

# **ATHABASCA**

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# **OIL CORPORATION**

## **CONFIDENTIALITY AGREEMENT**

**Please send an executed Confidentiality Agreement to  
Sayer Energy Advisors at the address listed below:**

**Athabasca Oil Corporation  
c/o Sayer Energy Advisors  
Suite 1620, 540 – 5<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 0M2  
Attention: Mr. Ben Rye  
Phone: 406.266.6133  
Fax: 403-266.4467  
Email: [brye@sayeradvisors.com](mailto:brye@sayeradvisors.com)**

**CONFIDENTIALITY AGREEMENT**  
**(the "Agreement")**

THIS AGREEMENT entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

BETWEEN:

Athabasca Oil Corporation, a corporation incorporated  
in the Province of Alberta ( "**AOC**" )

-and-

\_\_\_\_\_, a corporation incorporated  
in the Province of \_\_\_\_\_,  
( "**Recipient**" )

**WHEREAS** in connection with a contemplated transaction involving AOC's interests in • ("Transaction"), AOC is willing, in accordance with the terms and conditions of this Agreement to disclose (either through itself or its Representatives) to Recipient certain Confidential Information, on a non-exclusive basis, to assist the Recipient in evaluating the Transaction.

**NOW THEREFORE**, in consideration of the mutual promises herein, the Parties agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

1.1 In this Agreement:

- (a) "**Affiliate**" means with respect to a Party, any corporation or partnership which controls, is controlled by, or is under common control with, a Party. "Control" means the ownership, directly or indirectly of, in the case of a corporation, more than 50% of the voting rights of the corporation, and in the case of a partnership, more than 50% percent of the voting rights in such partnership or the power to cause the direction of the management and policies of such partnership;
- (b) "**Confidential Information**" means any and all information (including not only information transmitted in written, electronic or other form but also transmitted orally, visually or by any other means), including information acquired prior to the execution of this Agreement, disclosed or to be disclosed to the Recipient or its Representatives by or on behalf of AOC or its Representatives concerning or related in any way to the Transaction or the business, operations, assets or affairs of AOC or any of its Affiliates, including but not limited to:
  - (i) all agreements, correspondence, financial, technical, or business information, technology, engineering reports, models, data, compilations, marketing materials, budget information, geological, geophysical, geochemical and other engineering information (including, without limitation, seismic data), land schedules and other documentation;

- (ii) all economic information, legal opinions, joint venture information, lease information, marketing terms and arrangements, reports, evaluations, forecasts, compilations, records, interpretations, notes, analyses, documents, contracts to which the AOC is a party;
  - (iii) all Personal Information pertaining to the directors, officers, employees, consultants, contractors and agents of AOC or its Affiliates; and
  - (iv) all reports, evaluations, forecasts, compilations, records, interpretations, notes, analyses and documents prepared by the Recipient or its Representatives containing or based upon, in whole or in part, the information referred to in paragraphs (i) through (iii) above, or reflecting the Recipient's review of AOC, the information provided hereunder or of a Transaction; and
- (c) **"Party"** means either AOC or Recipient and **"Parties"** means each of them;
  - (d) **"Person"** includes any individual, group, firm, partnership, limited partnership, joint venture, trust, company, corporation and unincorporated organization;
  - (e) **"Personal Information"** has the meaning assigned in the *Personal Information Protection Act* (Alberta) and all regulations and amendments thereto;
  - (f) **"Representative"** means, with respect to a Party, the directors, officers, employees, consultants, solicitors, and advisors of a Party or an Affiliate of a Party that are engaged or employed to assist the Party with respect to the Transaction; and
  - (g) **"Transaction"** has the meaning given to that term in the Recitals.

## ARTICLE 2 CONFIDENTIALITY

**2.1** Unless otherwise permitted by this Agreement, the Recipient shall keep the Confidential Information confidential and not use such Confidential Information for any purpose whatsoever other than to evaluate the Transaction and shall not disclose the Confidential Information to anyone.

**2.2** Without the prior written consent of AOC, neither the Recipient nor any of its Representatives shall disclose to any person that any Confidential Information has been requested or has been made available or received, that this Agreement has been entered into; or the existence or status of any investigations, discussions or negotiations concerning a possible Transaction.

**2.3** Recipient may disclose Confidential Information on a need to know basis to those Representatives who require such information in order to evaluate the Transaction provided that prior to any such disclosure, Recipient shall have informed such Representatives of the confidential nature of the Confidential Information and the Recipient shall further ensure that the Representatives are bound by comparable obligations of confidentiality as those set forth herein. The Recipient shall be responsible for any breach or failure to adhere to the terms of this Agreement by such Representative.

**2.4** Recipient may disclose Confidential Information only to the extent the Recipient may demonstrate that such information:

- (a) is now in the public domain or becomes a part of the public domain other than through an act of the Recipient or any of its Representatives;
- (b) was or becomes available on a non-confidential basis from a source other than AOC or one of its Representatives, provided that such source is not and was not, to the Recipient's best knowledge, bound by a confidentiality agreement with, or otherwise subject to an obligation of confidentiality to AOC to hold or retain such information on a confidential basis;
- (c) is required to be disclosed under applicable law or by court order or by a governmental order or any securities law (including any stock exchange), provided that in such case the Recipient shall promptly notify AOC of such request to allow AOC the opportunity to take whatever legal or regulatory action which may be available to AOC to suppress or narrow such disclosure or to attempt to obtain an order or other assurance that confidential treatment will be accorded to such Confidential Information, and Recipient agrees to provide reasonable assistance to AOC in such matters if so requested by AOC; or
- (d) has been independently acquired or developed by the Recipient without violating any obligations under this Agreement.

### **ARTICLE 3 INDEMNITIES AND RETURN OF CONFIDENTIAL INFORMATION**

**3.1** Recipient agrees that AOC will be irreparably injured by a breach of the Agreement that could not be adequately compensated for by damages. Accordingly, the Recipient agrees that AOC shall be entitled to injunctive relief, specific performance or other equitable relief without proof or actual damages to prevent or cure breaches of this Agreement and to specifically enforce the terms and conditions hereof in addition to any other remedy to which AOC may be entitled at law or in equity. The Recipient also agrees to waive any requirement for the deposit of security or posting of any bond in connection with any equitable remedy.

**3.2** Recipient acknowledges the competitive value of the Confidential Information to AOC. Accordingly, without limitation and in addition to any rights of AOC against Recipient arising by reason of any breach hereof, Recipient shall:

- (a) be liable to AOC for all losses, costs, damages, and expenses whatsoever which it may suffer, sustain, pay or incur and in addition; and
- (b) indemnify AOC against all actions, proceedings, claims, demands, losses, costs, damages and expenses whatsoever which may be brought against or suffered by AOC or which it may suffer, sustain, pay or incur;
- (c) directly or indirectly resulting from the unauthorized disclosure by Recipient or its Representatives of all or any part or parts of the Confidential Information.

**3.3** AOC makes no representation or warranty as to the accuracy or completeness of the Confidential Information and neither AOC nor its Representatives shall have any liability as a result of Recipient's or Recipient's Representative's use of the Confidential Information.

**3.4** Recipient agrees that no contract or agreement between AOC and Recipient providing for a Transaction shall be deemed to exist between them unless and until a definitive agreement has been executed by the Parties.

**3.5** Recipient hereby acknowledges that it is aware, and that it will advise its Representatives who are provided Confidential Information, that applicable securities laws prohibit any Person who has received material, non-public information about AOC, from trading AOC securities or from communicating such information to any other Person under circumstances in which it is reasonably foreseeable that such Person is likely to trade securities of AOC, before such information has generally been disclosed to the public.

**3.6** At any time, at the request of AOC, Recipient shall promptly return or cause to be returned to AOC all of the Confidential Information which may have been released to or obtained by Recipient and Recipient shall erase or destroy, or have erased or destroyed, any copies or other reproductions or extracts thereof. Furthermore, Recipient shall, if so requested by AOC, provide a certificate to AOC that the terms and conditions of this paragraph have been complied with. Notwithstanding the foregoing, it is understood and agreed that the Recipient's computer back-up procedures may create copies of the Confidentiality Information and the Recipient may retain such copies in its archival or back-up computer storage for the period it normally archives backed-up computer records, which copies shall be subject to the provisions of this Agreement until the same are destroyed, and shall not be accessed by the Recipient during such period of archival or back-up storage other than as might be permitted herein.

#### **ARTICLE 4 NON-SOLICITATION AND PERSONAL INFORMATION**

**4.1** The Recipient shall not for a period of 18 months from the date of this Agreement (and shall ensure that its Representatives do not) either directly or indirectly, through one or more intermediaries or acting jointly or in concert with any Person, unless otherwise specifically approved and consented to in writing by AOC:

- (a) effect or participate in (whether publicly or otherwise), or cause or in any way advise, encourage or assist (including financial assistance) any other person to effect (whether publicly or otherwise) or participate in: (i) any acquisition of any securities or rights to acquire any securities (or any other beneficial ownership thereof), assets or properties of AOC, whether such agreement is with AOC or its shareholders, or with any third party (provided that the foregoing shall not apply to any acquisition by any of the Recipient's employee benefit plans in the ordinary course of business); (ii) any merger, plan of arrangement or other business combination or tender, takeover bid or exchange offer involving AOC or its shareholders; (iii) any recapitalization, restructuring, liquidation, dissolution or other extraordinary transaction with respect to AOC; or (iv) any act to "solicit" a "proxy" (as such terms are defined in applicable securities legislation) or consents to vote or otherwise with respect to any voting securities of AOC;
- (b) form, join or in any way participate in a group or act jointly or in concert with any person with respect to voting securities of AOC;
- (c) otherwise act, along or in concert with others, to seek to control or influence the management or board of directors of AOC or the policies of AOC;
- (d) disclose to any other Person any intention, plan or arrangement inconsistent with the foregoing;
- (e) solicit, make offers of employment, employ or otherwise contract for the services of any Person who is now employed or engaged as an employee or full-time consultant of AOC other than such Persons: (i) to whom offers of employment, consultancy or contract have

been made prior to the date of execution of this Agreement by the Recipient; (ii) who may respond to publicly advertised positions of employment, consultancy or contract with the Recipient; or (iii) who initiate solicitations of employment with the Recipient;

provided that the foregoing provisions of this paragraph 4.1 shall not be interpreted to prohibit AOC and the Recipient and their respective Affiliates and Representatives from continuing to conduct business with each other in the ordinary course and in a manner consistent with past practice; and provided further that Recipient shall have the right to propose or offer and continue to propose or offer to AOC terms of a possible Transaction.

**4.2** The Parties hereto acknowledge that they are responsible for compliance at all times with applicable privacy laws which govern the collection, use and disclosure of Personal Information pursuant to or in connection with this Agreement.

**4.3** The Recipient covenants and agrees to collect, use and disclose any Personal Information, disclosed to or obtained by it only for those purposes for which such information was initially collected from or in respect of the individual to which such information relates.

## **ARTICLE 5 TERMINATION**

**5.1** AOC reserves the right in its sole and absolute discretion to terminate all discussions and negotiations relating to the Transaction at any time. Any termination of this Agreement shall not affect the terms of this Agreement, which shall remain in full force and effect. Except as provided for in this Agreement, unless and until binding and definitive agreement, if any, concerning the Transaction has been executed and delivered, none of the Parties or their respective Representatives has any legal obligation or liability to any other Party or its Representatives of any kind whatsoever with respect to the Transaction. Unless and until such a binding and definitive agreement has been executed and delivered, Recipient understands that:

- (a) AOC shall conduct the process for the possible Transaction in its sole and absolute discretion (including providing information to any/or negotiating with any prospective buyer and entering into definitive agreements without prior notice to the Recipient or any other person);
- (b) Any procedures relating to such Transaction may be changed at any time without notice to the Recipient or any other persons; and
- (c) AOC shall have the right to reject or accept any potential buyer, proposal or offer, for any reason whatsoever, in its sole discretion.

The terms and conditions of any definitive agreements between the Parties in respect of a Transaction will supersede the terms of this Agreement to the extent they are inconsistent with this Agreement.

## **ARTICLE 6 GENERAL PROVISIONS**

**6.1** The Parties share a common legal and commercial interest in all Confidential Information which is and remains subject to all applicable privileges, including solicitor-client privilege, anticipation of litigation privilege, work product privilege, privilege in respect of "without prejudice"

communications and all other privileges at common law. No waiver of any privilege is implied by the disclosure of Confidential Information to any person pursuant to the terms of this Agreement.

**6.2** The rights and remedies provided in this Agreement are cumulative and in addition to, and not in substitution for, any other rights and remedies available at law or in equity.

**6.3** If any provision of this Agreement as applied to any Party in any circumstance is adjudged by a court to be invalid or unenforceable, this will in no way affect any other provision of this Agreement, the application of such provision in any other circumstance, or the validity or enforceability of this Agreement.

**6.4** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, by or between the Parties with respect to Confidential Information, whether disclosed before or after the date hereof. This Agreement may not be amended, supplemented, or otherwise modified by written agreement signed by all of the Parties.

**6.5** Notices required or permitted to be given under this Agreement shall be in writing and shall be effectively given if delivered personally or sent by e-mail (return receipt requested) as follows:

(i) If to AOC, to:

Athabasca Oil Corporation  
Suite 1200, 215 – 9<sup>th</sup> Avenue S.W.  
Calgary, Alberta, T2P 1K3  
Attention: Cam Danyluk, LLB, B.Comm  
Email: cdanyluk@atha.com

(ii) If to the Recipient, to the following address:

**Recipient Company Name:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**City:** \_\_\_\_\_ **Province/State:** \_\_\_\_\_  
**Attention:** \_\_\_\_\_  
**Email:** \_\_\_\_\_

**6.6** The division of this Agreement into articles and paragraphs and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

**6.7** This Agreement shall be construed and determined according to the laws of the Province of Alberta and the Parties hereby irrevocably attorn to the jurisdiction of the courts of Alberta.

**6.8** No waiver by AOC of any breach of any of the terms, conditions, representations in this Agreement shall take effect or be binding upon it unless the waiver is expressed in writing and any waiver so given shall extend only to the particular breach so waived and shall not limit or affect any rights with respect to any other future breach.

**6.9** This Agreement shall enure to the benefit of, and be binding on, the Parties and their successors and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement may be assigned or transferred, in whole or in part, by the Recipient without the prior written consent of AOC which may be withheld in AOC's sole and absolute discretion, provided however, that AOC may assign all or a portion of its rights, powers and privileges under this Agreement (including, without limitation, the right to enforce all of the terms of this Agreement) to its partners, affiliates or to any person who enters into a definitive agreement for a transaction of the type contemplated by this Agreement.

**6.10** This Agreement shall remain in full force and effect for a period of 18 months from the date hereof, or until such time as all of the Confidential Information becomes part of the public domain through no violation of this Confidentiality Agreement, whichever occurs first.

**6.11** This Agreement may be executed by the Parties in counterpart with the same effect as if the Parties had signed the same document. All counterparts of this Agreement shall be construed together and shall constitute one and the same instrument. Delivery by either Party of an executed counterpart of this Agreement to the other Party hereto by fax or other electronic means shall be deemed to be sufficient delivery of the Agreement by that Party.

***[Remainder of page intentionally left blank.]***



**IN WITNESS WHEREOF**, the duly authorized representative of each of the Parties has caused this Agreement to be executed on the date first written above.

**ATHABASCA OIL CORPORATION**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[COUNTERPARTY]**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I certify that no changes have been made to this Confidentiality Agreement that have not been clearly marked and initialed.

**CONFIDENTIAL INFORMATION DELIVERY OPTIONS: (please check one)**

\_\_\_\_ Electronic    or    \_\_\_\_ Hard copy (binder)