

Commonwealth of Pennsylvania  
**Pennsylvania Game Commission**  
Bureau of Wildlife Habitat Management  
OGM Division  
2001 Elmerton Avenue  
Harrisburg, PA 17110

State Game Land No. \_\_\_\_\_  
Tract: \_\_\_\_\_

## **NON-SURFACE USE COOPERATIVE AGREEMENT FOR EXERCISE OF PRODUCTION RIGHTS FOR OIL AND GAS**

This agreement made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015 (“Effective Date”) by and between the COMMONWEALTH OF PENNSYLVANIA, acting through the **PENNSYLVANIA GAME COMMISSION**, with an address at 2001 Elmerton Ave., Harrisburg, PA 17110, hereinafter designated “Commission” and \_\_\_\_\_ with an address at \_\_\_\_\_ and authorized to do business within the Commonwealth of Pennsylvania, hereinafter designated “Producer.”

### **WITNESSETH:**

**WHEREAS**, the Commission is authorized by Section 724 of the Game and Wildlife Code (34 PA. C.S. Section 724) to dispose of, by agreement sale or otherwise, oil and gas or rights therein on or under lands to which it has title; and

**[DELETE IF NOT APPLICABLE] WHEREAS**, the Commission is authorized by Section 723 of the Game and Wildlife Code (34 PA. C.S. § 723) to exchange oil and gas to which the Commission holds title for suitable lands having an equal or greater value; and

**WHEREAS**, the Commission is the owner of the oil, gas, and liquid hydrocarbon rights underlying \_\_\_\_\_ acres, more or less, of State Game Land No. \_\_\_\_ situate in \_\_\_\_\_ Township, \_\_\_\_\_ County, more particularly described on **Exhibit A (Map and Legal Description)** and herein referenced as the “Premises”; and

**WHEREAS**, the Commission has made a determination that entering into a cooperative agreement for the removal and production of oil, gas, and liquid hydrocarbon under the Premises hereinafter described with no surface disturbance will be in the best interest of the Commonwealth of Pennsylvania and has authorized entering into this cooperative agreement.

**NOW THEREFORE**, in consideration of the sum of ONE and NO HUNDREDTHS DOLLARS (\$1.00), paid by Producer to the Commission, receipt of which is hereby acknowledged, and other mutual promises contained herein, and intending to be legally bound, the Parties agree as follows:

### **1. USE OF PREMISES FOR OIL AND GAS ACTIVITIES**

1.1 The Commission grants Producer exclusive production rights to explore for and, if found, drill for, produce, and remove the oil, gas, and liquid hydrocarbons from the Premises within the Marcellus Formation **[SPECIFY FORMATION, STRATA OR DEPTH]**, including the pooling of all or a portion of the Premises.

1.2 It is understood that this Agreement is being entered into for the purpose of permitting Producer to unitize the Premises with other properties, which other properties shall bear all the burden of surface development. The Commission understands and gives consent that, due to slant (directional) or

horizontal drilling originating from surface entry on a parcel not owned by the Commission, the wellbore(s) may pass through or terminate below the Premises.

1.3 This Agreement grants subsurface contractual rights to develop and extract oil, gas, and liquid hydrocarbons only and does not convey any other surface or subsurface rights. Unless otherwise approved in writing by the Commission, this agreement is limited to non-surface use and does not convey any surface rights associated with the Premises.

## 2. TERM OR PERIOD

2.1 This Agreement shall remain in force for the term of years specified in the Oil and Gas Terms Sheet attached as **Exhibit B**, beginning from the Effective Date (“Primary Term”). This Agreement shall be subject to the conditions set forth herein and shall continue from year to year thereafter so long as oil, gas, or liquid hydrocarbons are produced in Paying Quantities (defined below) from the Premises.

2.2 This Agreement may be further extended if written approval is obtained from the Commission at least thirty (30) days prior to the expiration of the Primary Term, based upon Producer’s bona fide attempts to secure or restore the production of oil, gas, and liquid hydrocarbons by conducting drilling, completion, or reworking operations on lands unitized with the Premises, or engaging in the abandonment or plugging of wells or removal of equipment therefrom. In no instance shall the period to secure or restore production exceed ninety (90) days.

2.3 If, at the expiration of the Primary Term, oil, gas, and/or liquid hydrocarbons are not being produced from the Premises or lands pooled therewith, but Producer has commenced the drilling of a well under the Premises or lands pooled therewith, this Agreement will not terminate but will remain in effect for so long thereafter as operations are carried out with due diligence and with no cessation of more than 90 consecutive days. If such operations result in the production of oil, gas, or liquid hydrocarbons, this Agreement shall remain in force as otherwise provided herein.

2.4 For purposes of this Agreement, the term “Paying Quantities” shall be defined as a well associated with the Premises which produces an annual average of at least one (1) thousand cubic feet per day (Mcf/day), which shall be calculated by dividing the well’s total annual calendar year production in Mcf by 365 days. The term shall not apply within the same calendar year during which a well first begins producing after being completed and turned-to-line if that production does not average 1 Mcf/day. The term shall be satisfied as long as a minimum of one well associated with the Premises meets the average production of 1 Mcf/day criteria.

## 3. BONUS, RENTAL, AND FEE PAYMENTS

3.1 **Paid-Up Bonus.** Producer will pay the Commission a one-time, paid-up bonus payment for this Non-Surface Use Oil and Gas Agreement, as specified herein and in **Exhibit B** (Terms Sheet). This bonus payment will be paid per net acre of oil, gas, and liquid hydrocarbon rights owned by the Commission. Producer shall have 90 days from the final execution of this Agreement to verify Commission’s title to the oil, gas, and liquid hydrocarbons under the Premises and pay the bonus payment to the Commission. In the event title verification determines the Commission owns more or less than the total acreage of oil and gas rights set out herein, then the total bonus payment shall be multiplied by the number of net acres actually determined to be owned by the Commission. Once paid by Producer, the

bonus payment shall not be refunded.

3.2 **Annual Rental After Primary Term.** At the end of the Primary Term and for each succeeding year until the termination of this Agreement, Producer will pay the Commission an annual rental per acre for undeveloped acreage, as specified herein and in **Exhibit B** (Terms Sheet). Payments shall be due on the anniversary of the Effective Date of this Agreement. The drilling of wells unitized with the Premises shall reduce the annual rental by the number of net acres attributable to each well as provided in **Paragraph 8** (Drilling and Well Requirements), and that reduction shall become effective on the next rental date if the well is producing. If wells are drilled in a unit created by a spacing order issued to the Commission or in a unit created by voluntary unitization agreement entered into with the approval of the Commission, any well drilled in that unit shall reduce the annual rental by the number of net acres in the portion of the Premises included in such unit.

3.3 **Shut-In Rental.** In the event Producer does not market the production from a well unitized with the Premises, or should production cease from a producing well drilled under the Premises or lands pooled therewith, or should Producer desire to shut-in producing wells, Producer agrees to pay the Commission, commencing on the date one year from the completion of such producing well or the cessation of production or the shutting in of producing wells, an annual shut-in rental per net acre, as specified herein and in **Exhibit B** (Terms Sheet). This shut-in rental shall continue on an annual basis, with no pro rata reimbursement, until production is marketed and sold off the Premises or such well is plugged and abandoned according to law.

[DELETE IF NOT APPLICABLE] 3.4 **Land Exchange Fee Value.** Producer shall direct a portion of the payments due in **Section 3.1** to fund the acquisition of land acceptable to the Commission, providing that such acquisition shall come in the form of direct payment to the owner(s) of such land or to an escrow agent that will hold the purchase price and other costs for the purchase of said land, as specified herein and in **Exhibit B** (Terms Sheet). The total value of the payment made by Producer for the purchase of land shall be subtracted from the payments due under this Agreement. The Commission shall provide all necessary information needed by Producer to make payment.

#### 4. ROYALTIES

4.1 **Gas Royalty.** Producer shall pay to the Commission a gas royalty, as specified herein and in **Exhibit B** (Terms Sheet). The applicable royalty percentage applies to gross proceeds received by Producer for the sale of all natural gas, casinghead gas, or other gaseous substances produced and measured at the wellhead OR to a publicly published market value of all the natural gas, casinghead gas, or other gaseous substances of like quality, from each gas well unitized with the Premises, whichever the greater. In no circumstances shall the Commission receive less than the minimum royalty rate per thousand cubic feet (Mcf) based on the volume measured at the wellhead, as specified in **Exhibit B** (Terms Sheet).

4.2 **Gas Flare Royalty.** Producer shall pay the Commission a gas flare royalty, as specified herein and in **Exhibit B** (Terms Sheet). The applicable royalty percentage applies to any natural gas which is flared from any well unitized with the Premises. Payment shall be made for any gas flared beyond the initial twenty-four (24) hour period of flaring following well completion, and during any other time periods, unless the gas is flared in the case of an emergency. The gas price to be used for the flaring royalty payment shall be based on the average NYMEX (New York Mercantile Exchange) price for natural gas for the month and year in which the well is flared.

4.3 **Liquid Hydrocarbon Royalty.** If oil and/or condensate, natural gas liquids, or other liquid hydrocarbons (collectively, “Liquid Hydrocarbons”) are produced and marketed from any well unitized with the Premises, Producer shall pay the Commission a Liquid Hydrocarbon royalty on said products, as specified herein and in **Exhibit B** (Terms Sheet). The applicable royalty percentage shall apply to the gross proceeds OR a publicly published market value, whichever is greater, received by Producer per barrel (42 U.S. Gallons) at 60 degrees Fahrenheit produced and saved from the Premises for all Liquid Hydrocarbons of like grade and gravity which prevail in that geographic area on the day such Liquid Hydrocarbons are run into the pipeline or picked up from storage tanks. The amount to be paid to the Commission will be the applicable royalty percentage multiplied by the fractional interest held by the Commission.

4.4 **Provisions Applicable to all Royalties.**

4.4.1 Deductions and/or reductions from any royalty payment for production, post-production, or any other expenses or costs for processing or conditioning that may be necessary to deliver a marketable product between the wellhead and the point of sale will not be permitted.

4.4.2 In the event that oil, natural gas, and/or liquid hydrocarbons are sold at less than publicly published market value to an affiliated party of the Producer, or used by the Producer on or in connection with the Premises, then the applicable royalty due shall be paid to the Commission based upon the price that could have otherwise been obtained in an arms-length sale by Producer to a nonaffiliated third-party purchaser during the month in which such sale or use occurred.

4.4.3 Upon production from any part of any unit, as defined in Section 9 (Unitization), the Producer shall pay royalties to the Commission for its fractional interest based on the ratio of the net acres of the Premises that are included in a unit/pool to the total number of net acres in such unit/pool.

**5. PAYMENTS**

5.1 Producer shall be held responsible for all payments required under this Agreement. Correspondence and payments shall be mailed to the following address unless otherwise directed:

Pennsylvania Game Commission  
Bureau of Wildlife Habitat Management, OGM Division  
2001 Elmerton Avenue  
Harrisburg, PA 17110

Payments directed to the Commission shall be payable to “Pennsylvania Game Commission” and must include reference to the relevant State Game Lands and Tract Numbers. Payments of royalties shall be made not later than ninety (90) calendar days after the end of each monthly sales period, unless otherwise approved in writing by the Commission.

5.2 Producer shall submit statements of individual wells with the production and sales of oil, gas, and liquid hydrocarbons not later than ninety (90) calendar days after the end of each monthly sales period, unless otherwise approved in writing by the Commission. Such statements shall include, for each individual well, the gross wellhead volume as metered at the wellhead, the net royalty interest in the gas or liquid hydrocarbon product, the average monthly sales price received for the gas and liquid

hydrocarbon products produced, and the net royalty amount paid on each well. Also, a copy of the “Annual Well Production Report” for each well drilled under this Agreement shall be submitted yearly. All statements and reports shall be submitted to the Pennsylvania Game Commission, OGM Division. Electronic submission of reports to a Commission provided e-mail address is acceptable.

5.3 If Producer has failed to make any required payment under this Agreement within thirty (30) days, Producer agrees to pay an additional twelve percent (12%) annual interest on the defaulted amount calculated from the time of such default. This provision is in no way a waiver of the requirement to pay on time.

5.4 Notwithstanding any joint venture or other similar type of agreement that Producer may have with third parties for the exploration and development of oil, gas and liquid hydrocarbon products, including the products granted under this Agreement, Producer shall remain solely responsible for submitting payment to the Commission pursuant to this Agreement. Fractional payment by multiple parties shall not occur unless the Commission approves such payment in writing prior to the submission of any fractional payment.

## **6. GAS MEASUREMENT**

6.1 The volume of gas produced, saved, and marketed shall be measured according to the American Gas Association's (AGA) standards and Boyle's Law for the measurement of gas under varying pressures.

6.2 Producer or party responsible for operational activities on lands pooled with the Premises (“Operator”) shall operate each well with a discrete well meter at the well head, which will measure all the gas produced from that well. Producer or Operator shall ensure that all meters are maintained according to industry standards.

6.3 Producer shall gauge, measure, sample, and test all Liquid Hydrocarbons in accordance with industry standard practices, and at a temperature base of 60 degrees Fahrenheit. Producer will accurately inventory Liquid Hydrocarbons and, upon request, provide reports and records regarding such measurement.

## **7. OPERATIONS, CONSERVATION AND ENVIRONMENTAL ASSESSMENTS**

7.1 **Best Practices.** Producer shall carry on all operations prudently under this Agreement with all due diligence, in a good and workmanlike manner, in accordance with the best and most up-to-date oil and gas field practices, and in accordance with all applicable local, state, and federal rules, orders, regulations, laws, and ordinances. Producer must obtain any necessary permits.

7.2 **Environmental Assessments.** Producer shall be obligated and shall complete any and all environmental assessments or environmental impact statements or similar assessments required and/or relating to the oil, gas, and liquid hydrocarbon development of or under the Premises as may be promulgated by current or future State or Federal regulations.

7.3 **Water Resources.**

7.3.1 Producer shall have all current water supplies within the Premises, sampled and tested prior to the spudding of any well drilled on or under the Premises. If the Commission experiences a material adverse change in the quality of the Commission's water supply during or immediately after the completion of Producer's drilling operations, Producer shall sample and test the Commission's water supply at Producer's expense and within 48 hours of the Commission's written request. Should such test reflect a material adverse change as the result of Producer's drilling operations on the Premises, Producer agrees to provide the Commission with potable water until such time as the Commission's water source has been repaired or replaced with a source of similar quality and quantity.

7.3.2 Prior to drilling under the Premises or any drilling or surface disturbance associated with oil, gas, and liquid hydrocarbon development occurring within one thousand (1,000) feet of any water resource on the Premises, including impoundments, ponds, streams, seeps, springs, wells and wetlands as identified during a site visit at such time as these surface features are visible (collectively referred to as "Water Resources"), Producer shall submit to the Commission for approval a proposed monitoring plan that includes a map showing the locations of the Water Resources. The one thousand (1,000) foot radius shall be expanded as needed to include all Water Resources that are hydrologically connected with the development area. Prior to drilling under the Premises or any drilling or surface disturbance associated with oil, gas, and liquid hydrocarbon development occurring within the specified distance of the Water Resources, Producer shall sample and test the Water Resources in accordance with the Commission-approved monitoring plan and shall share the results with the Commission. Producer shall submit all monitoring data to the Commission in an Electronic Data Deliverable format specified by the Commission. All sampling shall be performed by a qualified professional experienced and trained in the collection of environmental samples for physical and chemical analysis in a manner consistent with the approved monitoring plan. Sample analysis shall be conducted by a DEP-certified laboratory. In the event the Commission obtains evidence to suspect a material adverse change in the quality and/or the quantity of the Water Resources during or after Producer's site development activities or drilling operations, Producer shall, upon notification by the Commission, sample and test the Water Resources at Producer's expense in consultation with the Commission. Should such a test reflect a material adverse change on the Water Resources as a result of Producer's drilling operations, Producer shall, at its own expense, take all steps necessary to return in a timely manner the quality and/or the quantity of the Water Resources to pre-development/pre-drilling conditions.

7.4 **Seismic Surveys.** Producer, its agents, contractors and subcontractors and employees of contractors and subcontractors shall have the right to conduct seismic surveys over and across the Premises. Prior to conducting any seismic work, Producer shall submit a map showing the location of every seismic line to the Commission's Land Management Officer for approval. If Producer's seismic lines cross State Game Lands not covered by this Agreement, Producer must obtain the customary Seismic Survey License from the Commission.

7.4.1 Two copies of the seismic survey plan showing all proposed receiver and shot locations shall be submitted to the OGM Division, PA Game Commission. The Commission will review the plans and provide a map to Producer showing avoidance areas based on the then known threatened and endangered species information, species of special concern, critical and unique habitats.

7.4.2 Unless otherwise agreed in writing, Producer agrees that seismic surveys will not be conducted on the Premises from October 1 through January 31.

7.4.3 Producer shall provide to the Commission a copy of the seismic data regarding the Premises in a “Prestack Migration Stack Volume (SEG-Y)” accompanied by the following within ninety (90) days of completion of the seismic data collection: (1) Acquisition Parameters; and (2) Processing Parameters and Sequence. If available, Producer shall also provide the Commission with copies of any reports they receive of interpretive analyses or findings relating to the seismic data covering the State Game Lands. Commission shall keep all proprietary data provided confidential between the parties hereto. The seismic survey report, plats and any graphics shall identify at a minimum, the location, elevation and depth of shot holes drilled.

7.5 **Protection and Conservation.** Except as modified herein, Producer covenants and agrees to conduct all operations in such a manner as to comply with those provisions outlined in **Exhibits C** (Contractor Integrity Provisions for Commonwealth Contracts) and **D** (Nondiscrimination/Sexual Harassment Provisions for Commonwealth Contracts) attached hereto and made a part hereof which are applicable. In the event of an inconsistency or contradiction, the terms of either **Exhibit C** or **Exhibit D** and the terms of this Agreement, then the terms of this Agreement will govern and control.

## 8. WELL REQUIREMENTS

### 8.1 OBLIGATION WELL

8.1.1 Unless terminated sooner under the terms of this Agreement, Producer shall complete at least one horizontal well (“Obligation Well”) and produce oil, gas, and/or liquid hydrocarbons on unitized acreage containing a portion of the Premises during the Primary Term.

### 8.2 SUBSEQUENT WELLS

8.2.1 If the Obligation Well drilled by Producer or any subsequent well is producing oil, gas, and/or liquid hydrocarbons and the well is expected to return the investment and operating costs during the anticipated productive life of the well to its economic limit, then Producer shall drill an additional well on a unit containing a portion of the Premises, but not necessarily under a portion of the Premises contained within the unit, as would be drilled by a reasonably prudent operator acting under the same or similar circumstances. Producer shall not be required under this provision to drill more wells than required under **Paragraph 9** (Unitization/Pooling) or allowed under any spacing order, rule, or regulation of the Pennsylvania Department of Environmental Protection.

### 8.3 OFFSET WELLS

8.3.1 **Horizontal Wells.** Upon the failure of Producer to enter into a unitization agreement to protect affected acreage of the Premises from drainage through offset horizontal wells, Producer shall take action as would a prudent operator under the same or similar conditions, to protect the drainage of any and all oil, gas, and liquid hydrocarbons from strata underlying the Premises to include, if necessary, the drilling of an offset well. Producer agrees to offset within one hundred eighty (180) days for any well drilled on areas where the oil, gas, and/or liquid hydrocarbons is not owned by the Commission with a bottom hole or well lateral location of one thousand (1,000) feet or less from the boundary of the Premises or any well drilled on oil, gas, and/or liquid hydrocarbons is not owned by the Commission that is completed within the radius of the drainage areas set by an order of the Department of Environmental Protection provided, however, that Producer may present evidence to the Commission to show that such offsetting well is unnecessary or economically unsound. Upon review of such evidence,

the Commission may, at its discretion, relieve Producer of its obligation to drill the offsetting well. However, if the Commission determines that an offsetting well should be drilled, Producer will have the option of (1) drilling the well as required, or paying the Commission a compensatory royalty on production, which will be calculated based on the production from the completed well which was to be offset and on the ratio the affected acreage bears to the total acreage which would have been drained by the well, or (2) releasing all the acreage of the Premises except as described in **Paragraph 9** (Unitization/Pooling).

**8.3.2 Vertical Wells.** Upon the failure of Producer to enter into a unitization agreement to protect affected acreage of the Premises from drainage through offset vertical wells, Producer agrees to offset within sixty (60) days, any well drilled on areas where the oil, gas, and/or liquid hydrocarbons is not owned by the Commission that is completed within five hundred (500) feet of the boundary line of the Premises or any well drilled on oil, gas, and liquid hydrocarbons is not owned by the Commission that is completed within the radius of the drainage areas set by an order of the Department of Environmental Protection provided, however, that Producer may present evidence to the Commission to show that such offsetting well is unnecessary or economically unsound. Upon review of such evidence, the Commission may, at its discretion, relieve Producer of its obligation to drill the offsetting well. However, if the Commission determines that an offsetting well should be drilled, Producer will have the option of (1) drilling the well as required, or paying the Commission a compensatory royalty on production, which will be calculated based on the production from the completed well which was to be offset and on the ratio the affected acreage bears to the total acreage which would have been drained by the well, or (2) releasing all the acreage of the Premises except as described in **Paragraph 9** (Unitization/Pooling).

**8.3.3** No well unitized with the Premises shall be shut-in if drainage will occur through any well within the distances as defined in **Paragraph 8.3** for oil, gas, and liquid hydrocarbon wells on areas where oil, gas, and liquid hydrocarbons is not owned by the Commission. If such draining gas wells are on compression, the offset wells on the Premises shall be placed on compression.

**8.3.4** Producer agrees that any well along the boundary line of the Premises, contiguous to other lands where oil, gas, and/or liquid hydrocarbons are owned by the Commission, shall be located at least three hundred sixty (360) feet from such boundary if oil or liquid hydrocarbons is the principal product anticipated from the objective formation; or at least two thousand (2,000) feet from such boundary if gas is the principal product anticipated from the objective formation of the well which has been drilled to the Onondaga Formation or deeper; or at least one thousand (1,000) feet from such boundary if gas is the principal product anticipated from the objective formation of the well which has been drilled above the Onondaga Formation; or that distance from such boundary line which will be the radius of the drainage area set forth by an order of the Department of Environmental Protection, if the area is subject to such a spacing order. Upon application by Producer, this provision providing for the distance from such boundary line may be waived by the Commission when deemed in the interest of the Commonwealth and not in an area subject to a spacing order of the Department of Environmental Protection.

## **8.4 PLUGGING**

**8.4.1** Producer shall properly and effectively plug all of Producer's wells under the Premises in accordance with the regulations of the Department of Environmental Protection, Bureau of Oil and Gas Management and all applicable laws of the Commonwealth. Two copies of the plugging

procedure approved by the OGM Division and the “Certificate of Well Plugging” shall be supplied to the OGM Division, Pennsylvania Game Commission.

## 9. UNITIZATION/POOLING

9.1 Subject to written approval of the Commission at initiation and/or termination of any pooling agreement, Producer may, at any time or times, pool and consolidate the rights granted in **Paragraph 1.1** (as to specific formation, strata, or depth), in whole or in part, with lands adjacent to or in the immediate vicinity of the Premises, so as to constitute a unit or units for the purpose of entering, with the owners and/or Producers, into joint operating agreements providing for the joint operation and development of the Premises or portions thereof with adjoining lands to prevent the drilling of an excessive number of wells or of wells located too close to the boundary of the Premises. If such operating agreements or unit agreements are entered into pursuant to a valid spacing or integration order, the approval of the Commission shall not be required.

9.2 Prior to producing from any well unitized with the Premises, the Producer shall submit to the Commission for its review and approval the following items, at a minimum - a declaration and notice of unit agreement, if applicable; a plat identifying the name of the unit, the boundaries of the unit, the well or wells planned to be included in the unit including a depiction of any horizontal laterals, the API number of each well in the unit, and the boundaries of ownership for all other parties included in the unit agreement; a division of interest table which includes the name of the unit, the total number of acres in the unit, Producer name, lessee names (correlated to the ownership parcels shown on the plat), agreement date, number of acres for each lessee in the unit, percentage of each lessee’s acreage based on the total unit acreage, tax parcel identification number, and deed recording information for each lease or agreement which is a part of the unit; the county/ies and township(s) within which the unit is located; the producing zone(s) covered by the unit should be identified; a calculation showing the Commission’s net royalty interest for each well in the unit, based on the royalty provision section specified in this Agreement; and a GIS shape file or equivalent of the unit, if requested by the Commission.

9.3 **Pugh Clause.** After the Primary Term or as otherwise specified in **Exhibit B** (Terms Sheet), it is agreed that if Producer exercises its option to unitize or pool any portion of its rights in the Premises (specified in **Paragraph 1.1** above), then such operations and production on and in any such unitized or pooled unit shall continue this Agreement in force and effect as to that portion of the Premises included in such unit(s) or pool(s), but not as to the portion of the Premises not included in any such unit(s) or pool(s). This Agreement may be kept in force and effect as to such remainder in any manner elsewhere provided in this Agreement not inconsistent with this Paragraph.

## 10. WELL RECORDS, LOGS, AND REPORTS

10.1 Producer shall keep a daily drilling record which will describe the formations penetrated, depth and volumes of water, oil, gas, and liquid hydrocarbons found while drilling each well unitized with the Premises. Upon request, any other data that is acquired in the normal procedure of drilling shall be made available to the Commission at a Pennsylvania location, such as drilling time, rate of fill-up, lost circulation zones, caving strata, casing records, core analyses, mud log analyses, perforation, and production test data. Within thirty (30) days after completion of each well, two copies of the “Well Record and Completion Report” for each well unitized with the Premises shall be submitted to the OGM Division, PA Game Commission. This report should include the open flow test results. Upon request, samples of all formations penetrated and parts of cores taken, accurately labeled with the name of the

well, and interval of depth shall be furnished to the Commission at Producer's expense. If requested, Producer shall ship a complete set of samples to the Pennsylvania State Geological Survey, at their requested location, within thirty (30) days after completion of each well.

10.2 Upon written request and within a timeframe specified by the Commission, Producer shall provide the Commission with production and pressure test data, production and pressure decline curves, gas analysis data including BTU value determinations, gas gravity, water and waste disposal records, well stimulation and treatment records, maintenance records and reports, and/or any other data or records in Producer's possession for any well(s) within the unitized area which the Commission deems necessary to protect its interests.

## **11. AUDITS**

11.1 Upon request, Producer shall make available to the Commission at a Pennsylvania location the meter data covering the production of each well under the Premises or unitized therewith and any statements furnished to Producer by any person or corporation to whom Producer delivers for sale or transport any oil, gas, and liquid hydrocarbons produced from the Premises.

11.2 Producer authorizes and directs any person, association, company, partnership, corporation, or other entity to whom it sells or furnishes oil, gas, and liquid hydrocarbons produced from any well under the Premises or on lands unitized therewith, to disclose and exhibit accounts and other instruments related to production from the Premises to the Commission at its request.

11.3 Producer grants to the Commission and/or Commission's designated representatives the right at any time to examine, audit, or inspect books, records, and accounts of Producer pertinent to the purpose of verifying the accuracy of payments and reports furnished to the Commission, and for checking the amount of payments lawfully due under the terms of this Agreement. Producer agrees to provide reasonable aid or facility to enable such audit to be made by the Commission, including providing the relevant documents or materials at a Pennsylvania location. If such audit should disclose any gross error or fraud by Producer in payment of royalties, then Producer shall pay the cost and expense of the audit together with the deficiency. In case of fraud by Producer, Commission shall have the right, but not the obligation, to cancel this Agreement after thirty (30) days written notice to Producer of intent to cancel.

## **12. BREACH AND TERMINATION**

12.1 In the event the Commission determines Producer has not complied with its express or implied obligations (including, without limitation, payments) under this Agreement, the Commission shall notify Producer in writing of the breach. Producer shall have thirty (30) days after receipt of the notice to meet or commence to cure any part of the breach alleged by the Commission. If the Producer fails to cure the breach within ninety (90) days, the Commission shall have the right, but not the obligation, to terminate this Agreement and/or to bring an action against Producer.

## **13. PRODUCER'S SURRENDER**

13.1 Producer may, at any time, surrender this Agreement or any portion thereof if Producer is not then in default of any obligations under this Agreement. Any such surrender must be evidenced by written notice delivered to the Commission at least thirty (30) days prior to the effective date of surrender ("Surrender Date"), confirming that Producer has performed all commitments with which Producer is

charged up to the Surrender Date. **Paragraph 8.1** (Obligation Well) shall not be regarded or construed as a commitment or obligation under this paragraph.

13.2 In the event that producing wells are to be retained, Producer shall be entitled to retain drainage acreage attributable to each well as previously provided under **Paragraph 9** (Unitization/Pooling). After the Surrender Date, Producer shall be relieved of all obligations as to acreage surrendered, and any rental thereafter coming due shall be reduced in the same proportion that the acreage covered hereby is reduced. Producer, however, shall not be relieved of any obligation which accrues prior to surrender even if the result caused by Producer's performance or failure of performance of an obligation or covenant does not manifest itself until after the Surrender Date.

#### **14. RELEASE**

14.1 Producer shall not be relieved from its obligations under this Agreement until a Commission representative has met with Producer's representative on the ground, inspected the premises if necessary, and received a signed statement to such effect from the Commission. Within thirty (30) days thereafter, Producer agrees to execute and deliver a release of the Agreement, which Commission shall record.

#### **15. FINANCIAL SECURITY**

15.1 Upon execution of this Agreement, Producer shall provide the Commission with financial security in a form acceptable to the Commission (*i.e.*, surety bond, irrevocable letter of credit with evergreen provision, bank certificate of deposit, *etc.*) to assure faithful performance by Producer of the covenants of this Agreement, in an amount as specified in **Exhibit B** (Terms Sheet).

15.2 Producer shall advise the Commission of the proposed cancellation of any financial security required by this Agreement immediately upon receipt of notice by Producer of the proposed cancellation.

#### **16. LIABILITY**

16.1 Producer shall alone be liable and responsible for any pollution or other damage which occurs as a result or consequence of Producer's operations, irrespective of whether or not such pollution or damage be due to negligence or to the inherent nature of Producer's operations, unless an independent intervening cause be found to be the sole proximate cause of the pollution or damage. In any action for civil damages by the Commission, there shall be a presumption that, but for Producer's occupation and use of the Premises, the pollution or other damage would not have occurred; it shall then be incumbent upon Producer to come forward with evidence to rebut this presumption. Any action for civil damages on account of such pollution brought by the Commission against Producer shall not bar the Commonwealth from bringing other actions under the Clean Streams Law or other pertinent law, rule, or regulation of the Commonwealth.

16.2 Commission shall not be liable to Producer for any time during which the Premises cannot be used.

#### **17. INDEMNITY**

17.1 Producer shall indemnify and hold harmless the Commission from and against all detriment, damage, loss, claims, demands, suits, and expenses, or other claims of any kind whatsoever which the Commission may sustain, suffer, or be subject to directly or indirectly by reason of location, obstruction, presence, maintenance, renewal, or removal of the operations permitted by this Agreement or resulting therefrom.

## **18. INSURANCE**

18.1 **General Commercial Liability Insurance.** Producer shall, at its sole expense, provide and maintain in full force and effect during the term of this Agreement general commercial liability insurance in an amount not less than \$250,000 for each occurrence and \$1,000,000 aggregate, which shall cover Producer and Commission for damage claims including, but not limited to, personal injury, accidental death, and property loss that may arise from operations conducted under this Agreement. Producer shall also maintain vehicle insurance, as well as all other insurances required by law.

18.2 **Pollution Liability Insurance.** Producer shall, at its sole expense, provide and maintain in full force and effect during the term of this Agreement pollution liability insurance as shall protect the Commission, the Producer and its contractors, if any, from claims of environmental impairment and pollution that may arise during the execution of this Agreement. The amount of pollution liability insurance shall be consistent with industry standards, but not be less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.

18.3 Producer shall provide the Commission with certificates of insurance for its general commercial liability and pollution liability insurance demonstrating the above coverage prior to beginning its operations on or beneath the Premises and shall have Commission listed as an Additional Insured.

18.4 Producer shall advise the Commission of the cancellation of any insurance policy required by this Agreement immediately upon receipt of notice by Producer of the cancellation and in no event later than the effective date of the cancellation.

## **19. TAXES**

19.1 All taxes assessed or payable on the oil, gas, or liquid hydrocarbons or any increase in the real estate tax liability (now or in the future), or taxes in lieu of real estate taxes, because of the operations under this Agreement shall be paid by the parties hereto in proportion to their interest. If applicable, Producer shall pay and fully discharge all taxes, special assessments and government charges of any character imposed during the term of this Agreement on the trade fixtures, appliances, equipment, fixtures, supplies or any other personal property placed by the Producer on the Premises. If any local, state, federal or other taxing power levies a license, severance, production, or other similar tax on oil or gas produced under the Agreement or on Producer's right to operate on the Premises, Producer shall pay all of such tax.

## **20. ASSIGNMENTS**

20.1 Producer shall make written application to the Commission to obtain consent to a proposed assignment whereby Producer is no longer solely responsible for all obligations under this Agreement. The request shall include sufficient detail to allow the Commission to evaluate the viability of any party

seeking to obtain an interest in this Agreement, the interest to be transferred, and the relationship among the parties if more than one party will hold an interest in this Agreement.

20.2 The Commission's approval of a request for assignment will be contingent upon satisfying the conditions set forth in this section and any additional conditions necessary to ensure that the assignment is in the best interest of the Commission.

20.3 A party seeking to obtain an interest in this Agreement must agree in writing to be bound by all the terms and provisions of this Agreement, as well as any additional requirements identified by the Commission. This written agreement may require a three-party document wherein the third-party interest holder verifies that its interest will be subordinate to any public interest the Commission maintains in its real property.

#### 20.4 **Assignment to Multiple Parties.**

20.4.1 If the Agreement is assigned to multiple parties, the parties must identify a single point of contact with the Commission for the purposes of notification and communication pursuant to this Agreement and that will be responsible for aggregating payment. Fractional payments by multiple parties shall not occur unless the Commission approves such payment in writing.

20.4.2 If multiple parties hold an interest in this Agreement, all parties must agree in writing to be jointly and severally liable for compliance with the terms and provisions of this Agreement and any additional requirements identified by the Commission. If a party defaults on any of the covenants, conditions, or obligations of this Agreement, as modified by the Commission's consent to assignment, the Commission, in its sole discretion, may hold all parties jointly liable for the default and may take action pursuant to this Agreement, including termination, against all parties; or the Commission may hold one party severally liable and take action against that party while allowing the other parties to continue to operate under this Agreement, if appropriate.

20.5 The Commission will release a Producer from responsibility and liability under this Agreement upon the completion of the following: (1) approval by the Commission of the assignment of all of the Producer's interest in this Agreement, (2) verification by the Commission that the Producer has fully complied with this Agreement as of the date of release, and (3) assumption by the assignee(s) of responsibility for the covenants, conditions, or obligations of this Agreement, as modified by the Commission's consent to assignment.

## 21. **LIMITATION**

21.1 The Commission is considered to be the owner of the oil, gas, and liquid hydrocarbons rights under the Premises but makes no warranty as to the presence of oil, gas, and liquid hydrocarbons, nor as to its ownership thereof. If it is determined by compromise or by a final judgment of a court of competent jurisdiction that the Commission does not have title to all or part of the oil, gas, and liquid hydrocarbon rights on the lands hereby entered into this Agreement, the royalties thereafter accruing from any part as to which this Agreement covers less than the full interest in such oil, gas, and liquid hydrocarbon rights, shall be paid only in the proportion to the Commission's interest, if any. Any prior payments under the terms of this Agreement shall not be reimbursable to Producer.

21.2 In the event of an adverse claim to the premises affecting title to all or a portion of the oil, gas, and liquid hydrocarbon rights under the Premises, notice of such claim will be given to the Commission which may enter into an escrow arrangement for future royalties accruing to such disputed portion under terms and conditions that the Commission feels proper to safeguard the rights and interests of the Commonwealth. If an adverse claimant files suit against the Commonwealth or against Producer claiming title to all or a portion of the oil, gas, and liquid hydrocarbon rights under the Premises or if the Producer, after receiving notice of an adverse claim, institutes litigation in a court of competent jurisdiction to secure an adjudication of the validity of the claim, the royalties accruing to the litigated portion shall be placed in an escrow account until such time as the ownership of the disputed interest shall be determined and paid accordingly.

21.3 Except as provided above, this proportionate reduction clause shall not apply to and shall not reduce the paid-up bonus payments or rents payable under this Agreement.

## **22. FORCE MAJEURE**

22.1 If Producer is prevented from complying with any obligations imposed in this Agreement solely because of a fire, flood, act of God, or other circumstances beyond Producer's control and which Producer, by the exercise of all reasonable diligence, is unable to prevent, then the Producer may petition the Commission for an extension of time to satisfy such obligations.

22.2 Producer shall notify the Commission within ten (10) working days by telephone and within twenty (20) working days in writing of the date it becomes aware or reasonably should have become aware of the force majeure event impeding performance. Producer shall forfeit the right to obtain an extension of time for performance under this section if such notice is not provided. The written submission shall include all necessary documentation, as well as a notarized affidavit from an authorized representative of producer specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by the Producer to mitigate the effects of the event and to minimize the length of the delay. The Commission will determine, in its sole discretion whether to permit an extension of time.

22.3 An increase in the cost of performing the obligations set forth in this Agreement shall not constitute circumstances beyond Producer's control. Producer's financial inability to comply with any of the obligations of this Agreement shall not be considered a force majeure event. Producer agrees to use all commercially reasonable efforts to expedite the resolution or termination of a force majeure event.

## **23. RIGHTS RETAINED OR RESERVED BY COMMISSION**

23.1 The Commission maintains the right to use the Premises in any and all respects not specifically limited by the terms of this Agreement.

23.2 No gas storage rights are granted under this Agreement.

23.3 The Commission retains or reserves all minerals, oil, gas and liquid hydrocarbons other than those rights specifically granted under this Agreement. Commission shall have the right to enter into other agreements with regard to those retained or reserved rights.

23.4 Producer acknowledges and agrees that certain information used, disclosed, or maintained in connection with the Agreement may be subject to public access or disclosure consistent with the Pennsylvania Right-to-Know law, 65 P.S. § 67.101 *et seq.* (“RTKL”). Producer further acknowledges and agrees that “public records,” as defined under the RTKL, shall be disclosed by the Commission pursuant to a lawful request for records. The Commission agrees to notify Producer in writing if records responsive to a lawful Right-to-Know request are known by Commission to constitute or reveal trade secrets or confidential, proprietary, or privileged information. In the event Producer objects to public access or disclosure of such records, it agrees to notify the Commission of its objection in writing and to furnish to it any affidavits(s) or other signed writing(s) to that effect within ten (10) business days from the date of the Commission’s notice to Producer.

## **24. PRODUCER REPRESENTATIONS AND WARRANTIES**

24.1 Producer represents and warrants that it has the full power, authority and legal right to execute, deliver and comply with this agreement and has taken all actions necessary or appropriate for the execution and delivery of and compliance with this agreement. This agreement constitutes valid and legally binding obligations of Producer enforceable against the Producer in accordance with its respective terms.

24.2 Producer represents and warrants that it has not applied for or consented to the appointment of a receiver, conservator, trustee or liquidator for itself or any of its property; admitted in writing its inability to pay its debts as they mature; made a general assignment for the benefit of creditors; been adjudicated a bankrupt or insolvent or filed a voluntary petition in bankruptcy or a petition or answer seeking reorganization or any arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law; and no action has been taken by it for the purpose of effecting any of the foregoing. No order, judgment or decree has been entered by any court of competent jurisdiction approving a petition seeking reorganization of Producer or all or a substantial part of the assets of the Producer, or appointing a receiver, conservator, sequestrator, trustee or liquidator of it or any of its property.

## **25. GENERAL**

25.1 This Agreement shall not be construed for, or against, any party, but shall be construed fairly according to its plain meaning.

25.2 The paragraph headings herein are for reference only and are not intended to have any legal force or effect.

25.3 Should any one or more of the provisions of this Agreement become or be adjudicated by a court of competent jurisdiction to be void or invalid, in whole or in part, the remainder of the Agreement shall remain in full force and effect.

25.4 This Agreement shall be governed by the law of the Commonwealth of Pennsylvania.

**IT IS HEREBY MUTUALLY UNDERSTOOD AND AGREED** that this Agreement shall be legally binding on the parties hereto, their heirs, administrators, executors, successors, and assigns.

**IN WITNESS WHEREOF**, the Commission and Producer have caused this Agreement to be duly executed by their proper officers, all hereunto duly authorized, on the date first above written.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA GAME COMMISSION

\_\_\_\_\_

\_\_\_\_\_  
R. Matthew Hough  
Executive Director

ATTEST:

[PRODUCER NAME]

\_\_\_\_\_  
Secretary or Treasurer

\_\_\_\_\_  
President or Vice-President/Managing Partner  
Printed Name: \_\_\_\_\_

APPROVED AS TO LEGALITY AND FORM:

\_\_\_\_\_  
Chief/Assistant Counsel

\_\_\_\_\_  
Office of Attorney General

COMMONWEALTH OF PENNSYLVANIA :  
: ss.  
COUNTY OF DAUPHIN :

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned officer personally appeared R. Matthew Hough, Executive Director of the Pennsylvania Game Commission, Commonwealth of Pennsylvania known to me to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA :  
: ss.  
COUNTY OF DAUPHIN :

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, a Notary Public, the undersigned officer personally appeared [name]\_\_\_\_\_, [title]\_\_\_\_\_ of [company]\_\_\_\_\_, known to me to be the person described in the foregoing instrument, and acknowledged that he/she executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal

\_\_\_\_\_  
Notary Public

My Commission Expires: