

CONFIDENTIALITY AGREEMENT

This confidentiality agreement (“**Agreement**”) is entered into as of this ____ day of _____, 2019 (“**Effective Date**”) in New Delhi:

BETWEEN

1. **Directorate General of Hydrocarbons**, having its office at OI DB Bhawan, Tower-A, Plot No 2, Sector 73, Noida, Uttar Pradesh- 201301 (hereinafter referred to as the “**Disclosing Party**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns); and
2. _____, a company incorporated under the laws of _____ and having its registered office at _____ (hereinafter referred to as the “**Recipient**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns);

The Disclosing Party and the Recipient are hereinafter collectively referred to as the “**Parties**” and individually as a “**Party**”.

WHEREAS

- A. The Disclosing Party and the Recipient are in discussions in relation to disclosing information in relation to the “**Properties**” (as defined under 1.1 below), more particularly specified in Schedule I.
- B. The Recipient has sought from the Disclosing Party certain Confidential Information for the following purpose to enable the Recipient to utilize such Information (i) to evaluate participation by the Recipient in the bidding process under Hydrocarbon Exploration and Licensing Policy and/or (ii) to carry out its obligation under any contract with the Government of India or any of its authorities in relation to exploration and production of hydrocarbons under the Hydrocarbon Exploration and Licensing Policy; and/or (iii) utilize such information to develop its knowledge of the area related to exploration and production of hydrocarbons.
- C. The Disclosing Party wants to protect the confidentiality of the information made accessible to the Recipient and desires that the Recipient shall not breach the confidentiality and shall not disclose, sell, trade, publish, or otherwise disclose to anyone in any manner whatsoever the confidential information, specifically in a way that adversely impacts the interests of the Disclosing Party, Government of India and India’s natural resources.

- D. The Recipient acknowledges and confirms that all information provided in relation to the Properties, on or after the date of this Agreement, shall be treated as confidential and shall not be used, disclosed, sold, assigned, traded, published, or otherwise disclosed by the Recipient for any purpose other than the purpose specifically agreed under this Agreement.

NOW THEREFORE IT IS HEREBY AGREED BY AND AMONGST THE PARTIES AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the subject or context otherwise requires, the following words and expressions shall have the following meanings:

“Affiliate or Affiliated Company” means a company or a body: (a) which directly or indirectly controls or is controlled by a company which is a Party to this Contract; or (b) which directly or indirectly controls or is controlled by a company which directly or indirectly controls or is controlled by a company which is a Party to this Contract. For the purpose of this definition it is understood that “control” means the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including but not limited to, by virtue of their shareholding or management rights or shareholder’s agreements or voting agreements or in any other manner.

“Confidential Information” shall mean data pertaining to geological, geophysical, geochemical, petro physical, engineering, well logs, maps, cores, cuttings and production data as well as all interpretative and derivative data, including reports, analyses, interpretations, evaluation and all information provided or to be provided by the Disclosing Party including without limitation any confidential, non-public or proprietary information provided or disclosed on or after the date of this Agreement to the Recipient in accordance with this Agreement and in relation to the Properties described in Schedule I, and shall include without limitation:

- (i) all copies, notes, analyses, studies, memoranda, compilations, or other documents, both in digital and non-digital format which contain, in whole or in part, the information furnished by the disclosing party with respect to the Purpose (as defined in this Clause 1.1 below)
- (ii) any information identified as being ‘privileged’ or ‘confidential’,

and shall be deemed to include all information, irrespective of the method of communication being by way of, but not limited to written documents, disks and electronic mail.

“Effective Date” shall mean the date first above written.

“**Person**” shall mean any natural person, firm, company, governmental authority, joint venture association, partnership or other entity (whether or not having a separate legal personality).

“**Purpose**” shall mean the purpose for which the Confidential Information shall be disclosed by the Disclosing Party to the Recipient and shall mean to enable the Recipient to utilize such Confidential Information disclosed to recipient for (i) evaluating participation by the Recipient in the bidding process under Hydrocarbon Exploration and Licensing Policy, (ii) to evaluate the Properties or any transaction in connection with a possible acquisition by Recipient or any one of its Affiliated Companies of certain rights in the Properties and/ or (iii) to carry out its obligation under any contract with the Government of India or any of its authorities in relation to exploration and production of hydrocarbons under the Hydrocarbon Exploration and Licensing Policy; and/or (iv) utilize such information to develop its knowledge of the area related to exploration and production of hydrocarbons.

“**Properties**” shall mean the area identified by the Disclosing party for possible acquisition by Recipient for evaluation and possible transaction with the Disclosing party may take place and shall be limited to the area listed under Schedule 1 to the Agreement.

1.2 **Interpretation**

Save where the context otherwise requires in this Agreement:

- (i) Words importing the singular shall include the plural and vice versa where the context so requires;
- (ii) References to any law shall include such law as from time to time enacted, amended, supplemented or re-enacted;
- (iii) Reference to any gender shall include a reference to all other genders;
- (iv) References to the words “include” or “including” shall be construed without limitation;
- (v) References to this Agreement or any other agreement, deed or other instrument or document shall be construed as a reference to such agreement, deed or other instrument or document as the same may from time to time be amended, varied, supplemented or novated; and
- (vi) The headings and titles in this Agreement are indicative and shall not be deemed part thereof or be taken into consideration in the interpretation or construction of the Agreement.

2. CONFIDENTIALITY OBLIGATIONS

2.1 Confidentiality Obligations

- (a) Subject to Section 2.1(c) below the Disclosing Party agrees to make available to the Recipient, all information reasonably requested by the Recipient, in relation to the area more fully described in Schedule I, for the Purpose.
 - (b) The Recipient acknowledges that any use of Confidential Information received by the Recipient, if used by the Recipient for any purpose other than the Purpose agreed in this Agreement, could materially and adversely affect the Disclosing Party and result in significant losses for the Disclosing Party.
 - (c) Having understood the above, the Recipient agrees and undertakes that it shall:
 - i) treat the Confidential Information provided to it by the Disclosing Party as confidential and not disclose such information, to any Person other than as permitted under this Agreement;
 - ii) use the Confidential Information solely for the Purpose agreed in this Agreement and not for any other purpose, including without limitation, for the purpose of furtherance of the Recipient's business or business interests;
 - iii) make all inquiries and other communications in relation to and on the basis of the Confidential Information on a confidential basis directly to the Disclosing Party or agents of the Disclosing Parties specified by it to the Recipient in writing. Accordingly, the Recipient agrees not to directly or indirectly contact or communicate with any Person other than the Disclosing Party or an authorized agent of the Disclosing Party in relation to the Confidential Information or to seek any information in connection therewith from such Person, without the express written consent of the Disclosing Party;
 - iv) strictly adhere to all the terms of this Agreement and apply no lesser security measures to protection of the Confidential Information than it applies to its own confidential information;
- ; and
- v) not make any statement or announcement to any third parties about the Purpose or the arrangements contained in this Agreement, except as otherwise permitted by this Agreement.

- 2.2 The Parties hereby agree that the obligations of confidentiality on the Recipient under this Agreement shall not apply to information: (a) that is in the possession of the Recipient on the date of this Agreement other than due to the disclosure of such information by a Disclosing Party; (b) that, subsequent to its disclosure hereunder, becomes publicly available to the Recipient without any violation of this Agreement by the Recipient or its Representatives; (c) approved for public release by prior written consent of the Disclosing Party in terms of this Agreement;.
- 2.3 The Parties hereby agree that the obligations of confidentiality as contained in this Agreement shall not apply to any Confidential Information that the Recipient is required to disclose for complying with any applicable law or the order of any court of law or governmental authority.
- 2.4 The Recipient agrees and undertakes that, without prejudice to the foregoing provisions, it shall not use the Confidential Information for any purpose whatsoever other than the Purpose agreed in this Agreement.

3 DERIVED CONFIDENTIAL INFORMATION

- 3.1 All interpretative and derivative data, including reports, analyses, interpretations and evaluation prepared from or out of Confidential Information is hereinafter referred to as “**Derived Confidential Information**” and shall also constitute Confidential Information.
- 3.2 The Recipient shall have the right to make use of Derived Confidential Information for the Purpose and for its own internal use and shall not sell , assign or trade Derived Confidential Information.
- 3.3 Recipient shall not disclose the Derived Confidential Information to anyone other than employees, officers and directors of Recipient and its Affiliated Companies or those persons to whom the Confidential Information may be disclosed pursuant to this Agreement without the prior written consent of Disclosing
- 3.4 Recipient shall be allowed to retain such Derived Confidential Information for its own use and shall not use such Derived Confidential Information for sale or any other purpose.

4 NON-EXCLUSIVE DISCLOSURE OF CONFIDENTIAL INFORMATION

- 4.1 Disclosing Party confirms that it has the right and authority to disclose the Confidential Information to Recipient. The disclosure of Confidential Information to Recipient is non-exclusive, and Disclosing Party may disclose the Confidential Information to others at any time.

5 PERMITTED DISCLOSURE BY RECIPIENT

- 5.1 Recipient may disclose Confidential Information to the extent the Confidential Information must be disclosed under applicable law, including by stock exchange regulations upon which the shares of Recipient or its Affiliated Company are quoted or by a governmental order, decree, regulation or rule or by order of any competent court, provided that Recipient shall give prompt written notice to Disclosing Party prior to such disclosure and so far as is practicable to do so the Recipient shall consult with the Disclosing Party prior to such disclosure with a view to agreeing its timing and content.
- 5.2 Recipient may disclose Confidential Information without the prior written consent of Disclosing Party to the following persons to the extent necessary and required for the performance of their duty for fulfilling the Purpose:
- 5.2.1 employees, officers, and directors of Recipient;
 - 5.2.2 employees, officers, and directors of an Affiliated Company of Recipient
 - 5.2.3 any consultant or agent retained by Recipient or its Affiliated Company; or
 - 5.2.4 any bank, financial institution, or entity funding or proposing to fund participation by Recipient or its Affiliated Company.
 - 5.2.5 if the Recipient has signed Revenue Share Contract in relation to properties, to persons as stated in relevant clause of the Revenue Share Contract.

Prior to making any disclosures to persons under Article 5.2.2, Article 5.2.3 or Article 5.2.4 or 5.2.5 however, the Recipient shall obtain an undertaking of confidentiality and restricted use substantially in the same form and content as this Agreement, from each such person, provided, however, that in the case of outside legal counsel, the Recipient shall only be required to procure that such legal counsel is bound by an obligation of confidentiality and provide promptly a copy of such undertaking of confidentiality to Disclosing Party.

6 RETURN OF CONFIDENTIAL INFORMATION

- 6.1 Disclosing Party may demand the return of the Confidential Information, except Derived Confidential Information, at any time upon giving written notice to Recipient, within 30 (thirty) days of receipt of such notice, the Recipient shall return or destroy all Confidential Information supplied to the Recipient by the Disclosing Party and destroy or permanently erase (to the extent technically practicable) all copies of such Confidential Information made by the Recipient

and use its reasonable endeavours to ensure that anyone to whom the Recipient as supplied any such Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that the Recipient are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body. The provisions of this section 6.1 do not apply to the following:

6.1.1 Confidential Information that is retained in the computer backup system of Receiving Party will be destroyed in accordance with the regular ongoing records retention process of Receiving Party or such Representative and if the Confidential Information is not used prior to its destruction;

7 TERM AND TERMINATION

7.1 This Agreement shall be effective for five (5) years from Effective Date or till such time as the Recipient has signed a Revenue Share Contract in respect of the Properties, whichever is earlier unless otherwise terminated.

7.2 In addition to the rights of the parties established by the underlying Agreement, if Recipient has materially breached any of its obligations under this Agreement, Disclosing Party, shall have the right to:

7.2.1 require Recipient to return or caused to destroy Confidential Information other than the Derived Confidential Information, immediately

7.2.2 terminate the Agreement immediately, if the breach is not cured within 15 days of notice to be given under this clause of 7.2.

Provided, that before exercising any of the options from Article 7.2.1 to Article 7.2.2, Disclosing Party shall give a written notice of its intention to Recipient.

7.3 Recipient shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Confidential Information received from, or on behalf of, Disclosing Party.

7.4 Any event of termination of this agreement under Clause 7.2 shall not relieve the Recipient from its confidentiality obligations envisaged under Clause 2.1 of this agreement.

8 INDEMNITY

8.1 Disclosing Party shall make no representations or warranties, express or implied, as to the quality, accuracy and completeness of the Confidential Information, and Recipient (on behalf of itself and its representatives) expressly acknowledge the inherent risk or error in the acquisition, processing, and interpretation of geological and geophysical data. Recipient shall defend and hold Disclosing Party harmless from all claims, liabilities, damages, or judgments involving a third party, including costs and attorney fees, which arise as a result of use of or reliance upon the Confidential Information by the Recipient or any other person or entity to whom Confidential Information may be disclosed pursuant to this Agreement.

9 GOVERNING LAWS AND JURISDICTION

- 9.1 This agreement shall be governed by the Laws of India and any claims, demands, cause of action, disputes, controversies and other matters in question arises out of, in relation to this Agreement during the subsistence of this Agreement or thereafter shall be adjudicated exclusively by the courts in New Delhi.

10 MISCELLANEOUS PROVISIONS

10.1 General Restrictions

This Agreement is personal to the Parties and shall not be assigned or otherwise transferred in whole or in part by any Party without the prior written consent of the others.

10.2 Liability for Breach

Without prejudice to any other rights or remedies that a non-defaulting Party may have against any other Party who is in breach of the terms and conditions of the Agreement (the '**defaulting Party**'), the defaulting Party acknowledges and agrees that damages alone may not be an adequate remedy for any breach by it of the provisions of this Agreement and that, accordingly, the non-defaulting Party shall be entitled without proof of special damage to seek the remedies of injunction, specific performance and other equitable relief for any such breach by the defaulting Party

10.3 Limitation of Liability:

The liability of the Parties to each other for breach of this Agreement shall be limited to direct actual damages and such equitable relief as may be granted under this Agreement. Parties shall not be liable to each other for any other damages, including loss of profits or business interruptions, or indirect, incidental, consequential, special, exemplary or punitive damages. Recipient acknowledges and agrees that Disclosing Party may be irreparably harmed by the breach of the terms of this Agreement and damages may not be an adequate remedy. Disclosing Party shall be entitled to seek an equitable relief or an injunction or specific performance for any threatened or actual breach of the provisions of this Agreement by the Recipient or any other person receiving Confidential Information pursuant to this Agreement.

10.4 Reservation of Rights

No forbearance, indulgence or relaxation or inaction by any Party at any time to require performance of any of the provisions of this Agreement shall in any way affect, diminish or prejudice the right of such Party to require performance of that provision and any waiver or acquiescence by any Party of any breach of any of

the provisions of this Agreement shall not be construed as a waiver or acquiescence of any right under or arising out of this Agreement, or acquiescence to or recognition of rights and/or position other than as expressly stipulated in this Agreement.

10.5 Cumulative Rights

All remedies of the Parties under this Agreement whether provided herein or conferred by statute, common law, equity, custom, trade, or usage are cumulative and not alternative and may be enforced successively or concurrently.

10.6 Severability

If any provision of this Agreement or the application thereof to any Person or circumstance is held to be illegal, invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Any invalid or unenforceable provision of this Agreement shall be replaced with a provision which is valid and enforceable and most nearly reflects the original intent of the unenforceable provision.

10.7 Notice

All notices under this Agreement shall be in writing, sent by email or first-class registered or recorded delivery post to the Party being served at its address specified above or at such other address of which such Party shall have given notice aforesaid and marked for the attention of that Party's signatory to this Agreement (or such other person as notified to the other Party). Delivery of all communications to be addressed as follows:

For the Disclosing Party

Attn: Mr. Asit Kumar, HoD(NDR)
Address: Directorate General of Hydrocarbons, OIDB Bhawan, Tower-A, Plot No 2, Sector 73, Noida, Uttar Pradesh- 201301
Telephone No: 0120-2472578
E-mail: asitkumar[at]dghindia[dot]gov[dot]in

For Recipient:

Attn: _____
Address: _____
Telephone No: _____
E-mail: _____

10.8 **Amendments**

No modification or amendment to this Agreement and no waiver of any of the terms or conditions hereof shall be valid or binding unless made in writing and duly executed by all the Parties.

10.9 **Entire Agreement**

This Agreement constitutes the entire understanding and agreement between the Parties with respect to its subject matter and supersedes all prior written or oral understandings, agreements and deeds relating to it and the provisions of this Agreement shall not be modified, waived or amended except in writing executed by both Parties.

10.10 **Relationship**

None of the provisions of this Agreement shall be deemed to constitute a partnership between the Parties hereto and no Party shall have any authority to bind or shall be deemed to be the agent of the other in any way.

10.11 **Costs**

Each Party shall bear its own costs in relation to this Agreement.

10.12 **Disclosure**

Neither Party shall make, or permit or procure to be made or solicit or assist any other Person to make any announcement or disclosure of the contents of this Agreement except to the extent permitted by this Agreement.

10.13 **Counterparts**

This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and which, when taken together, shall constitute one and the same instrument. Delivery of an executed signature page to this Agreement by either Party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such Party.

SCHEDULE I – Properties

[•]