

“Best Practice” Confidentiality Clauses

Example One

This Agreement will be published in [government gazette/federal register] or publicly available at [ministry website/ ministry library/ parliamentary records]. Information in relation to activities under these agreements shall be kept confidential if requested by a Party, to the extent that such Party establishes that confidentiality is necessary to protect business secrets or proprietary information. Such confidentiality is subject to [relevant disclosure laws], as well as to applicable laws and regulations, including stock exchange and securities rules, and requirements for the implementation of the Extractive Industries Transparency Initiative.

Example Two

- a) Subject to the limitations below and subject to applicable Law, for a period of [three] years from disclosure, each party agrees not to divulge information designated in writing at the time of delivery as confidential information (“Confidential Information”) by the other party to any other Person without the prior written consent of the designating party. By designation of information as Confidential Information a party will be deemed to have represented that after review of such information it has reasonably determined that the release of such information to third parties would materially adversely affect the party or its economic well-being. In any event Confidential Information does not include information that was publicly available or otherwise known to a party prior to the time of disclosure to it and not subject to a confidentiality obligation, subsequently becomes publicly known through no act or omission by a party, otherwise becomes known to a party other than through disclosure to such party by the other party, constitutes financial statements delivered to the Government that are otherwise publicly available, is mainly of scientific rather than commercial value such as geological or geophysical data relating to areas in which the Company no longer holds a valid exploration license and has not designated as a Proposed Production Area, or has been disclosed pursuant to generally applicable Law or a final order or any court having jurisdiction that is not subject to appeal.

- b) Each party will maintain the confidentiality of Confidential Information disclosed to it in a manner consistent with procedures adopted by such party to protect its own confidential information, provided that such party may deliver or disclose Confidential Information to its financial, legal and other professional advisors (to the extent such disclosure reasonably relates to the administration of this Agreement) or any other Person to which such delivery or disclosure may be necessary or appropriate to effect compliance with any law, rule, regulation or order applicable to such party, in response to any subpoena or other legal process, in connection with any litigation to which such party is a party if reasonably delivered necessary to protect such party's position in such litigation or if an Event of Default has occurred and is continuing but only to the extent such party reasonably determines such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under this Agreement.
- c) This Agreement and any annexes or amendments are not confidential, and the Company is not entitled to confidential treatment of information relating to the timing and amount of royalties and other payments specifically due under the terms of this Agreement or of Taxes and Duties payable by the Company or the rates at which such royalties, other payments or Taxes and Duties become due or are assessed, or information that is necessary to compute the amount of such royalties or other payments becoming due.