

CONFIDENTIAL

**COMMON INTEREST AGREEMENT REGARDING THE SHARING OF
INFORMATION RELATED TO STATE LAWSUITS AGAINST FOSSIL FUEL
COMPANIES FOR DECEPTIVE ACTS AND PRACTICES AND OTHER STATE LAW
CLAIMS**

The Parties to this Common Interest Agreement (“Agreement”), the State of Connecticut (“Connecticut”), the State of Delaware (“Delaware”), the District of Columbia (“District”), the Commonwealth of Massachusetts (“Massachusetts”), and the State of Minnesota (“Minnesota”) (collectively, “Parties”), are engaged in separate litigations against certain fossil fuel industry defendants, namely, *State of Connecticut v. Exxon Mobil Corporation*, Superior Court Civil Action No. HHD-CV-20-6132568-S, *State of Delaware, ex rel. Kathleen Jennings v. BP America Inc., et al.*, Superior Court Case No. N20C-09-097 AML CCLD; *District of Columbia v. Exxon Mobil Corporation, et al.*, Superior Court Civil Action No. 2020 CA 2892 B, *Commonwealth of Massachusetts v. Exxon Mobil Corporation*, Superior Court Civil Action No. 1984-CV-03333-BLS1, and *State of Minnesota v. American Petroleum Institute et al.*, Ramsey County District Court Civil Action No. 62-cv-20-3837 (together, along with any State(s) joining via Addendum, the “State Litigations”). For the purposes of this Agreement, the State Litigations also include any related litigations regarding removal to federal court and remand to state court of such actions. While each of the State Litigations contains unique elements, the State Litigations share common facts, causes of action (including consumer protection or consumer fraud claims), and defendants, including for all litigations Exxon Mobil Corporation (“Exxon Mobil”).

The State Litigations also share aims: for Connecticut’s case, to ensure that Exxon Mobil is prohibited from violating the Connecticut Unfair Trade Practices Act and penalized for past violations; for Delaware’s case, to ensure that the defendants are held accountable for their violations of Delaware law, including without limitation violations of the Delaware Consumer Fraud Act; for the District’s case, to ensure that the defendants are prohibited from violating the District’s Consumer Protection Procedures Act and penalized for their past violations; for Massachusetts’s case, to ensure that Exxon Mobil is prohibited from violating the Massachusetts Consumer Protection Act and penalized for its past violations; and, for Minnesota’s case, to ensure that the defendants are prohibited from violating Minnesota’s Prevention of Consumer Fraud Act and penalized for past actions, and are held accountable for the failure to warn consumers about their dangerous products. The Parties to this Agreement thus have a common interest in the successful prosecution of their respective State Litigations given the commonalities of fact, law, and purpose. The Parties would benefit from the sharing of information, including but not limited to legal and factual analyses, litigation strategies, draft briefs and other draft court filings, and other documents among the Parties.

The Parties wish to pursue their common interest throughout the preparations for, and the course of, any judicial proceedings, including any dispositive motions, trials, and appeals, involving these issues by exchanging privileged materials, while avoiding any waiver of the confidentiality of those privileged materials. 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 staff, management, consultants, experts, and counsel will further their common objectives with regard to the State Litigations.

Both federal and state law provide for the sharing of confidential and/or privileged information¹ 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 as set forth above. This document sets forth the Agreement under which the Parties and their respective staff, management, consultants, experts, and counsel will manage and protect confidential and/or privileged information shared and exchanged in preparation for, and during the course of any judicial proceedings concerning the State Litigations.

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 initial Parties to this Agreement are listed on the signature page of this Agreement. Subject to the approval of the Parties, additional parties, through their counsel, may join this agreement by executing the appropriate version of the attached Addendum and circulating a copy to all Parties.

2. **Purpose.** The Parties share the common interests and goals described above, and their work in connection with the State Litigations presents certain common issues of fact and may present common issues of law. The Parties recognize that the sharing and disclosure of confidential and/or privileged information among them, both in preparation for and during any state court judicial proceedings, litigation in any other courts, including the United States District Courts, the United States Courts of Appeals, and the U.S. Supreme Court, is essential in the conduct of litigation regarding the State Litigations. The purpose of this Agreement is to ensure that the privileged and/or confidential information shared will be used in preparing for and developing effective legal positions, including development of litigation strategy and the preparation of factual analysis, expert analysis, discovery (including taking and defending depositions), legal briefs and other court filings, and other documents among the Parties, and that this confidential and/or privileged 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, and communications, whether oral or written, electronic or paper, or otherwise. "Information" includes, but is not limited to, documents, materials, and communications exchanged among the Parties' staff, management, consultants, experts, clients, and/or counsel.

¹ "Information," and "confidential and/or privileged information" as used in this Agreement, are defined below.

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 preparing for and conducting administrative or judicial actions regarding State Litigations, including but not limited to the common interest privilege recognized in cases such as Delaware Rule of Evidence 502(b)(3) and in cases such as *In re Quest Software Inc. Shareholders Litigation*, 2013 WL 3356034 (Del. Ch. 2013); *Rembrandt Technologies, L.P. v. Harris Corp.*, 2009 WL 402332 (Del. Super. 2009); *Schaeffler v. United States*, 806 F.3d 34, 40 (2d Cir. 2015); *Minebea Co. v. Pabst*, 228 F.R.D. 13, 15 (D.D.C. 2005); *Ken’s Foods, Inc. v. Ken’s Steak House, Inc.*, 213 F.R.D. 89, 93-94 (D. Mass. 2002); *Hanover Ins. Co. v. Rapo & Jepsen Ins. Serv., Inc.*, 870 N.E.2d 1105, 1109 (Mass. 2007); *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910, 922 (8th Cir. 1997); *Schmitt v. Emery*, 2 N.W.2d 413, 417 (Minn. 1942) (overruled on other grounds); *Hybrid Athletics, LLC v. Hylete, Inc.* 2019 WL 6317953 (D. Conn. 2019); *see also* Del. R. of Evid. 502(b)(3); 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 absence of 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 regarding the matters covered by this Agreement shall also be deemed confidential and/or privileged information and protected under this Agreement.

6. **Confidentiality Statement.** The Parties agree to protect all information exchanged among them related to the matters covered by the Agreement (hereinafter “Protected Information”) regardless of whether such information 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. 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 paragraphs 7 and 8 of this Agreement. Any inadvertent disclosure of Protected Information that is inconsistent with this Agreement shall not waive the confidentiality of such Protected Information.

7. **Use of Protected Information.** Protected Information is to be used by the recipient of the information solely in connection with preparing and presenting the Parties' positions regarding the matters covered by the Agreement. 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 (i) required by applicable law, and (ii) not otherwise covered by paragraph 8 below. In the event that the relevant Party determines that disclosure is required by applicable law and not otherwise covered by paragraph 8, it agrees to use its best efforts, as permitted by applicable law, to give all Parties to this Agreement ten working days' notice prior to disclosure. Notwithstanding the foregoing, any Party may release, disclose, discuss, or make available Protected Information to or with its staff, management, consultants, experts, and counsel who have a need for such information as part of their responsibilities associated with the matters covered by this Agreement, provided that any such persons not employed by a Party are notified of and acknowledge in writing their obligation to keep such Protected Information confidential pursuant to this Agreement and the Party maintains a copy of all such acknowledgements.

8. **Requests for Release and/or Disclosure.** The Parties agree and acknowledge that each Party is subject to freedom of information or public records laws, and that nothing in this Agreement is intended to alter or limit the disclosure requirements of such laws. A Party who receives a request from a non-party to release, disclose, discuss, or obtain access to Protected Information (whether by way of a subpoena, discovery request, or request under any federal or state statute), and who determines that records containing Protected Information (whether redacted or not) will be released pursuant thereto, shall notify the other Parties of such request and determination prior to the date on which a response to such a request is due, with the goal of providing such notification at least ten calendar days before the response deadline. 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 that the Party receiving the request determines are relevant and applicable 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 matters covered by the Agreement.

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 and that money damages would be

inadequate. 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 other entities to this Agreement shall not be considered a modification and shall be accomplished, subject to the agreement of all parties, 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. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, in whole or in part, such determination shall not affect the validity of any other provision of this Agreement.

14. **Termination.** Any Party to this Agreement may terminate its participation in the 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.

15. **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 which is not related to the subject matter of this Agreement, 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 such other legal matter or proceeding.

16. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute an original hereof, and all counterparts so executed shall collectively constitute one binding agreement of the Parties, notwithstanding that all Parties are not signatory to the same counterpart. Counsel signing this Agreement on behalf of the named Party or Parties it represents certifies that it has the authority to execute this Agreement on behalf of said Party or Parties, that Counsel has fully informed the Party or Parties it represents of the terms of this Agreement, and that its party-clients have agreed to be bound by all of the terms of this Agreement.

17. **Effective Date and Prior Disclosure.** This written agreement becomes effective upon execution by the Parties. The Agreement then becomes effective as to each subsequently signing Party as of the date that each subsequently signing Party executes the Agreement or the Addendum. However, the Parties agree that all privileged, protected, or immune information previously disclosed by one Party to another Party in connection with the covered matters is subject to this Agreement.

It is so AGREED.

STATE OF CONNECTICUT

ATTORNEY GENERAL WILLIAM TONG

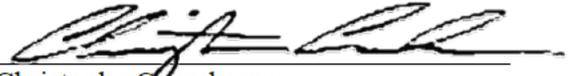


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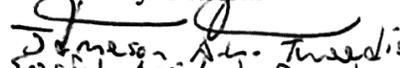
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ADDENDUM

**TO COMMON INTEREST AGREEMENT REGARDING THE SHARING OF
INFORMATION RELATED TO STATE LAWSUITS AGAINST FOSSIL FUEL
COMPANIES FOR DECEPTIVE ACTS AND PRACTICES AND OTHER STATE LAW
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_____, by and through _____,
desires to become a Party to the attached Agreement.

Now, therefore, counsel for _____, 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: _____

NAME OF PARTY:

By: _____

Name:

Title:

Address: