

SCHEDULE C: Confidentiality Agreement

DATED

CONFIDENTIALITY AGREEMENT

BETWEEN



NIGERIAN UPSTREAM PETROLEUM REGULATORY COMMISSION

AND

[BIDDER]

IN RELATION TO THE NIGERIA 2025 LICENSING ROUND

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THIS AGREEMENT is dated [DATE]

Between:

- (1) **NIGERIAN UPSTREAM PETROLEUM REGULATORY COMMISSION**, a statutory body established under the Petroleum Industry Act, 2021, whose registered office is at No. 7 Sylvester Ugoh Crescent, Jabi, Abuja ("**Commission**"); and
- (2) [FULL COMPANY NAME], incorporated and registered in with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Bidder**").

WHEREAS:

- (A) The Bidder is one of several parties participating in the Nigeria 2025 Licensing Round (together referred to as "**Licensing Rounds**") for the grant of a Petroleum Prospecting Licence or Petroleum Mining Lease.
- (B) As part of the Licensing Round, the Bidder will be granted access to Confidential Information contained in the virtual or physical data rooms set up by the Commission and/or its partners (**Data Room**), in order to carry out an evaluation study for the purpose of submitting a Bid.
- (C) In order to provide the Bidder with Confidential Information, it is a condition under Paragraph 14 of the Regulations that the Bidder executes this confidentiality agreement to ensure that any Confidential Information disclosed to the Bidder in the connection with the Licensing Rounds remains confidential and is not used by the Bidder or any other member of its Group for any purpose other than the Permitted Purpose.
- (D) The Commission has agreed to give the Bidder access to the Confidential Information in accordance with the terms and conditions outlined hereunder.

Agreed terms

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement and any words used in this agreement (including the

Recitals) and not defined below shall carry the meanings and definitions given to them in the PIA, the Regulations or the Guidelines.

Blocks: means the acreage for which a petroleum prospecting licence or petroleum mining lease will be issued by the Minister.

Business Day: a day other than a Saturday, Sunday or public holiday in Nigeria, England and the United States when banks in Abuja, Lagos, London and New York are open for business.

Confidential Information: has the meaning given in Clause 2.

Copies: copies of Confidential Information including any document, electronic file, note, extract, analysis, study, plan, compilation or any other way of representing, recording or recalling information which contains, reflects or is derived or generated from, any Confidential Information.

Data Providers: NDR and a Multiclient Company(ies) and each a “**Data Provider**”.

Data Room: has the meaning given to it in Recital (B).

Group: in relation to a Bidder, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a **member of the Group**.

Guidelines: the Nigeria 2025 Licensing Round Guidelines.

Multiclient Company: A speculative survey company that carries out geological and geophysical data acquisition for purpose of data sales.

NDR: the Nigerian National Data Repository.

PIA: the Petroleum Industry Act 2021.

Licensing Rounds: has the meaning given to it in Recital (A).

Permitted Purpose: considering, evaluating, negotiating or advancing the Licensing Round.

Permitted Recipient: any person referred to in 4.1 to whom Confidential Information is disclosed by, or at the request of, the Bidder.

Regulations: means the Petroleum Licensing Round Regulations 2022.

1.2 Clause and paragraph headings do not affect the interpretation of this agreement.

1.3 References to clauses are to the clauses of this agreement.

- 1.4 A reference to **this agreement** or any other agreement or document referred to in this agreement, is a reference to this agreement or such other agreement or document, in each case as varied from time to time.
- 1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.6 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective successors and permitted assigns, and references to any **party** shall include that party's successors and permitted assigns.
- 1.7 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.8 A reference to a **subsidiary** means a subsidiary as defined in section 381 (1) of the Companies and Allied Matters Act 2020.
- 1.9 Unless otherwise expressly provided in this agreement, a reference to **writing** or **written** excludes fax but not email.
- 1.10 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.11 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision:
- (a) is a reference to it as amended, extended or re-enacted from time to time; and
 - (b) shall include all subordinate legislation made under that legislation or legislative provision.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. Confidential Information

- 2.1 In this agreement, **Confidential Information** means all confidential or proprietary information (however recorded or preserved) that is disclosed or made available (in any form or medium), directly or

indirectly, by the Commission, NDR or a Multiclient Company (or any of their respective employees, officers, agents or advisers) to the Bidder (or any member of its Group or their respective employees, officers, agents or advisers) whether before, on or after the date of this agreement, in connection with the Licensing Rounds, including:

- (a) the fact that the Commission is considering offering the Blocks, that discussions or negotiations are taking (or have taken) place concerning the Licensing Round (or any details of such negotiations) and any terms (or prospective terms) relating to the Licensing Rounds;
- (b) the existence and contents of this agreement;
- (c) the existence and contents of the Data Room including assets, hydrocarbon analysis, reservoir engineering, technical, commercial, legal, financial, regulatory or governmental information as well as any information provided for inspection in the Data Room and all other reports, analysis, maps, interpretation, notes, assessments, evaluations, geological, engineering, seismic data, geophysical or other data and documents pertaining in any way whatsoever to the Licensing Rounds;
- (d) any findings, data or analysis derived from such information; and
- (e) any other information that is identified as being of a confidential or proprietary nature.

but excluding any information referred to in 2.2.

2.2 Information is not Confidential Information if:

- (a) it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Bidder or any other person in breach of this agreement (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information);
- (b) the Bidder received the information from a source that is not connected with the Commission or Data Providers and such source was not under any obligation of confidence in respect of that information;
- (c) the information was lawfully in the Bidder's possession before it was disclosed by Commission, the Data Providers (or on their

behalf) and the Bidder was not under any obligation of confidence in respect of that information; or

- (d) the parties agree in writing that the information is not confidential.

3. Bidder's obligations

3.1 In return for the Commission making Confidential Information available to the Bidder either directly or through the Data Providers or its agents, the Bidder undertakes to the Commission that it shall:

- (a) keep the Confidential Information secret and confidential;
- (b) not use or exploit the Confidential Information in any way, except for the Permitted Purpose;
- (c) not directly or indirectly disclose or otherwise make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with, the terms of this agreement;
- (d) not make any Copies, except as expressly permitted by, and in accordance with, the terms of this agreement;
- (e) not use, reproduce, transform or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means outside its usual place of business;
- (f) ensure that no person gets access to, or obtains any Confidential Information from, the Bidder or any member of its Group (or their respective officers, employees or agents), except as expressly permitted by, and in accordance with, the terms of this agreement; and
- (g) inform the Commission immediately on becoming aware, or suspecting, that Confidential Information has been disclosed to, or otherwise obtained by, an unauthorised third party.

3.2 The Bidder shall only make such Copies as are strictly necessary for the Permitted Purpose and shall:

- (a) clearly mark all Copies as confidential;
- (b) ensure that all Copies can be separately identified from its own information; and

- (c) ensure that all Copies within its control are protected against theft or unauthorised access.

4. Permitted disclosure.

4.1 Provided it complies with its obligations under 4.2, the Bidder may disclose Confidential Information to:

- (a) those officers or employees of the Bidder's Group that need to know the relevant Confidential Information for the Permitted Purpose;
- (b) the professional advisers or consultants engaged to advise the Bidder in connection with the Licensing Rounds; and
- (c) any person whom the Commission agrees in writing may receive the relevant Confidential Information.

4.2 Where Confidential Information is disclosed to a Permitted Recipient, the Bidder shall:

- (a) inform the Permitted Recipient of the confidential nature of the Confidential Information before it is disclosed; and
- (b) procure that the Permitted Recipient shall, in relation to any Confidential Information disclosed to it, comply with this agreement as if it were the Bidder and, if the Commission so requests, procure that the Permitted Recipient enters into a confidentiality agreement with the Commission on terms equivalent to those contained in this agreement.

4.3 The Bidder shall procure that each member of its Group complies with the Bidder's undertakings and obligations in this agreement as if it were the Bidder and a party to this agreement. The Bidder shall be liable for the actions or omissions of each member of its Group and the Permitted Recipients in relation to Confidential Information as if they were the actions or omissions of the Bidder.

5. Mandatory disclosure

5.1 Subject to the provisions of this 5, the Bidder may disclose Confidential Information to the minimum extent required by:

- (a) an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction; or

- (b) the laws or regulations of any country to which the affairs of the Bidder or any member of its Group are subject.
- 5.2 Before disclosing any Confidential Information under 5.1, the Bidder shall (to the extent permitted by law) use all reasonable endeavours to:
 - (a) inform the Commission of the full circumstances of the required disclosure and the Confidential Information that must be disclosed;
 - (b) take all such steps as may be reasonable and practicable in the circumstances to agree the contents of the required disclosure with the Commission before it is made;
 - (c) consult with the Commission as to possible steps to avoid or limit the required disclosure and to take those steps where they would not result in significant adverse consequences to the Bidder;
 - (d) gain assurances as to confidentiality from the body or authority requiring the disclosure; and
 - (e) where the disclosure is by way of public announcement, agree the wording of such announcement with the Commission before it is made.
- 5.3 The Bidder shall co-operate with the Commission if the Commission decides to bring any legal or other proceedings to challenge the validity of a requirement to disclose Confidential Information pursuant to 5.1.
- 5.4 If the Bidder is unable to inform the Commission before Confidential Information is disclosed pursuant to 5.1, the Bidder shall inform the Commission of the full circumstances of the disclosure and the information that has been disclosed immediately after such disclosure has been made.

6. Indemnity

- 6.1 The Bidder shall indemnify the Commission against all liabilities, 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 legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Commission arising out of or in connection with any breach of this agreement by the Bidder, any member of its Group, or a Permitted Recipient.

6.2 If a payment due from the Bidder under 6.1 is subject to tax (whether by way of direct assessment or withholding at its source), the Commission shall be entitled to receive from the Bidder such amount as shall ensure that the net receipt, after tax, of Commission in respect of the payment is the same as it would have been were the payment not subject to tax.

7. Reservation of rights and Bidder's acknowledgement

7.1 This agreement and the supply of Confidential Information shall not constitute an offer, representation or warranty by the Commission to enter into the Proposed Transaction or any further agreement with the Bidder.

7.2 Nothing in this agreement shall impose an obligation on either party to continue discussions or negotiations in connection with the Proposed Transaction, or an obligation on the Commission (or any Data Provider) to disclose any information to the Bidder (whether Confidential Information or otherwise).

7.3 All rights in the Confidential Information are reserved and none of the Confidential Information shall be the property of the Bidder. The disclosure of Confidential Information to the Bidder shall not give it or any other person any licence or other right whatsoever in respect of any Confidential Information beyond the rights expressly set out in this agreement.

7.4 The Bidder acknowledges that the Confidential Information may not be accurate or complete and neither the Commission (nor any Data Provider), nor their respective agents or advisers make any warranty or representation (whether express or implied) concerning the Confidential Information, or its accuracy or completeness.

8. Rights and remedies

8.1 Without prejudice to any other rights or remedies that the Commission may have, the Bidder acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement by the Bidder. Accordingly, the Commission shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.

- 8.2 The Bidder agrees and acknowledges that a Data Provider shall be entitled to rely on this indemnity clause and claim directly from the Bidder in respect of any damages suffered by that Data Provider for any breach of this agreement by the Bidder.
- 8.3 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

9. Duration

- 9.1 This agreement shall terminate upon the earlier of:
- (a) completion of the Licensing Rounds; and
 - (b) 2 years from the date of this agreement.
- 9.2 The Bidder's obligations under this agreement shall not be affected by any termination of the negotiations or discussions between the Bidder and the Commission in relation to the Licensing Rounds.
- 9.3 Termination of this agreement shall not affect any accrued rights or remedies to which a party is entitled.

10. Variation and waiver

- 10.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 10.2 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 10.3 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

11. Costs

The Bidder shall pay its costs and expenses incurred in connection with the Licensing Rounds, including the negotiation, preparation and execution of this agreement and the evaluation and review of the Confidential Information.

12. Notices

- 12.1 Any notice required to be given under this agreement shall be in writing and shall be sent to each party required to receive the notice by email or courier, to the address of the relevant party set out in the parties' clause.
- 12.2 This clause 12 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

13. Severance

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

14. Counterparts

This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

15. Dispute Resolution

- 15.1 Any dispute arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, shall, at the request of either of the Parties hereto, be submitted to the Regional Centre for International Commercial Arbitration, Lagos (the "Centre") and finally resolved by for arbitration in accordance with the Arbitration Rules contained in the Schedule to the Arbitration and Mediation Act, 2023, which Rules are deemed to be incorporated by reference into this clause.
- 15.2 The number of arbitrators shall be three.
- 15.3 The seat, or legal place, of arbitration shall be Lagos, Nigeria.
- 15.4 The arbitrators shall give their decision within six (6) months from the commencement date of the arbitration proceedings and shall provide the Parties to the dispute, claim, controversy or difference with a written decision stating the reasons for their decision. The Parties agree that the determination of the Arbitration Tribunal shall be final and binding on all

Parties to the dispute, and each Party hereby waives any right to make any and/or all applications to the courts for judicial review on issues of law that arise during arbitration and to appeal or challenge the award to the fullest extent possible and permitted by law or the grounds that the arbitrators made errors of law.

- 15.5 The Parties agree that any such arbitration award may be entered into and enforced by any Court or judicial order having competent jurisdiction over the Parties or the assets of the Party against whom the arbitration award was given Governing law and jurisdiction.

16. Governing Law

- 16.1 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Nigeria.

IN WITNESS WHEREOF the parties hereto have made and executed this agreement by their respective officers thereto duly authorised on the day, month and year first above written.

SIGNED FOR AND ON BEHALF OF

THE NIGERIAN UPSTREAM PETROLEUM REGULATORY COMMISSION

BY:

.....

ORITSEMEYIWA EYESAN (MRS)
COMMISSION CHIEF EXECUTIVE
CHAIRMAN, NIGERIAN DATA REPOSITORY ADVISORY COUNCIL

In the presence of:

SIGNATURE:

NAME: MS. OLAYEMI ADEBOYEJO

DESIGNATION: COMMISSION SECRETARY / LEGAL ADVISER

ADDRESS: 7 SYLVESTER UGOH CRESCENT, JABI, ABUJA, FCT

DATE:

SIGNED FOR AND ON BEHALF OF

Bidder

BY:

.....

[•]

In the presence of:

SIGNATURE:

NAME: [•]

DESIGNATION: [•]

ADDRESS: [•]

DATE: [•]