

## **Attachment D: Confidentiality Agreement**

**Introduction:** NRCS, partners, and participating producers (including landowners) have expectations with respect to privacy and information sharing related to RCPP projects. Ultimately however, NRCS retains responsibility and authority to ensure that producer information is only shared when adequate measures are in place to ensure compliance with applicable Federal privacy laws.

### **Attachment D Overview: Confidentiality Agreement Requirements**

All RCPP projects include information sharing, and most include some sharing of protected producer information as outlined in section D1 below (and discussed in greater detail in section D2). All RCPP partnership agreements must include an executed Privacy Agreement (see section D2) to safeguard protected producer information, unless NRCS provides a waiver to this requirement (see section D3).

### **Intended Uses of this document:**

This document is the confidentiality agreement template and only contains sections D1 and D2; it is to be used to support projects with lead partners prepared to execute a standard confidentiality agreement (without any edits to this template) or in projects where lead partner is requesting specific variance(s) from the standard confidentiality agreement language. If instead a waiver to confidentiality agreement requirements will be utilized with or without producer release forms, and more limited information sharing, please use the waiver template instead.

## D1. Information Sharing in this Project:

Typical information sharing needs associated with RCPP projects are outlined below, and further informed by specific responsibilities of parties to this agreement, including but not limited to project deliverables, outcomes and reporting responsibilities documented in the programmatic agreement and associated attachments and exhibits.

**Partner to Provide** Information to NRCS consistent with terms of the programmatic partnership agreement:

Partner(s) shall provide the following information to support this project:

- ✓ Detailed data on partner contributions adequately documenting completion of contribution deliverables as determined by NRCS. Documentation requirement shall include elements included in contribution deliverables as well as supporting information such as names and locations of benefitted producers as determined necessary by NRCS.
- ✓ Other reporting requirements and outcomes analysis as outlined in elsewhere in this agreement (see Attachments C and E respectively).

Additionally, where supported by executed Privacy Agreement(s) from the Partner(s) and/or voluntary executed written producer release(s) from affected producer(s), Partner(s) may collect protected producer information including to support producer applications for RCPP assistance or other project purposes. Information collected under this provision shall be limited to items needed to support the project:

- Complete contact and locational information for potential program (producer) participants, applicants and/or producer contract holders
- Applicable application data received from applicants
- Applicable contract data related to producer participants
- Plan and or Resource Inventory information of potential or actual participants

**NRCS to provide Information** to Partner consistent with terms of the programmatic partnership agreement:

NRCS shall provide the following information to support this project:

- ✓ aggregated and or non-protected producer application and award data for producer contract and supplemental agreements to support partner analysis responsibilities in this RCPP project
- ✓ annual reports on NRCS technical assistance expenditures.

**Additionally**, where supported by executed Privacy Agreement(s) from the Partner(s) and/or voluntary executed written producer release(s) from affected producer(s), NRCS may provide protected privacy information including those items listed below. Information shared under this provision shall be limited to items needed to support the project:

- Complete contact and locational information for potential program (producer) participants, applicants and/or producer contract holders
- Applicable application data received from applicants
- Applicable contract data related to producer participants
- Plan and or Resource Inventory information of potential or actual participants

## **D2. Section 1619 Agreement**

### **I. Purpose**

- a. The Programmatic Partnership Agreement to which this 1619 Section Agreement (Part D2) is attached is an agreement to provide *technical and financial* assistance under the Regional Conservation Partnership Program.
- b. To provide this assistance, the agency has determined that Lead Partner requires access to information provided by one or more agricultural producers or owners of agricultural land, or related geospatial information, (“protected information”) as described in subsection (b)(2) of Sec. 1619 of the Food, Conservation and Energy Act of 2008, (7 U.S.C. § 8791) (Sec. 1619). When adopted and in force, Part D2 authorizes disclosure of such information as necessary to provide such assistance by Lead Partner, as a cooperating entity with a USDA program.

### **II. Description of Assistance to be provided under USDA program**

- a. The cooperating entity will assist in the delivery of the identified program(s) as described in the Programmatic Partnership Agreement and related attachments, including but not limited to the Table of Deliverables and Section D1 (above) of this attachment.

### **III. Description of Information Required to Provide Assistance**

- a. The parties agree that disclosure of the following protected information to the cooperating entity may be necessary to adequately and efficiently provide the assistance described in the Programmatic Partnership Agreement and related attachments, including but not limited to the Table of Deliverables and Section D1 (above) of this attachment.

### **IV. Use of the Protected Information**

- a. The cooperating entity will use the protected information as follows: to support delivery of RCPP assistance to interested producers, applications or RCPP awardees (including producer and supplemental agreement holders).

### **V. Requirements for Authorized Disclosure of Protected Information to Cooperating Entity**

- a. USDA is prohibited from releasing protected information by Sec. 1619, unless permitted to disclose as provided in subparagraphs (b)(3) and (4). Specifically, subparagraph (b)(3)(A) describes the circumstances under which the disclosure of protected information is permitted to a person or agency working in cooperation with the USDA. Compliance with the terms of this MOU supports the determination that the cooperating entity meets the requirements of this statute. If applicable, it has also been determined that release of this information is authorized as a routine use under the applicable agency System of Records Notice.

## **VI. System of Records Routine Use**

a. If the information is maintained in a system of records as defined under the Privacy Act, it may only be shared as provided in 5 U.S.C. 552a(b). Typically, this requires that the information be covered by a routine use described in the applicable System of Records Notice (SORN) for the system of records. NRCS maintains producer records in Landowner, Operator, Producer, Cooperator, or Participant Files in field offices and various software platforms (including but not limited to Conservation Desktop, Protracts, and the National Easement Staging Tool (NEST)); these records may be shared per terms of this Part as required to support RCPP project implementation.

## **VII. Responsibilities**

a. The agency agrees to:

1. Provide the protected data that has been approved for disclosure under Part D2 and the associated agreement, as described above, or authorize the collection of such information directly from the producer or owner of agricultural land; and
2. Deliver protected data to the cooperating entity in a timely and efficient manner.

b. The cooperating entity agrees:

1. Not to disclose the protected information described above to anyone—

A. not covered by this agreement; and

B. providing technical or financial assistance under a USDA program, except as provided below.

2. To use the protected data only to perform work that is directly connected to providing *technical and financial* assistance with respect to this RCPP Project. Use of the protected data to perform work that is not directly connected to the Regional Conservation Partnership Program (RCPP) is expressly prohibited.

3. Not to transfer protected information to any other individual or organization that is not directly covered by this MOU.

4. To internally restrict access to the protected data to only those individuals within the organization that have a demonstrated need to know the protected data in order to perform work on the this RCPP project.

5. To notify about their obligation to abide by the terms of this MOU:

A. all current members or staff of the organization who will have access to the protected data prior to providing such access;

B. any new member or staff of the organization if that individual will be provided access to the protected data; and

C. all members or staff with access to the protected data at least twice annually to remind them of this continuing obligation.

c. The cooperating entity acknowledges the following binding restrictions:

1. Data provided in support of Part D2 is protected from unauthorized use and unauthorized disclosure pursuant to the administrative and/or civil remedies/criminal penalties as identified in applicable Federal statutes including the Privacy Act of 1974 (5 U.S.C. 552a - as amended), the Freedom of Information Act (5 U.S.C. § 552 - as amended), Section 1244 of the Food Security Act of 1985 (16 U.S.C. 3844), and Section 1619 of the Food, Conservation and Energy Act of 2008 (7 U.S.C. 8791).

2. Unauthorized use/unauthorized disclosure of the protected data may be a violation of applicable Federal statutes. The cooperating entity may be held contractually, administratively, civilly, and/or criminally liable if the cooperating entity discloses the protected data in violation of the applicable Federal statutes.

3. The provisions in Sec. 1619 are continuing obligations. Even when *Lead Partner* is no longer a cooperating entity, (whether through expiration or termination of the agreement) or when individuals currently affiliated with the cooperating entity leave the organization, every person having been provided access to the protected data shall continue to be legally bound to comply with the provisions in Sec. 1619.

4. Protected information provided under this agreement cannot be released under any state law or at the order of any state official or court, including under the state's "sunshine law," "open records act," and/or version of the Freedom of Information Act. If at the time of this MOU, or at any subsequent time, any state law is interpreted to be inconsistent with this requirement, or any state official orders the release of protected information under this MOU, the cooperating entity will immediately notify the agency.

### **VIII. Amendments**

a. This agreement may be amended at any time by the mutual written agreement of the parties.

### **IX. Termination and Expiration**

a. Effective Period

1. Part D2 will be in effect on the date of the final signature and shall continue until the end of the Programmatic Partnership Agreement to which is it attached.

2. Part D2 will be reviewed each year until the expiration date of the Programmatic Partnership Agreement.

3. Should the need for this agreement continue beyond the identified effective period, this agreement shall be reviewed, updated as necessary, and revalidated prior to the identified expiration date. The extension of this agreement shall be documented in an appropriate addendum or new privacy agreement that is signed by both parties.

b. This Agreement may be terminated:

1. Immediately by the agency if:
  - A. it believes that the cooperating entity has disclosed protected data in violation of Sec. 1619;
  - B. it believes that the cooperating entity has used the protected data for any purpose that is not directly connected to the (replace with the name of the USDA program); or
  - C. the cooperating entity is no longer a USDA Cooperator requiring access to data protected by Sec. 1619.
2. Immediately at the request of the cooperating entity. If possible, notice of at least thirty calendar days shall be provided to the agency prior to the date of termination for the Memorandum.
3. At any time by the mutual written agreement of the agency and the cooperating entity or independently by the agency or the cooperating entity with a 30 calendar day written notice between both parties.

If this agreement is terminated, potential impacts to RCPP project will be evaluated and NRCS will work collaborative with Lead Partner to maintain viability of this the partnership agreement to which Part D2 is attached, guided by RCPP policy and terms of Part D as a whole.

c. Use of the protected data for any purpose is expressly prohibited when the cooperating entity is no longer a cooperating entity. When Lead Partner is no longer a cooperating entity, any protected data provided under this MOU must be immediately destroyed. Lead Partner shall provide to the agency written certification that the protected data (paper and/or electronic copy) has been properly destroyed and/or removed from any electronic storage media.

**Signature of the cooperating entity and the Date Signed**

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Name, Title	Date
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**Signature of the [Natural Resources Conservation Service](#) Approving Official and the Date Sign**

**After reviewing this agreement, I have determined that the protected information will not be subsequently disclosed, and that it meets the requirements for an authorized disclosure under Section 1619 of the Food, Conservation and Energy Act of 2008.**

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Name, Title	Date
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**If any variance from template above is request, USDA FPAC Privacy Officer Signature is required.**

**Signature of the Farm Production and Conservation Privacy Officer and the Date Signed**

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Name, Title

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Date



7 U.S.C. § 8791 of the Food, Conservation and Energy Act of 2008

**Section 1619 (7 U.S. C. § 8791). INFORMATION GATHERING.**

**(a) GEOSPATIAL SYSTEMS.**—The Secretary shall ensure that all the geospatial data of the agencies of the Department of Agriculture are portable and standardized.

**(b) LIMITATION ON DISCLOSURES.**—

(1) **DEFINITION OF AGRICULTURAL OPERATION.**—In this subsection, the term “agricultural operation” includes the production and marketing of agricultural commodities and livestock.

(2) **PROHIBITION.**—Except as provided in paragraphs (3) and (4), the Secretary, any officer or employee of the Department of Agriculture, or any contractor or cooperator of the Department, shall not disclose—

(A) information provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming or conservation practices, or the land itself, in order to participate in programs of the Department; or

(B) geospatial information otherwise maintained by the Secretary about agricultural land or operations for which information described in subparagraph (A) is provided.

(3) **AUTHORIZED DISCLOSURES.**—

(A) **LIMITED RELEASE OF INFORMATION.**—If the Secretary determines that the information described in paragraph (2) will not be subsequently disclosed except in accordance with paragraph (4), the Secretary may release or disclose the information to a person or Federal, State, local, or tribal agency working in cooperation with the Secretary in any Department program—

(i) when providing technical or financial assistance with respect to the agricultural operation, agricultural land, or farming or conservation practices; or

(ii) when responding to a disease or pest threat to agricultural operations, if the Secretary determines that a threat to agricultural operations exists and the disclosure of information to a person or cooperating government entity is necessary to assist the Secretary in responding to the disease or pest threat as authorized by law.