

GOVERNMENT OF MALTA



## **CONFIDENTIALITY AGREEMENT**

**IN CONNECTION WITH THE DISCLOSURE OF INFORMATION  
REGARDING CERTAIN AREAS  
UNDER MALTESE JURISDICTION INCLUDING AREAS  
ON THE MALTESE CONTINENTAL SHELF**

**Continental Shelf Department  
Ministry for Finance  
Block E, Antonio Maurizio Valperga Street  
Floriana FRN 1700  
Malta**

**Tel:**

**Email:**

An agreement (hereinafter referred to “**Agreement**”) entered into on the Date set out in the Execution Page hereof by and between:

The **Receiving Party** (details of whom are set out in the Execution Page of this Agreement) represented hereon by the **Signatory** (details of whom are set out in the Execution Page of this Agreement), duly authorised for this purpose;

and

The **Disclosing Party**, the Continental Shelf Department, Ministry for Finance, Block E, Antonio Maurizio Valperga Street, Floriana, FRN 1700, Malta, for and on behalf of the Government of Malta represented hereon by [NAME], Director General (Continental Shelf Department) duly authorised for this purpose.

Each of the Receiving Party and the Disclosing Party is sometimes referred to as a “**Party**” and both of them together as the “**Parties**”.

WHEREAS the Receiving Party has expressed to the Disclosing Party an interest in the evaluation of the [petroleum potential / potential for geological storage of carbon dioxide / potential for geothermal energy] and the possible acquisition by the Receiving Party of certain rights under a licence regarding those certain area/s under Maltese jurisdiction including area/s on the Maltese continental shelf (hereinafter referred to as the ‘Area’);<sup>1</sup>

WHEREAS the Disclosing Party is willing in accordance with the terms and conditions of this Agreement to disclose to the Receiving Party certain information and data of a technically and commercially sensitive nature and whereas the Receiving Party is willing to receive such information and data as stipulated and is hereby being bound in terms of this Agreement (hereinafter referred to as the ‘appraisal of information’),

NOW THEREFORE the Parties agree as follows:

## 1. **DEFINITIONS**

### 1.1 In this Agreement:

“**Affiliated Company**” means any company or legal entity that controls, or is controlled by, or that is controlled by an entity that controls, the Receiving Party.

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<sup>1</sup> To be amended as required.

"Control" means the direct or indirect ownership of fifty (50) percent or more of the voting rights in a company or other legal entity.

**"Information"** means the information and data of a technically and commercially sensitive nature being disclosed on a non-exclusive basis relating to the Area which includes but is not necessarily limited to geological, geophysical, geochemical data, remote sensing data, well data, maps, models and interpretations relating to the Area obtained by the Receiving Party or any of its Subjects, and whether orally, in writing, digitally or in any other form and includes any information which may be made available by any Protected Person on behalf of the Disclosing Party relating to the Area by means of the appraisal of information.

**"Protected Person"** means the Disclosing Party, and its officers, employees, consultants, advisors and contractors.

**"Subjects"** means the Affiliated Companies of the Receiving Party and the directors, officers, managers, employees, shareholders, beneficial owners, consultants, advisors and contractors of the Receiving Party and its Affiliated Companies.

## **2. USE OF INFORMATION**

- 2.1 The Receiving Party shall treat, and cause the Subjects to treat, all Information as strictly confidential in accordance with this Agreement.
- 2.2 The Receiving Party may use the Information for its assessment of the prospectivity of the Area but for no other purpose.
- 2.3 The Parties recognise that persons authorised to review the Information under sub-paragraph 3.1 may form mental impressions (*i.e.*, impressions not written or otherwise reduced to a record) regarding the Information. The Parties agree that such persons shall not be precluded from working on other projects and that the use of these mental impressions by those persons for any purpose shall not be a violation of the restriction contained in sub-paragraph 2.2.
- 2.4 The Receiving Party shall mark, and treat, as confidential, any information or data whether conveyed orally or in writing including but not limited to documents, disks or other media containing or reflecting, or which are generated

from, any Information.

- 2.5 The Receiving Party agrees to abide by the data room guidelines attached hereto as **Schedule A**.

### **3. DISCLOSURE OF INFORMATION**

- 3.1 The Receiving Party may disclose the Information only to Subjects who are directly involved with the assessment of the Area but disclosure will be strictly to the extent that they require access to such Information for the purposes of such assessment and on the basis that they themselves will not disclose such Information to any other person where such disclosure would not be permitted pursuant to this Agreement. The Receiving Party shall take all actions necessary to prevent the disclosure of Information to any other person.
- 3.2 The Receiving Party shall be responsible to the Disclosing Party for the compliance of the Subjects described in sub-paragraph 3.1 with the terms of this Agreement as though such Subjects were the Receiving Party.
- 3.3 The Receiving Party agrees that it may make only sufficient copies of Information as may be necessary for review and evaluation by its Subjects as provided in sub-paragraph 3.1, and for no other purpose.

### **4. ANNOUNCEMENTS**

- 4.1 Subject to sub-paragraph 4.2, the Receiving Party shall not disclose, copy or distribute to any person (except to its Subjects as provided in paragraph 3), entity or authority or announce any Information or any of the terms or other facts relating to the Area without the prior written consent of the Disclosing Party which may be withheld or granted conditionally at the Disclosing Party's sole discretion.
- 4.2 Subject to sub-paragraph 4.3, where any disclosure, copying, distribution or announcement mentioned in sub-paragraph 4.1 is required and mandatory by law or regulation, court order or the requirements of any stock exchange or other regulatory organisation, or by a lawful order of governmental authority, or other authority with relevant jurisdiction over the Receiving Party, compliance with which is mandatory, then any such disclosure, copying, distribution or announcement shall be made by the Receiving Party (or any Subject as the case

may be) only to the extent required, provided that the Receiving Party shall make all reasonable efforts to give prompt written notice to the Disclosing Party prior to such disclosure, copying, distribution or announcement.

- 4.3 If the Receiving Party is unable to inform the Disclosing Party prior to effecting the required disclosure, copying, distribution or announcement as provided in sub-paragraph 4.2, it shall inform the Disclosing Party in writing of the circumstances, timing, content and manner of the disclosure, copying, distribution or announcement as soon as possible thereafter.

## **5. ACTIONS AFTER THE APPRISAL OF INFORMATION**

- 5.1 If the Receiving Party decides not to pursue its interest in the Area or otherwise its involvement with the Disclosing Party in any manner whatsoever the Receiving Party shall:

- (i) immediately stop using, and the Receiving Party shall ensure that its Subjects immediately stop using, any Information in its possession or in the possession of its Subjects for any purpose, and it shall not further disclose any Information in its possession to any person (including to any Subjects);
- (ii) within thirty (30) days destroy to the extent possible or deliver to the Disclosing Party, and it shall ensure that its Subjects within thirty (30) days destroy to the extent possible or deliver to the Disclosing Party, all copies of Information in its possession, or in the possession of its Subjects, and it shall immediately take reasonable steps and shall ensure that its Subjects within thirty (30) days take steps to expunge to the extent possible all Information from any computer, server, word processor, cloud storage or other device containing Information. On request by the Disclosing Party, any destruction of Information will be confirmed by the Receiving Party; and
- (iii) use its best efforts to prevent the disclosure of any Information.

- 5.2 The provisions of sub-paragraph 5.1 do not apply to the following:

- (i) Information that is retained in the computer backup system of the Receiving Party or a Subject to whom it was disclosed under sub-paragraph 3.1 if the Information will be destroyed in accordance with the regular

ongoing records retention process of the Receiving Party or such Subject and if the Information is not used prior to its destruction;

- (ii) Information that must be retained under applicable law, including by stock exchange regulations or by governmental or judicial order, decree, regulation or rule; provided that such Information is not otherwise used or disclosed except as permitted under this Agreement; and
- (iii) Copies of Information contained in executive summaries, management presentations and board minutes related to the Receiving Party's and its Subjects' evaluation of the Area and possible transaction with the Disclosing Party, provided such copies are retained for internal use only.

## **6. EVALUATION MATERIAL**

- 6.1 Information generated by the Receiving Party or by a Subject to whom information has been disclosed pursuant to sub-paragraph 3.1 that is derived in whole or in part from Information is "Evaluation Material." Evaluation Material includes, but is not limited to, models, analyses, estimates of reserves, interpretations, presentations for management, and economic evaluations.
- 6.2 For the avoidance of doubt, Evaluation Material is not, and is not to be deemed, Information. However, during the term of this Agreement, the Receiving Party shall not disclose Evaluation Material to anyone other than employees, officers and directors of the Receiving Party and its Subjects or those persons to whom the Information may be disclosed pursuant to this Agreement without the prior written consent of the Disclosing Party.

## **7. COMMUNICATIONS, CONSENTS AND ACTIONS**

- 7.1 All communications and questions regarding the Area shall be made only to the Director General of the Disclosing Party in writing.

## **8. TERM**

- 8.1 If the Receiving Party (or an Affiliated Company) acquires any of the Disclosing Party's rights in the Area, then this Agreement shall terminate automatically on the date the Receiving Party (or its Affiliated Company) enters into a further agreement to the extent that such agreement contains provisions which

supersede this Agreement and cover the confidentiality of the Information related to the Area. Unless earlier terminated under the preceding sentence, the confidentiality obligations and limitations set forth in this Agreement shall terminate six (6) years after the effective date of this Agreement.

## **9. GENERAL**

- 9.1 The Receiving Party agrees that no right or licence to any Information except as expressly set out in this Agreement is granted to it or its Subjects.
- 9.2 None of the Protected Persons or their advisors accepts any responsibility for or makes or gives any representation or warranty, express or implied, as to the truth, accuracy, completeness or reasonableness of any Information.
- 9.3 The Disclosing Party represents and warrants that it has the right and authority to disclose the Information to the Receiving Party and its Subjects.
- 9.4 None of the Protected Persons or their advisors is obliged to update any Information.
- 9.5 Neither the provision of any Information nor the discussions, negotiations (if any are entertained) or any other matter relating to the Area constitutes an offer, promise or undertaking by any of the Protected Persons to enter into any agreement and/or other arrangement relating to the Area including the granting of a licence with the Receiving Party nor to impose on the Receiving Party or any of its Subjects any obligation to enter into any agreement and/or arrangement and/or to acquire a licence relating to the Area.
- 9.6 The Receiving Party is responsible for making its own decision on the Information, the Area and the transaction contemplated.
- 9.7 The Receiving Party acknowledges and agrees that the Disclosing Party may be irreparably harmed by the breach of the terms of this Agreement and damages may not be an adequate remedy. The Disclosing Party shall be entitled to seek an injunction or specific performance for any threatened or actual breach of the provisions of this Agreement by the Receiving Party or any other person receiving Information pursuant to this Agreement. 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 this Agreement. In no event shall the Parties 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, however same may be caused, regardless of negligence or fault.

- 9.8 The failure by any Protected Person to exercise or delay in exercising a right or remedy provided by this Agreement, by law or in equity, does not constitute a waiver by such or any other Protected Person of such right or remedy or a waiver of other rights or remedies. No single or partial exercise by any Protected Person of a right or remedy provided by this Agreement, by law or in equity prevents further exercise of the right or remedy or the exercise of another right or remedy available to such or any other Protected Person, whether contractual, equitable, proprietary or otherwise.
- 9.9 If any provision of this Agreement is held to be invalid or unenforceable, that provision shall (so far as it is invalid or unenforceable) be given no effect and shall be deemed not to be included in this Agreement, but without invalidating any of the remaining provisions of this Agreement.
- 9.10 This Agreement may not be assigned or otherwise transferred by the Receiving Party in whole or in part without the prior written consent of the Disclosing Party.

## **10. EXCEPTIONS**

- 10.1 This Agreement does not apply to any Information which:
- (i) at the date of disclosure to the Receiving Party or its Subjects is publicly known, or at any time after that date becomes publicly known (other than by breach of this Agreement); or
  - (ii) was obtained by the Receiving Party from a third Party (save when such third Party's disclosure of such Information breaches a duty of confidence owned by it to any or all of the Protected Persons); or
  - (iii) as proven by written records is without any restrictions on disclosure and is in the Receiving Party's knowledge on the date hereof.

**11. GOVERNING LAW AND JURISDICTION**

11.1 This Agreement and all agreements and undertakings stipulated in or conducted in pursuance of this Agreement shall be governed by and construed in accordance with the Laws of Malta.

11.2 Any dispute arising out of or in connection with this Agreement which cannot be amicably resolved by the Parties acting in good faith shall be submitted to the Courts of Malta, which shall have exclusive jurisdiction.

**12. ENTIRE AGREEMENT**

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

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**EXECUTION PAGE**

**RECEIVING PARTY**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Email:** \_\_\_\_\_

**SIGNATORY**

(Duly Authorised)

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Email:** \_\_\_\_\_

**Passport No:** \_\_\_\_\_

**Position:** \_\_\_\_\_

**DATE** \_\_\_\_\_

SIGNED

FOR AND ON BEHALF OF **RECEIVING**

**PARTY** \_\_\_\_\_

SIGNED

FOR AND ON BEHALF OF **DISCLOSING**

**PARTY** \_\_\_\_\_

*Director General (Continental Shelf Department)*

## **Schedule A – Data Room Guidelines**

This document is intended to provide guidance to qualified companies attending the data room at the Continental Shelf Department.

### **1. Eligibility**

The data room is open to qualified companies having a proven record in either assessing [the petroleum potential or the potential for geological storage of carbon dioxide or the potential for geothermal energy] within areas under Malta's jurisdiction including areas on Malta's continental shelf.

### **2. Application**

Companies interested in visiting the physical data room are invited to write to the Director General of the Continental Shelf Department at [dgcs.csmalta@gov.mt](mailto:dgcs.csmalta@gov.mt) indicating their preferred dates for the data room visit. Access to the data room is subject to a Confidentiality Agreement. A two-day physical visit by two to three geoscientists is usually sufficient for an initial assessment of the data.

No virtual data room is currently available.

### **3. Location and Opening Hours of the Data Room**

The physical data room is located at the offices of the [Continental Shelf Department](#). The data room will be open from 9:00 am to 4:30 pm (Malta time) Monday to Friday (excluding public holidays) and is open to a team of a maximum of three (3) representatives from the visiting company.

A data room coordinator will be available during the data room visit.

### **4. Data Room Fees**

The Continental Shelf Department currently charges no admission fee for the use of the data room. Please contact the Director General of the Continental Shelf Department at [dgcs.csmalta@gov.mt](mailto:dgcs.csmalta@gov.mt) for more information.

### **5. Use of IT and Other Equipment in the Physical Data Room**

Although visitors may use mobile telephones and personal computers in the physical data room, the use of copiers, cameras (including but not limited to mobile phone cameras or pen cameras), scanners, external storage devices or any other copying device is strictly prohibited.

### **6. IT Facilities in the Physical Data Room**

Data is available on two desktop computers: one containing the well and block/regional evaluation reports and the other containing a Petrel project with all available seismic and well data for viewing.

Wi-Fi is available in the data room.

### **7. Conduct**

Company representatives visiting the data room are permitted to make annotations during the visit and to take representative screen shots of legacy data that will assist

the company in its assessment of the prospectivity of the area of interest. Screen shots as agreed with the Continental Shelf Department will be transferred to the company after the data room visit. The screen grabs shall be for the company's strict internal use.

It has to be clarified that the above applies only to legacy data which is owned exclusively by the Continental Shelf Department.

#### **8. Representation and warranty**

The Continental Shelf Department represents and warrants that it has the right and authority to make the data available in the data room. However, the Continental Shelf Department makes no representations or warranties as to the quality, accuracy and completeness of the data made available and shall have no liability whatsoever with respect to the use or reliance upon the data by the company viewing the data.

#### **9. CCTV Monitoring**

The physical data room as well as the conference room, corridors and reception area of the Continental Shelf Department are monitored on a 24/7 basis by CCTV cameras.