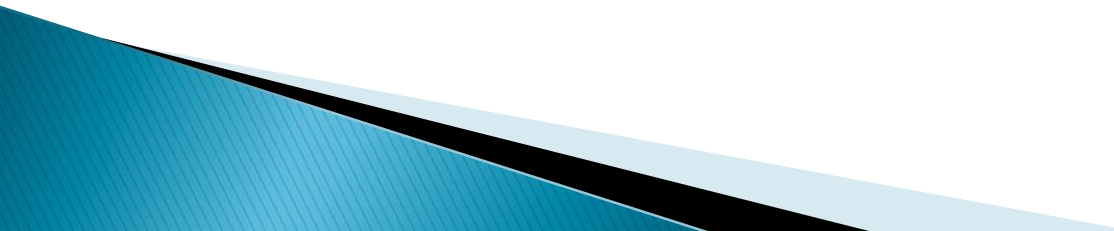




# CAPLA MASTER ROAD USE AGREEMENT 2017

# Agenda

- Safety Moment
  - History
  - Definitions
  - General
  - Terms
  - Addenda
  - Questions
- 

# History

- Road Use Agreements are generally used to provide indemnity and environmental protection for the Grantor when its roads are used by a third party.
- A Master Road Use Agreement was first put in use in 1998. It was revised in 2005 and now in 2017.

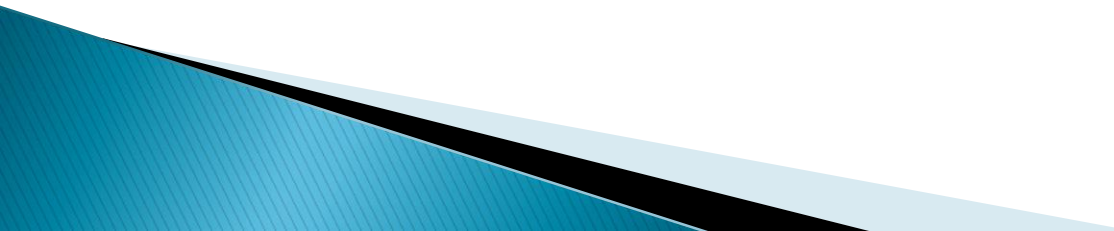
# Definitions

Addendum	Includes Schedules “A”, “B” and “C”. Multiple Addenda may be attached to each Master
Effective Date	The date shown on the first page of Schedule “A” of each Addenda. Each Addendum will have its own Effective Date. This date will most often be different than the date of the Master. An effective date may also appear on Schedules “B” and “C” at the discretion of the Grantor.
Schedule “A”	Purpose and Rates/Consideration for Grantee’s project
Schedule “B”	Plan of Road – Copy of survey showing Grantor’s roads being used
Schedule “C”	Field Representative and Additional Terms specific to project described in Schedule “A”

# Dos and Don'ts

- ▶ Freehold Land – Grantee must acquire landowner consent. Review surface lease to ensure you have the right to issue. Fees can be charged
- ▶ Board Order for your sole use only. Can issue road use for indemnification purposes, but cannot charge a fee.
- ▶ Crown – Cannot refuse road use on active Crown lands. AER will hear disputes on road use prior to an Agreement being signed. Fees can be charged
- ▶ First Nations – Cannot issue Road Use

# Reviewing Requests

- ▶ Do you own/operate the roads requested?
  - ▶ Is access built, active, open, under reclamation?
  - ▶ Does access go through facilities?
  - ▶ Special terms for area
    - Gates
    - Security requirements
    - Speed/weight restrictions
    - Travel restrictions (shift change, fish and wildlife)
    - Radio Frequency
- 

# Terms

## 1998 and 2005 Master Agreements

- ▶ Discussed with lawyers. No way to make 2017 Master supersede these Agreements
- ▶ Up to individual companies to decide if it wants to re-issue consents which currently exist or to use 2017 agreement on go forward basis only.

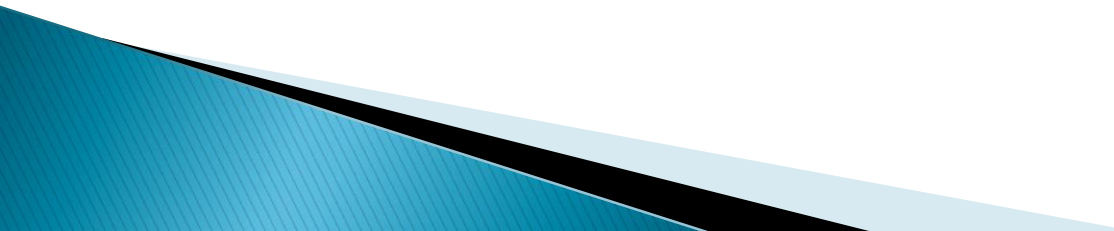
## Clause 3.1(c) – Interpretation

- ▶ If conflict between terms in Master and terms in Addendum, terms in Addendum prevail

## Clause 4.0 – Consideration

- ▶ Rates are set out in Schedule “A”
- ▶ Initial invoiced in advance
- ▶ Maintenance invoiced in arrears
- ▶ Rates on existing Addenda can be changed with 60 days notice. Change cannot be made retroactively. Rates on new Addenda set at time of issuance and do not need to match standard rates.
- ▶ Statute of Limitations applies – generally accepted that you cannot invoice maintenance more than 2 years in arrears, or as otherwise noted under PASC.

## Clause 5.0 – Change of Status

- ▶ 5.1 Status based on Status of Well/Facility at Regulatory Body. Effective on first of month in which the status change occurs
  - ▶ 5.1 gives option to use different status (production rates) if set out in Schedule “A”
  - ▶ 21.2 allows Grantor to change “Status of Well/Facility at Regulatory Body” to Production Rates as long as the change is highlighted
- 

## Clause 5.0 – Change of Status continued

- ▶ 5.2 gives Grantor option to accept a status change directly from the Grantee, but it takes effect the first of month after the notice.
- ▶ Committee felt this clause would be most often used for changes from Producing to Non-Producing when not reported to Regulator. Matches effective date in 2005 Agreement.
- ▶ For maintenance, no requirement to adjust past invoices for change of status. No requirement for Grantor to accept short pay.
- ▶ **Grantor now has control of how status is determined.** 2005 version said “status of well/facility”. Does not say how status is determined. Relies on Grantee to advise and Grantee’s interpretation.

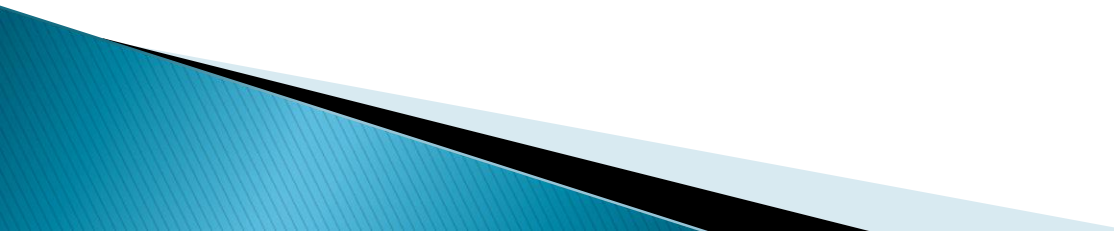
## Clause 6.0 – Grantor Responsibilities

- ▶ Grants use of Road. This was previously in preamble. For legal reasons needs to be in body of agreement

## Clause 7.0 – Grantee Responsibilities

- ▶ 7.1 – Don't break the law. Similar clause in CAPL Crossing Agreement
- ▶ 7.2 – If the Grantee sees something wrong with the road, they need to tell the Grantor
- ▶ 7.3 – Remove culverts, etc. Reads similar to 15.3 under the 2005 agreement

## Clause 9.0 – Maintenance

- ▶ No material changes between 2005 and 2017 versions
  - ▶ Grantor will maintain roads to their use. No requirement that road be suitable for Grantee's use
  - ▶ Grantor not liable to Grantee for disruptions during maintenance
  - ▶ Subject to Grantor approval, Grantee may upgrade road to make it suitable for use, but is then responsible for reclaiming its upgrades
  - ▶ Industry standard that Grantee does not pay for roads that it must maintain (handled in Schedule "A")
- 

## Clause 10.0 – Damages

- ▶ Grantee is responsible for cost to repair Grantor's road if it damages/destroys it
- ▶ Does not include normal wear and tear (covered by maintenance charges)

## Clause 13.0 – Default

- ▶ Default includes all terms, including payment of invoices, damages to road, environmental contamination.
- ▶ Agreement can be terminated in full or part if default not remedied within 30 days of notice

## Clause 15.0 – Insurance

- ▶ “Comprehensive General Liability” has been changed to “Commercial General Liability”. Has been increased from \$1,000,000 to \$5,000,000

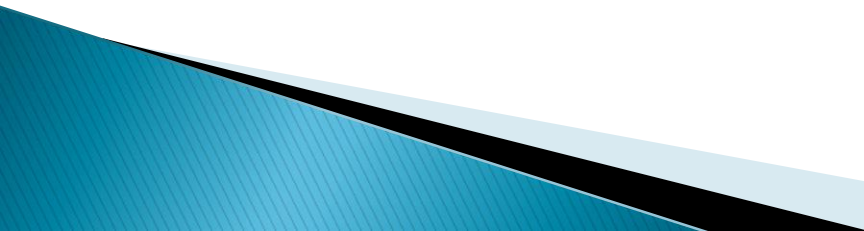
## Clause 16.0 – Arbitration

- Updated to ADR Institute of Canada as advised by legal counsel

## Clause 17.0 – Notices

- ▶ Clarifies when notice is deemed received and effective
- ▶ Clear that notice cannot be made by social media
- ▶ Default/Termination notices must be made to this address, as amended from time to time

## Clause 19.0 – Assignment

- ▶ Not assignable in whole or part
  - ▶ Most companies use one Master for all of its assets. Rarely are all assets sold/purchased in a block
  - ▶ Cannot assign an individual Addendum as it is attached to a specific company's Master
  - ▶ Some no charge Addenda may be chargeable for a new Grantee
  - ▶ Corporate name changes do not require an assignment or the issuance of a new Master or Addenda
  - ▶ Acknowledge this causes work in A&D
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## Clause 20.0 – Termination

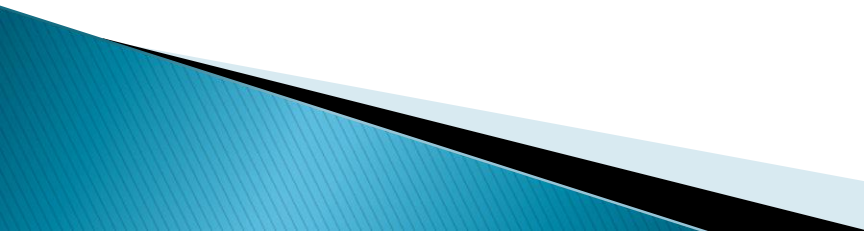
- ▶ No changes to this clause. Can terminate on 30 days written notice
- ▶ Remain liable for actions prior to termination
- ▶ Grantor has ability to address termination of Addenda within the Addenda, for example:
  - Expiry Date
  - Termination if construction does not commence within 1 year
  - Termination with reclamation certificate only

## Clause 21.0 – Miscellaneous

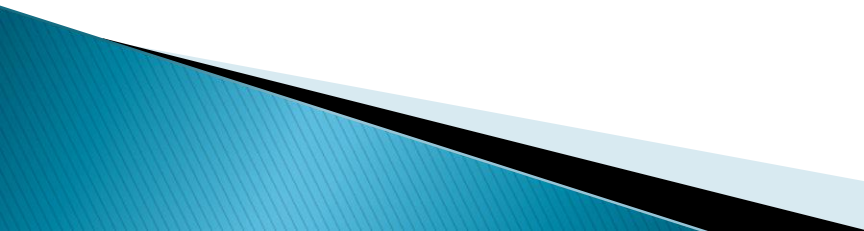
- ▶ 21.2 – Can make changes to the Master. Changes must be “specifically identified”. If not, changes are null and void
- ▶ 21.4 – Added counterpart and electronic execution clause

Masters are not attached and sent to Grantee every time an Addenda is created

Field should have a copy of the Master



# Addenda

- Companies use varying forms for the Addenda
  - Must be numbered
  - Used to give approval for individual projects
  - Must have effective date which most often varies from date of Master
  - Sets out rates/consideration for the project
  - Has route plans for project
  - Sets out terms specific to the project
  - Needs Grantee's signature accepting terms of Addendum. Best practice is for Grantor not to sign before Grantee
- 

# Schedule “A” – Purpose and Rates

- Purpose of Use – options are endless. How they are worded is up to Grantor. Standard uses are:
  - Drilling, Completion, Production and Abandonment of a Well
  - Pipeline Construction, Maintenance and Abandonment
  - Facility Construction, Maintenance and Abandonment
  - Utility Construction, Maintenance and Abandonment
  - Remediation and Reclamation
  - OSE Program
  - Timber Operations
  - Seismic Operation

\*Abandonment – Cut and capping operations which lead to the change of license of a pipeline/wellsite/facility to “Abandoned”

\*Remediation/Reclamation – Environmental clean up, equipment removal and return of site to a state which allows issuance of a Reclamation Certificate

# Schedule “A” – Purpose and Rates

- Effective Date for Addendum on Schedule “A”.  
Optional on Schedule “B” and “C”
- Expiry Date or Term (sometimes seen on Schedule “C”)
- Description of what project is for
- List of roads being used and km
- Consideration – can be full rate table or partial.  
Should include:
  - Initial Rate – if applicable
  - Maintenance Rates – if applicable
  - Statement saying “No charge” if not charging. Can also state why no charge (roads not opened/maintained by Grantor)
  - Can address method of charging maintenance, if different than 5.1
  - Can address when maintenance charges commence (ie rig release)

# Schedule “B” – Plan of Road

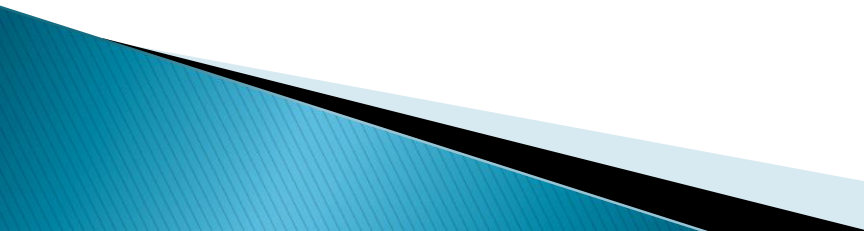
- Attach a plan of the road
- Should be supplied by the Grantee, but can be supplemented by Grantor if required
- Road being used should generally be highlighted in some way

# Schedule “C” – Field Representative and Additional Terms

## ➤ Field Representative

- Amount of detail varies with company. At minimum needs name, number and e-mail. Consider alternate.
- Grantor’s should be knowledgeable of state of roads
- Grantee’s should be knowledgeable of project

## ➤ Additional Terms

- Notify field representatives in advance of project (48–72 hours)
  - Road restrictions (winter/dry use, gates/security, weights, etc)
  - Require landowner’s consent
  - Rules of Road
- 

# Q&A

## CAPLA Master Road Use Review Committee

Norine Miller – Independent

Andrea Clarke – TransCanada PipeLines

Suzanne Artinian – Imperial Oil

Carla Barkley – Nexen Energy

Rachelle Klukus – Encana

Lori Morrissette – Laricina Energy

Deb Minchin – Shell

Ingrid Hall – Independent

Beryl Ostrom – Independent