The explanatory notes reflect primarily observations on the intention and scope of the provisions of the Property Transfer Procedure ("PTP"), issues that are expected to be covered in the Head Agreement and circumstances in which amendments might be considered. They have been included only to assist users in understanding the PTP, and are not intended to have any legal effect on its interpretation. Although the PTP has been prepared as a service to industry, the onus is on users to ensure that the provisions are appropriate for their circumstances. Users may wish to amend portions of the PTP to address their particular needs for a Transaction.

Topics expected to be included in the Head Agreement and customized to the particular Transaction follow:

Provision	**Related Annotation**
Definitions Provision	1.01 - General
Definitions of Effective Date and Scheduled Closing Date	Definition of Effective Date and Scheduled Closing Date respectively
List of Schedules	Definition of Schedule
Inclusion of Proprietary Seismic Data	Definitions of Base Purchase Price and Excluded Assets, 2.02, 2.05
GST/HST and any Provincial Sales Tax	2.05
Insurance	5.02
Sec. 116 Certificate re non-resident Vendor	6.02(a)
Additional Representations and Warranties	6.02(bb) and 6.04(f)
Multi-Party Purchaser	6.04
Additional Conditions (i.e., environmental)	8.01(b), 10.01, 10.02, 10.03 and 10.05C
Specific concerns about transferability of Well licences	Custom provisions in addition to 6.02(q), 6.04(d) and 10.01(e)
Employee transfers or terminations	N/A - Custom provisions
Transactions with a receiver or trustee	N/A - Custom provisions

General-Document Scope: Although the 2000 PTP has often been used by smaller companies for low to modest value Transactions, it did not receive the level of acceptance that had been anticipated when the document was completed. Similarly, the major potential benefits from the use of the PTP for undeveloped lands deals appear not to have been widely understood.

While the updated PTP is unlikely ever to be the "document of choice" for larger companies, it has been structured to facilitate use for Transactions at the lower end of the value range to offer all users a simple, sound and efficient way to address those Transactions. The updated PTP will also be a reference that can be used to assess potential improvement opportunities in existing internal precedents or to comment on a draft agreement presented by another Party. This more modest expectation about its application will also make it easier for larger companies to use the PTP as an efficiency vehicle for straightforward, lower value Transactions, while continuing to use their own document for more complex or higher value deals.

The Addendums present the use of the PTP for a straightforward sale, a simple swap and as a platform for several undeveloped lands only Transactions. They demonstrate the potential efficiencies to be obtained by use of the PTP for Transactions within its design parameters. Making the election sheet for the PTP and those examples available in a downloadable format from the CAPL and CAPLA websites will also facilitate use of the PTP by all users for low to modest value Transactions and for undeveloped lands only Transactions.

General-Shift of Content from Head Agreement to PTP: Content about the essence of the Transaction (i.e., value, tax allocations and any Deposit) were shifted from the contemplated Head Agreement to the PTP as of the 2017 PTP. This is consistent with the foundation of the other major CAPL documents by including as much procedural content as is feasible in the applicable CAPL document. The typical sale, for example, would include both P&NG Rights and Tangibles, with use of an 80-20 tax allocation between P&NG Rights and Tangibles. If there were a Deposit for that Transaction, it would typically be 10% of the Base Purchase Price. As a consequence, the update requires completion of a blank for the Base Purchase Price and an election for whether there is a Deposit. The Article 2.00 provisions in the PTP flow naturally from those decisions. Parties using the PTP for an Asset Exchange or using different tax allocations would need to make the modifications required for their Transaction. Similarly, the Parties would need to override the 10% Deposit if they included a Deposit requirement with a different threshold.

General-Reduction of Elections relative to 2000 PTP: One of the areas of emphasis in the update to the 2000 PTP was to eliminate unnecessary elections by structuring the applicable provisions to reflect what appeared to be the prevalent practice or a logical outcome without presenting it as an option. This was to facilitate acceptance of the 2017 PTP by allowing a more user-friendly platform for the typical low to modest value Transaction. That being said, it will not be uncommon for the Parties to choose a different value in any particular Transaction. These are identified in the applicable annotations and in the bolded reference in the Schedules of Elections and Modifications included in the Addendums at the end of the PTP as a reminder to users to confirm that the defaults in the PTP are appropriate for their particular Transaction.

Modifications to the defaults in the PTP might be considered if: (a) the Transaction were an Asset Exchange, rather than a sale (e.g., GST/HST Registration Numbers; Clause 3.01 place of Closing; and possible differences in the Clause 6.02 Vendor representations); or (b) the Parties wanted to override time periods or thresholds prescribed in the 2017 PTP that had been elections or Head Agreement content in the 2000 PTP. Examples of these are: Clause 2.02 tax allocations; Clause 2.03 optional 10% Deposit; Subclause 3.04B access to files period; Paragraph 4.02A(b) final statement of adjustments within six months; Clause 6.05 and 13.01 survival period on representations and warranties; optional Subclause 7.01E 50% or more ROFR exercise threshold; Subclause 8.02A seven Business Day period for notice of Title Defects; Subclause 8.02B Alternate 2 Title Defects thresholds of 10% and 25%; including a different value in Subclause 13.03A;and the $25,000 minimum claim threshold in Subclause 13.03B. (Some other provisions that might be reviewed for a Transaction are: the 31 day thresholds for marketing and J.V. agreements used in Paragraphs (c) and (g) of the definition of Title and Operating Documents and the corresponding reps in Paragraphs 6.02(i) and (j); the handling of freehold mineral tax in Clause 4.01; the $10,000 threshold in Subclause 4.02B; the $50,000 authorized expenditure threshold in Clause 5.01, Subclause 5.03A and Paragraph 6.02(h); the $100,000 threshold for addressing regulatory requirements under Paragraph 6.02(l); the 60-day period prescribed for replacing signs under Clause 11.02; and any modifications to the handling of surplus equipment contemplated in Clause 11.03.)

General-Identification of Schedules: The PTP does not prescribe the list of Schedules that Parties choose to include in their Agreement. Although there are a number of requirements in the PTP to include certain information in a Schedule, the PTP does not mandate to Parties the specific Schedules in which they must address the required content. There is no specific obligation to include a "Tangibles Schedule", a "J.V. Agreements Schedule" or a "Production Sales Contract Schedule", for example, notwithstanding that the content must be addressed. A Vendor's preferred scheduling format will be apparent to users quickly in the Head Agreement Clause that identifies applicable Schedules.

Date: The typical practice is to date Agreements as of the date they are being executed.

Clause 1.01-General: The PTP definitions are expected to be used in the Head Agreement. Something like the following should be included in the Definitions Clause of the Head Agreement: "*Each capitalized term used in this Head Agreement will have the meaning given to it in Clause 1.01 of the Property Transfer Procedure. In addition:"* Those definitions would be those noted above and any others required for the Transaction.

Abandonment and Reclamation Obligations: This definition is of most relevance in Clause 13.04, which addresses the Purchaser's assumed obligation for these liabilities. This definition and the definition of Environmental Liabilities cover the full spectrum of environmental occurrences and responsibilities. This issue is reviewed in more detail in the notes on Clause 13.04. This definition was materially expanded in the 2017 PTP.

AFE: This definition is relevant for the maintenance of business obligations in Article 5.00 and the Vendor's "Authorized Expenditures" representation in Clause 6.02. Except as authorized under the maintenance of business of provisions of Article 5.00 after execution of the Agreement, AFEs for which the Purchaser is expected to be responsible for an estimated share greater than $50,000 are to be identified on a Schedule in accordance with the representation in Paragraph 6.02(h).

Affiliate: i) This is the same as the 2015 CAPL Operating Procedure definition, and is very similar to that in the 1993 CAPL Assignment Procedure.

ii) The partnership reference recognizes that some companies have created partnerships comprised only of corporations that are Affiliates, for tax and other business reasons. This ensures that the corporation acting as "managing partner" and its corporate Affiliates are regarded as Affiliates of the partnership and *vice versa*. If it is comprised of other entities, the definition might be modified for the specific situation.

iii) One of the consequences of the CAPL Assignment Procedure approach is the inclusion of a 50% test for control. This will work well in the vast majority of circumstances. It offers consistency with the definition otherwise used by CAPL in that document and the more recent Operating Procedures. It offers a level of transparency that an alternative without that qualification would not. The elimination of that qualification would also create a net for the protected class re liability and indemnity and for the sharing of information that is potentially broader than the other Party anticipates. There may be circumstances in which a Party's particular circumstances are such that it would prefer the broader control test without regard to the prescribed threshold. In those circumstances, any such Party should present a specific modification that addresses its circumstances in a way that allows the other Party to assess the request (e.g., a significant investor potentially having access to information).

Asset Exchange: This definition was introduced in the 2017 PTP to reflect the fact that the vast majority of Transactions will be sales for which the Parties would prefer to use the traditional Vendor and Purchaser references. This definition, the corresponding definitions of Vendor and Purchaser and the definitions of Transferor and Transferee introduced in the 2017 PTP have allowed the PTP to be written to address sales, with rules of interpretation that accommodate an Asset Exchange.

Assets: i) The disposition may include only Petroleum and Natural Gas Rights (i.e., an ORR or undeveloped lands) or Tangibles with no Petroleum and Natural Gas Rights (i.e., plant or pipeline). Clause 1.05 ensures that the PTP is interpreted accordingly.

ii) The definition of Assets is amended under Clause 1.02 if portions of the Assets are excluded at Closing because, for example, of the exercise of Rights of First Refusal by third parties or Title Defects.

iii) Sulphur forming part of a base pad or storage block is acquired by the Purchaser under Paragraph 4.01(g) unless otherwise agreed in the Head Agreement. This assumes that the value would be negative/low. This would require a separate tax allocation as product inventory.

Base Purchase Price: i) This definition was introduced in the 2017 PTP to differentiate between the original Purchase Price and the adjusted Purchase Price that reflects adjustments, any other modifications and the handling of any Interest Amount that accrues during the Interim Period.

ii) Clause 2.02 states the Base Purchase Price, and allocates it among the Petroleum and Natural Gas Rights, the Tangibles and the Miscellaneous Interests. An allocation would also be required for seismic data or product inventory (e.g., sulphur storage block), if included. That Clause would break down the Purchase Price into the Deposit (if applicable) and the portion that is due at Closing. Although the GST/HST, if any, applicable to the Transaction will also be payable at Closing, it is not part of the Purchase Price. (See also the definition of Purchase Price.)

Business Day: Parties will often modify this definition if both the Assets and the head offices of the Parties are located outside Alberta. Corresponding modifications would be made to the time zone (Paragraph 1.03(h)), the Clause 1.09 governing laws jurisdiction, the reference to the *Limitations Act* (Alberta) in Subclause 4.02E and the reference to the *Arbitration Act* (Alberta) in Clause 9.02.

Closing: The price/value and other material terms have been agreed upon at the time of execution of the Agreement. However, under a Purchase and Sale or Asset Exchange structure, the Transaction will not be complete (and possession will not pass) until completion of the Purchaser's "due diligence" review of the Assets, the payment of the Purchase Price, the satisfaction of the conditions in Article 10.00 and the execution of the General Conveyance. The completion of the Transaction is referred to as Closing, and is further described in Article 3.00.

Closing Time: i) This definition has been modified in the 2017 PTP, in conjunction with the inclusion of a new definition of Scheduled Closing Date that ultimately links to a Transaction specific date chosen by the Parties in a Head Agreement definition.

ii) The 10:00 a.m. Closing Time is presented as the default time because of the logistics associated with any payment by wire transfer. The Purchaser's payment at Closing will often be made by wire transfer to the Vendor's account. A 2:00 p.m. Closing Time would be too close to the time at which banks close, particularly if the bank is in eastern Canada, and an 8:00 a.m. Closing might be required in the unlikely event that overseas banks were involved in a wire transfer for a Transaction for which the PTP was used.

iii) The most likely reasons for a delay would be the rectification of title problems identified during the Purchaser's due diligence review (Paragraph 8.02B(a)), delays in receiving ROFR elections or, if used in a more complex, custom Agreement, any Required Approvals.

iv) It is most convenient for the Vendor's accounting personnel to Close the sale of a producing property on the last day of a month, but this is seldom feasible. Other factors to be taken into account when selecting the Closing Time and the Scheduled Closing Date will be Required Approvals, the status of waivers of Rights of First Refusal, the number of other closings, the desire to simplify adjustments, the Vendor's desire to obtain the balance of the Purchase Price and the risks associated with maintaining possession of the Assets.

Deposit: Optional Clause 2.03 addresses any requirement for the submission of a Deposit. This generally will not result in any consequential amendments to the PTP. The PTP has been structured so that provisions that relate to a Deposit have no application by their own terms if there is no Deposit requirement. (See also Clauses 2.06, 12.01 and 18.05.) Clause 2.03 assumes a Deposit of 10% of the Base Purchase Price if the Clause has been selected, as that reflects the most common Deposit requirement. The Parties are free to negotiate a different Deposit requirement as appropriate for their Transaction.

Effective Date: i) A sample definition for the Head Agreement is: *"Effective Date" means 8:00 a.m. on the first day of* _____. Some Agreements use the term "Adjustment Date" instead, typically if the structure is to treat the date solely as an accounting adjustment date,

ii) The Effective Date should always be on the first day of a month when dealing with producing properties. It is the easiest date for an Accounting Department to use because production measurement, facility balances, sales and billings are generally on a calendar month basis.

Paragraph 4.01(g) states that production that had been produced, but not sold, at the Effective Date is not included in the Assets, subject to exceptions provided in that Paragraph for "tank bottoms" and sulphur forming part of a base pad or storage block. An 8:00 a.m. reference is included to enable field personnel to measure oil in tanks at a convenient time. Although one minute after midnight has an inherent attraction, it places a burden on field personnel if production is to be measured accurately at the Effective Date.

iii) To minimize the administrative burden on accounting personnel in handling adjustments, it may be beneficial to choose an Effective Date at the beginning of the month in which Closing is reasonably expected to occur. This may pose a problem for larger Transactions for which an engineering report had been prepared and a data room used in a competitive bid process. This approach will often be feasible for smaller Transactions, though, because use of the PTP will have simplified significantly the negotiation of the Agreement.

Environmental Liabilities: i) This definition is closely related to the definitions of Abandonment and Reclamation Obligations and Wells, and is of greatest relevance to Clause 13.04. The definition has been structured so that the Environmental Liabilities are not necessarily limited to operations conducted with respect to the Assets. This is because third party activities may have created or contributed to a problem. (See, in particular, the annotations on the definition of Wells for insights about the handling of Wells for which a reclamation certificate had been obtained.)

ii) Agreements will often include an environmental defects mechanism analogous to Alternate 8.02B(2), in which modifications to the Purchase Price and a potential termination right are triggered at certain value thresholds. While commonly used in large value Transactions, that type of structure is used much less frequently for the Transactions for which the PTP would tend to be used. The environmental review process under the PTP will ultimately depend on whether optional Article 8.00 is selected to apply and the structure of any additional environmental review condition to Closing included in the Head Agreement in accordance with Paragraph 10.02(d). If Article 8.00 were selected not to apply, the Parties would need to negotiate a resolution of any outstanding environmental matters before execution of the Agreement. In the alternative, an environmental condition to Closing might be structured simply as a binary outcome in which the Purchaser may either proceed with Closing or terminate the Transaction if it is not reasonably satisfied with the environmental condition of the Assets. Some users might choose to combine that condition with some sort of custom, detailed environmental defects provision that links the outcomes to the value of those defects, as is often used in larger deals.

iii) The nature of the PTP is that it is designed for low to modest value Transactions, such that it is unlikely to be used for a large-scale disposition of all of the Vendor's interests in a region. Because of the possibility that users may be reviewing the PTP as a reference document in conjunction with

the review of another form of Purchase & Sale Agreement for such a disposition, this annotation offers an introduction to what is referred to as a "white map" agreement in which the Vendor is disposing of all of its rights and obligations in the entire "white map" area.

Insofar as the Vendor may have miscellaneous working interests, ORRs and unidentified tangibles and facilities within that area, this structure ensures that the Purchaser is acquiring any such incremental interests that had not been identified in the Agreement without additional consideration. The "Further Assurances" provision would then require the Vendor to execute whatever documents would be reasonably required to effect the transfer of those overlooked interests to the Purchaser at the time the oversight was discovered.

A Purchaser considering such a Transaction must also be aware, however, that this also sees it having agreed to assume all residual obligations of the Vendor for all unidentified interests in the "white map" area. As neither Party actually knows what it does not know about those residual obligations, this potentially creates an outcome in which the Purchaser has agreed to assume the risk of potential financial obligations that it is unable to quantify with respect to either probability of occurrence or cost exposure.

The risk to the Purchaser inherent in this type of agreement is magnified in circumstances in which the Vendor had built its area asset base through one or more corporate acquisitions. This is because of the likelihood that only the records for then active properties were integrated into the Vendor's information systems. The Purchaser should also be particularly cautious about using a "white map" structure in circumstances in which there had been a history of oil operations in the "white map" area during the 1950 to mid-1980s period (e.g., abandoned oil units), given the different operating and environmental standards in that period.

Given the potential risk that a Purchaser could be assuming under a "white map" agreement, a Purchaser is most likely to be willing to consider this structure in practice if: (a) the competition for the property is significant in a "sellers' market"; (b) the Purchaser believes that the consideration for the property is attractive to it, after considering the potential risk of having to spend several million dollars to address unforeseen issues; and (iii) the nature of historic activities in the area is that there is a relatively low likelihood of significant issues emerging after Closing (e.g., nature of regional production history, period in which regional activities had been conducted, transparency of the historic involvement of the Vendor and its predecessors in the "white map" area).

A Purchaser considering a "white map" agreement can also mitigate the risk being assumed by it by attempting to negotiate a financial cap on its total exposure under the mechanism to a fixed dollar amount or some percentage of the Base Purchase Price.

A Vendor preparing a "white map" agreement must construct the operative provisions carefully. Provisions that link the Purchaser to obligations that relate only to wells or tangibles used to produce "Petroleum Substances" or the exploitation of the "Lands" or "Leases" respecting the area within the boundaries of the "white map area" are flawed. This is because the ultimate linkage to Petroleum Substances, Lands and Leases offers flexibility if there are additional interests (i.e., undescribed rights), but is limited only to the current tenure that is a subset of the "white map area" for any obligations for old wells not located on the currently held tenure. In the absence of an all-encompassing reference in the introduction of the definition of Environmental Liabilities to liabilities anywhere within the "white map area" without any linkage of that reference to the Petroleum and Natural Gas Rights, the Vendor could potentially find that the intended transfer of residual obligations to the Purchaser for the area is not successful.

Similarly, a Vendor preparing a P&S Agreement that includes a "white map area" structure must be careful in connecting the obligation to past activities of not only the Vendor, but its current Affiliates and all of its other predecessors in interest. The latter is particularly important for situations in which the Vendor's residual obligation has accrued to it from a predecessor in interest that no longer exists as of the Effective Date.

Each Party should ensure that it has obtained legal advice when preparing or reviewing any "white map" agreement.

Excluded Assets: i) This definition was introduced in the 2017 PTP. It addresses the types of exclusions that had been identified in the 2000 definition of Miscellaneous Interests as exclusions from that definition. It also addresses expressly other exclusions inherent in a Transaction, such as: (a) mineral rights subject to the Leases that are not included in the Transaction and retained interests in the equipment included in the Tangibles; (b) the handling of volumes produced (but not sold) as of the Effective Date, subject to a qualification with respect to "tank bottoms" and a sulphur pad or storage block whereby they are included in the Assets unless otherwise agreed by the Parties; (c) any Assets not being disposed to the Purchaser because the exercise of a ROFR by a third party; (d) any fee simple mineral interest of the Vendor or ORR accruing to it not identified as forming part of the Assets; and (e) excess inventory of tubing, etc. temporarily held on location. While this handling of produced volumes reflects typical industry practice, Parties will sometimes prefer not to address produced volumes in tanks on site in this manner because of potential challenges in measuring volumes accurately, particularly if the volumes are modest. (See also the annotations on Clause 4.01.) It is mutually beneficial to be clear in the applicable Schedule about the nature of any Excluded P&NG Rights and Excluded Tangibles, particularly for a partial interest disposition.

A Party using a mineral report run from its land information system will need to identify the exclusion of any fee simple mineral or ORR interests being retained by it very clearly to ensure that the applicable interest falls within the scope of the Excluded Assets definition. Otherwise, the inclusion on the report would see them being included in the Assets. In practice, a Vendor with fee simple title would be clear about its intention.

ii) Unless provided in the Agreement or as otherwise agreed by the Parties, the Assets generally do not include: (a) the Vendor's tax and financial records; (b) the Vendor's economic evaluations; (c) other than for geophysical data listed in a Schedule that was acquired under a unit agreement, the Vendor's proprietary geophysical data or other of the Vendor's proprietary technology or interpretations; (d) trade data or studies that the Vendor acquired subject to restrictions on disclosure; (e) legal opinions; and (f) other exclusions that are specifically identified in a Schedule. Computer equipment and software serving the Assets are also excluded as a general rule, as they are often proprietary technology or held subject to a licence that restricts disclosure by the Vendor, but SCADA is an exception to that. It was not feasible to add seismic provisions to the PTP.

The release of proprietary technology or economic evaluations could damage the Vendor's competitive position because of the insights those disclosures could provide about the manner in which the Vendor conducts its business. There may also be circumstances in which the Vendor's ongoing work in an area would see it want to modify Paragraph (h) to exclude core data that would otherwise fall within the Miscellaneous Interests.

iii) The narrow reference to an ownership interest in geophysical data acquired under a unit agreement was included because of the linkage of the data to the unit interest and the likely expectation of the Purchaser that it obtain an interest in all assets held under the unit. The Parties might want to modify their Agreement to be clear that any induced seismicity monitoring data that had been obtained would be included in the Assets.

iv) The Vendor would often make proprietary geophysical data respecting the lands available to a Purchaser through either the normal data licencing mechanism at a preferential rate or by selling its ownership in 100% proprietary data while retaining a licence to use. However, the Vendor would generally wish to retain trading rights to its owned data (and provide only a licenced copy of that data) for two reasons. Firstly, the intellectual property (i.e., potential future sales of the data to third parties) is an asset that has no connection to the Purchaser's acquisition of the Lands. Secondly, the retention of trading rights gives the Vendor control over future disclosure of the data, something that is particularly relevant if there is the possibility that it may conduct an exploration program for the shallow or deep rights underlying the Lands. However, the Parties will sometimes include a licence to proprietary seismic data in the Assets, as noted in the annotations on Clauses 2.01 and 2.02, and this would require the inclusion of additional provisions in the Agreement. The issues with geophysical data (e.g., data owned with third parties, the handling of derivative products, change in control) are beyond the scope of the PTP. In addition, a Vendor has no right to share data licenced from a third party.

v) Set-up data for Wells will typically be provided in an Excel spreadsheet or some other editable electronic format.

vi) Paragraph (o) recognizes that the Vendor may have stored surplus material owned by it (or with third parties other than the Well owners) at a site in circumstances in which that material is not intended to be used for the Assets. The Vendor should identify any such surplus material to the Purchaser, in writing, preferably before, or in conjunction with, the Purchaser's site visit. The Vendor should remove that surplus material prior to Closing or shortly thereafter, as contemplated by Clause 11.03.

vii) Agreements sometimes state that land abstracts fall within the scope of Excluded Assets. This possibly reflects a concern about potential liability due to reliance by the Purchaser on that information when setting up its records. This has not been done in the PTP because of the protections offered to the Vendor under Clause 6.03.

Excluded P&NG Rights: i) The inclusion of this definition and the definition of Excluded Tangibles as of the 2017 PTP simplifies the preparation of the Agreement if the Vendor is selling only a portion of its interest in the equipment and mineral rights that are included in the Assets.

ii) These are areal, stratigraphic and substance rights (or interests therein) subject to the Leases that are not included in the Transaction. If the Vendor were selling only 50% of its working interest, the retained 50% would fall within the scope of this definition. It is mutually beneficial to be clear in the applicable Schedule about the nature of any Excluded P&NG Rights, particularly for a partial interest sale.

iii) A Vendor that retains strata (or production therefrom) not included in a Transaction would be prudent to include a definition of the applicable geologic cutoff in its Head Agreement, particularly if the zone designation is known to be one that can be the subject of interpretation (e.g., the Mannville group). The risks in not including a definition of the applicable strata that links to a log for a particular well are shown by Nexxtep Resources Ltd. v. Talisman Energy Inc., 2012 ABQB 62 (Alta. Q.B.), appeal dismissed 2013 ABCA 40 (Alta. C.A.).

In that case, Talisman operated a vertical shallow sweet gas well in an interest set that was very different than the interest set associated with a deeper horizontal sour gas well that was operated by a different party. The sale agreement was for rights for "PNG base of Mannville to base of Pekisko", and the schedules referred to the deep working interest owner set, Talisman's status as a non-operator and the related horizontal well, without identifying on the schedules for the sold assets the other working interest set or the vertical well. Two years after closing, Nexxtep applied to the regulator for a re-designation of the productive interval of the vertical well as being below the base of the Mannville. It agreed with Nexxtep and re-designated the pool accordingly. Nexxtep sued for trespass, while recognizing that it did not acquire the vertical wellbore.

The Court concluded that there was a mutual mistake about the producing horizon when the agreement was made. Nexxtep argued that the reference in the agreement to "PNG base of Mannville to base of Pekisko" conveyed those mineral rights to it and that the Court was precluded from considering any extrinsic evidence to the contrary. The Court concluded that it could look at the "factual matrix." It concluded, when the agreement was interpreted as a whole and looked at objectively, that there was no conveyance of the vertical well or the associated pool and that the transaction related solely to the non-operated interests below the base of the Mannville, together with the related horizontal well.

iv) The nature of the interests and the related operations retained by the Vendor are sometimes such that the Purchaser will require additional provisions comparable to the "Reserved Formations" provisions of the CAPL Farmout & Royalty Procedure to address such matters as interference with operations and indemnification obligations for losses resulting from the Vendor's operations in its Excluded P&NG Rights. The inclusion of this definition reminds Purchasers of the need to consider that potential issue, and offers a platform for any such content.

Excluded Tangibles: This definition recognizes the possibility that the Vendor could be retaining an interest in equipment in which other of the Vendor's interest is included in the Tangibles being disposed by it in the Transaction. This might relate, for example, to other functional units of a Facility than those being sold or the sale of only a partial interest in the applicable equipment included in the Tangibles (e.g., only 25% of the Vendor's interest). It is mutually beneficial to be clear in the applicable Schedule about the nature of any Excluded Tangibles.

Extraordinary Damages: i) This definition used as its foundation the comparable definition in the 2015 CAPL Operating Procedure.

ii) It is tempting to assume that a Court would make such an award in the absence of this definition and the proviso in the definition of Losses and Liabilities. The case law on damages would apply, though. This includes limits on the range of damages that a Court could award for any such breach because of legal principles respecting "causation", "foreseeability" and "remoteness".

iii) The exception for breaches of Article 16.00 was included because an unqualified version of this definition would, in essence, eliminate all consequences in damages for breach of the confidentiality obligations.

iv) This definition must be read in conjunction with the definition of Losses and Liabilities. The proviso in that definition ultimately does not expose an injured Party to third party damage claims of this type that may be awarded by a Court. It precludes the injured Party from trying to recover these types of damages respecting its own interest. It does not eliminate the obligation of the Party causing the loss to indemnify the injured Party against third party claims suffered by it.

v) Assume that a Party is responsible for a loss. How do the Parties determine what portion (if any) of a damage award is attributable to Extraordinary Damages and has to be netted out? The Parties to any lawsuit will have to be cognizant of this liability exclusion and ask a Court to differentiate between the different heads of damages in any award of damages. Practically, this will always be the case, as the Party defending the action will raise early and often the fact that there are excluded heads of liability. If there remains confusion about the constituents of a Court awarded damage claim, the Parties may avail themselves of the "advice and direction" mechanism under the Alberta Rules of Court whereby the judge might clarify the damage award. The Parties could also address this if they were resolving a claim through arbitration.

vi) The handling of consequential damages relating to breach of confidentiality obligations might also be addressed in any existing confidentiality agreement that the Parties choose to keep alive under Clause 1.13, notwithstanding the protections afforded by Article 16.00 of the PTP.

Facilities: i) Many Purchase and Sale Agreements tend to include a loose description of the Tangibles, often using a general statement and relatively little information in the Schedule. This approach is particularly problematic when dealing with infrastructure that supports other operations, such as major pipelines and plants. The traditional approach often makes it extremely difficult for a Purchaser that is not familiar with the Assets to understand what it is acquiring off the wellsite. As a consequence, the 2000 PTP required the Parties to identify on a Schedule all non-unit production infrastructure that extended beyond the Lands (i.e., the wellsites). However, neither the 2000 nor 2017 PTP prescribe the name of the Schedule in which this information is to be presented because of the belief that the Parties should be able to use their own preferred Schedules.

This definition has been simplified significantly in the 2017 PTP because of concerns about the scheduling expectations in the 2000 PTP. This definition and the related definition of Tangibles provide the Parties with greater flexibility with respect to the manner in which they choose to describe the Facilities and Tangibles.

Notwithstanding the greater flexibility provided in this definition, it is the better practice for the Parties to describe any production infrastructure, such as plant interests and pipelines, in reasonable detail in a Schedule insofar as those Assets are not located solely on a well site. This is particularly the case with respect to any infrastructure governed by a CO&O Agreement and any pipeline serving wells held under more than one land agreement. While this might pose a burden on a Vendor in a larger scale regional disposition, it would be a much simpler task with respect to the typical low to modest value Transaction for which the PTP is likely to be used. It would be prudent for a Vendor to understand this during its initial internal due diligence process in any event, so that it could properly assess the value of the Assets being disposed.

ii) While not required, unit interests could be addressed relatively simply through a specific reference in a Schedule to Facilities held under the applicable unit operating agreement. This might be done through the inclusion of a statement such as: *"...the _____% participating interest of _____ (the Vendor/Party's name) in the "Unit Facilities", as defined in the ABC Unit #1, including (insert whatever is appropriate - i.e., the gas gathering and handling system subject thereto and its ____% participating interest in the CDE Gas Plant)."*

iii) As the Vendor's interest in a Facility could vary, it is the better practice to list all functional unit and segment interests being disposed of clearly in a Schedule. Since a Vendor will often retain a portion of its interest in a Facility (i.e., X% of its interest, certain plant functional units or pipeline segments), it may be prudent to address excluded infrastructure expressly to minimize the potential for subsequent disputes. It may also be beneficial to state that certain infrastructure is excluded if the Vendor is retaining it in its entirety to support other operations or for its midstream business. The importance of Facilities information is such that Parties will typically include a separate Facilities Schedule.

General Conveyance: The PTP presumes that the Head Agreement will be structured so that the Head Agreement does not convey the Assets by its own terms. Although a conveyance form of document has often been used for the disposition of minor value properties, it is expected that the PTP will often be used for Transactions that would have previously used that form of document. This is because the PTP generally will provide the same process efficiencies for the completion of minor Transactions (ease of review, reduced cycle time, customization of representations and warranties to minor properties), while providing a much greater degree of certainty for the Parties in the period between the Effective Date and the

Closing Time. Although the PTP is much longer than the typical conveyance type agreement, the expectation is that the benefits of using it for those minor Transactions will be apparent once the Parties are familiar with it.

The PTP offers a platform that can greatly simplify the sale or swap of undeveloped lands. See the sample undeveloped acreage sales and swap included as Addendums V-VII after the General Conveyance at the end of the PTP. Those examples demonstrate the potential efficiency enhancements in processing those types of Transactions by using the PTP.

Gross Negligence or Wilful Misconduct: i) This definition is based on the 2015 CAPL Operating Procedure definition, and has been included because of the references to this term herein. The annotations in that document offer additional insights on this definition.

ii) Early judicial considerations of the concept of "gross negligence" were often in automobile cases in which an injured non-paying passenger had to prove that the driver's conduct was "grossly negligent" ("gratuitous passenger cases"). The issue was considered more recently in the context of the 1990 CAPL Operating Procedure and loss of a mineral interest in Adeco Exploration Company Ltd. v. Hunt Oil Company of Canada Inc., [2008] A.J. No.836 (Alta. C.A.), affirming 2007 CarswellAlta 1953 (Alta.Q.B.). In making a finding of gross negligence, the Court of Appeal cited phrases from prior cases, such as "very great negligence", "conscious wrongdoing", "a very marked departure" from the standard of care, "the character and the duration of the neglect to fulfil [the] duty, including the comparative ease or difficulty of discharging it" as "important, if not vital, factors in determining whether the fault (if any)….is so much more than merely ordinary neglect that it should be held to be a very great, or gross, negligence" and "conscious indifference."

The 2007 CAPL Operating Procedure definition that did not include the Paragraph (a) content was considered in Bernum Petroleum Ltd. v. Birch Lake Energy Inc., 2014 CarswellAlta 1965 (Alta. Q.B.). It related to the manner in which the operator conducted joint operations on two wells. The Court referred to both the common law and the definition, and concluded that the determination of gross negligence or wilful misconduct is both fact and context specific. It recognized that there is significant risk in industry projects, that many things can go wrong when conducting operations and that "…Often, decisions in the course of drilling must be made quickly without time for extended consultation or analysis." Two major factors that contributed to finding in favour of the operator were, firstly, the non-operator's "failure to lead evidence on industry standards by which the actions of Bernum could be compared" and, secondly, that the non-operator did not object to the operator's drilling program until well after the fact. Based on this case, a Party should express any concern promptly in writing, and it should prepare for any litigation in the context of industry standards and the potential impact of a different approach on the outcomes.

iii) The ability to use instructions of the other Party as a shield only exists if the act or omission constituting Gross Negligence or Wilful Misconduct was inherent in the instructions. Prudent instructions implemented in a manner that meets the Gross Negligence or Wilful Misconduct test should not allow a Party to avoid sole liability.

GST/HST: GST/HST at the prescribed rate would notionally be charged for the $1 or $10 of Miscellaneous Interests in an undeveloped lands Transaction. In practice, few Vendors would actually collect that amount, as there would be no Tangibles for which GST/HST would be required.

Interest Amount: i) This definition relates to the accrual of interest under Alternate 1 of Clause 2.06. It was introduced in the 2017 PTP because of the possibility that the Parties may structure their Agreement so that interest accrues on the Purchase Price during the Interim Period. This reflects the premise that the accrual of interest reflects the benefit the Purchaser is receiving from the allocation of production revenue to it for the Interim Period through the Article 4.00 adjustments process.

Any Interest Amount that results in an adjustment of the Purchase Price will be allocated entirely to the Petroleum and Natural Gas Rights under Clause 2.06, provided that it will be allocated entirely to the Tangibles if there are no Petroleum and Natural Gas Rights included in the Transaction.

ii) The Interest Amount (and the other interest accruals contemplated in Article 2.00) are at the Prime Rate, plus one percent per annum. Many agreements will use Prime Rate, Prime Rate plus two percent per annum or another interest rate. Parties that prefer a different handling are free to negotiate their preferred handling in their own Agreement.

Interim Period: The inclusion of this definition streamlines the provisions pertaining to the maintenance of business during the period up to the Closing Time. (See Clause 4.03 and Article 5.00.)

Land Schedule: The Parties will customize the list of Schedules to their particular Transaction. This definition has been structured so that the Land Schedule includes "without limitation" certain land information, recognizing that some Vendors might prefer to list ROFRs and applicable contracts on a separate Schedule. The PTP is prescriptive about the requirement to identify certain types of information without specifying the particular Schedule in which that information is to be provided. Being prescriptive about Schedules would have adversely impacted acceptance of the PTP. (See also the definition of Schedule.)

Leases: The definition includes a reference to certificates of title because of the possibility that the Vendor may wish to dispose of any fee simple interest held by it under this Transaction. While this might be the case for a Transaction in which the Vendor holds minor fee simple interests that are incremental to the property, this assumption will not always be accurate. Given that any fee simple interest of the Vendor or any overriding royalty accruing to it is only included in the Assets if identified specifically on the Land Schedule or otherwise in the Head Agreement, the Vendor would want to be very clear about the handling if it were disposing of Leases in which it wished to retain a fee simple lessor interest or overriding royalty. It would typically want to include a clear statement that it is retaining its fee simple title as lessor under those Leases. If the fee simple interest were not subject to any Lease at the time (and the Purchaser wishes to obtain one), the Parties would presumably also be including in the Agreement a Schedule outlining the form of Lease that the Parties would be entering into at Closing for the applicable rights being leased by the Vendor to the Purchaser as part of the Transaction.

Licencee Rating: i) The definition has been structured as a generic definition that could apply across multiple jurisdictions over time.

This is consistent with the generic manner in which the PTP addresses the representation of each Party about the ability to make or accept a transfer of a licence of a Well or particular Tangible under the Agreement. (See, for example, the annotations on Clause 3.04, Paragraph 6.02(q) for the Vendor and Paragraph 6.04(d) for the Purchaser and the condition in Paragraph 10.01(e).)

ii) If the ability to effect a transfer of any licence for any of the Assets is in question, the onus is on the Parties to add custom content in their Head Agreement to address their particular needs. This might be done, for example, by including additional definitions, a Clause that relates to the specific handling required for their circumstances and the inclusion of additional conditions to Closing. Reviewing the Regulations for a Transaction is particularly important if they include a requirement for a review of a proposed transfer of a regulatory licence, permit or approval through a process in which that approval might not be granted, since this could require the inclusion of a Closing in escrow process in the Agreement.

There were two reasons for this approach. The first was the belief that the PTP should not attempt to predict or prescribe the handling of an emerging issue of increasing importance that should be assessed and handled by the Parties and their applicable legal advisors on a case-by-case basis. The second was that the fluidity of the Regulations on this area over time and across jurisdictions was such that any more specific handling of the issue in the PTP could potentially create unintended consequences for the Parties over time.

Losses and Liabilities: i) This definition is based on the definition in the 2015 CAPL Operating Procedure, with the addition of a proviso based on Clause 4.04 of that document. It streamlines the liability and indemnification provisions throughout the Agreement. (See, for example, Clause 5.08 and Article 13.00.)

ii) The reference "(including that Party)" clarifies that Losses and Liabilities apply to both third party claims and losses suffered directly by a Party.

iii) In the absence of the qualification before the proviso, legal costs to be recovered by the indemnified Party would be limited to costs on a party-party basis, as prescribed by the Alberta Rules of Court. This would usually be far less than the actual costs paid by a Party.

iv) The protection granted by this definition does not extend to third party damages for which the injured Party is entitled to be indemnified. The

provision distinguishes between a Party's damages relating to its own interest and requiring the innocent injured Party to compound its loss by paying cash amounts to a third party for any Extraordinary Damages awarded to that third party by a Court.

v) The definition is also subject to the general legal duty of an injured Party to mitigate its losses. This may include, in part, a duty to notify the other Party of the losses, so that corrective measures can be taken at the earliest opportunity.

Market Price: i) This definition was introduced in the 2017 PTP. It is based on the definition in the 2015 CAPL Operating Procedure, with the replacement of the optional sentence therein with a new last sentence relating to the Vendor's pre-existing *bona fide* arm's length sales agreements due to the differences with A&D. The 2015 CAPL Operating Procedure annotations offer additional insights on this definition.

ii) This definition was included to create greater certainty and protection for the Purchaser with respect to the Vendor's disposition of production volumes during the Interim Period on behalf of the Purchaser. This is particularly important during a period in which there is volatility in the price at which production is being sold in the marketplace. Paragraph 4.01(f) requires the Vendor to adjust accounts between the Parties using a Market Price for volumes being sold on behalf of the Purchaser during the Interim Period and that period following Closing during which the Vendor continues to market production on behalf of the Purchaser. Notwithstanding that objective, the definition is structured to offer suitable protection for the Vendor in circumstances in which the Vendor is selling Petroleum Substances under a pre-existing bona fide arm's length sales agreement of the type contemplated in Paragraph (c) of the definition of Title and Operating Documents. That being said, the Parties might also choose to enter into a separate asset specific marketing arrangement for the handling of production during that period.

This is an issue on which industry agreements respecting asset dispositions have tended to be silent. As a consequence, the purchasers thereunder have been at some risk in the absence of supplementary agreements between the vendor and the purchaser addressing the handling of production volumes during the period in which the vendor manages production volumes from the sale property on behalf of the purchaser.

iii) The definition refers to "the kind, quality and volume of Petroleum Substances disposed." Natural gas is typically measured at the wellhead as a volume (mcf), yet is sold as a heat equivalency (GJs). The Parties need to understand if the definition adequately describes a natural gas product with a high heat content (sold for a higher price), versus dry gas that might be included in a corporate pool price and derive a lesser value. Companies may decide it is more economic to leave the liquids in the gas and derive a higher gas sales price vs paying for processing. The Parties should address this on a custom basis in their Head Agreement if it is regarded as a material issue in their Transaction.

iv) The challenge with this type of definition is to include pricing mechanisms that protect against notional, discretionary allocations of the least favourable marketing arrangements in the Vendor's portfolio, while not creating inappropriate outcomes for it. There were two alternative approaches that could have been taken on this issue-(a) the inclusion of a detailed, prescriptive pricing mechanism that specified what the price is; or (b) a more general mechanism that focused on what the price is not, by including process controls to limit any attempt to use a price that is unreasonable. This definition uses the second approach. This approach preserves the desired flexibility in the vast majority of cases, while addressing the problem of arbitrary pricing allocations resulting from unfavourable hedging arrangements.

v) The onus is on a Purchaser to demonstrate that a sale price was unreasonable, having regard to market conditions at the time. This ensures that the Vendor is not required to investigate each sale opportunity to try to obtain the highest price available in the marketplace.

vi) A Vendor with a large portfolio of unfavourable marketing arrangements would often want to negotiate a different handling for the Interim Period, particularly if the financial records associated with the Assets reflected the pricing under those marketing arrangements.

Miscellaneous Interests: i) The value of the Assets is typically allocated to the "hard assets" - the Petroleum and Natural Gas Rights and the Tangibles. There are, however, other items which, while not having a readily quantifiable value, enable the Purchaser to use those assets - the Miscellaneous Interests. These include such items as the applicable operating, J.V. and unit agreements/files, production sale contracts, Surface Rights, wellbores and geological and engineering records. (J.V. accounting records would also tend to be provided for operated properties.)

ii) The definition of Title and Operating Documents referenced in Paragraph (a) includes certain production sale agreements, surface agreements, pad site sharing agreements and J.V. production handling agreements. That definition may be broader than that with which users are familiar.

iii) Wellbores and casing are characterized as intangibles for tax purposes. The wellhead and other surface equipment are Tangibles.

iv) The corresponding definition and the related annotations in the 2000 PTP also addressed information and materials that were excluded from the Miscellaneous Interests. The definition of Excluded Assets and the associated annotations address that content as of the 2017 PTP.

v) Other than for seismic, microseismic and proprietary interpretations falling within the definition of Excluded Assets, Paragraph (d) would include core and sampling information. A Vendor that intends to exclude that information would need to modify the applicable definitions.

vi) SCADA and other field measurement systems are addressed in the definition of Tangibles.

Permitted Encumbrances: i) The Assets are not maintained in a vacuum. A Purchaser cannot expect to step into the shoes of the Vendor and acquire them without any restrictions on their use. A Vendor should be very cautious about modifying the items in this definition because of the degree to which the representations and warranties made by it under Clauses 6.01 and 6.02 are ultimately linked so closely to the definition of Permitted Encumbrances. Similarly, a Purchaser should be cautious about adjustments to this definition that broaden the scope of this definition because of its impact on the Vendor's responsibility for the representations and warranties made by it under those Clauses.

The Assets are subject to a very wide spectrum of regulatory control. The Leases will also include certain restrictions and require the performance of certain obligations if they are to be maintained in good standing, such as an obligation to pay royalties. The Vendor should be clear about any unique royalty obligations that would not be transparent to a potential Purchaser, as well as the status of any royalty free or other reduced royalty program in its communications with the Purchaser. The Assets will also generally be subject to certain restrictions because of their inclusion in operating and unit agreements with third parties. These types of "clouds" on the use of the Assets exist in the normal course of business, and generally do not significantly diminish the value of the Assets to the Purchaser."

Certain other types of "clouds," however, have a material impact on the Purchaser's assessment of the value of the Assets. These include such items as ORRs held by third parties, ROFRs applicable to this Transaction, "live" farmouts, applicable penalties/cost recoveries, unit agreements, CO&O agreements, pad site sharing agreements and J.V. service agreements with longer termination provisions (i.e., longer than 31 days).

To bring these items within the scope of this definition, the latter items must be identified in the Land Schedule or one of the other Schedules to the Agreement, so that the Purchaser can take those items into account when determining the Purchase Price. (Marketing agreements exceeding 31 days also must be identified in a Schedule under Paragraph (c) of the definition of Title and Operating Documents.) However, the PTP does not specify the Schedule in which that information is to be provided, such that the Parties can use their own preferred Schedule names and formats.

It is also the better practice to describe in reasonable detail in any sale brochure any marketing agreements that are to be assigned and miscellaneous J.V. agreements, such as CO&O Agreements, pad site sharing agreements, water disposal agreements, processing or transportation arrangements and contracts with field operators. Those agreements can create material obligations.

ii) The reference "(or is pending at the Effective Date)" was introduced in Subparagraph (a)(iv) of the 2017 PTP. It recognizes that any consequence of non-participation that may apply to the Vendor as a result of its election not to participate in an operation under the Operating Procedure actually only crystallizes when that operation has been conducted and the entitlement of the participants to that consequence confirmed.

iii) The inclusion of only those Rights of First Refusal identified in a Schedule as Permitted Encumbrances creates an obligation on the part of the Vendor to review its obligations to third parties carefully. In practice, a ROFR under a land or J.V. agreement that is overlooked when building the Schedule is typically added without objection if it is discovered during the title review.

The alternative structure of this provision would provide that unidentified ROFRs would automatically be Permitted Encumbrances. This would provide little accountability to the Vendor in the preparation of its Schedules, and frequently result in delays in Closing Transactions. In addition, potential Purchasers would often unintentionally bid on properties with ROFRs because of the erroneous expectation that ROFRs did not exist.

iv) There is often some confusion about the inclusion of a Right of First Refusal as a Permitted Encumbrance, as a ROFR applicable to the Transaction would be exercised, waived or have lapsed prior to Closing. The reason for inclusion, though, is that the Purchaser acquires its interest subject to this restriction on its interest as regards any future dispositions if third parties hold the remaining interest under the ROFR agreement.

v) The Paragraph (b) type reference is sometimes qualified with a reference such as "that do not materially impair the use of the affected Assets." A Purchaser should make this an area of focus in its due diligence process if it has any such concern about the impact of the Permitted Encumbrances on its ability to use the Assets in the manner it intends. In addition, the inclusion of any such reference potentially creates a platform for unnecessary disputes, particularly when the respective uses can change over time.

vi) Paragraph (h) provides that a lien being contested in good faith is a Permitted Encumbrance. While generally appropriate, there may be circumstances in which the Vendor's financial situation or track record is such that a Purchaser will not be willing to accept this outcome. That being said, the Vendor may be required to identify certain contested liens in a Schedule under the Lawsuits and Claims representation being made by it under Paragraph 6.02(b) if the disputed lien was potentially escalating to litigation.

vii) Paragraph (k) states that Title Defects that are disclosed in the Agreement or had been identified and waived at Closing are Permitted Encumbrances. This does not adversely impact the Purchaser's rights with respect to certain other Title Defects that may only be discovered after Closing. The primary examples of those would be Title Defects that were: (a) not apparent because of the Vendor's failure to provide access to the required files in violation of the Provision of Documents representation in Paragraph 6.02(p) and a corresponding duty in Paragraph 8.01(a); (b) created as a result of the Vendor's breach of its maintenance of business obligations under Clause 5.03; and (c) subject to the handling in Clauses 6.05 and 13.01 for violation of the Vendor's representations and warranties under Article 6.00. (See also Subclause 8.02D.)

viii) Paragraph (l) was introduced as of the 2017 PTP, and captures any other adverse claims identified on a Schedule.

Petroleum and Natural Gas Rights: i) The interest being conveyed is the specific interest described in the Land Schedule, such that the Purchaser does not automatically acquire any additional interest held by the Vendor.

The Parties could easily modify this and the definition of Tangibles to link the disposition to the Vendor's entire interest if their intention is to acquire any incrementally greater interest held by the Vendor if the interests are unclear. (See also the annotations on Clause 1.03.)

ii) Farmins and other "live" earning agreements are included here, even though earning has not yet occurred. These interests might also be interpreted as Miscellaneous Interests in the absence of this reference. The Parties may wish to consider this question in certain circumstances because of the potential impact on the tax allocations if unearned rights comprise a large portion of the Lands.

iii) Under the definition of Excluded Assets, any fee simple mineral interest of the Vendor or ORR accruing to it is only included in the Petroleum and Natural Gas Rights if it is identified as forming part of the Assets. A Party using a mineral report run from its land information system as the Land Schedule will need to identify the exclusion of any fee simple mineral or ORR interests being retained by it very clearly to ensure that the applicable interest falls within the scope of the Excluded Assets definition. Otherwise, the inclusion on the report would see them being included in the Assets. In practice, a Vendor with fee simple title would be clear about its intention.

iv) It is unlikely that the PTP would be used for a SAGD or other bitumen project. The reference provides context for any such deal, though.

Pipeline Records: i) This definition was constructed as a generic definition that could apply across multiple jurisdictions, and reflects the recent emphasis on pipeline records in Alberta. The definition simplifies the drafting in other provisions of the PTP.

ii) The Parties may prefer to modify this definition to include a more detailed description of the required records in a Schedule if warranted due to more experience with the requirements of the Regulations or the nature of the Assets. This may be also be beneficial if there is uncertainty at the time as to what the AER considers as 'records required by CSA Z662 and the Pipeline Rules'. (See Clause 3.07, the related annotations and Paragraph 6.02(r) for additional context.)

Prime Rate: i) The inclusion of this definition allows the Parties to address the interest provisions in the PTP (Clause 2.03, Clause 2.06, Paragraph 4.01(k) and Clause 12.02) more simply if they prefer a different interest rate than set forth in any of those provisions.

ii) Some Vendors might make a corporate preference change to identify their principal banker more specifically.

Property Transfer Procedure: Although a form of General Conveyance was created in conjunction with the PTP, it was recognized that Parties may prefer to include their own preferred form of General Conveyance in the Agreement. As a consequence, it is not part of the PTP.

Purchase Price: i) A definition of Base Purchase Price was introduced in the 2017 PTP to address the original contemplated consideration before the adjustments and other modifications contemplated in the PTP. Some of the annotations on the 2000 version of this definition were also shifted to that definition as a result of that change.

ii) The Purchase Price would be increased by any interest that accrues for the period between the Effective Date and the Closing if the Parties negotiate the use of an interest mechanism in their Transaction under either Alternate in Clause 2.06. Clause 2.06 allocates incremental interest to the Petroleum and Natural Gas Rights, subject to any application of Clause 1.05 if the Assets do not include Petroleum and Natural Gas Rights. The Purchase Price would also be modified to reflect any Interim Period adjustments on the basis prescribed in Article 4.00. A positive balance for the Article 4.00 adjustments would reduce the cash payable at Closing.

Purchaser: This definition was introduced in the 2017 PTP to reflect the fact that the vast majority of Transactions will be sales for which the Parties would prefer to use the traditional Vendor and Purchaser references. The definition of Asset Exchange, this definition, the definition of Vendor and the corresponding definitions of Transferor and Transferee introduced in the 2017 PTP have allowed the PTP to be written to address sales, with rules of interpretation that accommodate an Asset Exchange.

Regulations: The reference to "the Assets, the Parties or the Transaction" is included to ensure that both applicable provincial and federal rules apply. Because of the division of powers between the two levels of government, the federal regime focuses on bodies, rather than properties.

Representations and Warranties Certificate: i) This definition has been included to streamline the applicable conditions to Closing and to accommodate the possible structure of the Agreement if this certificate is not required. The Parties will often choose not to include the certificate for minor value Transactions to minimize the administrative effort associated with those Transactions, particularly for non-operated properties.

ii) Some companies have the certificate executed by authorized employees who are not officers. Those companies may wish to consider a custom change for their agreements. This flexibility was not introduced in the provision in light of the many instances in which an acquiring Party requiring a certificate would prefer the higher level of comfort inherent in a certificate executed by an officer.

Required Approvals: This definition was introduced in the 2017 PTP. It addresses any approval(s) required under the *Investment Canada Act* and the *Investment Canada Act*, or either of them, as applicable. While it is unlikely that either of those approvals would be required for a Transaction that is likely to use the PTP, it is possible (e.g., a property with a partial interest and a book value that is heavily impaired).

This definition and the related content in Clause 6.01 and Article 10.00 and the related annotations have been included primarily because the PTP is likely to be used as a reference document when reviewing another form of document.

Right of First Refusal: See the detailed discussion on Rights of First Refusal in the annotations near the end of the PTP. Also see the detailed discussion in the annotations on Article 24.00 of the 2015 CAPL Operating Procedure.

Schedule: It is expected that the Parties will customize the list of Schedules for the Agreement in the Head Agreement. There was no attempt to do this in the PTP because of the differences in the manner in which companies prefer to present the information to be included in Schedules and the possibility that the Agreement could be an Asset Exchange Agreement. However, there are specific requirements to include prescribed types of information in a Schedule in addition to the normal land information (e.g., certain J.V. agreement and marketing information, live AFEs, certain Facilities and Tangibles, etc.). The applicable provision of the Head Agreement might be something such as: *The following Schedules are attached hereto and made part of this Agreement:*

(a) Schedule "A", which is the Property Transfer Procedure;
(b) Schedule "B", which is the Land Schedule, and identifies (i) the Lands; (ii) the Leases; (iii)….;
(c) Schedule "C", which is the_____, etc.;
(d) Schedule "?", which is the form of the Representations and Warranties Certificate; and
(e) Schedule "?", which is the form of the General Conveyance.

Scheduled Closing Date: This definition was introduced in the 2017 PTP. This definition and the related annotation should be reviewed in conjunction with the definition of Closing Time. A sample definition for the Head Agreement is: *"Scheduled Closing Date" means (date).* As is the case with the definition of Effective Date, it links back to the Head Agreement to make the contemplated dates readily apparent to readers.

Specific Conveyances: i) The Specific Conveyances are those documents, other than the General Conveyance, delivered to effect the conveyance of the individual Assets to the Purchaser. The General Conveyance is excluded because of its application to the Assets as a whole.

ii) The proviso at the end of the definition was introduced in the 2017 PTP. Surface Rights relating to road use agreements and crossing agreements are typically held under "master agreements" between the applicable grantor and grantee, such that the Vendor cannot assign its interest thereunder. Although the existence of any such agreement would be identified to the Purchaser, the Purchaser will need to enter into new agreements for the applicable Surface Rights within 60 days after Closing.

iii) As noted in the annotations on Clause 3.03, the importance of a clear handling of Environmental Liabilities is such that both the Vendor and the Purchaser need to be very careful when determining whether a 4A (assignment of interest in entire agreement) or 4B (assignment of interest in less than entire agreement) election is made in a notice of assignment under the CAPL Assignment Procedure if the applicable agreement had originally included other since expired lands with abandoned wells that are not referenced in the Agreement.

Surface Rights: i) Users need to recall that Surface Rights and other operational licences falling within the scope of the Miscellaneous Interests will only be assigned to the Purchaser if it is replacing the Vendor as Operator. There would be no assignments if the Vendor were a non-operator or it were only disposing of a portion of its interest while remaining as operator with its residual interest.

ii) The Surface Rights acquired for an undrilled location fall within the scope of the definition because of the broad "all rights to use the surface of land in connection with the Assets" reference. The "including" reference that follows is a non-exhaustive list of examples.

iii) Agreements tend to be silent about the handling of Surface Rights if the Vendor is retaining other operations in the area. If the Vendor, for example, is retaining a road, it will probably enter into a road use agreement with the Purchaser.

Expectations about the Vendor's retention of rights for certain Surface Rights would ideally be communicated early in the negotiations, preferably in any sale brochure. In practice, though, these issues often are not fully appreciated until the assignments are being prepared, so are to be identified to the Purchaser at least five Business Days prior to Closing, unless otherwise agreed by the Parties. While that timing seemed reasonable for the typical Transaction for which it is likely that the PTP will be used, the issue could be more complex for some Transactions. Notwithstanding the expectation in this definition, there will be many circumstances in which the interrelationships between the Assets and the Vendor's other operations will not be fully understood prior to Closing, such that the Parties will often amend the contemplated timing.

Although it is preferable to have as much clarity in this area as is possible prior to Closing, Parties have typically addressed these issues as they are discovered in a manner that is consistent with the outcomes in this Subclause. Parties will also sometimes negotiate a different outcome than contemplated by the exception, whereby the applicable Surface Rights will be transferred to the Purchaser subject to an ongoing licence for the Vendor to use those Surface Rights on mutually acceptable terms.

iv) The Vendor is to provide the Purchaser with access to roads comprising the excluded surface rights on such terms as are reasonable in the circumstances, insofar as access is required for operations respecting the Assets and the Vendor is permitted to provide that access under its own access terms. This access would generally be on normal commercial terms, particularly if the excluded surface rights are owned jointly with third parties (i.e., road system). This obligation does not apply to a well site because of the complications inherent in pad site sharing arrangements and the general requirements in applicable Occupational Health & Safety Regulations that there be a single "prime contractor" for any site.

v) The overall complexities associated with pad site sharing arrangements are such that a Vendor that operates a pad site should be very cautious about selling only some of the wells in which it has an interest on the pad site. If it sells a developed property that includes a pad site on which it plans to continue to be the site operator, the Vendor and Purchaser should enter into a contract operating agreement under which the Vendor continues to operate the applicable wells.

The situation is more complicated if the Purchaser has the vision of conducting new operations on a shared pad site. The other owners of the shared pad site are likely to have some opinions about any such expectation of the Purchaser. This is particularly the case if there is a pad site sharing agreement in place that limits the ability of any party other than the pad site operator to conduct operations or if there are "permitted use" restrictions that limit the types of activities that may be conducted on the shared pad site (e.g., only Montney operations, no critical sour).

vi) The issue of whether the Vendor may retain the contemplated excluded Surface Rights for its other operations may ultimately be referred to arbitration under Clause 9.02, insofar as there is a dispute respecting the rights proposed for retention by the Vendor.

vii) There may be circumstances in which the issue of retained surface is so important to a Purchaser that it requires the Vendor to outline the retained rights in a Schedule to the Agreement.

viii) The operative requirement to provide the Vendor with access to certain excluded access rights on reasonable terms has been included in the definition because of the high probability that the obligation could otherwise be overlooked by the Parties if included in another Clause.

Tangibles: i) Agreements have traditionally tended to include a loose description of the Tangibles, generally using a simple statement such as in Paragraph (c) and providing relatively little information in the Schedule. There are several problems with this approach. Firstly, the linkage is often to the areal extent of the mineral rights (the Lands), rather than the directly associated surface operations that might have a different surface location (e.g., horizontal wells). Secondly, there is no indication of the manner in which the Tangibles are held. Are they owned or leased? If some are owned and some are leased, there is often no identification of the manner in which specific Tangibles are held. Thirdly, the Vendor's interest in the Tangibles could vary. It is common, for example, for a Party to have a number of different interests in segments of a pipeline, given the likelihood that additional wells closer to the plant will also use the pipeline, and there are similar challenges for a plant with a number of functional units. Fourthly, it is extremely difficult for a Purchaser that is not familiar with the property to understand what it is buying off the wellsite unless the Vendor advises the Purchaser specifically of those Tangibles.

The definitions of Facilities and Tangibles and the annotations have been designed to increase significantly the level of certainty. They generally encourage the Vendor to identify non-unit production infrastructure extending off the surface of the Lands to be identified in a Schedule, as reviewed in more detail in the annotation on the definition of Facilities. Wellsite equipment and other equipment located at the location of a Well are captured by the general reference in Paragraph (c), although Parties will often wish to describe some of this equipment more specifically in a Schedule under Paragraph (b) (i.e., batteries, compressors, water source or handling equipment and possibly pumpjacks, leased vs. owned equipment, etc.). (The wellbore and casing associated with a Well are Miscellaneous Interests, rather than Tangibles, which also reflects the tax treatment.)

The respective field office personnel would likely discuss the Tangibles fully in practice and arrange a full "walkabout" before the transfer of possession anyway for an operated property of significant value. However, the better practice is to document the Tangibles in reasonable detail in any sale brochure and the Agreement, with leased Tangibles clearly identified.

ii) The better practice for surplus items owned solely by the Vendor (or other than by the Well or the owners of the Well), such as tubing and casing, is to remove them from the Lands prior to the Effective Date or the Purchaser's site visit. If the Vendor invited prospective Purchasers to tour the property, it would be prudent to advise them of surplus items that the Vendor planned to remove. Otherwise, they would be likely to believe that those items would be included in the Transaction. That being said, there may be some circumstances in which removal of the surplus equipment is not feasible prior to the site visit or Closing. In those cases, the surplus equipment should be identified to the Purchaser's personnel. The definition of Excluded Assets includes those types of surplus items, and the Vendor's No Removal of Assets representation is qualified to recognize that it may remove those items from the location of the Assets. (See also the eventual duty in Clause 11.03 to remove any such surplus items.)

iii) Some Transactions will involve a regional field office, but it is unlikely that the PTP would be used in a Transaction of that magnitude. The Parties would need to address their expectations about a field office and any associated staffing issues in their Head Agreement, as those issues are beyond the scope of the PTP. (See the handling of software in the definition of Permitted Encumbrances (j).)

iv) Abandoned non-unit pipelines, equipment beyond the entry into a gathering system or plant, tangible equipment serving other wells (e.g., water source equipment) and motor vehicles are excluded, unless they are specifically included, typically in a Schedule and possibly in a "white map" Transaction. This is often not addressed clearly, which can cause confusion. This definition requires the Parties to consider the matter specifically.

Thirteenth Month Adjustment: This definition applies in the adjustments Article (Article 4.00). These calculations are made under facility operating agreements, and are usually made within 120 days after the end of a calendar year. They are intended to reallocate revenues and expenses equitably between facility owners based on the volume throughputs of each owner. They are primarily required because many facility operators will initially allocate certain revenues and expenses based on ownership interests in the facility or other estimates. They are also necessary because there are often delays in charging operating costs for several months. A Thirteenth Month Adjustment attempts to align revenues and expenses more closely to facility usage by averaging the previous year's expenses with the corresponding throughput volumes.

As noted in the annotations for Paragraph 4.01(j), the averaging methodology used by facility operators could result in allocations that are not equitable if there is a significant variance in revenues, expenses and throughput volumes between the pre and post Effective Date periods. Paragraph 4.01(j) provides the Parties with the ability to make a custom adjustment in those instances.

Title and Operating Documents: i) The most obvious examples of Title and Operating Documents are the Leases and the other agreements that govern the working interests in the Lands, such as joint operating agreements, farmins, farmouts, poolings, units and trust agreements (as trustee or beneficiary). The definition of Permitted Encumbrances requires certain land, marketing and J.V. obligations to be identified in a Schedule.

ii) A&D agreements typically are not provided to a Purchaser. That being said, a Purchaser might wish to review them as feasible during its due diligence because they are relevant to the Vendor's title and because there are liability and indemnification provisions thereunder that can be ongoing obligations for which the Purchaser could be required to indemnify the Vendor.

iii) Paragraph (c) includes both marketing arrangements that are identified in a Schedule and those that are terminable on not more than 31 days' notice without an early termination penalty or other cost. The inclusion of the reference to short term production sales arrangements recognizes the fact that these arrangements are quite common in the normal course of managing production. The PTP offers two significant protections to the Purchaser with respect to those short-term sales arrangements. The first is that any such sale only falls within the scope of that reference if it can be terminated without penalty or other cost on not greater than 31 days' notice. (Note-It is not uncommon to use 90-day periods here and in Paragraph (g) in large Transactions.) The second, as of the 2017 PTP, is the protection offered under Paragraph 4.01(f) that the price used for production sales during the Interim Period is linked to a "Market Price".

This Paragraph has been qualified to be clear that any such agreement is not included in the Title and Operating Documents insofar as the nature of the agreement is that the Vendor is unable to segregate it through a partial assignment for the Lands and the other rights pooled or unitized therewith. (Any sales contract that can be segregated between the Assets and other retained interests only falls within this definition with respect to the Assets because the definition of Miscellaneous Interests applies only insofar as those materials relate to the Assets.)

iv) Industry agreements often have not emphasized the need to understand and describe the J.V. Agreements relating to the Assets. While not title documents in the traditional sense, the facility agreements and pad site sharing agreements in Paragraph (f) are relevant to the Vendor's ownership of the Assets, in addition to being operating documents. While not a requirement in the PTP, it is the better practice to identify them in a Schedule for the typical property for which the PTP is likely to be used. Service agreements (g) requiring more than 31 days' notice of termination can also have a significant impact on value, so they are required to be identified on a Schedule. Although there is no obligation to identify the typical service agreement in a Schedule, it is the better practice to do so for smaller properties, since it is unlikely to be an onerous task for those Transactions.

The handling of the service agreements with short notice termination provisions will ultimately depend on such factors as whether the Vendor is retaining any wells to which those service agreements apply and whether the Purchaser has its own agreements in the area in which it intends to integrate the acquired Wells. It is quite possible that the Purchaser might want to take an assignment of a service agreement and also quite possible that it may prefer to terminate a service agreement in order to negotiate a new agreement or to apply an existing agreement.

The emphasis on J.V. Agreements in the PTP reflects the importance of those agreements to the Purchaser's ability to optimize value from the Transaction. It is important for a Purchaser to understand these agreements and their impact on its assessment of the value of the Assets early in the evaluation of the Assets. This is an area that Purchasers often do not consider sufficiently carefully when considering a potential Transaction.

v) The Vendor should review its records carefully to identify and document any pad site sharing arrangements. A pad site sharing agreement is likely to include terms that could impact a Purchaser in ways that it may regard as significant. These include: (a) restrictions on the types of activities that may be conducted on the pad site ("permitted use"); (b) restrictions on the conduct of operations by owners other than the applicable site operator; (c) cross-indemnities among the applicable well owners and the blended interest pad owners; (d) insurance obligations governing all activities located on the pad site; and (e) special processes for abandonment of the pad site in due course. It is also important for the Parties to understand if there are shared pad sites for which there are no pad site sharing agreements in place, particularly if the Purchaser would be the *de facto* site operator for the pad site without the benefit of having a liability and indemnity regime in place for its activities.

vi) Examples of operational licences and approvals contemplated by Paragraph (h) include plant licences, battery operating approvals, clean air permits, water removal permits, communication equipment licences and pressure vessel registrations.

vii) Examples of the types of agreements contemplated by Paragraph (i) include utility contracts and equipment leases.

Title Defect: i) The starting point for this definition is to note that the 2017 PTP introduced a major change whereby the Article 8.00 Purchaser's review is structured as an optional Article. This does not reflect a perspective that a Purchaser should not conduct its normal due diligence review or that it is precluded from conducting such a review. Instead, it reflects the view of an increasing number of Parties that they are unwilling to sign an Agreement until the Purchaser's due diligence review is complete and the Vendor understands the concerns, if any, raised by the Purchaser about the Assets. This allows the Parties to address any such concerns through negotiation in conjunction with finalization of their Agreement. This approach may be used more frequently for the smaller Transactions for which the PTP is more likely to be used.

ii) Many of the title "defects" typically identified during the title review process are immaterial. This definition has been included to: (a) introduce an element of objectivity to the process; (b) focus the attention of the Parties on items that matter; and (c) ensure that the title review does not make the Transaction an "option to purchase", under which the Purchaser can, in effect, terminate the Transaction at will.

The Vendor will generally attempt to address all title deficiencies noted by a Purchaser. However, the only deficiencies that have any legal impact on the Transaction are those that are sufficiently material and adverse to title that they would not be acceptable to a knowledgeable, prudent Purchaser - "Title Defects." (See Article 8.00 for the effect of Title Defects on the Transaction.)

iii) The 2017 definition includes two Alternates.

Alternate 1 is similar to the 2000 definition. It is a much less prescriptive definition than Alternate 2. This Alternate should be used if Alternate 1 of Subclause 8.02B is selected, although it could still be used if Alternate 2 of Subclause 8.02B were selected.

Alternate 2 is a more elaborate definition, and is designed primarily for use with Alternate 2 of Subclause 8.02B, if it were selected. It identifies items that are Title Defects. It also specifies a number of items that are not to be regarded as Title Defects, and this type of definition will sometimes include items that are very "Vendor friendly".

Some Vendors require this type of definition for at least their larger value Transactions because of negative experiences in which Purchasers have attempted to use the title review process to attempt to negotiate a reduction of the Purchase Price for purported "defects" that are, in practice, remote risks that the Vendor would often be unable to address. Should a Vendor be expected to prove payment of an Alberta Crown rental in 1974, for example, when it is clear that the Lease has not reverted to the Crown? Similarly, is it feasible to be able to provide proof of payment of a freehold rental from 1962 if there is no proof of payment on file, nothing on file to indicate any concern by the lessor at the time and ongoing communications with the lessor that are fully consistent with a mutual belief that the freehold lease remains in good standing?

This Alternate was designed to offer a reasonably balanced handling of the concept between Vendors and Purchasers, recognizing that some Vendors will attempt to broaden this Alternate if it is selected and that some Purchasers will attempt to narrow it.

Alternate 2: i) Paragraph (e) has been included because of the possibility that the Vendor's interest in certain of the Lands is a beneficial interest, rather than a registered, legal interest in the applicable Lease(s). While it is possible that there will be circumstances in which transfers of the registered interest should have been done previously, this situation will typically exist because transfer of a registered interest was not feasible because of the areal or stratigraphic segmentation of interests under the applicable Lease(s).

ii) Paragraph (f) has been included because of the practice of some Parties to retain only electronic copies of records, such that files must be created from electronic records if a property is being sold.

iii) Paragraphs similar to (j) and (k) are typically included in this type of definition. They are included to limit the potential for a Purchaser to attempt to negotiate a reduction of the Purchase Price for "defects" that would typically be low risk items for which there is little ability to address the stated concern in practice. That being said, there will be Transactions in which a Purchaser prefers to eliminate or modify one or both of these Paragraphs.

iv) Vendors often structure this type of definition more broadly than is the case in the PTP. Examples of those types of qualifications are:

(a) a qualification in a provision similar to Paragraph (m) that also excepts out any matters expressly disclosed in data room materials provided by the Vendor to which the Purchaser had access when preparing its offer. This was not included because of the mass of information that can be included in a data room and the belief that anything truly significant should be disclosed in a Schedule;

(b) a Paragraph about failure to obtain any third party consent that requires prior written consent. While most consents would be under a provision that states that the consent could not be unreasonably withheld, that provision is premised on the consent requirement necessarily being of that type and on a belief that there would be no reasonable basis on which to withhold consent to the Transaction; and

(c) a Paragraph about a cessation of production of any Well. This might be considered for Transactions that include freehold leases, particularly if this had occurred many years ago and the reference were qualified to include references that there is no notice of default from the applicable lessor or any information in the applicable Lease file that indicates any ongoing concern of the lessor about this matter as of the Effective Date. Otherwise, a Vendor could be at risk that a Purchaser could try to use any deficiencies of that type to attempt to renegotiate the Base Purchase Price based on what is likely in practice to be a low-risk event. That being said, the status of the Lease as being in good standing is determined under the Lease, and a lessor's failure to issue a default notice or otherwise object is not necessarily determinative respecting the validity of the Lease.

Transaction: This definition was introduced in the 2017 PTP to simplify the drafting in the remainder of the PTP.

Transferee and Transferor: i) The neutral terms Transferee and Transferor were used in the 2000 PTP because of the possibility that the Transaction could be structured as a swap. Those definitions were qualified to recognize that the Parties may continue to use the terms Purchaser and Vendor in the Head Agreement.

Significant changes were made to the definitions in the 2017 PTP to reflect the fact that the vast majority of Transactions will be sales for which the Parties would prefer to use the traditional Vendor and Purchaser references. The definitions of Asset Exchange, Purchaser, Vendor and the corresponding definitions of Transferor and Transferee introduced in the 2017 PTP have allowed the PTP to be written to address sales, with rules of interpretation that accommodate an Asset Exchange.

ii) The Parties to an Asset Exchange would need to modify the place of Closing in Clause 3.01 from the office of the Vendor to the office of one of the Parties. Clause 3.01 designated the office of the Vendor to reduce the number of elections in the PTP. It reflected the assumption that most Transactions would be sales.

Vendor: As noted above, this definition was introduced in the 2017 PTP to recognize that the vast majority of Transactions were sales, rather than Asset Exchanges. The structure of the definition accommodates Asset Exchanges, though.

Wells: i) The identification of an accurate list of Wells is becoming increasingly important because of the restrictions on the transfers of Well licences under the Regulations and the increasing sensitivity about the handling of Abandonment and Reclamation Obligations and the assumption of other Environmental Liabilities. Given the importance of the issue and the nature of the typical deal for which the PTP will be used, this definition has been structured with three Alternates, recognizing that Alternate 1 might be used singularly or in combination with Alternates 2 or 3. While Alternate 2 can be used without Alternate 1 being selected (albeit unlikely), it is inherent in Alternate 3 that it would be used with Alternate 1.

Including a complete Schedule of Wells adds a much higher level of certainty to complex Transactions, particularly if the Schedule includes for each Well its status, producing horizon(s), Unique Well Identifier and the Vendor's interest in the Well. It provides a very good context to obtain a better understanding of the Surface Rights, Facilities, pipeline systems, fees, etc. This type of Schedule would also facilitate the entry of the property into the Purchaser's records, particularly as regards Accounting and Marketing. This is very helpful, for example, if the Vendor is retaining some zones, wells and regional infrastructure. This is unlikely to be an onerous obligation for the typical Transaction for which it is likely that the PTP will be used in practice. As a consequence, Alternate 1 only is the preferred and most likely selection for the typical Transaction for which the PTP will be used.

Alternate 1 captures all Wells the Parties have chosen to list in a Schedule. This is subject to the important qualification that the list of Wells on the Schedule is not necessarily limited to Wells located on the Lands or other lands pooled or unitized therewith. This recognizes that there may be circumstances in which the Parties have agreed to transfer residual responsibility to the Purchaser for certain other Wells not located on the live mineral rights (e.g., a well drilled into deeper rights that have since reverted to the Crown, a well drilled under one of the Title and Operating Documents at a location for which the mineral rights have expired). Alternate 1 can be used by itself or in combination with Alternate 2 or 3. Alternates 2 and 3 are mutually exclusive, and are only relevant if the Schedule of wells is incomplete (e.g., the Schedule did not list unit wells).

The PTP is not structured to include a requirement to list all Wells to be included in the Assets, though. Although it is a preferred practice to be as precise as possible in this area, it can often be difficult (e.g., a disposition of a large area, units with a large number of wells, units for which the operator does not maintain a current well list exhibit in the unit agreement). Alternates 2 and 3 include the more typical generic reference to Wells located on the Lands and other lands pooled or unitized with them insofar as they have not already been set forth on the Schedule. The Parties would need to exclude expressly any well producing from zones included in the Lands if certain producing wells were being retained by the Vendor.

Alternate 3 offers a major exception to the handling in Alternate 2. Insofar as abandoned, injection, water source or disposal wells not included in a unit are intended to comprise part of the Assets, they must be listed on a Schedule if Alternate 3 is selected to apply. This requires the Parties to address the handling of these wells specifically, and is designed to minimize the possibility of subsequent disputes. This treatment reflects the degree to which the handling of abandoned wells is actually a matter of negotiation and the need to confirm if service wells are intended to be retained by the Vendor because they serve other assets. (See the last paragraph of the definition of Tangibles for a similar treatment of abandoned non-unit pipelines.) The corollary of this if Alternate 2 applies is that a simple test of if the Wells are located on the Lands and other lands pooled or unitized therewith applies to all Wells not set forth on a Schedule (including reclaimed).

ii) In practice, the applicable Province will not transfer liability for a Well for which a reclamation certificate has been issued. The applicable Regulatory Authorities would potentially continue to look to the Vendor to address any problems that were to emerge with respect to any Wells it had operated. That handling, however, does not preclude the Parties from contracting for an outcome in which the Purchaser agrees to assume financial responsibility for any such circumstance through the indemnification of the Vendor contemplated in Clause 13.04. It is possible that the Purchaser might not be able to obtain the approval of the applicable Regulatory Authorities to conduct any remedial field work required to address any such problem, though. This also creates a potential trailing liability risk for the Vendor if the Purchaser either did not exist at the time any such problem became apparent or the Purchaser does not then have the financial resources to fulfill its indemnification obligation.

A Purchaser being requested to assume an indemnification responsibility to the Vendor under the Agreement for any subsequent problems for any reclaimed Wells must be cognizant of the control mechanism included in the definition for its protection-the inclusion of Alternate 3 and the limitation therein to reclaimed Wells listed on a Schedule.

iii) Even if abandoned wells are to be included in the Transaction, it is possible that the Parties may choose to have the Vendor remain responsible for the acquisition of any outstanding reclamation certificates at its own expense. (The Vendor would also retain the associated surface leases.) The Parties would need to add provisions in their Head Agreement to address this circumstance, with consequential modifications to the PTP.

iv) Although responsibility for abandoned Wells may be allocated to the Purchaser under the Agreement as between the Parties, the Parties need to be aware that Regulatory Authorities may not allow the well licences for abandoned Wells to be transferred from the Vendor to the Purchaser. For example, wellbores vest to the Crown after expiry of the applicable mineral rights under Section 32 of the *Mines and Minerals Act* (Alberta), subject to certain ongoing liabilities of former owners under other Regulations for issues that may emerge subsequently.

v) Another important issue the Parties will need to understand in at least an Alberta context is the potential impact of the acquisition of suspended wells because of the potential restrictions on the ability to transfer, or receive a transfer for, suspended wells and because of the potential negative regulatory consequences associated with the Purchaser's acquisition of inactive wells. (See also the representations of the Vendor and Purchaser on the transfer of licences in Paragraphs 6.02(q) and 6.04(d) and the possibility of additional representations in the Head Agreement under Paragraphs 6.02(cc) and 6.04(f), together with the associated annotations and the Paragraph 10.01(e) condition to Closing.)

vi) There may be requirements under the Regulations to ensure that a site that has been inactive for a prescribed time must be free of garbage, debris and unused equipment (e.g., BC OCG Bulletin-2016-03). The onus is on the Parties to understand if information about a suspension date should be identified in a Well Schedule in order to facilitate compliance with any such requirement.

Clause 1.02: i) Closing may not occur for all of the Assets because of the exercise of any Right of First Refusal or the exclusion of Assets because of the application of Article 8.00 to Title Defects. The definitions of "Assets", "Facilities", "Lands", "Leases", "Miscellaneous Interests", "Petroleum

and Natural Gas Rights" and "Tangibles", the amount and allocation of the Base Purchase Price in the Head Agreement, adjustments and any interest accruing on the Base Purchase Price will be altered accordingly in accordance with Articles 7.00 and 8.00 or otherwise through negotiation.

ii) If the Agreement were unexecuted at the time Assets are excluded from the Transaction (e.g., due diligence conducted before execution of the Agreement), the Parties would presumably modify the Base Purchase Price and the Schedules to reflect that exclusion. If, on the other hand, the Agreement were executed at that time, an amending agreement would be required.

iii) If the Transaction is an Asset Exchange, the Parties should address their expectations about the completion of this Transaction in this event in the Head Agreement. This is particularly important because a Party will often be prepared to negotiate a trade involving assets it would not be prepared to sell. Another important factor for at least American owned Parties can be a possible accounting requirement that a Transaction having a cash component greater than 25% of the Transaction value be regarded as a sale and an acquisition, rather than as an asset exchange. (U.S. GAAP Codification Topic 845 re non-monetary transactions.)

Paragraph 1.03(d): This Paragraph ensures that terms such as "Parties" can be used in the same context as "Party."

Paragraph 1.03(f): References such as "including" outline a list of examples that is not necessarily exhaustive. The context is actually "including, without limitation."

Paragraph 1.03(g): i) This clarifies the timing problems inherent in the use of such terms as "within" or "at least" when referring to a specific number of days, and is similar to the general timing provision in the Alberta Rules of Court.

ii) The clock basically starts on the day after a typical notice is received.

iii) The period within which an act must be performed, such as response to a notice, is generally extended to the next Business Day if the last date for performance is on a weekend or a statutory holiday.

Paragraph 1.03(k): The definitions of "Miscellaneous Interests", "Tangibles" and "Wells" refer to the entire disposed interest of the Vendor therein, other than for the Excluded Assets. This is not inconsistent with a Transaction under which a Party is disposing of only a portion of its interest, as it is not a Vendor for the retained interest. The definitions of Excluded Assets, Excluded P&NG Rights and Excluded Tangibles have been designed to ensure that the PTP accommodates any such Transaction without need for a large number of consequential changes. That being said, it is the better practice for a Vendor retaining a portion of its original interest to be clear on the face of the Agreement that it is retaining an interest in certain of the equipment and mineral rights otherwise included in the Assets and the extent of that retained interest.

Paragraph (k) is included primarily because of the possibility that the disposed Assets might comprise only a portion of the Vendor's current interest (i.e., half of its interest). It is disposing of the entire interest identified in the applicable Schedules and the corresponding interest in the Miscellaneous Interests, which could be less than the entire interest held by it.

It is imperative that the Parties carefully describe in the relevant Schedules the interests being conveyed in these circumstances to minimize the possibility of confusion and dispute as the Transaction evolves, particularly if the Vendor will remain as operator after a partial disposition of its interest. It would also typically be helpful to state in the applicable Schedule that the Vendor is retaining certain interests. This is particularly the case as one describes Facility and Tangibles interests, given the frequency that Transactions include only a portion of the Vendor's capacity or only some of the functional units or pipeline segments in which it has an interest.

As noted in the annotations for the definition of Petroleum and Natural Gas Rights, Paragraph (k) also applies if the Vendor erroneously understates its interest on a Schedule. In practice, the Parties would usually modify the Transaction to include the additional interest for incremental consideration or no additional consideration in many cases. This outcome is consistent with the handling of a lesser interest, as the Purchaser would generally expect an incremental reduction of the consideration in that situation if the misdescribed interest were material to it.

Paragraph 1.03(l): Under an Asset Exchange between X and Y, the Head Agreement will typically include such definitions as "X Assets", "X Lands", "X Leases" in the context of the interests being disposed by X and corresponding definitions for the interests being disposed by Y. This Paragraph ensures that references to "the Assets", "the Lands", "the Leases" and other subsets of the Assets are interpreted in the context of the applicable Transferor's interests, as the context requires. (See, for example, Addendums IV and VII.)

Paragraph 1.03(m): The provisions of Clause 1.03 apply on a *mutatis mutandis* basis to all of the components of the Agreement. This provides a better context for the Head Agreement and the other Schedules, as those other components will typically not include a comparable provision.

Clause 1.04: Clause 6.02 is an exception to the general rule in this Clause because the only representations and warranties that apply under that Clause are those that the Parties have selected to apply therein.

Clause 1.05: i) As noted in the definition of Assets, that definition might be modified if the Transaction does not pertain to both Petroleum and Natural Gas Rights and Tangibles. A Transaction of that type would normally require a large number of changes because of the assumption in precedents that Transactions include both of those classes of Assets. This Clause is designed to minimize the need for consequential changes to the PTP by including a general interpretive rule for those Transactions. The options included in the Vendor's representations and warranties would allow further customization within the framework of the PTP. Notwithstanding this structure, the Parties would probably customize their PTP in practice for larger value Transactions comprising only Tangibles or for other Transactions involving complex Tangibles.

ii) The PTP offers a platform that can greatly simplify the sale or swap of undeveloped lands. See the sample undeveloped acreage sales and swap included as Addendums V-VII after the General Conveyance at the end of the PTP. Those examples demonstrate the potential efficiency enhancements in processing those types of Transactions by using the PTP.

iii) The allocations would also need to be structured appropriately in Clause 2.02.

Clause 1.06: The provisions of the PTP that presume that the Purchaser has acquired the Assets are contingent on Closing occurring. The PTP also specifically recognizes the contingency that Closing will not occur in several of the major provisions.

Subclauses 1.07A and B: i) A conflicts provision would normally be included in a Head Agreement. It has been included in the PTP to attempt to achieve standardization and to ensure that all agreements using the PTP have a conflicts provision.

ii) The conflicts hierarchy is as follows: (a) Regulations/Leases; (b) Head Agreement; (c) Property Transfer Procedure; (d) other Schedules, including the form of General Conveyance; and (e) the General Conveyance and Specific Conveyances. However, the registered working interests in the Leases and any allocation of liability for loss under the Regulations will not prevail over the Vendor's working interests described in the Land Schedule or the allocation of responsibility for Losses and Liabilities between the Parties, such as Article 13.00. Those qualifications are consistent with the conflicts provision of the CAPL Operating Procedure.

iii) If the ability to effect a transfer of any licence for any of the Assets under the Regulations is in question, the onus is on the Parties to add custom content in their Head Agreement to address their particular needs. This might be done, for example, by including additional definitions, a Clause that relates to the specific handling required for their circumstances and the inclusion of additional conditions to Closing. Reviewing the Regulations for each Transaction is particularly important if they include a requirement for a review of a proposed transfer of a regulatory licence, permit or approval through a process in which that approval might not be granted, since this could require the inclusion of a Closing in escrow process in the Agreement.

There were two reasons for this approach. The first was the belief that the PTP should not attempt to predict or prescribe the handling of an emerging issue of increasing importance that should be assessed and handled by the Parties and their applicable legal advisors on a case-by-case basis. The second was that the fluidity of the Regulations on this area over time and across jurisdictions was such that any more specific handling of the issue in the PTP could potentially create unintended consequences for the Parties over time.

Subclause 1.07C: Insofar as a provision is severed from the Agreement, the consideration under the Agreement has been altered to some extent. The proviso in the second last sentence was introduced in the 2017 PTP, and is based on the corresponding provision in the 2015 CAPL Operating Procedure. It requires the Parties to make a good faith effort to include a replacement term that gives effect to the original intention in a legally binding manner.

Clause 1.08: i) This Clause provides a context for the qualifications on some of the Vendor's representations and warranties (Clause 6.02) and other references to the knowledge or awareness of the Vendor. The provision is linked to the actual knowledge of applicable employees with management or supervisory responsibilities and officers. A more Vendor friendly senior manager/officer test was not used because of the degree to which they would typically be removed from day-to-day management of properties.

There may be Transactions in which the Parties choose to broaden or narrow the scope of the knowledge qualification. They might, for example, identify the specific personnel to whom the "knowledge qualification" applies.

ii) The Vendor is not required to make additional inquires of its other employees and contractors or to search its own, third party or public records. However, it is the better practice to conduct a fairly thorough review of title and asset identification prior to dispositions, as outlined in the annotations on Paragraph 8.01(a).

iii) There may circumstances in which the Purchaser requires the Vendor to extend the scope of the Vendor's investigation for non-operated properties to contact the operator, typically when the value of non-operated Assets is high. The Parties would need to modify the last sentence to address their revised expectations for such an agreement.

iv) The corresponding provision in the 2000 PTP was regarded by many as too "Purchaser friendly". It was modified in the 2017 PTP to facilitate its acceptance by a broader user base. These modifications shifted the responsibility upward from the employees responsible for the applicable matter to the applicable personnel in management and supervisory roles, and eliminated the "after reasonable inquiry" requirement.

That being said, there will be circumstances in which Purchasers attempt to negotiate something more similar to the 2000 provision that pushed the responsibility down to a non-supervisory level for head office roles and included an "after reasonable inquiry" obligation.

v) If a person should have known something by application of reasonable care or diligence, that person can be regarded at law as having constructive knowledge of the applicable fact or condition. This Clause states that the Vendor's knowledge does not include constructive knowledge.

Clause 1.09: i) The assumption is that the Parties want the Courts of Alberta to have jurisdiction, even if the Assets are located outside of Alberta. There are two reasons for this. Firstly, the logistics of managing legal proceedings would generally be easier, since the Parties' head offices would typically be located in Calgary. Secondly, the Courts of Alberta have an extensive body of oil and gas case law that provides a valuable context for any litigation.

The Parties could easily modify this provision or include a provision in the Head Agreement to apply the laws of another jurisdiction if the reference to Alberta does not meet their needs (e.g., Parties based in Saskatchewan with the Assets located there). Corresponding modifications would potentially be made to the definition of Business Day, the time zone (Paragraph 1.03(h)), the reference to the *Limitations Act* (Alberta) in Subclause 4.02E and the reference to the *Arbitration Act* (Alberta) in Clause 9.02.

ii) Notwithstanding that the PTP may stipulate that the Courts of Alberta have jurisdiction, this is not necessarily determinative at law. (See, for example, Encal Energy Ltd. v. Numac Energy, [1986] B.C.J. No. 1918 (B.C.S.C.).)

Clause 1.11: An amendment generally is not effective unless it is executed by the Parties. However, a notice of a changed address for service under Clause 15.02 is an exception to the general rule.

Clause 1.12: i) The Clause covers actual and anticipated breaches. A prudent Party would seek a waiver before a breach, not after the fact.

ii) A Party that does not exercise a right within a prescribed time period cannot rely on this Clause to preserve its rights for that particular matter.

iii) The waiver concept was reviewed in Tri-Star Resources Ltd. v. J.C. International Petroleum Ltd., [1987] 2 W.W. R. 141 (Alta. Q.B..) and Kaiser Francis Oil Co. of Canada v. Bearspaw Petroleum Ltd. (1999), 240 A.R. 59 (Alta. Q.B.). The Tri-Star case pertained to a CAPL Operating Procedure that included an earlier version of this Clause. One of the issues was an alleged verbal statement by an officer of a non-operator that it would not attempt to remove the operator if its funds were protected from the operator's creditors. The Court found that a waiver must be in writing because of the mandatory nature of the provision. The Kaiser Francis case pertained to a pre-CAPL Operating Procedure that did not include a waiver clause. One of the arguments was that the non-operators were estopped from removing the party acting as successor operator because their conduct in working with that party as operator represented their consent to its appointment. The Court found, on the facts, that there had been "indulgences" that did not constitute a waiver of the non-operators' rights with respect to the appointment of the new operator.

Clause 1.13: i) Notwithstanding the "entire agreement" language included in this type of provision, a Court may consider the "factual matrix" if warranted in particular circumstances to address an ambiguity in a contract. A Court has some ability to help determine the intention of the parties to a contract in the way that would be determined by a reasonable person at the time, stopping short, however, of reviewing the negotiations of the parties because of the inherent fluidity in negotiations. (See, for example, Nexxtep Resources Ltd. v. Talisman Energy Inc., 2012 ABQB 62 (Alta. Q.B.), appeal dismissed 2013 ABCA 40 (Alta. C.A.), in which the Trial Judge stated, "Evidence of the factual matrix may therefore be considered to the extent it is instructive as to the genesis of the transaction; its background and context; the subject matter meant to be described by the words; and the aim, commercial purpose and practical objectives sought to be achieved.")

ii) The Parties will often enter into a confidentiality agreement in conjunction with a pending potential Transaction. The nature of the Transactions for which the PTP will be likely to be used is such that the Parties would typically see that confidentiality agreement superseded. Articles 16.00 and 17.00 would then address the Parties' expectations with respect to confidentiality and disclosures about their potential Transaction, including Subclause 16.01B for information disclosed about assets other than the Assets (e.g., interests for which Closing did not occur because, for example, of the operation of Clause 1.02 respecting ROFR exercises or Title Defects).

The Parties to a large Transaction will sometimes modify a provision comparable to Clause 1.13, so that their confidentiality agreement is not superseded (or is selectively suspended) by their Agreement. Those Parties should review any such confidentiality agreement carefully to ensure that the provisions not being superseded continue to be appropriate to the Transaction.

Clause 1.14: This Clause is designed to override a legal rule of construction ("*contra proferentem*") whereby an ambiguity in an agreement is held against the Party that drafted the agreement. Although different wording is used, the concept is also addressed in Subclause 1.02B of the 2015 CAPL Operating Procedure.

See, for example, Mobil Oil Canada Ltd. v. Beta Well Service Ltd. (1974), 43 D.L.R. (3rd) 745 (Alta.S.C., App. Div.) and Morrison Petroleums Ltd. v. Phoenix Canada Oil Co., [1997] A.J. No. 275 (Alta. Q.B.). The latter is interesting because the provisions in question were in the standard form 1981 CAPL Operating Procedure.

Clause 1.15: i) This Clause is designed to protect the Parties against modifications to the standard form that were not identified when the document was prepared. It is necessary because of the likelihood that the document will be prepared electronically, rather than by attaching a CAPL watermark copy. Comparable provisions are included in the CAPL Operating Procedure, the CAPL Farmout & Royalty Procedure and the CAPL Overriding Royalty Procedure. The Clause was updated in the 2017 PTP, but is conceptually consistent with the 2000 Clause.

The Clause ensures that modifications that have not been identified in the PTP, the Head Agreement or a Schedule of elections and modifications are not effective. The CAPL document will apply to the provisions as if the modifications had not been made.

ii) Although a form of General Conveyance was created in conjunction with the PTP, it was recognized that Parties may prefer to include their own preferred form of General Conveyance in the Agreement. As a consequence, it is not part of the PTP, such that this Clause does not apply to require Parties to identify changes between the General Conveyance used in their Agreement and the version created in conjunction with the PTP.

Clauses 2.01 and 2.02: i) The 2000 PTP had been structured so that the content in Clauses 2.01 and 2.02 would be included by the Parties in their Head Agreement and customized to their particular Transaction. This was modified as of the 2017 PTP by including these Clauses in the PTP. This reflects the intention to increase consistency and the fact that these Clauses would be suitable for the majority of Transactions. Shifting these Clauses into the PTP simplifies the creation of the typical Head Agreement, notwithstanding that adjustments would be required for an Asset Exchange or a Transaction with different Asset types (e.g., the exclusion of Tangibles or the addition of seismic).

Clause 2.02: i) Significant modifications to Clause 2.02 would be required if the Transaction were an Asset Exchange. Addendum IV at the end of the PTP provides a sample provision that might be considered for an Asset Exchange.

ii) The Parties must allocate the consideration for tax purposes among the Petroleum and Natural Gas Rights, the Tangibles and the Miscellaneous Interests, with an additional allocation to product inventory if Paragraph 4.01(g) applies to sulphur. This is because of the difference in tax treatment between land acquisition costs (basically a 10% declining balance write-off) and Tangibles (generally a 25% declining balance write-off for "Class 41" assets, with some different rates for certain special classes of assets).

A Vendor would prefer to maximize the allocation to Petroleum and Natural Gas Rights and to minimize the allocation to the Tangibles to maintain the maximum benefit associated with its tax pools. A Purchaser would generally wish to maximize the allocation to Tangibles.

Occasionally, a Purchaser will be a non-taxable or tax deferred entity that is not anticipated to be taxable in the foreseeable future. In such cases, there may be an initial temptation to structure the allocation to maximize the benefits to the Parties. This could involve a minimal allocation to the Tangibles for the benefit of the Vendor and a reduction of the Purchase Price for the benefit of the Purchaser. However, the allocation must always be reasonable. An artificial allocation would be reviewable under the anti-avoidance provisions of the *Income Tax Act* (Canada).

Notwithstanding the requirement that the allocation be reasonable, industry experience has generally indicated that a reasonable allocation for a typical producing property is 80% to Petroleum and Natural Gas Rights and 20% to Tangibles. The Parties can easily modify those allocations for any particular Transaction, and the bolded Paragraph in the sample annotated Schedule of Elections and Modifications included as Addendum I reminds users of this. It would not be appropriate, for example, if the property comprised primarily capped wells with minimal associated Tangibles, passive interests (ORRs and NPIs) or primarily Tangibles, such as a major gas plant.

iii) The PTP does not address the situation in which taxing authorities do not agree with the allocation included in this Clause. It is unlikely that this would be an issue for the typical Transaction for which the PTP would be used. If it were, the Parties would consult about how best to address the issue in the context of their particular situation.

iv) A licenced copy of proprietary seismic data could be included in the Transaction for nominal consideration or as a value item. If the latter, a separate allocation to seismic would be required, with a consequential modification to the reference to the allocation to Miscellaneous Interests, such as "Miscellaneous Interests Other Than Seismic". It would be beneficial to include a definition of "Seismic Data" in the Head Agreement to enable the Parties to streamline the preparation of their Head Agreement for those Transactions. The Parties would also need to modify other provisions of their Agreement to include Seismic Data (e.g., the definition of Assets, a Schedule outlining the location of the applicable program areas and probably the form of a licencing agreement).

Clause 2.03: i) The 2000 PTP was structured so that any Deposit was created in the Head Agreement. This was modified as of the 2017 PTP by including an optional Deposit Clause. In practice, a Deposit will often not be required in minor value Transactions. This is particularly the case if the Vendor determines that the ongoing business relationship between the Parties is such that a Deposit is not required to secure performance.

ii) The Deposit in this Clause was structured as 10% of the Base Purchase Price, to reflect the most typical Deposit threshold. The Parties can easily modify this threshold for any particular Transaction, and the bolded Paragraph in the sample Schedule of Elections and Modifications included as Addendum I reminds users of this.

iii) The Clause is consistent with the provision typically used in industry's Purchase & Sale Agreements, in that it acknowledges receipt of any required Deposit. The Parties will need to determine the logistics for delivery of the Deposit under their Agreement. For the typical Transaction for which the PTP is being used, the Vendor might often choose to have its representative exchange a copy of its execution page of the Agreement for the Deposit. A more elaborate process might be used if the Deposit is being made through a wire transfer.

iv) The Clause also addresses some of the procedural obligations if there is a Deposit. The Vendor will hold the Deposit in trust on behalf of the Purchaser, to be applied against the Purchase Price if Closing occurs. A Purchaser might require a modification so that a Deposit would be held in a special trust account if the Deposit were very large or there were material concern about a Vendor's financial situation.

v) If Closing does not occur, the handling of the Deposit is addressed by this Clause and the default provisions of Article 12.00 (i.e., the Deposit would be defaulted to the Vendor if Closing did not occur because of a default of the Purchaser). If the Deposit is to be returned to the Purchaser, interest accrues on a Deposit at the Prime Rate, plus one percent, even if the Vendor does not deposit the funds with a financial institution. Prime Rate, plus one percent was chosen for consistency with the treatment in the definition of Interest Amount and under Clause 2.06, to recognize that the Deposit would only be returned if the Purchaser was not at fault. As the interest rate payable on short term deposits will typically be approximately 2% below the Prime Rate, Parties might sometimes prefer to modify the PTP to use revised rates.

Clause 2.04: i) The amount specified as the Base Purchase Price is before any adjustments under Article 4.00 and any other modifications due to the exclusion of Assets as contemplated in Clause 1.05 (e.g., exercised ROFRs, Assets excluded due to Title Defects) or otherwise as agreed by the Parties (e.g., a negotiated reduction in price to accept certain discovered Title Defects or unexpected Environmental Liabilities).

ii) Any Interest Amount that accrues is an increase to the Purchase Price. In a Transaction with Petroleum and Natural Gas Rights, it is allocated to them, rather than the Tangibles, under Clause 2.06. This reflects the view that the foundation of the accrual of the Interest Amount is because of the benefit accruing to the Purchaser for net production income that accrues from the Effective Date.

iii) The introduction of the definition of Interest Amount in the 2017 PTP results in a different handling of interest than was the case in the 2000 PTP if there is a Deposit. That definition sees an accrual of interest in parallel on the Base Purchase Price for the benefit of the Vendor and on the Deposit for the benefit of the Purchaser, such that the Interest Amount is the difference between the two amounts.

iv) Subclause B reflects the overall handling of Environmental Liabilities under Clause 13.04. This Subclause recognizes that each Party would have taken into account the contemplated Environmental Liabilities associated with the Assets when determining the Purchase Price, and reinforces the Purchaser's responsibility for those obligations. This is not intended to affect the environmental due diligence process or the rights of the Purchaser thereunder. It had been addressed as part of Clause 2.01 in the 2000 PTP.

v) Subclause C provides that payment might be made by certified cheque, bank draft or wire transfer. However, a wire transfer to the Vendor's designated bank account will sometimes be required because of a $25MM cap on the use of cheques, bank drafts and other paper-based payment items going through Canada's financial clearing system that was introduced to enhance the stability of the Canadian payments system.

The Subclause is structured to recognize the possibility that a wire transfer could potentially be required for a Deposit or payment of any other amount required to be paid by a Party at a time other than the Closing Time. That being said, it is unlikely that a wire transfer would be required under financial clearing procedures for the amount of a Deposit or adjustment associated with the typical low to modest value Transaction for which the PTP would be used in practice.

Some Parties will also probably modify this Subclause so that all payments being made will be through a wire transfer.

vi) Parties without established processes to manage wire transfers might find it beneficial to do a test of the process with a notional amount before Closing (or any other applicable payment date for which a wire transfer is required) to ensure that the payment will be processed smoothly.

vii) It is possible (but not likely) that all or a portion of the consideration associated with a Transaction is the issuance of shares by the Purchaser. The onus is on the Parties to customize their Agreement to reflect any such Transaction.

Clause 2.05: i) Clause 2.05 requires the Parties to disclose their GST/HST Registration Numbers. The Purchaser's Registration Number is particularly relevant if, for example, real property is being conveyed (as the reverse collection mechanism likely will apply) or the section 167 election is made.

ii) Subclause A–Alternate 1: The GST/HST is not applicable to the conveyance (i.e., supply) of a right to explore for or exploit a mineral deposit (i.e., petroleum, natural gas and related hydrocarbons deposits). Under current administrative policy, this exception to the general rule applies to the conveyance of leasehold interests, but not fee simple/freehold interests. As a result, GST/HST should be applied to fee simple/freehold interests, any other real property interests and most personal property that is conveyed under the Agreement. Under the general rules, the Vendor will be required to collect and remit GST/HST on the conveyance of all personal property (including what is generally described as Tangibles, Miscellaneous Interests, and, if applicable, seismic). As the Purchaser generally will be able to claim the GST/HST paid by it as an input tax credit, there will be no cost to the Purchaser, except for the cost associated with the time value of money incurred during the recovery period. As a final matter, the allocation of value among the relevant classes of property must be reasonable for GST/HST purposes. For the Canada Revenue Agency ("CRA") administrative policy on this topic, see, *inter alia*, Policy Statement P-128R2, dated January 5, 2006.

In contrast to the general rule, the reverse collection mechanism will apply to real property that is supplied by way of "sale" (including an Asset Exchange) to a Purchaser, provided the Purchaser is registered for GST/HST purposes. In these circumstances, the reverse collection mechanism will apply to the transfer of fee simple/freehold interests, commercial land, buildings, easements and interests in pipelines. Under the reverse collection mechanism (section 221(2) of the ETA), the Purchaser must report and remit the GST/HST exigible, which remittance may be reduced by the input tax credit entitlement that the Purchaser has in respect of any such acquisition. The reverse collection mechanism is not optional. For the CRA administrative policy on this topic, see, *inter alia*, Policy Statement P-111R, dated February, 1995 and Guide RC4022 at page 56.

iii) Subclause A –Alternate 2: Subclause A has also been structured to include the option of a joint election, if applicable, so that the GST/HST will not be payable (currently Tax Form GST 44). The possible application of the section 167 election should be reviewed carefully at the relevant time to ensure that all of the prerequisites are met. As presently worded in the ETA, the Purchaser will satisfy the prerequisites if it is acquiring a business or part of a business of the Vendor and if the Purchaser is acquiring ownership, possession or use of at least 90% of the property that can reasonably be regarded as being necessary for the Purchaser to be capable of carrying on the business or part as a business. GST/HST Memoranda 14.4 Sale of a Business or Part of a Business (December, 2010) indicates that a transfer of certain undivided interests in a joint venture meets the requirements of section 167. If a number of joint venture interests are being conveyed, a separate 167 election may be required for each such joint venture interest being conveyed (provided each joint venture interest represents a business or part of a business). Note that the CRA administrative concession under the section 167 election has not been extended to encompass the conveyance of an interest in a single oil and gas well. It also may be instructive to review Policy Statement P-171R, dated February 21, 1995.

iv) Subclause B has been included to remind the Parties that provincial sales tax may apply to the Transaction. The Parties should note that the payment of provincial sales tax may be avoided in certain situations if applicable exemption certificates are provided.

v) Subclause C makes it clear that the Purchaser will indemnify the Vendor for any GST/HST and provincial sales tax (plus the corresponding penalties and interest) that become payable on a particular Transaction. Factors that influenced the indemnification by the Purchaser were that it agreed to the allocation of values for tax purposes and had the opportunity to ask any questions about the Vendor's GST/HST calculation. In addition, the Purchaser would be responsible for managing any section 167 election under Alternate 2, any application of the "reverse collection mechanism" for real property and the handling of any provincial sales taxes and the associated exemption certificates.

vi) Subclause D was introduced in the 2017 PTP. Section 182 of the ETA specifies that, in certain situations, compensatory payments made by a person as a result of a breach, modification or termination of an agreement will "include" an amount on account of GST/HST. This Subclause addresses the possibility that a Transaction might not Close due to the fault of a Party and consequently result in a breach, modification or termination of the Agreement in circumstances in which some form of compensation is paid by one Party to the other (e.g., the loss of a Deposit). Given that any such compensatory payment would typically not otherwise include an amount on account of GST/HST (or otherwise have been contemplated by the Parties during negotiations), this Subclause grosses up any such compensatory payment by the relevant GST/HST rate insofar as GST/HST applies to that compensatory payment. This sees the damaged Party being kept whole with respect to the applicable amount. (See also CRA's policy P-218R, revised August 9, 2007, and Paragraph 12.01(c) respecting the handling of a Deposit if there is a default.)

Clause 2.06: i) This Clause is premised on the Agreement not being executed prior to the Effective Date. If it is executed prior to the Effective Date, there may be circumstances in which the Parties will modify the interest and Deposit mechanisms. (See also Clause 2.03.)

ii) Most Vendors believe that they should have been entitled to its funds at the Effective Date. As the Vendor has arguably "loaned" the funds to the Purchaser for the Interim Period, it is a well-accepted practice that "interest" will accrue at a *per annum* rate between prime and prime plus 2%, so Alternate 1 has been included using the Prime Rate, plus 1% per annum. The justification for the interest charge on the adjusted Purchase Price is generally regarded as the accrual, to the Purchaser, of the incremental revenue applicable to the Interim Period.

Despite the broad use of this practice, there are others who object to the mechanism if Closing follows the Effective Date by 4 - 6 weeks and the Parties have been proceeding diligently since they "struck a deal." In essence, they believe that no interest should accrue during the period that the Parties are diligently preparing for Closing, since the Parties are working within logistical limitations that preclude them from Closing immediately. They note that the Purchaser is receiving no benefit during the Interim Period for non-productive Assets, arguably including the production that will be obtained following Closing (i.e., the $Y in value that does not include the cash flow for the Interim Period), while the Vendor has the benefit of limiting its potential exposure to future expenditures and legal liabilities from an Effective Date prior to Closing. They also note that the Purchaser will have paid for the incremental revenue for the Interim Period in its Purchase Price and that the incremental revenue would not actually be received until late in the month following the production month anyway.

iii) Closing could follow the Effective Date by between 3 and 6 weeks, assuming the prompt finalization of the Agreement and land interests of moderate complexity. (However, the Parties often will have intentionally negotiated a retroactive Effective Date.) The premise behind Alternate 2 is that Closing should occur shortly following the time reasonably allocated for the completion of the Purchaser's due diligence work and the Vendor's pre-Closing work to prepare documents, address partner consent/ROFR issues and respond to Title Defects. It is designed to compensate the Vendor with interest if Closing is delayed beyond the time reasonably anticipated for completion of the pre-Closing work because of such factors as the Purchaser's delay in providing ROFR values or in commencing and completing its title review. The interest rate was adjusted to Prime Rate plus 1% per annum in the 2017 PTP to be consistent with the other interest calculations in Article 2.00.

iv) A problem relating to the interest mechanism in both Alternates is the assumption that the Vendor has done nothing to delay Closing. Closing is often delayed by the Vendor's less than diligent efforts in processing the Transaction, the Purchaser's difficulties in completing its due diligence review if the Vendor's files have not been well maintained or the Vendor's delay in addressing Title Defects. As it is not appropriate to have interest accrue in those cases, the Vendor is required to assume responsibility for delays that are solely attributable to it under both Alternates, including any such delay that results in a second Closing for Assets for which Title Defects were remedied by the Vendor after Closing (Subclause 8.02F). Similarly, interest does not accrue insofar as Closing is delayed because the Parties are involved in an arbitration under Article 9.00.

v) The Clause includes a third option - not to accrue any interest on the Purchase Price by selecting that neither Alternate 1 nor 2 will apply. This option will often be selected for Asset Exchanges, minor value Transactions and Transactions with a short Interim Period.

vi) Interest is calculated on the Purchase Price net of the Deposit and any adjustments made at Closing under Paragraph 4.02A(a). Those adjustments include any modifications resulting from the exclusion of certain Assets under Clause 1.02 and any net adjustments under Article 4.00. To illustrate, assume that a Transaction with a $10MM Base Purchase Price sees a reduction of $2MM because of ROFR exercises and an Article 4.00 adjustment of $500K in favour of the Purchaser in circumstances in which there is no Deposit. The interest would be based on the adjusted $7.5MM amount. This approach is administratively simpler than calculating interest separately on the Purchase Price from the Effective Date and on production proceeds from the time of receipt.

vii) Any interest accrual under this Clause is an increase to the Purchase Price (capital), rather than an income/expense item. The interest amount increases the allocation to the Petroleum and Natural Gas Rights, provided that the allocation would be to Tangibles if there were no Petroleum and Natural Gas Rights (Clause 1.05). This approach is consistent with general industry practice.

Clause 3.01: i) Closing is premised on the conditions in Article 10.00 having been satisfied.

ii) The location of Closing had been left blank in the 2000 PTP because of the Asset Exchange scenario in which each Party would be a Transferor for certain Assets. As a clear majority of Transactions would be structured as sales for which Closing will be at the office of the Vendor, the default in the PTP is that Closing is at the office of the Vendor. The Parties to an Asset Exchange would need to modify this Clause in their individual Agreement, and the annotations on the definitions of Vendor and Purchaser remind users of this required change.

Clause 3.02: i) Although the Purchaser generally will acquire the benefits and obligations respecting the Assets retrospectively to an earlier Effective Date, it will not take possession of any operated Assets until the Closing Time. The provision was structured to link obligations (e.g., financial and liability and indemnification) to the Effective Date because: (a) it matched the net production income or loss being adjusted under Article 4.00 with the associated obligations (e.g., potential accrued liabilities) in accordance with the "matching principle" at the foundation of the accrual system of accounting; (b) the Purchaser has a high degree of influence on operational decisions under Article 5.00; (c) the Purchaser is protected by the "No Substantial Damage" condition in Clause 10.02 for any significant damage to the Tangibles; (d) the typical use of the Effective Date as the "transfer date" under any notice of assignment relating to a land agreement; (e) it encourages Parties to select the Effective Date on a current basis; and (f) as long as the net production income or loss during the Interim Period is handled in compliance with the requirements of the Canada Revenue Agency prescribed by Clause 4.03, it is unlikely that the CRA would otherwise concern itself with the terms negotiated by the Parties. Some companies prefer to follow the CRA's general historic practice of passing obligations at the Closing Time and regarding the Effective Date as simply an accounting reference date, particularly if the Interim Period is long. Those companies can address their concerns relatively easily by changing the Effective Date references in this Clause, Article 13.00 and the General Conveyance, and choosing a corresponding "transfer date" in the NOAs. Notwithstanding this Clause, the Purchaser would not have an insurable interest until Closing, such that a Purchaser would want to understand the policies of insurance held by the Vendor under Clause 5.02.

ii) It is the better practice for the Vendor's field personnel to spend time with the Purchaser's personnel prior to Closing to familiarize them with any Assets that they will be operating. In some circumstances, it will not be feasible for the Purchaser to take over the operated Assets at Closing, so it may be necessary for the Vendor to continue to operate the Assets for a short time as a contract operator under a side agreement. It is in the mutual interest of the Parties to have an agreement outlining that transitional services arrangement, including any applicable fees.

iii) The Effective Date and the Closing Time will seldom coincide. Article 5.00 addresses the Vendor's obligations to the Purchaser for the maintenance of the Assets until the date possession is transferred. This is an area that the Parties should review very carefully in the context of any particular Transaction to ensure that there is a suitable breadth and depth of coverage, particularly if using a different document format.

Clause 3.03: i) The Vendor is responsible for the preparation of documents respecting the conveyance of the Assets. There may be instances in which the Purchaser prefers to prepare those documents, though (i.e., a Vendor without significant A&D expertise disposing to a Purchaser with the expertise and the resources to prepare the documents), and that change could easily be made.

ii) Subclauses 3.03A and B are structured so that the Specific Conveyances are fully executed for Closing. Industry experience has been that those documents are often not prepared diligently by Vendors if the Specific Conveyances are not delivered until after Closing. Similarly, industry experience has been that documents were not executed by the Purchaser and distributed to third parties promptly if documents executed only by the Vendor were delivered at Closing. The distribution of the Specific Conveyances after Closing is addressed in Clause 3.05.

iii) The PTP does not prescribe a process in which drafts of Specific Conveyances are provided to the Purchaser for review several days before Closing. That being said, it is the better practice for drafts of those documents to be provided to the Purchaser a reasonable period prior to Closing, so that any required corrections can be made to the documents being executed at Closing. Addressing required corrections prior to Closing is greatly preferable than redoing the documents if errors have been discovered after distribution to the applicable third parties.

iv) The increasing importance of Environmental Liabilities is such that the Parties need to be very careful when preparing a notice of assignment under the CAPL Assignment Procedure for a land agreement that originally included rights in addition to those being acquired by the Purchaser

under the Agreement. Suppose, for example, that the original land agreement included Sections 1-4 and 9-12, that there were abandoned wells on sections 4, 9 and 10 and the only Lands still held under the Leases and that are all included in the Transaction are Sections 1, 2 and 12.

The typical traditional approach would be to include a 4A (interest in entire agreement) election in the notice of assignment prepared to reflect the assignment for distribution to the affected third parties, as the Purchaser was acquiring all of the Purchaser's live mineral rights subject to the land agreement. Is that the correct election, though, if any of those previously abandoned wells were still in the reclamation process or if Regulatory Authorities identified a problem with one of those previously abandoned wells 10 years after closing?

Both Vendors and Purchasers need to assess the evolution of a land agreement over time more carefully than they have in the past when making the 4A or 4B (assignment of interest in less than entire agreement) election in the applicable notice of assignment.

v) As noted in the definition of Specific Conveyances and the related annotations, Surface Rights relating to road use agreements and crossing agreements are typically held under "master agreements" between the applicable grantor and grantee. As the Vendor cannot assign its interest thereunder, they fall outside the definition of Specific Conveyances. Although the existence of any such agreement would be identified to the Purchaser, the Purchaser will need to enter into new agreements for the applicable Surface Rights within 60 days after Closing.

vi) The PTP also does not include prescriptive processes to describe the correction of any applicable Specific Conveyances or information included in an electronic registration to applicable Regulatory Authorities. The Further Assurances obligation in Clause 18.02 would apply to any such updates in the normal post-Closing process between the Parties.

vii) Notwithstanding the general expectation that the Specific Conveyance will be fully executed for Closing, Specific Conveyances will sometimes be delivered after Closing. Parties sometimes agree to proceed with Closing without Specific Conveyances being completed for Closing (i.e., large, complex, Transaction with an accelerated Closing). The document could easily be modified for such a Transaction, but any such modification should address the Parties' expectations about the timing of the delivery of the applicable Specific Conveyances. The nature of the conveyancing process is also such that Purchasers are reasonably flexible in this area in practice if certain Specific Conveyances are delivered after Closing. This is particularly the case if it is apparent that the Vendor has prepared most of the Specific Conveyances for Closing, that there is a good reason for the delay respecting the outstanding documents and that the Purchaser's experience with the Vendor's personnel over the course of the Transaction is that the Purchaser believes that completion of the outstanding Specific Conveyances will be pursued diligently by the Vendor.

viii) The complexity of the Transaction may be such that the Purchaser would not be able to set the files up immediately. It is important that the Vendor and Purchaser discuss the degree to which the Purchaser wishes the Vendor to conduct some of the post-Closing administration in such cases. The two most obvious examples would be the payment of rentals accruing in the one or two-month period following Closing and production accounting. These matters should be discussed in the context of the individual Transaction. They should be documented on a custom basis, to minimize the likelihood of a misalignment of expectations, if Clauses 3.06 (timing of electronic transfers re rentals), 3.07 (handling of pipeline transfers), 5.05 (rentals after Closing) and 5.06 (production accounting after Closing) do not suitably address their needs for the Transaction.

Clause 3.04: i) As a general statement, original copies of the applicable files and records are to be provided to the Purchaser at the Vendor's expense within 10 Business Days after Closing. There are four potential qualifications to that handling. Firstly, the Parties may agree to a short delay for the provision of those materials if the Vendor is making scanned copies or photocopies. Secondly, the Purchaser may not require those materials if it is already an owner and the materials duplicate its own. Thirdly, the Vendor may provide photocopies if it is also retaining an interest. Fourthly, the Parties might modify the Clause to include special handling processes if seismic or microseismic data are included.

There will be many circumstances in which the period specified for file delivery will not be appropriate, particularly for large Transactions. If it is too short in the circumstances or if a Party requires a longer period as a corporate standard, the period can easily be modified by the Parties. Similarly, there may be circumstances in which the relative simplicity of the Transaction or the Purchaser's desire to obtain immediate access to the files will cause the Parties to modify the provision to shorten the period for file delivery.

ii) In practice, file delivery can be problematic if the Vendor's practice is to retain copies of files. This is particularly the case if the Transaction is large, a large number of properties are being sold at the same time or Closing will occur near the end of the year. As the Parties will be working with the files for the title review and ancillary document preparation, scanning and copying logistics should be considered carefully early in the Transaction cycle. In some cases, it may be beneficial to scan or copy the files prior to the conclusion of the initial negotiations.

iii) Subclause B recognizes that not all Vendors make scanned copies or photocopies of the files being provided to the Purchaser. If required by the Vendor for audits or third party claims, for example, the Vendor may, at its sole expense, obtain copies of the required materials within a prescribed period after the Closing Time, insofar as the Purchaser retains those materials. Insofar as the Purchaser subsequently disposes of its interest in any of the Assets to an assignee, the Purchaser has an obligation to take reasonable steps to have its assignee comply with this obligation for the remainder of the prescribed period.

The 2000 PTP had been structured so that this period was a blank to be negotiated. The 2017 PTP was updated to include a default election of 72 months that the Parties could easily override for their own Agreement (e.g., "for so long as the Purchaser or any of its Affiliates retains an interest in the applicable Assets"). The Vendor would not have any direct contractual relationship with the Purchaser's subsequent assignee. However, the Purchaser can create a duty in that later Agreement to provide the access required under Subclause B that the Purchaser would be able to enforce on behalf of the Vendor.

iv) In practice, the Purchaser might not wish to obtain copies of geological samples and cores pertaining to the Wells. If it chooses not to obtain those materials, it should not expect to obtain them subsequently.

v) A Purchaser might request an electronic conversion of land data on larger Transactions to simplify entry of the land information into its land information system. The nature of this obligation on the Vendor's personnel is such that any such request should be discussed with the personnel who manage its land information system before agreeing to this type of request. Assuming the number of records involved in the Transaction warrants this handling, it is important for the Vendor's personnel involved in the negotiation of Transactions to understand, firstly, if what is being requested is actually feasible and, secondly, that the contemplated schedule does not interfere unduly with other fixed schedule obligations of the affected personnel who would be involved in a conversion project. Any such provision should be considered carefully on a case-by-case basis, as a provision that worked well with A because of prior interfaces and a common land information system, for example, might not work well for B.

vi) This Clause does not address the situation in which the Licencee Rating for either Party is such that special provisions are required to transfer the licences for Wells or Tangibles. As noted in the general annotation at the beginning of the PTP and the annotations on Licencee Rating, Paragraphs 6.02(q), 6.04(d) and 10.01(e), the onus is on the Parties to add custom content in their Agreement to address their particular needs. Reviewing the Regulations for each Transaction is particularly important if they include a requirement for a review of a proposed transfer of a regulatory licence, permit or approval through a process in which that approval might not be granted, since this could require the inclusion of a Closing in escrow process in the Agreement.

There were two reasons for this approach. The first was the belief that the PTP should not attempt to predict or prescribe the handling of an important emerging issue that should be assessed and handled by the Parties and their applicable legal advisors on a case-by-case basis. The second was that the fluidity of the Regulations on this area over time and across jurisdictions was such that any more specific handling of the issue in the PTP would potentially create unintended consequences for users over time.

Clause 3.05: i) One of the biggest problem areas in processing A&D Transactions had been the delay in the recognition of the Purchaser by third parties. This Clause includes options to address this, with Clause 3.06 addressing the handling of electronic transfers for applicable Leases and Surface Rights and any applicable transfers of the licences for Wells and Tangibles. The latter is particularly relevant for transfers of licences for Wells and Tangibles and the Alberta Crown's monthly statement process for Crown rentals.

To streamline this process, Alternate 1 provides that the Vendor is to handle the distribution and registration of the Specific Conveyances described in Paragraph 3.03A(b) on behalf of the Purchaser. This reflects the practical fact that the Purchaser's immediate focus after Closing generally is on

getting the properties into its system. Both Parties benefit through earlier recognition by the operator, as less accounting rework will be required. The Vendor particularly benefits by reducing the recognition period and in knowing that the registration of documents is complete.

The Purchaser controls the distribution and registration of the documents under Alternate 2. It may be particularly attractive if there are concerns about the diligence with which the Vendor would distribute the ancillary documents. While this structure had typically been used for industry's dispositions in the 1980s and much of the 1990s, it is now used relatively selectively.

ii) The Alternates each provide the flexibility for the Parties to agree on a different handling of some of the Specific Conveyances. The Parties may agree, for example, to use the selected Alternate for certain Specific Conveyances and a different process for other Specific Conveyances. It would be important for Parties to document any such segmented responsibility for the handling of Specific Conveyances.

iii) The other Party should be copied with the letters distributing or registering the Specific Conveyances as a normal practice. There is also an obligation on the registering Party to provide a proof of registration in a timely manner in due course, as applicable, in the circumstances.

iv) The execution of third parties will be required on an exception basis because of the wide application of the CAPL Assignment Procedure to land agreements. Each Party would be prudent to monitor any required third party execution closely under both Alternates, to try to minimize the lag in recognition of the Purchaser.

v) The third party recognition process is also facilitated by selecting an Effective Date within 4-6 weeks of the contemplated Closing Time wherever feasible, as there will be fewer adjustment issues if that timing were selected.

vi) The registration costs associated with discharges of Security Interests provided by the Vendor to satisfy the condition to Closing under Paragraph 10.02(c) are an exception to the general rule that the Purchaser bears all registration costs associated with the Transaction. The Vendor is responsible for those costs because they are incurred to address a deficiency in the Vendor's interest.

Clause 3.06: i) Under this Clause, the Parties coordinate the applicable electronic transfer process, if any, for transfer of the applicable interests in the Leases and, for operated properties for which the Purchaser will be the operator, the Surface Rights and licence transfers for Wells and Tangibles. This requires the Purchaser to accept the applicable transfer on a very short cycle following Closing. The expectation is that electronic transfers will be effected promptly, given the nature of any such electronic transfer process and the relative simplicity of a Transaction for which the PTP is most likely to be used

ii) Notwithstanding the mutual objective for an accelerated recognition of the Purchaser's interest, the nature of the monthly statement rentals process is that Parties often modify their approach to transfers of interests in documents that have a near term rental date in order to provide the Purchaser with the opportunity to set up its records for the acquired Assets. Insofar as requested by the Purchaser, by notice to the Vendor, the Vendor will pay rentals and other similar land maintenance payments due in the month in which Closing occurs and the two subsequent months. Notwithstanding that the Purchaser has the right to require the Vendor to manage upcoming land maintenance payments for that transition period, there will be many circumstances in which the Purchaser will be able to integrate the files into its records relatively quickly after Closing, such that the Purchaser will not require the Vendor to provide any such transitional support or to do so for only a shorter period. Insofar as the Vendor manages any such payments at the Purchaser's request, any related electronic transfers would be deferred until shortly following the applicable payment date. The Parties would modify the Clause to manage any different handling. (The Vendor's obligation to pay rentals and other such land maintenance payments during this transitional period is addressed in Clause 5.05.)

iii) As noted in the annotations on the definition of Licencee Rating and the reps pertaining to licence transfers (Paragraphs 6.02(q) and 6.04(d)), the PTP has been designed for the circumstance in which attributes of the Vendor or Purchaser or the applicable Assets do not impede a transfer of licences for any Wells and Tangibles that had been operated by the Vendor. This, of course, will not always be the case. Other than for the inclusion of the condition in Paragraph 10.01(e) that Parties will sometimes need to modify for their needs, the PTP has been designed so that Parties in that situation are required to address this key business issue on a customized basis in the context of the requirements of Regulatory Authorities for the applicable jurisdiction at the relevant time, preferably in consultation with their respective legal advisors.

This might be done, for example, by including additional definitions, a Clause that relates to the specific handling required for their circumstances and the inclusion of additional conditions to Closing. Reviewing the Regulations for each Transaction is particularly important if they include a requirement for a review of a proposed transfer of a regulatory licence, permit or approval through a process in which that approval might not be granted, since this could require the inclusion of a Closing in escrow process in the Agreement.

Simplifying the review of the other procedural aspects of the overall Transaction through use of the PTP facilitates a more focused examination of this important issue by the Parties' representatives relative to what would be the case without the PTP. The fluidity of this area over time and the differences between jurisdictions were such that the PTP was not structured to include any specific provision to address an issue that is a moving target. The alternative of including a "one size fits all" solution for relevant jurisdictions based on a snapshot in time assessment of the Regulations would ultimately create risk for users because of potential reliance on a provision that might not suitably address the issue at the time they were negotiating their Agreement.

A sample "snapshot in time" provision that illustrates some of the issues that would need to be considered by the Parties and their legal advisors when writing their own provision follows:

Covenant By Parties Respecting Well And Tangibles Transfers

Each Party covenants and agrees to cooperate with the other Party and to take all reasonable steps necessary, in a timely manner and as reasonable in the circumstances, in order to satisfy the requirements of all Regulatory Authorities with respect to the transfer from the Vendor to the Purchaser of the licences for any Wells and Tangibles licenced to Vendor for which the Parties intend that the Purchaser will succeed the Vendor as licencee. Each Party recognizes that the requirements of those Regulatory Authorities may require a particular Party to provide a security deposit or other form of financial security in respect of suspension, abandonment or reclamation costs associated with the applicable Wells and Tangibles, or any of them, as a condition of approving the applicable transfer. Nothing in this Clause, however, will obligate a Party to provide any such required security deposit or other form of financial security on behalf of the Party subject to that requirement.

Clause 3.07: i) The references to Pipeline Records reflect AER Bulletin 2015-34. It contemplates that the AER could conduct compliance monitoring (for existence and transfer of required records) on a random basis or during routine field inspections, typically after the transfers have been processed. The new licencee (transferee) is responsible for producing the applicable records on request of the AER, which places an onus on the Purchaser to protect itself through its due diligence process. A licencee that fails to do so will be in a non-compliance position. Non-compliance could, among other things, force it to conduct an engineering assessment to demonstrate that the applicable pipeline is fit for its intended use and service. Pending such an assessment, the AER could order the pipeline out of service, which may require Wells to be shut-in. Compounding the challenge of compliance is that the Parties might not agree about whether the Pipeline Records are complete for the purposes of the review by the Regulatory Authority and that the Regulatory Authority's expectation for completeness might not be known until any site inspection.

The references to Pipeline Records require the selected Party (Vendor or Purchaser) to bear accountability to address any deficiencies associated with Pipeline Records. The optional representation included in Paragraph 6.02(r) is fairly onerous, and Vendors will typically be extremely reluctant to assume a trailing liability. One would typically expect Vendors would have a strong preference not to accept that representation and to select Alternate 1 in this Clause as a consequence. Conversely, one would expect that Alternate 2 would be selected only (but not necessarily) if a Vendor has agreed to provide that representation.

Alternate 3 has been included to add flexibility. It allows the Parties to choose to share financial responsibility for any engineering assessments required to rectify any identified deficiencies on a different negotiated basis under the Head Agreement. A negotiated cost sharing creates reinforcement for each Party to address any deficiencies in a timely and cost-effective manner.

Clause 4.01: i) The benefits and obligations respecting the Assets are to be apportioned between the Vendor and the Purchaser, as of the Effective Date, in accordance with established accounting practices in the oil and gas industry. J.V. billings will be a major source of this information, recognizing that there will be some issues about the accuracy of the billings and their linkages to particular time periods in many cases.

ii) There will be many implementation type issues associated with a Transaction that accounting personnel need to handle in the spirit of the principles in this Article, as it is not feasible to be prescriptive about all situations. It is recommended that Parties ensure that their respective accounting personnel are discussing these issues well before Closing to ensure a smoother transition. Two examples of these types of issues are the Alberta Crown Royalty recognition process (RMF2 form) and gas cost allowance ("cost allowance" under the current Alberta Regulations), and the latter can be particularly complex.

In an Alberta context, the "New Royalty Framework" (NRF) was implemented in January 2009. Under the New Royalty Framework, the department implemented changes to the monthly and annual allowable cost processes. The "Unit Operating Cost Rate" is no longer used to determine operating cost deductions. In its place, actual operating costs will be deducted for owners. The "Corporate Effective Royalty Rate" was replaced with a "Facility Effective Royalty Rate", which is used to determine the monthly and annual Crown share of allowable costs, including capital, operating and custom processing cost allowances. The "Facility Effective Royalty Rate" is applied to each client at each facility.

This again reiterates the importance of: (a) identifying plant and pipeline interests clearly; (b) choosing an Effective Date and a Closing Time that ensure that the Interim Period will be relatively short; and (c) last, but certainly not least, having the right people communicating at the right time. As the royalty impact is inherent in the valuation of an asset, this issue should be understood by a Vendor relatively early in the divestiture process, with the applicable undepreciated capital base preferably shared in any sale brochure pertaining to the assets.

iii) Internal procedures must also be implemented by the Vendor to ensure that material AFEs received after the printing of any brochure or during the negotiations phase are brought to the attention of the Purchaser in a timely manner.

iv) Paragraphs (b) and (c) recognize that advances, cash calls and deposits will often still be outstanding after Closing. While not an apportionment around a defined date like some other items in the Clause, they need to be transferred to the Purchaser and addressed in the adjustment process. The Paragraphs recognize that certain costs relating to those liabilities might have been incurred between the Effective Date and Closing that require modifications to those advances, cash calls and deposits.

v) Paragraph (d) is an optional Paragraph as of the 2017 PTP. Parties will often choose to ignore a *per diem* rental adjustment for many small to modest sized Transactions for which the PTP would be used, particularly for any Transactions involving only undeveloped lands. This is consistent with the approach in the CAPL Farmout & Royalty Procedure, which has significantly reduced the frequency with which *per diem* rental calculations are used in farmouts.

If selected, rentals are apportioned on a *per diem* basis under Paragraph (d). (Some Vendors choose not to include rentals for non-operated surface rentals in this process in any event because of the effort required to confirm those amounts from J.V. billings and the fact that they are often relatively minor.) If a very rough calculation indicates that the amount of this adjustment would be minor, it is probably attractive not to apply this Paragraph for simplicity and devote the time to a more pressing matter. Joint Venture accounting personnel should be advised of any adjustment under this Paragraph when they are preparing the interim statement of adjustments.

vi) The applicable freehold mineral tax may be such that the Parties prefer to modify Paragraph (e) to eliminate any adjustment.

vii) Users must remember to include property tax adjustments in the Paragraph (e) adjustment. These can be material for some properties.

viii) Paragraph (f) was introduced in the 2017 PTP to provide greater certainty about the pricing to be used when determining the production proceeds accruing to the benefit of the Purchaser during the Interim Period and for that incremental period after Closing before it becomes recognized as the owner of the Assets. Production proceeds are to be calculated using a Market Price unless otherwise provided in the Agreement or agreed by the Parties. The Market Price definition is based on the 2015 CAPL Operating Procedure definition, and is ultimately a sale price that is not unreasonable in the applicable circumstances, having regard to current market conditions. This structure protects the Purchaser against a notional allocation of unfavourable hedges to production from the Lands. The corollary of this is that the Purchaser is not permitted to share in any attractive hedges that the Vendor had in place with respect to the property. The Parties are always free to negotiate a different outcome, however.

There may be circumstances, though, in which there are unique attributes to the Assets that cause the Parties to address marketing arrangements more specifically in the context of their particular Transaction. This could result in the use of an index, such as AECO-C, less transportation differential, as the sales price for gas volumes being sold on the Purchaser's behalf from the Effective Date.

ix) As a general statement, production inventory is retained by the Vendor under Paragraph (g), subject to qualifications with respect to "tank bottoms" and a sulphur pad or storage block. While this handling of produced volumes reflects typical industry practice, Parties will sometimes prefer not to address produced volumes in tanks on site in this manner because of potential challenges in measuring volumes accurately, particularly if the volumes are modest. (See also the annotations on the Clause 1.01 definition of Excluded Assets.)

As a Vendor is unlikely to wish to retain its share of a low to negative value sulphur pad or storage block, the PTP provides that the Vendor's interest therein is included in the Assets, unless the Parties otherwise agree in the Head Agreement. This would require a determination of the value of the sulphur, with a resultant tax allocation to product inventory. The Parties will wish to consider this in the context of their particular Transaction in light of the associated assumption of potential liabilities and the value of the sulphur inventory. This handling of sulphur is also premised on the assumptions that the value of sulphur inventory is very modest and that the Vendor's stored sulphur pertains only to production from the Assets. The Parties would need to address their expectations clearly in the Head Agreement if the sulphur pertained to other fields that were not included in the Assets.

The Parties need to be cognizant of any sulphur pad or storage block associated with the Assets and structure their Agreement accordingly. This was an issue in Talisman Energy Inc. v. Esprit Exploration Ltd., 2013 ABQB 132 (Alta. Q.B.). In that case, Talisman had purchased the seller's interest in a gas plant (but not P&NG rights) and an issue arose as to whether it had acquired an interest in the sulphur block associated with the plant. The Court held that Talisman had not acquired an interest in the sulphur block because the sulphur block did not fall within the scope of the definition of tangibles thereunder that related to the plant and the related sulphur facility. It had also been clear that the prior ownership interests in the plant did not correspond to the ownership interests in the sulphur block and that the sulphur owners had developed a sulphur storage procedure.

x) The Clause would need to be amended if a production banking mechanism were in place, probably through a modification to Paragraph (g).

xi) Paragraph (h) was introduced in the 2017 PTP. Insofar as the Vendor is operating any of the Assets under the Title and Operating Documents during the Interim Period and in a transitional period after Closing under Clause 5.04, any overhead recovery that accrues to the Vendor, as operator, under the applicable Title and Operating Documents is retained by it, and is not subject to the adjustment process. (This would see it retaining overhead amounts paid by third parties. The Purchaser would not reimburse the Vendor for the Vendor's own share of the overhead charges through this mechanism, though, as the share of overhead paid by the Vendor would be handled as a cost under the adjustment process.) This reflects the principle that the Purchaser should not receive the benefit of overhead recoveries accruing under the Title and Operating Documents for activities conducted by the Vendor for which it is not receiving any compensation from the Purchaser under the Agreement.

xii) Incentives (Paragraph (i)) are generally of two types - those that accrue to operations without regard to the attributes of the participants and those that accrue to a Party based on certain financial attributes or status. Incentives that accrue to a Party because of its unique attributes are excluded from the adjustment process. Those that would accrue to anyone conducting an operation are included in the adjustment process.

xiii) Paragraph (j) addresses Thirteenth Month Adjustments, including the allocation issues if there is a significant variance in revenues, costs and throughput volumes during the respective periods of ownership in a Facility. It is included because an operator's Thirteenth Month Adjustment typically uses annual averages that do not recognize variances over the year. In essence, the Parties will apportion on a *per diem* basis, but may conduct their own equalization to ensure that there is a more equitable allocation between the pre and post Effective Date periods. As this equalization can be a labour-intensive process, it is only recommended if the perceived adjustments are sufficient to warrant the effort.

If the Vendor is the operator of such a Facility, it should consider completing any outstanding Thirteenth Month Adjustments at the earliest feasible date, as it can be difficult to allocate resources to this task for a Facility that has been sold. If the Vendor is a non-operator in such a Facility, the Thirteenth Month Adjustment could occur well after Closing, as contemplated in Subclause 4.02C.

xiv) Except to the extent provided for the accrual of interest in Clause 2.06 and for the failure to pay revenues as due under Paragraph 5.04(c), no interest accrues on adjustments, as noted in Paragraph (k). Clause 2.06 is structured so that an interest accrual on the Purchase Price is based on the Purchase Price plus or minus any modifications resulting from the exclusion of certain Assets under Clause 1.02 and the net adjustment included in the interim statement of adjustments for Closing under Paragraph 4.02(a). Paragraph 5.03(c) creates an obligation to manage adjustments on a monthly cycle, failing which the applicable amount may accrue interest under Clause 12.02.

xv) Paragraph (l) provides that all disputes respecting adjustments are to be resolved under the dispute resolution provisions in Article 9.00.

Subclause 4.02A: i) The interim statement of adjustments will often not be prepared for Closing if: (a) the amounts are minor; (b) Closing occurs shortly following the Effective Date; or (c) a Transaction was completed on an accelerated basis. It was not included specifically in the list of deliveries at Closing under Subclause 3.03A as a result, although it is captured in the general reference in Paragraph 3.03A(e).

ii) The interim statement of adjustments is processed on a cash basis because revenues are required to be forwarded on a monthly basis during the adjustment period under Paragraph 5.04(c). The Parties may wish to modify the PTP to use an accrual basis if their intention is to forward revenues with only the interim and final statements.

iii) One of the Vendor's objectives is to minimize its G&A costs associated with a property. It naturally wishes its obligations to end as quickly as is possible, so a six-month adjustment period has been included in Paragraph A(b), to reflect the most commonly negotiated period. The Parties remain free to override this period by selecting a different period. Purchasers will sometimes prefer a one-year period in Paragraph (b), but it would usually exceed the period that is actually required for the vast majority of Transactions for which the PTP is likely to be used. Similarly, the timing might be modified to a 90 or 120-day period for simple, low value Transactions.

iv) The payment obligation under Paragraph A(b) is subject to any application of the Article 9.00 dispute resolution process because of Paragraph 4.01(l). The Parties might consider using a nationally recognized firm of chartered accountants to assist in the resolution of any audit dispute.

Subclause 4.02B: i) The mutual audit right in Subclause B is included because of the possibility that the Purchaser may receive information that is relevant to the adjustment process without the Vendor receiving that information. This could occur, for example, with respect to a Thirteenth Month Adjustment if the operator chose to provide information only to the Purchaser.

ii) Although the timing is consistent with industry norms (i.e., PASC J.V. Audit Protocol), the Parties may prefer to use different time periods in Subclause B because of the circumstances of their Transaction or because of a corporate preference. The audit period, for example, will often be too long for small Transactions or those in which the Purchaser is already the operator of the Assets.

iii) Errors will occasionally be discovered after the audit period specified in Subclause B. In practice, Parties are typically able to resolve such issues through discussion. However, it may be preferable to use a longer period in that Subclause for some complex Transactions.

iv) Note the reference to Thirteenth Month Adjustments, operator error adjustments and J.V. audits in Subclause C. The normal 26-month audit provision would be included in operating or unit agreements applicable to the Assets, such that third parties would be conducting those audits in accordance with those provisions, not the final adjustment provision in Subclause A.

v) The $10,000 adjustment threshold included in the Subclause is one that Parties may prefer to modify for particular Transactions or as a corporate preference change to the PTP. Users are reminded of this item in the general annotation at the beginning of the PTP and on the sample Schedule of Elections and Modifications included as Addendum I.

Subclause 4.02C: i) A 36-month cutoff period has been included in Paragraph C(a) because the typical 26-month audit provision under J.V. agreements is linked to a calendar year. If, for example, a sale closed in January 2018, it is possible that the J.V. audit would not be completed until December 2020, with outstanding audit exceptions potentially extending the process.

ii) There is an exception in Paragraph C(b) for royalty audits or other reviews conducted by the grantor of the Leases. The Crown conducts its audits infrequently. As a result, the Vendor retains full responsibility for the period prior to the Effective Date, notwithstanding the timing limitations otherwise imposed by this Clause and Clauses 6.05 and 13.01. The Crown (Alberta) can reassess royalties at any time in the event of negligence or fraud and within four years after the end of the month in which the Crown royalty was payable in all other cases.

iii) The Vendor has a contractual obligation to satisfy the adjustment requirements under Subclauses 4.02C and D, even if those obligations are discovered or confirmed after expiry of the survival period for the Vendor's representations and warranties under Subclause 6.05A and Clause 13.01. Failure to fulfil these obligations leaves the Vendor open to a normal claim for breach of contract.

iv) This Clause does not fully address pre-Effective Date audit issues. While the apportionment principles between the Parties are clear, this issue can be complicated significantly by third party operators. They may frustrate the principles herein by choosing not to match an audit adjustment to the pre and post Effective Date periods. They may also occasionally choose to deal only with the current owner, such that the Vendor largely relies on the good faith of the Purchaser for the distribution of positive audit adjustments that are unknown to the Vendor.

Subclause 4.02D: i) Subclause D was introduced in the 2017 PTP. It recognizes that nothing in the Transaction will interfere with any rights or obligations of the Vendor with respect to audits for the period prior to the Effective Date.

ii) The Assets will sometimes include significant ORRs that may not have been monitored closely by the Vendor. If the Purchaser monitors its ORRs closely, it might consider trying to negotiate a modification whereby the Purchaser has the ability to step into the shoes of the Vendor for a potential audit of the period prior to the Effective Date, with a negotiated sharing of any proceeds collected by the Purchaser for that prior period.

Subclause 4.02E: Subclause E extends the limitation period in the *Limitations Act* (Alberta) for only claims that arise under Article 4.00 respecting adjustments and audits to two years after expiry of the time the applicable audit was permitted to be performed. This reflects the fact that the timing of adjustments will often be a function of adjustments and audits under the land and J.V. agreements that govern the Assets. Subject to the timing restrictions respecting representations and warranties and liability and indemnification in Articles 6.00 and 13.00, the normal limitation period applies to other claims under the Agreement.

Clause 4.02-General: There had been a circumstance early in the century in which utility providers in Alberta had undercharged electricity costs. This was made up over time on subsequent billings through a "rate rider". This sometimes saw a charge for a period prior to the Effective Date recovered over time from the buyer, which caused an increase in the buyer's operating costs for the affected property. This is something of which a Purchaser should be aware if there were another similar occurrence, as it is something that the Purchaser would need to consider in its evaluation of the Assets. In this regard, a Purchaser would need to recognize that a Vendor would not want to assume any trailing liability for any such charge.

Clause 4.03: i) This Clause has been modified significantly relative to the 2000 PTP because the CRA is no longer willing to offer the latitude in enforcement from its general practice contemplated in optional Subclause 1B of the 2000 PTP. That Subclause reflected some latitude in enforcement with respect to Transactions for which: (a) the Effective Date and Closing were in the same calendar month; (b) the amounts in question were minor (or there was no significant tax benefit accruing to a Party); and (c) all of the income realized during the Interim Period was fully recorded as between the Parties.

Most Agreements are subject to conditions precedent. As a consequence, beneficial ownership of the Assets is retained by the Vendor until Closing in the view of the CRA, notwithstanding that beneficial ownership might be acquired at Closing by the Purchaser under the Agreement retrospectively to an earlier Effective Date. The net effect is that the Clause included in the 2017 PTP reflects the CRA's requirement that income realized during the Interim Period be reported by the Party that has beneficial ownership of the Assets on a real-time basis during the Interim Period.

ii) This Clause outlines the CRA requirement that the income or loss during the Interim Period is treated as the Vendor's income or loss, with a corresponding adjustment to the Purchase Price. This necessarily requires an equitable adjustment mechanism to the Base Purchase Price.

In determining the Purchase Price adjustment, care must be taken to ensure that all reasonable factors are taken into account, including the relevant income tax impact. This is important to avoid an overpayment or underpayment, as the case may be, by the Purchaser to the Vendor. Generally, in calculating the tax adjustment, the net production income should be calculated in accordance with the *Income Tax Act* (Canada).

iii) The CRA's needs are satisfied if Interim Period income is recognized by the Vendor for income tax purposes. The CRA is not normally concerned by the percentage negotiated by the Parties under this Clause. The negotiation of this percentage can often be contentious. Vendors will often request the percentage to reflect the circumstance that they are currently fully taxable (even if in a tax deferred position). On the other hand, Purchasers will often request a very small percentage to be used if their belief is that their Vendor is in a tax deferred position in the near to medium term, even though this does not consider the resultant impact on the Vendor's tax position in the outer years.

iv) The Parties should be cautious about deviating from the CRA's requirements for recognition of Interim Period income. Audit risk potentially increases significantly if the Parties purport to handle Interim Period income differently, particularly if the amounts involved are significant.

Clause 4.04: This Clause was introduced in the 2017 PTP. Insofar as the Purchaser erroneously received funds or an adjustment respecting the Assets and a period prior to the Effective Date, the Purchaser is to notify the Vendor of that error promptly and remit payment to it for the applicable amount. The Purchaser will hold any such amount in trust for the Vendor until that adjustment is effected.

Any such amount is independent of the final statement of adjustments process, as the Purchaser has no rights to any portion of such amount.

Article 5.00-General: i) This is an area in which many documents provide insufficient protection to Purchasers. Although the PTP has been structured to attempt to provide appropriate protections, each Agreement should be reviewed carefully to ensure that the expectations of the Parties are being met in their particular Transaction.

ii) Internal procedures must be implemented to ensure that all of the Vendor's affected personnel are aware of the obligations of the Vendor under this Article, particularly as regards material expenditures proposed after the Effective Date respecting the Assets.

Clause 5.01: i) This Clause addresses the Vendor's obligations for maintenance of Assets on behalf of the Purchaser during the Interim Period. This Clause was modified as of the 2017 PTP to provide the Vendor with the authority to assume a new obligation for which the Vendor's share of the associated expenditure is reasonably expected not to exceed $50,000, even if the Vendor's share of the cost ultimately exceeds that amount. The latter qualification ensures that a Vendor's authority is not compromised if the estimate is too low, and is analogous to the handling of the Operator's discretionary financial authority in Subclause 3.01B of the 2015 CAPL Operating Procedure.

Clause 5.03 prescribes certain circumstances in which consultation with the Purchaser is required. There will be other circumstances in which consultation with the Purchaser is reasonably expected, such as a continuation application or land selection under the Leases. A Vendor that allows a Lease to expire without consultation with a Purchaser about the possibility of a continuation application could place itself at risk.

ii) The Clause also includes a duty on the Vendor to notify the Purchaser promptly upon the Vendor becoming aware of any damage of the type contemplated by the "No Substantial Damage" condition in Paragraph 10.02(a). This is relevant for both the purposes of that representation and any application of Clause 5.02 to the handling of insurance proceeds.

Clause 5.02: i) Clause 5.01 of the 2000 PTP included content similar to that included in Subclause 5.02A of this version of the PTP. Subclauses 5.02B and C were introduced in the 2017 PTP.

ii) The Vendor is not required to obtain additional insurance for the Assets prior to Closing, unless and to the extent it is required to do so in the Head Agreement, under the Regulations or under applicable agreements with third parties, such as operating agreements. The premiums for existing policies attributable to the Interim Period would typically be minor with respect to the low to modest value Transactions for which the PTP is most likely to be used, and would be unlikely to warrant the effort required to include that amount in the Article 4.00 adjustment.

iii) Many larger Vendors have a very large deductible in their corporate policies (e.g., claims for an initial threshold of $ZZ MM). An obligation to obtain insurance for a particular modest value property is not attractive to them. A Purchaser would need to assess the potential risk to it and the degree to which it is comfortable that the "No Substantial Damage" condition to Closing in Paragraph 10.02(a) offers it the protection it requires.

iv) Purchasers sometimes object to this provision, since the common provision of this type does not refer to insurance. The express statement on insurance, however, simply alerts the Purchaser that it should be obtaining its own policies in due course. It is difficult for a Purchaser to argue that the usual provision that does not address additional insurance creates any obligation on the Vendor to obtain or maintain insurance.

v) Assuming Closing occurs (and notwithstanding that the acquisition will be effective as of the Effective Date under Clause 3.02), proceeds from payments made under the Vendor's insurance will accrue to it unless otherwise provided in Subclause 5.02B. This reflects the fact that the Vendor is the legal beneficiary under those policies. If a loss were to occur during the Interim Period, the Parties would need to determine how to address the loss. The Purchaser could possibly elect to terminate the Transaction under the "No Substantial Damage" condition (Paragraph 10.02(a)).

Subclause 5.02B applies if Closing occurs with respect to the applicable Assets to which insurance recoveries pertain. The Vendor will assign the applicable proceeds to the Purchaser at the later of Closing or the Vendor's receipt of the applicable recoveries, provided that this delivery of proceeds will not exceed the losses suffered by the Purchaser with respect to the insurable interest.

vi) The prevailing opinion is that a Purchaser does not have an insurable interest prior to Closing. On occasion, Vendors obtain extra insurance at the request and cost of the Purchaser.

Although the "No Substantial Damage" condition in Clause 10.02 provides Purchasers with good protection, the insurance issue is one that should also be addressed in the Head Agreement or as an amendment to the PTP if it is significant to the Parties. The advantage of this approach is that it allows the Parties to customize coverage to meet their particular needs.

Subclause 5.03A: i) This Subclause addresses the Vendor's obligation to obtain the consent of the Purchaser before making expenditures or assuming any new commitments or obligations except as provided within the authorities granted under this Subclause. This is subject to an exception for actions that are reasonably necessary for the protection of life or property.

ii) Paragraph (a) includes a qualification to address the situation in which the Vendor is obligated to participate in certain expenditures that it has not approved. The most common examples of this situation would be with respect to expenditures within the Operator's permissible authority limit and expenditures that have been approved through a vote of the applicable owners, such as a mail ballot under a CO&O Agreement or a unit agreement. The Vendor is required to notify the Purchaser of any such expenditure for which the Vendor's share of the cost is reasonably expected to exceed $50,000, together with appropriate supporting information about that expenditure. If it occurs prior to execution of the Agreement, it will often be helpful to include any such commitment in the Schedule that identifies outstanding AFEs. One important example of the latter would be the situation in which commitments have been made after the Effective Date, but prior to negotiations with the Purchaser.

The $50,000 expenditure threshold included in this Paragraph (as well as Clause 5.01 and Paragraph 6.02(h)) is one that Parties may prefer to modify for particular Transactions or as a corporate preference change to the PTP. Users are reminded of this item in the general annotation at the beginning of the PTP and on the sample Schedule of Elections and Modifications included as Addendum I.

iii) Paragraph (b) enables the Vendor to sell production in the ordinary course of business under sales agreements permitted hereunder (i.e., in accordance with the requirements in Paragraph (c) of the Title and Operating Documents-sales contracts identified on a Schedule or sales contracts terminable on not more than 31 days' notice).

In this regard, Paragraph 4.01(f) was introduced in the 2017 PTP to ensure that production proceeds were calculated using a "Market Price."

iv) A sale under a ROFR exercise (Paragraph (b)) could possibly be completed prior to Closing, although this generally will not be the case.

v) Paragraph (c) recognizes that portions of the Lands could expire in the normal course at expiry under the terms of the applicable Leases. The general duty of the Vendor to maintain the Assets in good standing in a proper and prudent manner and to consult with the Purchaser would still apply in terms of coordination with the Purchaser about any pending expiry and the possibility of retention of the applicable Lands, though.

vi) Paragraph (d) includes a general obligation to consult with respect to mail ballots issued under the Title and Operating Documents. While the financial outcome respecting a mail ballot is also covered under Paragraph (a), mail ballots can address other situations. As under Paragraph 5.03(a), the Purchaser could be bound by a vote, even though the Vendor had voted against the mail ballot at the Purchaser's instruction.

vii) The entire Article is premised on the Vendor's willingness to allocate resources to monitor the property sufficiently to comply with these obligations. This has occasionally been a problem in the industry in the transitional period up to and following Closing, as some Vendors have not distributed new notices, etc. to the Purchaser in a timely manner.

This is particularly important in the period after Closing during which the Purchaser is in the process of being recognized by third parties with respect to the interests acquired by it under the Transaction. There is a particular risk that Vendor's personnel may be operating under the mistaken belief that the Vendor's obligations to the Purchaser are complete after the Purchaser has "taken the keys to the car" at Closing.

It is imperative that the Vendor's personnel most closely involved in the Transaction educate other applicable personnel about the importance of continuing to manage the Assets appropriately during the period in which the Purchaser's recognition process for the interest remains ongoing.

Subclause 5.03B: i) This Subclause specifically addresses the chain of events that is to occur when a decision must be made with respect to an operation on the Lands or the exercise of some other right respecting the Assets. The most likely instances of those other rights would be: (a) rights under an area of mutual interest provision; (b) elections with respect to an operation, such as an operation notice under Article 10.00 of the CAPL Operating Procedure; (c) elections under a surrender provision, such as Article 11.00 of the CAPL Operating Procedure; (d) elections under an abandonment provision, such as Article 12.00 of the CAPL Operating Procedure; and (e) elections under a Right of First Refusal provision, such as Alternate 24.01B of the CAPL Operating Procedure.

Notwithstanding the inclusion of this Subclause, the Parties would typically prefer to negotiate a provision that addresses their particular circumstances more directly if they believe that they will need to manage any such Proposal.

Another way to manage this potential issue is to try to compress the period between the completion of negotiations and Closing to under 30 days if this is feasible under the Regulations. This issue may also require an acceleration of Closing in some circumstances for either all of the Assets or by segmenting the Transaction to accelerate Closing for the Assets directly affected by the Proposal. This would be easier to achieve for smaller Transactions, of course.

Another possibility would be to defer execution of the Agreement until the Purchaser's due diligence review is complete (i.e., Article 8.00 not selected). This would provide useful insights to each Party about the likelihood of concerns that put Closing at risk.

ii) The Vendor is to give notice of the Proposal promptly to the Purchaser, including supporting information in sufficient detail to enable it to have a reasonable understanding of the nature, schedule and cost of the Proposal (e.g., the information provided with the applicable AFE). This is subject to two qualifications that may require some discussion in the context of the particular Proposal. The first is that the disclosure is only permitted insofar as it is not prohibited under the applicable Title and Operating Documents (i.e., in breach of a JOA confidentiality obligation when the disclosure could damage the applicable third parties, such as information about a strategically important well while a ROFR is outstanding). The second is that the Vendor is not required to disclose any of its proprietary interpretations to facilitate the Purchaser's review of the Proposal.

The Purchaser must respond at least two Business Days before the Vendor is required to make its election, with the Vendor then making that election on behalf of the Purchaser. That period generally allows for internal handling of the matter by the Vendor. However, short notice AMI or casing point rights would often have to be dealt with by the Parties at the time on an exception basis, as the stated 12-hour response period for response periods under 48 hours would often be logistically difficult.

If the Purchaser elects not to participate in a Proposal, Paragraph (d) reminds users that the consequence of that non-participation is a Permitted Encumbrance, as noted in the introduction of Paragraph (a) of that definition. The net effect of that handling is that the Purchase Price will not be altered because of any resultant termination or alteration of the Vendor's interest in the Assets, and that consequence will not, of itself, constitute a Title Defect or breach of the Vendor's representations and warranties pertaining to the applicable Assets.

iii) The Vendor will sometimes wish to obtain advance payment of the Purchaser's share of applicable costs prior to the Vendor's election to participate in an operation or land acquisition on behalf of the Purchaser under Paragraph 5.03B(e). The Parties may also consider other alternatives that may be appropriate based on the circumstances and their history.

iv) This mechanism is unlikely to be contentious if Closing proceeds. However, it could problematic if Closing ultimately does not occur. While it is unlikely to pose problems in that situation if the Parties had a common view (positive or negative) of the Proposal, problems could arise if one Party favoured the Proposal and the other did not. In practice, this is most likely to be the case if the Purchaser likes the Proposal and the Vendor does not, given that the Purchaser was prepared to allocate capital to the acquisition of the Assets and the Vendor was prepared to dispose of the Assets. The most likely problem with this structure would be in circumstances in which the Purchaser causes the Vendor to participate in a Proposal that the Vendor would be unwilling to fund for its own account.

One provision that has occasionally been used states that: (a) the Vendor would reimburse the Purchaser the costs so assumed for a well if it is capable of production in "commercial quantities"; and (b) the Vendor could elect to reimburse the Purchaser for the acquisition costs of new lands or to allow the Purchaser to retain them.

There are several problems associated with such a provision. Firstly, the provision assumes that the Vendor's actions have not prevented Closing from occurring. Secondly, there are many other types of potential expenditures that are not addressed, such as G&G programs and capital improvements. Thirdly, such a provision would be likely to be a disincentive to potential Purchasers, since it is an extremely onerous provision for a Purchaser to accept without reference to a known fact situation.

That type of provision, however, is seldom used in Purchase and Sale Agreements. This is presumably because of the view that the preferable way to address the issue is to attempt to negotiate a resolution in the context of a specific fact situation. This issue should be addressed clearly in the Head Agreement if any such pending commitment is expected at the time of negotiations.

v) Some companies prefer not to address this issue directly through the inclusion of a process such as that outlined in this Subclause. Those companies could delete this Subclause or replace it with their own preferred process relatively easily. The only consequential changes to the PTP if this Subclause were deleted would be to Paragraph (a) of the definition of Permitted Encumbrances and Paragraph 5.03A(e).

Subclause 5.03C: The Purchaser may already have the right to propose operations under an existing operating agreement. However, it is generally precluded from requesting the Vendor to propose additional operations to third parties prior to Closing. In some cases, such as an expiry, it may be appropriate for the Vendor to propose an operation for the Purchaser, and this should be addressed in the Head Agreement or by amending this Subclause. This would presumably be negotiated by the Parties early in their negotiations or as a particular need arises.

Subclause 5.03D: This Subclause was introduced in the 2017 PTP. It is based on the proviso in Paragraph 5.04(b) of the 2000 PTP, with the addition of a reference to the Regulations and a requirement to notify the Purchaser of the basis for its conclusion. This Subclause applies to both Clause 5.03 and 5.04 because of the *mutatis mutandis* reference in Paragraph 5.04(a) to the application of Clause 5.03.

Clause 5.04: i) The premise of this Clause is the same as in Clause 5.02. The Vendor is to continue to maintain the applicable Assets on behalf of the Purchaser until it can exercise its rights with third parties. The Vendor will try to provide notices of assignment at Closing. Assuming that the files are provided to the Purchaser at approximately that time, this provision should not impose a great burden on the Vendor in practice.

ii) A bare trust is the simplest form of trust. The property is held on behalf of the beneficiary with limited active responsibilities of the trustee over and above what is prescribed by the document that creates the trust relationship (e.g., holding the interest on behalf of the beneficiary). The beneficiary is ultimately regarded as the owner of the property for tax and many other purposes.

iii) Revenues received by the Vendor during the adjustment phase are to be processed in a manner consistent with its internal accounting process, and are to be forwarded to the Purchaser on a monthly cycle. This ensures that the Purchaser receives its funds in a timely manner, while not placing an undue burden on the Vendor's personnel. If costs exceed revenues, the Vendor would invoice the Purchaser for the applicable amount. Amounts not paid when due may accrue interest under Clause 12.02.

iv) Paragraph 4.01(h) was introduced as of the 2017 PTP to ensure that the Vendor could retain any overhead recoveries accruing to it as operator under the Title and Operating Documents during the Interim Period and during any transitional period in which the Vendor continued to act as operator under the applicable Title and Operating Documents while waiting for the Purchaser to begin operating the applicable Assets. In the absence of this language, the Vendor would be acting as operator without any compensation for its efforts, as all accrued overhead paid by third parties for the period after the Effective Date would accrue to the account of the Purchaser.

v) The Parties may wish to address the transition in ownership through a separate contract operating agreement or transitional services agreement whereby the Vendor continues to operate applicable Assets on behalf of the Purchaser for a period after Closing. There may be other circumstances in which the Parties agree in the Head Agreement that the Vendor is to receive a negotiated monthly administrative fee for providing transitional support until the third party recognition process is complete or a date at which the Vendor's obligations under this Clause cease. This is unlikely to be considered for Transactions for which the PTP is most likely to be used, though.

vi) Two important transitional processes are the handling of rentals and other similar payments required to maintain in good standing the Leases and Surface Rights being managed by the Vendor and the handling of production accounting responsibilities for the month in which Closing occurs. These are addressed in Clauses 5.05 and 5.06.

vii) The post-Closing recognition process can be lengthy and frequently results in significant rework for both the Parties and third party operators. This high administration burden requires the Parties to attempt to optimize the recognition process. It is one of the major reasons that most Parties use Alternate 1 in Clause 3.05 and one of the major benefits of trying to have a short Interim Period.

viii) Paragraph 5.04(e) would also fall within the scope of the Further Assurances provision (Clause 18.02). The inclusion of this Paragraph offers a reinforcement of the principles in that Clause for users working specifically with maintenance of business matters, as they may not be familiar with the full range of obligations in the PTP.

Clause 5.05: i) This Clause addresses the potential handling of rentals and other land maintenance payments during the transitional period when the Purchaser is setting up the files in its land information system. It should be read in conjunction with Clause 3.06 relating to the handling of electronic transfers. It is the better practice to address clearly the responsibility for rentals during this transitional period, as Purchasers will not be prepared to assume responsibility for those payments of rentals until several months after Closing (i.e., two months after Closing) in some cases.

Insofar as requested by the Purchaser, by notice to the Vendor, the Vendor will pay rentals and other similar land maintenance payments due in the month in which Closing occurs and the two subsequent months. Notwithstanding that the Purchaser has the right to require the Vendor to manage upcoming land maintenance payments for that transition period, there will be many circumstances in which the Purchaser will be able to integrate the files into its records relatively quickly after Closing, such that the Purchaser will not require the Vendor to provide any such transitional support or to do so for only a shorter period. Insofar as the Vendor manages any such payments at the Purchaser's request, any related electronic transfers would be deferred until shortly following the applicable payment date. The Parties would modify the Clause to manage any different handling.

ii) The Parties would need to modify this Clause and Clause 3.06 if their preference was to use a different timing for their transition period. Notwithstanding these Clauses, it may be beneficial for the Parties' respective administrative personnel to supplement those Clauses by preparing a letter delineating clearly the Leases and Surface Rights to which this transitional process will apply.

iii) The Purchaser will sometimes make a request for the Vendor to manage rentals after Closing, and this type of request would typically be resolved by the Parties at the time. The PTP does not address that possibility because it is the better practice for the Parties to have a clear vision before Closing about how land maintenance payments will be handled. This is largely because rentals relating to the monthly statement process are paid in the middle of the month in which the rental is payable, with a defined earlier vetting process for any required adjustments. Other rentals would typically be paid two months in advance, such that good planning is mutually beneficial.

Clause 5.06: This Clause requires the Vendor to provide production accounting support for production obtained during the calendar month in which Closing occurs, in addition to its responsibility for production accounting for prior calendar months of the Interim Period. If, for example, the Effective Date were May 1st and Closing were July 16th, the Vendor would manage production accounting for the May-July production months. This would require the Purchaser to provide production data for July.

Clause 5.07: This Clause was introduced in the 2017 PTP. It addresses the circumstance in which the Vendor holds interests on behalf of a third party in any of the Assets acquired by the Purchaser, such as a "silent partner." If the Vendor is disposing of all of its interest in the applicable Assets to the Purchaser, the Purchaser will step into the shoes of the Vendor with respect to any such third party.

If feasible in the circumstances, the Vendor should attempt to have any such third party recognized as the applicable owner as part of the Vendor's internal due diligence process as it prepares for the Transaction. That being said, there will be circumstances in which either this is not feasible or the Vendor does not attempt to address this matter sufficiently early in the cycle to resolve it.

While the Clause admittedly places a burden on the Purchaser that it would prefer not to have, the alternative of having the Vendor retain ongoing administrative obligations for a property in which it no longer holds any interest would be unacceptable to most Vendors.

This Clause raises awareness of the issue, and a Purchaser that is sufficiently concerned about it can try to negotiate a different handling.

Subclause 5.08A: The Vendor is deemed to be acting on behalf of the Purchaser for all actions taken by the Vendor on behalf of the Purchaser under Article 5.00, assuming the Vendor's actions are in compliance with this Article and that its actions or omissions do not constitute Gross Negligence or Wilful Misconduct.

Subclause 5.08B: The Purchaser will indemnify the Vendor for Losses and Liabilities suffered by the Vendor as a result of acting on behalf of the Purchaser under this Article. However, the Purchaser is not obligated to indemnify the Vendor, insofar as they result from the Vendor's Gross Negligence or Wilful Misconduct, unless the act or omission was done or omitted to be done on the Purchaser's instruction. Purchasers will sometimes request that the standard be simple negligence. The simple negligence standard was not included. The Vendor is not obtaining any benefit from this transitional "possession" of the Assets, and the inclusion of a simple negligence standard would require the Vendor to retain a higher level of responsibility than an operator has for operational matters under the Operating Procedure.

Article 6.00-General: i) The representations and warranties provision has historically been one of the most heavily negotiated provisions of a Purchase and Sale Agreement with respect to both the types of representations that are to be included and their wording. The Vendor generally wishes to provide the most limited representations and warranties as are acceptable to a Purchaser. It wishes to sell the Assets on an "as is" basis, and wants the future risks associated with the property to be assumed by the Purchaser. The inclusion of broad representations and warranties is inconsistent with the Vendor's objective of reducing G&A costs by exiting an area. The potential liability resulting from their breach means that the Vendor is not entirely free of responsibility for the property.

The Purchaser, on the other hand, generally wishes to include the broadest representations and warranties that it is able to negotiate with a Vendor. Many of these representations and warranties will pertain to factual matters about either the Vendor or the Assets that the Purchaser is otherwise unable to confirm conveniently. That being the case, it may be reluctant to proceed with an acquisition if it believes its requests for broader representations and warranties are being unreasonably refused by a Vendor.

One must place a Party's optimization of its legal position in a larger context. The objective of the process is to sell/purchase a property in the manner that will maximize the degree to which the benefits associated with the Transaction exceed the applicable costs and risks. If differences on this issue are such that the Transaction is not completed, the pursuit of one goal has frustrated the objective.

The Agreement is ultimately one part of the product that a Vendor may be attempting to sell in an extremely competitive marketplace. Personnel must always remember that it could have a material impact on the assessment of the attractiveness of the product to potential Purchasers. Representations and warranties that indicate that the Vendor has reasonable confidence in its product should help the Vendor in its attempt to obtain the greatest value for its properties, particularly if it has done an internal review of the property and its continued financial viability is not in doubt. However, a Vendor must weigh the associated potential risks and benefits for each broader representation and warranty.

The menu of representations and warranties in Clauses 6.01, 6.02 and 6.04 is designed to focus negotiations on the appropriateness of the inclusion of a particular representation in the Agreement, while significantly reducing the degree to which the choice of wording is debated.

ii) The remedy available for a breach of a representation or warranty after Closing is in damages. The representations and warranties are analogous to an indemnification obligation, as their enforceability ultimately depends upon the financial viability of the Party making the representation. If there is a concern about a Vendor's financial viability, a Purchaser should not rely unduly upon the representations.

Clause 6.01 - General: These reciprocal representations and warranties pertain to the personality of the Parties. Including them in a single Clause avoids duplication. There may be instances in which some customization is required for one (but not both) of the Parties.

Paragraph 6.01(b): Some major acquisitions and divestitures may be subject to shareholder approval and other securities law implications. Given the likely use of the PTP for low to modest value Transactions and the need to have legal advice for any such circumstances, this topic is beyond the scope of these annotations.

Paragraph 6.01(d): i) The 2017 PTP has been modified to include the qualifications in Subparagraphs (i) and (ii) to reflect the fact that these qualifications are routinely used in industry A&D agreements.

In very large Transactions or Transactions in which there is real doubt about the enforceability of the Agreement, Purchasers may require an opinion from the Vendor's solicitors that the Agreement is enforceable. If there is a specific creditor concern, the Vendor should consider obtaining a court order to enable it to effect the Transaction.

ii) The PTP does not include any specific content addressing the circumstance in which a receiver or trustee is disposing of the Assets on behalf of a distressed Vendor. While the PTP may still be used as the foundation for many Transactions of this type, the onus is on the Parties to work with their legal advisors to supplement the PTP with additional customized content to address the circumstances of their contemplated Transaction. This additional content is likely to address, for example, the contemplated process for transfers of any Well licences.

Paragraph 6.01(f): This is typically included as a representation being made by the Purchaser because of the importance placed by the Vendor on the Purchaser's indemnification and the risks to which the Vendor would potentially be exposed with respect to Abandonment and Reclamation Obligations and other Environmental Liabilities relating to the Assets if the Purchaser were to cease to exist.

It is included as a mutual representation in this Clause for two reasons. The most critical is because of the Purchaser's need to ensure that it retains its remedies for any breaches of the Vendor's representations and warranties during their survival period. The second is because of the risk that the Transaction could be challenged by creditors if it occurred shortly before the Vendor were placed in receivership or sought debtor relief protection.

Clause 6.02-General: Although the representations and warranties in Clause 6.01 are generally accepted, those in Clause 6.02 will be a matter of negotiation between the Parties. This reflects the wide variance in Transaction circumstances (i.e., operated property, non-operated property to another owner or operator, non-operated property to a third party, high or low value, ORR holder and corporate philosophies). Many of these issues pertain more about whether a specific representation should be included at all, rather than its wording. As was the case with the 2000 PTP, each representation has been presented as an option, so that it only applies if selected, even though some of them will be used in the vast majority of Transactions.

The menu of possible representations and warranties included in this Clause is designed to provide Parties with greater flexibility for their Transaction. An election not to include an optional representation is not intended to place either Party in any different position with respect to the subject matter of the representation than is the case for any item that is not included in the menu of representations in this Clause.

Paragraph 6.02(a): i) This representation is admittedly structured awkwardly. Unfortunately, it cannot be rewritten to state simply that the Party is a resident of Canada. As a Party can be a resident of more than one country, the Vendor represents that it is not a non-resident. It is included primarily to provide the Purchaser with a justification for not applying a withholding tax with respect to the amount paid to the Vendor.

ii) A Vendor that is a non-resident cannot make this representation. In those Transactions, a Purchaser will generally require the Vendor to obtain a Sec. 116 certificate from the CRA acknowledging that it has paid the estimated tax payable by it with respect to the Transaction. The Purchaser's solicitors will usually require this as a condition precedent. Another practical way to protect the Purchaser is to include an obligation on the Vendor to provide the Sec. 116 certificate at some specified point following Closing, such as the following alternative representation: *"The Vendor is a non-resident of Canada within the meaning of the Income Tax Act (Canada), and will provide the Purchaser with a certificate in accordance with Section 116 of that Act prior to _____."* This would provide the Purchaser with a remedy if the Vendor failed to provide the certificate, such that the risk associated with the Sec. 116 certificate would, in effect, be transferred to the Vendor, assuming, of course, that the Vendor is regarded as a financially viable entity and that the Purchaser has a high level of comfort about the Vendor's intended compliance.

Paragraph 6.02(b): i) Note the reference to circumstances that the Vendor reasonably believes would give rise to a claim. The first portion of the Paragraph assumes that a third party is aware of the problem and is pursuing the exercise of legal rights. The latter reference would apply if the Vendor is aware of the problem, but is not aware of the intention of a third party to pursue a legal remedy.

ii) The Parties should clearly address their expectations about any existing lawsuit or claim in the Head Agreement to minimize the possibility of subsequent dispute.

Paragraph 6.02(c): This representation pertains not only to defaults, but notices alleging defaults. The disclosure requirement alerts a Vendor to the need to review the issue.

Paragraph 6.02(d): Provisions such as this Paragraph are often drafted so that the reference to "default" is modified by adding a reference to "material." Although a default that has a material and adverse impact on the Assets would logically be a "material default", some Purchasers object to the "material default" reference. The last phrase addresses the concerns of both Parties by referring to a default that "would reasonably be expected to have a material adverse effect on the total value of the Assets."

Paragraph 6.02(e): i) Note the reference to the Vendor's payment of royalties. The Vendor cannot warrant that royalties are being paid to the lessor if its royalties are being paid by a third party on its behalf.

ii) The Paragraph contemplates the future payment of royalties and taxes. Royalties applicable to the calendar month prior to the Closing Time, for example, would be paid in the succeeding month.

Paragraph 6.02(f): The Vendor's interest in the Assets is subject to the Permitted Encumbrances. Vendors will not give an absolute title warranty. They also avoid any implied warranties of title that otherwise may exist by including an express statement that the Vendor does not warrant title.

The general industry title representation is the "by, through and under" representation, whereby the Vendor warrants only that title is free of any encumbrances created "by, through or under the Vendor", other than the Permitted Encumbrances. The simple "by, through or under" representation potentially poses a problem, however, if the Vendor has knowledge of an encumbrance that it did not create. As a Vendor should be obligated to disclose all encumbrances respecting its interest of which it is aware, regardless of whether they were created "by, through or under the Vendor", this Paragraph also addresses other burdens of which the Vendor has knowledge.

Paragraph 6.02(g): i) The Vendor's interest in a Well may be reduced at payout or upon the recovery of a production penalty, and the Lands might be subject to a farmout agreement. These potential reductions must be identified in the Land Schedule to qualify as Permitted Encumbrances, and should be noted in any sale brochure.

ii) Note the reference to the Permitted Encumbrances in the provision. Without that reference, the Vendor is making a specific representation that arguably eliminates all of the protection the Vendor has attempted to provide itself with the Permitted Encumbrances concept and the limited title representation provided in Paragraph 6.02(f).

Paragraph 6.02(h): i) Procedures must be implemented by the Vendor to ensure that the Purchaser is aware of all new AFEs respecting the Assets. This should be coordinated through the relevant A&D personnel, who in turn would advise the Land A&D contact. The better practice is to list all such AFEs or commitments in a Schedule. If any of these types of obligations accrue under the maintenance of business provisions in Article 5.00 following execution of the Agreement, it is a good practice to capture that information on a reference table for the benefit of Accounting and Joint Ventures personnel. (See also Article 5.00.)

ii) The financial threshold for the Purchaser's exposure for a particular discretionary expenditure was increased from $25,000 to an estimated $50,000 in the 2017 PTP, as the $25,000 threshold had typically been used since the early 1990s. This threshold is also included in Clause 5.01 and Paragraph 5.03A(a), and is one that Parties may prefer to modify for particular Transactions or as a corporate preference change. Users are reminded of this item in the general annotation at the beginning of the PTP and on the sample Schedule of Elections and Modifications included as Addendum I. It is important to remember that this threshold is linked to the amount that was reasonably estimated to be applicable to the Vendor's share of the cost. The Vendor's authority to have made an expenditure is not compromised if the ultimate share of costs exceeds that amount.

Paragraph 6.02(i): i) A production sales contract that is not terminable on notice of 31 days or less only falls within the definition of Title and Operating Documents (and the resultant treatment as a Permitted Encumbrance) if it is identified in a Schedule. Otherwise, the Vendor is representing that there are no such contracts.

ii) The reference at the end of the provision requires any "take or pay" obligation that may exist to be noted in a Schedule. Expectations about any such obligation would also need to be addressed in the Head Agreement.

iii) A 31-day threshold is used in this Paragraph and Paragraph 6.02(j), as well as Paragraphs (c) and (g) of the definition of Title and Operating Documents. Parties may prefer to modify it for particular Transactions or as a corporate preference change to the PTP. Users are reminded of this item in the general annotation at the beginning of the PTP and on the sample Schedule of Elections and Modifications included as Addendum I.

Paragraph 6.02(j): i) This representation was introduced in the 2017 PTP. It is similar to the preceding representation about sales agreements. Other than for J.V. service type agreements that can be terminated on short notice (i.e., the typical 31 days or less termination mechanism), the Vendor represents that there are no service agreements of this this type that have not been identified on a Schedule. Again, any such agreement that satisfies those requirements is a Permitted Encumbrance. Its inclusion reflects the importance of J.V. Agreements to the value of a Transaction.

ii) See also Paragraph 6.02(w) with respect to any commitment to deliver to particular Tangibles or third party owned facilities and any associated obligation to pay for service that is not used by the Vendor.

Paragraphs 6.02(k)-(o): i) In light of the focus on environmental issues, these representations can be quite contentious in the negotiation of A&D Agreements. There are several major issues associated with these representations. The first is the linkage to the Vendor's knowledge, which is addressed in Clause 1.08. The second reflects the practical consideration that parties other than the operator generally have very limited direct operational knowledge about a property for Paragraphs (l)-(o), such that non-operators generally will not be willing to include them.

That being said, Paragraph (k) is not qualified by limiting the representation to Assets operated by the Vendor. While a non-operator Vendor's knowledge would not be as complete as the operator's, it is quite possible that such a Vendor would be aware of environmental problems for non-operated Assets that should be disclosed to the Purchaser.

Another potential issue is the reference to the "the material requirements of the Regulations as they existed at the relevant time" that is included in Paragraphs 6.02(m), (n) and (o). While Purchasers may object to the materiality qualification, its deletion would require the Vendor to provide an absolute warranty that it is not aware of any violation of the Regulations. The remedy for a minor violation discovered after Closing would be in damages, and would almost certainly be minimal. However, the consequences could be quite serious if a minor violation were discovered before Closing, in that it could literally enable a Purchaser with "cold feet" to terminate the Transaction, a particular risk if market conditions were volatile. The materiality qualification attempts to balance the interests of the Parties. Any violation which has a material and adverse impact on any of the Assets is logically a material violation.

The other difficulty with the unqualified representation is that regulatory approvals or licences often include performance objectives, rather than standards. If Regulatory Authorities do not require strict compliance, is it appropriate to provide a Purchaser a remedy for minor violations?

The inclusion of the phrase "as they existed at the relevant time" also reflects the degree to which the regulatory environment has evolved over time. The test for compliance at any particular time should be linked to the regulatory regime then in existence, not current regulatory standards, except insofar as current regulatory standards then apply to an outstanding specific problem. Paragraph 6.02(k) would potentially apply to any such situation, and Subparagraph (iii) is not contingent on there being an order or directive issued under the Regulations regarding such a problem.

ii) Paragraph 6.02(k) specifically addresses the Vendor's environmental representations. Except as identified in a Schedule, the Vendor represents that, to its knowledge, it is not aware of: (a) any environmental orders or directives requiring expenditures that have not been complied with in all material respects or otherwise satisfied; (b) any outstanding regulatory demands or notices pertaining to the breach of any environmental health or safety law applicable to the Assets; and (c) any circumstance it reasonably believes to be a reportable event under the Regulations.

A Purchaser (and a prudent Vendor) can obtain an Alberta Environmental Enforcement Historical Search through the Alberta Environmental Law Centre. Personnel will search their database for the environmental enforcement history of a company or individual, reviewing enforcement action taken by the Environmental Regulatory Service of Alberta Environment under the *Alberta Environmental Protection and Enhancement Act*, and its predecessor legislation, the *Hazardous Chemicals Act*, the *Agricultural Chemicals Act*, the *Clean Water Act* and the *Clean Air Act* to 1971 and pursuant to the *Water Act* from 1999. This search will provide information, such as the name of the company/individual, the date of any enforcement action, the type of enforcement action, the amount of any penalty, the applicable location and any comments respecting the enforcement action.

iii) Paragraph 6.02(l) was introduced in the 2017 PTP, and addresses operations in a wider sense than environmental matters. To its knowledge, the Vendor has not received any notices respecting the occurrence of a material violation of the Regulations and is not aware of any such material violation that is occurring in circumstances in which any such violation remains outstanding at the Closing Time.

iv) The estimated $100,000 threshold in Paragraph (l) is one that Parties may prefer to modify for particular Transactions or as a corporate preference change to the PTP. Users are reminded of this item in the general annotation at the beginning of the PTP and on the sample Schedule of Elections and Modifications included as Addendum I.

v) The Vendor will usually have much greater knowledge under Paragraphs (m), (n) and (o) for Assets operated by it at the relevant time than it will about non-operated properties. These representations were modified in the 2017 PTP to limit them to Wells and Tangibles operated by it.

vi) There are some subtleties associated with Paragraph (n). Notwithstanding that a Vendor may not transfer a well licence for a Well that has been abandoned and that has been reclamation certified, the Parties are free to agree in contract that the Purchaser will assume the Vendor's potential ongoing financial obligations for that Well through the liability and indemnification provisions, as noted in the annotations on the definition of Wells in Clause 1.01.

Whether an abandoned well is a Well for purposes of the Agreement will depend on the selection of the Alternates in the definition of Wells and if the particular well has been identified on a Schedule. The net effect is that an abandoned well on the Lands may or may not be a Well, depending on how the Parties have negotiated their Agreement.

Paragraph 6.02(p): i) The representations and warranties and title review effort are premised on the Vendor making the relevant documents and files available for the Purchaser's review: (a) on the basis contemplated in Clause 8.01 if Article 8.00 was selected to apply; or (b) in conjunction with any due diligence process conducted by the Purchaser prior to execution of the Agreement in circumstances in which optional Article 8.00 has not been selected to apply in accordance with Paragraph (a) in the introduction to Article 8.00.

ii) The obligation does not extend to all files and documents included in the Miscellaneous Interests because any delivery less than full compliance could provide the Purchaser with an option to terminate the Transaction prior to Closing if it could satisfy the materiality requirement in Paragraph 10.01(c). However, the Purchaser will also often include additional conditions under Article 10.00 (i.e., Paragraph 10.02(d)) under which it is to be provided with access to other types of documents. It will often require similar conditions for access to applicable materials if it is being asked to agree to conduct its due diligence review prior to execution of the Agreement, as would be the case if optional Article 8.00 were not being selected.

iii) The files to which this obligation pertains are not limited to those relating to title and environmental. In addition to the land and environmental files, the Purchaser will sometimes also wish to expand the specific list of files made available for review to include such files as J.V. and marketing agreements and production and accounting records. This Paragraph is consistent with the expectations in Paragraph 8.01(a).

Paragraph 6.02(q): This representation is included because of the possibility that the transfer of Wells to the Purchaser would result in the Vendor having a ratio of inactive to active wells that would not satisfy the requirements of applicable Regulatory Authorities, such as the Alberta AER.

The definition of Licencee Rating, this representation, the corresponding representation in Paragraph 6.04(d) and the condition in Paragraph 10.01(e) are structured so that they can apply across multiple jurisdictions. (See the related annotations and those on Clauses 3.04 and 3.06.)

If the ability to effect a transfer of a licence for any of the Assets is in question, the onus is on the Parties to add custom content in their Head Agreement to address their particular needs. This might be done, for example, by including additional definitions, a Clause that relates to the specific handling required for their circumstances and the inclusion of additional conditions to Closing. Reviewing the Regulations for a Transaction is particularly important if they include a requirement for a review of a proposed transfer of a regulatory licence, permit or approval through a process in which that approval might not be granted, since this could require the inclusion of a Closing in escrow process in the Agreement.

There were two reasons for this approach. The first was the belief that the PTP should not attempt to predict or prescribe the handling of an important emerging issue that should be assessed and handled by the Parties and their applicable business and legal advisors on a case-by-case basis. The second was that the fluidity of the Regulations on this area over time and across jurisdictions was such that any more specific handling of the issue in the PTP would potentially create unintended consequences for the Parties over time. Simplifying the review of the other procedural aspects of the overall Transaction through use of the PTP facilitates a more focused examination of this important issue by the Parties' representatives relative to what would be the case without the PTP.

Paragraph 6.02(r): This representation is inserted as a potential response to AER Bulletin 2015-34. Vendors should consider very carefully if they will select it (or any modified version thereof) in conjunction with their review of Clause 3.07. There is uncertainty at this time as to what the AER considers as 'records required by CSA Z662 and the Pipeline Rules', such that the most prudent approach for pipelines of any age may be for Parties to agree (with the AER if possible) on a list of required records for pipelines to be transferred until there is greater certainty on this issue. (See also the annotations on the definition of Pipeline Records and Clause 3.07.)

Paragraph 6.02(s)&(t): A Vendor should be required to disclose any regulatory production penalties and any overproduction above regulatory allowables if it is aware of those problems. As not all off-target wells will result in a production penalty under the Regulations, the representation pertains to only a subset of off-target wells.

Paragraph 6.02(u): i) Few P&S Agreements include this representation. It is an important item, though, particularly if the Purchaser intends to expand its position in the region. There is limited scope for application under new agreements, as the AMI term under those agreements tends to be relatively short. However, special care must be taken for old agreements, as they occasionally include large, perpetual AMI obligations. This representation is particularly relevant if the Transaction primarily involves undeveloped acreage.

ii) This was modified in the 2017 PTP to extend to any area of exclusion obligation. While it is likely that any such obligation assumed by the Vendor would be personal to it, the Vendor should review any such document to ensure that it does not adversely affect the Transaction. This reinforces to users why it is important to track these types of obligations carefully in internal records systems.

Paragraph 6.02(v): i) The representation is linked to the receipt of a lessor notice for two reasons, even though an offset notice as such is not required under a freehold lease. The first is that a potential Purchaser has the ability to conduct an initial due diligence review from public data sources. The second is that Crown offset notices are often discretionary, such that a notice from the Crown is required to trigger the obligation. Some agreements include an additional component in the provision, such as "and is not aware of any particular circumstance that has created such an offset obligation."

ii) It is a good practice for a Vendor to review offsetting lands to determine if there is recent drilling activity that might cause an offset obligation, to make a note of any such well on the applicable lease file and to conduct such further investigations as may be appropriate in the circumstances.

iii) A Vendor should be cautious about extending the scope of the application of this representation.

Paragraph 6.02(w): i) J.V. Agreements sometimes include a requirement that an owner deliver all of its production from a designated area to a particular facility. This is typically not addressed in A&D Agreements, even though there could be a large negative impact on a Purchaser's regional strategy. Purchasers should review this issue very early in their due diligence process, even if this representation is not included.

ii) This Paragraph was expanded in the 2017 PTP to address "take or pay" obligations for use of Tangibles or other facilities in addition to the commitment to deliver. (See also Paragraph 6.02(i).)

iii) The exception for Clause 1401 of the 1990 CAPL Operating Procedure is because of the limited commitment to deliver obligation under the 1990 CAPL Operating Procedure with respect to "production facilities" operated thereunder. (That commitment to deliver obligation was eliminated as of the 2007 CAPL Operating Procedure.)

iv) Notwithstanding the preceding annotation, it is important for users to recall that the 1990 CAPL Operating Procedure and the subsequent updates cover minor production facilities originally designed solely for use in the exploitation of the lands subject to the applicable land agreement.

Paragraph 6.02(x): Special shareholder approvals would be required if a Vendor were selling all or substantially all of its assets in the Transaction. The advice of legal advisors would be required if it were apparent that this were an issue.

Paragraph 6.02(y): This representation was introduced in the 2017 PTP. It will be important for the Purchaser that is becoming the operator of a property to understand the Tangibles, personal property and buildings that are owned and those that are only leased.

Paragraph 6.02(z): This representation was introduced in the 2017 PTP. Other than for any excess inventory belonging solely to it, the Vendor should not be removing from the location of any operated property equipment that is serving the Assets. Inherent in that statement is that the Vendor does not have the right to remove any such inventory that is owned by the joint account. (See also the removal under Clause 11.03.)

It is the better practice for a Vendor with excess inventory on site to remove it before the Purchaser's site visit or to identify it clearly as inventory that the Vendor will be removing prior to the Closing Date or shortly thereafter.

Paragraph 6.02(aa): Purchasers will often request a "quiet enjoyment" representation from the Vendor. The representation suggested by Purchasers is often too broad, as it may not recognize the interrelationship between the quiet enjoyment representation and the limitations applicable to the Vendor's delivery of the Assets - the other representations and warranties provided by the Vendor and the Permitted Encumbrances (includes the Title and Operating Documents and Title Defects that have been waived by the Purchaser). Failure to recognize that connection in the quiet enjoyment representation arguably eliminates much of the protection a Vendor intends with those limitations.

Paragraph 6.02(bb): i) Both this Clause and Clause 6.04 anticipate that the Parties may choose to include additional representations in the Head Agreement. Any such additional custom representations are treated in a consistent manner with those in the PTP.

ii) One representation that will probably often be included in the Head Agreement pertains to long term inactive wells and facilities and the measures being taken by Regulatory Authorities at the relevant time to manage the abandonment and reclamation issues associated with orphan wells and facilities. Parties will increasingly choose to address this issue specifically in a representation because of the potential negative impact associated with the acquisition of an inactive well or an inactive multiwell facility under, for example, the Alberta AER requirements. Both Vendors and Purchasers should be aware of the requirements of the applicable Regulatory Authorities on this issue and the consequences of non-compliance. A sample representation to address this issue is: "*Except as identified in a Schedule, to the Vendor's knowledge the Assets do not include any inactive well or inactive facility as described in the Regulations issued under the Oil And Gas Conservation Act (Alberta*)." Although a very important issue, this was not included in the list of optional representations in Clause 6.02 because of the need to review the matter on a case-by-case with business and legal advisors if it is an issue and the degree to which the regulatory regime will continue to evolve. (See also the definition of Licencee Rating, Paragraphs 6.02(q) and 6.04(d), together with the associated annotations.)

iii) Additional representations are sometimes requested, such as representations that: (a) the Vendor has made reasonable inquiries and searches for material documents and information relating to the Assets and for all information reasonably required to ensure that its representations and warranties would not be misleading; (b) the Tangibles are suitable for the production of Petroleum Substances; (c) no Wells need to be abandoned; (d) there are no Environmental Liabilities of which a Purchaser should be aware; (e) to the knowledge of the Vendor, the production and financial

data provided to the Purchaser were not materially inaccurate; and (f) the Vendor knows of nothing that would reasonably cause the Purchaser to wish to terminate the Transaction. Some of these are far too broad, and attempt to pass the business risk of the Transaction to the Vendor. The Vendor is not privy to the Purchaser's evaluations of the property, for example, and cannot know how it proposes to operate a property.

A Purchaser might also consider addressing some of the items noted above as part of its due diligence process or as a condition to Closing. Similarly, a Purchaser could also have a remedy for fraud in circumstances in which, for example, the financial information presented by a Vendor to the Purchaser/potential bidders was deliberately misleading.

Subclause 6.03A: i) This Subclause was added in the 2017 PTP to reinforce that the Purchaser could not claim a breach of a representation or warranty insofar as the applicable matter were disclosed in the Agreement.

ii) Agreements sometimes include language stating that the qualification extends to any matter, event or circumstance that was disclosed in the Agreement, in a data room or of which the Purchaser was otherwise aware. Subclause 6.05C offers a more balanced outcome. It allows either Party to raise as a potential defence with respect to a breach of a representation that the other Party did not rely on the representation.

Subclauses 6.03B and C: i) The former Subclause 6.05A was substantially rewritten as Subclauses 6.03B and C of the 2017 PTP. Subclause 6.03B reinforces the "as is, where is" nature of the Transaction by building on the first portion of the former Subclause 6.05A. Subclause 6.03C greatly expands the content that had been included in the last sentence of the former Subclause 6.05A with respect to the Purchaser's due diligence inspection of the Assets and its analysis of the value of the Assets. Notwithstanding the expanded wording in these Subclauses relative to the 2000 PTP, the principles remain unchanged.

ii) A prudent Purchaser will ask for copies of the Vendor's environmental records respecting the Assets as part of its normal due diligence process (whether conducted under optional Article 8.00 or prior to execution of the Agreement, as contemplated in the introduction to Article 8.00). A Vendor that withholds records that the Purchaser had requested the opportunity to review potentially finds itself in breach of the representation about the provision of documents (Paragraph 6.02(p)) if it has been selected to apply. Even if that representation were not selected to apply, there could be extreme circumstances in which a conscious decision by the Vendor to withhold records or to disclose selective records that create a misleading presentation of the circumstances could leave it open to a claim for fraud. In this regard, it is important to remember that that a claim for fraud is not limited to the normal period prescribed for the survival of representations and warranties under Subclause 6.05A and Subclause 13.01C.

Subclause 6.03D: This Subclause is similar to Subclause 6.05B of the 2000 PTP. A similar provision is typically used in A&D Agreements.

The Vendor makes no representations or warranties respecting the Assets in addition to those provided in Clauses 6.01 and 6.02, including those made in the Head Agreement under Paragraph 6.02(cc). The Vendor has generally provided information in its possession to the Purchaser to assist the Purchaser to conduct its own evaluation of the Assets. The Vendor did so without any intention of guaranteeing that the information was accurate. Excepting fraud on the part of the Vendor and the Vendor's responsibility for its representations on the basis provided in the Agreement, the acquisition of the Assets is ultimately a business decision of the Purchaser, based on its assessment of the accuracy of all available data.

The Vendor has three reasons for the inclusion of this type of Subclause.

Firstly, the Vendor wishes to reinforce that the Purchaser relies on information outside the contract at its own risk. Except as provided in the Agreement, the Purchaser is responsible for conducting its own evaluation of the Assets. Any information provided by the Vendor, such as a contract summary from a land information system, is intended to assist the Purchaser in its due diligence review, not to replace it. Secondly, the inclusion of representations/information outside of the Agreement poses difficult proof problems, even assuming that the "parol evidence rule" (a general prohibition on consideration by a court of negotiations/collateral representations outside the contract) could be overcome by the Purchaser. It would be difficult to prove if and how the alleged information was provided and the degree of the Purchaser's reliance thereon. The most practical reason, though, is that a Vendor wishes to minimize the possibility that unauthorized personnel and authorized, but uninformed, personnel could make statements that would impact the Parties' contractual arrangement. It is common for the Purchaser's representatives to be in contact with a number of the Vendor's representatives at any time, requesting various pieces of information. In their desire to assist the Purchaser, the Vendor's personnel occasionally provide honest, but incorrect advice, largely because the Purchaser's representatives often request an immediate response.

The probable result of the exclusion of the general release would be the creation of a very formalized process. Each Party would designate a representative through which all questions and answers would be directed in writing. In practice, the cost of such a mechanism seems to exceed the perceived benefit of the change when dealing with credible parties.

Clause 6.04: i) If the Purchaser is comprised of two or more Parties, the introductory portion of this Clause should be amended to something such as: *"Each Party comprising the Purchaser represents and warrants to the other Parties with respect to itself only and with respect to the interest it is acquiring in the Assets:"* There would be a parallel change in Clause 6.01 as well. There would potentially be several other items for negotiation. Those Parties may require the right to make payment separately (Head Agreement). The Purchaser's conditions provision (Clause 10.01) might be changed. They might also request that the indemnity and liability obligations throughout the document be several.

ii) Any application of the *Competition Act* (Canada) would often be addressed as a custom provision. (See also the annotations on Article 10.00.)

iii) Notwithstanding the brief references to the *Investment Canada Act* (Canada) and the *Competition Act* (Canada) in the PTP, it is unlikely that the PTP would be used in practice for any disposition that would be subject to review under either of those Acts. In the unlikely event that the PTP were used with any Transaction that was reviewable under one or both of those Acts, legal assistance would be required to address the process to be used by the Parties in their Agreement.

The references included in the annotations about those Acts are primarily included to offer a general context for users because of the likely use of the PTP as a reference document. This offers a context about the requirements that could apply to larger Transactions.

Paragraph 6.04(a): The *Investment Canada Act* (Canada) is considered briefly in the annotations on Paragraph 10.01(a). If the Transaction is "reviewable" under that Act, Paragraph 10.01(a) will apply. One other related provision for possible consideration in the Head Agreement is: *If the Purchaser is a "non-Canadian" for the purposes of the Investment Canada Act (Canada), the Purchaser will diligently proceed to satisfy all requirements of that Act associated with this Transaction, including obtaining any necessary rulings and approvals. The Vendor will provide reasonable assistance to the Purchaser as required for that application, at the Purchaser's cost and expense.*

Paragraph 6.04(b): This Paragraph was introduced in the 2017 PTP to offer similar protection as that offered to the Purchaser under Paragraph 6.02(b). While unlikely, it is possible that the Purchaser could be subject to legal proceedings that could threaten its ability to complete the Transaction. The Vendor would need to assess the risk of the Transaction moving to Closing if this were a potential issue.

Paragraphs 6.04(c): The Vendor wants to be able to enforce the Purchaser's ongoing obligations under the Agreement against it. Recognition of potential risks in this area also reinforces to the Vendor's personnel that ongoing obligations, such as liability and indemnification obligations, are ultimately only as good as the financial viability of the Party that has those obligations.

Paragraph 6.04(d): i) Subject to any application of Paragraph 10.01(e), the Purchaser represents that it is eligible to accept a transfer of the licence for Wells and Tangibles anticipated to be operated by it. In the 1980s, the transfer of a well licence was approved as a matter of course if the transfer was in the prescribed form, the required fee was paid and the Purchaser was a subsisting corporation. Regulatory Authorities, such as the AER, have modified their procedures over time to reflect their concern about the number of "orphan wells" with untraceable or insolvent licencees. The AER has also created an inactive well program and applies screening ratios of inactive to active wells to both well Vendors and Purchasers. The applicable Regulatory Authorities believe that the orphan well problem is likely to escalate drastically unless the financial and operating viability of a proposed Purchaser is reviewed before acceptance of the transfer. One cannot dismiss the possibility that a prior licencee would retain potential liability for a Well it had transferred if the successors in interest failed to abandon the Well and fulfil Abandonment and Reclamation Obligations. A Vendor must carefully screen potential buyers and only attempt to dispose of properties to a financially viable Purchaser.

ii) The Purchaser sometimes will not be able to make this representation as of the Effective Date. The representation will need to be modified for those cases, so that the required steps to become eligible have been completed by the Closing Time. This would typically require identification of the eligibility gaps to the Vendor. The representation could have been structured more broadly to apply the eligibility test only at the Closing Time. This was not done because of the Vendor's need to understand any eligibility issues in this area early in the Transaction.

iii) As noted in the annotations on the definition of Licencee Rating, Clause 3.04, Clause 3.06, Paragraph 6.02(q) and Paragraph 10.01(e), the onus is on the Parties to work with their business and legal advisors to add custom content in their Head Agreement to address their particular circumstances and needs if there are any contemplated issues about the transfer of Well licences in addition to the condition to Closing in Paragraph 10.01(e). Reviewing the Regulations for a Transaction is particularly important if they require a review of a proposed transfer of a regulatory licence, permit or approval through a process in which that approval might not be granted, since this could require the inclusion of a Closing in escrow process in the Agreement. Simplifying the review of the other procedural aspects of the Transaction through use of the PTP facilitates a more focused examination of this important issue by the Parties' representatives relative to what would be the case without the PTP.

Paragraph 6.04(e): Subject to any condition to Closing respecting financing, the Purchaser represents that it has the available funds to make the payments required by it at Closing and to perform any other financial commitments required under the Agreement. The latter recognizes that the Head Agreement or modifications to the PTP might include some other financial obligations, such as the assumption of the Vendor's share of costs for several pending wells in circumstances in which the Purchaser has acquired less than all of the Vendor's working interest.

Subclause 6.05A: i) The representations and warranties are to be true on the Effective Date, at execution of the Agreement and at the Closing Time. A representation that was true at the Effective Date would be of little comfort to a Purchaser if it was not also true at Closing.

ii) The representations and warranties will not survive Closing unless the provision states that they are to survive beyond Closing. Although the inclusion of a limited survival period is generally accepted, the duration of the period has sometimes been a matter of negotiation. The norm has become 12 months for material Transactions, with 6 months sometimes used for minor Transactions involving non-operated properties. In industry's initial experiences with A&D transactions in the late 1980s and early 1990s, Purchasers sometimes attempted to negotiate 18 or 24-month periods.

iii) The survival period was modified from a negotiated number of months to one year in the 2017 PTP to reflect the most typical outcome. Parties that prefer a different survival period in this Subclause and Subclause 13.01C can negotiate a different time period. It will not be uncommon, for example, for a Vendor to amend this period to six months for a minor value Transaction or one involving only undeveloped properties.

iv) This Subclause does not go so far as to state that the representations and warranties cease to have any effect at the end of the prescribed period because of the exception for fraud noted in Subclause 6.05B and the related annotations.

v) The survival period for representations and warranties in this Subclause does not enable the Vendor to avoid its contractual obligations for J.V. and royalty audits under Subclause 4.02C, however.

Subclause 6.05B: i) If a representation or warranty was made fraudulently, the limited survival period probably would not prevent a Party from subsequently pursuing its full legal rights within the normal legal limitation period prescribed under the *Limitations Act*. However, the inclusion of the exception for fraud provides Purchasers with additional comfort, and should be of no concern to a Vendor that is processing its divestitures properly.

ii) A Party claiming a breach of a representation or warranty after Closing must do so by providing notice with reasonable particulars about the alleged breach within the prescribed period, subject to the qualification for fraud noted above. It has no basis to make any further claim for that breach if it misses the prescribed period within which to make a claim.

Subclause 6.05C: Vendors occasionally include a provision whereby a Purchaser would be prohibited from commencing an action for any representation if the Purchaser had any knowledge that would cause it to question the truth of that representation. A Purchaser pursuing a claim for damages for the breach of a representation would be required to convince a court that there had been a breach of the representation to its detriment and, if so, to prove that the damages suffered by it resulted from its reliance on the representation. It would seem difficult for a Purchaser to make this argument if it had knowledge at the time that indicated that it was not relying on the representation. Although the defence might also be available at common law in the absence of this Subclause, the PTP states that a Party may offer as a possible defence that the other Party was aware, prior to Closing, of the matter that forms the basis of its claim for breach of a representation and that it chose to proceed with Closing anyway. However, the success of the defence would ultimately depend on the facts. (In a context outside oil and gas, see French Family Funeral Home v. Player et al, 2015 ONSC 182. It basically held that if a seller's non-compliance with a representation was readily discoverable by the buyer

before closing, the buyer's failure to object to the seller's non-compliance evidences the buyer's understanding that the representation was not meant to apply to deficiencies that the buyer knew about prior to closing.)

In the past, Purchasers sometimes requested amendments to provisions like Clauses 6.03 and 6.05 whereby there is a recognition that the Parties have, in fact, relied on the representations and warranties made by the other Party under this Article. This is inappropriate. The other Party would not have relied on the representation if it knew that it was untrue, but Closed anyway.

Subclause 6.05D: This Subclause was introduced in the 2017 PTP to try to mitigate the risk that the survival periods for representations and warranties under this Clause and Clause 13.01 might not be effective because of the potential application of Subsection 7(2) of the *Limitations Act* (Alberta). There has been some uncertainty as to whether that Subsection might impact the typical practice to include survival periods on representations and warranties in commercial agreements. This topic was considered in NOV Enerflow v. Enerflow Industries Inc., [2015] A.J. No. 1343 (Alta. Q.B.). After distinguishing another case that related to a motor vehicle claim, the Court found that sophisticated contracting parties are free to agree to expiration dates for representations and warranties in a contract. The Court also found that a party making a claim for breach of one or more representations and warranties could not make a very broad claim initially and then modify its claim to add additional breaches of unrelated representations and warranties after expiry of the survival period for the representations and warranties. For context, this case pertained to a two-year survival period, rather than the one-year period in the PTP. (See also Clause 13.01.)

Article 7.00: i) Rights of First Refusal and consents are considered in detail in the miscellaneous annotations at the end of the PTP. Users might also review the annotations on Clauses 24.01 and 24.02 of the 2015 CAPL Operating Procedure (or any applicable update).

ii) It is possible that an outstanding consent or ROFR could delay Closing in circumstances in which the Parties would prefer to proceed with Closing. The Parties might consider proceeding with Closing on the unaffected Assets and either a delayed Closing on the affected Assets or a Closing in escrow. The latter would see the applicable amount paid in trust to the Vendor's solicitor, who would hold the funds and the applicable Specific Conveyances until the matter is determined. This would then see the trust conditions lifted or the exclusion of the Assets from the Transaction under Clause 1.02, with the return of the Specific Conveyances to the Vendor and the applicable funds to the Purchaser. The PTP does not address this situation, such that the Parties would need to negotiate their preferred handling in the context of their situation.

Subclause 7.01A: i) Some of the Assets may be subject to a Right of First Refusal. If so, the Vendor will promptly serve the required notices. The Purchaser may not waive the existence or operation of a ROFR (Clause 10.04). The Vendor is to provide the Purchaser with copies of the applicable ROFR waivers at Closing under Paragraph 3.03A(c).

ii) Other than for the timing prescribed for delivery of the Purchaser's ROFR values, this Clause is not prescriptive about the timing for the process of handling any required ROFR notices. In practice, the Parties are mutually motivated to discuss the draft form of ROFR notice and to issue them promptly, recognizing that it is unlikely that a Vendor would issue a ROFR notice before execution of the Agreement.

Subclause 7.01B: i) The ROFR values to be provided by the Purchaser are to be determined in good faith and on a reasonable basis. As the Vendor retains the contractual relationship with the third parties receiving a ROFR notice, it should not blindly accept the Purchaser's ROFR value. While the proposed value will frequently be used by the Vendor without further discussion, the Vendor should initiate a discussion if the proposed values are not within the Vendor's expected range. (See also annotation (iii) of the ROFR annotations at the end of the PTP.)

Agreements are often structured so that the Vendor issues required ROFR notices using the values supplied by the Purchaser, with an indemnification of the Vendor by the Purchaser if the Purchaser's ROFR values are challenged by any of the applicable third parties. That approach was not used in the base Subclause because of the Vendor's pre-existing responsibilities to the other working interest owners, but it was accommodated through the inclusion of the optional sentence at the end of the Subclause.

ii) Subject to any application of the optional sentence, any dispute about the value to be included in a ROFR notice is resolved under the dispute resolution Article (Article 9.00). In theory, this could see arbitration used to resolve the ROFR value. In practice, however, the potential reference to arbitration encourages the Parties to resolve their differences through negotiation, as neither Party would prefer to see a value imposed on it through arbitration. If either Party believes that the determination of an allocated ROFR value will be contentious, it might also request that execution of the Agreement be deferred until it is confirmed.

Subclause 7.01C: The Vendor is to notify the Purchaser promptly following notice from a third party challenging the validity of a ROFR notice, the ROFR value, the election period or the purported application of an exemption to the ROFR under the applicable Title and Operating Document.

Subclause 7.01D: i) Assets for which ROFRs are exercised are excluded under Clause 1.02, with a corresponding requirement to amend the Agreement prior to Closing. Unless otherwise provided in the Head Agreement, the Vendor would retain the funds associated with a ROFR exercise. There will be circumstances in which it will be preferable to structure the Head Agreement so that ROFR proceeds flow directly to the Purchaser from the ROFR party at completion of that deal. This is particularly the case in an Asset Exchange, as the Vendor will usually wish to retain the characterization of the entire Transaction as a trade for tax and accounting reasons.

ii) If it already owns an interest in the property, the Purchaser may also hold a Right of First Refusal with third parties. If so, the Purchaser should exercise its ROFR. The Operating Procedure has provided the owners exercising the ROFR with priority over the Purchaser. If another offeree exercised its ROFR and the proposed Purchaser did not also make that election, the exercising offeree would acquire the applicable interest in its entirety and the Purchaser would not acquire any of the interest to which that ROFR applied.

iii) The sale resulting from a ROFR exercise sometimes will not be completed. If this were to occur, the Vendor would usually contact the Purchaser to determine if it were still interested in acquiring the affected Assets on the original terms. In practice, each Party would probably be very motivated to explore this approach. It would be consistent with the original strategies of the Parties for the area (Vendor to exit/Purchaser to expand). It should be relatively easy to complete that disposition because of the previous work that had been done on the form of the Agreement and due diligence. In addition, the Parties would usually be able to proceed with the disposition without having to issue new ROFR notices if they were proceeding under the original terms and were within the disposition period permitted under the ROFR provision of the applicable agreement. The most likely situations in which one of the Parties would be reluctant to proceed in this manner would be if there had been: (a) a major change in commodity prices or the performance of the affected Assets; (b) substantial damage to the affected Assets; or (c) some major event in the vicinity of the affected Assets (i.e., a major discovery in an offsetting block). However, a new ROFR notice could be required if the ROFR disposition window were missed.

The possibility of including a provision similar to Subclause 8.02F was considered, but this was not included, primarily because the Parties would usually take this approach in practice in the absence of such a provision. Such a provision would need to address the interrelationship to optional Subclause 7.01D and the requirement to provide priority to any other third parties that had elected to acquire the remaining portion of the affected Assets. There was also a concern that the inclusion of such a provision would often lead to incremental negotiation over what could probably in practice be a small potential incremental benefit, particularly if the provision were included as an option.

Parties that wish to address this issue remain free to build a custom solution for their concern in their Agreement.

Subclause 7.01E: i) Optional Subclause E may enable the Purchaser to terminate the Transaction if the value of the exercised Assets is 50% or more of the Base Purchase Price, a threshold that the Parties could easily modify for any particular Transaction. The Subclause has been included as an option because Vendors will often resist providing a Purchaser with an option to terminate a Transaction because of ROFR exercises. This is particularly the case for a Transaction structured as an Asset Exchange. The outcome in which the Vendor receives only cash instead of properties is a negative one to the Vendor if it originally had no interest in selling the ROFR Assets. The Party that ultimately assumes the risk of a ROFR exercise in a Transaction structured as an Asset Exchange is one of the important issues to consider when negotiating it.

That being said, a Purchaser would often struggle with a construction that would require it to Close on the remaining Assets if the majority of the original value of the Assets were with respect to a property it would not acquire because of the exercise of a ROFR by a third party.

ii) Although the Subclause has been populated by a default of a 50% threshold (rather than a blank), the bolded paragraph at the bottom of the sample Schedule of Elections and Modifications included as Addendum I reminds users of the need to confirm that this value is appropriate for their Transaction. What is material will vary between Transactions, and a strategically critical asset could have a ROFR value of significantly less than 50%. To illustrate, it is quite possible that a key Facility ROFR value could represent less than 50% of the Transaction value. Similarly, an allocation of a portion of the Base Purchase Price to seismic data would mean that there would be a smaller value base from which to satisfy the 50% test.

iii) Subclause E and Paragraph (d) of Alternate 8.02B(2) were updated significantly in the 2017 PTP. The 2000 PTP included a negotiated threshold for the combination of Title Defects and ROFR exercises. As of the 2017 PTP, the two processes are independent.

Subclause 7.01F: Although the Title and Operating Documents generally require prior consent to a disposition on a "consent not to be unreasonably withheld basis", those requirements are usually only honoured on an exception basis in practice. The Parties should consider modifying this Subclause to provide for prompt issuance of a consent notice if the Purchaser has a reasonable basis to assume that a third party may attempt to withhold its consent to the disposition. There may be circumstances in which the Parties require a specific condition under Article 10.00 if they believe that the acquisition of any particular consent may be an issue in their Transaction. (See the annotation on a leading case on when it is reasonable to withhold consent in the miscellaneous annotations at the end of the PTP.)

That being said, a particular Title and Operating Document, such as a freehold lease granted by an industry player, could potentially include a consent requirement that allows a third party the subjective discretion to withhold a consent. The Parties would need to address any such consent in the manner contemplated in the applicable Title and Operating Document as a consent to be requested prior to Closing. This Subclause provides the Purchaser with the right to request the Vendor to address any such consent requirement promptly.

Article 8.00-General: i) This Article was modified to be an optional Article in the 2017 PTP. This reflects the increasing trend to require the due diligence process to be completed prior to execution of the Agreement. This provides each Party with greater control over any negotiations required to resolve any negative matters encountered in the due diligence review, and ultimately increases deal certainty if the Parties are able to resolve those matters. This allows each Party to know if there are material problems before execution, rather than finding themselves in a potential lingering dispute after the Agreement is executed. This approach may be particularly attractive for the more straightforward Assets for which the PTP would typically be used, and it also offers a significant potential simplification if the Assets comprise only undeveloped lands.

ii) The second sentence in the introduction to the Article was included for the mutual benefit of the Parties. Even if this Article was not selected to apply, the duties in Clause 8.01 should apply to the Vendor with respect to access provided to the Purchaser for its due diligence review prior to execution of the Agreement (something that should be reinforced in the letter of intent), and the obligations in the last paragraph of that Clause should apply to the Purchaser with respect to its due diligence review. (See also the Vendor's representation about the provision of documents in Paragraph 6.02(p).) Similarly, Subclause 8.02D should apply to that due diligence review to ensure that the Purchaser is in the same position after Closing if the Article is not selected as it would have been if it had acquired the Assets in an Agreement in which Article 8.00 was selected to apply.

Paragraph 8.01(a): i) The Purchaser will wish to conduct a "due diligence" review of the Vendor's records pertaining to the Assets to confirm the Vendor's title. A lender financing the Purchaser for the Transaction could possibly also want its solicitors to review title. The Vendor is required to provide the Purchaser's nominees with reasonable access to those records. The "reasonable access" requirement mitigates the potential for a Vendor to attempt to frustrate the due diligence process by providing access that makes it difficult for the Purchaser to complete its review in accordance with the timing prescribed by this Article. (See also Paragraph 6.02(p).)

A prudent Vendor will conduct a thorough title review prior to the sale: (a) to assist internal users in evaluating the property; (b) to enable external users to appreciate the nature and extent of its interests in the Assets; (c) to compile accurate information for the preparation of Specific Conveyances; and (d) to attempt to recognize and rectify title deficiencies prior to the review of the Purchaser's solicitors. If the Vendor has done this work and compiled the information in a summary format, the Purchaser's solicitors will be able to perform their task far more efficiently. An early review of the associated Facilities and J.V. agreements is also prudent because of the benefits of identifying Facilities and applicable J.V. Agreements, of understanding ROFR requirements and any other unusual obligations and in facilitating the integration of records.

The Vendor should prepare for the Purchaser's title review by placing all of the relevant files in the workspace to be used by the Purchaser's solicitors. It should also ensure that the land analyst who had conducted the Vendor's title review will be available to respond to any questions the solicitors may have with respect to the land records. The Purchaser's solicitors should be provided with the Vendor's best records for the due diligence review. Joint Ventures may have better unit and J.V. records than a Land Department, for example. Similarly, both the Marketing Department and the Legal Department may also have better production sale agreement records than a Land Department.

ii) The obligation to provide reasonable access could create confidentiality concerns if the Transaction is "material" to the Vendor for securities law and exchange purposes. That Vendor may need to provide access in a way in which there is restricted exposure to its personnel. This is because the Vendor may be required to issue a press release prior to signing the Agreement if the Transaction does not remain strictly confidential.

Paragraph 8.01(b): i) A prudent Vendor will provide prospective bidders with an opportunity to tour an operated property with the Vendor's representatives prior to the sale. The Purchaser is given an additional opportunity to inspect the Assets as part of the due diligence process. (See also the notes on Clause 13.04.) The Vendor's designated representative should be someone reasonably qualified, by experience and knowledge of the Assets, to facilitate the Purchaser's review. The Vendor may have difficulty providing the Purchaser with access to non-operated properties, and a Transaction might be jeopardized in some cases if the Vendor is unable to provide the Purchaser with that access.

ii) The PTP is silent about due diligence concerns that do not pertain to the Vendor's title (e.g., environmental condition, confirmation of production data, confirmation or condition of Tangibles), as it is anticipated that Parties will customize their expectations in this area in their Head Agreement. There are several ways for the Parties to address those issues. One would be to include conditions in the Head Agreement, as contemplated in the annotations on Paragraph 10.02(d). Another would be to address the issue in a prescriptive manner in the Head Agreement through some form of defects provision that uses a threshold approach similar to Alternate 2 of Subclause 8.02B. Still another would be to try to negotiate an adjustment to price as Closing approaches, something that would most frequently be linked to the conditions approach noted above.

iii) The logistics of conducting a site review respecting potential Environmental Liabilities are such that a Purchaser should be cautious about acquiring a property during the winter.

Clause 8.02: i) A full discussion of the nature of title opinions is beyond the scope of these notes. For more information, see Insight Seminar Materials - 'Oil And Gas Title Opinions: Are They Necessary? How Are They Prepared?' (1990-02-13).

From the perspective of the Purchaser, the first point to note is that the scope of the title review should be defined clearly with the Purchaser's solicitors. While it is unlikely that the PTP would be used for a large regional Transaction, the comments noted below offer a context for approaches that may be particularly appropriate for a large acquisition. In that context, this instruction would address such issues as:

(a) Full title review or a limited review: If the Purchaser already has an interest in the property, it will often only be interested in the Vendor's particular interest, not the validity of the Leases. Similarly, if 80% of the value is allocated to 20% of the Assets, the Purchaser often will not want its solicitors to conduct any detailed review of the Lands with relatively little value.

(b) Sampling: If the Transaction includes many title documents, it may initially be attractive to limit the title review to a representative sample of the Vendor's records, so that the Purchaser can better assess the degree of confidence it will have in the Vendor's records. The best sample for a property with diverse interests would include some freehold, some Crown, some operated and some non-operated properties.

(c) Producing properties vs. undeveloped properties: In the absence of a mature prospect that the Purchaser intends to drill or a high allocation of value to undeveloped lands, a Purchaser would generally wish to focus the review on producing properties if the acquisition were large.

(d) Vendor's reputation: If the Vendor is a financially viable entity with a good reputation, the scope may be more limited. Those Vendors are not as likely to cut corners on record keeping systems, to have undisclosed third party partners or to have Security Interests registered against

their interests. The Purchaser is likely to have more confidence in the accuracy of those records. That being said, a Purchaser might take a more cautious approach if the Vendor had acquired a significant portion of the Lands through a prior corporate or asset transaction, as its predecessor's record keeping standards may have been different than the Vendor's.

(e) Potential Cost: The scope of the review will largely be a function of the cost of the review in the context of the value of the purchase. All other things being equal, a $20 MM Transaction warrants a more careful review than a $200,000 Transaction.

ii) A Purchaser should initially compare the Land Schedule to that in any independent engineering report prepared for a Vendor.

Subclause 8.02A: i) The Purchaser is to notify the Vendor of Title Defects at least seven Business Days prior to the Scheduled Closing Date or another agreed upon date (as compared to a negotiated period in the 2000 PTP), although it is often advantageous if items are disclosed to the Vendor as discovered. The Vendor is to respond not later than three Business Days prior to that date. These are arbitrary periods, premised on the assumption that the title review will be a relatively straightforward process, and they can be modified easily for any particular Transaction. If the Land Schedule is complex, this may not be feasible. The notice period will sometimes have to be modified (or Closing delayed) to provide the Purchaser with an additional opportunity to complete its review. If Closing is to be delayed while the Title Defects are being remedied, the Parties should address their expectations at the time about the handling of any interest that would otherwise accrue during that period under Clause 2.06. Clause 2.06 states that interest would not accrue on the Purchase Price during that period. (See also Clause 2.06.)

ii) It is critical for Purchasers to retain the responsibility for management of the title review process, so that the Transaction is conducted most efficiently. If the property is complex, it may be advantageous for the applicable Land personnel responsible for Closing the Transaction to meet early to discuss the process to move towards Closing and the respective expectations for managing the title review process.

The title opinion of the Purchaser's solicitors will often list many title deficiencies. Many, though, will not fall within the definition of Title Defects. A Vendor generally wishes to cooperate with both the Purchaser and its solicitors in the due diligence review, but cannot be expected to devote significant effort to the review of immaterial title deficiencies. To minimize this possibility, the Purchaser is to provide notice of the Title Defects, the Affected Assets, a list of missing documents and the Purchaser's requirements for rectification. This encourages a Purchaser to screen its solicitors' title opinion, by focusing the Vendor's efforts on those Title Defects that matter to the Purchaser. It must determine which deficiencies are Title Defects and the actions that will be required to rectify them. Subject to the exceptions in Subclause 8.02D, the provision is also structured to prevent the Purchaser from surprising the Vendor with additional Title Defects after the prescribed notification deadline.

Subclause 8.02B: This Subclause addresses the impact of Title Defects on Closing, and can only apply if the Purchaser has served a notice under Subclause 8.02A. (There are only rights under this Subclause if a notice of Title Defects has been served by the required time.)

Subclause 8.02B- Alt. 1: Alternate 1 provides the Purchaser with three options. It can: (a) provide the Vendor with additional time to remedy the Title Defects by delaying the Closing Time to such date as the Parties may agree; (b) waive the uncured Title Defects and proceed with Closing; or (c) terminate the Transaction. Alternate 1 of the definition of Title Defects should be used if Alternate 8.02B(1) is selected.

That being said, the construction of this Alternate is ultimately binary. Unless otherwise agreed by the Parties, the ultimate choice of the Purchaser is to proceed to Closing or to terminate the Transaction. The major advantages of this approach are its relative simplicity and the prohibition of "cherry picking", such that it can be particularly attractive for minor value Transactions. (See annotations below.) In addition to avoiding the potential for cherry picking, this mechanism also avoids the valuation problems inherent with the potential exclusion of portions of the Assets. It also assumes, though, that the Vendor would be able to find an alternative Purchaser easily, something which may not be true.

There is a risk that a Purchaser might terminate a Transaction under this Alternate if there are Title Defects for which the value of the Affected Assets is not material to the entire Transaction. This could place a Vendor at significant risk during a period of volatile prices. Parties will sometimes modify this Alternate to include a requirement of a minimum value threshold before the Purchaser can exercise this termination right.

Subclause 8.02B - Alt. 2: i) This Alternate includes greater flexibility in the handling of the Title Defects. Closing will proceed if the value of the outstanding Title Defects is below a threshold of 10% of the Base Purchase Price. The election sheet included as Addendum I reminds users that the typical 10% threshold might not provide a suitable result for a minor value Transaction if they choose to select Alternate 2.

A potential variation that Vendors might use in a large Transaction would be to require an individual Title Defect to meet a minimum threshold before it could be counted as part of the 10% threshold. It is unlikely that this variation would be used in a Transaction using the PTP, though.

ii) If the value of uncured Title Defects is above the 10% threshold, the Purchaser has four options: (a) to provide the Vendor with additional time to remedy the Title Defects by delaying the Closing Time to an agreed date; (b) to waive the uncured Title Defects and to proceed with Closing; (c) to proceed with Closing for the Assets not affected by the Title Defects, with the consideration being reduced accordingly, insofar as that value is greater than the 10% threshold; or (d) to terminate the Agreement if at least 25% of the consideration is applicable to the Assets affected by the uncured Title Defects. However, the Vendor may also terminate the Agreement if the Purchaser is proposing to exclude Assets with a value of at least 25% of the Purchase Price under Paragraph B(c). (The Parties also always have a fifth option in practice, to substitute other mutually agreed upon assets of the Vendor. That option was not included because it can create an expectation that replacement assets will be sought out.)

Some Vendors prefer a variation to Paragraph (c) so that the Purchaser acquires the Affected Assets with a reduction in the Base Purchase Price. This is designed so a Vendor is not required to retain Assets that would be difficult to dispose separately. There is an associated risk, though, that this could potentially encourage a Purchaser to identify Title Defects in order to attempt to acquire all of the Assets at a lower Base Purchase Price.

iii) The 10% threshold in Paragraph (c) is, in effect, a deductible. In the absence of the deductible aspect, Purchasers would be encouraged to raise additional concerns to try to satisfy the 10% threshold and obtain a full recovery, an approach that the PTP does not reinforce.

iv) The thresholds in Paragraphs (c) and (d) of this Alternate were modified from a blank to be negotiated for each Transaction to 25% as of the 2017 PTP. This was done to reflect the most typical negotiated outcome and to reduce the number of elections associated with use of the PTP. The Parties always remain free to negotiate a different handling in any particular Transaction, and the bolded paragraph in the sample Schedule of Elections and Modifications in Addendum I reminds users to review some of the default values included in the PTP.

v) Paragraph (d) of this Alternate and Subclause 7.01E were updated significantly in the 2017 PTP. The 2000 PTP had been structured so that the threshold in Paragraph (d) was a negotiated threshold for the combination of Title Defects and ROFR exercises. As of the 2017 PTP, the two processes are independent.

General - Subclause 8.02B: There are several points to note about the Title Defect mechanism.

i) Purchasers often request the inclusion of a condition precedent whereby it is not required to complete the Transaction unless it receives a title opinion satisfactory to it from its solicitors. Such a "title out" provision would, in effect, turn the Transaction into an option to purchase, so a Vendor should not agree to this condition. (See, for example, Canadian Petroleum Law Foundation - Papers Presented At June, 1990 Jasper Seminar - "Fundamental Issues And Practical Requirements Affecting The Purchase And Sale Of Producing Resource Properties" by Martin G. Abbott. The author reviews such cases as Canada Egg Products, Limited v. Canadian Doughnut Company Limited, [1955] S.C.R. 398 (S.C.C.) and Petro Can Oil & Gas Corp. Ltd. v. Resource Service Group Ltd. (1988), 90 A.R. 220 (Alta. Q.B.) and states on p.17 "... the weight of case authority sides with the view that reasonableness is not to be implied where the parties clearly have agreed to one party exercising subjective discretion..... Hoping that a court will imply some sort of reasonableness standard on the exercise of subjective discretion is a false hope. It is not enough to prove that the subjective discretion was exercised unreasonably. To prove that a person was not acting "honestly" in exercising this subjective discretion is very difficult, short of receiving an admission by such person. The practical effect is that the party in whose favour a subjective condition precedent exists has a great deal of latitude in proceeding or not proceeding with a deal, and probably does enjoy a circumstance akin to an option." If it were to be included, though, the discretion should be limited by a reference to Title Defects and the duty of the Purchaser to act reasonably in the exercise of the discretion. One might also include a threshold value in the provision, as found in Subclause 8.02B - Alternate 2.

ii) Clause 8.02 reflects the more common approach, in that the Vendor will have the opportunity to remedy curable Title Defects. If the Vendor attempts to remedy the Title Defects, the Purchaser's election would pertain to those Title Defects that have not been cured to its reasonable satisfaction. The reference "to the Purchaser's reasonable satisfaction" is more appropriate than "to the reasonable satisfaction of the Purchaser's solicitors." In practice, the Purchaser's solicitors would be more inclined to assert that a Title Defect had not been cured than would be the Purchaser's business advisors. The business advisors would be more likely to quantify the risk to determine if it is acceptable. This does not jeopardize a Purchaser or diminish the role of its solicitors, though, since the Purchaser would still consult with its solicitors.

iii) One contentious issue is the degree to which a Purchaser should be permitted to exclude portions of the Assets from Closing because of Title Defects. The Purchaser, of course, does not wish to acquire properties with Title Defects. On the other hand, the Vendor does not want a mechanism whereby the Purchaser has a significant opportunity to exclude Assets it does not find attractive from the sale. This is particularly so if the Vendor's desire is to sell all of its Assets in an area.

To avoid this result, Alternate 1 requires an "all or nothing election" and Alternate 2 includes a mechanism whereby there is no adjustment unless the total value of the Assets affected by the uncured Title Defects exceeds a specified threshold. The latter includes a 10% threshold as of the 2017 PTP. A different threshold might be used for small value Transactions, though, as a 10% threshold on a $300K Transaction would provide permissible Title Defects of $30,000.

iv) On occasion, Purchasers attempt to use "title deficiencies" as a vehicle to renegotiate the Purchase Price. If raised, the Vendor's reaction to the request would depend on a number of factors. They would include the reasonableness of the suggestion, the value of the Transaction, the nature of the applicable title deficiencies, the business risks associated therewith, the manner in which the Purchaser's representatives have handled the Transaction and the long-term business relationship of the Parties. However, a Vendor should be aware that other potential buyers may be reluctant to buy Assets that a Purchaser does not acquire because of Title Defects.

v) If a Purchaser Closes with respect to Assets, the Purchaser generally should not be able to assert after Closing that there are Title Defects. Subclause D addresses this. However, it is possible that Title Defects may subsequently be discovered after Closing in circumstances in which it would not be appropriate to preclude the Purchaser from a potential remedy. The primary examples of the latter would be Title Defects that were: (a) not apparent because of the Vendor's failure to provide access to the required files in violation of Paragraphs 6.02(p) and 8.01(a); (b) created as a result of the Vendor's breach of its maintenance of business obligations under Clause 5.03; and (c) subject to Clauses 6.05 and 13.01, in violation of the Vendor's representations and warranties under Article 6.00. The qualifications to Clause 6.05 address both the time limitation and the ability of the Vendor to raise a "no reliance" defence if appropriate in the circumstances.

vi) There may be a problem as regards the value used in a ROFR notice issued to a third party if Title Defects are discovered to apply to that interest. Although the original ROFR value may still be appropriate between the Parties when determining the impact of an exclusion due to the Title Defects, the value will often have been overstated in the ROFR notice in that circumstance. This may need to be reviewed by a Vendor, and could result in the need to reissue the ROFR notice.

Subclause 8.02E: There may not have been any prior agreement with respect to the portion of the Purchase Price that is attributable to the Assets affected by the Title Defects. This Subclause addresses the determination of the value if the Parties proceed with Closing for the Assets not affected by the Title Defects. In essence, the Purchaser would make a good faith estimate of that value, pending the resolution of the value of the Affected Assets by agreement of the Parties or under Article 9.00 (negotiation/arbitration). They would accelerate any such arbitration.

Subclause 8.02F: The Vendor will often rectify uncured Title Defects for excluded Assets shortly following Closing. The Vendor may, at its option, require the Purchaser to complete the acquisition of those Assets on the same basis as in the Agreement, subject to any obligation to issue ROFR notices again. Including this as an option of the Vendor is a disincentive for Purchasers to exclude Assets, as there is no right to re-acquire the excluded Assets. Similarly, the Purchaser is under no obligation to acquire excluded Assets if the Vendor is unable to remedy the applicable Title Defects within 30 days after the initial Closing. That being said, there may be circumstances in which the Purchaser would still be interested in acquiring the applicable Assets if the applicable Title Defects were remedied at a later date. The Parties will enter into a separate Agreement for the acquisition of the applicable Assets in the form of the Agreement, except that Clause 2.06 interest would not accrue for the period prior to the Vendor's notice under this Subclause. As this is a separate Agreement, it uses the original Effective Date, but would have its own Closing Date.

Subclause 8.02G: This Subclause protects the Vendor against the possibility that the Purchaser may attempt to terminate the Transaction under Paragraph (d) of Alternate 2 of Subclause 8.02B in circumstances in which the Vendor believes that the values attributed to the Title Defects have been inflated. This Subclause enables a Vendor to delay the Closing Time until two Business Days following a determination of the applicable value under Article 9.00. At that point the Purchaser may again make the election under Subclause 8.02B, subject to any obligation to issue ROFR notices again. The Vendor would also presumably be attempting to remedy outstanding Title Defects during that period as well.

Clause 9.01: i) This Clause was simplified as of the 2017 PTP by deleting the reference to mandatory mediation that had been included in the 2000 PTP. This was largely in the context of the types of Transactions for which the PTP was most likely to be used.

ii) The Parties might consider using a layered negotiation approach involving a notice mechanism for the involvement of senior managers/executives if negotiations were at an impasse. While it is unlikely they would include such a provision in a Transaction in which the PTP is likely to be used, it is something that might be considered if it were apparent that project personnel were at an impasse in their discussions.

iii) Although the 2000 PTP reference to mediation was not included as of the 2017 PTP, mediation is used increasingly to resolve dispute, and it is a required step in the Alberta judicial system if the dispute were to escalate to litigation. However, mediation can ultimately only be successful if the Parties are willing to explore alternative ways to resolve the dispute.

Parties considering mediation are motivated to agree on a mediator in practice. When choosing a mediator, it is important to consider the type of mediator to use for the mediation. Do the Parties require one who tries to lead them to a resolution that the mediator believes is appropriate based on the mediator's experience (an "evaluative mediator") or do they require one who tries to facilitate the discussions to enable them to develop a resolution that they believe is appropriate (a "facilitative mediator")? If they are unable to agree on the selection of a mediator, they might consider obtaining a list of potential mediators from groups such as the ADR Institute of Alberta and the ADR Institute of Canada Inc., where the latter is also willing to select one for them. (More information about the ADR Institute of Canada Inc. is found on its website at www.adrcanada.ca, and more information about the ADR Institute of Alberta is found at its website at www.adralberta.com.)

A mediator and the Parties will jointly determine the process to be used for the mediation, including any confidentiality requirements. The Parties might consider adopting the National Mediation Rules of the ADR Institute of Canada, Inc. or any similar rules.

Clause 9.02: i) A Party that wishes to pursue an issue formally after a failed negotiation is required to use arbitration if the dispute is one that pertains to: (a) the degree to which rights are being excluded from the Surface Rights because of the Vendor's need to retain those rights for its other operations (the definition of Surface Rights); (b) adjustments (Paragraph 4.01(l)); (c) ROFR values or allocations (Subclause 7.01B); or (d) the value of Assets for which the Title Defects remain uncured under Clause 8.02 (Subclauses 8.02E and 8.02G). The Parties might also agree to use arbitration for the resolution of any other particular dispute.

ii) Notwithstanding the reference to arbitration, the Parties might agree to refer any particular dispute about adjustments and audits to a nationally recognized firm of chartered accountants in an attempt to resolve the matter.

iii) Users are often very reluctant to use arbitration to resolve disputes. This is largely because of a concern about the possibility of an unpredictable outcome. As a consequence, the references to arbitration in this Clause might initially be of concern to some users because of a possible perception that the provision is designed to encourage the use of arbitration to resolve disputes.

The inclusion of arbitration references, in fact, is designed, firstly, to encourage the Party in the "power position" to listen more carefully and openly to the concerns of another Party than would otherwise be the case if litigation were the only remedy and, secondly, to encourage all Parties to resolve the issue through negotiation without actually resorting to arbitration and the possibility of an unfavourable outcome outside its control. In other words, the references to arbitration reinforce the resolution of disputes through negotiation because of the reluctance to use arbitration.

When considering the use of arbitration as a dispute resolution vehicle in this Clause, it is important to note for context that the CAPL Operating Procedure has dictated the use of arbitration for the resolution of strategically critical disputes on ROFR values (since the 1971 document), title preserving well issues (since the 1990 document) and many "production facility" issues (since the 1990 document) without apparent issues or any apparent proliferation of arbitration proceedings.

iv) Any arbitration will be conducted under the ADRIC Arbitration Rules in conjunction with the *Arbitration Act* (Alberta). The rules are substantially of a procedural nature. They supplement or make substitution for provisions of the *Arbitration Act* for the applicable jurisdiction (i.e., Alberta, if not modified). The handling of costs and appeals thereunder are generally on the same basis as provided in the applicable *Arbitration Act*. The Parties are also free to agree to require the arbitrator to select from only one of the two solutions presented by the Parties ("baseball arbitration").

v) The Clause contemplates use of a single arbitrator, which would typically be appropriate for the low to modest value Transactions for which the PTP is most likely to be used. The applicable Parties would often use an arbitration panel of three arbitrators for high value Transactions, although it would be unlikely that those Agreements would use the PTP.

The ADRIC Arbitration Rules and the *Arbitration Act* each allow an arbitrator to be appointed if the Parties are unable to agree.

vi) There are limited grounds on which to appeal or overturn an arbitration award under Sections 44 and 45 of the *Arbitration Act*. Section 44 allows for an appeal on a question of law with the leave of the Court in certain circumstances. Section 45 provides the Court with the authority to overturn an award in certain instances in which there were significant procedural problems with the conduct of the arbitration.

vii) A Party may otherwise commence a court action with respect to an outstanding dispute after a failed or terminated mediation.

Clause 9.03: A review of the law about injunctive relief is found in Gulf Canada Resources Ltd. v. Pembina Resources Ltd. (1994), 152 A.R. 74 (Alta. Q.B.). It was a dispute about the appointment of a new operator under a pre-CAPL Operating Procedure. The Court found that the plaintiff did not demonstrate irreparable harm entitling it to an injunction, such that it could adequately be compensated in damages if it suffered losses. The law in this area was also reviewed in Constellation Oil & Gas Ltd. v. Sunoma Energy Corp., [1999] A.J. No. 1202 (Alta. Q.B.), ExxonMobil Canada Energy v. Novagas Canada Ltd., [2002] A.J. No. 775 (Alta. Q.B.) and AltaGas Services Inc. v. BelAir Energy Corp., [2003] A.J. No.1127 (Alta. Q.B.).

Article 10.00: i) The Parties should address any Required Approvals specifically as conditions, and these will often be mutual conditions. It is unlikely that these requirements would apply to a Transaction for which the PTP is being used, but legal advice should be obtained if they may apply. As a potential reference for users for other dispositions, possible consents under the Regulations include:

Investment Canada Act: The *Investment Canada Act* (Canada) was enacted in 1985 to provide for the review of certain investments in Canada by non-Canadians. There must be notification under Part III of the acquisition of control of a Canadian business or the establishment of a new Canadian business by a non-Canadian. Investments exceeding certain thresholds also require review and pre-approval under Part IV, and all investments are subject to a national security review under Part IV.1. The review thresholds under Part IV are complex and subject to numerous exceptions. Pursuant to subsections 14.1(1) and (2) of the Act, as of June 22, 2017, the review threshold is, in general, an enterprise value of $1B for an investment to acquire control of a Canadian business (whether or not it is controlled by a Canadian) by a World Trade Organization (WTO) investor. The same threshold applies for any such investment by a non-WTO investor that is not a state-owned enterprise if the Canadian business in question was, immediately prior to investment, controlled by a WTO investor. The enterprise value of the Canadian business is calculated using sections 3.3-3.6 of the *Investment Canada Regulations*. If the investment is being made by a WTO investor that is a state-owned enterprise, the review threshold is an asset value of $379MM.

According to the Minister's "Guidelines-Acquisitions of Oil and Gas Interests", acquiring a working interest in a property on which only exploration activities are conducted is not treated as the acquisition of an interest in a "business", such that no notification or review is necessary. If the property contains recoverable reserves, it will usually be subject to either notification or review, depending on the size of the interest being acquired and the asset size of the business. In general, if the working interest being acquired, combined with any existing interest owned by the investor, exceeds 50% (as well as in certain other circumstances), the transaction is subject to notification or review, as applicable. For more information, refer to https://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/lk00064.html#p4.

Competition Act: The *Competition Act* (Canada) is a complex federal law governing business conduct, including the regulation of mergers (which includes the acquisition or establishment of a significant interest in a business or business assets). Under the Act, mergers of all sizes, in all sectors of the economy are subject to review. The purpose of the review is to determine if the proposed merger prevents or lessens competition, or if it is likely to do so. Section 93 outlines some factors that may be considered by the Competition Bureau (Bureau) to determine if the merger will limit competition. In general, mergers are viewed positively. For more information refer to http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03423.html.

Nevertheless, the Commissioner of Competition must, in general, be notified under Part IX of all proposed transactions that exceed both party size and transaction size thresholds (and, in some cases, percentage thresholds), and notifiable transactions are prohibited from being completed before certain time periods or waivers (i.e., advance ruling certificate or 'no action letter'). For 2017, these thresholds are $400MM and $88MM respectively, but the thresholds should be reviewed at the time of any applicable proposed transaction. Failure to notify can be a criminal offence. The *Notifiable Transactions Regulations* set out the procedure for calculating the aggregate value of assets and gross revenues from sales for purposes of the party-size (sections 8 and 9) and transaction-size thresholds (sections 10 and 11). According to sections 6 and 7 of the Regulations, the effective date for these calculations is, in general (and subject to sections 12-14), not the date of the transaction, but the last day of the period covered by the most recent audited financial statements in which those assets or gross revenues have been taken into account. Although it may seem unlikely that the *Competition Act* would apply to a transaction that uses the PTP, it is possible that it could apply to a heavily impaired property because the property value threshold is based on book value, rather than the value of the transaction. The above interpretation only applies to scenarios involving a 100% asset acquisition; the guidelines vary depending on transaction type. For more information, refer to http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03420.html#s2_1

Approval under the *Canada Petroleum Resources Act*: Both the *Canada Petroleum Resources Act* (Canada) and the legislation enacted with respect to the Nova Scotia and "Atlantic" (Newfoundland) Accords include provisions that are relevant to Vendors and Purchasers. Section 86 of the CPRA provides that a disposition that could result in the transfer of an interest in a production licence is of no effect until the Minister consents to it.

ii) If at least one of the Parties is a Canadian subsidiary of a U.S. company, Vendors and Purchasers must also be aware of the possible impact of the U.S. Hart-Scott-Rodino Antitrust Improvements Act. That act would apply mostly to mergers. While it can apply to large asset purchases, it is unlikely to apply to the purchase of oil and gas reserves because of an apparent $500MM US fair market value exemption for developed properties.

Clause 10.01: This Clause addresses conditions that are included for the mutual benefit of the Parties. The Parties may wish to include additional conditions for their mutual benefit under Paragraph 10.01(g).

Paragraph 10.01(c): i) Purchasers sometimes object to the materiality qualification, and suggest its deletion. The exclusion of that qualification would literally enable a Purchaser to terminate the Agreement for any failure of the Vendor to comply precisely with every provision of the Agreement, no matter how minor. If this ever occurred without reasonable cause, the Vendor would find itself in a very awkward position.

ii) A simple example of the application of this condition would be if a Vendor did not provide access to its records to the Purchaser for its title review under Article 8.00. (See also Paragraph 6.02(p).)

Paragraph 10.01(d): i) The requirement for the representations and warranties to be current is always a condition. However, the Representations and Warranties Certificate is only required if the Parties include a Schedule that includes the form of the certificate. The Parties will often choose not to require this certificate in lower value Transactions and Transactions including only undeveloped lands.

ii) A Vendor that is unable to transfer licences under the Regulations cannot make the representation in Paragraph 6.02(q) if it were selected to apply. It could not satisfy the condition in Paragraph 10.01(d) in that case.

Paragraph 10.01(e): i) As noted in the annotations on the definition of Licencee Rating, Clause 3.04, Clause 3.06, Paragraph 6.02(q) and Paragraph 6.04(d), the onus is on the Parties to work with their business and legal advisors to add custom content in their Head Agreement to address their particular circumstances and needs if there are any contemplated issues about the transfer of Well licences in addition to the condition to Closing in Paragraph 10.01(e). Reviewing the Regulations for each Transaction is particularly important if they include a requirement for a review of a proposed transfer of a regulatory licence, permit or approval through a process in which that approval might not be granted, since this could require the inclusion of a Closing in escrow process in the Agreement. Simplifying the review of the other procedural aspects of the overall Transaction through use of the PTP facilitates a more focused examination of this important issue by the Parties' representatives relative to what would be the case without the PTP.

ii) Each Party is required to address any deposit requirements applicable to it under the Regulations (e.g., due to its Licencee Rating). The Parties will sometimes modify this to reflect their particular needs (e.g., small deal in which the applicable Party does not involve its lawyer).

Paragraph 10.02(a): i) The Purchaser's primary condition precedent is that there will not have been material adverse damage to the Assets after the date of the Agreement/the Effective Date. A Purchaser cannot be expected to complete the Transaction if the Tangibles have been materially damaged during the period that the Vendor is maintaining the Assets on its behalf.

That being said, the Purchaser might still choose to proceed with Closing if there are insurance proceeds accruing for its benefit under Subclause 5.02B. However, this would be at the option of the Purchaser because the potential operational delay in correcting the problem might not be acceptable to it, and it would also require the Parties to address a number of insurance related issues (e.g., handling of deductibles, amount of proceeds, settlement rights, litigation management).

This is a generally accepted condition precedent that permits the Purchaser to terminate the Agreement because of the Vendor's failure to deliver the subject matter of the contract. The arrangement is no different than is generally found in other commercial transactions. Parties sometimes include a definition of "material adverse effect" in larger Transactions.

It is often presented in the context of damage to the Assets (rather than the Tangibles), subject to a qualification to ensure that reservoir decline or changes in either commodity prices or the Regulations are not relevant to the determination. The linkage of the condition to the Tangibles in the PTP eliminates the need for that type of qualification.

ii) The Vendor has a duty under Clause 5.01 to notify the Purchaser promptly upon becoming aware of any damage of the type contemplated in this Paragraph. In the absence of that duty or the inclusion of an obligation for the Vendor to provide a "No Substantial Damage" certificate at Closing, the Purchaser may have limited protection with respect to material damage of which it is unaware at Closing. However, the inclusion of this duty does not go as far as to provide the Purchaser with protection from material damage of which the Vendor is unaware.

The Parties could easily amend this condition to require a "No Substantial Damage" certificate if the Purchaser required the additional comfort of a certificate. However, this would be unlikely to be done for a Transaction for which the PTP is used.

Paragraph 10.02(c): i) Purchasers will typically have obtained appropriate due diligence searches (e.g., Alberta Department of Energy, Land Titles Office, Court House, Personal Property Registry, the Alberta Environmental Site Assessment Repository), and will require confirmation that any adverse registrations will not affect them after Closing. The form of confirmation that is required will depend on the type of Security Interest, and a "No Interest" letter will often be sufficient.

ii) The Vendor is required to reimburse the Purchaser for its associated registration costs under Clause 3.05.

Paragraph 10.02(d): i) Purchasers might attempt to negotiate the inclusion of additional conditions in the Head Agreement, such as: (a) approval of the Board of Directors or bank financing; (b) specified approvals under the Regulations; (c) an environmental review; (d) a production audit to confirm that production and accounting data provided to it at the time of the offer were accurate and to confirm current production rates; (e) a physical inspection of the Assets to ensure that they are in good working condition; and (f) a review of J.V. processing arrangements, etc.

There are two important considerations to keep in mind when possibly including these additional conditions. The first is to ensure that any conditions like (c) - (f) are presented in the context of a discretion that must be exercised reasonably. The second is that it will often be desirable to use a date significantly earlier than the Closing Time as the trigger date for those conditions. Otherwise, the Vendor could discover that the Purchaser will be exercising its right to terminate the Transaction two days before Closing. Addressing those types of conditions early in the process also allows the Vendor to consider an alternate Purchaser much earlier than would otherwise be the case. This is particularly important if a property is being sold through a competitive bidding mechanism or close to year end. (See also Subclause 10.05C.)

A sample of this type of condition follows: *"_____ Review: The Purchaser will have completed a review of _____ prior to _____, through which the Purchaser is satisfied, acting reasonably, with _____."*

As noted in the annotations on the definition of Environmental Liabilities and on Paragraph 8.01(b), Purchasers will sometimes structure a condition about the status of Environmental Liabilities that is also linked to an environmental defects provision analogous to the Title Defects procedure in Alternate 8.02B(2). This would allow modifications to the Purchase Price and a potential termination right at certain value thresholds. This structure would more typically be used for larger value Transactions, though.

ii) As noted in the annotations on Title Defects and Article 8.00, Vendors should be reluctant to agree to accept a subjective title review condition.

iii) As noted in the general annotations on the introduction of optional Article 8.00, there is an increasing trend to require the due diligence process to be completed prior to execution of the Agreement. This approach is addressed expressly as of the 2017 PTP through modifications whereby Article 8.00 has become an optional Article. This provides each Party with greater control over any negotiations required to resolve any negative matters encountered in the due diligence review, and ultimately increases deal certainty if the Parties are able to resolve those matters. This allows each Party to know if there are material problems before execution, rather than finding themselves in a potential lingering dispute after the Agreement is executed. This approach may be particularly attractive for the more straightforward Assets for which the PTP would typically be used, and it also offers a significant potential simplification if the Assets comprise only undeveloped lands.

Paragraph 10.03(c): The Vendor may also choose to add additional conditions precedent in the Head Agreement under Paragraph 10.03(c). This will typically be a management approval condition or conditions respecting specified approvals under the Regulations. The latter would frequently mirror additional Purchaser conditions, so might be included as a mutual consideration under Paragraph 10.01(g).

Clause 10.04: The conditions in Clauses 10.01, 10.02 and 10.03 may be waived by the Party for which the condition had been included. However, a Party cannot waive any outstanding Rights of First Refusal. The waiver mechanism under this provision is one of the major reasons why required consents under the Regulations should be included as a mutual condition under Paragraph 10.01(g).

Subclause 10.05A: i) The reference to any condition precedent in Clause 10.01, 10.02 or 10.03 includes each additional condition included in the Head Agreement pursuant to Paragraph 10.01(g), 10.02(d) or 10.03(c). Each such additional condition is treated as if it were made in the PTP.

ii) The release contemplated in this Subclause relates to "all further obligations hereunder", and does not extend to any ongoing obligations under a confidentiality obligation that may still remain in effect, as contemplated in Subclause 16.01B. Interest on any Deposit is addressed in Clause 2.03 and, in a default scenario, in Paragraph 12.01(c).

Subclause 10.05C: As noted in the annotations on Paragraph 10.02(d), the additional conditions included in the Head Agreement will often be conditions that should be cleared well before Closing. This Subclause places the onus on the Party requesting any such interim condition to address it in a timely manner, as it is deemed to have been waived if that Party does not notify the other Party by the prescribed time that an interim condition has not been satisfied.

Clause 10.06: This Clause reiterates the common law duty of the Parties to use reasonable efforts to satisfy any conditions precedent.

Clause 11.01: i) The opportunity to operate a property will generally be very attractive to a Purchaser. However, the Vendor cannot guarantee the Purchaser that it will serve as operator for Assets held with third parties. (See, for example, Clause 2.09 of the 1990, 2007 and 2015 CAPL Operating Procedures, which addresses what is implicit in earlier versions of the CAPL Operating Procedure and pre-CAPL documents, and Clause 307 of the Operating Procedure in the 1996 and 1999 PJVA CO&O Agreements.)

In addition, the onus is on the Parties to work with their business and legal advisors to add custom content in their Head Agreement to address their particular circumstances and needs if there are any contemplated issues about the transfer of Well licences in addition to the condition to Closing in Paragraph 10.01(e). The importance of reviewing the Regulations for each Transaction is particularly important if they include a requirement for a review of a proposed transfer of a regulatory licence, permit or approval through a process in which that approval might not be granted, since this could require the inclusion of a Closing in escrow process in the Agreement. Simplifying the review of the other procedural aspects of the overall Transaction through use of the PTP facilitates a more focused examination of this important issue by the Parties' representatives relative to what would be the case without the PTP.

ii) The second sentence was added as of the 2017 PTP, as it is typically included in industry's A&D Agreements. The Vendor may also sometimes be comfortable with a more onerous obligation in the Head Agreement to facilitate the process.

There may be circumstances, though, in which a Vendor would be unwilling to accept the retention of that sentence in its Agreement.

Clause 11.02: i) Insofar as the Purchaser will be replacing the Vendor as operator of the Assets, any signs on the site will have to be changed accordingly. The Parties should coordinate the replacement of any signs to ensure that they are always in compliance with the Regulations and that there is always an emergency contact number for the property. The 60-day window is included because of the timing of registrations and the possibility of remote or seasonal locations or a large number of field locations. This period will sometimes be too long or too short, such that the Parties might modify the timing to suit their unique circumstances, as long as they remain compliant with the Regulations (i.e., obtaining any required consents from the Regulatory Authority). There will also be many cases in which the Purchaser's interim approach is to add stickers to the existing signage, so that there is an updated emergency response number shortly following Closing.

ii) Another regulatory requirement that the Parties should discuss is any periodic requirement under the Regulations to conduct pressure surveys. The Parties' representatives need to know which Wells have outstanding pressure survey obligations as of Closing.

Clause 11.03: i) This Clause was introduced in the 2017 PTP.

Paragraph (o) of the definition of Excluded Assets recognizes that the Excluded Assets include certain excess materials stored temporarily at the location of the Assets. These materials are surplus to the needs for the Assets. They are typically held either by the Vendor for its own account or for the account of itself and third parties other than as joint property of the well owners.

It is the better practice for the Vendor to remove any such excess materials prior to the Purchaser's site visit. Failing that, the Vendor should identify any such materials during the site visit and remove them prior to Closing. Given operational logistics, the provision has been structured to provide the Vendor with the flexibility to remove those excess materials within 45 days after Closing, unless otherwise agreed by the Purchaser.

ii) Parties will sometimes choose to delete this Clause or to modify the timing. Negative prior experiences of some Purchasers, for example, will see them being very reluctant to accept this provision unless there is a clear identification of the surplus inventory. More flexible timing might also be included, for example, if the surplus materials are stored at a remote location or if Closing would occur around breakup.

Clause 12.01: i) This Clause applies if Closing does not occur because of the default of one of the Parties. It provides the Injured Party with the choice of one of three options.

Paragraph (a) enables the Injured Party to continue to treat the Agreement as binding and enforceable. A Purchaser would choose this option if it wished to seek specific performance. Specific performance is, in essence, an order of the court that requires a Party to fulfill the obligations of the contract specifically (i.e., sell the applicable assets, rather than pay damages for breach of contract).

Paragraph (b) would apply if the Injured Party prefers to commence a legal action to enforce its rights. Any Deposit and the interest accrued thereon would be held in trust by the solicitors of the Vendor until resolution of the claim, unless there is no dispute that the Purchaser is the Injured Party. If it is clear that the Purchaser is the Injured Party, the Deposit and accrued interest would be returned to it promptly. (Note that a Vendor that is the Injured Party could be in a worse position than if it had elected to proceed under Paragraph (c) and retain the Deposit as an estimate of its liquidated damages. If the Vendor's damages under Paragraph (b) were less than the Deposit and the accrued interest, the Vendor would be required to pay the excess to the Purchaser.)

Paragraph (c) addresses the default solely in the context of a Deposit. In essence, this Paragraph treats the Deposit as a genuine pre-estimate of damages. If the Vendor is the Defaulting Party, the Purchaser is entitled to a refund of the Deposit and the accrued interest. If the Purchaser is the Defaulting Party, the Vendor is entitled to retain the Deposit and the interest thereon as liquidated damages.

If fault is not an issue (no breach causing damages) and Closing does not occur, the Vendor would be required to return the Deposit and accrued interest under Clause 2.03.

ii) Although the Vendor may not previously have involved lawyers in the Transaction, it will typically have engaged a lawyer by the time a dispute is potentially on a path towards litigation under Subparagraph 12.01(b)(ii). In the unlikely event that the Vendor has not yet involved counsel at that stage, it would presumably have the Vendor's corporate counsel manage the Deposit as the dispute evolved.

iii) Purchasers might prefer that the provision include a general restriction that the Vendor's remedy necessarily be limited to the Deposit, if any, and the interest which accrued thereon, as liquidated changes. If such a mechanism were used, a Purchaser's remedies arguably should be limited to specific performance or the return of the Deposit and accrued interest and damages not exceeding the amount of the Deposit.

iv) Paragraph (c) was expanded in the 2017 PTP to add the "having regard to" phrase to reinforce the conclusion that the Deposit and accrued interest reflected liquidated damages if the injured Party chose to treat the Agreement as terminated and to limit its remedies to the handling of the Deposit.

Clause 12.02: i) Interest should accrue whether or not the Party entitled to payment has given the other Party notice of its intention to charge interest. The inclusion of the "regardless" phrase should eliminate the risk that prior notice is required, as was held in Renaissance Resources Ltd. v. Metalore Resources Ltd., [1984] 4 W.W.R. 430 (Alta. Q.B.), affirmed, [1985] 4 W.W.R. 673 (Alta. C.A.).

ii) This Clause would apply primarily in the context of Article 12.00. It would also apply: (a) if interest accrued under Alternate 2 of Clause 2.06 because of a delay in Closing; (b) in the unlikely event that the Vendor was prepared to Close without full payment of the Purchase Price; (c) if a Party does not pay amounts required under the adjustments process (Article 4.00); or (d) if a Party does not comply with liability and indemnification obligations. The prime plus 2% mechanism in the provision is analogous to default provisions in typical industry agreements, such as Clause 5.05 of the 2015 CAPL Operating Procedure.

Subclause 13.01A: i) Note the distinct treatment between liability and indemnity. If the distinction between the two is blurred, the Parties face the risk that the provision could be held to be solely an obligation to indemnify, with the Party suffering the loss not being able to rely on the Clause to provide it with a remedy. See Mobil Oil Canada, Ltd. v. Beta Well Service Ltd. (1974), 43 D.L.R. (3rd) 745 (Alta. S.C., App. Div.). Subsequent decisions, however, indicate that Courts are willing to look at the wording in its context. See, for example, TransCanada Pipelines v. Potter Station Power Ltd., [2002] O.J. No. 429 (Ont. S.C.), affirmed [2003] O.J. No. 1879 (Ont. C.A.), Alberta v. Western Irrigation District, [2002] A.J. No. 1085 (Alta. C.A.) and Herron v. Chase Manufacturers Inc., [2003] A.J. No. 865 (Alta. C.A.).

ii) This Subclause is based on the general belief that a Vendor should only be liable to the Purchaser for any items included in the representations and warranties, subject to a qualification for fraud and the survival periods contemplated by Clause 6.05 and Subclause 13.01C. There is no general "prior to" indemnity from the Vendor, as in the general indemnity type provision often used in industry agreements in the 1980s and 1990s and as included in Alternate 2 of the 2000 PTP. (The problem with the former Alternate 2 general indemnity approach is that it exposed the Vendor to some risks that the Parties had decided against addressing in the Vendor's representations and warranties when they were negotiated.)

iii) If a Purchaser perceives a particular problem with the Assets, it should attempt to address it in a specific representation or warranty.

iv) It is not appropriate to include a comparable structure under Clause 13.02 because post-Closing Losses and Liabilities suffered by the Vendor are far more likely to be due to the Purchaser's actions or omissions than a breach of its limited representations and warranties. (See also the annotations on Clause 13.03.)

v) Clause 5.08 provides an indemnification to the Vendor insofar as it is acting on behalf of the Purchaser under Article 5.00 and its acts or omissions do not constitute Gross Negligence or Wilful Misconduct. The definition of Gross Negligence or Wilful Misconduct introduced in the 2017 PTP includes the corresponding protection that had been included in the 2000 PTP that a Vendor's actions thereunder that would otherwise be "gross negligence or wilful misconduct" will not be treated as such if done with the Purchaser's express instruction or approval.

vi) The responsibility for liability and indemnification is triggered by the Effective Date, rather than the Closing Time. This is because the Vendor has been maintaining the property on behalf of the Purchaser under Article 5.00, with Article 13.00 premised on Closing having occurred. (See also the annotations on Clause 3.02.)

vii) Reviewers are reminded of the Vendor's duty under Clause 5.01 to notify the Purchaser of any substantial damage to the Tangibles prior to Closing. Similarly, the Vendor would be required to disclose any new lawsuit pertaining to the Assets because of the representation in Paragraph 6.02(b) that there are no new lawsuits that would have a material adverse effect on the Assets.

viii) The Vendor remains responsible in contract for performance of other obligations to be performed by it after Closing, subject to Clause 5.08.

Subclause 13.01B: i) The remedy provided by Clause 13.01 is distinct from the contractual remedy available for breach of a representation or warranty (Article 6.00). It does not operate to extend any representation or warranty. In the absence of Subclause 13.01B, a Party would arguably have broader remedies for the subject matter of each of the representations and warranties. This would come as a major surprise to a Vendor that had structured its representations and warranties so carefully. To minimize this possibility, the survival periods in Clause 13.01 and Clause 6.05 are consistent. (See Petroleum Law Foundation Papers - Abbott, op. cit. at p.68.)

ii) Clause 6.05 states that a Party alleged to have breached a representation or warranty is not precluded from raising the defence that the other Party did not, in fact, rely on it. If successful, this would mean that the other Party would not have damages for such a breach.

Subclause 13.01C: i) One of the most contentious issues historically had been the Vendor's attempt to limit its liability and indemnification obligations. During the initial industry experience with A&D Agreements, Purchasers sometimes argued that there should be no limitation period in the document, such that the normal legal limitation period should apply. In the alternative, they requested that the limitation period should be at least 18 or 24 months. Ignoring the obvious self-interest position, Vendors historically had two reasons for objecting to long limitation periods.

The first is the fact that a Vendor is usually selling a property to reduce its G&A costs and potential trailing liabilities by getting out of an area entirely. Except as is necessarily required, a Vendor wants to forget about the property as quickly as possible once it is sold. It wishes to minimize its continuing administrative obligations once it has disposed of the property, not maintain them.

The second is the decreasing ability of the Vendor to defend itself over time with respect to any claims commenced by a Purchaser under Clause 13.01. A Vendor will seldom continue to monitor operations following the disposition of a property, such that it is not well positioned to defend a claim. On the other hand, the legal burden faced by a Purchaser to prove its case (proof on a balance of probabilities) remains constant.

The handling in the PTP reflects the generally accepted way to handle the issue in industry's A&D Agreements, subject to the qualification that there may be special circumstances in any given Transaction that may warrant a modification of some type to the general obligation for a known problem.

ii) Although the inclusion of a limited survival period for the Vendor's representations and warranties is generally accepted, the duration of the period is sometimes a matter of negotiation. The norm has become one year for material Transactions, with six months sometimes used for minor Transactions involving non-operated properties. In industry's initial experiences with A&D agreements in the late 1980s and early 1990s, Purchasers sometimes attempted to negotiate 18 or 24-month periods.

The survival period was modified from a negotiated number of months to one year in the 2017 PTP to reflect the most typical outcome. Parties that prefer a different survival period in Subclause 13.01C and in Subclause 6.05A are free to negotiate it. It will not be uncommon, for example, for a Vendor to amend this period to six months for a minor value disposition or a Transaction involving only undeveloped properties. This survival period does not enable the Vendor to avoid its contractual obligations for J.V. and royalty audits under Subclause 4.02C, however.

Clause 13.01-Misc: There may be circumstances in which the nature of the Vendor's retained interest in the Excluded P&NG Rights is such that the Purchaser requires a contractual liability and indemnification obligation from the Vendor with respect to its ongoing activities with respect to the Excluded P&NG Rights. This is particularly the case if the Vendor then holds a 100% working interest in the Excluded P&NG Rights. Any such provision would link the obligation to the handling of Losses and Liabilities and Extraordinary Damages under the Agreement in a way that is similar to the handling of "Reserved Formations" under the CAPL Farmout & Royalty Procedure. This outcome seems fairly intuitive if the Vendor and its Affiliates have a 100% interest in the Excluded P&NG Rights.

It becomes much more complicated, though, if the Vendor and its Affiliates have a lesser interest at the relevant time or they subsequently dispose of their interest. A Vendor considering such a provision might limit its application to the situation in which it (and any Affiliates) held a 100% working interest in the applicable Excluded P&NG Rights because of the control it would have over activity during that period. If that restriction were not included, it would need to ensure that its obligation is limited to the share of the applicable Losses and Liabilities prorated to its working interest in the activity that caused the Losses and Liabilities (i.e., a 50% share of the Losses and Liabilities if it only held a 50% interest). In addition, it would probably require any such provision to be clear that it only applies to the Vendor and its Affiliates that are successors in interest, such that the provision would no longer apply if the Vendor subsequently disposed its entire interest in the Excluded P&NG Rights to an arm's length third party.

The inclusion of such a provision in the 2017 PTP as an optional Subclause was considered. However, the conclusion was that it would be a distraction relative to the potential benefit it offered.

Clause 13.02: Except insofar as caused by the Vendor's fraud or Gross Negligence or Wilful Misconduct, the Purchaser will be liable to and indemnify the Vendor for its Losses and Liabilities accruing from the Effective Date.

The use of the Effective Date for the assumption of this obligation is contingent on Closing having occurred for the applicable Assets. It ultimately reflects a linkage between the financial benefits that accrue to the Purchaser as a result of the adjustments for production from the Effective Date with the risks associated with activities respecting the Assets during the same period. (See also Clause 3.02 and the related annotations.)

Subclause 13.03A: i) The total of the Vendor's liabilities and indemnities under the Agreement, including the claims relating to its representations and warranties, will not exceed the consideration for the Assets under Subclause A. This had been an optional Subclause in the 2000 PTP, and has been changed because it is generally accepted. As noted in the bolded paragraph in the sample Schedule of Elections and Modifications included as Addendum I, the Purchaser will sometimes want to modify this for smaller Transactions.

ii) There have sometimes been suggestions that the liability for a breach of representation should be limited to the amount paid for the applicable Asset. There are, however, two problems associated with that view. The first is that the breach of a representation respecting a Tangible, for example, could have an unrecognized domino effect on other Assets. The second is that such a provision would, in effect, eliminate damages for the breach of a representation respecting the Miscellaneous Interests (typically valued at not more than $10), even though their existence (i.e., a production sale contract) may have induced the Purchaser to purchase the Assets.

iii) Purchasers sometimes request a similar cap on the Purchaser's legal responsibility because of the belief that the limitation should be reciprocal. This is not appropriate, though, assuming the *caveat emptor* principle in 13.04 is maintained. Once the Vendor has disposed of the Assets, there are basically four ways in which it would have a claim against a Purchaser under Clauses 13.02 and 13.04 - (a) if the Vendor is responsible for losses of third parties because of delays in the formal recognition process under third party agreements; (b) if the Vendor retains an interest in a portion of the Leases and holds the Purchaser's interest in trust; (c) if a third party commences a claim and includes the Vendor as a defendant because of its "deep pockets" or involvement in the property when the incident allegedly occurred; and (d) if Regulatory Authorities move along the chain to a previous owner with respect to Abandonment and Reclamation Obligations or other Environmental Liabilities. Although unlikely, these events could happen at any time. The property value at the time of the deal would have little relevance with respect to a major environmental problem 15 years later. The most obvious context for such an event would be with respect to a sour gas well, an old oil well or an old facility.

Subclause 13.03B: i) This was an optional provision in the 2000 PTP, for which the financial threshold was also to be negotiated. The optional elements were changed in the 2017 PTP because of prevailing industry practices. The Subclause sets a minimum $25,000 threshold for any claims to ensure that the Parties are not allocating resources to immaterial claims. This threshold applies to claims of either Party.

This amount may be too high for small Transactions and too low for Transactions at the higher end of the value spectrum for which the PTP is likely to be used in practice. The sample Schedule of Elections in Addendum I includes a reminder for users to consider if this threshold is appropriate for their Transaction. While a blank could have been included (as in the 2000 PTP), this would have required an additional election when the $25,000 threshold will probably be quite reasonable for many Transactions for which the PTP is most likely to be used.

ii) A higher threshold, such as $50,000 had been considered when preparing the 2017 PTP. There were three reasons for using a $25,000 threshold. The first was the nature of the typical low to modest value Transaction for which the PTP would most likely be used. The second was that there are relatively few claims that escalate in practice, such that the number of claims being escalated at either threshold would probably be quite similar. The third was that the inclusion of a higher threshold would potentially offer reinforcement for a Party (typically the Vendor) to be dismissive

of concerns below the higher threshold without considering the potential merits of the concerns. To mitigate the potential for small claims to be escalated, the provision is structured so that any recovery is only for the amount in excess of the prescribed claims threshold.

Clause 13.04: This Clause provides that the Purchaser is acquiring the Assets on an "as is" basis. The Purchaser is assuming full responsibility for all Abandonment and Reclamation Obligations, other Environmental Liabilities and obligations accrued or thereafter accruing with respect to the Assets, except for any claims it may have for fraud or the breach of the Vendor's representations with respect to the condition of the Assets under Clause 6.02. While this principle is generally accepted at this time, it can still be the most contentious provision in a particular Agreement.

Environmental concerns continue to gain importance. The public interest may at some point require that any party involved in the property over time could be held responsible for at least those Environmental Liabilities that accrued during its period of ownership. Vendors and Purchasers, therefore, should not be assessing the Regulations as they know them, but the Regulations as they might be. Again, the key is to ensure that a Party's obligations are backed by financial viability.

A detailed review of the environmental issues associated with an asset sale is beyond the scope of these notes. There are many informative articles that have been written about the topic. (See, for example, Legal Education Society Of Alberta Seminar Materials On Major Acquisitions And Divestitures In The Oil Industry [1990-02-28] - "Structuring A Divestiture Of Oil And Gas Properties To Protect Against Environmental Liabilities" by Al Hudec, Jackie Sheppard and Joni Paulus.) In addition, most majors and large intermediates are likely to have detailed internal policies on the environmental aspects of A&D transactions, and all relevant A&D personnel should be aware of corporate policies in this area.

Some general comments follow:

(a) The provision is basically an "as is" or *caveat emptor* provision. The primary onus is on the Purchaser to use its due diligence review to discover all patent (evident) and latent (present, but not visible) defects associated with the Assets, subject to two important legal principles. The first is that the Vendor cannot mislead the Purchaser about the condition of the Assets through a fraudulent suppression of the truth or an active non-disclosure of a material latent defect. The second is a possible duty of a Vendor to disclose latent dangerous conditions to a Purchaser if the defect would not have been readily apparent to a Purchaser in a reasonable due diligence review. Corporate policies of many Vendors, however, go beyond those principles. They require the Vendor to disclose all significant environmental concerns of which it is aware to the Purchaser, such that a Purchaser would generally have more confidence in operated properties being sold by reputable Vendors.

(b) It is the better practice for Vendors to conduct a preliminary environmental review of a property and to mention briefly the results of that review in any sale brochure. In addition, the Vendor should provide a tour of the property for prospective Purchasers prior to the disposition and encourage them to take that opportunity to inspect the property. It may also be attractive to provide the companies so inspecting the property with a copy of the Vendor's initial environmental review, with a suitable disclaimer respecting its reliability.

(c) Purchasers may wish to conduct a full environmental assessment of a property to attempt to minimize the possibility of being forced to assume accrued Environmental Liabilities. It is important, however, for a Purchaser not to sacrifice its objective for the pursuit of a document that ideally protects its abstract legal rights. An expensive environmental assessment typically does not make good business sense if the value of the property is not large, the Vendor is reputable and an initial inspection of the property, the environmental records and the applicable regulatory disclosures do not indicate a significant possibility of material environmental damage. Any such review provisions should be addressed in negotiations and reflected in the Head Agreement, as noted in the annotations on Paragraphs 8.01(b) and 10.02(d).

(d) Although the Purchaser's reasons for objecting to this type of provision are obvious, Purchasers may not fully appreciate a Vendor's rationale for the inclusion of such a provision. A reputable Vendor is not attempting to use the provision as a shield to protect it from responsibility for problems that it was able to "conceal" from a Purchaser. It has at least four major reasons for its inclusion.

Firstly, it wants to ensure that the Purchaser assumes full responsibility for its subsequent activities and the abandonment and reclamation of all Wells and field infrastructure being assigned to it, insofar as the Regulations enable the Vendor to free itself of that responsibility. Suppose that the provision differentiated between the Abandonment and Reclamation Obligations willingly assumed by the Purchaser (and taken into account by the Parties in the determination of the Purchase Price) and other Environmental Liabilities that accrued prior to the Effective Date for which the Vendor remains responsible. Where would this line be drawn? When did the Environmental Liabilities accrue, and how much accrued prior to the Effective Date? This is particularly a problem if the Purchaser's personnel change, its financial condition worsens or a subsequent assignee acquires the Assets, since there may be a motivation to attempt to alter the original expectations.

Secondly, the Vendor simply wants to forget about the Assets as quickly as is possible once they are sold. It wishes to minimize its continuing administrative and legal obligations once it has disposed of the property, not maintain them.

Thirdly, it would be very difficult for a Vendor to defend itself effectively against any subsequent claim unless it had conducted a full baseline environmental assessment prior to the disposition and had continued to monitor the property following the disposition. An expensive baseline study may be conducted for a valuable property. It is not a practical alternative, though, for the typical property being disposed under a rationalization program or the typical Transaction for which the PTP is used. Moreover, a Vendor would face great difficulty in protecting itself with respect to a non-operated property anyway, given its limited knowledge prior to the disposition.

Fourthly, the corporate environmental policy of many Vendors is likely to prohibit them from retaining Environmental Liabilities above those prescribed by the Regulations.

The provision ultimately provides for an arbitrary allocation of legal responsibilities, something that industry accepts every day in "knock for knock" drilling contracts. (Legal responsibility under those contracts is determined by characterizing the type of the loss. Fault is not an issue.) A Purchaser that is sufficiently concerned about the risks associated with the provision should take this risk into account when submitting its bid. It must recognize, though, that the modification may jeopardize the acceptance of the bid.

(e) No matter how soundly an indemnification provision has been structured, the indemnification given by a Purchaser only provides meaningful protection if it has significant financial worth. This will not pose a problem if the proposed Purchaser is a financially strong company which the Vendor's past experience dictates will be a prudent operator. If, on the other hand, the Vendor is not confident of the financial viability of the prospective Purchaser, the Vendor will be required to assess the risk associated with the disposition.

This would be a two-pronged examination - an assessment of the Purchaser's financial strength and the applicable contingent Abandonment and Reclamation Obligations and other Environmental Liabilities. It is important to recall that the Vendor's choice of a Purchaser also impacts the other interest holders if the Vendor holds less than a 100% working interest. It is not appropriate to sell to a Purchaser of dubious financial viability if the other owners would inherit the risk that the Purchaser may not be able to fulfil its obligations. Occasionally, the financial strength of a bidder which offered a lower price will justify the rejection of a higher bid from a company with questionable financial strength.

(f) Sometimes the Abandonment and Reclamation Obligations associated with a property with little remaining producible reserves will be so great that a Vendor would prefer to abandon the property than assume the risk of selling to certain Purchasers.

(g) Notwithstanding the previous notes, there will be circumstances in which there will be certain types of Environmental Liabilities for which the Vendor will retain full responsibility as a specified exception. One example might be a one-time spill that occurs off the wellsite in circumstances in which the Parties agree that the Vendor will remain responsible for remediation. Another common exception would be the situation in which the Vendor is assigning a well licence for an abandoned well for which reclamation is not then complete. The Purchaser's agreement to accept that assignment might be subject to the Vendor completing the reclamation of the applicable surface rights.

(h) The logistics of conducting a site review respecting potential Environmental Liabilities are such that a Purchaser should be cautious about acquiring a property during the winter.

(i) See the annotations on the definition of Environmental Liabilities in Clause 1.01 for some comments on "white map" Agreements. While it is unlikely that the PTP would be used for an Agreement of a scale that would potentially use a "white map" structure, those comments have been included in the annotations because of the likelihood that the PTP will be used as a reference document when reviewing a draft of a different form of A&D Agreement that has been prepared by another Party.

Subclause 13.05B: i) The Party with the obligation to indemnify will generally be primarily managing any litigation. The Subclause does not provide that Party with exclusive control of the litigation because of the belief that a Party should always be able to retain independent legal counsel.

ii) The Indemnified Party must remain cognizant of the Indemnifying Party's perspective, as the Indemnified Party might be tempted to try to make the legal issue disappear at the earliest possible date given the indemnification obligation of the Indemnifying Party. The consent mechanism is included to mitigate the potential for the Indemnified Party to disregard the interest of the Indemnifying Party in the matter. In practice, the likelihood of an ongoing relationship between the Parties and their land personnel will also mitigate this risk.

Clause 13.06: This Clause is included to facilitate enforcement of rights with respect to representations and warranties that the Vendor may still enforce against a prior vendor under an earlier agreement relating to the applicable Assets.

Clause 14.01: i) Both the Vendor and Purchaser want to ensure that the other Party retains its full rights and obligations through Closing. Purchasers may request that they be permitted to assign their interest to an Affiliate prior to Closing. This request should be considered on a case-by-case basis and the waiver granted only to a specified Affiliate. An otherwise acceptable Purchaser may have unacceptable Affiliates.

ii) There will be many circumstances in which an assignment to an Affiliate or a specific third party will be contemplated at the time the Transaction is negotiated. The Parties could easily modify this Clause to address their specific need or in the Head Agreement.

iii) The Vendor may be required to dispose of an interest because of an exercised ROFR, an earning or payout recovery under the Title and Operating Documents, the operation of Clause 5.03 or to address title deficiencies (e.g., any required assignment to a "silent partner").

Clause 14.02: The Vendor wishes to ensure that it will have the right to look to the Purchaser as a guarantor if the Purchaser subsequently assigns its interest. The typical provision usually states something such as, "A party may not assign its interest in this agreement without the prior written consent of the other party," a subjective prohibition. The effect of the two provisions is the same. Unless the Purchaser effected an assignment under the typical agreement, the Vendor could pursue a claim against the original Purchaser, assuming that it still exists at the relevant time.

Clause 15.01: i) Paragraph (a) provides that a notice may be served on a Party during its normal business hours on any Business Day. Service after normal business hours is treated as receipt on the next Business Day. If a Party is closed on a particular day by its own choice (i.e., a scheduled Friday off), the Party will still be deemed to have received the notice on that day, assuming it has a representative to receive it.

ii) Paragraph (b) does not require the addressee to acknowledge receipt for a fax or email notice to be effective. It is sufficient if the Party serving notice can demonstrate that it was sent. The Party serving the notice should not be required to assume the risk that the addressee's personnel do not handle the notice properly or that its equipment is not functioning properly. Otherwise, it would never know if its notice was effective. In the unlikely event there is actually a problem with receipt, the business considerations are such that the matter would typically be resolved to the addressee's satisfaction once the problem is identified. The onus, however, is on the addressee to satisfy the other Party of the legitimacy of its request. The content in (i) of Paragraph (a) is based on Section 30 of the *Electronic Transactions Act* (Alberta). Parties concerned with this outcome are free to modify the provision to require confirmation of receipt if they wish.

iii) The reference "other electronic medium" has been included to accommodate the issuance of notices by email if the Parties choose to include an email address in their respective addresses for service. A notice delivered by email will not be a valid notice if a Party's address for service does not include its email address.

A Party should only consider including an email address in its address for service if it has processes in place to ensure that email is checked on a regular basis, such that it not at risk because of vacations, business trips, etc.

iv) Only a change of address notice may be served by mail. This reflects the practical consideration that the Parties will generally have offices in Calgary in the vast majority of situations and the likelihood that notices will be served in circumstances in which time is of the essence. The provision can be modified on an exception basis to allow service by mail if one or both of the Parties do not have offices in Calgary.

v) It is the better practice to serve important notices under Paragraph (a). This expedites delivery and provides a tracking mechanism if issuance of the applicable notice or the timing of its receipt is challenged.

vi) Paragraph 1.03(j) addresses the manner in which to count days and Business Days for notices served under the PTP. That Paragraph generally states that the first day of the response period is the day following receipt and that expiry of the response period falling on a weekend or statutory holiday extends it to the next Business Day.

Clause 15.02: i) Each Party is to notify the other Parties of any changed address for service in a timely manner. This is implicit in the provision, so has been expressly included as a reminder to administrative personnel. Prompt notification of a changed address for service minimizes the risk that time sensitive notices will be misdirected.

ii) Parties have sometimes purported to use solely a post office box address for service of notices in circumstances in which the Party clearly had an office at a readily accessible location from which it was conducting business on a sustained basis. This Clause was modified as of the 2017 PTP to prohibit the selection of any such address for service because of the negative impact this would have on the normal course of business communication (i.e., delivery of notice to a Party's office by courier). One could also potentially argue that the Further Assurances Clause would prohibit the purported selection of any such address in any event. That being said, there will be circumstances in which there will be exceptions to this handling, such as when dealing with smaller players operating from a private residence or in a rural area.

Subclause 16.01A: i) Parties disclosing significant confidential information in commercial negotiations should enter into an appropriate confidentiality agreement before any such disclosure.

ii) This Clause was significantly updated in the 2017 PTP. The changes in Subclauses 16.01 and C were based largely on the corresponding content in Clause 18.01 of the 2015 CAPL Operating Procedure.

iii) This Clause applies in the period leading up to Closing.

iv) It is important to remember that confidential information is not to be disclosed to potential Purchasers at even a data room stage without the consent of any third parties having an interest in the confidential information, if required under the applicable Title and Operating Documents.

In this regard, users should be aware that Paragraph 18.01(d) of the 2007 and 2015 CAPL Operating Procedures provides potential Vendors with the most favourable authority for the disclosure of project information to prospective assignees. That Paragraph allows disclosure of information "to a third party that is a *bona fide* prospective assignee…..or to a third party with which it is conducting *bona fide* negotiations towards a merger, amalgamation or sale of shares representing a majority ownership interest of that Party or any of its Affiliates", provided that a confidentiality agreement is in place with the applicable third party.

By contrast, the corresponding provision of the 1990 CAPL (Paragraph 1801(c)) permits such a disclosure "to a third person to which such party has been permitted to assign a portion of its interest hereunder…", subject to a confidentiality agreement being in place with the applicable third party.

Prior versions of the CAPL Operating Procedure do not expressly authorize any such disclosure of information not in the public domain, such that the general obligation in the confidentiality clause therein applies with respect to any such intended disclosure to potential Purchasers.

v) If an existing interest holder were interested in attempting to purchase the Assets in circumstances in which the applicable Operating Procedure predated the 2007 CAPL Operating Procedure, it would potentially refuse its consent to the disclosure of that information. If the Vendor then proceeded to disclose the information, the non-consenting interest holder would possibly have a remedy in damages, particularly if a Right of First Refusal existed. It would have to prove its damages as part of its case, though.

vi) Stock exchange requirements generally require publicly traded companies to make timely, full, true and plain disclosure about developments that would reasonably be expected to affect the market value of a company's stock significantly. The foundations of this requirement are the objectives to provide all who invest in listed securities with equal access to information that may affect their investment decisions and to minimize the likelihood that those with preferential access to undisclosed information could profit from that knowledge. Users should consider the impact of these requirements for their Transaction in the context of the then current requirements of each stock exchange applicable to them.

For this purpose, the current TSX rules, for example, provide that "Material information consists of both material facts and material changes relating to the business and affairs of a listed company." It is largely left to the judgment of a listed company to determine what information is material and must be disclosed. However, the TSX may also require a public announcement if trading volumes are anomalous or rumours or speculation exist.

As of the fall of 2017, TSX requirements provide that disclosure is generally required upon information becoming known to management or, if known, upon the information becoming material. However, the TSX may allow the disclosure to be deferred if early disclosure could compromise the company's interests and the potential harm caused to the company and its investors by the disclosure outweighs the consequences of delay (e.g., premature disclosure of an intention to attempt to purchase an asset potentially increasing the price or disclosure of confidential corporate information that would benefit competitors). The TSX rules stipulate, though, that a company must retain strict confidentiality if disclosure is deferred, and immediate disclosure is required if there is any leak of the information.

The announcements must be factual and balanced, "neither over-emphasizing favourable news nor under-emphasizing unfavourable news." There must be enough information contained in the announcement to allow investors to make informed decisions about their investments.

The test of whether a Transaction is a "material change" is a subjective one, as a Transaction that is "material" for one company would not necessarily be "material" to another. As noted in the TSX Policy Statement on Timely Disclosure, "The materiality of information varies from one company to another according to the size of its profits, assets and capitalization, the nature of its operations and many other factors. An event that is "significant" or "major" in the context of a smaller company's business and affairs is often not material to a large company. The company itself is in the best position to apply the definition of material information to its own unique circumstances. The Exchange recognizes that decisions on disclosure require careful subjective judgments, and encourages listed companies to consult Market Surveillance when in doubt as to whether disclosure should be made." The TSX Venture Exchange has similar requirements. Additional information can be found on the TSX web page.

vii) Information included in Annual Reports and other presentations made to shareholders and the investment community typically extends beyond that required to be disclosed under securities laws and exchange requirements. The disclosing Party has an obligation not to disclose information from the Agreement that could damage the interest of the other Party, and Article 17.00 would apply to those public announcements.

viii) Paragraph (b) recognizes that it is not feasible to have a separate confidentiality agreement for each disclosure of information to employees, contractors, directors, officers and Affiliates. However, the disclosing Party remains liable for any Losses and Liabilities suffered by the other Party as a result of their disclosure of confidential information.

ix) The reference to legal counsel and financial and professional advisors in Paragraph (c) recognizes that they receive information in practice.

x) Paragraph (d) was originally introduced in the 2007 CAPL Operating Procedure, and applies to information required to be disclosed under legal or administrative proceedings. Murphy Oil Co. Ltd. v. Predator Corp., [2002] A.J. No. 647 (Alta. Q.B.) is relevant to this Paragraph. A Court may set aside confidentiality agreements. This reflects the policy view that "the search for the truth" serves a greater public need than freedom of contract. This type of order enables a witness to testify about matters subject to the confidentiality agreement if the witness is willing to do so.

Subclause 16.01B: The Purchaser's confidentiality obligations after Closing for information relating to the Assets is generally as provided under the Title and Operating Documents, except as provided under Article 17.00 respecting public announcements. The latter qualification respects the mutual sensitivity about the disclosure of information about the price paid for the Assets. However, the Purchaser would be obligated to keep confidential additional information it obtained under the Agreement that did not pertain to the Assets, except insofar as that information were then or subsequently in the public domain, as provided in Subclause 16.01C. That obligation would remain in effect for any interests originally expected to form part of the Assets that were excluded from the Assets under Clause 1.02 (e.g., ROFR exercises, any removal as a consequence of the Purchaser's due diligence review or as otherwise agreed).

Subclause 16.01C: i) This Subclause covers similar content as had been included in the last portion of the Clause included in the 2000 PTP.

ii) Users should be aware of the important qualification in the first sentence. General information, such as well depth or status, will usually be in the public domain. This does not enable one to argue that all well data is not confidential because that particular information is in the public domain.

iii) A provision comparable to Paragraph (c) often includes a statement that the information is obtained "lawfully from a third party under no obligation of confidence to the Vendor." The problem with such a provision is that it assumes that the Purchaser has full knowledge of the manner in which that third party acquired the information.

Clause 16.02: This Clause was introduced in the 2017 PTP, and addresses the Vendor's confidentiality obligations to the Purchaser.

The Vendor is permitted to disclose information insofar as is required for its performance of its obligations under the Agreement, including those relating to any Right of First Refusal and other consents of third parties contemplated in Article 7.00. The general reference to its obligations under the Agreement also addresses any Required Approvals, such as under the *Investment Canada Act*.

Otherwise, the obligations in Subclause 16.01A also apply, *mutatis mutandis*, to the Vendor prior to Closing and, with respect to the commercial terms of the Transaction, for the two-year period after Closing.

Other-Article 16.00: The confidentiality obligations in Clauses 16.01 and 16.02 are in substitution for the obligations in any separate confidentiality agreement executed by the Parties. After Closing, any separate confidentiality agreement would only remain in effect if the Parties chose to modify Clause 1.13 so that their separate confidentiality agreement remained in effect.

While this might sometimes be done for a large Transaction, this is unlikely to be the case for the typical low to modest value Transaction for which the PTP is likely to be used. This is particularly when Subclause 16.01B offers protections for information relating to other interests that ultimately were not included in the Assets for which Closing occurred (e.g., any application of Clause 1.02 whereby interests were removed from the Transaction due to ROFR exercises, Title Defects, etc.).

Clause 17.01: i) This Clause was updated in the 2017 PTP to align more closely to the similar provision in the 2015 CAPL Operating Procedure.

ii) Subclause A requires the Party proposing the disclosure to provide a draft of the proposed release to the other Party at least two Business Days before the release, insofar as there is a confidentiality obligation at the applicable time under Article 16.00. The release is then subject to the approval of the other Party, which approval may not be unreasonably withheld. Failure to respond within that two-day period is deemed approval. Limited exceptions to this general approval mechanism are included in Subclause B.

iii) Some Parties will probably make a corporate preference change so that the consent requirement is a subjective one, particularly if that Party is the Vendor. A Party will also sometimes require that change for a Transaction in which it is particularly concerned about the potential for the other Party to issue a public announcement that presents the information in a way that is designed largely to increase investor interest in it.

iv) Either Party may issue a release on its own behalf under Subclause B. Prior approval will not be required insofar only as the release is required to comply with securities laws or exchange requirements applicable to the Party with respect to material events or material changes, as described in detail in annotation (vi) on Subclause 16.01A. Other releases being made by a Party, including releases of property specific information in an Annual Report, are subject to the notification process in Subclause A. Although prior distribution to the other Parties is not required for releases required by securities laws or exchange requirements, it is the better practice to provide the other Parties with a draft on short notice for their information and feedback. This is particularly relevant if other Parties are publicly traded and the release would be material to their business.

v) If a Purchaser does not intend to issue a press release respecting a Transaction and the Vendor is not subject to those reporting requirements, it may be preferable for the Vendor not to issue a release for the Transaction. The disclosure of the consideration could assist other prospective bidders in assessing the Vendor's strategy for other sales.

vi) A Party that breaches the obligations in this Clause has breached a contractual obligation under the Agreement. If this were to occur prior to Closing, it could literally create a risk that the other Party could refuse to proceed with Closing because of failure to satisfy the Compliance condition in Paragraph 10.01(c). It is unlikely that the other Party would be sufficiently concerned to assert that right in practice, though.

Otherwise, it potentially creates a potential claim for damages in circumstances in which the failure to comply with the obligations in Clause 17.01 is effectively a release of information in breach of the obligations in Article 16.00. This is important because the Extraordinary Damages limitation does not apply to breaches of Article 16.00, such that damages would be determined in accordance with normal legal standards.

Clause 18.01: This Clause addresses the interrelationship between the Agreement and the associated Specific Conveyance documents. It ensures that the latter do not impact adversely upon the obligations under the Agreement. In the absence of this provision, the terms of Specific Conveyances could possibly "merge" with those of the Agreement, such that some of the representations and warranties could be extinguished or other obligations altered.

Clause 18.02: A clause similar to the first sentence was considered in Apex Mountain Resort Ltd. v. British Columbia, [2000] B.C.J. No. 1099 (B.C.S.C.), affirmed, [2001] B.C.J. No. 1596 (B.C.C.A). The Court found that the provision in that case did not go so far as to impose an obligation that would be inconsistent with that agreement. That provision did not include the "reasonably required" qualification historically included in the CAPL provision.

Clause 18.03: The Vendor will potentially be very concerned about the use of its name in conjunction with the Transaction. This is particularly the case if the Purchaser is sharing a perspective with investors that it acquired the Assets at a very favourable price relative to their potential.

Clause 18.04: The introduction of this Clause in the 2017 PTP reflects the importance of protecting personal information that may be obtained over the course of the Transaction.

The most sensitive information of this type that might be disclosed is likely information relating to potential employees if there are any employees potentially associated with the Transaction. The Parties should review the suitability of this Clause in that circumstance and make any required modifications.

It is unlikely that Transactions using the PTP would be of a financial magnitude for which the Agreement would address the transfer of employees to the Purchaser. Given that employee issues are beyond the scope of the PTP, significant customization would be required in the Head Agreement to address employee issues if the PTP were being used for a Transaction in which the Purchaser would be hiring any of the Vendor's employees in conjunction with the Transaction.

Clause 18.05: i) This Clause addresses the circumstance in which the Agreement is terminated and Closing does not occur. Subject to any residual obligations, such as the default provisions in Article 12.00, confidentiality obligations and public announcements under Articles 16.00 and 17.00 and any prior breach of any representations, warranties or other obligations, the Parties are otherwise released from their obligations under the Agreement.

ii) The obligation under Clause 10.06 to proceed in good faith and to use reasonable efforts to satisfy the Article 10.00 conditions is an example of a potential obligation for which a remedy may survive Closing.

iii) Subclause B addresses the return of materials and the handling of any Deposit and accrued interest. Purchasers will sometimes request greater flexibility with respect to records relating to any summary information shared as part of an internal management and board approval process.

It is important for a Purchaser to have a process in place to understand the manner in which it has handled the information provided to it by the Vendor in order to be able to comply with the obligations contemplated in this Subclause insofar as Closing does not occur with respect to the Assets.

iv) The last paragraph of Subclause B allows the Purchaser to retain certain information presented to attempt to obtain management approvals for the contemplated Transaction insofar as the retention of that information is required for legal or corporate governance purposes. While probably not a concern for the low to modest value Transactions for which the PTP is most likely to be used, that authority might be examined more closely in other circumstances.

Clause 18.07: i) This Clause was introduced in the 2017 PTP to facilitate the use of electronic signatures for the execution of Specific Conveyances. Notwithstanding the inclusion of this Clause, the effort to set up an electronic signature is such that it is unlikely to be used for most of the low to modest value Transactions for which the PTP is most likely to be used. That being said, it is possible that there could be a large number of Specific Conveyances on certain modest value Transactions.

The inclusion of the provision also provides the Parties with a sample provision that could potentially be useful when preparing a custom agreement for a large value disposition.

ii) It is important for a Party that has an electronic signature of a representative of the other Party to create suitable safeguards to ensure that the electronic signature will be used solely for purposes of the Transaction and to remove it from its systems in a timely manner after Closing. It is prudent for a Party that intends to request an electronic signature from the other Party to establish processes to ensure that the electronic signature will be used only for the intended purpose and will be removed from its systems. A Party requested to provide an electronic signature would be prudent to inquire about those processes before agreeing to provide an electronic signature.

The normal breach of contract remedies would apply for any breach of the obligations in Subclause 18.07D.

Clause 18.08: i) This Clause has been included because of the possibility that the Assets might be located in Saskatchewan. Including this content in the PTP simplifies the preparation of the applicable Agreement and encourages standardization. The content is of no relevance if the Transaction falls outside the scope of the Clause, such that it was not necessary to present the Clause as an option that could be selected.

ii) Saskatchewan's *Land Contracts (Actions) Act* is intended primarily to provide mortgagors with a degree of protection by requiring mortgagees to seek leave of the court before they are permitted to commence foreclosure proceedings. However, the Act's wording can also impact agreed Transactions between sufficiently sophisticated Parties, by imposing hurdles the Parties would not regard as appropriate with respect to any enforcement proceedings relating to Transactions.

iii) *The Limitation of Civil Rights Act* (Saskatchewan) limits certain enforcement rights of mortgagees and sellers. Among other things, the Act can impact a Vendor's right to recover an unpaid balance due in certain circumstances. This would essentially force a Vendor to seek cancellation of the Transaction in order to avoid that result.

iv) Corporate bodies are entitled to agree to waive the possible application of each of those Acts, and it is considered a reasonable practice to do so for Saskatchewan asset Transactions. Users need to be aware, though, that there are questions about whether other common forms of business organizations (e.g., partnerships) can validly waive application of those Acts.

General Conveyance: i) The PTP presumes that the Head Agreement will be structured so that the Head Agreement does not convey the Assets by its own terms. Although a conveyance form of document has often been used for the disposition of minor value properties, it is expected that the PTP will often be used for Transactions that would have previously used that form of document. This is because the PTP will typically provide the same process efficiencies for the completion of minor Transactions (ease of review, reduced cycle time, customization of representations and warranties to minor properties), while providing a much greater degree of certainty for the Parties in the period between the Effective Date and Closing. Although the PTP is much longer than the typical conveyance type agreement, the expectation is that the benefits of using it for those minor Transactions will be apparent once the Parties are familiar with it.

ii) Although a form of General Conveyance was created in conjunction with the PTP, it was recognized that Parties may prefer to include their own preferred form of General Conveyance in the Agreement. As a consequence, it is not part of the PTP.

Parties using their own form of General Conveyance would need to align the terminology in their General Conveyance to the PTP.

iii) The price/value and other material terms have been agreed upon at the time of execution of the Agreement. However, under a Purchase and Sale or Asset Exchange structure, the Transaction will not be complete (and possession will not pass) until satisfaction of the conditions in Article 10.00 and Closing, as further described in Article 3.00. The execution of the General Conveyance by the Parties evidences the fact that Closing has occurred and that the Purchaser has acquired the Assets.

iv) The General Conveyance is a subordinate document to the Agreement, and is to be read in conjunction with the Agreement. It is clear, for example, that the definitions in the Agreement apply to the General Conveyance, and Subclause 1.07A of the PTP is also clear that the Head Agreement and the PTP will prevail insofar as there is any conflict between those documents.

Miscellaneous Annotations

Reduction of elections relative to 2000 PTP: One of the areas of emphasis in the update to the 2000 PTP was to eliminate unnecessary elections by structuring the applicable provisions to reflect what appeared to be the prevalent practice or a logical outcome without presenting it as an option. This was to facilitate acceptance of the 2017 PTP by allowing a more user-friendly platform for the typical low to modest value Transaction. That being said, it will not be uncommon for the Parties to choose a different value in any particular Transaction. These are identified in the applicable annotations and in the bolded reference in the Schedules of Elections and Modifications included in the Addendums at the end of the PTP as a reminder to users to confirm that the defaults in the PTP are appropriate for their particular Transaction.

Modifications to the defaults in the PTP for the former 2000 PTP elections might be considered if:

i) the Transaction were an Asset Exchange, rather than a sale (e.g., GST/HST Registration Numbers; Clause 3.01 place of Closing; and possible differences in the Clause 6.02 Vendor representations); or

ii) the Parties wanted to override time periods or thresholds prescribed in the 2017 PTP that had been elections or Head Agreement content in the 2000 PTP. Examples of these are: (a) Clause 2.02 tax allocations; (b) Clause 2.03 optional 10% Deposit; (c) Subclause 3.04B access to files period; (d) Paragraph 4.02A(b) final statement of adjustments within six months; (e) Clause 6.05 and 13.01 survival period on representations and warranties; (f) optional Subclause 7.01E 50% or more ROFR exercise threshold; (g) Subclause 8.02A seven-Business Day period for notice of Title Defects; (h) Subclause 8.02B Alternate 2 Title Defects thresholds of 10% and 25%; (h) including a different value in Subclause 13.03A; and (i) the $25,000 minimum claim threshold in Subclause 13.03B.

Additional potential modifications: Some other provisions that might be reviewed for a particular Transaction include:

i) the 31-day thresholds for marketing and J.V. agreements used in Paragraphs (c) and (g) of the definition of Title and Operating Documents and the corresponding reps in Paragraphs 6.02(i) and (j);

ii) the handling of freehold mineral tax in Clause 4.01;

iii) the $10,000 threshold in Subclause 4.02B;

iv) the $50,000 authorized expenditure threshold in Clause 5.01, Subclause 5.03A and Paragraph 6.02(h);

v) the $100,000 threshold for addressing regulatory requirements under Paragraph 6.02(l);

vi) the 60-day period prescribed for replacing signs under Clause 11.02; and

vii) any modifications to the handling of surplus equipment contemplated in Clause 11.03.

Undeveloped Lands Transactions: The PTP offers a platform that can greatly simplify the sale or swap of undeveloped lands. See the sample undeveloped acreage sales and swap included, respectively, as Addendums V-VII after the General Conveyance. Those examples demonstrate the potential efficiency enhancements in processing those Transactions by using the PTP.

Securities Disclosures: There may be a requirement under applicable securities legislation or stock exchange requirements for the Purchaser to file a business acquisition report ("BAR") upon a "significant" acquisition of a "business." The BAR is a prescribed form that requires the inclusion of historical financial statements, such that the cooperation of the Vendor would be required to complete the form. Significance is calculated based on a number of tests (asset, investment, profit and loss), such that the requirement is specific to the size of the buyer and not based on a threshold Purchase Price. A Clause addressing this topic was not included in the PTP because the requirement would be unlikely to apply to a Transaction for which the PTP would be used.

Consents: The decision to withhold consent should be made very carefully. A third party could be liable for damages if the refusal to grant consent frustrated a Transaction and a Court held that the refusal to grant consent was unreasonable. Courts often regard this type of covenant as being mostly for the protection of the disposing party-that another party may not refuse its consent unreasonably. (See, for example, Cudmore v. Petro-Canada Inc., [1986] 4.W.W.R. 38 (B.C.S.C.).) The risk of damages is very real if a disposing party lost a disposition in a period of falling

commodity prices because a Purchaser exercised the typical right to terminate a Transaction over the unreasonable refusal of a third party to grant a required consent.

The issue was most recently considered in the context of the CAPL consent provision in IFP Technologies (Canada) v. Encana Midstream and Marketing, 2014 ABQB 470 (Alta. Q.B.). The facts were unusual, in that Encana and IFP had entered into a JOA using a modified 1990 CAPL whereby IFP held a 20% working interest in thermal and enhanced recovery operations with Encana in circumstances in which Encana retained 100% of the interest in primary production. In essence, this saw the ownership linked to the manner in which the rights were produced, such that the interests were, as the Court described them, "competing working interests." Issues arose after Encana disposed of its entire interest in the property to Wiser under an agreement that basically required it to earn its interest for conducting operations with respect to the existing primary production assets, where Wiser's focus was on establishing primary production from the lands. There were no protections included in the IFP agreement offering it any protections if the working interest owner of the primary production rights were to proceed with a development of those rights.

The case raised several issues. One related to the consent not to be unreasonably withheld mechanism in Subclause 2401B(e) of the 1990 document-a parallel provision to Alternate 2401A included in the ROFR process since the 1990 document. IFP had refused its consent because of the adverse impact it believed that a primary production development could have on its future ability to proceed with a thermal development.

In reviewing the consent issue, the Court offered the following summary of the law on the issue: "The burden of proof is on the party asserting consent was unreasonably withheld": Sundance Investment Corp. v. Richfield Properties Ltd. (1983), 41 A.R. 231 (Alta. C.A.). "The party whose consent is required is entitled to base its decision on its own interests alone": Coopers & Lybrand Ltd. v. William Schwartz Construction Co. (1980), 31 A.R. 466 (Alta. Q.B.), aff'd [1981] A.J. No. 537 (Alta. C.A.). "Whether a person has acted reasonably in withholding consent depends on all the factual circumstances": Exxonmobil Canada Energy v. Novagas Canada Ltd., 2002 ABQB 455 (Alta. Q.B.). "The question is not whether a reasonable person might have given consent, but whether a reasonable person could have withheld consent in the circumstances": 1455202 Ontario Inc. v. Welbow Holdings Ltd., [2003] O.J. No. 1785 (Ont. S.C.J.). "In Exxonmobil, Park J reviewed the evidence on an objective basis to determine whether in the circumstances a reasonable person would have refused to consent to the assignment. Proceeding with an assignment in the face of a reasonable refusal to consent is a clear breach of a negative covenant": Exxonmobil.

The Trial Judge noted, "The court should not defer to the party withholding consent, but must assess the reasons for withholding consent and consider whether a reasonable person in similar circumstances would have made the same decision. The court should consider the purpose of the consent clause and the meaning and benefit it was intended to confer."

One of Encana's key arguments was that the withholding of consent was unreasonable if the objecting party would receive as much after the disposition as it would if it had not been made. There were primary production assets located on the lands, and there was no commitment by Encana to advance a thermal development project. The retention of much of the tenure was also at near-term risk if no development activities were conducted, where Wiser's activities allowed tenure to be retained for the benefit of IFP. While IFP may have had an expectation that a thermal project would be advanced, that expectation was not shared. As a result, the Court found that the consent had been unreasonably withheld.

Rights of First Refusal: This overview of Rights of First Refusal is provided primarily for the benefit of personnel who are not familiar with the applicable provisions of land and J.V. agreements. Users may also wish to review the annotations on Clauses 24.01 and 24.02 of the 2015 CAPL Operating Procedure (or the most current version of that document then endorsed by CAPL) for further insights on ROFRs.

In complying with a Right of First Refusal requirement, there are a number of important points to recall, including those that follow.

i) The use of ROFRs has decreased over time. Prior to the 1974 CAPL Operating Procedure, a ROFR was the norm, often because large companies were insistent on inclusion as a control mechanism on potential dispositions by the other parties. The use of the consent mechanism increased after the 1974 document began to be used, although many companies continued to insist on a ROFR as their standard election. The use of ROFRs has decreased since the early 1990s because of industry's experiences with A&D activities and recognition that each party is probably a seller at some point during the asset life cycle. While some companies still insist on a ROFR as their standard election, most are more selective about when they will require a ROFR (e.g., significant agreements within a core area, potential high-risk, high-reward projects). The changes in the handling of ROFRs in the post-1981 CAPL Operating Procedures were largely designed to narrow the potential application of a ROFR election.

ii) The ROFR mechanisms in the post-1981 CAPL Operating Procedures are more onerous than the provisions in the 1974 and 1981 documents. This reflects the conclusion that industry's experiences with asset rationalization programs since the late 1980s have demonstrated the advantages and disadvantages of including ROFRs in agreements. The more modern CAPL ROFR mechanism has been structured on the assumption that only parties that are serious about attaching the obligation to their interest would include a ROFR.

iii) Courts recognize an implied duty of good faith under ROFR provisions. In GATX Corp. v. Hawker Siddeley Canada Inc., [1996] O.J. No. 1462 (Ont. C.J.), the Court stated: "It is well established that the grantor of a right of first refusal must act reasonably and in good faith in relation to that right, and must not act in a fashion designed to eviscerate the very right which has been given." This implied duty of good faith was also recognized at Trial and the Court of Appeal in Chase Manhattan Bank of Canada v. Sunoma Energy Corp., [2001] A.J. No. 245 (Alta. Q.B.), affirmed [2002] A.J. No. 1550 (Alta., C.A.) (typically referred to as "Best Pacific") and in Hanen v. Cartwright, [2007] A.J. No. 334 (Alta. Q.B.). The Court of Appeal in Best Pacific, though, struggled with a suggestion that this duty would apply to a purchaser that did not have privity of contract with the ROFR holder.

iv) The 2007 CAPL Operating Procedure introduced a time limitation on the duration of the ROFR. This enables the parties to retain the benefits of a ROFR process during the initial stages of a project and to have the flexibility of a consent mechanism when the project is mature. On the other hand, parties that wish to include the more traditional ROFR process can simply use an expiry date more than 50-75 years in the future. The inclusion of this mechanism reflects a policy objective of reducing the number of long duration ROFRs.

v) The Vendor must serve the notice in strict compliance with the applicable Right of First Refusal provision. A defect may enable an offeree to void the notice following the finalization of the sale. It must be served at the offeree's designated address for service, not be addressed to its Mr. X, who the landman knows is responsible for the area. The material terms must be noted. If, for example, a Purchase Price of $3MM is paid half in cash and half from the proceeds of future production, this must be noted. Such items as the Effective Date, the anticipated Closing Time and the structure of the transaction as an asset sale or "butterfly" should also be noted.

From a purely legal sense, the only way to eliminate all risk that the notice would not be defective would be to attach a copy of the form of the Agreement to the notice. (Note that this need only be the document form agreed upon by the Vendor and the Purchaser. A copy of a signed copy probably is not required. The land information on the Schedule "A" to the ROFR notice generally is sufficient for the offeree if it fairly characterizes that interest, such that a special Schedule "A" to the Purchase and Sale Agreement for each individual ROFR will seldom be required.) The major advantage associated with the practice is that the offeree cannot exercise the Right of First Refusal unless it is prepared to execute the Agreement as presented to it. This is mutually attractive to the Vendor and the proposed Purchaser. The Vendor knows that it will not have to negotiate another Purchase and Sale Agreement with an offeree following a simple agreement on price, and the submission of the document to the offeree also motivates the Purchaser to attempt to finalize the document with the Vendor promptly. The Purchaser knows that the offeree will not be able to purchase the property on more favourable terms than had been offered by it. The Purchaser will be sure of the Assets that it will be purchasing promptly, and will not have to consider the scenario in which an offeree exercises its right, but fails to finalize the document. Both Parties also recognize the logistical difficulty faced by an offeree that is required to review both the property and the associated agreement within a specified time frame. It might be less likely, therefore, that the offeree would proceed to exercise its Right of First Refusal. Use of the PTP will facilitate the election process and the completion of Transactions resulting from ROFR exercises.

vi) A ROFR notice should not be issued until the form of the Agreement is complete. The validity of a ROFR notice could be at risk if material changes were subsequently made to the Agreement, as the recipients would not have made their election on the actual business terms.

vii) The applicable Agreement may include terms that pertain specifically to other properties. The general view of commentators is that terms that are specific to other assets may be blacked out of the agreement to which the Offerees are provided access.

viii) The notice and election mechanism under the CAPL ROFR provision is structured in the context of offer and acceptance. A disposing party

should only issue its ROFR notice if it is confident that its Transaction will proceed. This is particularly important when attempting to complete an Asset Exchange. Otherwise, the disposing party could be obligated to dispose of assets under a ROFR when it would prefer to retain the interest.

In this regard, commentators have generally concluded that a Vendor may not issue a conditional ROFR notice whereby the "offer" may be withdrawn if a package deal or Asset Exchange is contingent on ROFRs not being exercised. A Vendor in this situation needs to be confident that the Transaction would otherwise proceed. It may also wish to manage its risk by requesting waivers without issuing a ROFR notice that the recipients may accept. This is particularly the case if it is only prepared to dispose of its interest through the specific Asset Exchange.

ix) If the sale consists of a number of properties, the Purchaser will have to make a reasonable allocation of the Purchase Price to the Assets subject to the applicable Rights of First Refusal. Otherwise, the Vendor is unable to comply with its Right of First Refusal obligations. (See Subclause 7.01B.) An unreasonable allocation could possibly enable the offeree to have a court void the notice and pursue a remedy against the Vendor for breach of contract if the provision did not include an arbitration mechanism (i.e., pre-CAPL Operating Procedure provision). Before submitting the Purchaser's allocation, a prudent Vendor might also make its own internal allocation, to determine if the Purchaser's allocation seems reasonable, and consultation may be required on the ROFR values. This is because the Vendor, not the Purchaser, is responsible for compliance with the ROFR provisions of the Title and Operating Documents.

x) The basic election period was increased from 20 days to 30 days in the 1990 CAPL Operating Procedure. A recipient of a ROFR notice is required to conduct a complex evaluation very quickly. As this is often with little or no advance warning, the 20-day period in previous versions of the Operating Procedure was not practicable in many cases. While this election period will be inconvenient to a Vendor in a particular instance, it is in the best position to determine the timing of notices. Moreover, presuming that the parties had originally chosen to include a ROFR because of their genuine desire to include a ROFR, the change ensured that the mechanism was more effective in practice.

xi) Vendors occasionally attempt to take a short-cut by simply requesting offerees to waive their ROFR. This saves some effort if all of the offerees agree to waive the right. However, if an offeree advises that it does not waive its rights or fails to acknowledge the request, the Vendor would have to comply with the contractual requirement anyway. The Vendor's notice, therefore, should both comply with the ROFR notice requirements and, in addition, request a waiver if the offeree does not intend to exercise its ROFR.

xii) Unit agreements seldom include any restriction on dispositions. Operations for the unitized zone are conducted under the unit agreement. Some assume, therefore, that the CAPL Operating Procedure no longer applies to the unitized zone, such that a Right of First Refusal obligation therein does not apply to the unitized interest. Unless the unit agreement specifically states that it has superseded the prior agreement for all purposes, the generally accepted view is that a Right of First Refusal in the land agreement continues to apply.

xiii) Similar considerations as for a unit agreement potentially apply to the interrelationship between a subsequent non-cross-conveyed pooling agreement and the original agreements under which the pooled interests were held. If, for example, the pooling agreement included a consent mechanism and the original agreement included a ROFR, the ROFR in the original agreement arguably still applies unless there was a clear intention in the subsequent agreement to override the ROFR. This type of pooling agreement is typically structured as a vehicle to allow the lands to be combined for development and production purposes only during the period in which the well is productive, with reversionary processes back to the original agreement. To minimize potential confusion later, the pooling agreement should be clear about the expectations for the original ROFR.

xiv) The ROFR provision will usually include a period within which the Vendor may proceed to complete the sale before having to comply with the ROFR again. See, for example, Paragraph 2401B(g) of the 1990 CAPL Operating Procedure, which provides that another notice is to be issued if the sale is not complete within 150 days after issuance of the ROFR notice. Vendors and Purchasers must be aware of the requirement to finalize the Transaction within that period. Since older Operating Procedures may include a completion period of 60 days or less, a prudent Vendor might request that the period to complete the sale be extended to 120 days or more as part of the waiver request if an older Operating Procedure applies.

xv) Vendors must examine all applicable agreements for ROFRs. There is a tendency for Vendors and Purchasers to focus solely on the land agreements. However, failure to discover a ROFR in a J.V. agreement during due diligence is as serious as the failure to note a ROFR under a land agreement. It is also important to remember to check a freehold lease that has been granted by an industry player for a possible ROFR.

xvi) The ROFR provision in an Operating Procedure generally will not apply to a royalty interest. However, it arguably applies if a Farmor has the right to convert its ORR to a working interest at payout, and Clause 12.02 of the CAPL Farmout & Royalty Procedure is clear on this issue if that document applies. This is something that a Vendor needs to consider with respect to its Paragraph 6.02(f) representation that there are not any unscheduled ROFRs. In practice, this is unlikely to be an issue for a poor well. A cautious Farmee would comply with the obligation if payout were anticipated in at least the short to medium term. The converse is also true. If a party with a convertible ORR would have a ROFR after payout, that party might also issue a ROFR. This treatment also avoids the allocation issues associated with an asset that includes a well subject to a convertible ORR and other lands earned under the same agreement. The election process typically used in those notices is on the basis of the after-payout interests.

xvii) Remember to confirm if the Transaction falls within the exemptions in Clause 2402 of the CAPL Operating Procedure. Of particular relevance are a disposition involving "substantially all" of the assets in the province and the "5% rule" (1981 and 1990 CAPL Operating Procedure)/ "10% rule" (2007 and 2015 CAPL Operating Procedure).

xviii) Failure to comply with a ROFR obligation exposes the Vendor to the risk that a court could order specific performance at a later date. This could deprive the Purchaser of the property and leave the Vendor open to a large award of damages. See, for example, Canadian Long Island Petroleums Ltd. et al. v. Irving Industries (Irving Wire Products Division) Ltd. et al., [1974] 6 W.W.R. 385 (S.C.C.), affirming, [1973] 5 W.W.R. 99 (Alta. S.C., App. Div).

Since that decision, Alberta has amended *The Law of Property Act* to address a right of first refusal. Section 63 provides that a right of first refusal is an equitable interest in land and may be registered under that Act (application limited to freehold). The common law cases on priority now apply to registrable rights of first refusal in Alberta. The failure to file a caveat protecting a right of first refusal had a negative impact on the offerees in Calcrude Oils Ltd. v. Langevin Resources, [2003] A.J. No. 1575 (Alta. Q.B.).

There is a significant possibility that an action would not be successful against the Vendor, though, if it were apparent that the offeree were aware of the breach and made minimal, if any, effort to protect its rights in a timely manner.

xix) The Purchaser will be assuming both the benefits and burdens applicable to the Vendor's interest. In some instances, the Purchaser may forget that an attractive portion of the Assets subject to a ROFR will be used to finance the Abandonment and Reclamation Obligations and other Environmental Liabilities applicable to Assets not subject to that particular ROFR. It will often allocate only a portion of the net cash consideration in the larger Transaction to the attractive Assets. The ROFR obligation, however, is to provide the offerees with the opportunity to purchase the Assets for fair market value where the consideration cannot be matched in kind. This is actually the fair market value of those Assets on a standalone basis. The real value is not the degree to which the net cash consideration is attributable to the attractive Assets; it is the price the Purchaser would pay for those Assets if it were not being forced to assume the responsibility for the abandonment and reclamation of Assets not subject to that Right of First Refusal. In many cases, this amount will be higher than the total cash consideration in the Transaction because of the effect of netting the other Abandonment and Reclamation Obligations and other Environmental Liabilities against the more valuable Assets.

xx) The Purchase Price will often be relatively minor if the applicable assets comprise only a portion of the Assets in the Transaction. It is important for the electing party to recall that the G&A costs associated with effecting the Transaction could be high relative to the value of the interest being acquired. If, for example, the Right of First Refusal value were $2,000, the cost of processing the Transaction would generally far exceed the value of the interest. This is particularly the case if one considers the opportunity cost of the Transaction. What are project personnel not able to work on because of the time being spent working on this type of Transaction?