

# FARMING LAND ACCESS AGREEMENT TEMPLATE

FOR PETROLEUM EXPLORATION ACTIVITIES UNDER THE PETROLEUM AND  
GEOHERMAL ENERGY RESOURCES ACT 1967

October 2015



appea



## **THIS DOCUMENT**

This document has been prepared to provide a guide for farmers, graziers and petroleum companies for land access negotiations.

The content of this template document is intended only to provide generic terms for an agreement. It does not constitute legal advice. The reader should seek legal or other professional advice before acting or relying on any of the content

The authors will not be responsible to the reader or anyone else for any loss suffered in connection with the use of this document or any of its content.

The authors make no warranties or representations (express or implied) about this document or any of the content. The authors exclude, to the maximum extent permitted by law, any liability which may arise as a result of the use of this document, its content or the information in it. To the extent permitted by law, the authors will not be liable for any indirect, incidental, special or consequential loss.

This document, its content or the information in it should not be used as a substitute for consultation with professional accounting, tax, legal or other competent advisers

## COMPANY AND LAND HOLDER DETAILS

DETAILS OF AGREEMENT			
<b>Owner of the Land</b>		<b>Operator - Exploration</b>	
Name		Name of Operator	
ABN		ABN	
Property Name		Project Name (if applicable)	
Address		Permit Type	
		Permit Number	
		Location	

<b>Occupier of the Land</b>		<b>Petroleum Licence Holder</b>	
Name		Name of Licence Holder	
ABN		ABN	
Property Name		Project Name (if applicable)	
Address		Permit Type	
		Permit Number	
		Location	

NOMINATION OF RESPONSIBLE PERSON	Owner / Occupier	Operator - Exploration
<b>Operations</b>		
Name		
Postal Address		
Email		
Fax		

## **AGREEMENT**

The Land Holder and the Operator agree to the matters set out below:

### **1. Application of Agreement**

This agreement applies to **petroleum activities** pursuant to an **exploration permit**, including any renewals or substitutions of that **exploration permit**.

For the avoidance of doubt, this Agreement covers and applies to the exploration activities to be conducted by the Operator during the Term.

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

- (a) To facilitate effective communication the Operator, the Petroleum Licence Holder, the Land Holder and the Occupier of the Land are each to appoint a 'Responsible Person' to act as a point of contact during the term of this Agreement. The Responsible Person should have appropriate knowledge of the project and the Land and act as the primary point of contact for all communications.
- (b) The Responsible person should keep records of relevant plans of the Land, discussions and commitments relating to this Agreement.
- (c) Either party may change its Responsible Person acting on its behalf by giving notice in writing to the other party.
- (d) Matters within the knowledge of the Responsible Person shall be deemed to be within the knowledge of the party appointing that Responsible Person.

### **3. Warranties**

- (a) The Land Holder warrants that the Land Holder is the owner of the Land and that it has the right to grant access to the Land pursuant to this Agreement.
- (b) The Licence Holder warrants that it is and that it is entitled to be the holder of the Licence for the purposes of the Act and this Agreement.

### **4. Term of the Agreement**

- (a) The Term of this Agreement is from the date of execution of this Agreement to:
  - (i) the date on which all of the Petroleum Activities have been completed; or

- (ii) the date nominated at Item 2 of Schedule A.
- whichever occurs first, and in either event the requirements to rehabilitate the Land as set out in this Agreement are to be satisfied.
- (b) Notwithstanding any other provision, this Agreement may be terminated prior to the expiry of the Term:
  - (i) by agreement between the Parties; or
  - (ii) by the Operator in its sole discretion in the event any permits, approvals or consents are not obtained.
- (c) Termination of this Agreement will not prejudice any right any Party may have against any other Party arising out of any breach of this Agreement which occurred prior to the termination.

## 5. Operator's Commitments

The Operator agrees that the Land Holder is entitled to carry out the **farming enterprise** without undue interference from **petroleum activities**. In the conduct of the **petroleum activities**, the Operator will:

- (a) keep the Land Holder informed about the nature and timing of all **petroleum activities**;
- (b) ensure that the farming enterprise on the Land is not unduly disrupted, except as set out in this Agreement, and in particular:
  - (i) keep all gates, whether open, closed or locked, in the state in which they are found;
  - (ii) ensure stock on the Land is not unduly disturbed, injured or killed;
  - (iii) take all precautions to reduce fire risk on the Land and adhere strictly to any fire restrictions imposed by any Authority;
  - (iv) ensure that infrastructure on the Land is not damaged;
  - (v) provide the Land Holder with copies of plans for well construction and protection of groundwater aquifers;
  - (vi) implement a comprehensive biosecurity program to:
    - A. protect the Land from Pest incursion;
    - B. protect the Land from the spread of Pests;
    - C. ensure the wash down of vehicles entering and exiting the Land.

- (c) carry out all activities in accordance with the requirements of the Petroleum Act and all other applicable laws and regulations.
- (d) take all reasonable steps that are consistent with the efficient conduct of the **petroleum activities**;
- (e) not cause any pollution on the Land, including any groundwater or soak, dam, bore or water course on the Land.
- (f) take all reasonable steps to prevent damage being caused to the Land by water run-off or soil erosion.
- (g) obtain any necessary approvals required under the Environmental Protection Act 1986 (WA) and comply with any conditions of those approvals.
- (h) maintain and keep in good repair any roads or tracks used in the conduct of **petroleum activities** whether or not constructed by the Operator.
- (i) operate vehicles at speeds that are:
  - (i) appropriate in relation to the farming enterprise; and
  - (ii) minimise noise, dust and disturbance to the Land.
- (j) not bring firearms, domestic animals or alcohol onto the Land.
- (k) ensure that all the Operator's employees and Contractors are not, when on the Land, affected by drugs (including over the counter or prescription drugs) or affected by alcohol.
- (l) collect and remove all rubbish and waste from the Land;
- (m) where appropriate and agreed with the Land Holder, construct fences around the **petroleum activities**.
- (n) ensure that any water, fluid or slurry ponds are properly lined to prevent leakage into and / or contamination of the Land, whether on or below the surface.
- (o) ensure that all the Operator's employees and Contractors are appropriately inducted, trained and qualified to conduct the **petroleum activities** and all other works that may be required on the Land.
- (p) manage the **petroleum activities** so as to accommodate the seasonal farming enterprise, such as seeding and harvesting.

The Operator is responsible for all such activities in accordance with this Agreement, including those undertaken by its employees and Contractors.

## **6. Land Holder's Commitments**

The Land Holder acknowledges that the Operator is entitled to carry out **petroleum activities** provided that the Operator has first obtained all necessary **approvals** for the **petroleum activities**.

The Land Holder must:

- (a) not interfere with the **petroleum activities**;
- (b) act in a responsible manner and comply with any requirements which arise from the Petroleum Act;
- (c) consider a request for the use of facilities, such as water supply facilities, on the Land;
- (d) assist the Operator if required to obtain consents and **approvals** relating to access to the Land, provided that the Operator shall pay for all costs (including for the Land Holder) associated with obtaining such consents and **approvals**.

## **7. Information**

Without limiting the information that is to be provided, during the Term of this Agreement the Operator shall provide to the Parties:

- (a) a map showing any variation to the location of **petroleum activities** (where such has not already been discussed and agreed);
- (b) notification of any additional substantial plant or equipment (such as drilling rigs, accommodation camp and storage and maintenance areas) the Operator proposes to bring onto the Land;
- (c) a copy of an emergency response management procedure (including fire management) and all environmental management and safety plans;

## **8. Meetings**

If requested by the Land Holder, the Operator must be in contact with the Land Holder to discuss any issues and respond to any questions the Land Holder has regarding the **petroleum activities** in a timely manner.

## **9. Inspection**

The Operator shall provide to the Land Holder, upon request, the right to inspect the **petroleum activities** in the presence of the Operator and in compliance with the requirements of the Petroleum Act.

#### **10. Notification**

The Operator agrees to provide the Land Holder with at least 48 hours' notice of its intent to enter upon the Land for the first time. Thereafter the Operator shall keep the Land Holder informed, on a reasonably timely basis, of the petroleum activities and proposed petroleum activities.

#### **11. Temporarily Restricted Access**

- (a) If during the Term any Party requires, for reasonable occupational health, safety, security or farming enterprise reasons, that access to a defined area of the Land should temporarily be prohibited or restricted, then the Party seeking such prohibition or restriction shall give notice to the other Parties, such notice to specify the reason for the temporary prohibition or restriction, the relevant area of the Land and proposed time period that such prohibition or restriction is sought to operate for.
- (b) After receiving a notice in accordance with this clause, the Parties must discuss the identified concerns and any mitigating actions that may be taken to minimise disruption to the petroleum activities or the farming enterprise as the case may be.
- (c) In the event that there is any dispute in relation to matters raised in a notice provided pursuant to this clause the Parties shall resolve such dispute using the dispute mechanism as set out in this Agreement.

#### **12. Compensation**

The Operator shall pay compensation to the Land Holder in accordance with Schedule B of this Agreement.

Nothing in this Agreement prevents the Parties from varying the terms of Schedule B from time to time during the Term, provided that such variation is in writing and signed by the parties or by the parties' respective Responsible Person.

#### **13. Other Damages**

- (a) Nothing in this Agreement prevents the Land Holder from seeking damages, pursuant to section 19 of the Act or otherwise where, as a



result of the petroleum activities undertaken by the Operator, there is damage or loss caused to the Land Holder's Land, infrastructure or the **farming enterprise**.

- (b) Prior to taking any action pursuant to this clause, the Land Holder shall give the Operator notice detailing the extent of the damage or loss and how that damage or loss resulted from **petroleum activities**.
- (c) Where:
  - (i) the damage or loss is capable of repair, the Land Holder shall give the Operator notice directing the Operator as to the manner in which and the time by which the Land Holder acting reasonably requests the repair be made;
  - (ii) the damage or loss is not capable of repair, the Land Holder shall:
    - A. provide the Operator with a reasonable period of time in which to assess and pay damages;
    - B. otherwise take whatever action that the Land Holder determines necessary to address the damage or loss.

#### **14. Rehabilitation**

- (a) The Operator undertakes to meet the approval conditions set out in the regulatory environmental approval and in accordance with its rehabilitation plan as submitted to the Department.
- (b) Prior to commencing restoration of the Land, the Operator will consult with the Land Holder to determine whether the Land Holder desires to make use of any improvements placed on the Land and if the Land Holder gives notice in writing of its desire to make use of any such improvement, then to the extent agreed in writing between the parties, the Operator shall not be obligated to restore the relevant area or improvement on the Land as the case may be.
- (c) In addition to the obligation in clause 13(a) above and before the expiry of the Term (or sooner determination of this Agreement), the Operator must:
  - (i) vacate the Land;

- (ii) ensure that the Land is cleaned up and made free of any rubbish or contamination created as a result of the petroleum activities; and
  - (iii) surrender all keys in respect of the Land to the Land Holder.
- (d) In developing and implementing a rehabilitation plan, the operator will:
  - (i) Consult with the Land Holder about the rehabilitation program to be incorporated in the environmental management plan required by PGER regulations;
  - (ii) Prepare a short non-technical summary of the rehabilitation proposal for the Land Holder;
  - (iii) Incorporate all statutory rehabilitation requirements – in addition to any specific programs agreed between the Land Holder and the Operator – in the environmental management plan; and
  - (iv) Meet all regulatory requirements for such rehabilitation.
- (e) For the avoidance of doubt, the provisions of this clause shall survive the termination of this Agreement.

**15. Independent Assessment of Remediation**

- (a) Prior to commencement of petroleum activities, the Parties shall, unless agreed otherwise, jointly instruct independent professional advisors to report to both Parties on the condition of the Land where the petroleum activities are to take place.
- (b) Upon the cessation of the exploration activities and prior to the commencement of rehabilitation, and subject to clause 14(b), jointly instruct independent professional advisors to report to both Parties on what specific remediation is required to return the Land, as far as practical, to its former condition as outlined in assessments undertaken at sub-paragraph (a).
- (c) The Operator will ensure that the proposed rehabilitation conforms with the provisions of all environmental approvals and applicable regulations.
- (d) The agreed reasonable costs of any professional advisors engaged jointly by the parties pursuant to sub-paragraph (a), including costs

incurred in instructing, as required, agronomists, farming consultants, accountants, shall be paid solely by the Operator as outlined at Schedule B.

- (e) In the event that a disagreement arises between the Parties in the operation of paragraphs (a) and (b), or in relation to any reports so obtained, the parties shall seek to initiate Dispute Resolution, as outlined under Section 17.

## 16. Release

To the extent permitted by **law**, the Operator waives and releases the Land Holder from all claims in respect of:

- (a) the death of, or injury to, any of the **Operator's personnel**;
- (b) damage to or loss of any property which is from time to time in or upon the Land including vehicles, plant and equipment in the custody or control of the Operator; and
- (c) consequential loss, including loss of profits, loss of opportunity or business interruption or restriction of income or opportunities in relation to the **petroleum activities** (including any loss or damage suffered by the Operator as a result of any notice provided pursuant to this Agreement).

The Release provided for in this clause does not apply to claims to the extent that they arise out of the wilful failure of the Land Holder to comply with the **law** or this Agreement or for the gross negligence of the Land Holder as the case may be.

## 17. Dispute Resolution

- (a) If a difference or dispute (together called a **Dispute**) between the parties arises out of or relates to this Agreement, then any party (the Disputer) may give the other parties (the Disputee) a written notice of dispute adequately identifying and providing details of the Dispute (**Notice of Dispute**)
  - (i) If a notice of dispute is given then the Responsible Person for the Disputer and the Responsible Person for the Disputee(s) must in the first instance use their reasonable endeavours to resolve the dispute.

- (ii) If the dispute is not resolved within 30 days, a Party may seek to refer the dispute to mediation.
- (iii) The mediation shall be conducted before a **mediation panel** convened for that purpose.
- (iv) The mediation shall be governed by the rules for mediation adopted from time to time by The Institute of Arbitrators & Mediators Australia.
- (v) The mediation shall be conducted within 30 days of the referral of the dispute to mediation.
- (vi) Whilst a matter is in dispute, the parties shall be entitled to continue any activity authorised by this Agreement unless any or all such activities have not been approved by the Department.
- (vii) A decision by mediation does not affect the right of any party to refer the dispute to a Magistrate's Court pursuant to the provisions of the **Petroleum Act**, provided that such proceedings shall not be commenced at any time whilst the dispute process set out in this clause has been invoked by a Party and reasonable attempts have been made in good faith to resolve the matter through mediation

## **18. Confidentiality**

Unless the parties otherwise agree, the existence of this Agreement and the contents of this Agreement are not confidential as between the parties.

## **19. Indemnity**

- (a) To the extent permitted by law, the Operator indemnifies and holds harmless the Land Holder, its officers, employees, agents, advisers, contractors and representatives from and against all claims, demands, expenses, costs, actions and proceedings of any kind arising out of or in connection with the Operator's entry onto the Land and the **petroleum activities** and for any damage, or injury or death to any person or to any property caused by the Operator.
- (b) The Operator's liability to indemnify the Land Holder under this clause will be reduced proportionately to the extent that any unlawful or wilful misconduct of the Land Holder has contributed to the relevant

liability, loss, damage, expense or cost.

- (c) For the avoidance of doubt, the indemnities provided under sub-clauses (a) and (b) apply without variation to the benefit of any lawful occupier of the Land.
- (d) To the extent permitted by law, the Land Holder indemnifies the Operator from and against all claims for compensation by any Occupier of the Land during the Term of this Agreement.

**20. Insurance**

- (a) The Operator must, at its own cost, effect and maintain appropriate insurance to industry standards and as required by law in respect of its activities. Such insurances shall include, but not be limited to:
  - (i) public liability insurance for at least \$20,000,000 for any one event relating in any way to the Land or the petroleum activities or the Operator's use of the Land; and
  - (ii) worker's compensation insurance
- (b) If requested by the Land Holder, the Operator will provide written confirmation (by way of a certificate of currency or, where this is not available, such means as is reasonable in the circumstances) that relevant insurance is up-to-date and in place.

**21. Assignment**

- (a) The Operator shall not assign, transfer, charge, encumber or otherwise deal with all or any part of its rights or obligations under this Agreement without first procuring that any assignee, transferee or joint venturer enters into a deed of covenant by which the assignee, transferee or joint venturer consents in favour of the Land Holder to be bound by this Agreement.
- (b) The Land Holder must not:
  - (i) assign, sell or transfer all or any part of its rights or obligations under this Agreement; or
  - (ii) assign, sell, transfer, lease, sub-lease, licence or part possession with all or any part of the Land, without first procuring that the assignee, purchaser or transferee enters into a deed of covenant by which the proposed person

referred to in clause 21 (b) (i) and (ii) conveys in favour of the Operator to be bound by this Agreement.

- (c) For the purposes of sub-clauses (a) and (b) the parties shall not unreasonably withhold their consent to the proposed transaction.

## **22. Costs and duty**

- (a) The Operator will pay the Land Holder's reasonable costs incurred in obtaining legal, financial or technical advice in relation to the discussions, negotiation and preparation of this Agreement, provided that the Land Holder and Operator identify the likely costs and seek to agree those costs prior to advice being sought.
- (b) The Operator will pay any duty or taxes assessed or payable in relation to this Agreement.

## **23. Amendment**

No variation or waiver of, or any consent to any departure by a Party from, a provision of this Agreement is of any force or effect unless it is confirmed in writing signed by all the Parties and then that variation, waiver or consent is effective only to the extent for which it is made or given.

## **24. Good Faith**

The Land Holder and the Operator will act in **good faith** in dealings toward each other under this Agreement.

## **25. Termination**

- (a) The Land Holder may terminate this Agreement by written notice, effective upon that notice, if:
- (i) there is a material breach by the Operator of any of its obligations under this Agreement; or
  - (ii) an **insolvency event** occurs in relation to the Operator or the Petroleum Licence Holder.
- (b) The Land Holder may only exercise the right to terminate this Agreement under clause 25(a)(i) :
- (i) where such breach has resulted in imminent danger to property or life; or
  - (ii) a notice of the breach has been given by the Land Holder to the Operator and the breach has not been remedied

following discussions between the Land Holder and the Operator;

- (c) Any dispute as to whether any matter or circumstance constitutes a material breach shall be dealt with under the Dispute Resolution provisions of this Agreement.
- (d) The Operator may terminate this Agreement:
  - (i) by notice to the Land Holder that it abandons its rights pursuant to this Agreement; or
  - (ii) by notice resulting from the Operator / Petroleum Licence Holder wholly surrendering the Licence.

## **26. Guarantee**

- (a) Where the Petroleum Licence Holder is not the Operator, the Petroleum Licence Holder:
  - (i) guarantees to the Land Holder the due and punctual performance, compliance and discharge by the Operator of the Operator's obligations and liabilities under this Agreement;
  - (ii) indemnifies the Land Holder against any claim, damage, loss or liability of any nature arising directly out of the non-compliance with any of the obligations or liabilities of the Operator under this Agreement.
- (b) The Petroleum Licence Holder's guarantee:
  - (i) is a continuing guarantee and is not discharged by any one payment or any one act; and
  - (ii) will continue for so long as any of the Operator's obligations and liabilities remain unsatisfied.
- (c) The Petroleum Licence Holder's guarantee is absolute and unconditional.
- (d) The Land Holder is entitled to require the Petroleum Licence Holder to pay to the Land Holder any outstanding compensation or other amount to compensate the Land Holder for any loss or damage without the Land Holder having made any claim or instituted any

proceedings against the Operator in respect of such claims or breaches.

- (e) Until the Land Holder's claims against the Operator and against the Petroleum Licence Holder have been fully satisfied, the Petroleum Licence Holder will hold on trust for the Land Holder any money received by the Petroleum Licence Holder under any arrangement, composition, assignment, liquidation or bankruptcy of the Operator.
- (f) The Petroleum Licence Holder enters into and provides the guarantees in this clause in consideration of the Land Holder entering into this Agreement with the Operator at the request of the Petroleum Licence Holder.

### **27. Counterparts**

This Agreement may be executed in any number of counterparts, each of which is an original and all of which constitute one and the same document.

### **28. Severance**

If any provision of this Agreement is invalid and not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of separate enforcement with regard to the invalid provision, are and continue to be valid and enforceable in accordance with their terms.

### **29. Waiver**

The failure, delay, relaxation or indulgence on the part of any Party in exercising any power or right conferred upon that Party by this Agreement does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right under this Agreement.

### **30. Governing Law**

- (a) This Agreement is to be governed and construed in accordance with the laws of Western Australia.
- (b) The Parties submit to the non-exclusive jurisdiction of the courts of Western Australia.

### **31. Definitions**

In this Agreement, unless the contrary intention appears:



**approvals** means any **authorisation**, lease, licence, permit, approval, certificate, consent, direction or notice from any government or governmental or other competent authority and which is necessary for the carrying out of **petroleum activities**.

**associate** means, in respect of the Operator, its related body corporates.

**assumption** means, in respect of the Operator, Petroleum Licence Holder, the Land Holder, the assumption of the obligations on any of them under this Agreement.

**authorisation** means any permission required under the **Petroleum Act** in order to carry out petroleum activities (other than an Petroleum Title).

**Authority** any municipality, authority or person exercising any powers or functions under any applicable laws or legal requirements

**commencement date** means the date nominated at Item 3 of Schedule A.

**Contractors** includes, but is not limited to, the agents, contractors and subcontractors of the Operator.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Department** means the Department of Mines and Petroleum.

**Exploration permit** means the exploration permit issued to the Licence Holder by the Department and as identified in Item 4 of Schedule A.

**Farming enterprise** means any and all activities that the Land Holder is and is entitled to carry out on the Land.

**good faith** includes:

- (a) not delaying in responding to questions
- (b) give genuine consideration to the proposals of the other party;
- (c) disclose relevant information (other than confidential or commercially sensitive information) in a timely manner;
- (d) refrain from capricious or unfair conduct that undermined negotiation;
- (e) make reasonable offers and counter offers;
- (f) refrain from acting for an improper purpose.

**improvement** means:

- (a) a building used as a residence, or for a business or an agricultural purpose, and any other building or structure;
- (b) a road constructed by or for the Land Holder of the Land;
- (c) a yard, fence, wall and any other barrier (for example, a gate);

- (d) a pipe, tank, trough, pump and any other thing for storing or raising water or another liquid;
- (e) a garden, orchard, plantation and any other similar land use.

**insolvency event** means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the **Corporations Act**) or analogous person appointed to it or any of its property, being taken under section 459F(l) of the **Corporations Act** to have failed to comply with a statutory demand, being unable to pay or stops or suspends or threatens to stop or suspend payment of its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in a person becoming an insolvent under administration (as defined in section 9 of the **Corporations Act**), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

**Land** is the land as described at Item 1 of Schedule A.

**Land Holder** means the person who owns the Land and includes the occupier of the Land, where those persons are not the same.

**law** means any law or regulation of Western Australia or the Commonwealth or other law in force in Western Australia.

**Licence** means the licence issued to the Licence Holder by the Department.

**Licence Holder** means the Petroleum Licence Holder as shown in the Company Land Holder Details

**Mediation Panel** means a panel comprising an independent chairman and one representative from each of the agricultural and petroleum industries where such persons are to have some experience with respect to access and compensation arrangements (whether mining or oil & gas) within the agricultural sector.

**Occupier** means the occupier of the Land.

**Operator's personnel** means officers, employees, agents, contractors or sub-contractors of the Operator.

**Pest (or Pests)** means any declared pest, disease or prohibited organism as those terms are dealt with and defined in the *Biosecurity and Agriculture Management Act 2007*.

**petroleum** has the meaning set out in the **Petroleum Act**.

**petroleum activities** means the exploration activities of the Operator on the Land as set out in Item 5 of Schedule A.

**Petroleum Act** is the Petroleum and Geothermal Energy Resources Act 1967 (WA)

**related body corporate** means a related body corporate as defined in section 50 of the **Corporations Act**.

**Term** means the term of this Agreement as set out in Item 2 of Schedule A.

**transfer** of operatorship of the **Exploration permit** occurs when parties with an equity interest in the exploration permit agree to remove the Operator and appoint an alternate Operator.

### **32. Interpretation**

In this Agreement, unless the contrary intention appears:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (e) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (f) a reference to any thing (including any right) includes a part of that thing but nothing in this clause implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this Agreement;
- (h) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (i) a reference to a document includes all amendments or supplements to, or replacements or notations of, that document;
- (j) a reference to a party to a document includes that party's successors and permitted assignees;
- (k) a promise on the part of 2 or more persons binds them jointly and severally;
- (l) a reference to an agreement other than this Agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;

- (m) a reference to an asset includes all property of any nature, including a business, and all rights, revenues and benefits;
- (n) a reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or a similar procedure or, where applicable, changes in the constitution of any partnership or person or death;
- (o) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind;
- (p) no provision of this Agreement will be construed adversely to a party because that party was responsible for the preparation of this Agreement or that provision;
- (q) a reference to a body, other than a party to this Agreement (including an institute, association or authority), whether statutory or not:
  - A. which ceases to exist; or
  - B. whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (r) references to time are to Perth, Western Australia time; and
- (s) where this Agreement confers any power or authority on a person that power or authority may be exercised by that person acting personally or through an agent or attorney.
- (t) Specifying anything in this Agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.
- (u) Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next following Business Day.

## SCHEDULE A – KEY TERMS

Item 1 - Description of the Land	
Item 2 - Term of Agreement	
Item 3 - Commencement Date	
Item 4 - Petroleum permit reference	
Item 5 - Petroleum activities	

**SCHEDULE B – COMPENSATION**

<b>Compensation</b>	<b>Due Date for Payment</b>

## APPENDIX 1 - COMPENSATION PRINCIPLES

Each agreement will include a provision for compensation payments, specific to each project or land holder. Recognising that each property and farming enterprise is unique, the model agreement does not attempt to draw up a prescriptive formula for compensation on private land. However, the parties to this agreement propose that compensation should be based on the following principles:

1. The Land Holder should not be financially disadvantaged by the exploration activity.
2. The Land Holder will be compensated for any loss of income, damage, inconvenience or loss of amenity.
3. The Operator will pay all reasonable costs, including:
  - (a) legal costs; and
  - (b) other professional costs, incurred by the Land Holder in seeking advice or information
  - (c) on this Agreement; and
  - (d) any potential impact(s) to the Land from the petroleum activities.Those costs are to be agreed between the parties within the initial negotiations.
4. Wherever possible, or practical, the Land holders' requests and preferences will be taken into account during the exploration program.
5. Provision for compensation should consider potential long term losses as well as immediate impacts.
6. Compensation – or an agreed portion of the compensation – will be paid before the start of any exploration activity.
7. Notwithstanding the compensation priorities listed below, Operators agree to compensate farmers for any losses which are shown to be attributable to exploration activity.

Impacts to be considered in a compensation package include

- 1 The cost of securing independent expert advice on legal, financial and technical matters (outlined in Item 3 in this section)
- 2 Loss of income from cropping, grazing, horticulture or other agricultural activity

- 3 Disruptions to farm management, including stock movement, fencing changes, livestock breeding, transport and other disturbances
- 4 The cost of rehabilitation and biosecurity measures such as the replacement of like soils and weed control (additional to conditions imposed by Government regulators)
- 5 Seasonal restrictions on vehicle movements
- 6 Soil compaction and other ground disturbance
- 7 Potential agistment costs
- 8 Reduced efficiency in roughened paddocks
- 9 Cropping delays
- 10 Access to water
- 11 Management of fire risks
- 12 Monitoring and assessment of rehabilitation and other remedial work
- 13 Temporary disturbance during drilling, well construction and hydraulic fracturing
- 14 Land use for flaring and management of hydraulic fracture fluid or produced water.
- 15 Vehicle movement and storage areas
- 16 Devaluation of property – where this can be independently verified to the satisfaction of both parties

The potential impacts above are related to exploration.

Potential impacts from commercial production would be considered in a separate agreement for field development and operation.



**APPENDIX 2 –  
Relevant passages on land access from  
the *Petroleum and Geothermal Energy Resources Act 1967***

**Section 16 - Consent of owner or trustees required in certain cases for exploration etc.**

- (1) A permittee, holder of a drilling reservation, access authority or special prospecting authority, lessee or licensee shall not enter upon any land to which this section applies for the purpose of —
- (a) exploring for petroleum or geothermal energy resources; or
  - (b) carrying out operations for the recovery of petroleum or geothermal energy, unless the consent in writing of the owner or trustees, as the case may be, of the land has been first obtained.
- (1a) This section applies to land that is comprised in the permit, drilling reservation, access authority, special prospecting authority, lease or licence and is —
- (a) private land not exceeding 2 000 m<sup>2</sup> in extent; or
  - (b) used as a cemetery or burial place; or
  - (c) less than 150 m in lateral distance from any cemetery or burial place, reservoir or any substantial improvement.
- (2) For the purposes of this section —
- (a) **reservoir** includes any natural or artificial storage or accumulation of water, spring, dam, bore, and artesian well; and
  - (b) the Minister is the sole judge of whether any improvement is substantial.

**Section 17 - Compensation to owners and occupiers of private land**

- (1) A permittee, holder of a drilling reservation, lessee or licensee may agree with the owner and occupier respectively of any private land comprised in the permit, drilling reservation, lease or licence as to the amount of compensation to be paid for the right to occupy the land.
- (2) Subject to subsections (3) and (5), the compensation to be made to the owner and occupier shall be compensation for being deprived of the possession of the surface or any part of the surface of the private land, and for damage to the surface of the whole or any part thereof, and to any improvements thereon, which may arise from the carrying on of operations thereon or thereunder, and for the severance of such land from other land of the owner or occupier, and for rights-of-way and for all consequential damages.
- (3) In assessing the amount of compensation no allowance shall be made to the owner or occupier for any gold, minerals, petroleum, geothermal energy resources or geothermal energy known or supposed to be on or under the land.
- (4) If within such time as may be prescribed the parties are unable to agree upon the amount of compensation to be paid, either party may apply to the

Magistrates Court at the place nearest to where the land is situated to fix the amount of compensation.

- (5) In determining the amount of compensation, the Court shall take into consideration the amount of any compensation which the owner and occupier or either of them have or has already received in respect of the damage for which compensation is being assessed, and shall deduct the amount already so received from the amount which they would otherwise be entitled to for such damage.

### **Section 18 - Owner of private land in vicinity of permit area, drilling reservation, lease area or licence area may be entitled to compensation**

If any private land or improvement thereon adjoining or in the vicinity of the land comprised in any permit, drilling reservation, lease or licence is injured or depreciated in value by any operations carried on by or on behalf of the permittee, holder of the drilling reservation, lessee or licensee or by reason of the occupation of any portion of the surface, or the enjoyment by the permittee, holder of the drilling reservation, lessee or licensee of any right-of-way, the owner and occupier of the private land or improvements thereon shall severally be entitled to compensation for all loss and damage thereby sustained, and the amount of compensation shall be ascertained in the same manner as is provided in section 17.

### **Section 19 - Compensation for further damage**

If while in occupation of any land comprised in a permit, drilling reservation, lease or licence the permittee, holder of the drilling reservation, lessee or licensee, as the case requires, causes any damage to the surface of any private land comprised within the boundaries of the land the subject of the permit, drilling reservation, lease or licence belonging either to the same or any other owner, or to any improvement on any such private land, not being damage already assessed under the provisions of this Part, the owner and occupier of the private land or improvement shall severally be entitled to compensation for the damage sustained by each of them, and the amount of such compensation shall be ascertained in accordance with the provisions of section 17.

### **Section 20 - Holder of permit, drilling reservation, lease or licence not to commence operations on private land until compensation tendered or agreed upon**

- (1) A permittee, holder of a drilling reservation, lessee or licensee shall not commence any operations on private land unless or until he has paid or tendered to the owner and to the occupier of the land the amount of compensation, if any, which he is required to pay under and as ascertained in accordance with this Act or he has made an agreement in writing with the owner or occupier as to the amount, times and mode of payment of the compensation, if any.
- (2) Where the owner is dead or cannot be found any payment of compensation may be made to the Minister in trust for the owner.

### **Section 22 - Determination of partial compensation**

In an action under section 21, if the Court considers it impracticable or inexpedient to assess the amount of compensation to be paid in full satisfaction for the damage sustained by the compensable lessee to the improvements and consequential damage, the Court may on the application of a party or of its own motion give judgment or make a declaration as to the compensation payable in respect of any specified period and in respect of the whole or part of the total claim or compensation.

### **Section 23 - Security for compensation**

The Court before whom proceedings in relation to compensation have been commenced may, at any stage of those proceedings, make an order against the person concerned in them and from whom compensation is sought, from commencing or, as the case may be, continuing any operations under this Act until he has given such security as the Court thinks fit for payment of any compensation for which he may be or become liable.

### **Section 24 - Matters for which compensation not payable**

- (1) Except where and then only to the extent agreed to by the parties or authorised by the Court compensation is not payable under the provisions of this Act to the lessee of land leased by way of a pastoral lease within the meaning of the *Land Administration Act 1997*, a lease otherwise granted for grazing purposes only, a lease for timber purposes or a lease for the use and benefit of the Aboriginal inhabitants (in this subsection called the **affected lessee**)
  - (a) for deprivation of the possession of the surface of the land or any part of the surface; and
  - (b) for damage to the surface of the land; and
  - (c) where the affected lessee is deprived of the possession of the surface of any land, for severance of the land from any other land of the affected lessee; and
  - (d) for surface rights of way and easements.
- (2) Compensation is not payable for any gold, minerals, petroleum, geothermal energy resources or geothermal energy known or supposed to be on or under the land.