

TRINIDAD ONSHORE BID ROUND 2013

**CONFIDENTIALITY AGREEMENT FOR
LICENCING OF DATA**

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (hereinafter referred to as "Agreement") made and effective this _____ day of _____, 2013 (hereinafter referred to as the ("Effective Date")), by and between:

- 1) **PERMANENT SECRETARY, MINISTRY OF ENERGY AND ENERGY AFFAIRS** acting for and on behalf of the Government of the Republic of Trinidad and Tobago, (which expression shall mean and include the persons or persons for the time being carrying out the duties of the Permanent Secretary in the Ministry) having its registered office situate at Tower C – Energy Trinidad, International Waterfront Centre, #1 Wrightson Road, Port of Spain, Trinidad (hereinafter referred to as the "Disclosing Party") of the First Part; and *[state Receiving Party's name]*
- 2) _____
a company organized and existing under the Laws of *[state jurisdiction in which Receiving Party is incorporated]*, _____, with its registered office at _____
(hereinafter referred to as the "Receiving Party") of the Other Part.

Both the Disclosing Party and the Receiving Party are herein jointly referred to as "Parties" and individually as "Party".

WHEREAS:

- A. the Receiving Party has paid the Participation Fee as a prerequisite to accessing data concerning the Acreage in order to carry out an evaluation study for the purpose of submitting a bid to be awarded an Exploration and Production (Public Petroleum Rights) Licence with respect to the Acreage;
- B. in order to provide the Receiving Party with certain Confidential Information, it is a condition that the Receiving Party execute this Confidentiality Agreement; and
- C. the Disclosing Party has agreed to give the Receiving Party access to Confidential Information in accordance with the terms and conditions outlined hereunder.

NOW, THEREFORE, the Parties hereby agree as follows:

1. DEFINITIONS

In this Agreement capitalized terms shall have the meaning assigned to them as follows:

- "Acreage" Means Rio Claro, Ottoire and St. Mary's blocks;
- "Advisors" includes, consultants, financial advisors, independent petroleum

engineers, lawyers and accountants;

“Affiliate”

means a corporation or partnership that is affiliated with a Party, and for the purpose of this definition, a corporation or partnership is affiliated with a Party if it directly or indirectly controls or is ‘controlled by a Party. For the purpose of determining whether a corporation or partnership so controls a Party or is so controlled by a Party, it shall be deemed that:

- (a) a corporation is directly controlled by another corporation or partnership if shares of the corporation to which are attached more than fifty percent (50%) of the votes that may be cast to elect directors of the corporation are beneficially owned by the other corporation or partnership and the votes attached to those shares are sufficient, if exercised, to elect a majority of the directors of the corporation;
- (b) a partnership is directly controlled by a corporation or another partnership if that corporation or other partnership beneficially owns more than fifty percent (50%) interest in the partnership;
- (c) a corporation or partnership is indirectly controlled by another corporation or partnership if control, as defined in (i) or (ii) above, as the case may be, is exercised through one or more other corporations or partnerships; and
- (d) where two or more corporations or partnerships are affiliated at the same time with the same corporation or partnership, they shall be deemed to be affiliated with each other;

“Bid”

means an offer made by a bidder to enter into an Exploration and Production (Public Petroleum Rights) Licence and joint operating arrangement with Petroleum Company of Trinidad And Tobago Limited;

“Confidential Information”

includes the Data and means all information (including information in the form not only of written information but also information which may be transmitted orally, visually, electronically or by any other means) whether deliberately or inadvertently disclosed or provided to the Receiving Party or to its Representatives by the Disclosing Party or the Disclosing Party’s Representatives either by way of Data Rooms or site visits or any other means of disclosure, relating to the Disclosing Party, its business, affairs, assets, operations or proposed activities including, without limitation, any technical, commercial, legal, financial, strategic, tactical, regulatory or governmental information as well as any information relating to competition, prospective partners, acquisitions or information provided for inspection in any Data Room and all other reports, analysis, evaluations, geological, engineering, geophysical or other data, trade secrets and all other documents or information pertaining in any way whatsoever to the Disclosing Party or the Possible Transaction together with all analysis, evaluations, compilations, notes, studies or other documents prepared by the Receiving Party or its Representatives containing or based upon, in whole or in part,

such information or reflecting the review of, or interest in the Disclosing Party or the Possible Transaction and includes all information, if any, previously made available to Receiving Party or its Representatives;

- “Data” means such information as the Disclosing Party decides in its sole discretion to disclose through the provision of original, electronic or other documents, reports, maps, plans, calculations, notes, assessments and analyses or copies thereof as part of the bidding process or otherwise concerning the blocks or related Confidential Information;
- “Data Package” means the data package provided by the Disclosing Party for the purposes of bidding for the onshore bid round;
- “Data Room” means the data room made available by the Disclosing Party for the purposes of bidding for the onshore bid round;
- “Participation Fee” means the non-refundable sum of Forty Thousand Dollars in United States of America currency (US\$40,000.00) to be paid by bidders;
- "Person" means any natural or legal person, including a corporation, trust or partnership;
- "Possible Transaction" means a transaction or series of transactions whereby the Receiving Party may enter into an Exploration and Production (Public Petroleum Rights) Licence and joint operating arrangement with Petroleum Company of Trinidad And Tobago Limited; and
- "Representatives" means, in the case of the Receiving Party, any of the employees, officers, directors, agents or Advisors who are involved in the preparation of an evaluation, or in any other way in respect of a Possible Transaction and, in the case of the Disclosing Party, any of the Disclosing Party's employees, officers, directors, agents or any Advisors.

2. SCOPE

- 2.1 The principal object of this Agreement is the provision of by the Disclosing Party of a data set which includes but is not necessarily limited to hydrocarbon analysis, reservoir engineering, petrophysics, geology, geophysics, hydrocarbons production, drilling and workover, infrastructure, maps, interpretations, Capex and Opex, to assist the Receiving Party in the assessment of hydrocarbon potential in the Acreage and the maintenance of confidentiality in respect of the Data, any other Confidential Information and any assessments, analysis, studies or opinions derived therefrom.

- 2.2 In making available the Confidential Information, neither the Disclosing Party nor implied as to the quality, accuracy or completeness thereof or otherwise or with respect to any conclusions, interpretations or analysis with respect to any thereof. The Receiving Party (on behalf of itself and its Representatives) expressly acknowledges the inherent risk of error in the acquisition of Confidential Information. Neither the Disclosing Party nor its Representatives shall have any liability whatsoever to the Receiving Party or any of its Representatives as a result of the use of or reliance upon any of the Confidential Information by the Receiving Party or its Representatives; it being understood that only those particular express representations and warranties which may be made by the Disclosing Party in a written agreement when and if executed, shall have any legal effect.
- 2.3 Confidential Information provided to the Receiving Party pursuant to this Agreement shall remain the property of the Disclosing Party and is provided on a non-exclusive basis, without prejudice to the Disclosing Party's right to disclose, licence, sell or in any way treat with such proprietary rights as it may have in the Data or any Confidential Information. The Receiving Party has and shall have no proprietary or other interest in any Data or Confidential Information disclosed, and the Receiving Party agrees to hold the same in trust for the sole benefit of the Disclosing Party.
- 2.4 The Receiving Party agrees that no agreement providing for a Possible Transaction shall be deemed to exist unless and until a definitive written agreement with respect thereto has been executed and delivered by the Disclosing Party in accordance with the laws referred to in clause 7.1 and that unless and until such an agreement has been so executed and delivered, neither the Disclosing Party, nor any of its Representatives shall have any legal obligation of any kind whatsoever with respect to any Possible Transaction with the Receiving Party by virtue of this Agreement or any other written or oral expression with respect to a Possible Transaction except, in the case of this Agreement, for the matters specifically agreed to herein. the Receiving Party further understands and agrees that:
- (a) The Disclosing Party and its Representatives shall be free to conduct, or not conduct, any process with respect to any Possible Transaction with any other Person as the Disclosing Party, in its sole discretion, shall determine (including, without limitation, negotiating with any Person and entering into any agreement without prior notice to the Receiving Party or any other Person); and
 - (b) The Receiving Party shall not have any claim whatsoever against the Disclosing Party or any of its Representatives arising out of or relating to any Possible Transaction.

3. OBLIGATIONS

- 3.1 The Disclosing Party shall provide the Receiving Party with the Data. The Disclosing Party may provide the Receiving Party with additional Confidential Information and any such additional information provided shall be governed by

- the Confidentiality Agreement and included in the definition of “Data” for the purpose of the Agreement.
- 3.2 All Confidential Information, all analysis, assessments, studies or opinions thereof produced by the Receiving Party or otherwise shall be treated in the strictest confidence by the Receiving Party and its contents or effects shall not be disclosed by the Receiving Party to any third parties, without the prior written consent of the Disclosing Party, except:
- (a) to the extent that the Receiving Party is compelled by law or ordered under law to furnish to any competent judicial or administrative authority a portion or the entirety of the Data;
 - (b) to the extent that any such part or all of the Confidential Information was in the possession of the Receiving Party prior to its acquisition under this Agreement through lawful and legitimate means and without breach of any confidentiality obligations;
 - (c) to the extent that Confidential Information is already or becomes a part of the public knowledge or literature other than through the act or omission of the Receiving Party or of any other person to whom Confidential Information is disclosed pursuant to this Agreement;
 - (d) to the extent that Confidential Information is acquired independently by the Receiving Party from a third party that represents it has the right to disseminate such Data at the time it is acquired by the Receiving Party; or
 - (e) to the extent that any analysis, assessment, studies or opinions were developed by the Receiving Party independently of the Confidential Information or Data received from the Disclosing Party.
- 3.3 The Receiving Party shall treat the Data and any assessment, analysis opinion or study of the Data in the strictest confidence, and shall under no circumstances use all or any part of the Confidential Information other than with a view to assessing the potential of the Acreage as stated above.
- 3.4 The Receiving Party shall not in any manner divulge, release, reveal, display, discuss, impart, furnish, disclose or otherwise make known or accessible the Data or any assessment, analysis opinion or study of the Data or any part thereof to any judicial or natural person, except as permitted in Clause 3.2, other than to the Receiving Party and to such of its Representatives as is necessary for the assessment of the Acreage. The Receiving Party and its Representatives shall take all such steps as are necessary to ensure that the terms and conditions of this Confidentiality Agreement, are binding on the Representatives who must have access thereto for the purpose referred to in Article 2.1 hereinabove, PROVIDED THAT the Representatives shall not, whether individually or collectively, be permitted by the Receiving Party in any agreement, to divulge, release, reveal, display, discuss, impart, furnish, disclose or otherwise make known the Data or any assessment, analysis opinion or study of the Data to anyone who is not a Representative.
- 3.5 The Receiving Party agrees that the Confidential Information shall be kept strictly confidential and shall not be sold, traded, published or otherwise disclosed to anyone in any manner whatsoever, including by means of photocopy,

reproduction or electronic media, without the Disclosing Party's prior written consent, except as provided in this Agreement.

- 3.6 The Receiving Party shall use its best efforts to restrict disclosure of the Data and shall be entitled to disclose the Confidential Information to as few as possible of its employees (and only those who need to know or are directly connected with the analysis of the Data) and shall ensure that its employees to whom this information is disclosed shall abide by the terms of this Agreement and shall not use or disclose information, except in accordance with this Agreement.
- 3.7 Prior to making any such disclosures to persons under Clause 3.6 above, the Receiving Party shall obtain an undertaking of confidentiality, enforceable by both the Disclosing Party and the Receiving Party, substantially in the same form and content as this Agreement, from each such person.
- 3.8 The Receiving Party shall maintain appropriate standards to ensure the confidentiality required hereunder, including such reasonable care as shall be consistent with the efforts the Receiving Party regularly exercises with respect to the preservation of its own confidential data and information.
- 3.9 The Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by Receiving Party and its employees and consultants, and will cooperate with the Disclosing Party in every reasonable way to help the Disclosing Party regain possession of the Confidential Information and prevent its further unauthorized use or disclosure.
- 3.10 The Receiving Party may disclose the Confidential Information without the Disclosing Party's prior written consent to an Affiliate (as hereinafter defined), provided that the Receiving Party guarantees the adherence of such Affiliate to the terms of this Agreement.

4. LIABILITIES

- 4.1 The Receiving Party shall be liable for any and all damages (except punitive and exemplary damages) to the Disclosing Party arising out of a breach or threatened breach of any terms or conditions of this Agreement.
- 4.2 Notwithstanding the provisions of Clause 4.1 above, in the event of breach or threatened breach of any term or condition of this Agreement, the Disclosing Party shall be entitled to injunctive relief, as well as any other relief appropriate under the circumstances against the Receiving Party in any court of competent jurisdiction.
- 4.3 The Disclosing Party is not under any obligation to reimburse any costs and expenses which the Receiving Party may incur in connection with the review of the Data.

5. WARRANTIES AND INDEMNITIES

- 5.1 Each Party represents and warrants to the other Party that (i) it has the requisite authority to enter into and perform this Agreement.

- 5.2 The Disclosing Party represents that it owns all the Confidential Information disclosed and has the lawful right to disclose such Confidential Information as contemplated by this Agreement.
- 5.3 In accordance with Clause 2.2, the Data is provided on an "as is" basis and the Disclosing Party, whether by the presentation of the Data or through statements made by its employees, agents or Representatives in discussions relating to the Data or otherwise, makes no warranty express or implied, or representation as to the accuracy of the Data, or its fitness for use for any purpose whatsoever.
- 5.4 The Disclosing Party shall not be liable for any costs, losses, damages or expenses resulting from any inaccuracy or omissions in the Data whether or not caused by error or negligence on the part of the Disclosing Party.
- 5.5 The Receiving Party agrees to release and hold the Disclosing Party harmless from all responsibility or liability for conclusions or interpretations drawn from the Data.
- 5.6 The Receiving Party shall:
- (a) be liable to the Disclosing Party for any and all losses, costs, damages and expenses whatsoever (including legal, accounting and other professional costs, expenses, fees and disbursements, with legal fees determined on a solicitor-client basis) which it may suffer, sustain, pay or incur;
 - (b) indemnify and hold the Disclosing Party harmless against all actions, proceedings, claims, demands, losses, costs, damages and expenses whatsoever (including legal, accounting and other professional costs, expenses, fees and disbursements, with legal fees determined on a solicitor-client basis) which may be brought against or suffered by it or which it may sustain, pay or incur and which are established to result or arise, directly or indirectly, from disclosure of all or any part of the Data contrary to the provisions hereof or any other breach of this Agreement by the Receiving Party or any of its Representatives.

6. COPIES AND RETURN OF DATA

- 6.1 The Receiving Party shall acquire no proprietary interest in or right to the Confidential Information and shall return all originals, reproductions copies, reports, extracts, notes, memoranda and other records in respect of any Confidential Information, and all other tangible materials and devices provided to the Receiving Party as Confidential Information, or at Disclosing Party's option, certify destruction of the same whether provided by the Disclosing Party or developed by the Receiving Party, and purge from all computer data storage systems or hardware any Data stored in electronic form:
- (a) where the Receiving Party does not submit a Bid, within two (2) days of the Bid Submission Deadline.
- 6.2 The Receiving Party shall provide, together with the returned Data, a Notarised affidavit by the General Counsel (or equivalent Officer of the Receiving Party) confirming unconditionally to the Disclosing Party that the terms and conditions of Article 6.1 have been complied with.

7. ARBITRATION AND APPLICABLE LAW

- 7.1 This Agreement shall be governed, construed and interpreted in accordance with the Laws of the Republic of Trinidad and Tobago, excluding any choice of law rules which would refer the matter to the law of another jurisdiction.
- 7.2 Any dispute, controversy or claim arising out of or related to this Agreement, or the breach, termination or invalidity hereof, which cannot be settled amicably by all the Parties, shall be settled by arbitration by a panel of three (3) arbitrators in accordance with the Arbitration Rules of the International Chamber of Commerce as follows:
- (a) the place of arbitration shall be Trinidad and Tobago;
 - (b) the language of arbitration shall be English;
 - (c) the applicable law shall be the Law of the Republic of Trinidad and Tobago;
 - (d) The Arbitration Act Chapter 5:01 of the Laws of Trinidad and Tobago shall also apply to any such arbitration. To the extent, if any, that there is a conflict between the Arbitration Act and the Rules, the Arbitration Act shall control;
 - (e) the decision of the arbitrators shall be final and binding upon the Parties without the right to appeal, and judgment upon such award rendered may be entered in any court having jurisdiction, or application may be made in such court for a judicial acceptance of such award or any other enforcement, as the case may be; and
 - (f) each of the Parties will select one (1) arbitrator and the third arbitrator shall be appointed by mutual agreement of the two (2) arbitrators so appointed but if a Party fails to select its arbitrator within thirty (30) days of notice of commencement of the arbitration proceeding or if the two (2) arbitrators chosen by the Parties fail to choose the third arbitrator within thirty (30) days of the second Party-selected arbitrator being chosen, the President of the International Chamber of Commerce shall choose the remaining arbitrator(s).

8. ASSIGNMENT

This Agreement and the obligations set forth hereunder shall not be transferred or assigned in whole or in part by the Receiving Party or any person bound hereby without the prior written consent of the Disclosing Party.

9. AMENDMENTS, CHANGES AND MODIFICATIONS

No amendments, changes or modifications to this Agreement shall be valid except if the same are in writing and signed by a duly authorized Representative of each of the Parties.

10. DURATION of AGREEMENT

The confidentiality obligations set forth in this Agreement shall continue in full force and effect until the latest of:

- (a) the date when the Confidential Information provided is in the public domain or acquired, known or developed by the Receiving Party as provided in Clause 3.2(C); or
- (b) the date on which the Receiving Party has fully complied with the requirements of Clause 6.1.

11. SEVERABILITY

Where any provision of this Agreement is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole and in such event, such provision shall be changed and interpreted so as to best accomplish the objective of such unenforceable or invalid provision within the limits of applicable Law.

12. ENTIRE AGREEMENT

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

IN WITNESS WHEREOF, the duly authorized Representatives of the Parties have caused this Agreement to be executed in two (2) identical originals on the date first written above.

On behalf of the MINISTRY OF ENERGY AND ENERGY AFFAIRS:

Signature: _____ Date: _____

Name: _____

Designation: _____

In the presence of:

Signature: _____

Name: _____

Designation: _____

On behalf of [state full name of the Receiving Party]:

Signature: _____ Date: _____

Name: _____

Designation: _____

In the presence of:

Signature: _____

Name: _____

Designation: _____

