

**PRIVILEGED & CONFIDENTIAL**

**CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN  
CLIMATE CHANGE PUBLIC NUISANCE LITIGATION**

The parties to this confidentiality agreement (the “Agreement”), specifically the States of California, Delaware, Maryland, New York, Oregon, Washington and any other State, municipality, or other governmental entity that completes the attached Addendum (collectively “Parties”), have an interest in or are counsel for entities that have an interest in one or more cases brought in U.S. District Court for the Northern District of California [REDACTED] in which various entities have filed actions against fossil fuel producers for remedies, including abatement of a public nuisance, due to present and future harm related to climate change. Together, these cases are referred to herein as the “Litigation.” The Litigation includes, [REDACTED], [REDACTED], *City of Oakland, et al. v. BP P.L.C. et al.* (N.D. Cal. 17-cv-06011), *City and County of San Francisco, et al. v. BP P.L.C., et al.* (N.D. Cal. 17-cv-06012) and *San Mateo v. Chevron Corp.* (N.D. Cal. 17-cv-04929), [REDACTED].

The Parties to this Agreement have a common interest in ensuring the proper application of the federal and/or state common law of public nuisance arising from the effects of climate change, including sea level rise. [REDACTED]

[REDACTED] The Parties agree to share information for the purpose of advancing their common interest, to keep such information and materials confidential, and to protect any privileges attaching to such information and materials to the extent authorized by law. The Parties also agree that the sharing of information, both written and oral, among their governing boards, staff, management, consultants, experts, clients, and counsel will further their common objectives.

Both federal and state law provide for the sharing of confidential and/or privileged information<sup>1</sup> among those with common interests during the course of and in anticipation of litigation, without a waiver of any otherwise applicable privileges, protections, immunities, and exemptions from disclosure, so that the claims and defenses of the parties may be thoroughly investigated and prepared without giving undue advantage to the opposing side. Maintaining such confidentiality is necessary for the accomplishment of the Parties’ objectives with respect to the Litigation. This document sets forth the agreement under which the Parties and their respective governing boards, staff, management, consultants, experts, clients, and counsel will manage and protect confidential and/or privileged information shared and exchanged in preparation for, and during the course of, the Litigation.

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<sup>1</sup> “Information,” as used in this Agreement, is defined below.

THEREFORE, the Parties to this Agreement, through their duly authorized undersigned counsel, hereby agree to the following, effective as of the date below, regardless of when signed.

1. **Parties.** The Parties to this Agreement are the States of California, Delaware, Maryland, New York, Oregon, Washington, and any other State, municipality, or other governmental entity that joins this Agreement by executing the attached Addendum and circulating a copy to all Parties, as set forth in paragraph 11.

2. **Purpose.** The Parties share common interests and goals in ensuring the proper application of the federal and/or state common law of public nuisance arising from the effects of climate change, including sea level rise, in the Litigation, and their participation in the Litigation presents common issues of fact and law. The Parties recognize that the sharing and disclosure of privileged and confidential information among them is essential in the Litigation. The purpose of this Agreement is to ensure that the privileged and/or confidential information shared will be used for developing efficient joint participation in the Litigation, [REDACTED], and that this privileged and/or confidential information will not be disclosed to third parties or otherwise disclosed such that any privileges or other basis for confidentiality attached to these communications and documents are waived.

3. **“Information,”** as used in this Agreement, refers to any and all documents, materials, information, and communications, whether oral or written, electronic or paper. “Information” includes, but is not limited to, documents, materials, information, and communications exchanged among the Parties’ governing boards, staff, management, consultants, experts, clients, and/or counsel.

4. **“Confidential and/or privileged information”** is information provided by or exchanged between one Party and another with the expectation of confidentiality and which is subject to one or more applicable privileges, protections, immunities, or exemptions from disclosure, including but not limited to, the attorney-client, attorney work product, deliberative process, and official information privileges and protections. “Confidential and/or privileged information” shall include information provided by or exchanged between the Parties prior to the execution of this agreement. The signing of this Agreement shall not waive any applicable privilege, protection, immunity or exemption from disclosure or otherwise affect the status of “confidential and/or privileged information” exchanged prior to the signing of this Agreement by the Parties.

5. **“Common Interest Privilege,”** as used in this agreement means the privilege arising from the common interests of the Parties in participating in the Litigation, including but not limited to the common interest privilege recognized in cases such as *Waller v. Financial Corp. of America*, 828 F.2d 579, 583, n.7 (9th Cir. 1987); *Hunydee v. United States*, 355 F.2d 183 (9th Cir. 1965); *Continental Oil Company v. United States*, 330 F.2d 347 (9th Cir. 1964); and in Fed. R. of Evid. 501.

To avoid misunderstandings or inadvertent disclosure, all documents exchanged pursuant to this agreement should bear the legend **“Confidential – Protected by Common**



**Interest Privilege**” or words to that effect. However, the inadvertent failure to include such a legend shall not waive any privilege or protection available under this agreement or otherwise. In addition, any Party may, where appropriate, also label documents exchanged pursuant to this agreement with other appropriate legends, such as, for example, “Attorney-Client Privileged” or “Attorney Work Product.” Oral communications among the Parties shall be deemed confidential and protected under this agreement when discussing matters related to the Litigation.

6. **Confidentiality Statement.** The Parties agree to protect all communications and documents exchanged among them regarding the Litigation, regardless of whether such communications or document exchanges occurred before or after the effective date of this Agreement, as confidential and privileged to the maximum extent allowable under applicable law, based upon all applicable privileges including, but not limited to, the attorney-client privilege, attorney work-product protections, joint defense privilege, and governmental privileges including, but not limited to, the deliberative process privilege where applicable (hereinafter “Protected Information”). Pursuant to this Agreement, rights in the confidentiality of Protected Information, and the confidences attached thereto, have not and will not be waived except as provided in paragraph 7 of the Agreement. Any inadvertent disclosure of Protected Information that is inconsistent with this Agreement shall not waive the confidentiality of such Protected Information.

7. **Non-disclosure.** Protected Information is to be used by the recipient of the information solely in connection with preparing and presenting the Parties’ positions regarding the Litigation. Protected Information may not be shared by a recipient with any non-party to this agreement without prior written waiver from all parties to this Agreement, unless the relevant party determines that disclosure is required by applicable law. In the event that the relevant party determines that disclosure is required by applicable law, it agrees to use its best efforts, as permitted by applicable law, to provide notice, at least seven calendar days in advance, to all parties to this Agreement prior to disclosure. [REDACTED] as the Parties shall deem necessary and appropriate for proper coordination.

8. **Requests for Release and/or Disclosure.** A Party who receives a request from a nonparty to release, disclose, discuss, or obtain access to any information, including Protected Information (whether by way of a subpoena, discovery request, or request under any federal or state statute) shall use its best efforts, as permitted by applicable law, to provide notice, at least seven calendar days prior to the date on which response to such request is due, to all parties to this Agreement. Unless the other Parties consent to disclosure or release of Protected Information, the Party receiving the request for disclosure shall assert, to the extent authorized by law, and subject to any mandatory disclosure laws or court orders, all relevant and applicable privileges and other objections to the disclosure of such information.

9. **No Agency or Additional Attorney-Client Relationships.** This Agreement shall not create any agency or similar relationship among the Parties. Nor shall this Agreement alter the existing attorney-client relationships among the Parties or

create any new attorney-client relationships. No Party shall have authority to waive any applicable privilege or other confidentiality protection on behalf of any other Party; nor shall any waiver of an applicable privilege or protection by the conduct of any Party be construed to apply to any other Party. Nothing in this Agreement is intended or shall be construed to obligate any of the Parties to disclose or share any information or material relating to the Litigation.

10. **Enforcement.** The Parties agree that a breach of a provision of this Agreement by a Party may cause irreparable harm to the other Parties and therefore agree that injunctive relief is the appropriate means to enforce this Agreement. No Party shall be subject to any claim for damages as a result of a breach of this Agreement.

11. **Modification.** It is agreed that any modifications to this Agreement shall be in writing and signed by all Parties. The inclusion of additional states, municipalities, or other governmental entities to this Agreement shall not be considered a modification and shall be accomplished by having the new party execute the attached Addendum and distribute a copy to all Parties.

12. **Integration.** This written Agreement memorializes the entirety of the Parties' pre-existing oral agreement regarding the confidentiality of their communications. It is agreed that this Agreement itself, any amendments thereto, and all discussions among the Parties related to the Agreement are themselves subject to the attorney-client privilege, common interest privilege, and work product doctrine.

13. **Termination.** Any Party to the Agreement may terminate this Agreement upon written notice to the other Parties. In such instance, the terminating Party and its counsel will continue to be bound by this Agreement with regard to any Protected Information received prior to the termination.

14. **Nondisqualification Agreement.** The Parties agree that no Party or attorney for a Party to this Agreement may attempt to use, in any other legal proceeding or cause, either the fact of the Agreement or any information learned as a result of this Agreement as a reason to disqualify any other lawyer or law firm acting as counsel in the above-captioned case from acting as legal counsel in any other legal matter or proceeding.

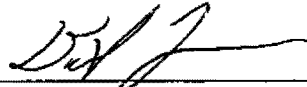
15. **Counterparts.** This Agreement may be executed in counterparts.

16. **Effective Date.** This Agreement becomes effective on the last date of execution by the Parties. This Agreement becomes effective as to any additional party on the date such party executes the attached Addendum. All of the Parties' communications with each other concerning the Litigation made prior to execution of this Agreement are fully subject to this Agreement.

It is so AGREED.

Dated: April 25, 2018

**STATE OF CALIFORNIA**



\_\_\_\_\_  
DAVID ZONANA  
*Supervising Deputy Attorney General*  
California Department of Justice  
1515 Clay St.  
Oakland, CA 94602  
David.Zonana@doj.ca.gov

Dated: April \_\_, 2018

**STATE OF DELAWARE**

\_\_\_\_\_  
VALERIE EDGE  
*Deputy Attorney General*  
Delaware Department of Justice  
102 W. Water Street  
Dover, DE 19904  
Tel. (302) 257-3219  
valerie.edge@state.de.us

16. **Effective Date.** This Agreement becomes effective on the last date of execution by the Parties. This Agreement becomes effective as to any additional party on the date such party executes the attached Addendum. All of the Parties' communications with each other concerning the Litigation made prior to execution of this Agreement are fully subject to this Agreement.

It is so AGREED.

Dated: April \_\_, 2018

**STATE OF CALIFORNIA**

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DAVID ZONANA  
*Supervising Deputy Attorney General*  
California Department of Justice  
1515 Clay St.  
Oakland, CA 94602  
David.Zonana@doj.ca.gov

Dated: April 27, 2018

**STATE OF DELAWARE**

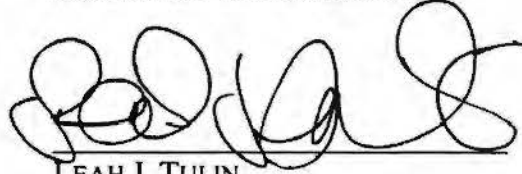


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Dated: April 26, 2018

**STATE OF MARYLAND**



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Maryland Office of the Attorney General

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ltulin@oag.state.md.us

Dated: April \_\_, 2018

**STATE OF NEW YORK**

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MICHAEL J. MYERS

*Assistant Attorney General*

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michael.myers@ag.ny.gov

Dated: April \_\_, 2018

**STATE OF MARYLAND**

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*Principal Counsel*

JOSHUA SEGAL

*Special Assistant Attorney General*

Office of the Attorney General for Maryland

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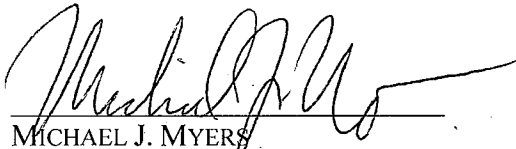
[Andrea.Baker@Maryland.gov](mailto:Andrea.Baker@Maryland.gov)

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Dated: April 26, 2018

**STATE OF NEW YORK**



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Dated: April 25, 2018

**STATE OF OREGON**



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*Attorney-in-Charge*  
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[paul.garrahan@doj.state.or.us](mailto:paul.garrahan@doj.state.or.us)

Dated: April \_\_, 2018

**STATE OF WASHINGTON**

---

WILLIAM SHERMAN  
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Dated: April \_\_, 2018


**STATE OF OREGON**

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Dated: April 25, 2018

**STATE OF WASHINGTON**



---

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## ADDENDUM

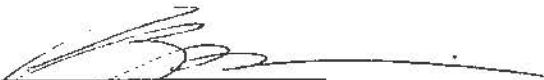
### TO CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN CLIMATE CHANGE PUBLIC NUISANCE LITIGATION

The Commonwealth of Massachusetts, by and through the Office of the Attorney General, desires to become a Party to the attached Agreement.

Now, therefore, counsel for the Commonwealth, agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: 4/26/18

NAME OF PARTY: Commonwealth of Massachusetts

By:   
Name: Christophe Courchesne  
Title: Chief, Environmental Protection Division, Office of the Attorney General  
Address: 1 Ashburton Place, 18th Floor  
Boston, MA 02108  
Christophe.Courchesne@state.ma.us  
617 963 2423

## ADDENDUM

### TO CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN CLIMATE CHANGE PUBLIC NUISANCE LITIGATION

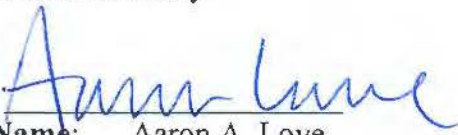
The State of New Jersey, by and through the Office of the New Jersey Attorney General, desires to become a Party to the attached Agreement.

Now, therefore, counsel for the State of New Jersey agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: April 30, 2018

**NAME OF PARTY:**

State of New Jersey

By: 

**Name:** Aaron A. Love

**Title:** Deputy Attorney General

**Address:** R.J. Hughes Justice Complex  
25 Market Street  
PO Box 093  
Trenton, NJ 08265



ADDENDUM

TO CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN  
CLIMATE CHANGE PUBLIC NUISANCE LITIGATION

The State of Rhode Island by and through Attorney General Peter F. Kilmarc, desires to become a Party to the attached Agreement.

Now, therefore, counsel for Peter F. Kilmarc agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: 4/30/2018

NAME OF PARTY:

By: Gregory S. Schultz

Name:

Title:

Address:

Gregory S. Schultz  
Special Assistant Attorney General  
150 South Main Street  
Providence, RI 02908  
Tel. (401) 274-4400  
gschultz@riag.ri.gov

## ADDENDUM

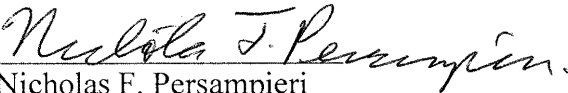
### TO CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN CLIMATE CHANGE PUBLIC NUISANCE LITIGATION

The State of Vermont, by and through the office of Attorney General Thomas J. Donovan, Jr., desires to become a Party to the attached Agreement.

Now, therefore, counsel for the State of Vermont, agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: April 30, 2018

NAME OF PARTY: State of Vermont

By:   
Nicholas F. Persampieri  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609  
(802) 828-3186  
nick.persampieri@vermont.gov

**ADDENDUM**

**TO CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN CLIMATE  
CHANGE PUBLIC NUISANCE LITIGATION**

The State of Connecticut, by and through the Office of the Attorney General of Connecticut, William Tong, desires to become a Party to the attached Agreement.

Now, therefore, counsel for the State of Connecticut, agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: March 6, 2019

NAME OF PARTY: State of Connecticut

By:

  
Daniel M. Salton

Assistant Attorney General

Office of the Attorney General of Connecticut

55 Elm Street

Hartford, CT 06106

(860) 808-5250

Daniel.Salton@ct.gov

## **ADDENDUM**

### **TO CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN CLIMATE CHANGE PUBLIC NUISANCE LITIGATION**

The State of Minnesota, by and through the Office of Minnesota Attorney General Keith Ellison, desires to become a Party to the attached Agreement.

Now, therefore, counsel for the State of Minnesota agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: March 8, 2019

NAME OF PARTY: State of Minnesota

KEITH ELLISON  
Attorney General  
State of Minnesota



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MAX KIELEY  
Assistant Attorney General

445 Minnesota Street, Suite 900  
St. Paul, Minnesota 55101-2127  
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(651) 297-4139 (Fax)  
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**PRIVILEGED & CONFIDENTIAL**

**AMENDMENT TO CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN CLIMATE CHANGE PUBLIC NUISANCE LITIGATION**

The parties to the Confidentiality Agreement Regarding Participation in Climate Change Public Nuisance Litigation, effective April 27, 2018 (the “Agreement”), specifically the states of California, Connecticut, Delaware, Maryland, Minnesota, New Jersey, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, the Commonwealth of Massachusetts, the District of Columbia, and any other State, municipality, or other governmental entity that completes the addendum attached to the Agreement (collectively “Parties”), while believing that the Agreement is sufficient to maintain the confidentiality of all information, communications and documents shared between the Parties as set forth below, out of an abundance of caution agree to the following amendment to the Agreement (the “Amendment”).

Previously, the first paragraph of the Agreement stated:

The parties to this confidentiality agreement (the “Agreement”), specifically the States of California, Delaware, Maryland, New York, Oregon, Washington and any other State, municipality, or other governmental entity that completes the attached Addendum (collectively “Parties”), have an interest in or are counsel for entities that have an interest in [REDACTED] cases brought in U.S. District Court for the Northern District of California, [REDACTED], in which various entities have filed actions against fossil fuel producers for remedies, including abatement of a public nuisance, due to present and future harm related to climate change. Together, these cases are referred to herein as the “Litigation.” The Litigation includes, [REDACTED] *City of Oakland, et al. v. BP P.L.C. et al.* (N.D. Cal. 17-cv-06011), *City and County of San Francisco, et al. v. BP P.L.C., et al.* (N.D. Cal. 17-cv-06012) and *San Mateo v. Chevron Corp.* (N.D. Cal. 17-cv-04929), [REDACTED]

The Parties now hereby agree that the following paragraph shall be substituted for the first paragraph of the Agreement:

The parties to this confidentiality agreement (the “Agreement”), specifically the States of California, Connecticut, Delaware, Maryland, Minnesota, New Jersey, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, the Commonwealth of Massachusetts, the District of Columbia, and any other State, municipality, or other governmental entity that completes the attached Addendum (collectively “Parties”), have an interest in or are counsel for entities that have an interest in [REDACTED] in which various entities have filed or will file actions against fossil fuel producers for remedies, including abatement of a public nuisance, due to present and future harm related to climate change. Together, these cases are referred to herein as the “Litigation.” The



Litigation includes, [REDACTED] *City of Oakland, et al. v. BP P.L.C. et al.* (N.D. Cal. 17-cv-06011), *City and County of San Francisco, et al. v. BP P.L.C., et al.* (N.D. Cal. 17-cv-06012) *San Mateo v. Chevron Corp.* (N.D. Cal. 17-cv-04929), *Rhode Island v. Chevron Corp.* (R.I. Super. Ct. PC-2018-4716, and D. R.I. 18-00395), *Mayor & City Council of Baltimore v. BP p.l.c.* (Md. Cir. Ct. 24-C-18-004219 and D. Md. 18-02357), *City of New York v. BP p.l.c.* (S.D.N.Y 18-00182), and *King County v. BP p.l.c.* (Wash. Super. Ct. 18-2-11859-0 and W.D. Wash. 18-00758), *Board of County Commissioners of Boulder County, et al., v. Suncor Energy, et al.*, No. 19-1330 (10th Cir.), [REDACTED]  
[REDACTED]

This Amendment becomes effective on the last date of execution by the Parties. This Amendment becomes effective as to any additional parties on the date such party executes the addendum attached to the Agreement. All of the Parties' communications with each other concerning the Litigation made prior to execution of the Agreement or this Amendment are fully subject to both the Agreement and this Amendment.

It is so AGREED.

Dated: November \_\_\_, 2019

**STATE OF CALIFORNIA**

\_\_\_\_\_  
ERIN GANAHL  
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Erin.Ganahl@doj.ca.gov

Dated: November \_\_\_, 2019

**STATE OF CONNECTICUT**

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Hartford, CT 06106  
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Dated: November \_\_\_, 2019

#### STATE OF DELAWARE

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Jameson.Tweedie@state.de.us

Dated: November \_\_\_, 2019

#### STATE OF MARYLAND

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*Special Assistant Attorney General*  
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Abaker@OAG.state.md.us  
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Dated: November \_\_\_, 2019

#### COMMONWEALTH OF MASSACHUSETTS

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Massachusetts Office of the Attorney General  
1 Ashburton Place, 18<sup>th</sup> Floor  
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Christophe.Courchesne@state.ma.us





Dated: November \_\_\_, 2019

**STATE OF MINNESOTA**

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(651) 297-4139 (Fax)

max.kieley@ag.state.mn.us

Dated: November \_\_\_, 2019

**STATE OF NEW JERSEY**

---

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Dated: November \_\_\_, 2019

**STATE OF NEW YORK**

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Dated: November \_\_, 2019

**STATE OF NORTH CAROLINA**

---

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North Carolina Department of Justice  
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Dated: November \_\_, 2019

**STATE OF OREGON**

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paul.garrahan@doj.state.or.us

Dated: November \_\_, 2019

**STATE OF RHODE ISLAND**

---

GREGORY S. SCHULTZ  
*Special Assistant Attorney General*  
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Dated: November \_\_, 2019

**STATE OF VERMONT**

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*Assistant Attorney General*  
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nick.persampieri@vermont.gov

Dated: November \_\_, 2019

**STATE OF WASHINGTON**

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Seattle, WA 98104-3188  
Tel. (206) 442-4485  
Bill.Sherman@atg.wa.gov

Dated: November \_\_, 2019

**DISTRICT OF COLUMBIA**

---

DAVID HOFFMANN  
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441 4th Street, N.W., Suite 600 South  
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AGO0085-AGO0119	<p>A 35-page document consisting of a 5-page Confidentiality Agreement and 17 signature pages, effective April 27, 2018 and last dated December 11, 2019, entered into by the State of Vermont on April 30, 2018 by Assistant Attorney General Nicholas F. Persampieri and other States by their respective legal counsel on various dates from April 2018 to December 2019, as well as a 2-page Amendment to the same with 11 signature pages, effective and last dated December 11, 2019, entered into by the State of Vermont on December 9, 2019 by Assistant Attorney General Nicolas F. Persampieri and other States by their respective legal counsel on various dates from November to December 2019.</p> <p>The subject matter of the Confidentiality Agreement, as amended, concerns the sharing of information by the parties having an interest in or who are counsel for entities having an interest in filed and as-yet unfiled lawsuits under state or federal law involving common questions of fact and law relating to climate change (hereinafter “Climate Change Litigation”). The Climate Change Litigation includes, but may not be limited to: <i>City of Oakland, et al. v. BP P.L. C., et al.</i> (N.D. Cal. 17-cv-06011), <i>City and County of San Francisco, et al. v. BP P.L.C., et al.</i> (N.D. Cal. 17-cv-06012), <i>San Mateo v. Chevron Corp.</i> (N.D. Cal. 17-cv-04929), <i>Rhode Island v. Chevron Corp.</i> (R.I. Super. Ct. PC-2018-4716, and D. R.I. 18-00395), <i>Mayor &amp; City Council of Baltimore v. BP p.l.c.</i> (Md. Cir.</p>	<p>1 V.S.A. § 317(c)(4)</p> <p>“Records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege . . . .”</p> <p>V.R.C.P. 26(b)(4) / Work Product Protection</p> <p>“[D]ocuments and tangible things otherwise discoverable . . . and prepared in anticipation of litigation or for trial by or for another party or for that other party’s representative . . . .”</p>
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