

**IN THE MATTER OF AN ARBITRATION UNDER
THE NORTH AMERICAN FREE TRADE
AGREEMENT**

- and -

**THE ARBITRATION RULES OF THE UNITED NATIONS
COMMISSION ON INTERNATIONAL TRADE LAW (1976)**

- between -

ODYSSEY MARINE EXPLORATION, INC. (USA)

(the “Claimant”)

and

THE UNITED MEXICAN STATES

(the “Respondent”)

ICSID Case No. UNCT/20/1

**PROCEDURAL ORDER NO. 5
CONFIDENTIALITY ORDER AND
UNDERTAKING**

Tribunal

Mr. Felipe Bulnes Serrano, Presiding Arbitrator
Dr. Stanimir Alexandrov, Arbitrator
Prof. Philippe Sands, Arbitrator

Secretary of the Tribunal

Ms. Anna Toubiana, Legal Counsel, ICSID

30 August 2021

I. Procedural Background

On 29 March 2021, the Claimant set out its objections to the Respondent's Document Request No. 17 to produce internal documents and contracts between the Claimant and/or Cooley and/or Polar Falls LLP and [REDACTED]. Notwithstanding the objections, the Claimant agreed to produce the contracts with [REDACTED] subject to a protective order and appropriate undertakings from the Respondent that would limit dissemination and use of these documents.

On 6 April 2021, the Respondent filed its Response to the Claimant's Objections and ultimately, on 23 April 2021, the Tribunal ordered the parties to confer and propose a joint Procedural Order on Confidentiality in connection with the documents produced in response to the Respondent's Document Request No. 17.

The Claimant submitted the draft proposal for the Respondent's consideration and the Respondent submitted its counterproposal thereafter.

On 11 August 2021, the parties submitted their joint proposed draft Confidentiality Order and Undertaking and asked the Tribunal to resolve the outstanding disputed provisions.

II. Order

The Tribunal issues the following Confidentiality Order:

1. This Confidentiality Order shall apply specifically to the contracts with [REDACTED] ("the Documents").
2. Subject to the terms and conditions hereunder, the Documents described in paragraph 1 of this Order shall be considered as highly confidential, with the meaning ascribed to the term "*Confidential Information*" in paragraph 4 of Procedural Order No. 2.
3. The Claimant shall label each page of the Documents with the legend "*Highly Confidential – Restricted Access – Dissemination Prohibited*".
4. The Claimant shall set up an electronic Data Room where the Documents will be uploaded. The Claimant shall provide direct access to the Data Room to the Authorized Person(s) referred to in paragraph 5 below subject to the following restrictions:
 - 4.1. The Documents will be accessible as "*Read Only*." The Authorized Person(s) will not have access to hard or electronic copies and will not be permitted to make copies or take photographs and videos of the Documents;
 - 4.2. Access will allow the Authorized Person(s) to consult the Database, but not to make

- any changes or alteration thereto;
- 4.3. The Data Room shall be available until the submission date of the Respondent's Rejoinder;
 - 4.4. The Respondent shall keep the Confidential Information secure and take appropriate measures to ensure that the Authorized Person(s) understand the confidential nature of the Confidential Information and comply with the same obligations.
 - 4.5. Any breach of the present restriction shall be reported immediately to the Claimant's counsel and to the Tribunal.
5. A person is entitled to receive access to the Documents in accordance with paragraph 1 and 4 of this Order only if that person:
 - 5.1. Is one of the legal counsel of record on the Tribunal and ICSID distribution list, representing the Respondent in ICSID Case No. UNCT/20/1;
 - 5.2. Is a Member of the Tribunal (i) in the event the Tribunal wishes to examine the Documents and/or (ii) where either Party elects to submit the Documents as exhibits in this arbitration.
 6. The Documents described in paragraph 1 of this Order shall only be used for the purpose of these proceedings and access shall only be given to the Authorized Person(s) referred to paragraph 5 of this Order if such persons:
 - 6.1. consent to be bound by this Confidentiality Order;
 - 6.2. undertake not to disclose the information or permit to be disclosed the information in whole or in part, except for the purposes of use during the course of this proceeding; and
 - 6.3. undertake not to show, make available, distribute, or otherwise disseminate or communicate or discuss the contents thereof with anyone other than the persons specified in paragraph 5 of this Order.
 7. The Parties may reference the Documents or contents thereof in their submissions provided that all such information is treated as confidential and appropriately identified.
 8. The above terms and conditions of the Respondent's access to the Documents/Confidential Information contained in the Claimant's Data Room apply until conclusion of the

proceedings, unless otherwise agreed between the parties or ordered by the Tribunal upon its own initiative or upon request of a party.

9. This Confidentiality Order shall be published by ICSID in accordance with Procedural Order No. 2.

On behalf of the Tribunal,

[Signed]

Mr. Felipe Bulnes Serrano

Presiding Arbitrator

Date: 30 August 2021