

# EXPLANATION OF THE LAND ACCESS AGREEMENT TEMPLATE

FOR PETROLEUM EXPLORATION ACTIVITIES UNDER THE *PETROLEUM AND  
GEOTHERMAL ENERGY RESOURCES ACT 1967*

*To be read in conjunction with the 'Farming Land Access Agreement Template'.*

## **1. Company and Land Holder Details**

This agreement between land holders and petroleum explorers sets out protocols and commitments for oil and gas exploration on private farmland in Western Australia.

In this agreement:

- the Operator is the company responsible for the activity taking place on the Petroleum Title.
- The Licence Holder is the company registered with the Department of Mines and Petroleum as the holder of the petroleum permit. In most instances, the Operator and Licence Holder will be the same company
- The Land Holder is the person/business who owns the land.
- The Occupier is the person living on the land.

## **2. Appointment of Responsible Person**

In many cases the agreement will require the signatures of only two parties – the landholder/occupier and the petroleum titleholder/operator.

However, where the parties are not single entities (for example, where the land is owned or leased by one business and occupied by another – and where the petroleum licence is held by one company but the exploration is undertaken by another) the agreement may need to be signed by up to four signatories. These four signatories would also be required to implement the agreement

As outlined in Clause 2, each party will be expected to appoint a responsible person to act as a point of contact for negotiations and during the term of the agreement. Where the land holder or occupier are not the same person – or the operator and the licence-holder are not the same entity – the parties may wish to begin the process by appointing a single responsible person for each interest group (e.g. landholding and exploration interests).

This would help to streamline the process and improve the interaction between the landholders and exploration entities. If this concept is agreed, the appointment and the necessary authority for the “responsible persons” could be included in Clause 2.

## **3. Term of the Agreement**

States the date on which the Agreement will start and finish, either at the conclusion of activities by the petroleum company or on a date agreed between the parties. The

Agreement can also be terminated beforehand on the agreement of the parties or if the company does not obtain the necessary approvals to carry out the proposed works.

All rehabilitation will need to be completed before a company extinguishes its obligation on the land under law. Rehabilitation requirements are covered by regulation and at Section 13 of the Agreement.

#### **4. Operator's Commitments**

This section outlines the Operator's commitments to ensure that agreed commitments and obligations are met and that the impact of exploration activities on the farming operation is minimised. The agreement lists a range of management practises and control measures to prevent undue disruption of grazing, cropping and other farming activities.

#### **5. Land Holder's / Occupier's Commitments**

This section recognises that a Land Holder / Occupier will not interfere with operations and will observe all industry health and safety regulations. The land owner will work with the operator to implement environmental management and rehabilitation plans.

#### **6. Information**

Outlines the standard information to be provided to the Land Holder / Occupier by the Operator in relation to the Operator's activities, location of equipment and emergency management procedures.

The Operator will provide a map, indicative timetable, safety plans and program outline to the farmer who will, in turn, provide a summary of planned farming activities.

Using this information, the parties will negotiate an appropriate compensation agreement, incorporating the land holders "reasonable" costs which are negotiated up front and quantified as part of the agreement. For this to occur, the Land Holder / Occupier will provide an outline of the costs likely to be incurred on securing the necessary advice and information to complete the agreement, prior to the advice being sort. This would include legal, financial and technical advice. In some cases, neighbouring farmers may wish to collaborate to get advice on the potential impacts and implication of petroleum exploration on areas of farmland.

#### **7. Meetings**

Commits both parties to discussing and responding to any issues that arise once operations commence.

#### **8. Inspection**

Requires that, for health and safety reasons, any inspection of petroleum activities take place with the Operator present.

#### **9. Notification**

Requires the Operator to provide at least 48 hours' notice of intent to enter a property each time. It is expected that the Operator would have discussed this with the Land Holder /

Occupier well in advance of the notice of entry being provided and that this would be expected to take into account the farming activities.

## **10. Restricted Areas**

This section outlines the process for both parties to agree on some areas being designated temporarily off-limits for health and safety reasons. For example, an area being used for seismic surveys or flaring would be subject to access restrictions for specified periods. Similarly, the Land Holder may give notice that Operators should not access areas at times due to seasonal farming activities such as seeding, harvesting, lambing and calving.

## **11. Compensation**

This section relates to compensation for negotiating the agreement and compensation for the impact of activities.

While the Agreement does not identify any compensation values, Schedule 1 outlines matters which are material for considering an appropriate compensation package.

## **12. Other Damages**

Clause 12 notes that, consistent with the Act and Common Law damages, compensation is payable for unforeseen damage and loss as a result of petroleum activities

## **13. Rehabilitation**

This section outlines an Operator's commitments to rehabilitate and restore the land, in consultation with the land holder. In this context, the operator will consider the land holders views in designing the rehabilitation; prepare a non-technical summary of the program for the land holder as part of the preparation of a public environmental management plan - and meet all of the agreement and regulatory commitments for rehabilitation.

The Operator will consult the Land Holder / Occupier as to whether any infrastructure installed by the Operator should not be retained (for example, if the Land Holder / Occupier expects to utilise a water well or fencing that the Operator has installed).

## **14. Release**

Outlines the conditions under which the Land Holder is not held liable for any claims by the Operator (including particularly in relation to death, damage or loss). It does not apply where the Land Holder fails to comply with the law or the Agreement or negligently interferes with the Operator's activities.

## **15. Independent Assessment of Remediation**

Before any exploration activities begin, the Operator and Land Holder can agree to undertake a baseline survey to establish the condition of the land to establish a benchmark

for rehabilitation. If agreed, the Operator and Land Holder should jointly identify an advisor(s) to provide a report on the condition of the land. Upon completion of the petroleum exploration activities and prior to rehabilitation, the parties should jointly instruct advisor(s) to provide a report on specific remediation required to return the land, as far as practical, to its former condition.

The Operator should ensure that the proposed rehabilitation conforms to the provisions of their environmental approvals and relevant regulations;

## **16. Dispute Resolution**

Either Party can give notice that they believe the negotiations would benefit from mediation if a dispute has not been resolved within 30 days. Pursuit of mediation does not prevent either party from referring a dispute to the Magistrate's Court for arbitration.

Further details on the mediation process are set out in the 'Farmer's Guide to Petroleum Exploration on Private Land'.

## **17. Confidentiality**

The final Agreement will not be confidential by default unless the parties choose to make it so.

## **18. Indemnity**

This section states that the Operator will not hold the Land Holder responsible for any claims, demands, expenses, costs, actions and proceedings associated with the petroleum activities or any injury or death caused by the Operator. However, responsibility of the Land Holder and Occupier increases if there is unlawful or wilful misconduct on their part that contributes to an Operator's liability, loss, damage, expense, or cost.

## **19. Insurance**

Under law, companies must retain insurance against expenses, liabilities or anything else that results from activities including, for example, the cost of cleaning up any environmental damage. This section requires that Operators provide the Land Holder / Occupier with details of the relevant insurance arrangements.

## **20. Assignment**

Provides that the parties may sell, assign or part with their rights and obligations under the Agreement provided that they have the incoming entity sign a deed agreeing to the terms of the Agreement.

## **21. Amendment**

Notes that any amendments to the Agreement need to be agreed in writing by both parties.

## **22. Good Faith**

Notes that both parties are acting in good faith with producing and implementing this Agreement.

### **23. Termination**

This section outlines the conditions under which the Agreement can be terminated by written notice and the process to be followed.

### **24. Guarantee**

The Petroleum Licence Holder provides a guarantee to the Land Holder / Occupier that the Operator will act in accordance with the Agreement. This section also indemnifies the Land Holder and Occupier against any claim by the Operator arising from their non-compliance with the Agreement.

### **25. Counterparts**

States that the separately signed copies of the Agreement are collated and form the one Agreement.

### **26. Severance**

Allows for the Agreement to remain in force even if one clause is invalid or unenforceable.

### **27. Waiver**

This section notes that the failure, delay, relaxation or indulgence of a Party to exercise a power or right in the Agreement does not mean that power or right is no longer available to them. The Party also has an ability to exercise that right or power in the future. For example, a Land Holder's delay in claiming compensation for a damaged fence does not mean the Land Holder is not entitled to that compensation.

### **28. Governing Law**

Notes the laws that are relevant to the Agreement.

### **29. Definitions**

Provides an explanation of common and significant terms used within the Agreement.