[NTD = Note To Draft – instructions for the user to be deleted before sending the document to other parties]

TRUST AGREEMENT

**THIS AGREEMENT** dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "**Agreement**"). [**NTD: Enter Current date**]

**BETWEEN**:

[**COMPANY A**], a body corporate having an office in Calgary, Alberta

(the "**Trustee**")

- and -

[**PARTNERSHIP B**], an Alberta general partnership **OR** [**COMPANY B**], a body corporate having an office in Calgary, Alberta

(the "**Beneficiary**")

**BACKGROUND**

Trustee is the registered owner of interests in the Title Document(s);

Trustee wishes to acknowledge that it holds the Trust Interest in trust for Beneficiary subject to the terms and conditions in this Agreement; and

Beneficiary wishes to appoint Trustee and acknowledge that Trustee holds the Trust Interest in trust for Beneficiary.

**In consideration** of the sum of $10.00 and other valuable consideration paid by Beneficiary to Trustee, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

# DEFINITIONS

**"Affiliate"** means a corporation, partnership or trust that is affiliated with the Party for which the expression is being applied. For the purpose of this definition, a corporation, partnership or trust is affiliated with another corporation, partnership or trust if it, other than by way of security only, directly or indirectly controls or is controlled by that other corporation, partnership or trust. In determining if a corporation, partnership or trust so controls or is so controlled, it shall be deemed that:

### a corporation is directly controlled by another corporation, partnership or trust if: (i) shares of the corporation to which are attached more than 50% of the votes that may be cast to elect directors of the corporation are beneficially owned by that other corporation, partnership or trust; and (ii) the votes attached to those shares are sufficient, if exercised, to elect a majority of the directors of the corporation;

### a partnership or trust is directly controlled by a corporation, another partnership or another trust if that corporation, other partnership or other trust beneficially owns more than a 50% interest in the partnership or trust; and

### a corporation, partnership or trust is indirectly controlled by another corporation, partnership or trust if control, as set forth in Paragraph (a) or (b) above, is exercised through one or more other corporations, partnerships or trusts.

Two or more corporations, partnerships or trusts affiliated at the same time with the same corporation, partnership or trust are deemed to be affiliated with each other.

**"Effective Date"** means \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**"Lands"** means the areal, stratigraphic and substance rights set forth and described in Schedule "A", subject to such limitations to zones and formations as are set forth in Schedule "A", or such portion thereof as may remain subject to this Agreement at the relevant time.

**"Party"** means a corporation, partnership, individual, body politic, trust or other legal person bound by the terms of this Agreement.

**"Title Document"** means, insofar only as applicable to the Lands at the relevant time, the document(s) of title set forth in Schedule "A" (or any of them) and any documents issued or derived therefrom, including all amendments, renewals, extensions, continuations or replacements thereof.

**"Trust Interest"** means the registered interest in the Lands and the Title Document as set forth and described in Schedule "A" or such portion thereof as may remain subject to this Agreement at the relevant time.

# AGREEMENT OF PARTIES

Beneficiary appoints Trustee to hold, as bare trustee, the Trust Interest in trust on behalf of Beneficiary as of the Effective Date. As of the Effective Date, Trustee agrees that it holds and shall hold, as bare trustee, the Trust Interest in trust for Beneficiary on the terms and conditions described in this Agreement and Trustee agrees that all benefit and advantage accruing to the Trust Interest shall, if and when received by Trustee, be held by Trustee in trust for Beneficiary.

# OBLIGATIONS

## Trustee Does Not Guarantee Title

By this Agreement, Trustee does not purport to hold in trust for Beneficiary any better title or interest than Trustee now holds, and Trustee does not, either expressly or by implication, warrant or guarantee title to the interest held for Beneficiary.

## Trustee Not Obligated to Conduct Operations

Trustee shall not, by this Agreement, be obligated to drill any wells, conduct any operations, post any deposits or apply for continuation of the Title Document, nor shall Trustee be required to pay any shut-in royalty or compensatory royalty on Beneficiary's behalf.

## Trustee to Cooperate With Beneficiary

Trustee will cooperate with Beneficiary to provide any authorizations required to enable Beneficiary to make any required applications to regulatory authorities to attempt to retain the Lands under the Title Document. Trustee acknowledges that Beneficiary may drill wells, conduct operations, and may post deposits insofar as they pertain to the Trust Interest in accordance with applicable law and the directions of any governmental authority having jurisdiction over the Trust Interest.

## Trustee to Provide Documentation

Trustee shall provide to Beneficiary in a timely manner, copies of all correspondence received by Trustee that pertain to the Title Document, including, without limitation, any notices to fulfill offset obligations, any notices related to retention of the Title Document, in whole or in part, and any notices of default which may impact the Trust Interest.

# PAYMENTS TO BE MADE BY BENEFICIARY

## Beneficiary to Pay Royalty

Beneficiary shall remit directly to the lessor(s) any royalty payable under the Title Document in respect of the Trust Interest. Beneficiary shall provide the lessor(s) with the information required to be delivered to the lessor(s) under the Title Document with respect to any such payment. If Trustee is required to provide information to the lessor regarding the payment of a royalty, Beneficiary shall also provide that information to Trustee to the extent reasonably required by Trustee to fulfill its obligations hereunder, and under the Title Document.

## Beneficiary to Pay Taxes

Beneficiary agrees to pay or to assume responsibility for its undivided share of all taxes, encumbrances and other levies or obligations which may arise or be payable with respect to the Trust Interest or the production obtained therefrom or attributable thereto.

## Beneficiary to Pay Rentals

[OPTION 1: Subject to the application of the last sentence of Clause 6.3, Beneficiary acknowledges that Trustee is the payor of the rentals under the Title Document. The Parties agree that all rentals payable under the Title Document shall be shared by Trustee x% and Beneficiary x%. Beneficiary agrees to pay its share of all rentals payable under the Title Document upon receipt of an invoice from Trustee.

OR (if the applicable agreement addresses handling of rentals)

OPTION 2: Subject to the application of the last sentence of Clause 6.3, Beneficiary acknowledges that Trustee is the payor of the rentals under the Title Document and that Trustee shall invoice Beneficiary for its share of rentals as more specifically described in the agreement that created the Trust Interest. Beneficiary agrees to pay its share of all rentals payable under the Title Document upon receipt of an invoice from Trustee.]

# BENECIFIARY RATIFICATION AND INDEMNIFICATION

## Beneficiary Ratifies Actions of Trustee

Subject to the application of Clause 5.2, Beneficiary expressly acknowledges that in all matters relating to the Trust Interest between the Effective Date and execution of this Agreement, Trustee has been acting as trustee for and the duly authorized agent on behalf of Beneficiary, as of the Effective Date. Beneficiary hereby expressly ratifies, adopts and confirms all acts or omissions made or done by Trustee, which shall, for such purposes, be construed as having been made or done by Beneficiary.

## Indemnification Procedures

### Beneficiary shall be liable to Trustee for, and, in addition, shall indemnify and save harmless Trustee, its Affiliates and their respective directors, officers, employees and agents from and against, any and all liability, loss, costs, claims, damages and expenses, including, without limitation, all penalties, fines, court costs, legal costs (on a solicitor and his own client basis), lessor royalties, claims or damages whatsoever arising as a result of Trustee holding the Trust Interest in trust for Beneficiary, except insofar as caused by the gross negligence or wilful misconduct of Trustee, its Affiliates or any of their respective directors, officers, employees and agents.

### Notwithstanding Clause 5.2(a): (i) if there are multiple Trustee parties; (ii) if one of them is the Trustee party responsible for maintaining the Title Document; and (iii) insofar as the liability, loss, costs, claims, damages or expenses relate to the gross negligence or wilful misconduct of that Trustee in carrying out its responsibilities of maintaining the Title Document, that Trustee shall be solely responsible for the liability, loss, costs, claims, damages or expenses, including responsibility therefor to the other Trustee parties on the same basis as provided for in this Clause.

### For the purposes of this Clause, an act, omission or failure to act shall not be regarded as gross negligence or wilful misconduct insofar as it was done: (i) in accordance with the express instructions or approval of Beneficiary, subject to the terms and conditions of the respective Title Documents; and (ii), that act, omission or failure to act was inherent in those instructions or that approval. In all cases, the Parties will act in good faith in their dealings.

# ASSIGNMENTS

## Incorporation of Assignment Procedure

Any assignment of interest in this Agreement shall be made in accordance with the 1993 CAPL Assignment Procedure ("**Assignment Procedure**"), which document is incorporated by reference herein.

## Assignment by Trustee

Trustee shall not assign, transfer, encumber, alienate or in any way dispose of Beneficiary's Trust Interest or Trustee's obligations under this Agreement without Beneficiary’s prior written consent, which consent may not be unreasonably withheld or delayed, provided that the Trustee may assign its interest in this Agreement pursuant to Clause 6.1.

## Assignment of Registered Interest

If Trustee no longer holds an interest in a Title Document, other than the Trust Interest, and it becomes practicable for Trustee to assign (or cause to be assigned) a registered interest in that Title Document to Beneficiary, Trustee shall, in a timely manner, prepare such documentation or initiate such transfer as is reasonably required to assign the applicable Trust Interest to Beneficiary with respect to that Title Document and Beneficiary shall accept such assignment. This Agreement shall no longer apply to the applicable Trust Interest so assigned following any such assignment, provided that this does not release Trustee from any obligations that had accrued to Trustee with respect to that Trust Interest prior to completion of that assignment.

## Beneficiary to Advise Trustee of Working Interest Changes

[OPTIONAL: If Trustee is not party to agreements that would enable it to identify all of the owners of a beneficial interest in the Lands, then, in addition to the obligation described in the Assignment Procedure, Beneficiary shall advise Trustee, as soon as reasonably practicable and in any event no later than 75 days prior to the due date of the rentals under the Title Document, of any changes to the working interest of Beneficiary and the other parties in the Title Document which may be governed by agreements to which Trustee is not a party.]

## Multiple Beneficiaries

[OPTIONAL: If Beneficiary is comprised of more than one Party, [Name of Beneficiary] is appointed as the single representative of Beneficiary for all purposes under this Agreement, other than for the application of Clause 5.1, 5.2 and 6.1 to an assignment (the "**Beneficiary Representative**"). The Parties comprising Beneficiary may appoint another Party to be the Beneficiary Representative with Trustee's consent, which consent may not be unreasonably delayed or withheld.]

## Address for Service

Any service of notice shall be made in accordance with the Assignment Procedure to the addresses shown below:

|  |  |
| --- | --- |
|  |  |

# TERM

Except for those obligations as, by their nature, are intended to survive termination, such as any requirement to settle accounts and any indemnification obligations under this Agreement, this Agreement shall: (i) remain in force until; and (ii) shall be terminated with respect to a particular Title Document, when: (a) that Title Document reverts to the grantor thereof in its entirety or with respect to the Lands subject thereto; or (b) the interest of Beneficiary is either registered on that Title Document or that interest is surrendered or terminated by notice from any Beneficiary to Trustee. Nothing in this Clause shall alter rights or obligations accruing prior to such termination.

# MISCELLANEOUS

## Further Assurances

Each of the Parties shall, on a timely basis and without further consideration, do such further acts and execute and deliver all such further documents as may be reasonably required in order to perform its obligations fully in accordance with the terms of this Agreement.

## Schedules

All schedules attached to this Agreement shall be incorporated and shall form part of this Agreement as though contained in the body of this Agreement.

## Enurement

Subject to the provisions hereof, this Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors, trustees, receivers, receiver-managers and permitted assigns.

## Jurisdiction

This Agreement shall in all respects be subject to and interpreted in accordance with the laws in effect in the Province of [**Alberta**]. Each Party accepts the exclusive jurisdiction of the courts of the Province of [**Alberta**] and all courts of appeal therefrom.

## Limitation Period

The two-year period for seeking a remedial order under section 3(1)(a) of the *Limitations Act* (Alberta), as amended (the "**Act**"), for any claim (as defined in the Act) arising in connection with this Agreement is extended to four years.

## Supersedes

This Agreement supersedes all other trust agreements between the Parties with respect to the Trust Interest.

## Entire Agreement

This Agreement contains the entire agreement between the Parties, and there are no representations, warranties or agreements collateral or otherwise with respect to the Trust Interest, other than as expressed herein as between the Beneficiary and the Trustee with respect to the rights and obligations set forth herein pertaining to the Trust Interest.

## Amendments in Writing

Except as otherwise provided herein, amendments to this Agreement must be in writing and executed by all Parties.

## Counterpart Execution

This Agreement may be executed in counterparts, and all counterparts together shall constitute one Agreement. No Party shall be bound by the provisions of this Agreement until all Parties have executed this Agreement.

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

|  |  |
| --- | --- |
|  |  |
|  |
| Per: |  |  | Per: |  |
|  | Name:Title: |  |  | Name:Title: |

This is an Execution Page to a Trust Agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and made between       and

**SCHEDULE** "**A"**

to a Trust Agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

between       and      .

|  |  |  |
| --- | --- | --- |
| **TITLE DOCUMENT** | **LANDS** | **TRUST INTEREST** |
|  |  |  |
|  |  |  |
|  |  |  |

[NTD: The Trust Interest cannot be greater than the Trustee’s registered interest as the Trustee cannot hold in trust something which it does not itself have.]