

CALIFORNIA CLIMATE ACTION REGISTRY  
NONDISCLOSURE AND USE OF INFORMATION AGREEMENT

VERIFICATION OVERSIGHT FOR CALIFORNIA REGISTRY MEMBER

\_\_\_\_\_ (California Registry member's name added here.)

The California Air Resources Board ("ARB") and (California Registry member) \_\_\_\_\_  
Name of member and type of company \_\_\_\_\_  
having a place of business at \_\_\_\_\_ enter into this  
Nondisclosure and Use of Information Agreement ("Agreement") on the date set forth below for the  
purpose of providing ARB records for verification oversight activities under the California Climate  
Action Registry ("California Registry") and agreeing to the manner those records will be handled by  
ARB.

ARB plans to assist the California Registry with oversight of verification services that are provided by  
third parties to ensure the quality of the third-party verification program. As part of these oversight  
activities, ARB may require access to detailed business information and records of California Registry  
member's name, including but not limited to its activity data, costs books, invoices and related  
materials, and other information related to operations at facilities in California that are either owned or  
operated by California Registry member's name, its parent company, subsidiaries, or affiliates. ARB  
and California Registry member's name acknowledge that some of the records that ARB receives will  
contain information that is proprietary, that contains valuable trade secrets, or that California law  
otherwise requires or allows to be handled as confidential information. By entering into this  
Agreement, ARB and California Registry member's name intend to protect these types of information  
and records from public disclosure to the maximum extent permitted by California law.

Considering these facts, ARB and California Registry member's name agree as follows:

1. For the purpose of this Agreement, "Confidential Information" means information that California  
Registry member's name voluntarily provides to ARB for use in verification oversight relating to the  
California Registry that is one of the following: a "trade secret" as defined in Government Code  
section 6254.7, subsections (d) and (e); "official information" under Evidence Code section 1040; or  
information that is subject to other laws, including the California Public Records Act (Gov. Code, §  
6250 et seq.) ("CPRA"), that authorize or require ARB to withhold the information from public  
disclosure. Under Government Code section 6254.7, subsection (e), air pollution emissions data can  
never be Confidential Information even if the data falls within the usual legal definition of trade  
secrets; information used in calculating emissions data may, however, be a trade secret. For  
purposes of this Agreement, Confidential Information does not include information that California  
Registry member's name or any other person provides to ARB pursuant to any other program or  
provision of law, including as part of the mandatory reporting of greenhouse gas emissions to ARB.
2. ARB agrees to use information provided under this Agreement only for oversight of the verification  
activities related to California Registry member's name's annual greenhouse gas emissions results for  
calendar year 200X as a member of the California Registry ("Permitted Purpose").
3. California Registry member's name agrees to voluntarily provide ARB with records that California  
Registry member's name believes contain Confidential Information on the condition ARB maintains  
the confidentiality of those records and not provide the records or information contained in the records  
to persons outside ARB except as specified in Paragraphs 8 and 9 of this Agreement. California  
Registry member's name's agreement to voluntarily provide certain information to ARB on the

condition it not be disclosed to others may establish a qualified privilege for that information under Evidence Code section 1040 in addition to any other legal grounds for maintaining confidentiality of the information.

4. California Registry member's name agrees to identify all the records it believes contains Confidential Information by prominently marking each record as "CONFIDENTIAL" at the time records are provided to ARB and to attach to the records a completed and signed copy of the submittal sheet that is attached to this Agreement. If ARB receives a request for disclosure or seeks to disclose records that California Registry member's name has marked as confidential, ARB will contact the person identified on the submittal sheet and initiate the process set forth in California Code of Regulations, title 17, section 91022. [Note that because of a change to the California Public Records Act, an existing reference in California Code of Regulations, title 17, section 91022, subdivision (e) to "Government Code Section 6256.1" should be to "Government Code Section 6253, subdivision (c)."] Records identified by California Registry member's name as confidential will not be disclosed unless ARB determines, in accordance with the regulations referenced above, that the records do not qualify for a legal exemption from disclosure. The regulations establish substantial safeguards before any such disclosure. As required by California Code of Regulations, title 17, section 91022, subdivision (b), California Registry member's name will provide ARB with documentation supporting its claim of confidentiality within five days of the date California Registry member's name receives notice from ARB that disclosure of the records is being requested or sought, except that California Registry member's name may request additional time if it is not able to produce the documentation within five days. In acting on requests for additional time, ARB will make reasonable efforts to accommodate the request for additional time consistent with ARB's need to decide in a timely manner the status of information that is subject to a claim of confidentiality. ARB will not object to any motion by California Registry member's name to intervene in an action described in California Code of Regulations, title 17, section 91022, subdivision (f) that concerns information provided under this Agreement.

5. In consideration for its receipt of Confidential Information, ARB agrees to hold the Confidential Information in strict confidence to the maximum extent permitted by California law and not to disclose it or otherwise make it available to any person or third party. But Confidential Information may be provided to ARB employees or contractors who need to have access to the Confidential Information for the Permitted Purpose and who, by direction or agreement, are subject to nondisclosure obligations substantially similar to, and at least as restrictive as, those set forth in this Agreement. ARB will take all reasonable actions to restrain its employees and contractors from any prohibited or unauthorized disclosure or use of any Confidential Information.

6. ARB will not reproduce or copy, in whole or in part, information that California Registry member's name has marked as confidential except when necessary for the Permitted Purpose and specifically authorized by California Registry member's name.

7. The restrictions in this Agreement on ARB's use and disclosure of information received from California Registry member's name during the term of this Agreement will apply as long as ARB retains Confidential Information provided by California Registry member's name. Upon written request from California Registry member's name and only after ARB has completed its use of the information for the Permitted Purpose, ARB will either destroy records that California Registry member's name has marked as confidential or return those records to California Registry member's name. ARB may also initiate the return of these records to California Registry member's name. No records may be returned or destroyed if a request or subpoena seeking the records, or any other legal process relevant to the records, is pending.

8. This Agreement and its restrictions on the handling of information do not apply to information that California Registry member's name has marked as confidential if that information:

(a) is or becomes known to the general public without breach of this Agreement; or

(b) was previously known to or was possessed by ARB without restriction before any disclosure pursuant to this Agreement; or

(c) is or has been lawfully disclosed to ARB by a third party without an obligation of confidentiality; or

(d) is independently developed by ARB without access to or use of the Confidential Information; or

(e) is required to be disclosed pursuant to judicial action or Government regulations, provided ARB notifies California Registry member's name before such disclosure and cooperates with California Registry member's name, at California Registry member's name expense, in the event California Registry member's name elects to legally contest and avoid such disclosure.

9. Nothing in this Agreement prevents ARB from releasing:

(a) Confidential Information and information marked as confidential by California Registry member's name to the United States Environmental Protection Agency, which protects trade secrets as provided in the Freedom of Information Act (5 USC § 552), and section 114 of the Clean Air Act and amendments thereto (42 USC § 7401 et seq.) and in federal regulation; and

(b) Confidential Information and information marked as confidential by California Registry member's name to other public agencies provided those agencies preserve the protections afforded information that is identified as a trade secret, or otherwise exempt from disclosure by law. (Government Code, § 6254.5, subdiv. (e))

10. Nothing in this Agreement in any way diminishes or eliminates in any respect any right or remedy California Registry member's name may have under the CPRA or other applicable law to protect its trade secret information from disclosure to the public.

11. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

Attachment: Confidential Records Submittal Sheet

Air Resources Board	California Registry member's name
_____ Signature	_____ Signature
_____ Printed Name	_____ Printed Name
_____ Title	_____ Title
_____ Date	_____ Date

## CONFIDENTIAL INFORMATION SUBMITTAL SHEET

Use this sheet and return it with records submitted to the Air Resources Board (ARB) if you wish to designate any information provided to ARB as CONFIDENTIAL. **This sheet was prepared for use with records submitted to ARB for verification oversight of emissions reporting to the California Climate Action Registry.**

Please note that records provided to ARB may be released: (1) to the public upon request, except trade secrets that are not emissions data or other information that is exempt from disclosure or the disclosure of which is prohibited by law; (2) to the Federal Environmental Protection Agency (EPA), which protects trade secrets as provided in the Freedom of Information Act (5 USC § 552), and section 114 of the Clean Air Act and amendments thereto (42 USC § 7401 et seq.) and in federal regulation; and (3) to other public agencies provided those agencies preserve the protections afforded information that is identified as a trade secret, or otherwise exempt from disclosure by law (see Gov. Code, § 6254.5, subd. (e)). For more information regarding ARB's handling of information that has been identified by the submitter as confidential, please refer to the regulations at California Code of Regulations, title 17, sections 91000-91022, the California Public Records Act (Gov. Code, § 6250 et seq.), and any Nondisclosure and Use of Information Agreement signed by ARB and the submitter.

Trade secrets as defined in Government Code section 6254.7 will not be released to the public. However, the California Public Records Act provides that air pollution emissions data are always public records, even if the data comes within the definition of trade secrets. Information used to calculate emissions data may constitute a trade secret even though the emissions data is a public record. (Gov. Code, § 6254.7, subd. (e).)

**Any information that you believe are a trade secret or are otherwise exempt from disclosure under any other provision of law must be identified in writing as "CONFIDENTIAL" at the time the records are submitted to ARB. You must also provide the name, address, and telephone number of the individual to be consulted if ARB receives a request for disclosure or seeks to disclose records you have claimed are confidential.** You may be required to provide documentation of your claim of trade secret or exemption at a later date. Records identified as confidential will not be disclosed unless ARB determines, in accordance with the regulations referenced above, that the records do not qualify for a legal exemption from disclosure. The regulations establish substantial safeguards before any such disclosure.

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In accordance with the provisions of California Code of Regulations, title 17, sections 91000-91022 and the California Public Records Act (Gov. Code, § 6250 et seq.) and, if applicable, the Nondisclosure and Use of Information Agreement signed with ARB,

[Company Name:] \_\_\_\_\_ declares that it has identified all or portions of the paper or electronic records accompanying this sheet as confidential and has further **identified each page that contains information it believes is confidential by prominently marking it "CONFIDENTIAL."** This information is being voluntarily submitted to ARB on the condition ARB will protect it from public disclosure to the maximum extent permitted by California law.

Authorized  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed name: \_\_\_\_\_ Title: \_\_\_\_\_

All inquiries pertaining to the confidentiality of these records and notices of pending requests or proposals for disclosure should be directed to one of the following persons:

<u>Contact Person:</u>	<u>Alternate Contact Person:</u>
Printed name: _____	Printed name: _____
Title: _____	Title: _____
Telephone: _____	Telephone: _____
Address: _____	Address: _____
_____	_____