

## SAMPLE SURFACE USE AND DAMAGE AGREEMENT

This Agreement is made and entered into, effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ (“Effective Date”) by and between \_\_\_\_\_, whose address is \_\_\_\_\_, (“Grantor”), and, \_\_\_\_\_ (“Grantee”).

### RECITALS

- A. Grantor owns the surface estate or otherwise controls the surface rights in and to the property described in Exhibit A, attached hereto and made a part of this Agreement (“Property”).
- B. Grantee owns or operates mineral leases and rights, including but not limited to coal bed methane leases and rights, and may become holder of other mineral leases and rights, including but not limited to coal bed methane leases and rights, underlying and in the vicinity of the Property (“Leases”) and desires to enter on the Property for the purposes of conducting oil and gas operations related to the Leases (“Operations”).
- C. In addition to the rights granted in the Leases, Grantee desires to obtain the right to use the Property for the purpose of access to and from the Leases and right of way related to its Operations.
- D. Grantor and Grantee desire to stipulate and agree on the rights to be granted by Grantor to Grantee and the compensation and damages to be paid for such rights.

### AGREEMENT

*In consideration of the foregoing recitals and the terms, covenants and conditions contained herein, Grantor and Grantee agree as follows:*

1. **Right-of-Way.** Grantor grants to Grantee, and all of its parent, subsidiary, or other affiliated companies, their agents, employees, and others authorized by them, a private right of way upon and across the Property as Grantee may reasonably require for well locations, roads, gathering system pipelines, transmission pipelines, power lines and associated facilities, related to its Operations (“Right-of-Way”). Grantor warrants that it is the owner of the Property and has the legal right to grant the Right-of-Way described herein and that Grantee shall have the quiet use and enjoyment of the Property in accordance with the terms and conditions of this Agreement.
2. **Location and Notification.** Grantee agrees to notify Grantor in advance of entry on the Property for the purpose of drilling and construction activities relating to the Leases and its Operations. Grantee also agrees to consult with Grantor as to the

location of well sites, roads, pipelines and power lines and other associated facilities and will make reasonable efforts to accommodate Grantor's concerns, if any.

3. **Compensation.** As compensation and damages for Grantee's use of any of the Property under the Leases and for its Operations, Grantee will pay to Grantor as follows:
  - A. **Well Locations.** \$\_\_\_\_\_ lump sum payment for the surface used for each well location, which shall include compensation and damages for subsequent facilities for Grantee's Operations on the same surface area.
  - B. **Other Facilities Related to Grantee's Operations** (including but not limited to compressor stations, meter sites and battery sites). \$\_\_\_\_\_ per acre lump sum payment for the surface used for each facility.
  - C. **Right of Way for Roads, Pipelines and Underground Power Lines.** -----  
- per rod lump sum payment for right of way not to exceed fifty (50') feet in width containing but not limited to access road(s), pipeline(s) and/or underground power line(s). Such compensation shall include the right for Grantee, from time to time and at any time or times, to lay, construct, operate, inspect, maintain, repair, replace with same or different size pipe, remove, or abandon in place such pipeline(s) and/or underground power line(s). Such compensation also includes the right for Grantee to construct from time to time and at any time or times additional pipelines, appurtenances, valves, metering equipment, cathodic protection, wires, conduits, cables, and/or underground power lines and other facilities needed for its Operations within the right of way granted.
4. **Payments.** For taxation purposes, all compensation paid pursuant to this Agreement for well locations shall be compensation for surface damages to the Property.

For taxation purposes, fifty (50) percent of compensation paid pursuant to this Agreement for other facilities related to Grantee's Operations and/or for right of way for roads, pipelines and underground power lines shall be in consideration for the right of way to use the Property and fifty (50) percent shall be paid as compensation for surface damages to the Property.
5. **Release.** Grantor acknowledges the receipt and sufficiency of all compensation paid by Grantee pursuant to this Agreement as full and complete settlement for and as a release of all claims for loss, damage or injury to the Property arising out of Grantee's Operations.
6. **Conduct of Operations.**

- A. All of Grantee's Operations shall be conducted in a safe and workmanlike manner and in compliance with all applicable federal, state or local laws, rules or regulations.
- B. Grantee will design and construct well locations to provide a safe working area while reasonably minimizing the total surface area disturbed.
- C. Grantee will use existing roads to the greatest extent practicable.
- D. At the time any access road is initially constructed, Grantee will install a cattleguard at each existing fence line crossed by such access road.
- E. All disturbed areas affected by drilling or subsequent operations, except areas reasonably needed for production operations, shall be maintained by Grantee to control dust and minimize erosion.
- F. During drilling, production and reclamation operations, Grantee shall keep all disturbed areas as reasonably free of noxious weeds as practicable.

**7. Reclamation.**

- A. All disturbed areas affected by drilling or subsequent operations, except areas reasonably needed for production operations, shall be reclaimed by Grantee as early as practicable and as nearly as practicable to their original condition.
- B. Grantee shall consult with Grantor regarding seed mix to be used for reseeding.
- C. Grantee shall notify Grantor prior to final reclamation operations on the Property, including plugging and abandonment, and shall comply with any federal, state or local notification rules, regulations or requirements. Grantee shall use its reasonable efforts to consult in good faith with Grantor and reasonably accommodate Grantor's concerns, if any, regarding all aspects of final reclamation, including but not limited to timing of such operations, topsoil protection and reclamation of the Property. All final reclamation operations shall comply with all applicable federal, state or local laws, rules or regulations.

**8. Designated Contact Person.** Grantor and Grantee designate the following as their primary contact person for discussions, consultation and/or notification purposes:

\_\_\_\_\_

Grantor or Grantee may notify the other of a change in its designated contact person.

9. **Assignability.** This Agreement may be assigned by Grantee without Grantor's consent to any person or entity holding an oil and gas leasehold interest in the Property but may not otherwise be assigned without Grantor's prior written consent.
10. **Binding Effect.** All provisions of this Agreement shall be binding on and inure to the benefit of Grantor and Grantee and their heirs, executors, administrators, successors and assigns.
11. **Termination.** This Agreement shall terminate when Grantee notifies Grantor that it has permanently ceased Operations related to this Agreement.
12. **Recordability.** This Agreement may only be recorded with the written consent of both Grantor and Grantee. Grantor and Grantee agree to execute a memorandum version of this Agreement, which may be recorded.
13. **Shall Not Diminish Other Rights.** Except as otherwise specifically provided for in this Agreement, no other rights held by Grantee to and in the Property relating to the Leases or other acquisition of rights shall be diminished by this Agreement.
14. **Counterparts.** This Agreement may be executed in two or more original counterparts, all of which together shall constitute one and the same Agreement.

**EXECUTED** as of the date of acknowledgement, but this Agreement is effective as of the first date mentioned above.

**GRANTOR:**

**GRANTEE:**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Title:

Social Security Number

\_\_\_\_\_

State of \_\_\_\_\_ }

}

County of \_\_\_\_\_ }

