

C. Form ADEM-eDWRS-2: Terms and Conditions Agreement (TCA)

TERMS AND CONDITIONS AGREEMENT FOR REPORTING REGULATORY DATA USING ELECTRONIC DATA INTERCHANGE TO ADEM USING eDWRS (the "Agreement"), by and between ADEM, Montgomery, Alabama, a State governmental agency, and reporting party ("Certifier") who has signed and returned the Terms and Conditions Agreement (TCA) Memorandum, included in today's notice referenced below, is effective on the date the initial PIN(s) is created, after the receipt and acceptance of Certifier's signed TCA Memorandum.

1. RECITALS

The intent of this agreement is to create legally binding obligations upon the parties using electronic data interchange (EDI) and eDWRS, to ensure that (a) use of any electronic functional equivalent of documents referenced or exchanged under this agreement shall be deemed an acceptable practice in the ordinary course of Certifier-to-ADEM environmental reporting and (b) such electronic records shall be admissible as evidence on the same basis as paper documents. The parties intend to be legally bound by them.

2. VALIDITY AND ENFORCEABILITY

- 2.1 This Agreement has been executed by the parties to evidence their mutual intent to create binding regulatory reporting documents using electronic transmission and receipt of such records.
- 2.2 Any records properly communicated pursuant to this Agreement shall be considered to be a "writing" or "in writing"; and any such records which contain or to which there is affixed, a Signature, as defined by paragraph 8 of this Agreement, ("Signed Documents") shall be deemed for all purposes (a) to have been "signed" and (b) to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business.
- 2.3 The conduct of the parties pursuant to this Agreement, including the use of Signed Records properly communicated pursuant to the Agreement, shall, for all legal purposes, evidence a course of dealing and a course of performance accepted by the parties in furtherance of this Agreement.
- 2.4 The Certifier agrees not to contest the validity or enforceability of Signed Documents under the provisions of any applicable law relating to whether certain agreements are to be in writing or signed by the party to be bound hereby. Signed Documents, if introduced as evidence on paper in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of the Signed Documents under the Alabama Rules of Evidence as inadmissible nor in violation of either the business records exception of the rule on hearsay, or the best evidence rule, or on the

basis that the Signed Documents were not originated or maintained in documentary (paper) form.

3. DATE OF RECEIPT

A Document shall be deemed to have been properly received by ADEM when it is accessible by ADEM and adheres to the XML protocol as modified by ADEM, if applicable. No Document shall satisfy any reporting requirement or be of any legal effect until it is received.

4. VERIFICATION

Upon receipt of a Document, the eDWRS shall process the Document to make it accessible to ADEM. The status of each submission is available for review by the Certifier on the eDWRS website. If the submission has been rejected by ADEM, the Certifier is responsible for resending the Document.

5. SUBMISSION

If the Document is rejected by ADEM, then the Certifier must replace the document. If the eDWRS website does not indicate that the Document has been submitted, the Certifier should submit the Document.

6. INABILITY TO SUBMIT

Circumstances, both foreseeable and unforeseeable, may prevent a reporting party from conducting EDI. Nevertheless, no Certifier will be excused from the requirement to file reports with the Agency by the appropriate regulatory deadline. If a party is unable to electronically file a required report by such deadline, it must notify ADEM of the situation.

7. SIGNATURE

The Certifier shall adopt as its signature an electronic identification consisting of symbols (i.e., the Personal Identification Number [PIN]) that is affixed to or contained in each Document submitted by the Certifier ("Signature"). The Certifier agrees that any such Signature affixed to or contained in any submitted Document shall be sufficient to verify such party originated and possessed the requisite authority both to originate the transaction and to verify the accuracy of the content of the document at the time of submittal. Unless otherwise specified in the TCA, affixing the Personal Identification Number (PIN) associated with the Certifier's user account in the eDWRS to any transmitted Document constitutes a valid Signature. The Certifier expressly agrees to sign each and every report submitted by using their PIN, and that the use of their PIN constitutes certification of the truth and accuracy, upon penalty of perjury, of the information contained in each such report. The Certifier also expressly agrees that each report submitted by using their PIN constitutes their agreement with the certification statement.

8. DEFINITIONS

Whenever used in this Agreement or any documents incorporated into this Agreement by reference, the following terms shall be defined as follows:

- 8.1 **Compromise:** When the PIN is intentionally or unintentionally disclosed to individuals and organizations that are not authorized to know or use the PIN.
- 8.2 **Data:** Factual information stored in or used by a computer, especially information organized for analysis or used to reason or make decisions.
- 8.3 **Document/Record:** Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. The Documents is intended to satisfy the reporting requirements of the Permittee.
- 8.4 **Electronic Agent:** A computer program designed, selected or programmed by a party to initiate or respond to electronic messages or performances without review by an individual. An electronic agent acts within the scope of its agency if its performance is consistent with the functions intended by the party who utilizes the electronic agent.
- 8.5 **Electronic Transaction:** A record generated or communicated by electronic, optical or other analogous means for transmission from one information system to another. The term includes electronic data interchange and electronic mail.
- 8.6 **Message:** Data structured in accordance with the protocol specified in the Guidelines and transmitted electronically between the parties and relating to a Transaction.
- 8.7 **Personal Identification Number (PIN):** Each PIN will consist of a sequence of alphanumeric characters.
- 8.8 **Report:** The Document required by the ADEM Drinking Water Permit Program including but not limited to chemical monitoring reports, monthly operating reports (MORs), consumer confidence reports (CCRs) and bacteriological reports.
- 8.9 **Signed:** For the purposes of EDI, a transaction is “signed” if it includes a symbol and/or action that is adopted or performed by a party or its electronic agent with the present intent to authenticate or manifest assent to a record, a performance, or a message. Actions or symbols adopted or performed by an electronic agent serve to authenticate with present intent a record or message on behalf of a party if the party designed, programmed or selected the electronic agent with an intent that the agent produce the result and the electronic agent performs in a manner consistent with its intended programming. That a record or message is signed is conclusively presumed as a matter of law if the parties agreed to an authentication procedure and the symbol or action taken complies with that procedure. Otherwise, that a document is signed may be proved in any manner including by a showing that a procedure existed by which a

party must of necessity have taken an action or executed a symbol in order to have proceeded further in the use or processing of the information.

8.10 Submission Log: Must be retained for all parties using eDWRS for reporting purposes. The Submission Log includes the date, time, and the file submitted; it also documents the person who certified the submission. The Certifier can verify that an official log of all submissions is maintained without any modifications, as described in the ADEM eDWRS User's Guide.

8.11 User Guide: The ADEM eDWRS User's Guide

9. EDI TRANSACTION PARAMETERS

Each party may electronically transmit to or receive from the other party in the format set by ADEM. All Documents/Reports shall be transmitted in accordance with the standards set forth herein and in the ADEM eDWRS User's Guide. Any submission of data that is not a Document/Report (i.e., that is not one of the specified transaction sets) shall have no force or effect between the parties.

9.1 Implementation Guidelines: All Documents transmitted between the parties shall adhere to the Protocol established in the ADEM eDWRS User's Guide, the ADEM eDWR Transmission Protocol, and all modifications of these documents.

9.2 Modifications of Standards: Whenever ADEM intends to upgrade to a new version of the data exchange standard or modify the Guidelines, ADEM shall give notice of its intent and shall establish a conversion date. The Certifier shall have a minimum of sixty (60) days from the conversion date to upgrade to the new standard. ADEM may discontinue support of the previous standard no sooner than ninety (90) days after the conversion date.

10. SYSTEM AND OPERATION EXPENSES

Each party, at its own expense, shall provide and maintain the equipment, software, services and testing necessary to effectively and reliably transmit and receive Documents.

11. SECURITY

The parties shall take reasonable actions to implement and maintain security procedures necessary to ensure the protection of submission against the risk of unauthorized access, alteration, loss or destruction including, but not limited to: protecting the secrecy of password and PIN.

11.1 Creation of PIN: Where ADEM requires certification to ensure the authenticity of electronically submitted documents, ADEM will require the Certifier to use a PIN. ADEM will issue a new PIN at request of the PIN holder. If a PIN has been

compromised, it will be suspended upon notification (by telephone or otherwise) from the PIN holder.

- 11.2 Protection of PIN: Each party must protect the security of their PIN from compromise and shall take all necessary steps to prevent its loss, disclosure, modification, or unauthorized use. The Certifier shall notify ADEM immediately if there is reason to believe the security of any PIN has been compromised. If ADEM has reason to believe that PIN security has been compromised, the account will be disabled. Also, the Certifier is responsible for immediately notifying ADEM of termination of employment or reassignment.

12. MISDIRECTED AND CORRUPTED TRANSMISSIONS

If ADEM has reason to believe that a Document is not intended for ADEM or is corrupted, ADEM shall notify the Certifier and overwrite the document with the reason for removal (where allowed by applicable law). The original record of the Document's receipt will be retained and verification will indicate that the document has been altered.

13. COMMUNICATIONS CONNECTIONS

Unless otherwise stipulated in program-specific notice, Documents shall be transmitted electronically to each party through a Internet service provider (ISP). The Certifier assumes all risks associated with their interaction with the ISP.

- 13.1 ISP Liability Apportionment: Each party shall be responsible for ensuring the correctness of its transmission except as otherwise provided in this Agreement.

- 13.2 Records Transmitted Through Provider: The parties agree that either of them may have access to Providers' copies of the records, at the expense of the requesting party.

14. RECORD RETENTION AND STORAGE.

Nothing herein is intended to release the Certifier from or waive any requirement of law applicable to the Certifier pertaining to record or document retention, or to create new or additional requirements for retention of records or documents except as specifically noted herein or in the supporting documents. The sender shall retain all records, regardless of the medium on which they are recorded, used in the derivation of the Documents/Reports or information therein transmitted pursuant to this Agreement for the period, which would be required for functionally equivalent paper records.

15. CONFLICTING TERMS AND CONDITIONS

This Agreement and the registration forms required in the ADEM eDWRS Participation Package constitute the entire agreement between the parties. As the parties develop additional capabilities respecting EDI, additional addenda may be added to this Agreement. Upon the effective date, each Addendum shall be appended to this Agreement. If the Certifier

does not agree to specified changes in the terms and conditions of this Agreement, as provided in the newly published Addenda, the Certifier must notify ADEM in accordance with paragraph 16 below.

16. TERMINATION

This Agreement shall remain in effect until terminated by either party with not less than 30 days prior written notice, which notice shall specify the effective date of termination; provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under any Documents or otherwise under this Agreement prior to the effective date of termination. The process for Termination of the Agreement is detailed in the ADEM eDWRS Participation Package.

17. SURVIVABILITY

Notwithstanding termination for any reason, Clauses #2 (Validity and Enforceability), #11 (Security), #14 (Record Retention and Storage), #22 (Governing Law), #23 (Choice of Language), and #24 (Dispute Resolution) shall survive termination of this Agreement.

18. ASSIGNABILITY

This Agreement is for the benefit of, and shall be binding upon, the Certifier

19. SEVERABILITY

Any provision of this Agreement, which is determined to be invalid or unenforceable, will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

20. NOTICE

All notices or other forms of notification, request or instruction required to be given by a party to any other party under paragraphs 15 and 16 of this Agreement shall be delivered by hand, or sent by first class post or other recognized carrier to the address of the addressee as set out in this Agreement or to such other address as the addressee may from time to time have notified for the purpose of this clause.

21. INABILITY TO FILE REPORTS VIA EDI

No party shall be liable for any failure to perform its obligations in connection with any EDI Document, where such failure results from any act or cause beyond such party's control which prevents such party from transmitting or receiving any Documents via EDI, except that the Certifier is nonetheless required to submit records or information required by law via other means, as provided by applicable law and within the time period provided by such law.

22. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the State laws of Alabama and the Federal laws of the United States.

23. CHOICE OF LANGUAGE

The parties have requested that this Agreement and all Documents and other communications submitted via the eDWRS or otherwise delivered with respect to this Agreement be expressed in the English language.

24. DISPUTE RESOLUTION

All disputes, differences, disagreements, and/or claims between the parties arising under or relating to this agreement that are not resolved by negotiation and that the parties cannot agree to submit for mediation or other procedure for the resolution of disputes, shall be subject to the jurisdiction of Alabama Courts.

25. ENTIRE AGREEMENT

This Agreement and the ADEM eDWRS Participation Package constitute the complete agreement of the parties relating to the matters specified in this Agreement and supersede all prior representations or agreements, whether oral or written, with respect to such matters. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. As the parties develop additional capabilities respecting EDI, additional Addenda may be added to this Agreement. ADEM does not intend to change guidelines without just cause. As a practical matter, it is too cumbersome to obtain formal agreements from each Certifier when technical or procedural changes are required. Therefore, ADEM will publish notice of new Addenda appending this Agreement and their effective date. Upon the effective date, each Addendum shall be appended to this Agreement.

This Agreement is for the benefit of, and shall be binding upon, the parties and their respective successors and assigns.

The Alabama Department of Environmental Management and the Certifier have caused this Agreement to be properly executed on their behalf, as of the date the Certifier receives their PIN.

PWSID/Lab Number: _____
Phone: _____
Email: _____

Certifier: Signature: _____ Date: _____
Name: _____
Title: _____

ADEM: Signature: _____ Date: _____
Name: _____
Title: _____