INITIAL CONSIDERATIONS –JOINT OPERATING AGREEMENT

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**Joint Operating Agreement Definition**

The Joint Operating Agreement (JOA) governs the relationship between parties having working interests in the same parcel of land (“joint lands”) and provides agreement for the exploration, development and operation of the joint lands. (This is normally the first agreement the parties will enter into to). The agreement's primary purposes are to allow parties to delineate the division of costs and benefits and to establish and/or point to a set of rules by which the parties will operate the jointly owned lands.

**What is a JOA?** - A JOA is created when two or more parties acquire a parcel of land at a provincial Crown land sale or from a freehold mineral owner by virtue of a mineral lease or by virtue of area of mutual interest lands. JOA’s can also be used for the administration of complicated deals, resulting in an unclear chain-of-title with different parties, working interests and encumbrances (royalties) involving different parcels of land.

**The JOA document consists of:**

The main body of the agreement (“Head Agreement”) identifies the:

1. Date of Agreement
2. Identification of the Parties
3. Statement of the intent of the Agreement
4. Definitions not already identified in the CAPL Operating Procedure or if the definitions differ from the CAPL Operating Procedure
5. Effective date of the Agreement
6. Identification of the Operator
7. Terms of the Agreement
8. Signatory area for all parties to execute the Agreement

Schedules are attachments to the Head Agreement and there can be any number of schedules including the following:

* **Schedule “A”** - commonly outlines the Title Documents, Lands and Working Interests as well as any Encumbrances relating to the joint lands.
* **Schedule “B”** commonly has the Canadian Association of Petroleum Landmen (CAPL) Operating Procedure as well as the Petroleum Accountants Society of Canada (PASC) Accounting Procedure (attached either as the full document or simply as an election rate sheet).
* **Other Schedules** can be attached as well, such as maps, well requirement sheet, etc.

The CAPL Operating Procedure specifically governs the appointment and replacement of operator, lists the functions and duties of the operator as well as those of the remaining partners, sharing of costs and expenses, ownership and disposition of production, independent operations, surrender and other miscellaneous items such as litigation, force majeure, notices and transfers of interest. This form JOA was designed for use in conjunction with either the 2007 or 2015 CAPL Operating Procedure.

The PASC Accounting Procedure sets out overhead rates, audit procedures and general accounting requirements.

These Procedures are incorporated into the Head Agreement to form the overall JOA. In older forms of JOAs, such as prior to the creation and standardization of CAPL and PASC Procedure documents, agreements were lengthy and allowed for varied interpretations due to the lack of "standard" agreed-upon terms and wording. The modern JOA incorporates these Procedures to reduce complexity and need for interpretation. As such, the Committee omitted unnecessary or duplicative provisions where possible.

**Notes:**

* It is **imperative** that a contract landman / administrator **accurately** and **correctly** document the fundamental key negotiated terms, details and obligations into the agreement. If these items and issues are not properly addressed, it opens the door for dispute(s) and quite possibly, a lawsuit between the parties.
* Ensure you get the document executed ASAP. There are consequences that arise from operating with an unexecuted JOA, not the least of which is legal ramifications, plus drafting Assignment Agreements instead of NOA’s for the transfer of interest between companies.
* This JOA is provided as a standard form of document. Any complicating factors at play, particularly with regard to the operation and production of unconventional resources may require additional terms or changes depending on each specific party's needs. We recommend that you consult a legal professional prior to entering into a JOA if your specific case is non-standard or unique. Examples of additional clauses, depending on the situation, might include Plant Participation, Area of Mutual Interest, Segregation, Environmental, Lease Selection and Special Penalty Provisions.
* Please note that clause 4.3 Multiple Completions and Operating Procedure is not contractually necessary, but is included for transparency.
* Keep in mind that this agreement contains election sheets for the CAPL 2007 and CAPL 2015 Operating Procedures but only one sheet is necessary as Schedule “B”.

This is a template for the following, Note that options are in red:

**JOINT OPERATING AGREEMENT**

**(Using the 2015/2007 CAPL)**

**Name Area, Province**

**THIS** **AGREEMENT DATED** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**BETWEEN/AMONG:**

**COMPANY ONE,** a body corporate, having an office in the City of \_\_\_\_\_\_\_\_\_\_\_\_, in the Province of \_\_\_\_\_\_\_\_\_\_\_. (**"ONE SHORT”**)

 and

**COMPANY TWO**, a general partnership, by its Managing Partner **COMPANY TWO LTD.**  having an office in the City of \_\_\_\_\_\_\_\_\_\_, in the Province of \_\_\_\_\_\_\_\_\_ (**"TWO SHORT”**)

and

**COMPANY THREE**, an individual, having a residence in the City/Town of \_\_\_\_\_\_\_\_\_\_\_\_\_, in the Province of \_\_\_\_\_\_\_\_\_ (**"THREE SHORT”**)

**BACKGROUND**

The Parties are the holders of certain interests in the Title Documents covering the lands that comprise the Petroleum Substances, as described in Schedule “A”.

The Parties have entered into this Agreement to provide for the exploration, development, maintenance and Operation of the Joint Lands and the Title Documents.

**IN CONSIDERATION** of the terms and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. **DEFINITIONS AND INTERPRETATIONS**

Except as otherwise defined in this Agreement, the definitions set out in the Operating Procedure will apply, mutatis mutandis, to this Agreement and:

1. “Effective Date” means \_\_\_\_\_\_\_\_\_\_\_\_\_.
2. “Encumbrances” means those royalties, overriding royalties, production payments, net profits interests or other charges of a similar nature that apply against the Joint Lands or the production of Petroleum Substances.
3. "GST" means the goods and services tax, as determined under the applicable Regulations.
4. "Joint Lands" means those lands as described in Schedule "A".
5. "Operating Procedure" means the standard form 2015/2007 CAPL Operating Procedure, together with the standard form 1996 PASC Accounting Procedure, with the elections and amendments as described in Schedule "B".
6. “Reserved Formations” means any rights held by a Party that are not included in the Joint Lands, but that coincide by surface area with all or a portion of the Joint Lands.
7. "Working Interests" means the respective undivided interest of the Parties as described in Schedule "A".
8. **SCHEDULES**

The following Schedules are attached to and incorporated into this Agreement:

1. Schedule “A”, which describes the Title Documents, the Joint Lands, the Encumbrances and the Working Interests; and
2. Schedule “B”, which contains the elections and amendments to the Operating Procedure.

Subject to the elections and amendments identified in Schedule “B”, the documents contemplated in the definition of Operating Procedure are incorporated by reference into this Agreement.

1. **TITLE DOCUMENTS AND ENCUMBRANCES**

## 3.1 Representations And Warranties

No Party warrants title to the Title Documents*,* however, each Party confirms that:

1. It has the requisite capacity, power and authority to enter into and fully perform the terms of this Agreement.
2. It is not aware that the terms of the Title Documents have not been complied with to the extent necessary to keep them in full force and effect.
3. It has not granted an interest in the Title Documents, nor is it aware of any act or omission, and it has not received nor issued any notice of default under the terms of the Regulations or the Title Documents that has not been remedied, except as specifically provided for under this Agreement.
4. With the exception of the Encumbrances described in Schedule "A", its Working Interest in the Joint Lands and Title Documents are free and clear of all Encumbrances and adverse claims.

## 3.2 Joint Lands Not To Be Encumbered

In addition to the provisions of Article 15.00 of the Operating Procedure, no Party will do, or cause to be done, anything to encumber the Joint Lands or otherwise impact the Title Documents held by it which might reasonably result in any portion of any of those Title Documents becoming subject to termination or forfeiture.

1. **OPERATING PROCEDURE**

**4.1 Application of Operating Procedure**

As of the Effective Date, the Operating Procedure will govern the relationship of the Parties as to their Working Interests and will apply to all Operations conducted with respect to the exploration, development and maintenance of the Joint Lands and the production of Petroleum Substances pursuant to the Title Documents and Regulations.

## 4.2 Appointment of Initial Operator

Subject to the provisions of this Head Agreement and the Operating Procedure, (Company Short Name) accepts the appointment of initial Operator and agrees to assume, as of the Effective Date, the duties, obligations and rights of the Operator under the Operating Procedure.

## 4.3 Multiple Completions And Operating Procedure

Notwithstanding the provisions of Article 9.00 and Article 10.00 of the Operating Procedure, under no circumstance may a Party Complete a well in one or more formations included in the Joint Lands with any other formations or substances not included in the Joint Lands without the consent of the other Parties, which consent may be refused by a Party for any reason. The Parties agree that detailed terms for a Completion of a well for production from both the Joint Lands and rights not included in the Joint Lands are not sufficiently addressed in this Agreement and require a separate agreement.

1. **INSURANCE**

Each Participating Party will, in addition to the insurance provisions of Clause 3.11 of the Operating Procedure, carry independently, but in proportion to its Participating Interest in the particular Operation under the Operating Procedure, [Optional wording if the Operator carries insurance on behalf of the Parties] The Operator, in addition to the insurance provisions of Clause 3.11 of the Operating Procedure, will carry for the Joint Account insurance with a limit of liability for its respective Participating Interest share of at least [•] million dollars ($[•],000,000.00) (based on a 100% Participating Interest) for expenses relating to the control of a well including, but not limited to: (i) making wells safe; (ii) deliberate well firing; (iii) underground blowout; (iv) re-drilling or recompletion; (v) drilling relief wells; (vi) seepage and pollution contamination, clean-up and containment; (vii) joint venture contingent liability; and (viii) evacuation expense. Upon request, each Party will promptly provide each other with evidence that such insurance is maintained, including a copy of any particular policy of insurance, if so requested.

1. **OTHER OPERATIONS AND RESERVED FORMATIONS**

Each Party will have the right to drill a well to explore and develop any of its Reserved Formations and to produce or otherwise carry on other operations with respect to its Reserved Formations. That Party will conduct any such other operations with respect to the Reserved Formations in a manner that will not interfere with Operations on the Joint Lands.

1. **GOODS AND SERVICES TAX**

The Parties authorize the Operator, on their behalf, to make an election or elections jointly with the Operator under subsection 273(1) of the *Excise Tax Act* (Canada) to have the Operator carry out all GST compliance responsibilities and to be responsible for collecting, paying, reporting, remitting or claiming a refund for the accumulated GST transactions for all property and services supplied, acquired or imported by the Operator on behalf of the Joint Account in respect of the Joint Lands. The Parties will be bound by that election, when made, for the duration of this Agreement. The Operator will not be held individually liable for the collection and remittance of the GST but moreover, the Parties will be liable jointly and severally for the GST. Should, however, any Party choose to take its share of Petroleum Substances in kind, such Party will be responsible for the accounting, filing and submitting of the applicable GST.

1. **COUNTERPART EXECUTION**

This Agreement may be executed in counterpart, and when each Party has executed a counterpart, all counterparts together will constitute one and the same agreement.

The Parties have executed this Agreement to be effective as of the Effective Date.

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  |
| Per: |  |  | Per: |  |
|  |  |  |  |  |
|  |
|  |  |  |
|  |
| Per: |  |  | Per: |  |
|  |  |  |  |  |

Execution page to the Joint Operating Agreement dated **{enter “Agreement Date”}** between/among **{enter “Full Name of First Party”}** and **{enter “Full Name of Second Party”} and {enter “Full Name of Third Party”}**

**SCHEDULE “A”**

to the Joint Operating Agreement

dated **{enter “Agreement Date”}** between/among

**{enter “Full Name of First Party”}** and **{enter “Full Name of Second Party”}** and **{enter “Full Name of Third Party”}**

|  |  |  |  |
| --- | --- | --- | --- |
| **Title Documents** | **Joint Lands** | **Encumbrances** | **Working Interests** |
|  |  | **\* ORR** |  |
|  |  |  |  |

**Encumbrances**

**\* e.g. 15% ORR paid by Party E 50%, Party A 25%, Party B 25% and paid to Party C 50%, Party D 50%, based on 75% of production; as described in the Farmout Letter Agreement dated February 28, 2012.**

**SCHEDULE “B”**

to the Joint Operating Agreement

dated **{enter “Agreement Date”}** between/among

**{enter “Full Name of First Party”}** and **{enter “Full Name of Second Party”}** and **{enter “Full Name of Third Party”}**

# CAPL OPERATING PROCEDURE - 2007

**Clause 1.01-Market Price Definition, optional sentence:** Will Apply \_\_\_ -or- Will Not Apply \_\_\_

**Clause 1.01-Production Facility, optional Paragraph(f):**

 Will \_\_\_ Apply -or- Will Not \_\_\_ Apply

 Estimated cost less than $ \_\_\_\_\_\_\_\_\_, if applies

**Subclause 3.11C-Required Insurance:** Alternate (a) \_\_\_ (b) \_\_\_

***(Consider for special operating areas for which a longer Commencement period is required:***

**Paragraph 7.01(b) and Subclause 10.03B:**  Change reference to 120 days to \_\_\_\_\_ days.)

**Subclause 10.02G-Receiving Party May Not Defer Response:**

 Will \_\_\_ Apply -or- Will Not \_\_\_ Apply

 Total vertical depth less than \_\_\_\_\_ metres subsurface, if applies

**Subclause 10.04A-Operator for Independent Operation:** Alternate (a) \_\_\_ (b) \_\_\_

**Paragraph 10.07A(e)-Penalty Where Independent Well Results in Production:**

 Development Well: \_\_\_\_\_% Exploratory Well: \_\_\_\_\_%

**Subclause 10.10A–Definition of Title Preserving Well:** \_\_\_\_ days

**Article 21.00–Dispute Resolution:** Will \_\_\_ Apply -or- Will Not \_\_\_ Apply

**Paragraph 21.03(j)–Arbitration Proceedings-optional Paragraph for unresolved audit exceptions:**

Will \_\_\_ Apply -or- Will Not \_\_\_ Apply

 Estimated total adjustment of less than $ \_\_\_\_\_\_\_\_\_\_\_, if applies

**Clause 22.02-Addresses For Service:**

 COMPANY ONE COMPANY TWO

 Address Address

 Fax No. Fax No.

**Clause 24.01-Right to Dispose:** Alternate A \_\_\_ B \_\_\_

 If Alternate B, the date at which ROFR expires is \_\_\_\_\_\_\_\_\_\_\_\_\_

**Paragraph 24.02(f)–Exception for all Earning Agreements:** Will \_\_\_ Apply -or- Will Not \_\_\_ Apply

**SCHEDULE “B”**

to the Joint Operating Agreement

dated **{enter “Agreement Date”}** between/among

**{enter “Full Name of First Party”}** and **{enter “Full Name of Second Party”}** and **{enter “Full Name of Third Party”}**

# CAPL OPERATING PROCEDURE - 2015

**Clause 1.01-Market Price Definition, optional sentence:** Will Apply \_\_\_ -or- Will Not Apply \_\_\_

**Clause 1.01-Production Facility, optional Paragraph(f):**

 Will \_\_\_ Apply -or- Will Not \_\_\_ Apply

 Estimated cost less than $ \_\_\_\_\_\_\_\_\_, if applies

**Subclause 3.11C-Required Insurance:** Alternate (a) \_\_\_ (b) \_\_\_

***(Consider for special operating areas for which a longer Commencement period is required:***

**Paragraph 7.01(b) and Subclause 10.03B:**  Change reference to 120 days to \_\_\_\_\_ days.)

**Subclause 10.02G-Receiving Party May Not Defer Response:**

 Will \_\_\_ Apply -or- Will Not \_\_\_ Apply

 Above base of \_\_\_\_\_ formation, if applies

**Subclause 10.04A-Operator for Independent Operation:** Alternate (a) \_\_\_ (b) \_\_\_

**Paragraph 10.07A(e)-Penalty Where Independent Well Results in Production:**

 Development Well: \_\_\_\_\_% Exploratory Well: \_\_\_\_\_%

**Subclause 10.10A–Definition of Title Preserving Well:** \_\_\_\_ days

**Subclause 10.13B, optional Paragraph (d):** Will \_\_\_ Apply -or- Will Not \_\_\_ Apply

**Article 21.00–Dispute Resolution:** Will \_\_\_ Apply -or- Will Not \_\_\_ Apply

**Paragraph 21.03(k)–Arbitration Proceedings for unresolved audit exceptions, if Article 21.00 applies:**

Will \_\_\_ Apply -or- Will Not \_\_\_ Apply

 Estimated total adjustment of less than $ \_\_\_\_\_\_\_\_\_\_\_, if applies

**Clause 22.02-Addresses For Service:**

 COMPANY ONE COMPANY TWO

 Address Address

 Fax No. Fax No.

**Clause 24.01-Right to Dispose:** Alternate A \_\_\_ B \_\_\_

 If Alternate B, the date at which ROFR expires is \_\_\_\_\_\_\_\_\_\_\_\_\_

**Paragraph 24.02(f)–Exception for all Earning Agreements:** Will \_\_\_ Apply -or- Will Not \_\_\_ Apply

**PASC 1996 ACCOUNTING PROCEDURE**

**Clause 105 - Operating Fund**: proportionate share of %

**Clause 110 - Approvals**: Clause in the Agreement **- or -** Approval from or more owners, etc. totalling %;

Vote within **15 business days** from receipt or be **deemed** to have voted **affirmative**.

**Clause 112 - Expenditure Limitations without owner approval**:

(a) single capital expenditures not in excess of $

(c) full settlement of damage claim not in excess of $

**Clause 202(b) - Employee Benefits**: %

**Clause 213 - Camp and Housing**: (shall / shall not) be chargeable

**Clause 216 - Warehouse Handling**: % of the costs of such Material

**Clause 221 - Allocation Options**: (Applicable or Not Applicable)

|  |  |  |
| --- | --- | --- |
| **Clause** | **Cost** | **Options for Charging Joint Account** |
| Fixed $/Month | **Other** |
| **Subject to 302(e)** | **Not Subject to 302(e)** | **% of Direct Cost Well/m3** |
| 204 | Automotive |  |  |  |  |
| 207(c) | Prod Office |  |  |  |  |
| 212 | Communications |  |  |  |  |
| 213(a) | Camp |  |  |  |  |
| 214 | Measurement & Control |  |  |  |  |

**Clause 302 - Overhead Rates**:

(a) For each Exploration Project: % of Cost and/or (b) For each Drilling Well % of Cost and/or

 (1) % of first $ (1) % of first $

 (2) % of next $ (2) % of next $

 (3) % of cost exceeding (1) and (2) (3) % of cost exceeding (1) and (2)

(c) For each Initial Construction Project % of Cost and/or (d) For Subsequent Construction Project % of Cost and/or

 (1) % of first $ (1) % of first $

 (2) % of next $ (2) % of next $

 (3) % of cost exceeding (1) and (2) (3) % of cost exceeding (1) and (2)

(e) For Operations and Maintenance:

 (1) % of the cost, and/or

 (2) $ per producing well per month

 (3) $ flat rate

**Rates in Sub-clauses 302(e)(2) & 302(e)(3)**  (shall / shall not)

be adjusted as of the first day of July each year following the year in which the Agreement became effective.

**Clause 406 - Pricing of Joint Material Purchases, Transfers, and Dispositions** $ for requiring approval.

**Clause 501 - Inventories**: every five (5) years or as otherwise approved by the Owners.