPA WITH NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Provider makes no representations that the use of the Data will not infringe any patent or proprietary rights of third parties.
7. The parties agree that any copyrightable subject matter, including but not limited to journal articles, training, educational or informational material or software, created jointly by the parties from the activities conducted under the Agreement may be copyrighted by [Provider]. Further, if [Provider] intends to disseminate the work(s) outside of the United States, [Provider] may secure copyright to the extent authorized under the domestic laws of the relevant country. [Provider] hereby grants to the U.S. federal government a royalty-free, worldwide, nonexclusive, irrevocable right to reproduce, distribute, publish, display or perform the work(s) publicly, to make derivative works and, in regard to all of the above-referenced uses, to authorize others to do the same on its behalf.
8. EPA shall retain title to any patent or other intellectual property rights in inventions made by its employees in the course of the Research Project. However, if said inventions contain any portion of the Data, are derived from the Data, or could not have been produced but for the use of the Data, EPA agrees to contact the Provider to determine what ownership interests, if any, the Provider may have.
9. Provider will not be liable to EPA for any claims or damages arising from EPA’s use of the Research Material.
10. As an agency of the federal government, EPA’s responsibility for the payment of claims for the loss of property, personal injury or death, or otherwise arising out of any negligent act or omission of its employees in connection with the performance of work under this Agreement shall be governed by the Federal Torts Claims Act.
11. This Agreement shall be governed by and construed in accordance with the laws of the United States. All actions concerning this Agreement shall be brought in the federal district courts of the United States.
12. If either party desires a modification to this Agreement, the parties shall, upon reasonable notice of the proposed modification by the party desiring the change, confer in good faith to determine the desirability of such modification. Such modification shall not be effective until a written amendment is signed by all the parties hereto by their representatives duly authorized to execute such amendments.
13. All notices pertaining to or required by this Agreement shall be in writing and shall be signed by an authorized representative, addressed as follows:

(a) If to LABORATORY:

Authorized Representative (signator)

Name

Title

Address

Phone

Email

With a copy to (PI or other):

Name

Title

Address

Phone

Email

AND

FTTA Program Manager:

Kathleen Graham

graham.kathleen@epa.gov

(303) 312-6137

ftta@epa.gov

(b) If to PROVIDER:

Authorized Representative (signator)

Name

Title

Address

Phone

Email

With a copy to (PI or other):

Name

Title

Address

Phone

Email

Any party may change such address by notice given to the other party in the manner set forth above.

1. Will EPA develop any products or services from information or data provided by the PROVIDER?

\_\_\_\_Yes – Go to item A
\_\_\_\_No – Skip to #16 (next clause)

Item A. The EPA Center must coordinate matters related to Quality Assurance with their QA Specialist.

[ ]  If necessary, the Center will develop/has developed a Quality Assurance Plan in coordination with the QA Specialist.

[ ]  No QA requirements are needed.
2. Paragraphs 2 and 5 shall survive termination.
3. The illegality or invalidity of any provisions of this Agreement shall not impair, affect or invalidate the other provisions of this Agreement.

1. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any prior understanding or written or oral agreement relative to said matter.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as follows:

**PROVIDER:**

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

 Date

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Provider Mailing Address for Notices:

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name] Date

Director, [Name of Center]

**Read and Acknowledged by EPA Representative:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name] Date

[Center name and title]

**Appendix A**

**Research Project**

**Recipient Principal Investigator:**

 Name/full contact info

**PROVIDER Principal Investigators:**

 Name/full contact info

**Research Project:**

Brief description, including what EPA will be doing.