

Annex VII

NON-DISCLOSURE AGREEMENT

Framework Contract ECHA/2016/400

THIS AGREEMENT becomes effective on the last date of signature by one of the parties.

BETWEEN:

The European Chemicals Agency in Helsinki, ECHA (hereinafter called "the Agency"), which is represented for the purposes of the signature of this Agreement by **[complete], Executive Director,**

And

.....

[official name in full]

[*official legal form*]

[*statutory registration number*]

[official address in full]

[*VAT registration number*]

[(hereinafter referred to as 'the contractor'),][represented for the purposes of the signature of this framework contract by [forename, surname and function,]]

[The parties¹ identified above and hereinafter collectively referred to as the 'the contractor' shall be jointly and severally liable vis-à-vis the Agency for the performance of this agreement.]

RELATING TO the disclosure of confidential information exchanged during the implementation of Framework Contract ECHA/2016/400 for the provision of IT infrastructure services to the European Chemicals Agency in Helsinki (hereinafter called "the FWC").

¹ Insert full details of partners

WHEREAS:

- A) The Agency is obliged due to the nature of its mandate to maintain the highest standards of security and confidentiality in the performance of its legal duties and obligations under:
- the Regulation 2006/1907/EC concerning the registration, evaluation, authorisation and restriction of chemicals (REACH);
 - the Biocidal Product Regulation (BPR, Regulation (EU) 528/2012) concerning the placing on the market and use of biocidal products;
 - the Prior Informed Consent Regulation (PIC, Regulation (EU) 649/2012) which administers the import and export of certain hazardous chemicals;
- B) The Agency shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data pursuant Regulation (EC) No 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the 'Community institutions and bodies' and on the free movement of such data (OJ L 8, 12.01.2001, p. 11). Personal data processed under the FWC shall be confidential within the meaning of Regulation (EC) No 45/2001 of 18 December 2000.
- C) Each party possesses valuable information, technical knowledge, experience and data of a secret and confidential nature, which may be regarded as assets of scientific, business and commercial value;
- D) Without prejudice to Article I.10 of the FWC, in the context of the implementation of the FWC, both parties mutually agree to disclose such information to the other on the condition that the other party does not disclose the same to any third party, nor make use thereof in any manner except as set out below;
- E) Prior to the signature of the FWC, the contractor is required to sign this Non-Disclosure Agreement (NDA) with the Agency. The contractor may use the information received from the Agency in the context of the request for services of ECHA and the subsequent implementation of the FWC solely for the purpose of providing the services agreed upon in the FWC.

NOW IT IS HEREBY AGREED as follows:

1 CONFIDENTIAL INFORMATION

- 1.1 In this Agreement "Confidential Information" shall mean any and all information, know-how or data relating to the FWC which is disclosed or given by either party to the other party either directly or indirectly, whether in writing or by any other means, that is marked as confidential.
- 1.2 The information mentioned in E) above is considered by the Agency as confidential.

2 UNDERTAKING

- 2.1 In consideration of the disclosure of Confidential Information by either party to the other, each party undertakes to treat as strictly confidential and not divulge to any third party any of the Confidential Information disclosed by the other and not to make use of any such Confidential Information, without the other party's prior written consent.
- 2.2 In the event of either party visiting the establishment of the other, the visiting party undertakes that any further Confidential Information which may come to its knowledge as a result of such visit, shall be kept strictly confidential and will not be divulged to any third party and will not be made use of in any way by the visiting party without the other's prior written consent.

3 LIMITATION

The obligations of confidence and non-use herein shall not apply to any part of the Confidential Information which:

- 3.1 Was lawfully in the recipient party's possession at the time the information was received, without any restrictions as to confidentiality;
- 3.2 Was available to the public before that date or was in the public domain;
- 3.3 Becomes available to the public or to the public domain after that date otherwise than as a result of an act or default of the recipient;
- 3.4 Is received by the recipient from a third party not bound to the disclosing party by any obligation of secrecy;
- 3.5 Is independently developed by the recipient after that date without using the Confidential Information, as evidenced by written record;
- 3.6 Is to be disclosed pursuant to a requirement of law or court order, by which the recipient is bound to disclose the information in whole or in part, so long as the party required disclosing the information provides the other party with timely prior notice of such a requirement.

4 PERSONNEL'S OBLIGATIONS

Each party shall ensure that any of their personnel (employees or agents) and of the personnel of their contractors or sub-contractors, who receive the Confidential Information are both advised of and agree to be bound by the confidentiality and use terms of this Agreement.

5 TERM

This Agreement shall remain in effect for a period of fifteen (15) years from the date on which the agreement becomes effective.

Upon completion of the services under the FWC, if the Contractor possesses confidential information as mentioned in Article 1 of this NDA the Contractor shall provide ECHA with a formal statement informing that all the confidential data that has been temporarily stored in their infrastructure has been duly deleted and destroyed from any of the media engaged during the FWC implementation (i.e. storage areas, disks, tapes, CD, DVD, back-up devices, etc.).

6 GOVERNING LAW

6.1 This Agreement shall be subject to Finnish law.

6.2 Any dispute, controversy or claim between the parties resulting from the interpretation or application of the Agreement which cannot be settled amicably shall be settled by adjudication before the competent courts of Helsinki.

Signed by:

For and on behalf of ECHA

[complete]

Executive Director

Date

Signed by:

For and on behalf of *Company name*

Name

Function

Date

For and on behalf of *Company name*

Name

Function

Date