

## CONFIDENTIALITY AGREEMENT

(Revised as of 6/29/2016)

CONFIDENTIALITY AGREEMENT (this “**Agreement**”) dated as of \_\_\_\_\_, 2016 (the “**Effective Date**”) by and between \_\_\_\_\_ as Discloser (“**Discloser**”) and \_\_\_\_\_ (“**Recipient**”).

WHEREAS, Recipient is interested in entering into a possible transaction (the “**Possible Transaction**”) for the purchase of certain producing oil and gas assets (“**the Assets**”) of Galveston Bay Energy LLC (“Borrower” or “GBE”);

WHEREAS, Discloser intends to furnish Recipient and its Representatives (defined below) with certain Confidential Information (defined below) to facilitate Recipient’s due diligence in connection with the Possible Transaction;

WHEREAS, Discloser is required to maintain the confidentiality of the Information, except that Information may be disclosed to a prospective purchaser pursuant to the terms of an appropriate confidentiality agreement; and

WHEREAS, as a condition to the delivery of the Confidential Information, Discloser desires that Recipient and its Representatives, maintain the confidentiality of the Confidential Information and use the same only for the purposes contemplated by this Agreement.

NOW, THEREFORE, in consideration for and as a condition to Discloser’s furnishing Confidential Information, the parties agree as follows:

### **1. CONFIDENTIAL INFORMATION**

As used in this Agreement, the term “Confidential Information” means all information regarding the Assets which is furnished to the Recipient, directly or indirectly by the Discloser regardless of whether specifically identified as “confidential” and regardless of whatever form or medium such information may take during or after its communication and shall include, but not be limited to, information regarding the Borrower’s trade secrets, financial data, operations, business records, oil and gas reserves and leases, oil and gas production data, engineering data, scientific and technical information, methods, techniques, processes, specifications, devices, intellectual property, patents, patent applications and inventions not yet the subject of an issued patent or published patent application, business practices, projections, financial and economic models, economic data, personally identifiable information about the individuals in the organization, applicants for positions within the organization, information of persons whom Borrower may someday like to have as part of its organization, competitive intelligence data, information about those persons and entities with whom the Borrower interacts (including employees, customers, potential customers, investors, joint venturers, vendors, and suppliers), potential transactions and all materials containing or reflecting such information.

Notwithstanding the foregoing, “Confidential Information” shall not include information (a) in the public domain at or subsequent to the time such portion was communicated to the Recipient by the Discloser (other than as a result of violation of this Agreement), (b) in the Recipient’s possession and to the Recipient’s knowledge free of any obligation of confidence at or subsequent to the time such portion was communicated to the Recipient by the Discloser, (c) independently developed or acquired by the Recipient or any of its Representatives without any violation of this Agreement.

To the extent that any Confidential Information may include materials subject to attorney-client privilege, the Discloser is not waiving and will not be deemed to have waived or diminished its attorney work-product protections, attorney-client privileges or similar protections and privileges as a result of disclosing any Confidential Information (including Confidential Information related to pending or threatened litigation) to the Recipient, regardless of whether the Discloser has asserted or is or may be entitled to assert such privileges and protections. The parties (a) share a common legal and commercial interest in all such Confidential Information that is subject to such privileges and protections; (b) are or may become joint defendants in proceedings to which such Confidential Information covered by such protections and privileges relates; and (c) intend that such privileges and protections remain intact should either party become subject to any actual or threatened proceeding to which such Confidential Information covered by such protections and privileges relates. In furtherance of the foregoing, the Recipient shall not claim or contend, in proceedings involving either party, that the Discloser waived its attorney work-product protections, attorney-client privileges or similar protections and privileges with respect to any information, documents or other material not disclosed to the Recipient due to the Discloser disclosing Confidential Information (including Confidential Information related to pending or threatened litigation) to the Recipient.

## **2. NONDISCLOSURE AND NON USE OBLIGATION**

Recipient agrees to maintain the confidentiality of the Confidential Information and shall not, directly or indirectly, during the term of this Agreement (i) transfer or disclose orally, in writing or electronically any Confidential Information to any third party; or (ii) use any Confidential Information for any purpose other than for its internal use or use by its Representatives in connection with making a bid for a Possible Transaction.

## **3. DISCLOSURES TO REPRESENTATIVES**

It is understood that the Recipient may disclose Confidential Information to only those of Recipient’s Representatives who (a) require such material for the purpose of evaluating the Possible Transaction and (b) are informed by Recipient of the confidential nature of the Confidential Information and the obligations of this Agreement. Recipient further agrees that Recipient and Recipient’s Representatives will not use any of the Confidential Information for any reason or purpose other than to evaluate and to negotiate the Possible Transaction. Recipient also agrees to be responsible for enforcing this Agreement as to Recipient’s Representatives and to take such action, legal or otherwise, to the extent necessary to cause them to comply with this Agreement and thereby prevent any disclosure of the Confidential Information by any of the

Recipient's Representatives (including all actions that the Recipient would take to protect its own trade secrets and confidential information) except as permitted by this Agreement.

#### **4. LEGAL PROCEEDINGS**

In the event that Recipient or any of its Representatives is required by any law, regulation, interrogatories, requests for information or documents, subpoenas, civil investigative demand or similar process to disclose any Confidential Information, to the extent reasonably practicable, such party will provide Discloser with prompt written notice of such request or requirement so that Discloser or Borrower may seek an appropriate protective order or take other appropriate action (and if Discloser or Borrower seeks such an order or takes such action, such party will provide such cooperation as Discloser or Borrower shall reasonably request). If Recipient or any of its Representatives are nonetheless required to disclose Confidential Information, such party may disclose only that portion of the Confidential Information that is legally required to be disclosed and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information.

#### **5. RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION**

Recipient agrees that Borrower and/or Discloser retains all right, title and interest in the Confidential Information and that at Discloser's option it shall either return to Discloser or destroy all Confidential Information, and all copies thereof, within 10 days of the written request therefor by Discloser; provided, however, that Recipient may retain any copies, extracts or other reproductions of such Confidential Information in whole or in part (A) to the extent necessary in order to comply with legal or regulatory recordkeeping requirements of general application, or (B) in accordance with customary recordkeeping policies of Recipient (including any internal policy or system relating to the archiving or backup storage of electronic data).

#### **6. NO OBLIGATION TO NEGOTIATE OR ENTER A TRANSACTION**

Discloser reserves the right, in its sole discretion, to reject any and all proposals made by Recipient or Recipient's Representatives with regard to a Possible Transaction and to terminate discussions and negotiations with Recipient and Recipient's Representatives at any time. Neither Recipient nor Discloser shall have rights or obligations of any kind whatsoever with respect to a Possible Transaction by virtue of this Agreement other than for the matters specifically agreed to herein. Without limiting the preceding sentences, nothing in this Agreement requires either Recipient or Discloser to enter into a Possible Transaction or to negotiate such transaction for any specified period of time.

#### **7. TERMINATION**

The obligations set forth in this Agreement shall survive from the Effective Date to a date that is the earlier of (i) the completion of the Possible Transaction between Disclosure and Recipient or (ii) 24 months from the Effective Date.

## 8. NO REPRESENTATIONS OR WARRANTIES

Discloser retains the right to determine, in its sole discretion, what information, properties and personnel it wishes to make available to Recipient, and neither Discloser nor its Representatives make any representation or warranty (express or implied) concerning the completeness or accuracy of the Confidential Information, except pursuant to representations and warranties that may be made in a definitive agreement for the Possible Transaction, if any, between the parties. Recipient agrees that that it is not entitled to rely on the completeness or accuracy of the Confidential information and that it will be entitled to rely solely on such representations and warranties as may be included in any definitive agreement with respect to the Possible Transaction, subject to such limitations and restrictions as may be contained therein.

## 9. REMEDIES

Recipient acknowledges and agrees that Discloser may suffer irreparable injury not compensable by money damages in the event of breach of the provisions of this Agreement and therefore may not have an adequate remedy at law. Accordingly, Discloser shall be entitled to injunctive relief to prevent or curtail any such breach, threatened or actual, without necessity of posting a bond. The foregoing shall be in addition and without prejudice to such other rights as Discloser may have at law or in equity.

## 10. MISCELLANEOUS

- 10.1        Modification. This Agreement may not be amended or modified except by an instrument in writing signed by or on behalf of the parties hereto.
- 10.2        Waiver. Neither the failure nor any delay by any party in exercising any right, power or privilege under this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.
- 10.3        Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect. If any of the covenants or provisions of this Agreement are determined to be unenforceable by reason of its extent, duration, scope or otherwise, then the parties contemplate that the court making such determination shall reduce such extent, duration, scope or other provision and enforce them in their reduced form for all purposes contemplated by this Agreement.
- 10.4        Construction. The headings of sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All

words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word “including” does not limit the preceding words or terms. The parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

- 10.5        Execution. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for any purpose whatsoever.
- 10.6        Jurisdiction. Any action or proceeding seeking to enforce any provision of, or based upon any right arising out of, this Agreement shall be brought in the courts located in the State of Texas, and each of the parties consents to the jurisdiction of such court (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.
- 10.7        Governing Law. This Agreement will be governed by the laws of the State of Texas without regard to conflicts-of-laws principles.

*[Signature page follows.]*

Signature Page to Confidentiality Agreement

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

DISCLOSER

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

RECIPIENT

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