

PRIVILEGED & CONFIDENTIAL

**COMMON INTEREST AGREEMENT REGARDING SHARING OF INFORMATION
IN DEFENSE OF THE CLIMATE CHANGE SUPERFUND ACT**

The parties to this common interest agreement (the “Agreement”), specifically the State of New York, West Harlem Environmental Action, Inc., Black Farmers United, Catskill Mountainkeeper, Citizens Campaign for the Environment, and any entity that joins this Agreement by executing the attached Addendum and circulating a copy to all Parties, as set forth in Paragraph 10 (hereinafter the “Parties”), are engaged in litigation, or intend to engage in litigation, to defend New York State’s Climate Change Superfund Act, L 2024, ch 679, approved and effective December 26, 2024. The Climate Change Superfund Act is currently being challenged in *State of West Virginia et al. v Letitia James et al.*, NDNY, No. 1:25-cv-168 (BKS/DJS) and *Chamber of Commerce of the United States of America et al. v Letitia James et al.*, SDNY, No. 1:25-cv-01738-MKV. The Parties expect to work together to coordinate on litigation strategy and make legal arguments in defense of the Climate Change Superfund Act in the *State of West Virginia* and *Chamber of Commerce* cases.

The Parties to this Agreement have a common interest in the defense of the Climate Change Superfund Act in the *State of West Virginia* and *Chamber of Commerce* cases, to ensure that the Climate Change Superfund Act is upheld. The Parties wish to pursue their common interest concerning the defense of the Climate Change Superfund Act, while avoiding any waiver of the confidentiality of privileged materials. The Parties may share information for the purpose of advancing their common interest, and agree 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.

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 with respect to the defense of the Climate Change Superfund Act. 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 the preparation of a litigation strategy and legal arguments in defense of the Climate Change Superfund Act.

Therefore, the Parties agree as follows:

1. **Parties.** The Parties to this Agreement are set forth above. Each Party shall advise their respective staff, management, consultants, experts, and counsel, that material exchanged pursuant to this Agreement is confidential and subject to the terms of this Agreement, and such persons

¹ “Information,” as used in this Agreement, is defined below.

shall agree to abide by those terms. Pursuant to Paragraph 10 below, additional Parties, through their counsel, may join this Agreement and become Parties by executing the appropriate version of the attached Addendum, circulating a copy to all Parties and after receiving the approval of the existing Parties in writing or by email within five (5) days of receipt.

2. **Purpose.** The Parties share common interests and goals with respect to *State of West Virginia et al. v Letitia James et al.*, NDNY, No. 1:25-cv-168 (BKS/DJS) and *Chamber of Commerce of the United States of America et al. v Letitia James et al.*, SDNY, No. 1:25-cv-01738-MKV and potential future litigation challenging the validity of the Climate Change Superfund Act. The Parties recognize that the sharing and disclosure of privileged and confidential information among them is in their mutual best interests. The purpose of this common interest Agreement is to ensure that the privileged and/or confidential information shared will be used in preparing an effective litigation strategy, legal arguments and legal briefs, 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 shall be preserved and not waived. The Parties would not disclose to any of the other Parties such privileged and/or confidential information but for their mutual interests in defense of the Climate Change Superfund Act.

3. **“Confidential and/or privileged information”** is information provided by or exchanged between the Parties, including, but not limited to, documents, materials, information, and communications exchanged among the Parties’ staff, management, consultants, experts, and/or counsel, 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 pursuant to the Common Interest Doctrine.²

4. 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 defense of the Climate Change Superfund Act.

5. **Non-Disclosure.** The Parties agree to protect all communications and documents exchanged among them related to the defense of the Climate Change Superfund Act, regardless of whether such communications or document exchanges occurred before or after the effective date

² “...[W]here two or more clients *separately* retain counsel to advise them on matters of common legal interest, the common interest exception allows them to shield from disclosure certain attorney-client communications that are revealed to one another for the purpose of furthering a common legal interest.” [Ambac Assurance Corp. v. Countrywide Home Loans, Inc.](#), 2016 NY Slip Op 04439, ¶¶ 4-5, 27 N.Y.3d 616, 625, 36 N.Y.S.3d 838, 843, 57 N.E.3d 30, 35

of this Agreement, as confidential and privileged to the extent allowable under applicable law, based upon all applicable privileges including, but not limited to, the attorney-client privilege, attorney work-product protections, common interest privilege, joint defense privilege, and governmental privileges including, but not limited to, the deliberative process privilege (hereinafter “**Protected Information**”). Protected Information (1) shall not be released, disclosed, discussed or made available to or with any persons or entities who are not Parties to this Agreement, and (2) shall not be used for any purpose other than to further the Parties’ common interests described herein, except as provided in Paragraphs 6 and 7 *infra*. Any inadvertent disclosure of Protected Information that is inconsistent with this Agreement shall not waive the confidentiality, protection, or privilege of such Protected Information. Any Party that inadvertently discloses any Protected Information shall immediately, upon learning of the inadvertent disclosure: (a) advise the other Parties; and (b) request in writing the return or destruction of the Protected Information inadvertently disclosed.

6. **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 defense of the Climate Change Superfund Act. Protected Information may not be shared by a recipient with any non-party to this Agreement without prior written consent of 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 7, *infra*, concerning Requests for Release and/or Disclosure. If the relevant Party determines that disclosure is required by applicable law and not otherwise covered by Paragraph 7, *infra*, then it agrees to use its best efforts, as permitted by applicable law, to provide notice at least five (5) business days in advance, to all Parties to this Agreement prior to disclosure.

7. **Requests for Release and/or Disclosure.** The Parties agree and acknowledge that each Party may be 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 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 to, as permitted by applicable law, to provide notice, at least five (5) business days prior to the date on which response to such a request is due, to all Parties to the 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 that the Party receiving the request determines are relevant and applicable to the disclosure of such information.

8. **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 defense of the Climate Change Superfund Act.

9. **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.

10. **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, other government entities, or other organizations as parties to this Agreement shall not be considered a modification and shall be accomplished by having such prospective party execute the attached Addendum and provide a copy to all Parties, provided however, that if any existing Party to this Agreement provides written notice (including by email) of its objection within five (5) business days of receipt of notice of the prospective party's execution of such Addendum, the execution of the Addendum by the prospective party shall be considered a Modification requiring the signature of all Parties in order to become effective.

11. **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.

12. **Termination.** Any Party to this Agreement may terminate 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 in accordance with applicable records retention policies, consistent with applicable Rules of Professional Conduct.

13. **Nondisqualification Agreement.** The Parties agree that no Party or counsel for a Party to this Agreement may attempt to use, in any other legal proceeding or case that 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 joint effort as a reason to disqualify any other lawyer or law firm acting as counsel in the matter described in this Agreement from acting as counsel to a Party in any other matter.

14. **Disclosure of Potential Conflicts/Change in Law.** The Parties agree to promptly disclose to each other if their respective positions relating to defense of the Climate Change Superfund Act may result in a material conflict. Parties also agree to promptly disclose to each other if they determine that they cannot maintain the non-disclosure obligations in Paragraph 5, *supra*, due to a change in law, including, but not limited to, newly enacted legislation, regulation(s), or rule(s), a new interpretation of law, a court decision, or other legally significant development. In the event that such a conflict in position or change in law arises, the notifying Party agrees to promptly terminate this Agreement pursuant to Paragraph 12, *supra*, in conjunction with disclosure.

15. **Counterparts.** This Agreement may be executed in counterparts, including electronically, 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 represent, certifies that it has the authority to execute this Agreement on behalf of said Party or Parties.

16. **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.

17. **Effective Date.** This Agreement becomes effective upon its execution by at least two Parties (whether in a signature block or execution of the attached Addendum), and shall, once executed, supersede any prior confidentiality agreements among the Parties on the same subject. It may be executed in counterparts, each of which shall be deemed an original for all purposes. All of the Parties' communications with each other concerning the defense of the Climate Change Superfund Act made prior to execution of this Agreement are fully subject to this Agreement. All additional parties added pursuant to Paragraph 10, *supra*, shall be effective on the 6th day after execution.

18. **Successors and Assigns.** This Agreement is binding upon, and inures to the benefit of, the Parties and their respective successors and assigns.

19. **Substitution of Parties or Counsel.** This Agreement shall automatically apply to substitute, additional, or associated counsel who may appear on behalf of a Party. This Agreement shall not be subject to abrogation by any heir, assign, or other successor in interest to any Party hereto. Nor shall such heir, assign, or successor in interest waive any privilege or doctrine with regard to information shared pursuant to this Agreement by, or among, the undersigned counsel and their respective clients. There are no third-party beneficiaries of this Agreement.

20. **Notification.** All notices, in writing or by e-mail, shall be to the signed Parties and/or their designee(s).

It is so AGREED.

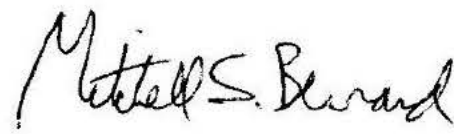
Dated: 04/16/2025

STATE OF NEW YORK



AYAH E. BADRAN
Assistant Attorney General
Office of the Attorney General
Environmental Protection Bureau
The Capitol
Albany, NY 12224
Tel. (518) 776-2394
Ayah.Badran@ag.ny.gov
Copy to OGC

Dated: April 16, 2025



Mitchell S. Bernard
Natural Resources Defense Council, Inc.
40 West 20th Street, 11th Floor
New York, NY 10011
mbernard@nrdc.org



Michelle Wu
Natural Resources Defense Council, Inc.
40 West 20th Street, 11th Floor
New York, NY 10011
(646) 889-1489
michellewu@nrdc.org



Dror Ladin
Earthjustice
48 Wall Street, 15th Floor
New York, NY 10005
(917) 410-8701
dladin@earthjustice.org

*Counsel for West Harlem
Environmental Action, Inc., Black
Farmers United, Catskill
Mountainkeeper, Citizens Campaign
for the Environment*

ADDENDUM: PARTICIPATION BY ADDITIONAL PARTIES IN COMMON INTEREST AGREEMENT

_____, by and through _____, desires to become a Party to the attached Agreement.

Now, therefore, counsel for _____, agrees to the terms of the Agreement (including Paragraph 10 thereof concerning modifications thereof) and agrees to deliver a copy of this executed Addendum to all Parties to the Agreement within five business days. Circulation of an electronic copy of the executed Addendum by e-mail to all known Parties to the Agreement shall satisfy this requirement.

DATED: _____

NAME OF PARTY:

By: _____
Name:
Title: