

## QUALIFIED PERSON PROTECTIVE AGREEMENT

WHEREAS, Section 201-13.8, Hawaii Revised Statutes ("HRS") provides that if information collected by the Department of Business, Economic Development, and Tourism (including its relevant energy and/or statistical analysis divisions, "DBEDT" or "Department") could place businesses at a competitive disadvantage if disclosed, or if disclosure of such information would result in the impairment of DBEDT's ability to obtain such information and the frustration of a legitimate government function, then DBEDT may withhold such competitively sensitive information;

WHEREAS, under Section 486J-5.5, DBEDT is required to establish an energy data collection program that meets the requirements of the government and industry while promoting sound policy making, energy planning, energy assurance planning, and energy security;

WHEREAS, under Section 486J-3, HRS, every refiner and distributor ("Reporting Entity" or "Reporting Entities") shall file monthly with the Department statements containing certain volumetric fuel data which by statute are deemed confidential and exempt from public disclosure;

WHEREAS, under Section 486J-6(a), HRS, confidential commercial information provided pursuant to section 486J-3 is exempt from public disclosure under chapter 92F;

WHEREAS, under HRS Section 486J-6(c), unless otherwise provided by law, with respect to data that the Department obtains or is provided, no employee of the receiving organization may do any of the following: (1) use the information furnished or obtained for any purpose other than the purposes for which it is supplied; (2) make any publication whereby the data furnished by any Reporting Entity can be identified; or (3) permit any person other than the receiving organization to examine the individual reports or statements provided;

WHEREAS, DBEDT hereby sets forth with its Qualified Persons (as defined below) a set of procedures and provisions pertaining to the use and disclosure of information considered to be confidential under section 486J-3 and 486J-6, HRS (hereinafter individually and collectively "Confidential Information");

NOW, THEREFORE, IT IS HEREBY AGREED, that the Undersigned enters into this Qualified Person Protective Agreement ("QPPA") to keep information reported pursuant to Section 486J-3, HRS, confidential, as follows:

### TERMS OF THE QPPA

1. This QPPA governs the classification, acquisition, and use of Confidential Information produced pursuant to Section 486J-3, HRS.
2. Except as otherwise provided below, any person obtaining Confidential Information directly or indirectly from someone under circumstances in which the ultimate source of the

information was from the reports required under Section 486J-3, HRS, shall be subject to the terms and conditions of this QPPA.

3. [RESERVED]

4. All information filed with the Department pursuant to section 486J-3(1) - (4), HRS, shall be protected against disclosure to a non-Qualified Person pursuant to the terms of this QPPA, unless such information is declassified by the relevant Reporting Entity, or permission to disclose the information to such non-Qualified Person is granted by the relevant Reporting Entity, as provided in paragraph 8 below.

5. All Confidential Information shall be subject to the terms of this QPPA, and shall be treated by all Qualified Persons (as defined in paragraph 7 below) as constituting Confidential Information. Any notes, summaries, abstracts, or analyses that are prepared by counsel, experts, or other Qualified Persons, and that reflect any of the underlying Confidential Information, shall also be subject to the terms of this QPPA.

6. Except as provided in paragraph 8 below, Confidential Information shall not be made available or disclosed to any person who is not a "Qualified Person" as defined in paragraph 7 below.

7. With respect to any Confidential Information, the term "Qualified Person" or "Qualified Persons", as used in this QPPA, means DBEDT and its staff, counsel (including employees directly employed by such counsel), and consultants retained by DBEDT who have executed this QPPA. Such terms would also include the Hawaii Public Utilities Commission, its staff, counsel, and consultants; the Department of the Attorney General, its employees, and special deputies; and the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs, State of Hawaii, its staff, counsel, and consultants that are involved in the energy data collection process and who have executed this QPPA.

8. When a Qualified Person wishes to disclose Confidential Information to a non-Qualified Person, the Qualified Person must request permission from the Reporting Entity who filed the Confidential Information. The request shall identify the non-Qualified Person to whom disclosure is desired; disclose any past, present, or anticipated affiliation between the Qualified Person and the non-Qualified Person; specify the exact information to be disclosed; and state the reasons for the requested disclosure. If permission is granted by the relevant Reporting Entity, disclosure of the Confidential Information shall be made to such non-Qualified Person in the same manner as provided for Qualified Persons in paragraph 9 below. In the event that Confidential Information is for any reason produced or disclosed to a non-Qualified Person without the permission of the Reporting Entity, the Qualified Person responsible for the unauthorized production or disclosure shall take all steps necessary to (1) protect the Confidential Information from further unauthorized production or disclosure, and (2) recall and retrieve the Confidential Information from all non-Qualified Persons or holders of the Confidential Information, and return the Confidential Information to the Reporting Entity.

9. Prior to disclosing Confidential Information to a Qualified Person, the Qualified Person shall read a copy of this QPPA, execute a copy of this QPPA, and deliver the executed copy to DBEDT. DBEDT shall provide a listing of those Qualified Persons who have signed the QPPA and have been provided access to the confidential data to a designated representative of each Reporting Entity that requests the same, quarterly by e-mail.

10. Any Confidential Information obtained under this QPPA shall be used solely in connection with the purposes set forth in Section 486J-3 and 486J-5.5, HRS, as amended, and shall not be used for any other purpose, including business, governmental or commercial purposes, or in any other administrative or judicial proceeding, except as provided in paragraph 11.

11. Any Confidential Information obtained under this QPPA may be used by DBEDT and its staff and counsel, where the intended use of such Confidential Information is for the purpose of assisting DBEDT in fulfilling its statutory duties and responsibilities under Chapters 486J, 125C, 196, and 201, HRS, as amended. The Confidential Information shall continue to be treated as confidential until the protection conferred by this QPPA is terminated by the Reporting Entity.

12. Confidential Information shall be retained in a locked cabinet dedicated to the storage of Confidential Information, or otherwise secured to ensure that access to and disclosure of the Confidential Information is limited to a Qualified Person. To the extent such Confidential Information is filed in electronic form, the data will be placed and saved in electronic files in DBEDT's secured network server accessible to only a Qualified Person for purposes of data processing and data management.

13. Confidential Information that is given to or filed with DBEDT or its staff in paper copy shall be separately bound and placed in a sealed envelope or other appropriate sealed container on which shall appear the following legend:

"THIS ENVELOPE IS SEALED PURSUANT TO PROTECTIVE AGREEMENT AND CONTAINS DOCUMENTS WITH CONFIDENTIAL INFORMATION. IT IS NOT TO BE OPENED OR THE CONTENTS OF THIS ENVELOPE DISPLAYED OR REVEALED EXCEPT TO QUALIFIED PERSONS AUTHORIZED TO INSPECT THE ENCLOSED DOCUMENTS."

14. Confidential Information shall not be reproduced or duplicated, except to make working copies. If a document contains information so sensitive that it should not be copied by anyone, the producing party shall have the following legend placed on each page of the document:

"Copying Prohibited"

15. If a court or other administrative agency requests, subpoenas, or orders production of Confidential Information that a party or person has obtained under this QPPA, that party or person shall immediately notify the Reporting Entity of the request, subpoena or order, and not produce that information until the Reporting Entity has had a reasonable opportunity to seek a court order or take such other action as it deems necessary to preclude production of its Confidential Information pursuant to the request, subpoena or order.

16. The confidentiality of the information produced pursuant to this QPPA shall be preserved until DBEDT, by written stipulation, waives the protection conferred by this QPPA after consultation and consent from the relevant Reporting Entity.

17. Except as provided in paragraph 18 below, within 90 days after DBEDT determines the Confidential Information is no longer required for purposes of section 486J-3, HRS, persons in possession of Confidential Information shall, at the relevant Reporting Entity's option, return or destroy all such materials and all copies, notes, tapes, papers, electronic files, or other medium containing, summarizing, excerpting, or otherwise embodying any Confidential Information. If the relevant Reporting Entity requests destruction, the person destroying the information shall certify its destruction to the Reporting Entity, indicating the name of the person destroying the Confidential Information, the method of destruction, when the Confidential Information was destroyed, and the identity of the specific materials, copies, notes, tapes, etc. containing Confidential Information that has been destroyed.

18. Confidential Information produced shall remain in the possession of DBEDT for the duration provided by applicable statutory authority.

As designated above, the undersigned Qualified Person states as follows:

- A. I, \_\_\_\_\_, have read, am familiar with, and agree to all the provisions hereinabove recited.
- B. I am employed, retained or assisting DBEDT, the Hawaii Public Utilities Commission, the Department of the Attorney General, and/or the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs, in performing its statutory duties under Hawaii Revised Statutes ("HRS") Chapter 486J, and have requested review of Confidential Information as defined above.
- C. I understand the Confidential Information is to be used solely to assist DBEDT in performing its statutory duties under HRS Chapter 486J, and that unless otherwise permitted in the QPPA herein, I am to make no other use of the Confidential Information, nor am I to disclose the Confidential Information to any other person, entity, government agency or anyone else.
- D. I further understand that at the conclusion of my status as a Qualified Person as defined above, I shall account to DBEDT for each copy, extract, note and summary of, or other document containing any part of such Confidential Information.
- E. I hereby certify that I have read the above and agree to abide by its terms and conditions.

DATED at \_\_\_\_\_, this \_\_\_ day of \_\_\_\_\_, 2010.

Signature \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_

(\_\_\_\_) \_\_\_\_\_  
Telephone Number