

Memorandum of Understanding

Between

The Canada-Nova Scotia Offshore Petroleum Board

And

**The Office of the Director of Public Prosecutions, referred to
as the Public Prosecution Service of Canada**

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1 Purpose

In order to ensure effective enforcement of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* and its regulations (the “Statute”), the parties have entered into this Memorandum of Understanding (the “MOU”) regarding the Canada-Nova Scotia Offshore Petroleum Board (the “Board”) funding prosecution services provided by the Public Prosecution Service of Canada (the “PPSC”).

2 Authorities and Responsibilities

2.0 Principle

The parties agree that effective enforcement is carried out by investigative agencies that conduct investigations of alleged offences and lay charges, and prosecution services that provide prosecution services in relation to those investigations and charges, both exercising their respective roles independently, but co-operatively.

2.1 Board’s Administrative Responsibilities

The statutory mandate of the Board is defined by the Statute which provides the Board with the authority to regulate petroleum activities in the Nova Scotia Offshore Area. As such, it evaluates operator compliance with requirements under the Statute which includes health and safety, environmental protection, petroleum resource management and conservation, and employment and industrial benefits while conducting authorized petroleum related work activities. The Board agrees to pay for PPSC prosecution services costs related to investigations and prosecutions of offences under the Statute, as well as offences under the *Criminal Code* and other federal law that are related to the enforcement of the Statute.

2.2 RCMP and other Investigative Agency Enforcement Responsibility

Other investigative agencies such as the Royal Canadian Mounted Police (the “RCMP”) may enforce health and safety as well as environmental laws related to petroleum activities in the Nova Scotia Offshore Area and as such may also investigate offences and lay charges under the Statute, or other federal law including the *Criminal Code*. These agencies open, conduct, direct, control and conclude such investigations, exercising their discretion independently with respect to the investigation at all stages. Their officials carry out their duties and exercise their discretion

in accordance with relevant statutory, constitutional law, and their internal practices and policies. They decide whether to lay charges, or to seek the PPSC's recommendations on charges. The Board acknowledges that it cannot instruct separate investigative agencies with respect to the conduct of investigations, or the decision to lay charges, or to refer charges to the PPSC.

2.3 PPSC - Primary Prosecutorial Responsibility¹

The PPSC is responsible for the provision of prosecution services in relation to the enforcement of the Statute on behalf of the federal Crown. These services are set out in the *Director of Public Prosecutions Act* (the DPPA) which empowers the Director of Public Prosecutions (the "Director") to act independently in respect of federal prosecutions. The Director, who acts under and on behalf of the Attorney General of Canada, and federal prosecutors who represent the Director, exercise these duties in accordance with the DPPA, and the constitutional imperative to act independently, and in the public interest. The PPSC provides prosecution services in accordance with the PPSC Service Standards set out in Annex A, as well as its internal policies.

3 Financial Issues

3.0 Cost recovery Funding

3.0.1 PPSC Funding Model

The PPSC recovers from the Board its costs for the provision of prosecution services in excess of the PPSC's A-base funding allocated to the provision of prosecution services related to the enforcement of the Statute. These costs include those related to FTEs that provide prosecution services, disbursements, and private sector barristers acting as federal prosecutors.

3.0.2 Prosecution Services Rates

The rates used to recover the cost of FTEs providing prosecution services are those approved each fiscal year by Treasury Board and are applied consistently across all federal government departments and agencies. The current FTE rates are set out in Annex B. Annex B is amended from time to time in accordance with Treasury Board decisions.

¹ Provincial Attorneys General may also provide prosecution services in relation to the enforcement of the Statute.

3.0.3 Disbursements

Disbursements are non-FTE related costs necessary for the effective exercise of prosecution services paid by the PPSC or private sector barristers as a result of the provision of prosecution services. These costs may include: court fees, witness (including expert) fees, transcripts fees, interpretation services, photocopying, printing, disclosure-related costs, travel expenses and on-line research fees.

3.0.4 Private Sector Barrister Accounts

In accordance with ss. 7(2) of the DPPA, the Director may retain, on behalf of the federal Crown, the services of barristers to provide prosecution services related to enforcement of the Statute. The barristers (“Agents”) are remunerated in accordance with rates approved by the Treasury Board as set out in Annex C and render accounts to the PPSC for services rendered in accordance with their Agreement with the Director. The PPSC reviews the Agents’ accounts for reasonableness and then certifies them. The PPSC then pays the accounts rendered by the Agents directly. Once paid, the PPSC remits the accounts of the Agents to the Board for reimbursement.

3.0.5 Costs of policy and training sessions and other meetings

Where the Board requests PPSC participation in the provision of training to Board employees or to others, or other meetings, the parties discuss in advance what costs will be paid by the Board which may include the time of prosecutors to prepare for and attend the training session or meeting at the hourly rates set by Treasury Board, as well as other related costs, such as travel expenses. The PPSC does not cost recover for any time associated with the training of its own personnel. The recovery of costs related to the PPSC training of the RCMP or other investigative agencies in relation the enforcement of the Statute is permissible upon the agreement of the Board.

3.0.6 New Initiatives

Where costs for new initiatives are projected to exceed the Board’s budgetary envelope, best efforts will be made to identify additional resources to address the shortfall.



3.1 Joint financial planning and forecasting

3.1.1 Forecasting by the PPSC

During the quarter that precedes the beginning of each fiscal year, the PPSC and the Board meet in order to jointly plan for the next fiscal year. The PPSC provides to the Board a forecast of the resources it requires to provide prosecution services and pay for requisite disbursements for the next fiscal year. The results of the joint planning and forecasting are set out using the template in Annex D. This forecast will consider relevant factors including billings from previous years and the estimated average prosecution cost multiplied by the number of known and anticipated cases to be referred in the fiscal year for prosecution services in relation to the Statute. The PPSC also provides information on the rates for prosecution services as approved by Treasury Board and such other factors the parties agree are relevant.

3.1.2 Adjustments to Forecast

The PPSC undertakes to provide as much advance notice as possible of significant increases or decreases in the level of required prosecution services to the Board through an adjustment in the PPSC forecast.

3.1.3 Shortfalls in resourcing

The Board undertakes to plan the necessary resources to fund all prosecutions agreed to fall under its statutory responsibility. Where the Board foresees any actual or projected shortfall or cessation of the payment of prosecution services, it agrees to communicate this to the PPSC so that the parties may work together to resolve the shortfall.

3.2 Invoicing and Reporting

3.2.1 Corporate Statement and Invoices

On a monthly basis, the PPSC makes the following available to the Board:

- a) a Corporate Statement summarizing amounts invoiced to the Board for the billing period and year-to-date totals.
- b) supporting information on:
 - o FTE costs based on the relevant FTE classification, hourly rate, and hours



- expended per PPSC file;
- o Disbursements
- o Agent accounts including hourly rate and hours expended per file; and
- o Adjustments to amounts billed in prior periods; and
- c) an adjusted forecast of payments required to year end.

3.2.2 Board Review and Payment

The Board reviews the PPSC Corporate Statement and invoices for errors. Adjustments are made if required. The Board pays the PPSC by way of cheque, or such other manner as agreed to by the parties.

4 Annual Meeting

The parties will meet to discuss financial planning and forecasting prior to the start of the fiscal year. In addition, they will discuss annually, preferably in the last quarter of the fiscal year, enforcement under the Statute, and any of the following subjects. Other investigative agencies, such as the RCMP may be invited to attend those portions of the meeting agreed to by the parties.

- (a) The implementation of the provisions of this MOU;
- (b) Legislative changes of which the Board becomes aware that would enhance the investigation and prosecution of cases or that may be required as a result of judicial decisions or other matters;
- (c) Evidentiary issues, patterns of non-compliance or trends, or prosecution issues;
- (d) Recommendations about matters requiring action by the parties; and
- (e) Any other relevant issue or concern.

5 Organizational and Operational Issues

5.0 Training

The PPSC provides training sessions to Board officers respecting their enforcement powers and the conduct of investigations. The Board funds such sessions and the subject matter and the frequency of the sessions will be mutually determined by the parties.

5.1 External Communications

The DPPA provides that the PPSC communicates with the media on all matters respecting the initiation and conduct of prosecutions. This does not preclude the Board from providing general information to the media or other external entities regarding the enforcement of the Statute in accordance with its policies. In respect of specific cases, the Board consults with the PPSC prior to making any communication to the media.

5.2 Legislative and Policy Developments

The Board advises the PPSC of any proposed legislative or policy change of which the Board becomes aware, or any funding initiative that could impact upon prosecution services of the PPSC.

5.3 Confidentiality and Security of Information

5.3.1 Information confidential

Information received by one party from the other under this MOU will be treated as confidential and will only be used and disclosed in accordance with the laws of Canada.

5.3.2 Compliance with Treasury Board and other policies

Each party ensures that their general policies and procedures for the security of information comply with the Treasury Board Security Policy and related operational standards of the party.

6 Final Provisions

6.0 Effective Date

This MOU shall come into effect at the time it is last signed.

6.1 Dispute Resolution

Any disagreement with respect to this MOU is resolved by the designated officials. Those officials may, for purposes of resolving a disagreement, consult with other officers or officials in the Board and the PPSC.

6.2 Amendments

This MOU may be amended at any time with the consent of the Board and the PPSC by an exchange of letters between the designated officials. The Annexes are updated as required.

6.3 Termination

6.3.1 Termination by one party

Either party may terminate this MOU by written notice to the other designated official of their intention to terminate this MOU. The MOU will terminate six months from the date of the notice.

6.3.2 Termination by mutual consent

The parties may mutually decide to terminate this MOU at any time through an exchange of letters between the designated officials.

6.4 Nature of the Memorandum of Understanding

This MOU is an administrative agreement between the parties and is not intended to be legally binding or enforceable before the courts. The memorandum of understanding between the parties effective August 12, 2005 is hereby terminated and replaced by this MOU.



6.5 Designated Officials

The following designated officials for the Board and the PPSC, respectively, have overall administrative responsibility for this MOU:

For the Board Chief Executive Officer 1791 Barrington Street Halifax, Nova Scotia B3J 3K9 Telephone: 902-496-3206 Fax: 902-422-1799	For the PPSC Director General, Regulatory and Economic Prosecutions 284 Wellington Street Ottawa, Ontario K1A 0H8 Telephone: 613-960-4852 Fax: 613-954-2958
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7 Signatures

Whereas the parties have signed this MOU on the dates indicated below.

For:

Public Prosecution Service of Canada



Kathleen Roussel

Deputy Director, Regulatory and Economic
Prosecutions and Management Branch

Date: 28/11/13

For:

**Canada-Nova Scotia Offshore Petroleum
Board**



Stuart Pinks

Chief Executive Officer

Date: December 10, 2013

Annexes

Annex A - PPSC Service Standards

Annex B – FTE Rates

Annex C – Barrister/advocate Rates

Annex D – Planning and Forecasting