



**Association of International Petroleum Negotiators**

**MODEL FORM CONFIDENTIALITY AGREEMENT©**

**November 2007**

**DISCLAIMER**

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## **CONFIDENTIALITY AGREEMENT**

THIS AGREEMENT ("Agreement") is effective \_\_\_\_\_, 20\_\_ ("Effective Date") between \_\_\_\_\_, a company organized and existing under the laws of \_\_\_\_\_ ("Disclosing Party"), and \_\_\_\_\_, a company organized and existing under the laws of \_\_\_\_\_ ("Receiving Party"). These parties may also be referred to individually as "Party" or collectively as "Parties".

### **ARTICLE 1 DISCLOSURE OF CONFIDENTIAL INFORMATION**

In connection with the possible acquisition by Receiving Party of certain rights held by Disclosing Party in the area described in Exhibit A ("Area") under \_\_\_\_\_, Disclosing Party is willing, in accordance with the terms and conditions of this Agreement, to disclose to Receiving Party certain information relating to the Area which may include geological and geophysical data, maps, models and interpretations, notes, summaries, commercial, contractual and financial information ("Confidential Information"). The Confidential Information is more fully described in Exhibit "B".

### **ARTICLE 2 UNDERTAKING NOT TO DISCLOSE**

In consideration of the disclosure referred to in Article 1, Receiving Party shall not disclose the Confidential Information to anyone without the prior written consent of Disclosing Party, except as provided in this Agreement.

### **ARTICLE 3 CERTAIN INFORMATION NOT CONFIDENTIAL**

The following shall not constitute Confidential Information:

- 3.1** information that is already known to Receiving Party as of the Effective Date;
- 3.2** information that is or becomes available to the public other than through the act or omission of Receiving Party or of any other person to whom Confidential Information is disclosed by the Receiving Party unless public disclosure was made pursuant to Article 4.1;
- 3.3** information that is acquired independently from a third party representing that it has the right to disseminate such information at the time it is acquired by the Receiving Party; or
- 3.4** information that is developed by Receiving Party independently of the Confidential Information received from Disclosing Party.

**ARTICLE 4**  
**PERMITTED DISCLOSURE BY RECEIVING PARTY**

Receiving Party may disclose Confidential Information without the prior written consent of Disclosing Party:

- 4.1** to the extent the Confidential Information must be disclosed under applicable law, including by stock exchange regulations or by a governmental order, decree, regulation or rule, provided that Receiving Party shall make all reasonable efforts to give prompt written notice to Disclosing Party prior to such disclosure; or
- 4.2** to the following persons to the extent that Receiving Party needs them to evaluate the Area or any transaction between the Parties in relation to the Area:
  - 4.2.1** employees, officers, and directors of Receiving Party;
  - 4.2.2** employees, officers, and directors of an Affiliated Company of Receiving Party ("Affiliated Company" means any company or legal entity that controls, or is controlled by, or that is controlled by an entity that controls, a Party. "Control" means the direct or indirect ownership of more than fifty (50) percent of the voting rights in a company or other legal entity.);
  - 4.2.3** any consultant or agent retained by Receiving Party or its Affiliated Company; or
  - 4.2.4** any bank, financial institution, or entity funding or proposing to fund participation by Receiving Party in the Area, including any consultant retained by such bank, financial institution, or entity.

☐ **OPTIONAL PROVISION**

Prior to making any disclosures to persons under Article 4.2.3 or Article 4.2.4, however, the Receiving Party shall obtain an undertaking of confidentiality 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 Receiving Party shall only be required to procure that such legal counsel is bound by an obligation of confidentiality.

**ARTICLE 5**  
**OBLIGATION OF RECEIVING PARTY FOR PERMITTED DISCLOSURES**

Receiving Party shall be responsible to Disclosing Party for any act or omission of the entities and persons described in Article 4.2 that would have breached this Agreement if the action had been by Receiving Party.

**ARTICLE 6**  
**RESTRICTION ON USE OF CONFIDENTIAL INFORMATION**

- 6.1** Receiving Party shall only use or permit the use of the Confidential Information to evaluate the Area and to determine whether to enter into negotiations concerning the acquisition of all or part of the rights of Disclosing Party in the Area.
- 6.2** The Parties recognize that persons authorized to review the Confidential Information under Article 4.2 may form mental impressions (*i.e.*, impressions not written or otherwise reduced to a record) regarding the Confidential Information. The use of these mental impressions by those persons shall not be a violation of the restriction contained in Article 6.1.

**ARTICLE 7**  
**DAMAGES**

The liability of the Parties to each other for breach of this Agreement shall be limited to direct actual damages only. Such direct actual damages shall be the sole and exclusive remedy, and all other remedies or damages at law or in equity are waived except such equitable relief as may be granted under Article 12. In no event shall the Parties be liable to each other for any other damages, including loss of profits or incidental, consequential, special, or punitive damages, regardless of negligence or fault.

**ARTICLE 8**  
**RETURN OF CONFIDENTIAL INFORMATION**

- 8.1** Receiving Party shall acquire no proprietary interest in or right to the Confidential Information.
- 8.2** Disclosing Party may demand the return of the Confidential Information at any time upon giving written notice to Receiving Party. Within thirty (30) days of receipt of such notice, Receiving Party shall return all of the original Confidential Information and shall destroy or cause to be destroyed all copies in its possession and in the possession of persons to whom it was disclosed pursuant to this Agreement.
- 8.3** The provisions of Article 8.2 do not apply to the following:
- 8.3.1** Confidential Information that is retained in the computer backup system of Receiving Party or a person to whom it was disclosed under Article 4.2 if the Confidential Information will be destroyed in accordance with the regular ongoing records retention process of Receiving Party or such person and if the Confidential Information is not used prior to its destruction; and
  - 8.3.2** Confidential Information that must be retained under applicable law, including by stock exchange regulations or by governmental order, decree, regulation or rule.

## **ARTICLE 9 EVALUATION MATERIAL**

- 9.1** Information generated by Receiving Party or by a person described in Article 4.2 that is derived in whole or in part from Confidential Information is "Evaluation Material." Evaluation Material includes models, analyses, estimates of reserves, interpretations, presentations for management, and economic evaluations.
- 9.2** During the term of this Agreement, Receiving Party shall not disclose Evaluation Material to anyone other than the persons described under Article 4 without the prior written consent of Disclosing Party.

## **ARTICLE 10 TERM**

☐ **ALTERNATIVE PROVISION 1**

This Agreement shall terminate on \_\_\_\_\_.

☐ **ALTERNATIVE PROVISION 2**

This Agreement shall terminate on the later of: \_\_\_\_\_; the date on which disclosure is no longer restricted by the law applicable to the Area; or the date on which disclosure is no longer restricted by the terms of the concession, license, contract or permit currently covering the Area.

☐ **OPTIONAL PROVISION**

Notwithstanding the prior provisions of this Article 10, this Agreement shall terminate upon return of Confidential Information and destruction of copies of Confidential Information by Receiving Party under Article 8.2.

## **ARTICLE 11 REPRESENTATIONS AND WARRANTIES**

Disclosing Party represents and warrants that it has the right and authority to disclose the Confidential Information to Receiving Party. Disclosing Party, however, makes no representations or warranties, express or implied, as to the quality, accuracy and completeness of the Confidential Information, and Receiving Party expressly acknowledges the inherent risk of error in the acquisition, processing, and interpretation of geological and geophysical data. Disclosing Party, its Affiliated Companies, their officers, directors and employees shall have no liability whatsoever regarding the use of or reliance upon the Confidential Information by Receiving Party.

**ARTICLE 12**  
**GOVERNING LAW AND DISPUTE RESOLUTION**

- 12.1** This Agreement shall be governed by and interpreted in accordance with the substantive laws of \_\_\_\_\_ excluding any choice of law rules which would refer the matter to the laws of another jurisdiction.
- 12.2** Any dispute arising out of, relating to, or in connection with this Agreement, including any question regarding its existence, validity, or termination shall be settled before a sole arbitrator in accordance with the Arbitration Rules of \_\_\_\_\_ in \_\_\_\_\_. The proceedings shall be in the English language. The resulting arbitral award shall be final and binding without right of appeal, and judgment upon such award may be entered in any court having jurisdiction thereof. A dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect. Receiving Party acknowledges that remedies at law may be inadequate to protect against breach of this Agreement; accordingly, the arbitrator may award both monetary and equitable relief, including injunctive relief and specific performance. A Disclosing Party may apply to any competent judicial authority for interim or conservatory relief; an application for such measures or an application for the enforcement of such measures ordered by the arbitrator shall not be deemed an infringement or waiver of the Agreement to arbitrate and shall not affect the powers of the arbitrator. Any monetary award issued by the arbitrator shall be payable in U.S. dollars. Each Party waives any right to damages other than those provided in Article 7, and the arbitrator shall certify in the decision that only those damages authorized by Article 7 were awarded.

**ARTICLE 13**  
**NONEXCLUSIVE DISCLOSURE OF CONFIDENTIAL INFORMATION**

The disclosure of Confidential Information to Receiving Party is nonexclusive, and Disclosing Party may disclose the Confidential Information to others at any time.

**ARTICLE 14**  
**NO RIGHTS IN THE AREA**

Unless otherwise expressly stated in writing, any prior or future proposals or offers made in the course of the discussions of the Parties are subject to all necessary management and government approvals and may be withdrawn by either Party for any reason or for no reason at any time. Nothing contained herein is intended to confer upon Receiving Party any right whatsoever to the interest of Disclosing Party in the Area.

## **ARTICLE 15 GENERAL PROVISIONS**

### **15.1 No Waiver**

No waiver by either Party of any one or more breaches of this Agreement by the other Party shall operate or be construed as a waiver of any future default or defaults by the same Party. Neither Party shall be deemed to have waived, released, or modified any of its rights under this Agreement unless such Party has expressly stated, in writing, that it does waive, release or modify such rights.

### **15.2 Modification**

This Agreement may not be modified except by written consent of the Parties.

### **15.3 Interpretation**

#### **15.3.1 Headings**

The topical headings used in this Agreement are for convenience only and shall not be construed as having any substantive significance or as indicating that all of the provisions of this Agreement relating to any topic are to be found in any particular article or provision.

#### **15.3.2. Singular and Plural.**

Reference to the singular includes a reference to the plural and vice versa.

#### **15.3.3. Article or Exhibit**

Unless otherwise provided, reference to any article or an exhibit means an article or exhibit of this Agreement.

#### **15.3.4. Include.**

The words "include" and "including" have an inclusive meaning, are used in an illustrative sense and not a limiting sense, and are not intended to limit the generality of the description preceding or following such term.

### **15.4 Counterpart Execution.**

This Agreement may be executed in counterparts and each counterpart shall be deemed an original Agreement for all purposes; provided that neither Party shall be bound to this Agreement until both parties have executed a counterpart. For purposes of assembling the counterparts into one document, Disclosing Party is authorized to detach the signature page from one counterpart and, after signature thereof by Receiving Party, attach each signed signature page to a counterpart.

### **15.5 Entirety.**

This Agreement comprises the full and complete agreement of the Parties regarding the disclosure of the Confidential Information and supersedes and cancels all prior communications, understandings, and agreements between the Parties relating to the Confidential Information, whether written or oral, expressed or implied.

### **15.6 No Third Party Beneficiaries**

The interpretation of this Agreement shall exclude any rights under legislative provisions conferring rights under a contract to persons not a party to that contract.

## **ARTICLE 16 NOTICES**

All notices authorized or required between the Parties by any of the provisions of this Agreement shall be in written English, properly addressed to the other Party as shown below, and delivered in person, by courier, or by any electronic means of transmitting written communications that provides written confirmation of complete transmission. Oral communication and e-mails do not constitute notice for purposes of this Agreement. A notice given under any provision of this Agreement shall be deemed delivered only when received by the Party to whom the notice is directed. "Received" for purposes of this article means actual delivery of the notice to the address or facsimile address of the Party shown below.

\_\_\_\_\_  
(DISCLOSING PARTY)

Address:  
Attention:  
Facsimile:

\_\_\_\_\_  
(RECEIVING PARTY)

Address:  
Attention:  
Facsimile:

## **ARTICLE 17 ASSIGNMENT OF THIS AGREEMENT**

The Receiving Party may assign this Agreement to an Affiliated Company; provided, however, the Receiving Party shall remain liable for all obligations under this Agreement. Receiving Party may assign this Agreement to a person or entity that is not an Affiliated Company only with the prior written approval of Disclosing Party. Any attempted assignment by Receiving Party to a person or entity that is not an Affiliated Company without the prior written approval of



Disclosing Party shall be void. Without limiting the prior provisions of this Article 17, this Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns.

IN WITNESS of their agreement each Party has caused its duly authorized representative to sign this instrument effective on the date first written above.

Signed:

\_\_\_\_\_  
(DISCLOSING PARTY)

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signed:

\_\_\_\_\_  
(RECEIVING PARTY)

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT "A"**  
**CONFIDENTIALITY AGREEMENT**  
**AREA**

**EXHIBIT "B"**  
**CONFIDENTIALITY AGREEMENT**  
**CONFIDENTIAL INFORMATION**