**Introduction to the Royalty Allocation Amending Agreement**

A Royalty Allocation Amending Agreement is typically required in situations in which a Horizontal Well traverses multiple Spacing Units that have different encumbrances. The Royalty Allocation Amending Agreement will amend an existing Royalty Agreement. The principles outlined in this agreement template might also be used in a new Agreement that incorporates the 1997 CAPL Farmout & Royalty Procedure or Overriding Royalty Procedure under which an Overriding Royalty is created, and that functionality will be included in that other precedent.

Overriding Royalty allocation provisions are included in the 2015 CAPL Farmout & Royalty Procedure and Overriding Royalty Procedure, and this document is primarily based on Clause 5.03 of the 2015 Farmout & Royalty Procedure. New Royalty Agreements that incorporate those documents will not likely require any further allocation provisions.

This Royalty Allocation Amending Agreement is not to be used to allocate lessor royalties payable under a Title Document. In these cases, either a Production Allocation Unit Agreement (PAUA) or the Royalty Allocation Lease Amending Agreement template (located under Resources – Contracts on the CAPLA website) may be used.

This template uses a royalty allocation methodology that will apply in a consistent manner to all wells subject to the Royalty Allocation Amending Agreement for which a royalty allocation is required, rather than a separate Royalty Allocation Amending Agreement at the time for each single well.

The allocation is based on horizontal wellbore length in each Spacing Unit. The Total Wellbore Length in this document is measured from the Heel to Toe of the horizontal wellbore, as described on the survey for the well. In most cases, the Heel will be the same as the Intermediate Casing Point (“ICP”) on the survey, but there may be exceptions.

**(NTD)** = Note to Draft i.e. instructions for the user that should be deleted before sending the document to other parties for review

Optional wording is in RED

**ROYALTY ALLOCATION AMENDING AGREEMENT**

      Area,

**THIS ROYALTY ALLOCATION AMENDING AGREEMENT** dated \_\_\_\_\_\_\_\_\_\_, 20\_\_\_ **(NTD: current date)**

**BETWEEN:**

**COMPANY ONE,** an Alberta general partnership, having an office in Calgary, Alberta (“**ONE SHORT**”)

- and -

**COMPANY TWO,** a body corporate, **or** an Alberta general partnership, having an office in      ,  (“**TWO SHORT**”)

**BACKGROUND**

The Royalty Payor <<plans to drill **OR** has drilled>> the well known as <<Well Name>> as a Horizontal Well (the **“Initial Royalty Allocation Well”**), with the productive portion of that well within more than one Spacing Unit that includes both the Royalty Lands and Non-Royalty Lands, and the Royalty Payor may drill one or more additional similar Horizontal Wells in the future.

In order to determine how the Overriding Royalty will be paid to the Royalty Owner, the Parties agree in this Royalty Allocation Amending Agreement to a methodology that addresses the manner in which production will be allocated between the Royalty Lands and the Non-Royalty Lands with respect to any Horizontal Well drilled that penetrates more than one Spacing Unit that includes both the Royalty Lands and the Non-Royalty Lands, including the Initial Royalty AllocationWell.

The Parties wish to amend the Royalty Agreementinsofar as is necessary to give effect to this Royalty Allocation Amending Agreement with respect to any Royalty Allocation Well.

**NOW THEREFORE** in consideration of the mutual covenants and agreements contained in this Royalty Allocation Amending Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

# 1.0 DEFINITIONS

Except as otherwise specifically defined in this Royalty Allocation Amending Agreement, the definitions set out in the Royalty Agreement shall apply to this Royalty Allocation Amending Agreement, and, in addition:

“**Allocation Ratio**” means the Royalty Length of a Royalty Allocation Well divided by the Total Horizontal Length of that well, expressed as a percentage and rounded to two decimal places.

“**Allocation Ratio Confirmation Notice**” means, with respect to any Royalty Allocation Well, a notice issued by the Royalty Payor to the Royalty Owner in accordance with Clause 4.2 of this Royalty Allocation Amending Agreement that:

### includes a copy of the As Drilled Survey for that Royalty Allocation Well;

### identifies the Royalty Length and Total Horizontal Length of that Royalty Allocation Well;

### outlines the calculation of the Allocation Ratio for that Royalty Allocation Well in accordance with this Royalty Allocation Amending Agreement; and

### outlines any applicable further allocation of production from that Royalty Allocation Well to the Royalty Lands in accordance with Clause 4.4 of this Royalty Allocation Amending Agreement.

“**As Drilled Survey**” means a diagrammatic presentation of final survey data obtained after a Royalty Allocation Well has been drilled that shows the actual wellpath of that well, including its Heel, Toe, Royalty Length and Total Horizontal Length.

“**Heel**” means, with reference to the As Drilled Survey, either:

### for a Royalty Allocation Well in which intermediate casing is set within the formation being drilled horizontally, the downhole coordinates of the applicable Horizontal Leg corresponding to the bottom of the intermediate casing; or

### for a Royalty Allocation Well in which intermediate casing is set in a formation above the formation being drilled horizontally or in a case in which there is no intermediate casing, the downhole coordinates at which the applicable Horizontal Leg reaches at least 85 degrees inclination from vertical within the formation being drilled horizontally.

“**Horizontal Leg**” means the portion of a wellbore with an inclination of at least 80 degrees from vertical into a formation that is the horizontal component of a well.

“**Horizontal Well**” means a well that includes a Horizontal Leg for which that Horizontal Leg was either: (i) identified when that well was proposed initially; or (ii) subsequently drilled from the point of kickoff from a vertical stratigraphic wellbore.

“**Initial Allocation Ratio**” means the anticipated Royalty Length of a Royalty Allocation Well, divided by the anticipated Total Horizontal Length of that well, expressed as a percentage and rounded to two decimal places, based on the information contained in the preliminary directional plan provided to the Royalty Owner by the Royalty Payor hereunder for that Royalty Allocation Well.

“**Non-Royalty Lands**” means any petroleum and natural gas rights included in the Spacing Unit for a Horizontal Well to which this Agreement applies that are not the Royalty Lands.

### “**Overriding Royalty**” means the overriding royalty or royalty, as applicable, described in Clause(s) \_\_\_ of **(NTD: The underlying agreement Clause number in the option should only be used if a CAPL form document was not referenced as a Schedule. Be sure to include any Clauses relating to the calculation of the royalty or the deductions related to it.)** the Royalty Agreement, subject to such deductions and other adjustments as may be prescribed by the Royalty Agreement at the applicable time, or any modification thereto or those deductions or other adjustments as agreed by the Parties.

“**Royalty Agreement**” means the \_\_\_\_\_ Agreement dated \_\_\_\_\_\_ \_\_, \_\_\_ originally between/among \_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_ and any amendments thereto, including the 1997 CAPL Farmout & Royalty Procedure/Overriding Royalty Procedure incorporated by reference with rates and elections included as a Schedule thereto.

“**Royalty Allocation Amending Agreement** **Effective Date**” means \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

“**Royalty Allocation Well**” means a well drilled as a Horizontal Well (including the Initial Royalty AllocationWell), such that the Horizontal Leg of the Horizontal Well penetrates in part a Spacing Unit that includes the Royalty Lands and in part the Non-Royalty Lands, provided that a well drilled prior to the Royalty Allocation Agreement Effective Date shall only be a Royalty Allocation Well if expressly stated in this Royalty Allocation Amending Agreement to be a Royalty Allocation Well.

“**Royalty Lands**” means those lands subject to the Royalty Agreement that are described as Royalty Lands on Schedule “A”, insofar as those identified Royalty Lands remain subject to the Royalty Agreement at the applicable time.

“**Royalty Length**” means that portion of the Total Horizontal Length of a Royalty Allocation Well that is located on a Spacing Unit that includes Royalty Lands (including for this purpose half of any road allowance being traversed by the Horizontal Leg of that well), as described on the As Drilled Survey for that well.

“**Royalty Owner**” means \_\_\_\_\_ as to \_\_\_.\_\_% and \_\_\_\_\_ as to \_\_.\_\_%.

“**Royalty Payor**” means \_\_\_\_ as to \_\_\_.\_\_% and \_\_\_\_\_ as to \_\_.\_\_%.

“**Royalty Payor's Working Interest**” means the Working Interest on which the Overriding Royalty is based, as described in Schedule “A”.

“**Spacing Unit**”means the area of the Royalty Lands and Non-Royalty Lands allocated to a Royalty Allocation Well under the Regulations for the production of the applicable Petroleum Substances in each individual formation of the Royalty Lands and Non-Royalty Lands from which they will be produced. Notwithstanding the preceding portion of this definition, a reference to a Spacing Unit being penetrated by a Royalty Allocation Well and that includes Royalty Lands refers to the applicable area(s) that would apply to that well under the Regulations if that well were drilled as a vertical well on each such area, such that a Horizontal Leg in a gas well with one-section spacing that traverses two sections is regarded as being located on two one-section Spacing Units.

“**Toe**” means the bottom hole coordinates of a Royalty Allocation Well or, if such well includes more than one Horizontal Leg, the bottom hole coordinates of the applicable Horizontal Leg, in either case as described in the As Drilled Survey, provided that any permanent plugging back or cementing off of a portion of a Horizontal Leg prior to the commencement of production from that Royalty Allocation Well shall result in a corresponding adjustment to its Toe, Total Horizontal Length and Royalty Length, as applicable.

“**Total Horizontal Length**” means the actual total length, in metres, of a Royalty Allocation Well, measured within that well between its Heel and Toe, as identified on the As Drilled Survey for that well.

Insofar as there is a conflict between the definitions set out in the Royalty Agreement and the definitions in this Royalty Allocation Amending Agreement, the definitions in this Royalty Allocation Amending Agreement shall prevail.

**(NTD: Use this optional sentence if these terms are defined but not capitalized in the Royalty Agreement, most likely if it is a non-CAPL Farmout & Royalty Procedure / Overriding Royalty Procedure.)** In the definitions incorporated from the Royalty Agreement, “party” shall be read as “Party”, and “petroleum substances” shall be read as “Petroleum Substances”.

# 2.0 SCHEDULES

The following Schedules are attached and made part of this Royalty Allocation Amending Agreement:

(a) Schedule “A”, which describes the Title Documents, the Royalty Lands and the Royalty Payor's Working Interest;

(b) Schedule “B”, which is the preliminarydirectional plan showing the basis for the Initial Allocation Ratio **OR** the As Drilled Survey showing the basis for the Allocation Ratio for the Initial Royalty AllocationWell; and

(c) Schedule “C”, which is the Allocation Ratio Confirmation Notice for the Initial Royalty Allocation Well. **(NTD: Use this Paragraph if this Agreement is prepared after the Initial Royalty Allocation Well has been drilled.)**

# 3.0 allocation of production FROM ROYALTY LANDS

## 3.1 **Royalty Owners’s Consent And Operator’s Discretion**

(a) Each Party comprising the Royalty Owner hereby confirms that it consents to the drilling of one or more Royalty Allocation Wells on the basis provided in this Royalty Allocation Amending Agreement.

(b) This Article 3.0 is subject to the discretion of the Royalty Payor:

(i) not to proceed to drill any anticipated Royalty Allocation Well;

(ii) to modify the anticipated wellpath trajectory and bottom hole location, or either of them, for any Royalty Allocation Well; and

1. to complete or otherwise manage any Royalty Allocation Well;

in the manner that it sees fit, insofar as the Royalty Payor otherwise complies with its obligations under this Royalty Allocation Amending Agreement and the Royalty Agreement. Notwithstanding the foregoing portion of this Subclause, the Allocation Ratio for the applicable Royalty Allocation Well shall be adjusted accordingly insofar as any modification contemplated in Paragraph (ii) above affects the Royalty Length or the Total Horizontal Length of that Royalty Allocation Well.

## 3.2 **Calculation Of Overriding Royalty Prior To Allocation Ratio Confirmation Notice**

Prior to receipt by the Royalty Owner of the Allocation Ratio Confirmation Notice for a Royalty Allocation Well pursuant to Clause 4.2, the Overriding Royalty for that well shall be calculated on the same basis as under Clause 3.3, except that the Initial Allocation Ratio shall be used for that calculation, rather than the Allocation Ratio. That initial calculation shall then be subject to adjustment under Clause 4.3.

## 3.3 **Calculation Of Overriding Royalty After Allocation Ratio Confirmation Notice**

Insofar as a Royalty Allocation Well is subject to the Royalty Agreement, the Parties agree that in calculating the Overriding Royalty, the quantity of produced Petroleum Substances allocated to a Spacing Unit that includes Royalty Lands shall be determined by multiplying the Allocation Ratio by the total volume of Petroleum Substances produced from that Royalty Allocation Well. This allocation is then subject to any further allocation that is required under the Royalty Agreement due to the pooling or unitization of the Royalty Lands with other lands, as described in Clause 4.4.

## 3.4 **No Alteration Of Allocation Over Time**

The Parties recognize that the productivity of a Royalty Allocation Well may change over time, but, with the exception of a potential adjustment to the Toe as provided herein, this shall not result in any alteration of the Allocation Ratio.

## 3.5 **Separate Calculations For Each Horizontal Leg**

If a Royalty Allocation Well includes more than one Horizontal Leg, the Royalty Payor shall make the calculation contemplated in this Article 3.0 for each such Horizontal Leg as if it were by itself a Royalty Allocation Well. Notwithstanding the preceding sentence, if it is not feasible for the Royalty Payor to determine the production actually attributable to each such separate Horizontal Leg, it shall use as a basis for the calculation the ratio of the Total Horizontal Length of each such Horizontal Leg to the sum of the Total Horizontal Lengths of all of those Horizontal Legs.

# 4.0 Allocation Ratio

## 4.1 **As Drilled Survey For Royalty Allocation Well**

### The Royalty Payor shall use reasonable efforts to obtain an As Drilled Survey for any Royalty Allocation Well in a timely manner following the drilling rig release of that well. It shall provide a copy of the As Drilled Survey for any Royalty Allocation Well to the Royalty Owner within 30 days after receiving it.

### If: (i) the Royalty Payor has created the As Drilled Survey provided to the Royalty Owner hereunder from survey data for a Royalty Allocation Well; and (ii) the Royalty Owner has not already received that survey data from the Royalty Payor when it provided any required drilling information for that Royalty Allocation Well under the Royalty Agreement to the Royalty Owner, the Royalty Owner may, upon reasonable notice to the Royalty Payor, require the Royalty Payor to provide the Royalty Owner access to that original survey data in order to confirm the accuracy of the information presented in that As Drilled Survey.

### Notwithstanding the provisions of this Clause 4.1, the preliminary directional plan showing the basis for the Initial Allocation Ratio **OR** the As Drilled Survey for the Initial Royalty Allocation Well is attached to this Royalty Allocation Amending Agreement as Schedule “B”.

## 4.2 **Confirmation Of Allocation Ratio For Royalty Allocation Well**

(a) The Royalty Payor shall provide an Allocation Ratio Confirmation Notice to the Royalty Owner within 45 days following the Royalty Payor’s receipt of the As Drilled Survey for each Royalty Allocation Well.

(b) The Royalty Payor shall outline in the Allocation Ratio Confirmation Notice contemplated in the preceding Subclause the basis for the calculation of the Allocation Ratio for the applicable Royalty Allocation Well in reasonable detail. The information in that notice shall be deemed correct unless, within 30 days after its receipt, a Party comprising the Royalty Owner notifies the Royalty Payor that it does not believe that the information in that Allocation Ratio Confirmation Notice is accurate, its reasons for that belief and its suggested correction to that Allocation Ratio Confirmation Notice. The Parties shall attempt in good faith to resolve the matter for a period of 21 days, following which any Party may, at any time, submit the matter for binding arbitration under the *Arbitration Act* (Alberta).

(c) Notwithstanding the provisions of this Clause 4.2, the Allocation Ratio Confirmation Notice for the Initial Royalty Allocation Well is attached to this Royalty Allocation Amending Agreement as Schedule “C”.

## 4.3 **Adjustments Due To Modification Of Allocation Ratio**

This Clause applies insofar as an Initial Allocation Ratio used for the calculation of the Overriding Royalty for a Royalty Allocation Well is being modified as a result of the receipt of the As Drilled Survey. Any such modification to the Allocation Ratio for a Royalty Allocation Well shall be done on a cash basis, and the Parties shall adjust accounts accordingly for the required amount within 60 days following the finalization of that Allocation Ratio. Any such adjustment shall be made using the pricing that was used for the calendar month to which the applicable portion of any such adjustment pertains. The Royalty Payor shall effect any such adjustment with or against the production volumes or amount payable to the Royalty Owners in conjunction with the calculation of the Overriding Royalty in the calendar month following finalization of that Allocation Ratio. The Royalty Payor shall clearly identify any such adjustment attributable to a modified Allocation Ratio on its statement delivered with respect to the calculation of the Overriding Royalty for the production month in which that adjustment is effected.

## 4.4 **Effect Of Pooling Or Unitization On Calculation**

(a) This Clause applies if a Spacing Unit to which an allocation of production volumes from a Royalty Allocation Well is being made hereunder includes Royalty Lands and Non-Royalty Lands. If any such Spacing Unit includes both Royalty Lands and Non-Royalty Lands that have been pooled, unitized or otherwise combined to form that Spacing Unit, an additional allocation may be required under the Royalty Agreement between the applicable Royalty Lands and Non-Royalty Lands to calculate the final Overriding Royalty payable for the production volumes initially allocated to that Spacing Unit under Article 3.0 using the Allocation Ratio.

(b) Further allocation of the Overriding Royalty for a section contemplated in the preceding Subclause shall be on the basis prescribed by the Royalty Agreement. To illustrate, a pooling of a half section of Royalty Lands with a half section of Non-Royalty Lands to complete the Spacing Unit in that section on an acreage basis thereunder would result in an allocation of 50% of the production volumes calculated for that Spacing Unit using the Allocation Ratio to be allocated to the Royalty Lands and the remainder to the Non-Royalty Lands. However, the further reallocation within that section contemplated in this Clause would not affect in any way that portion of the Overriding Royalty allocated under this Royalty Allocation Amending Agreement to a Spacing Unit containing only Royalty Lands.

## 4.5 **Notification Responsibilities If Royalty Payor Comprised Of Multiple Parties**

If the Royalty Payor is comprised of more than one Party, the obligations of the Royalty Payor in this Article 4.0 shall be performed by the operator of the applicable well.

# 5.0 Pad Site Sharing Agreement

Insofar as there are any shared well pads serving wells governed by the Royalty Agreement and other wells not governed by the Royalty Agreement, the nature of the cost allocations, management of shared facilities and potential liability and indemnification obligations are such that the applicable owners of those wells may have entered into a pad site sharing agreement with respect to the applicable shared well pads. If any such agreement exists, the Parties recognize that any acquisition of a working interest by the Royalty Owner from the Royalty Payor under the Royalty Agreement would be acquired subject to the terms of any such pad site sharing agreement, including any restrictions therein with respect to a single site operator or any permitted use limitations therein respecting wells of a certain type or a use of the shared well pad that is limited to activities in a prescribed formation.

# 6.0 MISCELLANEOUS

## 6.1 **Ratification Of Royalty Agreement**

The Royalty Agreement shall continue in full force and effect. It is amended only to the extent necessary to give force and effect to this Royalty Allocation Amending Agreement, and is ratified, approved and confirmed as so amended.

## 6.2 **Enurement**

Subject to the terms and conditions of the Royalty Agreement, this Royalty Allocation Amending Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and assigns.

## 6.3 **Further Assurances**

Each Party shall, on a timely basis and without further consideration, complete such other documents and take such other actions as may be reasonably required to perform its obligations under the Royalty Agreement and this Royalty Allocation Amending Agreement.

## 6.4 **Jurisdiction**

**(NTD: The jurisdiction should align with the Royalty Agreement, which may or may not be Alberta)** This Royalty Allocation Amending Agreement shall be subject to and be interpreted, construed and enforced in accordance with the laws in effect in the Province of Alberta. Each Party accepts the jurisdiction of the courts of the Province of Alberta and all courts of appeal therefrom.

## 6.5 **Counterpart Execution**

This Royalty Allocation Amending Agreement may be executed in counterpart and when each Party has executed a counterpart, all counterparts taken together shall constitute one and the same agreement.

**IN WITNESS WHEREOF** the Parties have executed this Royalty Allocation Amending Agreement to be effective as of the Royalty Allocation Amending Agreement Effective Date.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **COMPANY ONE** | |  | **COMPANY TWO** | |
|  | | | | |
| Per: |  |  | Per: |  |
|  |  |  |  |  |

Execution page to a Royalty Allocation Amending Agreement dated \_\_\_\_\_\_\_\_\_\_ \_\_\_\_, 20\_\_\_, between Company One and Company Two.

**Schedule “A”**

attached to and forming part of a Royalty Allocation Amending Agreement

dated \_\_\_\_\_, 20\_\_\_ and made between

Company One and Company Two

|  |  |  |
| --- | --- | --- |
| **Title Documents** | **Royalty Lands** | **Royalty Payor’s Working Interest** |
|  |  |  |

**Schedule “B”**

attached to and forming part of a Royalty Allocation Amending Agreement

dated \_\_\_\_\_, 20\_\_\_ and made between

Company One and Company Two

<<preliminary directional plan or As Drilled Survey>>

**Schedule “C”**

attached to and forming part of a Royalty Allocation Amending Agreement

dated \_\_\_\_\_, 20\_\_\_ and made between

Company One and Company Two

**Allocation Ratio Confirmation Notice**

**Initial Royalty Allocation Well**

**<<Well Name>>**

(NTD: Use the relevant example that fits the particular scenario. The allocation methodology contemplated for a simple Royalty Allocation Well is shown in the following example)

|  |  |  |
| --- | --- | --- |
| **Example 1** | Spacing Unit  25-25W4: 1 | Spacing Unit  25-25W4: 2 |
| Royalty Lands  25-25W4: 1 | Non-Royalty Lands  25-25W4: 2 |
| Total Horizontal Length | 1000 metres | |
| Royalty Length | 600 metres | n/a |
| Allocation Ratio | 60.00% | n/a |

(A further allocation would then be required within a particular Spacing Unit if the terms of the Royalty Agreement required the Royalty Lands to be pooled or unitized with other lands within that Spacing Unit to complete the applicable Spacing Unit for the Royalty Allocation Well, as contemplated in Clause 4.4, and as shown in the additional example below)

|  |  |  |  |
| --- | --- | --- | --- |
| **Example 2** | Spacing Unit  25-25W4: 1 | | Spacing Unit  25-25W4: 2 |
| Royalty Lands  25-25W4: SW1  (25% of Spacing Unit) | Non-Royalty Lands 25-25W4: N&SE1  (75% of Spacing Unit) | Non-Royalty Lands  25-25W4: 2 |
| Total Horizontal Length | 1000 metres | | |
| Royalty Length | 600 metres | | n/a |
| Allocated Horizontal Length After Pooling | 600m X 25% = **150m** | 600m X 75% = **450m** | **400m** |
| Allocation Ratio | 60.00% | | n/a |
| Allocation After Pooling | 60% X 25% = **15.00%** | 60% X 75% = **45.00%** | **40.00%** |