



Dated (21st April, 2019)



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

**TENDERS OF GRAVEL PRODUCTION
FACILITIES**

- (1) **THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF
AFGHANISTAN** as the
Government
- (2) [●] as the Interested Party

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is dated and made between the following parties (the “Parties”)

- (1) **THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF AFGHANISTAN** (the “Government”);

AND

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

[●] *[INSERT TYPE OF ENTITY]*, Structured under the Laws of [●] *[INSERT COUNTRY]* Registration Number/Tax Identification Number [●] Registered Office/Country of business [●] *[INSERT ADDRESS]* (“The Interested Party”)

OR

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

[●] *[INSERT NAME]*, son of [●], with [●] *[INSERT COUNTRY]* Identity Number [●] and Passport Number [●], residing at [●] *[INSERT ADDRESS]* (“Interested Party”)

[FOR CONSORTIAM AND OTHER ARRANGEMENTS REPEAT THE ABOVE AS APPLICABLE SO THAT EACH MEMBER/SPONSOR IS A PARTY TO THE AGREEMENT AND INCLUDE WORDING BELOW]

[Who shall be jointly and severally liable under this Agreement?]

BACKGROUND

The Interested Party is considering participating in the Project. In consideration of the Government agreeing to make available to the Interested Party Certain Confidential Information in relation to the Project, by its signature of this Agreement, the Interested Party agrees to the terms as set out in this Agreement.

INTERPRETATION & DEFINITIONS

All references in this document to “you” and “your” are to the Interested Party and all references to “we” and “us” are to the Government.

Definitions

In this agreement (including the acknowledgement set out below)

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

“**Gravel Prospect**” means the potential areas of quarry materials which are the subject of tender processes, located in Kapisa (Nijrab District) Afghanistan.

“Government” means the party set out above as the first of the Parties to this Agreement and such reference shall include the Government of Afghanistan, any ministry (including but limited to the Ministry of Mines and Petroleum), department or subdivision thereof, and any entity wholly or partially controlled by any of them.

“Confidential Information” means all information relating to the Project which is provided to you by us or by any person on our behalf, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or information that:

- (a) Is or becomes public information other than as a direct or indirect result of any breach by you of this Agreement, or
- (b) Is identified in writing at the time of delivery as non-confidential by us or our advisers, or
- (c) Is in your possession before the date that the information is disclosed to you by us or by any person on our behalf, or is lawfully obtained by you after that date from a source which is unconnected with us or with any person who provided such information on our behalf and which, in either case has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

“Ministry of Mines and Petroleum” means the Ministry of Mines and Petroleum of the Islamic Republic of Afghanistan.

“Participant Group” mean you, each of your holding companies and subsidiaries and each subsidiary of each of your holding companies.

“Permitted Purpose” means considering and evaluating whether to submit a tender in respect of the Project, and, where applicable, the submission of a tender in respect of the Project, and if appropriate, all associated communications and negotiations regarding of project agreements to be awarded for the Project.

“Project” means in relation to any or all of the Gravel Prospects, the design, construction, financing, insurance, ownership, operation, maintenance and management of a new Gravel production facility, the exploration, assessment and exploitation and transportation of quarry materials to be used for the production of Gravel, the transformation of such materials into Gravel final product.

The Parties have shown their acceptance of the terms of this agreement by signing it below:

CONFIDENTIALITY

1. Confidentiality undertaking

You undertake:

- (a) To keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by paragraph 2 of this Agreement and to ensure that all Confidential Information is protected with security measures and the same degree of care as you would take in relation to your own confidential information;
- (b) To keep confidential and not disclose to any except as provided for by paragraph 2 of this Agreement the fact that the Confidential Information has been made available or that discussions or negotiations are taking place or have taken place between us and you in connection with the Project; and
- (c) To use Confidential Information only for the Permitted Purpose.

2. Permitted disclosure

We agree that you may disclose the Confidential Information and such of those matters referred to in paragraph 1(b) of this Agreement (“**Confidential Matters**”) as you shall consider appropriate:

- (a) To essential parties or members of the Participant Group and their officers, directors, employees, professional advisers, sub-contractors, agents or auditors if any person to whom:
 - (i) the Confidential Information is to be given; and/or
 - (ii) any Confidential Matters are to be disclosed,pursuant to this paragraph 2(a) is informed in writing of its confidential nature, except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of such information and/or such matters or is otherwise bound by requirements of confidentiality in relation to the Confidential Information and/or Confidential Matters on terms at least as strict as those set out in this Agreement;
- (b) To any person to whom information is required or requested to be disclosed (but even then only to the extent strictly necessary);
 - (i) pursuant to any request having the force of law by any judicial, governmental, supervisory, banking, taxation, regulatory or similar body having the force of law;
 - (ii) by the rules of any relevant stock exchange having the force of law; and/or

(iii) pursuant to any applicable law or regulation; and

(c) With our express prior written consent.

3. **Notification of disclosure**

You agree that:

(a) In the event that you become (or it becomes reasonably likely that you may become) legally compelled or required by court order or required or requested by any applicable authority described in paragraph 2(b) of this Agreement to disclose any Confidential Information and/or Confidential Matters pursuant to paragraph 2(b) of this Agreement, you shall first provide us with written notice of this and consult with us as soon as possible prior to making any such announcement or disclosure, so as to give us the opportunity to seek an appropriate remedy to prevent such disclosure and you shall cooperate and assist us in the event that we elect to challenge such requirement or request; and

(b) You shall notify us immediately upon becoming aware or suspecting that any Confidential Information has been disclosed by you or any other company within the Participant Group, or by any officer, director, employee, professional adviser, sub-contractor, agent or auditor thereof in contravention of the terms of this Agreement, and cooperate with us in taking any action to limit and/or remedy such breach.

4. **Reproductions**

You shall not make copies or reproduction of Confidential Information except to the extent necessary for the Permitted Purpose.

5. **Return of copies**

If you cease to be involved in the tender processes for the Gravel (Kapisa) Project or are unsuccessful as a bidder for Kapisa (Nijrab) Project and we so request, you shall in relation to this Project in which you have ceased to be involved return all Confidential Information supplied to you by us or by any person on our behalf and destroy or permanently erase all copies of Confidential Information made by you and use all reasonable endeavors to ensure that anyone to whom you have supplied any Confidential Information destroys or permanently erases such Confidential Information and any copies made by them. You shall provide written confirmation to us that such Confidential Information has been returned, destroyed or permanently erased, as applicable. Your obligation under this paragraph 5 apply save to the extent that you or the recipients of the Confidential Information are required to retain any such Confidential Information by any applicable law or by any competent judicial, governmental, supervisory, banking, taxation, regulatory or similar body, or stock exchange, having the force of law, or where the confidential Information has been disclosed under paragraph 2(b) of this Agreement at which point you shall notify us in writing explaining the reason behind the retention of such

Confidential Information and the body requiring such retention of the Confidential Information.

6. Continuing Obligations

The obligations in this Agreement are continuing and, in particular, shall survive the termination of any discussions or negotiations between you and us. Notwithstanding the previous sentence, the obligations in this Agreement shall cease five years after the date of this Agreement.

7. No Representation, consequences of breach, etc.

You acknowledge and agree that neither we nor our employees, advisors or any other associated government authorities, personnel and entities or any person who has provided Confidential Information to you on our behalf:

- (a) Make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or by any person on our behalf or the assumptions on which it is based; of
- (b) Shall be under any obligation to update any Confidential Information or correct any inaccuracy in the Confidential Information or any other information supplied by us or by any person on our behalf, or be otherwise liable to you or any other person in respect of the Confidential Information or any such information.

8. Entire agreement, no waiver, amendments, etc.

- (a) This Agreement constitutes the entire agreement between us and you in relation to your obligations regarding the Confidential Information and supersedes and previous agreement, whether express or implied, regarding the Confidential Information.
- (b) Delay in exercising or a failure to exercise, any right or remedy in connection with this Agreement shall not operate as a waiver of that right or remedy. A single or partial exercise of any right or remedy shall not preclude any other or further exercise of that right or remedy or the exercise of any other right or remedy. A waiver of a breach of this Agreement shall not constitute a waiver of any subsequent breach.
- (c) The terms of this Agreement and your obligations under this Agreement may only be amended or modified by written agreement between us and you.

9. Nature of undertaking

The undertaking given by you under this Agreement are given to us and are also given for the benefit of each person who provides you with Confidential Information on our behalf.

10. Liability

- (a) Without prejudice to any other rights or remedies that we may have, you acknowledge and agree that:
 - (i) We may be harmed by a breach of any of the provisions of this Agreement;
 - (ii) Damages may not be an adequate remedy for any such breach or threatened breach;
 - (iii) No proof of special damages shall be necessary for the enforcement of this Agreement, and
 - (iv) We shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of any of provisions of these Agreements.
- (b) You shall indemnify us during the term of this agreement against all liabilities, claims, costs, expenses, damages and losses including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and other costs and expenses suffered or incurred by us and/or by each person who provides you with Confidential Information on our behalf arising out of any breach or non-performance by you, by any other company within the Participant Group, or by any officer, director, employee, professional adviser, sub-contractor, agent or auditor thereof, of any of the obligations or undertaking under this Agreement.

MISCELLANEOUS

11. Intellectual Property

- (a) The delivery of or the act of us or any person on our behalf providing access to any documents and materials containing Confidential Information shall not amount to a license in your favor to use, copy or in any way deal with that Confidential Information or any related documents and materials other than for the Permitted Purpose and all Confidential Information shall remain our property or the property of the person(s) who prepared the information (as the case may be).
- (b) The ownership of all intellectual property rights, including copyright, in Confidential Information, shall remain with us or the person(s) who prepared the information (as the case may be) and nothing in this

Agreement shall operate to assign, or be deemed to assign, any of those rights to the Interested Party.

12. Capacity, Authority and Further Assurances

- (a) You warrant that:
 - (i) You have entered into this Agreement in accordance with your respective laws and corporate constitutions on the date hereof by your duly authorized signatories; and
 - (ii) You have the capacity, power and authority:
 - (A) To enter into and deliver the Agreement; and
 - (B) To exercise your rights and perform you obligations under Agreement.
- (b) You shall from time to time (at your own cost) do, perform, sign, execute and deliver all such acts, documents and things (or procure the doing, performance, signing, execution or delivery of them) as we shall from time to time reasonably require to give full effect to this agreement and secure to us the full benefit or the light powers and remedies conferred upon us in the this Agreement.

13. Severability

- (a) If a provision or any part of this Agreement is void or voidable by a party mentioned herein or unenforceable or illegal that would not be so void, avoidable, unenforceable or illegal if it were interpreted restrictively and it is capable of being so interpreted, it shall be interpreted accordingly.
- (b) Subject to paragraph 12(a) of this Agreement, if a provision or any part of this Agreement is held to be illegal or unenforceable, in whole or in part, such provision of part shall to the extend be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall not be affected.

14. Amendments to the Agreement

No amendment to this Agreement or any waiver in connection herewith shall be effective unless in writing and signed on behalf of us and you, and in each case by a person duly authorized by the said entities.

15. Governing Law and Jurisdiction

This Agreement shall be governed and construed in accordance with the laws of Afghanistan, including international treaties and bilateral investment treaties to which Afghanistan is a party.

16. Language

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

Therefore, the Parties hereby agree:

**For: THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF AFGHANISTAN**

Title: _____

For: The Interested Party:

Title: _____

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