

# Agreement to Hold NCASI Information Resources in Confidence

**Background Information.** The National Council for Air and Stream Improvement, Inc. (NCASI) is a member-supported non-profit research organization that focuses on environmental issues of concern to the forest products companies that comprise its membership. Among other activities, NCASI gathers information and conducts technical studies, and publishes the results of these investigations in various different reports including NCASI Technical Bulletins, Special Reports, Research Briefs, newsletters, handbooks, and manuals. In addition to printed media, NCASI also makes its information resources available via a members-only web-site with restricted access.

Although NCASI may publicly disseminate its information resources when such disclosure serves the interests of its Member Companies, NCASI's information resources are the property of NCASI and are generally disclosed only to its Member Companies and, where appropriate, their agents and contractors and trade associations. To maintain the value of their support of NCASI, its Member Companies strive to maintain the confidentiality of NCASI information resources by carefully controlling the release of NCASI publications and other information resources. An important aspect of this effort to preserve the confidentiality of NCASI information resources is the imposition of restrictions on the further use and/or disclosure of NCASI information resources by third parties to whom such information may be disclosed. In particular, NCASI's Member Companies seek to limit the further use and/or release of NCASI information resources by consultants, engineering firms, and others (hereinafter, contractors) that have been engaged to work for a Member Company, and that may have been provided access to NCASI information resources to facilitate their work for the Company. Once that work is completed, NCASI's Member Companies seek assurance that NCASI information resources will not be used by their Contractors to benefit either the Contractor or other third parties that are not NCASI Member Companies.

This confidentiality agreement provides a framework for the disclosure of NCASI information resources by a Member Company to its Contractor while imposing a binding obligation on the Contractor receiving such information to restrict the disclosure of NCASI information resources to any third party, the use of those information resources for the benefit of any third party, or the further use of NCASI information resources for any purpose whatsoever once the Contractor's work assignment has been completed.

## An Agreement

This is an agreement (hereinafter, Agreement) by and between \_\_\_\_\_,

(hereinafter, the Company), a Member Company of the National Council for Air and Stream Improvement, Inc. (hereinafter, NCASI) and \_\_\_\_\_,

a company or person having a place of business in \_\_\_\_\_, (hereinafter, the Contractor). This Agreement governs the disclosure of certain NCASI information resources by the Company to the Contractor and the use of those information resources by the Contractor. This Agreement is effective immediately upon the date of execution by the authorized representatives of Company or the Contractor, whichever occurs last.

**Article 1. Preamble**

WHEREAS the Company is in possession of certain documents provided by NCASI that the Company wishes to maintain as confidential; and

WHEREAS the Company wishes to disclose certain documents to Contractor to facilitate the use of the information contained therein by the Contractor for the benefit of the Company; and

WHEREAS Contractor wishes to use NCASI's confidential and proprietary documents in performing work for, or providing services to, the Company; and

WHEREAS Contractor is willing to maintain the confidentiality of NCASI's confidential documents;

NOW, THEREFORE, in consideration of the value of Contractor's access to the confidential information made available by the Company, and in consideration of the value of the efficiency achieved by Contractor through use of this confidential information in the execution of certain work, which the parties both acknowledge to be adequate consideration for the purposes of this Agreement, the Company and Contractor hereby enter into this Agreement, and agree to be bound by its provisions and terms.

**Article 2. Other Agreements**

If one or more boxes are checked below, this Agreement is made in the context of a separate contract, agreement, purchase order, or other arrangement, and this Agreement is then made a part of that separate contract, agreement, purchase order, or other arrangement agreement by reference:

- ☐ Company's purchase order No. \_\_\_\_\_
- ☐ Contract between the Company and the Contractor dated \_\_\_\_\_  
and described more fully as \_\_\_\_\_  
\_\_\_\_\_
- ☐ An agreement between the Company and the Contractor dated \_\_\_\_\_  
and described more fully as \_\_\_\_\_  
\_\_\_\_\_
- ☐ An arrangement between Company and Contractor as follows \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If no box is checked, this Agreement is independent of any other contract, agreement, purchase order, or other arrangement.

### **Article 3. NCASI Information Resources Defined**

- 3.1 This Agreement governs the disclosure and use of any written document that has been authored, prepared or published by NCASI or by a NCASI employee, contractor, or agent, including publications, technical bulletins, reports, handbooks, manuals, articles, newsletters, data compilations, computer programs, computer software, memoranda, letters, analytical test methods, calculations or other written material, provided such written document is clearly identified as having been prepared, authored or published by NCASI or its employees, contractors, and agents. The written documents described in this Article 3 are defined for the purposes of this Agreement, and are hereinafter referred to, as NCASI Information Resources.
- 3.2 NCASI Information Resources covered under this Agreement include printed materials, as well as materials rendered in electronic, optical, magnetic and any other media that is used to retain and communicate information.
- 3.3 NCASI Information Resources includes excerpts, portions, sections, abstracts, and other parts taken from any of the documents described in this Article 3 of this Agreement.
- 3.4 This Agreement does not apply to any information or knowledge that has not been documented in written format using one or more of the media described in Article 3. Specifically, verbal remarks, verbal opinions, and trade secrets that have not been documented in written format are not addressed under this Agreement.
- 3.5 This Agreement does not apply to information that Contractor can demonstrate:
  - (i) was known to Contractor prior to the execution of this Agreement;
  - (ii) becomes known to Contractor as a result of its efforts, without material reliance on NCASI information resources, or as a result of disclosure by any third party; or (iii) could be found in the publicly available literature prior to execution of this Agreement or became available in publicly available literature other than disclosure by Contractor.
- 3.6 This Agreement does not apply to NCASI Information Resources that are known to the Company by virtue of its status as a Sustaining Member Company of NCASI in good standing. Use and disclosure of NCASI Information Resources by Sustaining Member Companies is controlled by a separate agreement between NCASI and the Sustaining Member Company.

### **Article 4. Disclosure of NCASI Confidential Information by the Company**

- 4.1 The Company may, at its sole discretion, choose to disclose to Contractor certain NCASI Information Resources, and the Contractor may choose, at its sole discretion, to receive these NCASI Information Resources.

- 4.2 For the purposes of this Agreement, disclosure of NCASI Information Resources by the Company means one or more of the following: i) the physical transmittal from Company to Contractor of NCASI Information Resources in one or more of the media described in Article 3; ii) the physical transmittal from NCASI to the Contractor of NCASI Information Resources in one or more of the media described in Article 3 upon request by Company; or iii) the provision of access by the Contractor to the Company's proprietary libraries, computer networks, intranets, and other similar vehicles where NCASI Information Resources may be viewed or obtained.

#### **Article 5. Non-Disclosure**

- 5.1 Contractor agrees not to disclose NCASI Information Resources as defined under this Agreement, nor the content thereof, to any third party, except as allowed under the provisions of this Agreement.
- 5.2 Contractor agrees to exercise the same level of care in protecting the confidentiality of NCASI Information Resources that it would exercise in protecting its own proprietary and confidential information. Contractor shall make reasonable and appropriate efforts to safeguard NCASI Information Resources from loss, unauthorized use, or disclosure to anyone other than as permitted under this Agreement and shall not distribute NCASI Information Resources to anyone other than as permitted under this Agreement, without prior written authorization from an authorized representative of the Company.
- 5.3 Contractor will require its employees, agents, and others whom the Contractor may provide access to NCASI Information Resources to comply with the provisions of this Agreement by execution of separate confidentiality agreements, contracts, employment contracts or other similar devices.
- 5.4 Contractor will promptly notify Company and NCASI of any unauthorized release of NCASI Information Resources.
- 5.5 In the event that Contractor is requested or required (by oral question, interrogatories, requests for information or documents, subpoenae, or similar process) by any court or governmental agency or authority to disclose any NCASI Information Resources, Contractor agrees to notify the Company immediately and will use its best efforts to delay such disclosure until Company has had an opportunity to seek protective relief against such disclosure. If Contractor is legally required to disclose NCASI Information resources to any court or governmental agency or authority of competent jurisdiction, Contractor may disclose such information without liability under this Agreement; provided, however, that such disclosure shall not relieve Contractor of any liability under this Agreement for any previous disclosure that was not permitted by this Agreement.

- 5.6 Contractor agrees to destroy, return to Company or return to NCASI any and all copies of NCASI Information Resources as defined under this Agreement, including without limitation all printed copies and all copies residing on magnetic, optical, or electronic storage media associated with computers or computing devices operated or owned by Contractor, within ninety days of the earliest of the following events: (i) completion of the work under the separate contract, agreement, purchase order, or other arrangement as described in Article 2 of this Agreement; (ii) termination of the separate contract, agreement, purchase order, or other arrangement as described in Article 2 of this Agreement; (iii) submission of a written request by the Company to the Contractor for return or destruction of NCASI Information Resources; or (iv) termination of this Agreement for any reason.

#### **Article 6. Use of NCASI Information Resources**

- 6.1 Contractor agrees that it will use NCASI Information Resources solely to facilitate the execution of its work for the benefit of the Company.
- 6.2 Without limiting the generality of the preceding paragraph, Contractor specifically agrees not to use NCASI Information Resources or the content thereof to assist, serve, inform, do work for, or provide any benefit whatsoever to, any third party. These restrictions apply regardless of whether that third party is a member of NCASI.
- 6.3 Contractor shall not make copies of NCASI Information Resources except to the extent necessary to carry out its work for the benefit of the Company.
- 6.4 Contractor acknowledges and agrees that the limitations on its use of NCASI Information Resources in this Article 6 (as well as all limitations on disclosure of NCASI Information Resources in this Agreement) apply regardless of whether the work for which it entered into a contractual arrangement with the Company has been completed, has been paid for, or was ever initiated or performed.

#### **Article 7. Miscellaneous Provisions**

- 7.1 Each party shall be responsible for any breach of this Agreement by its directors, officers, employees, agents, and representatives.
- 7.2 This Agreement shall be binding upon the successors and assigns of each party hereto and shall inure to the benefit of, and be enforceable by, the successors and assignees of each party.
- 7.3 Each party understands and acknowledges that any and all information contained in NCASI Information Resources is being or will be provided to Contractor without any representation or warranty, express or implied, as to the accuracy or completeness of the NCASI Information Resources.
- 7.4 Contractor acknowledges and agrees that, due to the unique nature of the NCASI Information Resources, any breach of this Agreement would cause irreparable

harm to Company, for which damages are not an adequate remedy at law, and that Company shall therefore be entitled to equitable relief in addition to all other remedies available at law.

- 7.5 The provisions of this Agreement shall be severable if any of the provisions hereof are held by a court of competent jurisdiction to be invalid, void or otherwise enforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.
- 7.6 This Agreement shall be construed (both as to validity and as to performance) and enforced in accordance with, and governed by, the laws of the State [Commonwealth] of \_\_\_\_\_ applicable to agreements made and to be performed wholly within such jurisdiction.
- 7.7 This Agreement embodies the entire agreement of the parties relating to the subject matter hereof and may be waived, amended or modified only by a written instrument signed by the party against which such waiver, amendment or modification is sought to be enforced, which written instrument shall set forth specifically the provisions of this Agreement that are to be so waived, amended or modified.
- 7.8 This Agreement may be executed in counterparts, each of such counterparts to be deemed for all purposes an original, and all such counterparts together constituting but one in the same instrument.

IN WITNESS WHEREOF, Company and Contractor have caused this Agreement to be executed by their duly authorized officers, as indicated below:

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date