

**CONFIDENTIALITY AGREEMENT**

**DATED / / 2010**

**AGÊNCIA NACIONAL DO PETRÓLEO  
DE  
SÃO TOMÉ E PRÍNCIPE**

**and**

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1. The Recitals are not part of this Agreement and are included herein for information purposes only.
2. In this Agreement, the words and expressions set out in this Clause shall, unless the context requires otherwise, have the meaning ascribed to them below:

**“Affiliate”** means in relation to a Party a company or corporation or partnership or entity that:

- (i) is directly or indirectly controlled by such Party; or
- (ii) directly or indirectly controls such Party; or
- (iii) is directly or indirectly controlled by a company or corporation or partnership or entity that also directly or indirectly controls or is controlled by such Party.

For these purposes “control” means control of more than 50% of the voting shares or other voting rights of such company or corporation or partnership or entity.

**“Confidential Information”** means any and all documents, agreements, technical information, Evaluation Package and Data, including but not limited to 2D data, and other information which relates to the EEZ and which is either directly or indirectly and in whatever form;

- (i) disclosed to the Receiving Party by the Disclosing Party; or
- (ii) otherwise acquired by the Receiving Party from the Disclosing Party.

**“Data”** means any and all geophysical and/or geological information, data, whether 2D or 3D, and/or reports relating to the EEZ, regardless of the form or medium in or on which they are displayed, copied or recorded (including, for the avoidance of doubt, potential field data such as gravity and magnetism).

**“Third Party”** means an individual, a partnership, a corporation, a trust or other entity not being a Party to this Agreement.

3. In consideration of the Disclosing Party making available to the Receiving Party the Confidential Information, the Receiving Party agrees that such disclosure shall only be made by the Disclosing Party: (i) at the premises of the Disclosing Party in a secure environment wherein the Receiving Party is unable to copy or otherwise depart the premises of the Disclosing Party with copies of the Confidential Information or part thereof or any information or work products derived therefrom; and (ii) in a single visit for a maximum period of 2 days of 8 hours each day; and (iii) only the Receiving Party may be in the data room at any one time and under the supervision of a representative of the Disclosing Party; and (iv) the Receiving Party shall abide by the data room rules set out by the Disclosing Party.
  
4. The Receiving Party further agrees and undertakes, subject to Clauses 5, 6 and 7 below, that it will keep the Confidential Information strictly confidential and that the Receiving Party shall not without the prior written consent of the Disclosing Party;
  - (a) Disclose any Confidential Information to any Third Party;
  
  - (b) Use any Confidential Information for any purpose other than the Project;
  
  - (c) Permit any Third Party to use the Confidential Information or part thereof for such Third Party own benefit or commercial purpose.
  
  - (d) Remove, copy or otherwise depart the Disclosing Party's premises with any Confidential Information or part thereof or other information or work products derived therefrom or copies of any of the forgoing, except as otherwise provided hereunder.
  
5. The restriction on disclosure and use set out in Clauses 2 and 3 above shall not apply to any Confidential Information which:
  - (a) at the date of its disclosure to the Receiving Party is public knowledge or which subsequently becomes public knowledge other than by any act or omission of the Receiving Party;
  
  - (b) is already lawfully known to the Receiving Party or any of its Affiliates as evidenced by its or their written records;

- (c) is at any time after the date of this Agreement lawfully acquired by the Receiving Party from any third party which is rightfully in possession of it and not bound to the Disclosing Party by any confidentiality obligations in respect thereof;
  - (d) is required to be disclosed by a court of competent jurisdiction or under any applicable law or by a government authority or under any rule of any recognised stock exchange (provided that the Receiving Party shall, whenever possible, give written notice to the Disclosing Party prior to such disclosure, including details of the Confidential Information to be disclosed and the persons to whom it is proposed to disclose).
6. The Receiving Party shall be entitled to disclose the Confidential Information without the Disclosing Party's prior written consent to employees, officers and directors of the Receiving Party or its Affiliate strictly on a need to know basis. The Receiving Party shall be entitled to disclose the Confidential Information to professional consultants or agents or financiers retained by the Receiving Party or its Affiliate for the purpose of evaluating the Confidential Information, to the extent they have a clear need to know in order to evaluate the Project, provided that prior to making any such disclosures the Receiving Party shall obtain an undertaking of confidentiality, in essentially the same form and content as this Agreement, from each such person. The Receiving Party shall remain responsible for the acts or omissions of any such persons to whom the Confidential Information is disclosed pursuant to this Agreement as if they were the acts or omissions of the Receiving Party.
7. Upon visiting the data room the Receiving Party will be provided with an evaluation package comprising of a pdf presentation containing ninety (90) slides and these include a section on the exploration history, a technical overview and a brief report of the introduction to the hydrocarbon prospectivity of the EEZ of São Tomé e Príncipe (hereinafter referred to as the "Evaluation Package"). In addition to the Evaluation Package, the Receiving Party may select a reasonable number of up to a maximum of fifteen (15) images or screen dumps of Data, to assist its management in making their decisions, for approval by the Disclosing Party or its representative prior to the Receiving Party departing the data room. Such images or screen dumps may not contain any information or annotations indicating its location or position of the Data. The Receiving Party must return any such images or screen dumps to the Disclosing Party by the date on which the license round closes and if the Receiving Party does not submit a bid no copies thereof may be made or retained by the Receiving Party thereafter and the same must be destroyed. The Receiving Party shall provide written confirmation to the Disclosing Party that any copies thereof have been destroyed.

8. The Disclosing Party may demand the return of the Confidential Information received by the Receiving Party pursuant to this Agreement at any time upon giving written notice to the Receiving Party. Within thirty (30) days of the date of such notice the Receiving Party shall return all of the Confidential Information received hereunder to the Disclosing Party 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.
9. Whilst the Disclosing Party makes available the Confidential Information in good faith the provision thereof does not in any way constitute a warranty by the Disclosing Party that such Confidential Information is accurate, up-to-date, exhaustive or complete on the subject matter concerned for the purpose of the Project and such Confidential Information is disclosed or made available “as is” and any decision made or action taken by the Receiving Party in reliance upon the Confidential Information shall be at the Receiving Party’s own risk. The Disclosing Party and/or other government entities, and the officers, directors and employees of the Disclosing Party and/or other government entities shall have no liability whatsoever with respect to the use of or reliance upon the Confidential Information by the Receiving Party.
10. The Disclosing Party hereby represents and warrants that it has the power, right and authority to disclose the Confidential Information to the Receiving Party on the terms set forth herein. Subject to compliance by the Receiving Party with the terms of this Agreement, the Disclosing Party shall defend and indemnify the Receiving Party from and against any and/or all claims by Third Parties arising out of allegedly unauthorised disclosure of the Confidential Information or any part thereof by the Disclosing Party to the Receiving Party.
11. Without prejudice to any other rights or remedies that the Disclosing Party may have, the Receiving Party agrees that damages alone may not be an adequate remedy for any breach by the Receiving Party (or any person to whom the Receiving Party has disclosed the Confidential Information) of the provisions of this Agreement and that the Disclosing Party may be entitled to the remedies of injunction, specific performance and any other equitable relief for any threatened or actual breach of the provisions of this Agreement. Neither Party shall be liable in an action initiated by one Party against the other Party for indirect, special, punitive or consequential loss or damages resulting from or arising out of this Agreement, including, without limitation, loss of profit, business interruption or loss of contract however same may be caused.

12. No amendments, changes or modifications to this Agreement shall be valid unless the same are made in writing and signed by both Parties and their respective authorised representatives.
13. This Agreement shall come into effect on the date first above written and shall apply and continue in effect unless and until superseded by the provisions of a further agreement entered into between the Parties in respect of the Project, or in the absence of such agreement, for a period of five (5) years from the date hereof.
14. This Agreement comprises the full and complete agreement of the Parties with respect to the disclosure of the Confidential Information by the Parties and supersedes and cancels all prior communications, understandings and agreements between the Parties, whether written, oral, expressed or implied.
15. This Agreement is not intended to and shall not be construed as constituting any commitment by either Party to accept any proposal made by the other Party or to provide financial or other contribution to the other Party in respect of or in connection with the Project or to create a partnership, joint venture, agency or any other business combination between the Disclosing Party and the Receiving Party and both Parties shall remain at all times as separate legal entities nor shall it be construed as a guarantee that any interest in or Block in the EEZ will be awarded to the Receiving Party.
16. Each Party may sign identical counterparts of this Agreement with the same effect as if both Parties had signed the same document. A copy of this Agreement signed by one Party and delivered by facsimile transmission to the other Party shall have the same effect as the delivery of an original of this Agreement containing the original signature of such Party.
17. This Agreement shall be governed by and interpreted in accordance with the Laws of England and Wales, without regard to the conflict of laws principle that would cause the law of another jurisdiction to apply. The Parties hereby agree to submit to the exclusive jurisdiction of the English Courts for the purpose of interim relief.
18. A dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect. Any dispute arising out of or in connection with the agreement, including any question regarding its existence, validity or termination which cannot be resolved amicably by the Parties shall be referred to and finally resolved by arbitration under the rules of arbitration of the International Chamber of Commerce (“ICC Rules”)

which are deemed to be incorporated by reference in this article. The place and legal seat of arbitration shall be London, England.

The arbitration tribunal shall comprise of by one (1) arbitrator appointed by mutual agreement of the Parties. In the event that the Parties fail to agree on the arbitrator to be appointed within 14 (fourteen) days from the date the claimant submitted its request for arbitration then on the application of either Party the president of the ICC at any time and from time to time, acting as the appointing authority under the said ICC Rules, shall appoint the arbitrator who shall be fluent in the English language experienced in the licensing of intellectual property, Data and the oil industry.

The decision of the arbitrator (which shall be given by him in writing stating his reason therefore) shall be given within three (3) months from the commencement of the arbitration proceedings, shall be final and binding on the Parties and the Parties hereby preclude any and/or all application for judicial review and/or appeal to the fullest extent possible and permitted by law and the ICC Rules. The costs of the arbitration (including the costs of any technical expert appointed by him) shall be borne in such proportions as the arbitrator may determine to be fair and reasonable in all the circumstances or, if no such determination is made by the arbitrator, by the Parties in equal proportions. The Parties shall bear their own legal costs incurred by them. Judgement upon the award rendered by the arbitrator shall be binding upon the Parties hereto and may be entered in and enforced by any court having jurisdiction over the Party or the assets of the Party against who the award was made.

19. This Agreement shall not be construed to confer any benefit on any person not being a Party to this Agreement nor shall it provide any rights to such person to enforce any of its provisions by virtue of the provisions of the English Contracts (Rights of Third Parties) Act 1999 which are hereby expressly excluded. The Parties may rescind, vary, waive, restore, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Agreement without the consent of any person who is not a Party to this Agreement.

*[Signature block follows]*

**IN WITNESS WHEREOF** the Parties have signed this Agreement as of the day and year first above written.

SIGNED by duly authorised signatory

for and on behalf of

**THE AGÊNCIA NACIONAL DO PETRÓLEO DE SÃO TOMÉ E PRÍNCIPE**

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Name:.....

SIGNED by duly authorised signatory

for and on behalf of the **RECEIVING PARTY**

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Name:.....