



د افغانستان اسلامي جمهوریت  
وزارت معادن و پترولیم  
ISLAMIC REPUBLIC OF AFGHANISTAN  
**Ministry of Mines and Petroleum**



**ISLAMIC REPUBLIC OF AFGHANISTAN  
MINISTRY OF MINES AND PETROLEUM**

**TENDER OF (Project name)**

- (1) **THE MINISTRY OF MINES AND PETROLEUM ON BEHALF OF  
THE GOVERNMENT OF THE ISLAMIC  
REPUBLIC OF AFGHANISTAN**
- (2) **[insert Bidder name]**

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**NON-DISCLOSURE AGREEMENT**

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**THIS AGREEMENT** (“**Agreement**”) is effective this [insert day] day of [insert month], [insert year] (the “**Effective Date**”) and made [between / by and among]:

- (1) **THE MINISTRY OF MINES AND PETROLEUM** (the “**Ministry**”) **ON BEHALF OF THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF AFGHANISTAN** (the “**Government**”)

**AND**

- (2) **[COMPLETE THIS SECTION FOR AN AFGHAN-REGISTERED ENTITY]**

**[INSERT NAME OF ENTITY]**, Registration Number/Tax Identification Number [●], Registered Office **[INSERT ADDRESS]** (“**Recipient**”);

**[OR]**

- (3) **[COMPLETE THIS SECTION FOR AN INTERNATIONAL ENTITY]**

**[INSERT NAME OF ENTITY]**, Structured under the Laws of **[INSERT COUNTRY]** Registration Number/Tax Identification Number [●], Registered Office/Country of primary place of business **[INSERT ADDRESS]** (“**Recipient**”);

**[OR]**

- (4) **[COMPLETE THIS SECTION FOR AN INDIVIDUAL]**

**[INSERT NAME]**, child of [●], with **[INSERT COUNTRY]** Identity Number [●] and Passport Number [●], residing at **[INSERT ADDRESS]** (“**Recipient**”);

**[FOR CONSORTIA AND OTHER ARRANGEMENTS REPEAT THE ABOVE AS APPLICABLE SO THAT EACH MEMBER/SPONSOR IS A PARTY TO THE AGREEMENT]**

The Ministry and Recipient may also be referred to individually as a “**Party**” and collectively as the “**Parties**”.

## **RECITALS**

A. WHEREAS, Disclosing Party owns or controls certain Confidential Information related to the Project (as such terms are defined below);

B. WHEREAS, Disclosing Party may disclose certain Confidential Information to Recipient in connection with the bidding process for the Project initiated under Article 41 of the Minerals Law;

C. WHEREAS, Recipient anticipates receiving certain Confidential Information from Disclosing Party in connection with Recipient’s potential submission of a tender proposal to undertake the Project; and

D. WHEREAS, Disclosing Party is willing to disclose certain Confidential Information to Recipient to enable Recipient to submit such tender proposal, in reliance upon and subject to the terms and conditions of this Agreement.

## AGREEMENT

NOW THEREFORE, in consideration of the mutual agreements of the Parties, the Parties agree as follows:

1. Definitions.

In this Agreement:

**“Affiliate”** means, with respect to any Recipient, any person or entity controlling, controlled by, or under common control with the Recipient.

**“Afghanistan”** means the Islamic Republic of Afghanistan.

**“Confidential Information”** means all information, tangible or intangible and in whatever form or medium, furnished, communicated, or otherwise made available by or on behalf of Disclosing Party relating to the Project, Disclosing Party, or communications with any other party with respect to the Project, whether before, on or after the Effective Date of this Agreement. All information generated by Recipient, Affiliates, or Recipient’s or Affiliates’ Representatives, which contains, reflects, or is derived from “Confidential Information” shall be considered “Confidential Information”. For the avoidance of doubt, the existence of this Agreement shall also be considered “Confidential Information.”

**“Disclosing Party”** means the Government, any ministry (including, but not limited to, the Ministry), committee, or subdivision of the Government, or any of the Government’s employees or advisors, or any other associated government authority, personnel, or entity, or any person who has provided Confidential Information to Recipient, Affiliates, or its or their Representatives on behalf of the Government.

**“Permitted Purpose”** means (i) evaluation of whether to submit a tender proposal to undertake the Project, (ii) preparation and submission of a tender proposal to undertake the Project, and (iii) communications directly related to any contracts or licences awarded to Recipient in connection with the Project.

**“Project”** has the meaning given to that term in the Request for Expressions of Interest dated XX December, 2019, relating to the project

**“Recipient”** means the Recipient(s) as identified in this Agreement, each in its individual capacity.

**“Representative”** means, with respect to any party, representatives of that party, including any and all directors, officers, employees, members, managers, agents, representatives, financial advisors, consultants, contractors, and legal counsel.

2. Recipient shall (and shall cause its Affiliates and its and their respective Representatives to) (i) treat all Confidential Information as strictly confidential; (ii) maintain all Confidential Information in a secure place (including protecting electronic information on a secure server), not to be disclosed to anyone not a Party to this Agreement, except to those Representatives of Recipient and Affiliates to whom it is necessary to disclose such Confidential Information for a Permitted Purpose; and (iii) not use any Confidential Information in any way other than for a Permitted Purpose. Recipient shall be responsible for ensuring that all persons to whom the

Confidential Information is disclosed under this Agreement shall keep such information confidential and shall not disclose or divulge the same to any unauthorized person.

3. The confidentiality provisions of paragraph 2 shall not apply to any Confidential Information to the extent any of the Confidential Information (i) is now or later becomes a part of the public domain other than as a result of Recipient's, any Affiliate's, or its or their respective Representative's breach of this Agreement; (ii) becomes available to Recipient on a non-confidential basis from a source other than Disclosing Party who is not bound by a confidentiality agreement or other obligation of secrecy with respect to such information; (iii) is already in the possession of Recipient, on a non-confidential basis, at the time of disclosure by Disclosing Party, as shown by Recipient's files or records immediately prior to the time of disclosure; or (iv) is independently developed by Recipient without reference to any Confidential Information by persons who have not had access to such Confidential Information.

4. Any Disclosing Party who is not a named Party to this Agreement shall be an express third-party beneficiary to this Agreement and shall be entitled to the rights and benefits of this Agreement and may enforce its terms as if it were a party to this Agreement.

5. Notwithstanding anything to the contrary in this Agreement, Disclosing Party shall have no obligation to disclose any Confidential Information to Recipient.

6. Notwithstanding the provisions of paragraph 2, if Recipient, Affiliates, or any of its or their respective Representatives become legally compelled to disclose any Confidential Information, Recipient will, where practicable, provide the relevant Disclosing Party with prompt written notice of the potential disclosure so that Disclosing Party may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, Disclosing Party waives compliance with the provisions of this Agreement only to the extent necessary to allow Recipient, such Affiliates, or such respective Representatives to disclose only that portion of such Confidential Information that Recipient is legally required to disclose, as advised by counsel in a written opinion.

7. Recipient shall notify Disclosing Party immediately upon becoming aware or suspecting that any Confidential Information has been disclosed by Recipient or Affiliates or its or their respective Representatives in contravention of the terms of this Agreement, and shall cooperate with Disclosing Party in taking any action to limit or remedy such breach.

8. Recipient shall not make copies or reproductions of Confidential Information except to the extent necessary for a Permitted Purpose.

9. If Recipient ceases to participate in the bidding process for the Project, or upon the written request of Disclosing Party, Recipient shall, and shall cause Affiliates and its and their respective Representatives to, within thirty (30) days of such cessation or request, as applicable: (i) redeliver to Disclosing Party all Confidential Information, including all copies of Confidential Information; (ii) destroy those portions of any notes, summaries, and other documents or writings whatsoever (including electronic writings) prepared by Recipient, Affiliates, or its or their respective Representatives that contain Confidential Information; and (iii) certify such destruction in writing to Disclosing Party by an authorized person supervising such destruction. Notwithstanding anything to the contrary in this Agreement, Recipient may, if it so elects, retain one copy of the Confidential Information in the files of its attorney solely for evidentiary purposes (it being understood that any such Confidential Information so retained shall be subject to the terms of this Agreement).

10. **DISCLOSING PARTY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE QUALITY, ACCURACY, AND COMPLETENESS OF THE CONFIDENTIAL INFORMATION DISCLOSED UNDER THIS AGREEMENT. DISCLOSING PARTY SHALL HAVE NO OBLIGATION TO UPDATE ANY CONFIDENTIAL INFORMATION AND NO LIABILITY WHATSOEVER WITH RESPECT TO THE USE OF OR RELIANCE UPON THE CONFIDENTIAL INFORMATION BY RECIPIENT, AFFILIATES, OR ITS OR THEIR REPRESENTATIVES.**

11. Recipient represents and warrants that (i) it has entered into this Agreement in accordance with its organizational documents and the laws applicable to it on the date of this Agreement; (ii) it has the capacity, power, and authority to enter into and deliver the Agreement and to perform its obligations under this Agreement; (iii) the individual executing this Agreement has been duly authorized to bind Recipient to the terms and conditions of this Agreement; and (iv) if Recipient is evaluating the Project as a member of a consortium or association, that every member of such consortium or association is a signatory to this Agreement.

12. The Parties agree that Disclosing Party would not have an adequate remedy at law for any breach or nonperformance of the terms of this Agreement by Recipient and that this Agreement, therefore, may be enforced by specific performance or a temporary restraining order and/or injunction without proof of special damages.

13. Recipient shall indemnify, defend, and hold harmless Disclosing Party at all times against all liabilities, damages, and losses (including, but not limited to, any direct or indirect losses, loss of profit, or loss of reputation) and all costs and expenses (including, but not limited to, reasonable attorneys' fees) arising from any claim, suit, action, or proceeding brought by or against Disclosing Party arising out of Recipient's, Affiliates', or its or their Representatives' breach of this Agreement.

14. Each Recipient shall be jointly and severally liable for the duties and obligations of every other Recipient under this Agreement.

15. All Confidential Information disclosed to or obtained by Recipient pursuant to this Agreement shall remain the exclusive property of Disclosing Party (or the property of the party from which Disclosing Party licensed the Confidential Information). Neither this Agreement nor any disclosure of Confidential Information pursuant to this Agreement shall be deemed to grant Recipient any ownership, license, or other rights to or under any know-how, trade secrets, other intellectual property, or Confidential Information of Disclosing Party.

16. No modification or waiver of any of the provisions of this Agreement, or any representation, promise or addition to this Agreement, or waiver of any breach of this Agreement, will be binding upon either Party unless made in writing and signed by the Parties, and in each case by a person duly authorized. No waiver of any particular breach will be deemed to apply to any other breach, whether prior or subsequent to a waiver. No failure or delay by either Party in exercising any right, power, or privilege under this Agreement shall act as a waiver of such right, power or privilege.

17. Any notice required or contemplated under this Agreement shall be in writing and delivered to the other Party by hand, mail, or electronic transmission (with a copy by mail) to the addresses identified below:

*If to the Ministry:*  
Large-Scale Mining Committee  
Ministry of Mines and Petroleum  
Charayi Abdulhaq (Abdulhaq Circle)  
Kabul, Afghanistan  
[largescalemining@momp.gov.af](mailto:largescalemining@momp.gov.af)

*If to Recipient:*  
[insert address]

18. If any part or provision of this Agreement may be interpreted to be void, voidable, unlawful, or unenforceable, which part or provision would not be so void, voidable, unlawful, or unenforceable if it were interpreted restrictively, such part or provision shall be interpreted restrictively. If any part or provision of this Agreement is declared fully or partially invalid, unlawful, or unenforceable by a court of competent jurisdiction, the remainder of the part or provision and this Agreement will remain in full force and effect.

19. The legality, validity, enforceability, and interpretation of this Agreement and the relationship of the Parties shall be governed with the laws of Afghanistan, including international treaties and bilateral investment treaties to which Afghanistan is a party.

20. The Ministry and Recipient hereby consent to the resolution of any dispute arising out of or relating to this Agreement by binding arbitration by one arbitrator in accordance with rules of the International Centre for Settlement of Investment Disputes pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. The place of arbitration shall be Singapore. The language of the arbitration shall be English. Judgment on an award may be entered by any court of competent jurisdiction.

21. This Agreement shall be binding upon and inure to the benefit of the Parties, their respective successors and assigns. Recipient may not assign this Agreement without the express prior written consent of the Ministry, which may be withheld in its sole and absolute discretion.

22. Recipient shall, at its own cost, do and perform, or cause to be done or performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments, and other documents, as the Ministry may reasonably require to carry out the intent and accomplish the purposes of this Agreement.

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

24. The original of this Agreement is drafted in English. If this Agreement is translated into any other languages, the English language text shall control.

25. Subject to paragraph 26, the obligations in this Agreement are continuing and shall survive the termination of any discussions or negotiations between the Ministry and Recipient.

26. This Agreement and the Parties' obligations shall expire ten (10) years after the Effective Date.

*[Remainder of page intentionally left blank. Signature page follows.]*

IN WITNESS WHEREOF, the undersigned have executed this Agreement to be effective as of the Effective Date.

**MINISTRY:**

The Ministry of Mines and Petroleum on behalf of the Government of the Islamic Republic of Afghanistan

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

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

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

**RECIPIENT:**

[insert name of Party]

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

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

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

***[REPEAT SIGNATURE BLOCK AS REQUIRED SO THAT EACH PARTY IS SIGNATORY]***