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INTRODUCTION TO PROPERTY TRANSFER PROCEDURE (July 19, 2017)

This is the second version of the CAPL Property Transfer Procedure ("PTP"). The 2000 version did not become widely accepted, although it has often been used by smaller companies for low to modest value transactions.

The rationale for the creation of the document remains unchanged, though. There are many purchase and sale agreement precedents used in the oil and gas industry. While there is a good degree of conceptual consistency, the construction and sequence of those documents are very inconsistent. Some of the impacts associated with the current approach include: (i) delays in the completion of documentation, generally through multiple drafts; (ii) the degree to which project personnel must often focus negotiations on the wording of procedural terms; (iii) a high risk that material issues are not being addressed appropriately; (iv) biased documents; and (v) inefficient processes that lead to waste. In simple terms, an industry that challenges personnel to "do more with less" cannot afford to continue to address basically the same procedural terms in a multitude of different ways.

Standardization of the procedural aspects of the typical A&D agreement can address these problems and deliver ongoing returns to industry. It can: (i) reduce the cycle time, effort and cost required to complete suitable documentation; (ii) provide a procedural framework that focuses negotiations on key business terms; (iii) level the playing field for the procedural aspects of transactions; (iv) streamline administrative processes, while increasing document and data integrity; and (v) focus resources on additional value creation opportunities.

Given the probable reluctance of companies to use the PTP for large scale transactions or other complex transactions, the objective of the project is to "make simple transactions simple again." It is focused on: (i) the typical low to modest value producing property transaction with limited complexity; and (ii) the potential use of the PTP as a platform for a simplified handling of transactions for undeveloped lands. This is shown in the sample transactions in Addendums III-VII. It is expected that the PTP will be of particular interest to smaller companies and their land personnel for their more typical day-to-day transactions. The PTP is also likely to be used as a reference point when updating a precedent or reviewing a different form of agreement.

There are six major objectives associated with the 2017 PTP.

1. Make required modifications, while maintaining the integrity and substance of the 2000 PTP.
   - Changes resulting from industry's experiences with the 2000 PTP.
   - Changes resulting from evolving business needs and changes in industry's documents since 2000.
   - Reduce the number of elections and shift some content from the Head Agreement to the PTP.
   - Reasonable solutions to reasonably foreseeable problems.
     - Focus on addressing the needs for the typical low to modest value transaction (e.g., not addressing employee issues, details of *Investment Canada Act*, *Competition Act*, etc.).
     - Parties remain in control of significant business issues (i.e., the PTP not prescriptive about well licence transfer processes when the Regulations vary across jurisdictions and over time).
   - Provide a simple, viable platform for the typical sale or exchange of undeveloped lands.
   - Trend towards "plainer language" drafting style in industry agreements.

2. Create a document that will be widely used.
   - Representatives of major stakeholders (CAPL, CAPLA, EPAC, Legal, PASC and PJVA) involved directly in the project to increase alignment and to assist in marketing.
   - Address a range of typical industry deal types, with users expected to customize for exceptions and special needs in the Head Agreement and a Schedule of elections and modifications.
   - Extensive annotations to assist users on an ongoing basis for transactions and as a reference.
   - Emphasis on encouraging cross-functional industry comments over the evolution of the PTP.

3. Minimize the effort associated with the finalization of A&D agreements.
   - Companies currently saying basically the same thing in many different ways.
   - Focused on the procedural elements that typically do not vary materially in agreements.
     - Simplification of the Head Agreement, as shown in the Addendums.
   - Provide a platform to focus on the business issues associated with the particular transaction.
     - Not an attempt to pre-structure the business components of a transaction.
     - Users expected to amend the PTP to address special needs.

4. Provide a balanced starting point in negotiations.

5. Simplification.
   - Balance simplification with retention of required content and options.
     - Options where necessary, but few options to accommodate exceptions to general practices.
   - Structured to be used with both sale and asset exchange formats without a multitude of options.

6. Structure the PTP to exploit advances in systems technology.
   - Use of menu format to optimize accuracy of data and streamline data entry processes.

2017 CAPL PROPERTY TRANSFER PROCEDURE

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TABLE OF CONTENTS

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 10.03(c)
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 (q) 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.

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PROPERTY TRANSFER PROCEDURE (July 19, 2017)

Attached to and forming part of the Agreement dated _____, between _____

1.00 DEFINITIONS AND INTERPRETATION

1.01 Definitions

In this Property Transfer Procedure:

"Abandonment and Reclamation Obligations" means all past, present and future obligations under the Title and Operating Documents and the Regulations to:

(a) abandon the Wells (whether drilled prior to, on or after the date hereof);

(b) close, decommission, dismantle and remove structures, foundations, buildings, pipelines and equipment pertaining to the Tangibles; and

(c) restore, remediate and reclaim the surface and subsurface locations thereof and lands used to gain access thereto, pertaining to any Wells, Facilities, other Tangibles, any other facilities, pipelines and other sites: (i) located within, on or under the Lands and lands pooled or unitized therewith; (ii) comprising all or part of the Assets; (iii) that were used or previously used with respect to Petroleum Substances produced or previously produced from the Lands or lands pooled or unitized therewith; or (iv) as otherwise described in a Schedule;

all in accordance with generally accepted oil and gas industry practices in the jurisdiction in which the Assets are located and the Regulations.

"AFE" means an authority for expenditure, mail ballot or any other authorization under the Title and Operating Documents for the conduct of an operation or for costs or expenses to be incurred,

"Affiliate" means a corporation, partnership or trust that is affiliated with the Party for which the expression is being applied. For the purpose of this definition, a corporation, partnership or trust is affiliated with another corporation, partnership or trust if it, other than by way of security only, directly or indirectly controls or is controlled by that other corporation, partnership or trust. In determining if a corporation, partnership or trust so controls or is so controlled, it will be deemed that:

(a) a corporation is directly controlled by another corporation, partnership or trust if: (i) shares of the corporation to which are attached more than 50% of the votes that may be cast to elect directors of the corporation are beneficially owned by that other corporation, partnership or trust; and (ii) the votes attached to those shares are sufficient, if exercised, to elect a majority of the directors of the corporation;

(b) a partnership or trust is directly controlled by a corporation, another partnership or another trust if that corporation, other partnership or other trust beneficially owns more than a 50% interest in the partnership or trust; and

(c) a corporation, partnership or trust is indirectly controlled by another corporation, partnership or trust if control, as set forth in Paragraph (a) or (b) above, is exercised through one or more other corporations, partnerships or trusts.

Two or more corporations, partnerships or trusts affiliated at the same time with the same corporation, partnership or trust are deemed to be affiliated with each other.

"Agreement" means the Head Agreement and the Schedules attached to it, including this Property Transfer Procedure.

Deleted: all obligations under the Title and Operating Documents and the Regulations:¶ to abandon the Wells;¶ to decommission and remove the Tangibles, including associated foundations and structures; and¶ to restore, remediate and reclaim the lands to which the Surface Rights relate.

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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(q) 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(q) 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

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"Asset Exchange" means a Transaction in which any of the consideration for the acquisition of the Assets from another Party hereunder is the disposition of certain Assets by a Party hereunder to that other Party.

"Assets" means the Petroleum and Natural Gas Rights, the Tangibles, the Miscellaneous Interests and any sulphur comprising part of a base pad or storage block that forms part of the Assets under the adjustment process contemplated in Paragraph 4.01(g), subject to: (i) the exclusion of the Excluded Assets; (ii) Clause 1.02 respecting the potential exclusion of certain Assets from the Agreement; and (iii) Clause 1.05 if the Assets do not include both Petroleum and Natural Gas Rights and Tangibles.

"Base Purchase Price" means the amount described as such in Clause 2.02.

"Business Day" means any day other than a Saturday, Sunday or statutory holiday in Alberta.

"Closing" means the completion of the Transaction on the basis described in Clause 3.03 and the resultant transfer of possession of the Assets from the Vendor to the Purchaser under Clause 3.02.

"Closing Time" means, unless another date and time has been agreed upon in writing by the Parties, 10:00 a.m. on the latest of:

(a) the Scheduled Closing Date;

(b) the third Business Day after the day on which any and all Rights of First Refusal have been exercised or waived by the holders thereof or all time periods within which those rights may be exercised have expired;

(c) the third Business Day after the day on which the last of any Required Approvals has been granted; or

(d) the fifth Business Day after the day on which an arbitrator has rendered a decision with respect to any matters in dispute pursuant to Paragraph 9.02(a), (c) or (d).

"Deposit" means any payment made by the Purchaser under Clause 2.03, if it is selected to apply, as security for payment of the Purchase Price and, if applicable, as an estimate of liquidated damages for the purposes of determining the remedies available to an injured Party under Paragraph 12.01(c) after a default.

"Effective Date" has the meaning set forth for that term in the Head Agreement.

"Environmental Liabilities" means any and all environmental damage, contamination or other environmental issues respecting the Assets, whether or not caused by a breach of the applicable Regulations, whether or not resulting from operations conducted with respect to the Assets and regardless of whether a reclamation certificate had been issued. Environmental Liabilities include liabilities related to:

(a) the transportation, storage, use or disposal of toxic or hazardous substances or hazardous, dangerous or non-dangerous oilfield substances or waste;

(b) the release, spill, escape or emission of toxic or hazardous substances or hazardous, dangerous or non-dangerous oilfield substances or waste;

(c) any other pollution or contamination of the surface, substrate, soil, air, ground water, surface water or marine environments;

(d) Abandonment and Reclamation Obligations;

(e) the removal or failure to remove foundations, equipment and structures;

(f) damages and losses suffered by third parties as a result of any of the occurrences in Paragraphs (a)-(e) of this definition; and

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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 interest of the Vendor or ORR accruing to it not identified clearly 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.) **(Other annotations below are moved from those on that def'n.)**

A Party using a mineral report run from its land information system will need to identify the exclusion of any fee simple or ORR interests being retained by it very clearly as an exclusion to ensure that the applicable interest falls within the scope of the Excluded Assets definition.

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 by the unit.

iv) The Vendor would often be willing to make proprietary geophysical data respecting the lands available to a Purchaser through the normal data licencing mechanism at a preferential rate. However, the Vendor would generally wish to retain trading rights to the 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 the Vendor may subsequently 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.

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.

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(g) any obligations imposed by the Regulations to protect the environment or to rectify environmental problems.

"Excluded Assets" means, unless otherwise provided herein or agreed in writing by the Parties:

(a) the Excluded P&NG Rights and the Excluded Tangibles;

(b) Petroleum Substances beyond the wellhead at the Effective Date, including Petroleum Substances in the course of production or transportation or in tanks or storage, provided that sludge at the bottom of any storage tanks and any sulphur forming part of a base pad or storage block will be included in the Assets (and not excluded under this Paragraph), unless otherwise agreed specifically by the Parties in the Agreement;

(c) any Assets excluded from the Assets pursuant to Clause 1.02 because of the exercise of any Right of First Refusal, a title review process or otherwise by agreement of the Parties;

(d) any fee simple interest of the Vendor or any overriding royalty being received by it, unless specifically identified in each such case on the Land Schedule or in the Head Agreement;

(e) any rights to occupy surface being retained by the Vendor in accordance with the definition of Surface Rights in Clause 1.01;

(f) the Vendor's ownership interest in and interpretations of seismic data and microseismic data, other than its ownership interest in any seismic data or microseismic data identified on a Schedule that was acquired for the account of the owners under a unit agreement;

(g) studies, technology or trade seismic data that are owned by or licenced from any third party;

(h) the Vendor's proprietary information, technology or interpretations, evaluations or forecasts relating to the Assets, including: (i) interpretations of geological data; (ii) engineering or reserves forecasts and analyses; and (iii) economic evaluations;

(i) information or data contained in the Vendor's field data capture systems for Wells operated by it, including the Vendor's production volume and gas flow reporting systems, provided that the Vendor will provide to the Purchaser extracts, in an editable electronic format, of setup data of Wells operated by the Vendor that were producing as of the Effective Date;

(j) computer software, computer networks and other technology systems, except insofar as is used exclusively with SCADA and other field management systems or measurement facilities included in the Tangibles;

(k) motorized vehicles or owned or leased field offices used by the Vendor in operating any of the Assets, unless specifically identified in a Schedule as being included in the Transaction;

(l) except insofar as is otherwise adjusted for pursuant to Clause 4.01, advances and deposits to operators, Regulatory Authorities or other third parties prior to the Effective Date to secure obligations or as prepayment of costs or expenses;

(m) the Vendor's tax and financial records relating to the Assets;

(n) legal opinions and all other documents prepared by or on behalf of the Vendor in contemplation of litigation and any other documents within its possession subject to solicitor-client privilege under the laws of the Province of Alberta or any other relevant jurisdiction;

(o) any excess inventory of materials temporarily stored at the location of the Assets (such as tubing and casing) that: (i) was not being used for operations respecting the Assets at or after the Effective Date; and (ii) is owned solely by the Vendor (or otherwise not held jointly for the account of the Vendor and any third parties owning the applicable Well);

(p) records, policies, manuals and other proprietary, confidential business or technical information not used exclusively in the operation of the Assets; and

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 transparent 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 ERCB for a re-designation of the productive interval of the vertical well as being below the base of the Mannville, and the ERCB agreed with Nexxtep and re-designated the pool accordingly. Nexxstep 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 transparent 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

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The definition of Facilities has been included to require Parties to address their expectations much more clearly with respect to production infrastructure that extends off the surface of the Lands. It requires all such non-unit facilities (typically those serving more than one well) to be described in a Schedule, preferably with a description of the Transferors interest therein. (See also Subclause 1.01II.)¶

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(q) any item or thing that is specifically referred to as an additional exclusion in a Schedule.

"Excluded P&NG Rights" means mineral rights (or interests therein) granted under the Leases for areal, stratigraphic, substance or production rights that are excluded from the Transaction because: (i) they are not included in the Lands; and (ii) they are retained by the Vendor under the Leases at the relevant time.

"Excluded Tangibles" means any residual interest being retained by the Vendor after Closing in any tangible depreciable property and assets included in the Tangibles.

"Extraordinary Damages" means, except for any Losses and Liabilities respecting a Party's breach of the confidentiality obligations prescribed by Article 16.00, any losses, costs and expenses howsoever arising or occurring that are in the nature of consequential, indirect, punitive or exemplary damages (including compensation for business interruption, loss of profits, loss of opportunity, opportunity costs, reservoir or formation damage, the inability to produce Petroleum Substances or a delay in their production and, except insofar as prescribed by Clause 2.05 and 4.03, tax liabilities).

"Facilities" means:

(a) all unit facilities under any unit agreement that applies to the Petroleum and Natural Gas Rights; and

(b) all other field facilities and pipelines specifically identified as Facilities in a Schedule.

"General Conveyance" means a document delivered at Closing, substantially in the form of Exhibit "A" hereof, through which the Vendor conveys the Assets to the Purchaser.

"Gross Negligence or Wilful Misconduct" means any act, omission or failure to act (whether sole, joint or concurrent) by a person that:

(a) was a marked and flagrant departure from the standard of conduct of a reasonable person acting in the circumstances at the time of the alleged misconduct; or

(b) was intended to cause, or was in reckless disregard of, or wanton indifference to, the harmful consequences to the safety or property of another person or to the environment which the person acting or failing to act knew (or should have known) would result from such act, omission or failure to act.

However, Gross Negligence or Wilful Misconduct does not include any act, omission or failure to act insofar as it: (i) constituted mere ordinary negligence; or (ii) was done or omitted in accordance with the express instructions or approval of the other Party, insofar as the act, omission or failure to act otherwise constituting Gross Negligence or Wilful Misconduct was inherent in those instructions or that approval.

"GST/HST" means the goods and services tax provided for under the *Excise Tax Act* (Canada), or any successor or parallel federal or provincial legislation that imposes a tax on the recipient of goods and services.

"Head Agreement" means the agreement to which this Property Transfer Procedure is attached as a Schedule.

"Interest Amount" means, if Alternate 1 of Clause 2.06 has been selected to apply, an amount equal to:

(a) interest on the Base Purchase Price at the Prime Rate plus one percent per annum, calculated daily and not compounded, from and including the Effective Date to and including the day prior to the Closing Time; minus

(b) interest on any Deposit at the Prime Rate plus one percent per annum, calculated daily and not compounded, from and including the date the Deposit is received by the Vendor to and including the day prior to the Closing Time.

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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 VI, 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 10.03(c).)

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.

The PTP requires the Parties to address any recognized problems in effecting required licence transfers on a custom basis in their Agreement in the context of their particular situation. 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 issue of increasing importance that needs to 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 5.05 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.

ii) 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

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This amount will increase the Purchase Price as described in Clause 2.06, and will be allocated, for tax purposes, solely to the Petroleum and Natural Gas Rights, except that this amount will be allocated solely to the Tangibles if the Assets do not include any Petroleum and Natural Gas Rights.

"Interim Period" means the period from the Effective Date to, but not including, the Closing Time,

"Lands" means, subject to the exclusion of the Excluded Assets, the lands, formations and associated Petroleum Substances described in the Land Schedule, insofar only as rights relating thereto are granted under the Leases.

"Land Schedule" means the Schedule that describes, without limitation, the Lands, the Leases and the Petroleum and Natural Gas Rights and interests therein being disposed of by the Vendor.

"Leases" means, collectively, the various leases, licences, certificates of title and other documents of title set forth in the Land Schedule through which the holder may explore for, drill for, recover, remove or dispose of Petroleum Substances within, upon or under the Lands (or lands with which the Lands are pooled or unitized), and includes, insofar only as they relate to the Lands, the rights accruing to the holder thereof and, if applicable, all renewals and extensions of those documents and all documents issued in substitution therefor.

"Licencee Rating" means the liability management rating, licencee liability rating or other comparable rating, assessed by the applicable Regulatory Authority in the jurisdiction in which the Assets are located in the context of transfers to the Purchaser hereunder of the licences for Wells or Tangibles under the Regulations.

"Losses and Liabilities" means all claims, liabilities, actions, proceedings, demands, losses, costs, expenses, penalties, fines, assessments, charges and damages, whether statutory, regulatory, contractual, tortious or otherwise, which may be sustained or incurred by any of a Party, its Affiliates and their respective directors, officers, and employees respecting any person (including that Party), including reasonable legal fees and disbursements on a solicitor and client basis, provided that Losses and Liabilities do not include any Extraordinary Damages, except insofar as the damaged Party is entitled to be indemnified hereunder by the other Party for any such damages suffered by third parties that have been awarded by a court of competent jurisdiction.

"Market Price" means the price at which Petroleum Substances are disposed of for purposes of Articles 4.00 and 5.00, which price is not unreasonable, having regard to market conditions applicable to similar production in *bona fide* arm's length sales agreements at the time of that disposition. In making a determination of a Market Price, the disposing Party will use a *bona fide* methodology that is reasonably consistent for the period to which the disposition pertains, and will consider such factors as:

(a) the kind, quality and volume of Petroleum Substances disposed;

(b) the timing and duration of the disposition;

(c) whether the disposition is required under a pre-existing *bona fide* arm's length agreement that applies specifically to the Lands and those disposed Petroleum Substances;

(d) the point of sale; and

(e) the type of, and costs for using, transportation service (including any applicable demand and variable charges, measurement variance and any other volumetric deductions forming part of the consideration for the transportation service, including fuel) to deliver those Petroleum Substances to the nearest point of sale.

Except as provided in Paragraph (c) above, structured prices for terms exceeding 31 days, whether transacted or referenced, are not relevant to the determination of Market Price hereunder. For this purpose, a structured price includes any fixed price, price swap, forward or futures contract, put or call option, either physical or financial, entered into by a Party for the sale of production volumes. Notwithstanding the preceding portion of this definition, insofar as Petroleum Substances are disposed of and accounted for by the Vendor pursuant to any pre-existing *bona fide* arm's length

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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 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 sold 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 (GJ's). 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 include 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 and, perhaps, in a Schedule. The Leases will also include certain restrictions and require the performance of many obligations if they are to be maintained in good standing. 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.

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agreement that is either identified in a Schedule or can be terminated, without penalty, on notice of 31 days or less, the price received by the Vendor for the disposition of those Petroleum Substances under that agreement will be the Market Price for that disposition for the purposes of this Agreement, subject to any adjustment under Paragraph (e) above for transportation service under that agreement insofar as not otherwise applied against the proceeds of production under Article 4.00 or any other provision of the Agreement.

"Miscellaneous Interests" means, subject to the exclusion of the Excluded Assets, the Vendor's entire disposed interest in all property and rights, other than the Petroleum and Natural Gas Rights and the Tangibles, insofar only as they pertain directly to the Petroleum and Natural Gas Rights and the Tangibles, or either of them, including:

(a) the Title and Operating Documents;

(b) the Surface Rights;

(c) the wellbores and downhole casing respecting the Wells; and

(d) copies of geological, engineering, Facility and other records, files, reports, data and documents that, in the Vendor's reasonable judgment, relate directly to the Assets, including the Vendor's ownership interest in any seismic data or microseismic data identified on a Schedule that was acquired for the account of the owners under a unit agreement.

"Party" means a person, partnership or corporation that is bound by the Agreement.

"Permitted Encumbrances" means:

(a) the terms and conditions of the Title and Operating Documents, including obligations for lessor royalties payable under the Leases, the reversion of any Lands between the Effective Date and the Closing Time due to expiry of the applicable Lands in accordance with the terms of the applicable Leases, as contemplated in Subclause 5.03A, and any penalty or forfeiture that applies to the Assets subsequent to the Effective Date that results from the Purchaser's election under Subclause 5.03B not to participate in a particular operation, provided that the following items in existence at the Effective Date must be identified in a Schedule to qualify as Permitted Encumbrances:

(i) any overriding royalties, net profits interests or other encumbrances applicable to the Petroleum and Natural Gas Rights for which the Purchaser will assume an obligation for payment hereunder;

(ii) any existing potential alteration of the Vendor's interest in the Assets because of a payout conversion or farmin, farmout or other such agreement;

(iii) any Right of First Refusal;

(iv) any penalty, cost recovery or forfeiture that applies to the Assets at the Effective Date (or is pending at the Effective Date) because of the Vendor's election not to participate in a particular operation; and

(v) any unit, facility, shared well pad and service agreements described in Paragraphs (d), (f) and (g) of the definition of Title and Operating Documents;

(b) easements, rights of way, servitudes or other similar rights, including rights of way for highways and other roads, railways, sewers, drains, oil or gas pipelines, gas or water mains, power, telephone or cable television towers, poles and wires;

(c) the Regulations and any rights reserved to or vested in any Regulatory Authority to levy taxes, require periodic payment of rentals, fees or other amounts or otherwise to control or regulate any of the Assets in any manner, including the right to control or regulate production rates and the conduct of operations;

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Deleted: Unless otherwise agreed in writing by the Parties, the Miscellaneous Interests exclude the Transferor's tax and financial records, as well as files, documents, reports, data, intellectual property and computer hardware or software insofar as they: (i) pertain to the Transferor's geophysical data and interpretations thereof; (ii) pertain to the Transferor's proprietary technology, evaluations or interpretations (whether geological, engineering, economic or otherwise); (iii) are legal opinions; (iv) are documents prepared on behalf of the Transferor in contemplation of litigation; (v) are owned or licenced by third parties with restrictions that prohibit their deliverability or disclosure to the Transferee; (vi) are referred to specifically as exclusions in a Schedule; or (vii) pertain to records required to be maintained under the Regulations if the retention period for those records thereunder has expired.¶

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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(m) 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) 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: 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. (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.

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(d) statutory exceptions to title and the reservations, limitations and conditions in any grants or transfers from the Crown of any of the Petroleum and Natural Gas Rights or interests therein;

(e) undetermined or inchoate liens incurred or created in the ordinary course of business as security for the Vendor's share of the costs and expenses of the development or operation of any of the Assets or the handling of Petroleum Substances, which costs and expenses are not delinquent as of the Closing Time;

(f) undetermined or inchoate mechanics' liens and similar liens for which payment for services rendered or goods supplied is not delinquent as of the Closing Time;

(g) liens granted in the ordinary course of business to a public utility, municipality or governmental authority respecting operations pertaining to any of the Assets for which any required payments are not delinquent as of the Closing Time;

(h) any lien contemplated by Paragraph (e), (f) or (g) above that the applicable lienholder has attempted to apply because of an allegation that a required payment is delinquent if the Vendor is contesting that lien in good faith and it will retain responsibility therefor;

(i) any security granted by, through or under a third party that applies only to that third party's interest in any of the Assets;

(j) any Security Interest of any third party encumbering the Vendor's interest in and to any of the Assets if, at or prior to Closing, the Vendor has delivered to the Purchaser a discharge in registrable form or a "no interest letter" in a form satisfactory to the Purchaser, acting reasonably, from the financial institution(s) or other third party holding that Security Interest;

(k) any defects or deficiencies in title to the Assets disclosed in the Agreement and any other defects or deficiencies in title to the Assets that are waived or deemed to be waived under Article 8.00; and

(l) all other liens, adverse claims and other third party claims or interests set out in a Schedule, insofar as they are not included in the preceding Paragraphs of this definition.

"Petroleum and Natural Gas Rights" means, subject to the exclusion of the Excluded Assets, the interests of the Vendor described in the Land Schedule in respect of the Leases insofar as they apply to the Lands, including any existing contractual right of the Vendor to earn an interest in the applicable Lands under a farmin or similar arrangement and any overriding royalty, net profits interest or other encumbrance in favour of the Vendor specifically identified as respecting the Lands.

"Petroleum Substances" means crude oil, natural gas and every other mineral or substance (including products derived therefrom, sulphur and its components and, if applicable, sands and other rock materials containing bitumen), the right to explore for which, or an interest in which, is granted under the Leases respecting the Lands.

"Pipeline Records" means, with respect to each pipeline operated by the Vendor that is included in the Tangibles and for which the licence is expected to be transferred to the Purchaser, any pipeline records that the Vendor is required to retain under the Regulations for each such pipeline.

"Prime Rate" means the per annum rate designated at the applicable time as the reference rate for Canadian dollar commercial loans by the main Calgary branch of the principal bank used by the Vendor, with any change to that rate being effective under the Agreement on the same day as it is made effective by that bank.

"Property Transfer Procedure" means this Schedule.

"Purchase Price" means the amount determined under Clause 2.04 as a consequence of modifying the Base Purchase Price to reflect exclusions and adjustments on the basis prescribed by that Clause and as may otherwise be described in the Agreement.

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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 "J", which is the form of the Representations and Warranties Certificate; and
(e) Schedule "L", 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 the owners of the pad site have a pad site sharing agreement in place that limits the ability of any party other than the pad site operator to conduct operations.

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"Purchaser" means the Party that is purchasing the Assets hereunder and that is described as "the Purchaser" in the Head Agreement, provided that all references to "the Purchaser" herein will be interpreted as "the Transferee" for a Transaction that is an Asset Exchange.

"Regulations" means all statutes, laws, rules, orders, directives, guidelines and regulations in effect from time to time and made by governments or Regulatory Authorities having jurisdiction over the Assets, the Parties or the Transaction, and also includes, for purposes only of the confidentiality obligations in Article 16.00 and the issuance of public announcements under Article 17.00, applicable stock exchange requirements.

"Regulatory Authority" means an agency or authority of a government having apparent or actual jurisdiction over the Assets, the Parties or the Transaction.

"Representations and Warranties Certificate" means a certificate to be executed by an officer of a Party as a condition to Closing under Clause 10.01 on behalf of that Party (but not in any personal capacity) respecting the accuracy of the representations and warranties made by that Party under Article 6.00, if the form of that certificate has been included as a Schedule.

"Required Approvals" means any approval required under the *Investment Canada Act* (Canada) and the *Competition Act* (Canada), or either of them, as applicable.

"Right of First Refusal" means a right of first refusal, pre-emptive right of purchase or similar contractual right under any of the Title and Operating Documents or otherwise whereby a third party has the right to purchase or acquire any of the Assets because of the Vendor's agreement to dispose of the Assets to the Purchaser under the Agreement.

"Schedule" means a schedule or exhibit to the Head Agreement.

"Scheduled Closing Date" has the meaning set forth for that term in the Head Agreement.

"Security Interests" means security interests in the Assets (or registrations evidencing same) expressly granted by the Vendor, any of its Affiliates or its predecessors in title under the provisions of, without limitation, a mortgage, deed of trust, *Bank Act* (Canada) assignment, debenture, general security agreement or a land charge under personal property security legislation.

"Specific Conveyances" means all conveyances, notices of assignment, other assignments, transfers, novations, authorizations and other documents, other than the General Conveyance, that are reasonably required or desirable in accordance with normal oil and gas industry practice to effect the transfer of the Assets to the Purchaser and to novate the Purchaser into the Title and Operating Documents in the place of the Vendor with respect to the Assets, provided that no such conveyance will be made for any Surface Rights for which the Purchaser is required to enter into its own agreement with the applicable grantor or grantee (such as a road use agreement or crossing agreement held under a "master agreement"), in each such case within 60 days after Closing.

"Surface Rights" means all rights to use the surface of land in connection with the Assets, including, rights to enter upon and occupy the surface of land on which the Tangibles and the Wells are located and rights to cross or otherwise use the surface of land for access to the Assets, excluding: (i) any such rights serving wells other than the Wells; (ii) rights derived from a road use agreement or crossing agreement held under a "master agreement" for which the Purchaser is required to enter its own agreement; or (iii) any such rights that the Vendor otherwise reasonably retains for its other operations, as identified to the Purchaser in writing at least five Business Days prior to Closing (or at such other time as the Parties may agree), provided that the Vendor will provide the Purchaser with such rights of use as it may reasonably require for its operations respecting the Assets on such terms as are reasonable in the circumstances, insofar only as the Vendor has the right to do so and this grant of access relates only to any such access roads being retained by the Vendor.

"Tangibles" means, subject to the exclusion of the Excluded Assets, the Vendor's entire disposed interest in and to:

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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(i), 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(i) 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.

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(b) **(Similar to former (c))** any additional items that are specifically indicated in a Schedule to be included as Tangibles; and

(c) all other tangible depreciable property and assets that are located at the location of the applicable Well and in the vicinity of the Lands and that are used or useful solely for production, gathering, treatment, compression, transportation, injection, water disposal, water source, measurement, processing, storage or other operations respecting the Petroleum and Natural Gas Rights or the handling or measurement of Petroleum Substances, including any tangible equipment relating to the Wells and located at the site of the applicable Well, unlicenced incidential facilities (such as water intake facilities and environmental monitoring sites and facilities) and SCADA and other field management systems or measurement systems at the site of the applicable Well.

Notwithstanding the preceding portion of this definition, the following are excluded from the Assets unless identified in a Schedule or they are otherwise included in the Assets by operation of the Agreement: (i) any abandoned pipeline that is not subject to a unit agreement; (ii) any tangible depreciable property beyond the point of entry into a gathering system, plant or other facility serving any wells other than the Wells; (iii) any other tangible depreciable property serving wells other than the Wells; and (iv) any motorized vehicles.

"Thirteenth Month Adjustment" means the accounting process performed annually by an operator of particular Tangibles under the Title and Operating Documents for the purpose of recalculating and redistributing certain revenues and expenses among the users of those Tangibles to reconcile actual revenues and expenses with the estimates originally used by the operator for its initial allocations to those users, including operating expenses, processing fee revenues, excess capacity utilization fees and recoveries, royalties and gas cost allowances (or similar cost allowances).

"Title and Operating Documents" means, subject to the exclusion of the Excluded Assets and insofar as the Title and Operating Documents are being disposed hereunder and relate directly to the Petroleum and Natural Gas Rights, the Wells and the Tangibles, or any of them:

(a) the Leases;

(b) agreements affecting the Vendor's interests in the Petroleum and Natural Gas Rights, including operating agreements, royalty agreements, farmout or farmin agreements, option agreements, participation agreements, pooling agreements, production allocation unit agreements (or similar documents) required under the Regulations in order to produce from a horizontal well, trust agreements and declarations;

(c) agreements for the sale of Petroleum Substances that: (i) are terminable on not more than 31 days' notice (without an early termination penalty or other cost); or (ii) are identified on a Schedule, excluding any agreement that pertains to production of the Vendor being retained by it that does not relate to the Assets if the Vendor is unable to assign that agreement to the Purchaser with respect only to the Lands and any lands pooled or unitized therewith;

(d) agreements respecting the unitization of any of the Petroleum and Natural Gas Rights;

(e) agreements pertaining to the Surface Rights;

(f) agreements for the construction, ownership and operation of gas plants, gas gathering systems and other Facilities or Tangibles or the construction, ownership and operation of any shared pad site and the associated Tangibles;

(g) service agreements for the treating, gathering, storage, transportation or processing of Petroleum Substances or other petroleum substances, injection or subsurface disposal, the use of wellbores or the operation of any Wells or Tangibles by a third party that: (i) are terminable on not more than 31 days' notice (without an early termination penalty or other cost); or (ii) are identified on a Schedule;

(h) any approvals, authorizations or licences required under the Regulations for the conduct of operations with respect to the Assets, including Well, Tangibles and pipeline licences; and

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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 Defects: 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 be trying 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.

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(i) all other agreements that relate to the ownership, operation or exploitation of the Petroleum and Natural Gas Rights, the Wells or the Tangibles.

"Title Defect" has the meaning in Alternate ____ *(Specify 1 or 2)*:

Alternate 1 (General Approach)
means a deficiency or discrepancy in or affecting the title of the Vendor in and to any of the Assets, sufficient to cause a reasonable buyer of the affected Assets to refuse to purchase them for fair market value (computed as if that defect did not exist), but specifically excludes, without restricting the generality of the foregoing, the Permitted Encumbrances.

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Alternate 2 (Detailed Approach)
means a deficiency or discrepancy in or affecting the title of the Vendor in and to any of the Assets, sufficient to cause a reasonable buyer of the affected Assets to refuse to purchase them for fair market value (computed as if that defect did not exist), and includes:

(a) *the Vendor holding a lesser beneficial interest in and to the particular Asset than attributed to it in the Land Schedule or another applicable Schedule;*

(b) *the interest described for the Vendor in the Land Schedule or another applicable Schedule is subject to an encumbrance that is either not described or is misdescribed in that Schedule, where the value of that encumbrance or of the misdescribed portion of that encumbrance is directly adverse to the value of that Asset or the Purchaser's ability to enforce or defend title to that Asset if acquired by it hereunder; or*

(c) *any other directly adverse deficiency or discrepancy in or affecting the title of the Vendor in and to any of the Assets;*

provided, however, that notwithstanding the foregoing, a "Title Defect" specifically excludes:

(d) *all Permitted Encumbrances, including limitations in any of the Title and Operating Documents on the rights granted thereunder and any loss of Lands between the Effective Date and the Closing Time due to the expiry of any of the Lands subject to the Leases in accordance with the terms of the applicable Leases and Clause 5.03;*

(e) *the fact that the interest of the Vendor or any of its predecessors in any of the Assets is a beneficial interest and not a legal interest;*

(f) *the Vendor's interests in the Assets being held under any Title and Operating Documents that are evidenced by electronic copy only and the Vendor not having paper copies to any or all of those Title and Operating Documents;*

(g) *any matter pertaining to the interest of a third party that does not pertain to the interest of the Vendor in the Assets or affect the Vendor's interest in a material, adverse way;*

(h) *an alteration, subsequent to the Effective Date, to the Vendor's interest in any of the Assets as set forth in a Schedule attached hereto as a result of an earning or payout conversion under the Title and Operating Documents, provided that the applicable earning or payout conversion right is described in the Land Schedule or another Schedule;*

(i) *a Right of First Refusal identified in this Agreement that has been exercised in accordance with the requirements of the applicable Title and Operating Documents;*

(j) *missing documents or receipts that would otherwise demonstrate timely and full payment of initial consideration, lease rentals, delay payments, shut-in payments or other payments required under any Lease, provided that: (i) the lessor of the applicable Lease has accepted subsequent payments; (ii) there is no notice of default in respect thereof from the lessor in the applicable Lease file that has not been rectified; and (iii) there is no other evidence that the required payment was not made in a timely manner;*

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.

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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.

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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.

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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.

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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).

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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.

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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.

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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(o) 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 10.03(c) condition to Closing.)

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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.

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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.

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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

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(k) *missing or unsigned documents in the chain of the Vendor's title to any particular Asset, provided that: (i) those documents are not reasonably required to confirm the creation, establishment or maintenance of that title; and (ii) the current status of that title can otherwise be confirmed with reasonable certainty;*

(l) *any Abandonment and Reclamation Obligations;*

(m) *all defects, deficiencies, discrepancies and other matters that are described in the Agreement; and*

(n) *any defect or other issue relating to any Right of First Refusal or similar rights which may or may not have been applicable as a result of the contribution of the Assets by an Affiliate of the Vendor to the Vendor, or as a result of any previous internal reorganization of the Vendor or its Affiliates.*

"Transaction" means the transaction contemplated by the Agreement through which the Purchaser acquires the applicable Assets from the Vendor.

"Transferee" means, with respect to an Asset Exchange, the Party acquiring the applicable Assets hereunder.

"Transferor" means, with respect to an Asset Exchange, the Party disposing the applicable Assets hereunder.

"Vendor" means the Party that is selling the Assets hereunder and that is described as "the Vendor" in the Head Agreement, provided that all references to "the Vendor" herein will be interpreted as "the Transferor" for a Transaction that is an Asset Exchange.

"Wells" means the Vendor's entire disposed interest in all wells (and the associated wellbores and casing) described in: Alternate 1 only ____; a combination of Alternates 1 and 2 ____; a combination of Alternates 1 and 3: ____; or Alternate 2 only ____ below *(Specify Alternate(s))*.

Alternate 1 (Wells Set Forth In Schedule)
Wells set forth in a Schedule, whether or not located on the Lands or lands pooled or unitized therewith.

Alternate 2 (Unscheduled Wells Located On The Lands-No Exclusions)
Wells not already set forth on a Schedule described in Alternate 1, if applicable, that are located on the Lands or lands pooled or unitized therewith, including any of the following such wells: any producing, shut-in, suspended, capped, observation, pressure monitoring, abandoned, injection, water source and disposal wells.

Alternate 3 (Unscheduled Wells Located On The Lands With Exclusions)
Wells not already set forth on a Schedule described in Alternate 1 that are located on the Lands or lands pooled or unitized therewith, including any of the following such wells: any producing, shut-in, suspended, capped, observation, pressure monitoring and other wells subject to a unit agreement, provided that the following wells not subject to a unit agreement will only be considered Wells if set forth on that Schedule as being included in the Assets: an abandoned, injection, water source or disposal well (including any such abandoned well that is reclamation certified or reclamation exempt).

1.02 Exclusion Of Assets

If a portion of the Assets is excluded from Closing because of: (i) the application of Clause 8.02 to Title Defects; (ii) the exercise of any Right of First Refusal by third parties; (iii) other provisions of the Agreement; or (iv) the written agreement of the Parties:

(a) the terms "Assets", "Facilities", "Lands", "Leases", "Miscellaneous Interests", "Petroleum and Natural Gas Rights" and "Tangibles" will be interpreted to reflect the exclusion of that portion of the Assets, and the Parties will proceed in a timely manner prior to Closing to amend the Head Agreement and the Schedules accordingly;

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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 transparent on the face of the Agreement that it is retaining an interest in the equipment and mineral rights included in the Assets and the extent of that retained interest.

Paragraph (k) is included primarily because of the possibility that a Vendor might only be disposing of a portion of its interest in the Assets (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 may also 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.

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(b) the amending agreement contemplated in the preceding Paragraph will modify the Base Purchase Price and the Purchase Price to reflect the value attributed to the Assets for which Closing does not occur, with a corresponding modification to the allocations of value among the classes of Assets under Clause 2.02, and, if requested by the Purchaser by notice to the Vendor, any Deposit held under Clause 2.03 will be adjusted accordingly; and

(c) the adjustments made under Article 4.00 and any interest accruing under Clause 2.06 will be calculated accordingly.

1.03 References And Interpretation

Unless otherwise stated:

(a) the references "hereunder", "herein" and "hereof" refer to the provisions of this Property Transfer Procedure, and a reference to an Article, Clause, Subclause, Paragraph or Subparagraph herein refers to the specified provision of this Property Transfer Procedure;

(b) the singular will be construed to include the plural and *vice versa*, and words that refer to a particular gender will include all genders;

(c) the headings of Articles, Clauses and Subclauses and any other headings or indices are for reference only, and will not be used in interpreting any provision herein or as indicating that all provisions of this Property Transfer Procedure relating to a particular topic are found in that Article, Clause or Subclause;

(d) a capitalized derivative or other variation of a defined term will have a corresponding meaning;

(e) all references to "dollars" or "$" refer to lawful currency of Canada, and all billings, payments and receipts will be made and recorded in Canadian currency;

(f) a reference to "includes" or "including" is used to present some (but not necessarily all) examples of the matter for which the reference is used, and is not to be construed to limit the interpretation of that matter to only those examples;

(g) a reference to a statute or similar legislative instrument includes all applicable Regulations, all subordinate or successor legislation in effect from time to time and all amendments thereto;

(h) any reference to time means Mountain Standard Time or Mountain Daylight Time during the respective intervals in which each is in force;

(i) a reference to "costs" and "expenses" excludes all payments made for taxes in the nature of GST/HST or any other value added, sales or transfer tax, insofar as they are refundable (by credit or otherwise) under the Regulations;

(j) any reference to "days" refers to calendar days unless the reference is to Business Days, and if the phrase "within", "at least" or "not later than" is used to refer to a specific number of days or Business Days, the day of receipt of the relevant notice will be excluded and the day of the relevant response or event will be included in determining the relevant time period. However, if the time for doing any act (including a response to a notice within a prescribed period) expires on a day that is not a Business Day, the time for doing that act will be extended to the next Business Day;

(k) any reference to the "Vendor's entire disposed interest" means that interest of the Vendor being disposed of hereunder in the applicable Assets, but does not include any residual interest being retained after Closing by that Party in the Excluded Assets;

(l) references to Assets or any subset thereof with respect to an Asset Exchange will refer to the interest of the applicable Transferor in the applicable Assets or subset thereof, as the context requires; and

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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.

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.

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(m) this Clause will apply, *mutatis mutandis*, to the Head Agreement and the other Schedules.

1.04 Optional And Alternate Provisions

If the Parties have not made an election required hereunder for an optional or alternate term, that optional term or the first such alternate provision will apply as if it had been designated, except: (i) as provided in Clause 2.06 respecting the accrual of interest and Clause 6.02 respecting representations and warranties being made by the Vendor; and (ii) that the "will not" selection will apply with respect to the optional sentence in the definition of Wells in Clause 1.01 and a Deposit under Clause 2.03.

1.05 Interpretation If Types Of Assets Limited

If the Assets to which the Agreement pertains do not include both Petroleum and Natural Gas Rights and Tangibles, the provisions of this Property Transfer Procedure will be interpreted in the context of either the Petroleum and Natural Gas Rights or Tangibles, as the case may be, and the applicable Miscellaneous Interests.

1.06 Interpretation If Closing Does Not Occur

Each provision of the Agreement that presumes that the Purchaser has acquired the applicable Assets hereunder will be construed as having been contingent upon Closing having occurred.

1.07 Conflicts And Enforceability

A. *Conflicts Within Agreement*-The applicable provision of the Head Agreement will prevail if there is a conflict between a provision of the Head Agreement and that of a Schedule (including this Property Transfer Procedure), the General Conveyance or a Specific Conveyance. The applicable provision of this Property Transfer Procedure will prevail if a provision of this Property Transfer Procedure conflicts with that of another Schedule, the General Conveyance or a Specific Conveyance, unless expressly stated in that other Schedule, the General Conveyance or that Specific Conveyance.

B. *Conflicts With Regulations Or Leases*-The provisions of the Regulations or the applicable Lease will prevail if there is a conflict between any provision of the Agreement, the General Conveyance or a Specific Conveyance and the Regulations or a Lease, provided that: (i) the Parties recognize that the registered interests in the Leases may not correspond to the Vendor's interests in the applicable Lands; (ii) the allocation of responsibility for Losses and Liabilities will apply between the Parties, including the liability and indemnification provisions of Article 13.00; and (iii) the Regulations will prevail insofar as there is a conflict between the Regulations and the Leases.

C. *Severance And Enforceability*-The applicable provisions (or portions thereof) of the Agreement will be deemed to be severed from the Agreement to the extent necessary, insofar as: (i) a conflict is not within the exceptions in Subclause 1.07B; or (ii) any provision of the Agreement is judicially determined to be unenforceable. Any such severed provision will be of no further force and effect, provided that the Parties will mutually attempt in good faith to negotiate a replacement provision that will secure the purposes of the original provision in a legally valid manner. The remainder of the Agreement will remain in full force and effect between the Parties in such event.

1.08 Vendor's Knowledge

The knowledge or awareness of the Vendor herein consists of the actual knowledge or awareness of its current officers and employees with management or supervisory responsibilities whose normal responsibilities relate to the matter in question. For these purposes, knowledge and awareness do not include the knowledge of any other person, any third party or constructive knowledge. For representations and warranties that are made to the Vendor's knowledge or awareness, the Vendor does not have any obligation to review its files or records, to make inquiry of any third parties or to review the files and records of any third party or Regulatory Authority.

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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).

It is not uncommon for the Parties to a large Transaction to modify a provision comparable to Clause 1.13, so that their confidentiality agreement is not superseded (or is selectively suspended) by their Agreement.

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.

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1.09 Governing Law (Former 18.04)

The Agreement will be treated as a contract made in the Province of Alberta. The Agreement will be subject to and be interpreted and enforced in accordance with the laws in effect in the Province of Alberta, including the federal laws of Canada applicable therein, provided that this does not affect the Parties' obligations to comply with the Regulations applicable to any Assets located outside the Province of Alberta. Subject to the dispute resolution processes in Article 9.00, each Party accepts and attorns to the exclusive jurisdiction of the courts of the Province of Alberta in the Judicial District of Calgary and all courts of appeal therefrom with respect to the Agreement and any associated legal proceedings between the Parties.

1.10 Time Of Essence (Former 18.05)

Time is of the essence in the Agreement.

1.11 No Amendment Except In Writing (Former 18.06)

Except as otherwise provided herein, amendments to the Agreement must be in writing and executed by the Parties.

1.12 Waiver (Former 18.03)

A. *Waiver Must Be In Writing*-Except as otherwise provided herein, no waiver by any Party of any application or breach (whether actual or anticipated) of any condition, representation, warranty or other provision of the Agreement will be effective, unless that waiver is expressed in writing under that Party's authority. Any waiver so given will extend only to the particular application or breach to which it pertains, and will not limit or affect any rights respecting any future application of that provision or any other or future breach, whether of a like or different character. A Party that fails to take any steps in respect of a breach or non-fulfillment of any provision of the Agreement by another Party will not be regarded as having waived its rights with respect to that matter, except insofar as the Agreement expressly provides that its rights are extinguished with respect to that matter because of its failure to exercise those rights by a specified time.

B. *Exercise Of Remedies*-No failure of a Party to exercise any right or remedy will operate as a waiver thereof. A Party will not be precluded from exercising any right available to it at law, equity or by statute because of its exercise of any single or partial right, and a Party may exercise any such remedies independently or in combination. **(Former 18.09)**

1.13 Supersedes Earlier Agreements (Former 18.08)

The Agreement supersedes all other oral or written agreements, representations and understandings between the Parties about the Transaction and the Assets, and expresses the entire agreement of the Parties with respect to the Transaction and the Assets, except for: (i) the Title and Operating Documents; and (ii) any other such agreement, representation or understanding insofar as it is expressly stated in the Agreement to remain in effect between the Parties.

1.14 Legal Rules Of Construction

The Agreement has been negotiated by each Party with the opportunity to obtain legal representation. Any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party will not apply to the construction or interpretation of the Agreement.

1.15 Modifications To 2017 CAPL Property Transfer Procedure

This Property Transfer Procedure is in the 2017 form of CAPL Property Transfer Procedure published by the Canadian Association of Petroleum Landmen. It is modified only by filling in the blanks and making the elections required herein and by those changes specifically identified: (i) herein by underlining or strikethrough text; (ii) in the Head Agreement; or (iii) in a Schedule of elections and amendments. Each modification hereof that has not been specifically identified in this

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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(d) applies to sulphur. This is because of the difference in tax treatment between land acquisition costs (basically a 10% declining balance writeoff) and Tangibles (generally a 25% declining balance writeoff 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 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 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.

iv) 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 2.05, 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.

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ii) The Petrodocs tool automatically identifies all changes from the standard form on the face of the document generated for a particular transaction.

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manner will be deemed to be inoperative, and the 2017 CAPL Property Transfer Procedure will apply as if that modification had not been made.

2.00 ACQUISITION AND DISPOSITION

2.01 Disposition And Acquisition

The Vendor agrees to dispose of the Assets to the Purchaser, and the Purchaser agrees to acquire them from the Vendor on the terms and conditions set forth in this Agreement.

2.02 Base Purchase Price And Tax Allocation

The Base Purchase Price is $ _____. The Parties hereby agree to allocate the Base Purchase Price amongst the Assets, as applicable, as follows:

(a)	Petroleum and Natural Gas Rights	80%
(b)	Tangibles	20% minus the value attributed to the Miscellaneous Interests
(c)	Miscellaneous Interests	$10.00.

The Parties will report the Transaction for all federal, provincial and local tax purposes in a manner consistent with the allocation referred to in this Clause.

2.03 Receipt And Handling Of Deposit

This optional Clause will /will not (Specify) apply herein.

The Vendor acknowledges receipt from the Purchaser, on the day of execution of this Agreement, of a deposit of 10% of the Base Purchase Price paid by certified cheque, bank draft or wire transfer. The Vendor will hold the Deposit in trust on behalf of the Purchaser, but the Vendor will not be required to hold the Deposit in a special trust account. If Closing occurs, the Vendor will apply the Deposit to the Purchase Price. If Closing does not occur, the Vendor will promptly return the Deposit to the Purchaser with simple interest thereon calculated at the Prime Rate plus one percent per annum from the time of its receipt by the Vendor to the date of its return to the Purchaser, subject to the respective rights of the Parties under Article 12.00 in the event of default.

2.04 Determination Of Purchase Price And Form Of Payment

A. *Adjustments To Base Purchase Price*-The Purchase Price for the Assets is the amount resulting from the following calculation:

(a) the Base Purchase Price;

(b) plus or minus, as applicable, the amount of any modifications resulting from the exclusion of certain Assets from the Transaction under Clause 1.02 and any other modification to the Purchase Price otherwise agreed by the Parties;

(c) plus or minus the applicable net adjustments resulting from the operation of Article 4.00, provided that any apportionment made thereunder that is not contained in the interim or final accounting referenced in Clause 4.02 will not cause an adjustment to the Purchase Price; and

(d) plus the Interest Amount, if applicable, under Clause 2.06.

The Purchaser will pay that calculated amount, less any Deposit, and any taxes payable under Clause 2.05 to the Vendor at Closing.

B. *Environmental Liabilities Taken Into Account*-Each Party confirms that the Purchaser's assumption of responsibility for Environmental Liabilities, including the Abandonment and

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Deleted: The Head Agreement includes provisions that set forth the Purchase Price and the allocation of the Purchase Price to the Petroleum and Natural Gas Rights, Tangibles and Miscellaneous Interests, as applicable.

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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.

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.)

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Reclamation Obligations, and the Vendor's release of responsibility therefor has been taken into account in determining the Purchase Price.

C. *Form Of Payment*-Unless otherwise agreed, the Purchaser will pay all amounts payable under the Head Agreement and this Article by certified cheque, bank draft or wire transfer. However, the Purchaser must pay any such amount by wire transfer if required by the rules of Canada's financial clearing system. In such event, the Vendor will notify the Purchaser, at least three Business Days prior to the Closing Time (or such other time when that payment is required), of the account designated by the Vendor for receipt of that amount.

2.05 GST/HST And Other Sales Taxes

A. *Handling Of GST/HST*-The GST/HST applicable to the disposition of the Assets will be handled on the basis outlined in Alternate _____ below (Specify 1 or 2). The Business GST/HST Registration Numbers of the Parties are _____.

Alternate 1 (General)

Subject to any application of the reverse collection mechanism applicable to certain real property conveyances, the Purchaser will remit the applicable GST/HST to the Vendor at Closing. The Vendor will remit such GST/HST to the applicable governmental authority in the manner and within the time constraints stipulated in Part IX of the Excise Tax Act ("ETA"), or as stipulated in successor or parallel legislation that might arise from time to time. If the reverse collection mechanism applies, the Purchaser will comply with all of its obligations and entitlements under the ETA.

Alternate 2 (Joint Section 167 Election)

The Purchaser and Vendor will make a joint election under section 167 of the ETA so that GST/HST will not be payable on the transfer of the Assets. The Parties will both execute the relevant GST/HST form for Closing to effect that election. The Purchaser will file that form with its GST/HST return for the reporting period in which Closing occurs. It will provide the Vendor with such supporting documentation as the Vendor may reasonably request in order to confirm that such election has been made and properly filed. The Purchaser will indemnify, hold harmless and defend the Vendor for the Vendor's Losses and Liabilities pertaining to any failure of the Purchaser to file that election or any failure in its acceptance by applicable governmental authorities.

B. *Handling Of Sales Taxes*-At Closing, the Purchaser will remit any provincial sales taxes pertaining to its acquisition of the Assets to the applicable Regulatory Authority in the required manner, or will provide appropriate purchase exemption certificates, if applicable. The Purchaser will indemnify, hold harmless and defend the Vendor for the Vendor's Losses and Liabilities pertaining to any failure of the Purchaser to remit those taxes as required.

C. *Reassessment*-If the amount of the GST/HST or any provincial sales tax payable hereunder is adjusted as a result of any reassessment by the applicable Regulatory Authority, the Purchaser will indemnify, hold harmless and defend the Vendor against any such applicable adjustment to GST/HST or provincial taxes and any associated interest and penalties (excluding income taxes), and all such amounts, including any applicable refund, will be for the Purchaser's account. However, the Parties will cooperate to ensure that all reasonable steps are taken to minimize the net impact of any such taxes and the corresponding penalties and interest.

D. *GST/HST Amounts Payable Under Section 182 Of ETA*-Notwithstanding any other provision of this Agreement, if any amount is payable by a Party as a result of a breach, modification or termination of this Agreement in circumstances in which section 182 of the ETA applies to any of that amount, the amount payable for GST/HST will be increased by an amount equal to the applicable GST/HST rate multiplied by the applicable portion of the amount otherwise payable and the applicable payor will pay that increased amount.

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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 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); (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.

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2.06 Interest Accrual

Interest will accrue on the Base Purchase Price (less the Deposit), plus or minus the net amount of the modifications and adjustments made at Closing under Clause 1.02 and Paragraph 4.02A(a), on the basis provided in this Clause if Alternate 1 or 2 is selected. Any such interest accrual will result in a corresponding increase to the Purchase Price and, subject to Clause 1.05, the amount allocated to the Petroleum and Natural Gas Rights. Any interest accruing under this Clause will be calculated on a daily basis, but will not be compounded. Interest will not accrue under this Clause if neither Alternate is selected. Alternate ____/ Neither Alternate 1 nor 2 ____ will apply (Specify) in this Clause.

Alternate 1 (Accrual From Effective Date)
Interest at Prime Rate plus one percent per annum will accrue to the Vendor on the adjusted Purchase Price during the Interim Period, provided that the interest accrual for the period after the Vendor's receipt of a Deposit will be based on the adjusted Purchase Price, less the Deposit.

Alternate 2 (Accrual From Scheduled Closing Date)
If Closing is delayed, interest at Prime Rate plus one percent per annum will accrue to the Vendor on the adjusted Purchase Price, less any Deposit, for the period between the Scheduled Closing Date and the date Closing occurs.

Notwithstanding the preceding portion of this Clause and the Alternate that has been selected, interest will not accrue for the applicable period, insofar as the Vendor waives that interest accrual or Closing is delayed: (i) to provide the Vendor with the opportunity to attempt to address any Title Defects or other title deficiencies, including any delay contemplated under Subclause 8.02F if certain title deficiencies are remedied by the Vendor after Closing; (ii) due to the conduct of an arbitration under Article 9.00; or (iii) for any other reason solely attributable to the Vendor.

3.00 CLOSING

3.01 Place Of Closing

Unless otherwise agreed, Closing will occur at the Closing Time at the office of the Vendor identified in its address for service in Clause 15.02.

3.02 Effective Date Of Transfer

Subject to the handling of net production income or loss during the Interim Period prescribed by Clause 4.03 and the Vendor's obligations to the Purchaser with respect to the maintenance of the Assets during the Interim Period under Article 5.00 (including those relating to insurance), the transfer of the Assets from the Vendor to the Purchaser and the assumption of the benefits and obligations associated with the Assets by the Purchaser will be effective as of the Effective Date, provided that Closing occurs. As between the Parties, possession of the Assets will pass to the Purchaser at Closing.

3.03 Deliveries At Closing

A. *Deliveries By The Vendor*-Subject to the handling of Specific Conveyances prescribed by Clauses 3.05, 3.06 and 3.07, the Vendor will deliver to the Purchaser at the Closing Time:

(a) a General Conveyance, which has been prepared and executed by the Vendor;

(b) all required Specific Conveyances, prepared and executed by the Vendor, except insofar as the Vendor is permitted to deliver the Specific Conveyances at a later date under the Head Agreement or as agreed in writing by the Purchaser;

(c) copies of all waivers and exercises of Rights of First Refusal received by the Vendor respecting the disposition of the Assets to the Purchaser;

(d) the Representations and Warranties Certificate executed on behalf of the Vendor, if required by the Agreement; and

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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. It is not uncommon for Parties to agree to proceed with Closing without Specific Conveyances (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 Specific Conveyances. The nature of the conveyancing process is also such that Purchaser's 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(g), 6.04(d) and 10.03(c), the onus is on the Parties to add custom content in their Agreement to address their particular needs.

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 issue that needs to 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.

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(e) those other documents as are specifically required under the Agreement or as may be reasonably requested by the Purchaser upon reasonable notice to the Vendor, including: (i) any agreements required from the Vendor under the definition of Surface Rights for surface access to the Assets because of the Vendor's retention of surface access for its other operations; and (ii) registrable discharges of all Security Interests or a "no interest" letter that is satisfactory to the Purchaser, acting reasonably, from the financial institution(s) or other third parties holding those Security Interests, if requested by the Purchaser under Paragraph 10.02(c).

B. *Deliveries By The Purchaser*-Subject to the handling of Specific Conveyances prescribed by Clauses 3.05, 3.06 and 3.07, the Purchaser will deliver to the Vendor at the Closing Time:

(a) payment of any amount owing at Closing by the Purchaser under the Agreement;

(b) a General Conveyance duly executed by the Purchaser;

(c) the Representations and Warranties Certificate executed on behalf of the Purchaser, if required by the Agreement;

(d) copies of Specific Conveyances that have been executed by it; and

(e) those other documents as may be specifically required under the Agreement.

3.04 Delivery Of Files

A. *Vendor's Delivery Of Files*-Unless otherwise agreed by the Parties, the Vendor will deliver to the Purchaser, in an organized form and at the Vendor's expense, the Vendor's records, files, reports, data and documents constituting the Miscellaneous Interests within 10 Business Days after Closing. Insofar as those materials relate directly to assets in which the Vendor retains an interest, the Vendor may retain the original of those materials and provide a photocopy of them to the Purchaser. The Vendor may retain a photocopy or scanned copy of any original materials delivered to the Purchaser under this Subclause.

B. *Vendor's Right Of Access To File Materials*-The Vendor may, at its sole expense, obtain from the Purchaser, for a period of 72 months after the Closing Time, copies or photocopies of the materials delivered to the Purchaser under the preceding Subclause insofar only as: (i) those materials are reasonably required by the Vendor, including as reasonably required for audits or claims by third parties; and (ii) those materials are still in the possession of the Purchaser. If the Purchaser disposes of any of the Assets during that period to a third party, the Purchaser will take reasonable steps to enable the Vendor to have continued reasonable access to those materials for those purposes for the remainder of that period, provided that the Purchaser will not be required to retain copies of those materials after any such disposition by it.

3.05 Distribution Of Specific Conveyances

Alternate _____ (Specify 1 or 2) will apply in this Clause, provided that the Vendor will reimburse the Purchaser for all registration fees incurred by the Purchaser in registering any discharges for Security Interests provided to the Purchaser as a condition to Closing under Paragraph 10.02(c).

Alternate 1 (Vendor To Distribute Specific Conveyances)

Except as otherwise agreed by the Parties, the Vendor will retain the required number of original copies of the Specific Conveyances and other documents delivered under Subclause 3.03A, and will promptly distribute them to third parties or register them on behalf of the Purchaser after Closing, insofar as they are normally distributed or registered. The Vendor will deliver to the Purchaser proof of registration of the applicable Specific Conveyances in a timely manner. The Purchaser will reimburse the Vendor for all transfer and registration fees incurred by the Vendor in registering those Specific Conveyances and other documents.

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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.

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 10.03(c) 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. Simplifying 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. **NTD: Notwithstanding the construction of the Alternates in Subclause B, there is limited actual experience with the new Alberta process to date, such that this Clause could be modified significantly during the comment process. In addition, there will be circumstances in which the Parties modify the applicable Alternate to address such matters as a potential cap on liability, a deductible and a short expiry period.**

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Alternate 2 (Purchaser To Distribute Specific Conveyances)

Except as otherwise agreed by the Parties, the Purchaser will, after Closing, promptly distribute to third parties or register the Specific Conveyances and other documents delivered under Subclause 3.03A, insofar as they are normally distributed or registered. The Purchaser will deliver to the Vendor proof of registration of the applicable Specific Conveyances in a timely manner. The Purchaser will bear all costs in distributing or registering those Specific Conveyances and other documents.

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3.06 Electronic Transfers And Rentals

A. *Submission And Acceptance*-Notwithstanding the distribution of Specific Conveyances contemplated in Clause 3.05 (but subject to the handling of the electronic transfers prescribed under Clause 3.07), this Clause applies insofar as required under the Regulations to effect an electronic transfer of the Vendor's registered interest in any Leases, Surface Rights or Wells or Tangibles on the basis contemplated in the Agreement, insofar as that registered interest is being assigned hereunder. The Vendor will submit electronic transfers for the Purchaser's approval under the process prescribed by the Regulations for any such Leases, Surface Rights or Wells or Tangibles within two Business Days following Closing. The Purchaser will confirm its acceptance of that interest within one Business Day after receipt of notification of that proposed transfer in that transfer system.

B. *Handling If Pending Rentals*-Notwithstanding the preceding Subclause, this Subclause applies if there are any Leases or Surface Rights for which the Vendor is the payor of rentals and other similar land maintenance payments for which those amounts are payable in the calendar month in which Closing occurs and the next two calendar months. Insofar as requested by the Purchaser, by notice to the Vendor prior to Closing, the Parties will defer processing the transfers relating to the applicable Leases or Surface Rights until such date after the applicable payment date(s) as the Purchaser may reasonably request.

3.07 Pipeline Records And Associated Licence Transfers

A. *Deferral Of Transfer Of Certain Licences*-Notwithstanding anything to the contrary in Clauses 3.05 and 3.06, if the Purchaser is required to be in possession of Pipeline Records pursuant to the Regulations prior to the submission of a transfer or application for transfer from the Vendor to the Purchaser of the licenses for the Tangibles to which those Pipeline Records pertain, the responsible Party may defer the submission of that transfer or application to a time not later than 10 Business Days following the Vendor's delivery of those Pipeline Records to the Purchaser under Subclause 3.04A.

B. *Deficiencies In Pipeline Records*-Provided that Closing occurs, Alternate ___ below (Specify 1 or 2) will apply in this Clause:

Alternate 1 (Purchaser Responsible For Deficiencies)
The Purchaser will be liable to and, in addition, indemnify, hold harmless and defend the Vendor against all Losses and Liabilities as a result of any Pipeline Records deficiencies, including financial responsibility for performance of any engineering assessments required to be conducted under the Regulations as a result of any Pipeline Records deficiencies.

Alternate 2 (Vendor Responsible For Deficiencies)
The Vendor will be liable to and, in addition, indemnify, hold harmless and defend the Purchaser against all Losses and Liabilities as a result of any Pipeline Records deficiencies for which the Purchaser provides written notice with reasonable particulars of those deficiencies to the Vendor within six months following Closing, including financial responsibility for performance of any engineering assessments required to be conducted under the Regulations as a result of any such Pipeline Records deficiencies. Insofar as the Purchaser fails to provide such a notice to the Vendor within that period, the Purchaser will be responsible for the applicable Pipeline Records deficiencies on the same basis as provided in Alternate 1 of this Subclause.

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 and the inclusion of that amount in the Purchase Price, 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.

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4.00 ADJUSTMENTS

4.01 Benefits And Obligations To Be Apportioned

Except as otherwise provided herein, the Parties will apportion all benefits and obligations of every kind and nature relating to the Assets, including, capital expenditures, maintenance costs, development costs, operating costs, royalties, property taxes, proceeds from the sale of production, fees paid or received for use of applicable production handling infrastructure, accounts receivable, gas cost allowances (or similar cost allowances) and incentives accruing to operations under the Regulations. The Parties will make that apportionment on an accrual basis as of the Effective Date using established accounting practices in the oil and gas industry. Notwithstanding the generality of the foregoing, the following principles will apply to adjustments made under this Article:

(a) all costs incurred in connection with work performed or goods and services provided in respect of the Assets will be deemed to have accrued as of the date the work was performed or the goods or services provided, regardless of the time those costs became payable;

(b) advances, cash calls and deposits made by the Vendor under the Title and Operating Documents or the Regulations for operations respecting the Assets will be adjusted as a credit to the Vendor, insofar as costs and expenses relating to them have not accrued or been incurred as of the Closing Time, and any such remaining advances, cash calls and deposits will be transferred to, and be for the benefit of, the Purchaser;

(c) advances, cash calls and deposits received by the Vendor from third parties for operations pertaining to the Assets will be handled as required under the applicable Title and Operating Documents, insofar as costs and expenses relating to them have not accrued or been incurred as of the Closing Time, and any such advances, cash calls and deposits transferred to the Purchaser will be as trustee on behalf of the applicable third parties on the basis provided in the associated Title and Operating Documents;

(d) Subject to the handling of rentals and any similar payments under Clause 5.05 in the transitional period after Closing, this optional Paragraph will ___ /will not ___ (Specify) apply:

surface and mineral lease rentals and any similar payments made by the Vendor to preserve any of the Leases or any Surface Rights will be apportioned on a per diem basis as of the Effective Date;

(e) all taxes, other than income taxes and any taxes based on the volume of produced Petroleum Substances, will be apportioned on a *per diem* basis as of the Effective Date;

(f) the proceeds from all Petroleum Substances produced after the Effective Date will be for the benefit of the Purchaser, with those proceeds calculated using a Market Price, unless otherwise provided specifically in the Agreement or agreed by the Parties;

(g) all Petroleum Substances produced as of the Effective Date, but not delivered to the purchaser thereof, including Petroleum Substances in storage, will not comprise part of the Assets, provided that, except to the extent otherwise agreed specifically in the Agreement, sludge at the bottom of any storage tanks and sulphur comprising part of a base pad or storage block, if any, will form part of the Assets. The value of any such sulphur inventory forming part of the Assets will be calculated as of the Effective Date, and that calculated amount will be added to the Purchase Price, with a separate tax allocation for product inventory. Petroleum Substances not comprising part of the Assets will remain the property of the Vendor, and the proceeds from any sale thereof by the Purchaser will be calculated using a Market Price and will accrue to the Vendor, with sales of those Petroleum Substances deemed to occur on a "first in, first out" basis;

(h) the Vendor will not be required to make any adjustments in favour of the Purchaser with respect to any overhead amounts accruing to the Vendor, as operator, from any third parties under any of the Title and Operating Documents during the Interim Period and for any transitional period contemplated in Clause 5.04, insofar as the Vendor continues to act as operator of any of the Assets under the applicable Title and Operating Documents;

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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 (j). 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.

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(i) there will be no adjustments for royalty tax credits or other similar incentives that accrue to a Party because of financial or organizational attributes specific to it, other than gas cost allowances (or similar cost allowances);

(j) a Thirteenth Month Adjustment for a period that includes months before and after the Effective Date will be apportioned on a *per diem* basis to reflect expenses, revenues and throughput volumes for the respective periods of the Parties' ownership of the Assets, provided that the methodology used in the applicable Title and Operating Documents to calculate a Thirteenth Month Adjustment will apply, *mutatis mutandis*, to any such adjustment between those periods, as if each such period is an annual period, if there is a material variance between the throughput or unit operating costs during those periods;

(k) there will be no interest payable on adjustments, except: (i) insofar is provided for in Clause 2.06; and (ii) insofar as a Party fails to pay to the other Party the applicable amount owing to that other Party by the prescribed time under Paragraph 5.04(c); and

(l) any dispute respecting adjustments will be resolved under Article 9.00.

4.02 Adjustments To Accounts

A. *Adjustment Statements*-Subject to the handling of disputes contemplated in Paragraph 4.01(l) and Subclauses B and C of this Clause, adjustments between the Vendor and the Purchaser under the Agreement will be effected as follows:

(a) unless otherwise agreed by the Parties, the Vendor will provide the Purchaser with an interim statement setting forth in reasonable detail the adjustments proposed to be made at Closing not later than three Business Days prior to the Closing Time, based on the Vendor's good faith estimate of the costs and expenses paid by the Vendor prior to Closing, the revenues received by the Vendor prior to Closing and other relevant information available to the Vendor at that time; and

(b) within the six month period after the Closing Time, the Vendor will prepare, on the basis of information available at that time and with input from the Purchaser, a written final statement of all adjustments and payments to be made under the Agreement, with the net amount thereof to be remitted by the Party required to make payment within 30 days after receipt of that statement, without prejudice to the other rights of that Party under the Agreement to verify that amount.

The Vendor will provide reasonable assistance to the Purchaser to assist it to verify the amounts set forth in a statement delivered to the Purchaser under this Subclause.

B. *Audit Rights*-Notwithstanding the preceding Subclause, each Party will have the right, following Closing, but not later than six months after the distribution of the final statement of adjustments by the Vendor under Paragraph 4.02A(b), to examine, copy and audit the records of the other relative to the Assets for the purposes of effecting or verifying adjustments required under this Article, provided that this period will be extended insofar as is reasonably required to enable the Purchaser to verify any further adjustments contemplated under Subclause 4.02C. The auditing Party will, upon reasonable notice, conduct that audit at its sole expense during normal business hours at the offices of the audited Party or at such other premises at which those records are maintained. Any claims of discrepancies disclosed by that audit for a potential adjustment of at least $10,000 will be made in writing to the audited Party within two months after the completion of that audit. That Party will respond in writing to any such claims within six months after the receipt of notice of those claims. The Parties will resolve any outstanding claims of discrepancies through the dispute resolution provisions of Article 9.00 insofar as they are not resolved within two months after that response.

C. *Possible Further Adjustments*-This Subclause applies notwithstanding the adjustments contemplated in Subclause 4.02A, the audit process contemplated under Subclause 4.02B and the periods prescribed by Subclause 6.05A and Clause 13.01 for the Vendor's responsibility for breaches of representations and warranties made by it under Article 6.00.

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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.

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Further adjustments on the basis indicated in this Article will be made as and when those items arise if notice requesting that adjustment, including reasonable particulars thereof, has been given by a Party to the other Party within 30 days after receipt of a Thirteenth Month Adjustment or a completed and agreed to audit or other report and the need for that adjustment arises from:

(a) a Thirteenth Month Adjustment, operator error adjustments or errors established by joint venture audits within 36 months after the Closing Time; or

(b) errors established by an audit or other review of lessor royalty payments that is conducted under the Regulations or Leases within 60 months after the Closing Time or such later time as may be prescribed by the Regulations.

D. *Audit Periods Before Effective Date*-Nothing in this Article will restrict or otherwise interfere with any audit rights or obligations that the Vendor may have under any of the Title and Operating Documents prior to the Effective Date. Any adjustments under any such audit will be for the Vendor's account, insofar as they relate to a period prior to the Effective Date. Each Party will keep the other reasonably informed in a timely manner about the progress on handling prior audits, and each Party will offer such reasonable assistance as may be reasonably required to ensure that prior audits are resolved on a timely basis.

E. *Extension Under Limitations Act*-Subject to the dispute resolution processes of Article 9.00 and the timing restrictions in this Article 4.00, the Parties agree that the period for seeking a remedial order under section 3(1)(a) of the *Limitations Act* (Alberta) for all claims that may arise under this Article 4.00 respecting adjustments and audits is extended until two years after expiry of the time the Agreement or the applicable Title and Operating Documents permitted the applicable audit to be performed.

4.03 Adjustment For Income Tax - Interim Period Income

The net production income or loss (i.e., gross revenues less operating costs, lessor royalties and other direct costs) that accrues in respect of the Assets in the Interim Period will belong to, or be a loss of, the Vendor. That amount will be adjusted for income taxes at the rate of ___%. The net production income or loss, as adjusted for income taxes, provided for in this Article will constitute a decrease or increase to the Purchase Price and, subject to Clause 1.05 if the Assets do not include Petroleum and Natural Gas Rights, to the amount allocated to the Petroleum and Natural Gas Rights.

4.04 Notification Of Receipt Of Funds Accruing To Vendor

The Purchaser will promptly notify and remit to the Vendor any payment or adjustment received by the Purchaser with respect to the Assets and relating to a period prior to the Effective Date. The Purchaser will hold any such payment or adjustment in trust for the Vendor until such time as the Purchaser accounts to the Vendor for any such payment or adjustment, provided that this obligation does not require the Purchaser to hold any such funds being held by it on behalf of the Vendor in a separate trust account or otherwise to segregate those funds.

5.00 MAINTENANCE OF BUSINESS

5.01 Assets To Be Maintained In Proper Manner

Subject to the Agreement, the Leases and the other Title and Operating Documents, the Vendor will, during the Interim Period and insofar as the nature of its interest permits:

(a) maintain the Assets in a proper and prudent manner in accordance with good oil field practice and the material requirements of the Regulations, with such consultation with the Purchaser as is prescribed by Clause 5.03 or is otherwise then reasonably appropriate;

(b) pay or cause to be paid when due all costs, expenses and other amounts payable in respect of the Assets during the Interim Period; and

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If Closing occurs in the same calendar month as the Effective Date, the net production income or loss (i.e., gross revenues less operating costs, lessor royalties and other direct costs) that accrues in respect of the Assets in the Interim Period will belong to, or be a loss of, the Transferee. Such net production income or loss will be reported by the Transferee for income tax purposes, and the consequential resource allowance implications will be claimed by the Transferee (and not by the Transferor). ¶
Alternate 2 ¶
The treatment of net production income or loss realized during the Interim Period will be handled in the manner that the Parties provide in the Head Agreement.

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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.

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(c) comply with all of its obligations respecting the Assets under the Title and Operating Documents.

For the purpose of this Article 5.00, the Vendor has authority to make an expenditure with respect to a new obligation or commitment respecting the Assets for which the Vendor's share of that expenditure is reasonably estimated not to exceed $50,000, even if the Vendor's share of that expenditure ultimately exceeds that amount. The Vendor will promptly give notice, in reasonable detail, to the Purchaser upon the Vendor becoming aware of any damage to the Tangibles of the type contemplated in the condition to Closing in Paragraph 10.02(a) that there be no substantial damage to the Tangibles.

5.02 Obligations For Insurance

A. *Vendor's Insurance Obligations*-During the Interim Period, the Vendor will maintain any insurance policies that are in its name or for its benefit respecting the Assets. Unless otherwise specified herein or in the Head Agreement, the Vendor will not be required to obtain additional insurance respecting the Assets during the Interim Period, except insofar as that insurance is required to be maintained under the Regulations or the Title and Operating Documents. The Vendor will remain the beneficiary under all such policies of insurance, and, except as otherwise provided in Subclause 5.02B or as otherwise agreed by the Parties, the Purchaser will not be entitled to any proceeds of settlement thereunder.

B. *Insurable Event Occurs*-This Subclause is contingent on Closing occurring and is notwithstanding the Purchaser's acquisition of the Assets as of the Effective Date. This Subclause applies to the handling of any insurance proceeds recoverable under any insurance policies contemplated in Subclause 5.02A respecting the Vendor's interest in the Assets due to an event that occurs, or Losses and Liabilities that otherwise accrue, during the Interim Period, including: (i) any applicable damage to the Assets; (ii) any Environmental Liabilities respecting the Assets; or (iii) any other event respecting the Assets that results in a third party claim. Insofar as this Subclause applies, the Vendor will assign to the Purchaser in a timely manner after the later of Closing or the recovery of those insurance proceeds, all of the Vendor's rights in and to any such insurance proceeds relating to the Assets, provided that this assignment of insurance proceeds will not exceed the amount of the applicable Losses and Liabilities suffered by the Purchaser.

C. *Obligations After Closing*-Except insofar as otherwise required under any of the Title And Operating Documents, as provided in the Agreement or as agreed in writing by the Parties, the Purchaser will be responsible for maintaining its own policies of insurance respecting the interests acquired by it from the Vendor in the Assets at Closing.

5.03 Commitments During Interim Period

A. *Vendor Notifications*-During the Interim Period, the Vendor will promptly provide to the Purchaser copies of all AFEs, notices and mail ballots the Vendor receives respecting the Assets. The Vendor will not, without the prior written consent of the Purchaser, which consent may not be unreasonably withheld or delayed:

(a) assume any new obligation or commitment respecting the Assets, if the Vendor's share of the associated expenditure is reasonably estimated to exceed $50,000, except: (i) for amounts that it is committed to expend or is deemed to authorize under the Title and Operating Documents without its specific authorization or approval; or (ii) insofar as the Vendor reasonably determines that those expenditures or actions are necessary for the protection of life, property or the environment or otherwise to address an actual or imminent emergency, provided that it will promptly notify the Purchaser of any such expenditure or actions;

(b) sell, transfer or otherwise dispose of any of the Assets, except for: (i) sales of production of Petroleum Substances reasonably made by the Vendor in the ordinary course of business under sales arrangements permitted herein; or (ii) insofar as is required to comply with any Right of First Refusal;

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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.

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. 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 PTR if this Subclause were deleted would be to Paragraph (a) of the definition of Permitted Encumbrances and Paragraph 5.03A(e).

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(c) surrender or abandon any of the Assets, provided that, subject to the general obligation of the Vendor to maintain the Assets and consult with the Purchaser under Clause 5.01, this Paragraph does not apply to any reversion of Lands under the Leases due to their expiry in accordance with the applicable Leases;

(d) terminate any of the Title and Operating Documents, amend any of them (other than for processing of assignments by third parties in the ordinary course of business), enter into any new agreement respecting the Assets or vote on any mail ballot or other similar notice issued under the Title and Operating Documents;

(e) subject to Clause 5.01, Paragraph 5.03A(a) and Subclause 5.03B, propose or initiate the exercise of any option arising as a result of the ownership of the Assets (including rights under area of mutual interest provisions and any Right of First Refusal) or propose or initiate any operations with respect to the Assets that have not been commenced or committed to by the Vendor as of the Effective Date, if that exercise or option would result in an obligation of the Purchaser after the Effective Date or a material adverse effect on the value of any of the Assets; or

(f) other than for Permitted Encumbrances, grant a Security Interest or any encumbrance with respect to any of the Assets.

Nothing in this Subclause, however, limits the Vendor's ability to pay, on behalf of the Purchaser, amounts owing with respect to any pending expenditures identified in a Schedule, as contemplated in the Vendor's representation in Paragraph 6.02(h) respecting authorized expenditures and any other amounts authorized to be expended on behalf of the Purchaser under this Article.

B. *Elections During Interim Period*-If an operation or the exercise of any option respecting the Assets is proposed in circumstances that would require the written consent of the Purchaser under Subclause 5.03A (the "Proposal"):

(a) the Vendor will promptly give notice of the Proposal to the Purchaser, including with that notice supporting information in sufficient detail to enable the Purchaser to have a reasonable understanding of the nature, schedule and cost of the Proposal, insofar as the applicable Title and Operating Documents do not prohibit the disclosure of that supporting information by the Vendor to the Purchaser, provided that this does not require the Vendor to disclose any of its proprietary interpretations respecting that Proposal;

(b) the Purchaser will advise the Vendor, by notice, not later than two Business Days prior to the time the Vendor is required to make its election for the Proposal to the applicable third parties, if the Purchaser wishes the Vendor to exercise its rights on behalf of the Purchaser, provided that: (i) this period will be reduced to 12 hours if the period within which the Vendor is required to reply is 48 hours or less; and (ii) failure to make an election within the applicable period will be deemed to be the Purchaser's election not to participate in the Proposal;

(c) the Vendor will notify the applicable third parties of the Purchaser's election for the Proposal within the period during which the Vendor may respond to it;

(d) any termination or alteration of the Vendor's interest in the Assets resulting from an election by the Purchaser not to participate in a Proposal will be a Permitted Encumbrance; and

(e) the Vendor may require the Purchaser to advance or otherwise secure any costs to be incurred by the Vendor on behalf of the Purchaser under this Subclause in such manner as may be reasonably appropriate in the circumstances.

C. *Vendor Not Obligated To Propose Operations*-The Purchaser may not, without the written consent of the Vendor, request the Vendor to propose the conduct of any operation

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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.

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respecting the Assets during the Interim Period, except insofar as provided in the Head Agreement or this Article.

D. *Vendor May Refuse To Follow Certain Instructions*-Notwithstanding any other provision of this Clause, the Vendor may refuse to follow instructions of the Purchaser that it reasonably believes to be unlawful, unethical or in conflict with the Regulations or any of the Title and Operating Documents by providing notice to that effect to the Purchaser in a timely manner. The Vendor will identify in any such notice the basis for that conclusion in reasonable detail.

5.04 Post-Closing Transitional Maintenance Of Assets

Following Closing and insofar as the Purchaser must be recognized by third parties under the Title and Operating Documents or otherwise recognized as the owner of any of the Assets, the Vendor will hold the applicable interests acquired by the Purchaser on its behalf as a bare trustee. The following will apply to the applicable interests and Assets until that recognition has been effected:

(a) the provisions of Clause 5.03 will continue to apply, *mutatis mutandis*, except insofar as otherwise provided in this Clause;

(b) the Vendor will forthwith provide to the Purchaser all AFEs, notices, mail ballots, specific information and other documents the Vendor receives respecting the Assets, and will respond to such AFEs, notices, mail ballots, information and other documents pursuant to the written instruction of the Purchaser, if received on a timely basis;

(c) the Vendor will deliver to the Purchaser, on a monthly basis, in a manner consistent with the Vendor's internal accounting processes and the adjustment provisions of Article 4.00, all revenues, proceeds and other benefits received by the Vendor respecting the Assets and accruing to the Purchaser hereunder, less the share of the applicable lessor royalties, operating costs, treating, gathering, processing and product transportation expenses and those other costs and expenses directly relating to the Assets and the production of Petroleum Substances, provided that:

(i) the Vendor may not recover any administrative costs and expenses it incurs as a result of the performance of its obligations under this Article, except as provided: (i) in Paragraph 4.01(h) with respect to certain overhead recoveries accruing to the Vendor as operator under any of the Title and Operating Documents; (ii) elsewhere in the Agreement; or (iii) otherwise by agreement of the Parties;

(ii) any net amount owing to the Vendor under this Paragraph will be paid by the Purchaser within 30 days after receipt of the Vendor's invoice therefor;

(iii) any amount not paid by a Party within the prescribed period may, at the option of the other Party, accrue interest under Clause 12.02; and

(d) insofar as not already adjusted for under the preceding Paragraph: (i) the Purchaser will forward to the Vendor, within the period prescribed by the applicable Title and Operating Documents, any cash call advances, operating fund payments or other amounts required to be paid thereunder; (ii) the Vendor will hold any such amounts in trust on behalf of the Purchaser (without obligation to hold any such funds in a separate trust account or otherwise to segregate those funds); and (iii) the Vendor will pay those amounts in a timely manner to the applicable third parties; and

(e) subject to the handling of Specific Conveyances prescribed by Clauses 3.05, 3.06 and 3.07, the Vendor will, on behalf of the Purchaser, deliver all such agreements, notices and other documents as the Purchaser may reasonably request to effect its ownership of the Assets.

5.05 Payment Of Rentals By Vendor

This Clause applies insofar as: (i) the Vendor is responsible for payment of rentals, delay payments, shut-in payments and similar payments to the applicable grantor or lessor with respect to any of the Leases or the Surface Rights to maintain them in good standing; and (ii) any such payments are

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

payable before the end of the second calendar month after the calendar month in which Closing occurs. Insofar as requested by the Purchaser, by notice to the Vendor prior to Closing, the Vendor will make all such applicable payments on behalf the Purchaser. It will include those amounts in the interim statement of adjustments under Paragraph 4.02A(a), in a monthly accounting under Paragraph 5.04(c) or in the final statement of adjustments under Paragraph 4.02A(b), as applicable.

5.06 Production Accounting During Month In Which Closing Occurs

The Vendor will be responsible for production accounting with respect to the Assets for production obtained during the calendar month in which Closing occurs. The Purchaser will assume responsibility for production accounting with respect to the Assets for production obtained as of the first day of the calendar month following the calendar month in which Closing occurs. If the Purchaser is operating the applicable Assets during any portion of a calendar month for which the Vendor is responsible for production accounting, the Purchaser will provide the Vendor with all production data reasonably required by the Vendor to perform its obligations under this Clause.

5.07 Transfer Of Incidental Obligations To Third Parties

This Clause applies if the Vendor holds an interest for the benefit of a third party in the same properties as comprise the Assets and the Vendor is disposing of its entire interest in the applicable Assets to the Purchaser hereunder. The Parties will cooperate in transferring any such obligations of the Vendor to the Purchaser as of the Closing Time, insofar as is permitted by the contractual obligations of the Vendor to that third party. Nothing in this Clause, however, will operate to release the Vendor from any obligations to that third party that had accrued prior to the Closing Time.

5.08 Vendor Acting On Behalf Of Purchaser For Maintenance Of Assets

A. *Purchaser's Ratification Of Actions*-Provided Closing occurs and insofar as the Vendor maintains the Assets and takes actions on behalf of the Purchaser in compliance with the obligations under this Article, it will be deemed to have been acting on behalf of the Purchaser hereunder. The Purchaser ratifies all actions taken, or refrained from being taken, by the Vendor under this Article in that capacity, with the intention that all such actions will be deemed to be those of the Purchaser, except insofar as the Vendor's actions under this Article constitute Gross Negligence or Wilful Misconduct of the Vendor, any of its Affiliates or the respective directors, officers, agents or employees of the Vendor or any of its Affiliates.

B. *Indemnification Obligations Of Purchaser*-The Purchaser will be liable to and, in addition, indemnify, hold harmless and defend the Vendor, its Affiliates and the respective directors, officers, agents and employees of the Vendor and its Affiliates against all of their Losses and Liabilities as a result of maintaining the Assets or exercising other rights on behalf of the Purchaser under this Article, insofar as those Losses and Liabilities are not a direct result of the Gross Negligence or Wilful Misconduct of the Vendor, any of its Affiliates or the respective directors, officers, agents or employees of the Vendor or any of its Affiliates.

6.00 REPRESENTATIONS AND WARRANTIES OF PARTIES

6.01 Mutual Representations And Warranties

Subject to the consents, approvals and waivers contemplated in the Agreement, each of the Vendor and the Purchaser represents and warrants to the other that:

(a) **Standing:** It is duly organized, validly subsisting, registered and authorized to carry on business in the jurisdiction(s) in which the Assets are located and in the jurisdiction in which it is constated;

(b) **Requisite Authority:** It has the requisite capacity, power and authority to execute the Agreement and all other agreements and documents to be executed by it, or on its behalf, hereunder and to perform its obligations hereunder;

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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.

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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 to whether a specific representation should be included at all, rather than its wording. 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.

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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 the Purchaser 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.

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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.

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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.

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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.

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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.

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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.

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(c) **No Conflict:** The execution and delivery of the Agreement and the completion of the transfer of the Assets hereunder are not and will not, in any material respect, be in breach of, or in conflict with:

(i) any provision of the charter, by-laws, partnership agreement (if applicable), other constating documents or other governing documents of that Party;

(ii) the Regulations or any court order or judgment applicable to that Party or the Assets; or

(iii) any material agreement, instrument, permit or authority to which it is a party or by which it is bound;

(d) **Execution And Enforceability:** It has taken all actions necessary to authorize the execution and delivery of the Agreement and all other documents to be executed by it hereunder, and, as of the Closing Time, that Party will have taken all actions necessary to authorize and complete the transfer of the Assets hereunder. The Agreement has been validly executed and delivered by that Party, and the Agreement and all other documents executed and delivered on behalf of that Party hereunder constitute binding obligations of that Party enforceable in accordance with their respective terms and conditions, subject to the qualification that such enforceability may be subject to:

(i) bankruptcy, insolvency, fraudulent preference, reorganization or other Regulations affecting creditors' rights generally; and

(ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding at equity or law); and

(e) **No Finders' Fees:** It has not incurred any obligation or liability, contingent or otherwise, for brokers' or finders' fees for the Transaction for which the other Party will have any responsibility; and

(f) **No Material Change In Existence**: It does not have any present plan or intention to cease to remain in existence.

6.02 Vendor's Representations And Warranties

The optional Paragraphs in this Clause will only apply herein if indicated to apply by so indicating with a "Yes" in the applicable blank in the margin. An optional Paragraph for which the blank is not populated or for which it is populated by a "No" or "N/A" will be of no effect in the Agreement.

The Vendor represents and warrants to the Purchaser that:

(a) **Residency For Tax Purposes:** It is not a non-resident of Canada within the meaning of the Income Tax Act (Canada);

(b) **Lawsuits And Claims:** Except as identified in a Schedule, to the Vendor's knowledge, there are no unsatisfied judgments or claims, proceedings, actions, lawsuits or administrative proceedings in existence or threatened with respect to the Vendor, the Assets or its interest therein, and, to the Vendor's knowledge, no particular circumstance exists that it reasonably believes will give rise to such a claim, proceeding, action or lawsuit that would have a material adverse effect on the aggregate value of the Assets;

(c) **No Default Notices:** Except as identified in a Schedule, the Vendor has not received any notice of default under the Regulations or the Title and Operating Documents or any notice alleging its default thereunder, which default remains outstanding or unsatisfied;

(d) **Compliance With Title And Operating Documents:** To the Vendor's knowledge, there has been no act or omission whereby it is, or would be, in default under the Regulations in effect at the relevant time or any of the Title and Operating Documents, which default would reasonably be expected to have a material adverse effect on the total value of the Assets;

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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.

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(e) **Payment Of Royalties And Taxes:** To the Vendor's knowledge, all rentals, royalties and all *ad valorem*, property, production, severance and similar taxes and assessments based on, or measured by, its ownership of the Assets, the production of Petroleum Substances from the Lands or the receipt of proceeds therefrom that are payable by it and that accrued prior to the Effective Date and for all prior years have been properly paid in the manner prescribed by the Leases and the Regulations, or will be so paid when due;

(f) **Encumbrances:** The Vendor does not warrant its title to the Assets, but does warrant that, except for the Permitted Encumbrances, its interest in the Assets is free and clear of any and all liens, mortgages, pledges, claims, options, Rights of First Refusal, encumbrances, overriding royalties, net profits interests or other burdens that were created by, through or under the Vendor (or of which the Vendor has knowledge) and for which the Purchaser will be responsible after Closing;

(g) **No Reduction:** Except for the Permitted Encumbrances, the Vendor's interests in the Assets are not subject to reduction, by farmout, reference to payout of a Well or otherwise, through any right or interest granted by, through or under it or of which it has knowledge;

(h) **Authorized Expenditures:** Except: (i) as identified in a Schedule; (ii) as may be authorized under Article 5.00; or (iii) as are operating costs incurred in the ordinary course of business, there are no outstanding AFEs or other outstanding financial commitments respecting the Assets under which expenditures reasonably expected to exceed $50,000 are or may be required by the Purchaser as a result of the acquisition of the Assets or in respect of which any amount is outstanding as of the Effective Date; **(Moved up this rep relative to 2000.)**

(i) **Sale Agreements:** Except as identified in a Schedule, the Petroleum and Natural Gas Rights are not subject to any agreement for which the Purchaser will be required to assume responsibility after Closing: (i) for the sale of Petroleum Substances that cannot be terminated, without penalty, on notice of 31 days or less; (ii) that includes "take or pay" or similar provisions; or (iii) for gas balancing;

(j) **Production Handling Agreements:** There are no Title and Operating Documents that are processing agreements, transportation agreements, disposal agreements or other production handling agreements respecting the Assets for which the Purchaser will be required to assume responsibility after Closing, except for: (i) any such Title and Operating Documents identified as such on a Schedule; and (ii) any such agreement that can be terminated on notice of 31 days or less without early termination penalty or other cost;

(k) **Environmental Matters:** Except as identified in a Schedule, to the Vendor's knowledge, it has not received and is not aware of:

(i) any order or directive under the Regulations that relates to Abandonment and Reclamation Obligations, other Environmental Liabilities or environmental compliance matters under the Regulations, if that order or directive has not been complied with or otherwise satisfied in all material respects by the Closing Time;

(ii) any demand or notice issued under the Regulations for the breach of any environmental, health or safety laws applicable to the Assets, including any Regulations respecting the release, use, storage, treatment, transportation or disposition of environmental contaminants, which demand or notice remains outstanding as of the Closing Time; or

(iii) any particular existing circumstance respecting health, safety or the environment that it reasonably believes to be material and a reportable event under the Regulations; **(Moved up this rep relative to 2000.)**

(l) **Operations And Compliance With Regulations:** Except as identified in a Schedule, to the Vendor's knowledge with respect to any Assets operated by it as of the Effective Date, it has not received (and does not have knowledge of) any notice of the occurrence of a material violation of the Regulations or any notice under the Regulations requiring work, repairs, construction or other capital expenditures with respect to the Assets for which the share of

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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 Well 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.

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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: (i) on the basis contemplated in Clause 8.01 if Article 8.00 was selected to apply; or (ii) 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.

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).

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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 10.03(c) 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.

The situation in which there were recognized problems in effecting the required licence transfers is one that the Parties are required to address in the context of their particular circumstances. 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 issue that needs to 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 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 Clause 3.07.) **(NTD: Further review required as more information becomes available.)**

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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.

costs applicable to the Vendor's interest is reasonably expected to exceed $100,000, and it is not aware that any material violation is occurring or has occurred (including failure to maintain any required permits or licences), which violation remains outstanding as of the Closing Time;

(m) **Condition Of Wells:** To the Vendor's knowledge with respect to any Assets operated by it as of the Effective Date, each Well located on the applicable Lands, whether producing, shut-in, injection, disposal or otherwise, has been drilled and, if completed, completed and operated in accordance with generally accepted oil and gas field practices and the material requirements of the Regulations as they existed at the relevant time;

(n) **Abandonment Of Wells:** To the Vendor's knowledge with respect to any Assets operated by it as of the Effective Date:

(i) each Well located on the applicable Lands that has been abandoned has been plugged and abandoned, and the wellsite therefor is either properly restored or in the process of being properly restored, in accordance with generally accepted oil and gas field practices and the material requirements of the Regulations as they existed at the relevant time; and

(ii) except as identified on a Schedule, it has not received notice under the Regulations to abandon any Well that was not abandoned as of the Effective Date;

(o) **Condition Of Tangibles:** To the Vendor's knowledge with respect to any Assets operated by it as of the Effective Date, the Tangibles have been constructed, installed, maintained and operated in accordance with generally accepted oil and gas field practices and the material requirements of the Regulations as they existed at the relevant time;

(p) **Provision Of Documents:** To the Vendor's knowledge, it will have made available to the Purchaser: (i) prior to Closing and in a manner materially consistent with the expectations outlined in Clause 8.01 if Article 8.00 has been selected to apply; or (ii) prior to execution of the Agreement and in a manner materially consistent with any due diligence process conducted by the Purchaser, as applicable, all of the Title and Operating Documents in the Vendor's possession that are relevant to the Vendor's title to the Petroleum and Natural Gas Rights and those additional Title and Operating Documents and other files, documents and materials comprising the Miscellaneous Interests that are reasonably required by the Purchaser to satisfy any conditions included for its benefit under Clause 10.02 or that have otherwise been reasonably requested by the Purchaser in conjunction with the Transaction;

(q) **Well And Tangibles Transfers:** The Vendor has a Licencee Rating whereby it is eligible under the Regulations to transfer the applicable licence or approval for any Well or Tangibles operated by it for which it is intended that the Purchaser will become operator after Closing;

(r) **Records Relating To Operated Tangibles:** The Vendor has collected, maintained and retained all Pipeline Records and other records relating to Tangibles operated by it as required under the Regulations, and it has or will have provided all such records to the Purchaser by the date the licence transfer for the applicable Tangibles is to be effective;

(s) **Regulatory Production Penalties:** To the Vendor's knowledge, each Well that has been drilled for the purpose of producing Petroleum Substances has been drilled at a location for which an off-target production penalty is not applicable under the Regulations, except as identified in a Schedule;

(t) **Regulatory Production Allowables:** To the Vendor's knowledge and except as identified in a Schedule: (i) no notice has been received under the Regulations that a Well has been produced in excess of regulatory production allowables; and (ii) there is no pending change thereto, other than as may generally be applicable under the Regulations;

(u) **Area Of Mutual Interest Or Area Of Exclusion:** Except as identified in a Schedule, none of the Title and Operating Documents includes, or is otherwise subject to, an area of mutual interest or an area of exclusion that remains in effect as of the Effective Date;

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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.

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(v) **No Notice Of Offset Obligations:** Except as identified in a Schedule, the Vendor has not received any notice from, or on behalf of, the applicable lessor that any of the Leases is subject to an offset obligation, including an unsatisfied obligation to drill a well or surrender rights or an obligation to pay compensatory royalties;

(w) **No Commitment To Deliver:** Except as provided in Clause 1401 of a standard form 1990 CAPL Operating Procedure forming part of any of the Title and Operating Documents or as identified in a Schedule, none of the Title and Operating Documents includes a commitment to deliver production from any Lands to particular Tangibles or any third party owned facilities, including any such commitment that requires the Vendor to pay a "take or pay" fee for use of those Tangibles or other facilities that exceeds their actual use by the Vendor;

(x) **Not A Disposition Of Substantially All Vendor's Assets:** The Vendor is not disposing of all or substantially all of its assets through the Transaction;

(y) **Leased Vehicles, Equipment And Premises:** None of the Tangibles or any motorized vehicles or field office included in the Assets are leased or rented, except as identified on a Schedule;

(z) **No Removal Of Assets:** Other than for any excess inventory of materials (such as tubing and casing): (i) temporarily stored at the location of the Assets; (ii) owned solely by the Vendor (or otherwise not held jointly for the account of the Vendor and the third parties owning the applicable Well); and (iii) that was not being used for operations respecting the Assets at or after the Effective Date, the Vendor has not removed any other tangible depreciable property and assets from the location of the Assets after the Effective Date;

(aa) **Quiet Enjoyment:** Subject at all times to: (i) the Vendor's other representations and warranties made under this Article; (ii) the Permitted Encumbrances; (iii) Title Defects waived (or deemed to be waived) by the Purchaser under Article 8.00; and (iv) the satisfaction of the obligations required to maintain the Leases in good standing by the applicable lessees, the Purchaser may, for the remainder of the term of the Leases, take possession of and use the Assets for its own use and benefit without any interruption by the Vendor or any other person claiming by, through or under the Vendor; and

(bb) **Additional Representations:** The Vendor makes those additional representations and warranties that are specified as such in the Head Agreement, which are deemed to be made under this Clause for all purposes hereunder.

6.03 No Additional Representations Or Warranties By Vendor (Former 2000 6.05)

A. *Qualifications To Vendor's Representations*-Each representation or warranty of the Vendor made under Clause 6.01 or 6.02 will be qualified on the basis set forth in this Subclause. Any matter, event or circumstance that would constitute or give rise to a breach thereof in the absence of this Subclause will be excepted from that representation or warranty, insofar as that matter, event or circumstance was expressly disclosed in the Agreement.

B. *Assets Acquired On "As Is, Where Is" Basis*-This Subclause is subject to Subclause 6.03A. Except as set forth in Clauses 6.01 and 6.02: (i) the Vendor makes no representations or warranties to the Purchaser; and (ii) the Purchaser acknowledges that it is acquiring the Assets on an "as is, where is" basis, without representation and warranty and without reliance on any information provided to the Purchaser or its representatives by the Vendor or its representatives, whether oral or in writing. In particular, except as expressly set forth in Clauses 6.01 and 6.02, the Vendor otherwise negates any representations or warranties, whether contained in any information, memorandum or otherwise, with respect to:

(a) any data or information supplied by the Vendor or its representatives in connection with the Assets, the Agreement or the Transaction, whether provided in any data room materials or otherwise, including any engineering, geological, geophysical or other interpretations or economic evaluations respecting the Assets;

(b) the quality, quantity or recoverability of Petroleum Substances relating to the Assets;

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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.

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(c) the value of the Assets or the future cash flow therefrom; and

(d) the quality, condition, serviceability, fitness or marketability of the Tangibles and Wells or their suitability for use for any purpose.

C. *Responsibility For Due Diligence*-This Subclause is subject always to: (i) the Vendor's representations and warranties under Clauses 6.01 and 6.02, as qualified in Subclause 6.03A; and (ii) Clause 6.05 relating to the survival of representations and warranties. The Purchaser confirms, as of the Closing Time, that:

(a) it will have made its own independent investigation, analysis and evaluation of the Vendor's interest in the Assets and the related Title and Operating Documents, including a review of the Vendor's title thereto, and will have relied on its own investigation, analysis and evaluation of the Vendor's title thereto;

(b) it has been provided with the right and opportunity to conduct its own due diligence and site inspections of the Assets and the related records held by the Vendor with respect to any Abandonment and Reclamation Obligations and other Environmental Liabilities, and will have relied on its own investigation, analysis, evaluation and inspection as to its assessment of the environmental condition of the Assets;

(c) it has not relied on any data, information or advice from the Vendor or its representatives with respect to any of the matters specifically enumerated in this Clause in connection with the acquisition of the Assets under the Agreement;

(d) in determining the Purchase Price, it took into account its assumption of the Abandonment and Reclamation Obligations and other Environmental Liabilities relating to the Assets on the basis set forth in the Agreement and the corresponding release of the Vendor's responsibility therefor; and

(e) it has relied (and will continue to rely) solely upon its own engineering and other evaluations, projections, assessments and inspections relating to the Assets and their condition, quantum and value.

D. *Discharge By Purchaser*-Except for the representations and warranties in Clauses 6.01 and 6.02, or in the event of fraud, the Purchaser forever releases and discharges the Vendor, its Affiliates and the respective directors, officers, contractors, agents and employees of the Vendor and each of its Affiliates from any Losses and Liabilities of the Purchaser and its assigns and successors, as a result of the use or reliance upon advice, information and materials pertaining to the Assets delivered or made available to the Purchaser by the Vendor, any of its Affiliates or the respective directors, officers, contractors, agents or employees of the Vendor or any of its Affiliates prior to or under the Agreement, including any evaluations, projections, reports and interpretive or non-factual materials prepared by or for the Vendor, or otherwise in its possession.

6.04 Purchaser's Representations And Warranties (Former 2000 6.03)

The Purchaser represents and warrants to the Vendor that:

(a) **Investment Canada Act:** The Purchaser is not a "non-Canadian" for the purposes of the *Investment Canada Act* (Canada) or, if the Purchaser is a "non-Canadian", the Purchaser will comply with the requirements of that Act to the extent, if any, that the Transaction is reviewable or subject to notification requirements or conditions thereunder;

(b) **No Lawsuits Or Claims:** There are no material unsatisfied claims, proceedings, actions, lawsuits or administrative proceedings in existence or threatened against the Purchaser that may materially and adversely affect the Purchaser's ability to complete the Transaction;

(c) **Acquiring As Principal:** The Purchaser is acquiring the Assets as principal and not on behalf of any third party;

Deleted: Except to the extent provided in Clause 6.02, the Transferor does not warrant title to the Assets or make representations or warranties respecting: (i) the quantity, quality or recoverability of Petroleum Substances; (ii) any estimates of the value of the Assets or the revenues applicable to future production from the Lands; (iii) any engineering, geological or other interpretations or evaluations respecting the Assets; (iv) the rates of production of Petroleum Substances; (v) the degree to which production of natural gas from the Lands corresponds to the annual contract volume under any gas sales contract identified in a Schedule; or (vi) the quality, condition or serviceability of the Assets or the suitability of their use for any purpose. Without restricting the generality of the foregoing, the Transferee acknowledges that it has made (and will, prior to Closing, continue to make) its own independent evaluation and inspection of the Assets and their condition as part of its due diligence process, and that, subject always to Clause 6.04, it has relied on that independent review for its assessment of the condition, quantum and value of the Assets.¶

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Paragraph 6.04(d): i) Subject to any application of Paragraph 10.03(c), 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.

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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.

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iii) As noted in the annotations on the definition of Licencee Rating, Clause 3.04, Clause 3.06, Paragraph 6.02(g) and Paragraph 10.03(c), 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 10.03(c). Simplifying 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 6.04(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.

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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.

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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.

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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.)

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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.

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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).

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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).

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(d) **Well And Tangibles Transfers:** Subject to any application of Paragraph 10.03(c) respecting the submission by the Purchaser of any security deposit required under the Regulations, the Purchaser has a Licencee Rating whereby it is eligible under the Regulations to accept the transfer of the applicable licence or approval for any Well or Tangibles for which it is intended to replace the Vendor as operator after Closing;

(e) **Financial Capacity:** Subject to any condition to Closing respecting financing under Paragraph 10.02(d), it has sufficient cash, available lines of credit or other sources of immediately available funds to enable it to make payment of all amounts to be paid by it hereunder at Closing and to perform any other financial commitments being assumed by it with respect to the Vendor under the Agreement; and

(f) **Additional Representations:** The Purchaser makes those additional representations and warranties, if any, that are specified as such in the Head Agreement, which are deemed to be made under this Clause for all purposes hereunder.

6.05 Survival Of Representations And Warranties (Former 6.04)

A. *Representations And Warranties To Survive Closing*-Each Party acknowledges that the other may rely on the representations and warranties made by that Party under Clauses 6.01, 6.02 and 6.04. Those representations and warranties were true on the Effective Date and at execution of the Agreement and will be true at the Closing Time, and will continue in full force and effect and survive the Closing Time for a period of one year, for the benefit of the Party for which they were made.

B. *Claims For Breach*-This Subclause is notwithstanding the preceding Subclause, but subject to the Vendor's responsibility under Subclause 4.02C for any adjustments required thereunder after expiry of the period described in Subclause 6.05A. In the absence of fraud, no claim or action may be commenced for a breach of any representation or warranty under this Article or Article 13.00, unless, within the period prescribed in the preceding Subclause, written notice specifying the breach of the particular representation or warranty in reasonable detail has been provided to the Party that made that representation or warranty. Each Party waives any rights it may have at law or otherwise to commence a claim or action for a breach of a representation or warranty after that period in the absence of such a notice.

C. *Reliance*-Nothing in this Clause, Article 13.00 relating to liability and indemnification or any other provision of the Agreement will preclude a Party that made a representation or warranty under this Article 6.00 from offering as a possible defence that, prior to Closing, the other Party was aware of the matter, event or circumstance that forms the basis of its claim for breach of a representation or warranty and that it chose to proceed with Closing, notwithstanding that matter, event or circumstance.

D. *Parties Confirm Intention To Limit Liability*-Subject to the exceptions provided herein with respect to any claims for fraud, the Parties confirm that the time periods in this Clause and Article 13.00 with respect to claims for the breach of any representation and warranty are intended by the Parties as a limitation of liability that represents a fair and equitable allocation of the risks and liabilities that each Party has agreed to assume in connection with the Transaction, and that this is not an agreement within the meaning of subsection 7(2) of the *Limitations Act* (Alberta).

7.00 THIRD PARTY RIGHTS AND CONSENTS

7.01 Rights Of First Refusal And Consents

A. *Service Of Required Notices*-If any portion of the Assets is subject to a Right of First Refusal, the Vendor will promptly serve all required notices after execution of the Agreement. Each such notice will include a request for a waiver of any Right of First Refusal.

B. *Right Of First Refusal Values*-The Purchaser will supply to the Vendor, in good faith and on a reasonable basis, the value or allocation proposed by the Purchaser for any of the Assets

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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 proposed 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.)

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Some Agreements are 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 PTP because of the Vendor's pre-existing responsibilities to the other working interest owners. That being said, there may be circumstances in which the Parties might ultimately modify their Agreement to use that approach if they are at an impasse on a ROFR value.

ii) 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.

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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.

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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.

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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.

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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 have great difficulty with enabling a Purchaser 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.

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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.)

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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

for which a Right of First Refusal notice is required under this Clause and the applicable Title and Operating Documents within three Business Days after the later of delivery to the Purchaser of: (i) the Agreement for execution by the Purchaser; or (ii) a list of each Right of First Refusal and the applicable Lands or Facilities to which it pertains and the applicable election period if that information was not included in a Schedule to the Agreement. The Parties will consult with respect to that value or allocation as appropriate in the circumstances. The Vendor will use the agreed upon value or allocation for the purposes of this Clause, provided that any dispute between the Parties with respect to that value or allocation will be resolved under Article 9.00.

C. *Challenge By Third Party*-The Vendor will promptly notify the Purchaser if a third party challenges the validity of a Right of First Refusal notice, including: (i) the value specified in a Right of First Refusal notice; (ii) the number of days within which a recipient may elect to exercise a Right of Refusal or the manner in which those days have been calculated; or (iii) the application of an exemption to the Right of First Refusal under the applicable Title and Operating Documents. In such event, the Parties will consult as appropriate in the circumstances about the manner in which they will address that challenge.

D. *Exercise Of Right Of First Refusal*-Insofar as any third party elects to exercise any Right of First Refusal, the Vendor will promptly notify the Purchaser of that exercise, in which case the Purchaser will proceed only with the acquisition of those interests in the Assets to which those exercised third party Rights of First Refusal do not directly pertain. The value and description of the Assets will be amended under Clause 1.02, and, subject to any application of Subclause 7.01E and the other provisions of the Agreement, the Parties will proceed with Closing for those unaffected Assets, with a resultant adjustment of accounts.

E. *Termination*-This optional Subclause will _____ / will not _____ (Specify) apply herein.

The Purchaser may, by notice to the Vendor prior to the Closing Time, terminate the Agreement if the value of the Assets deleted from the Assets through the exercise of Rights of First Refusal by third parties is 50% or more of the Base Purchase Price, calculated using the right of first refusal values contemplated in Subclause 7.01B.

F. *Consents*-If the disposition herein requires the consent or approval of a third party under the Title and Operating Documents, the Vendor will serve all required notices in accordance with normal oil and gas industry practice, provided that the Purchaser may, by notice not later than five Business Days after execution of the Agreement, request the Vendor to serve any such notice promptly if the applicable consent requirement is other than for a consent that may not be unreasonably withheld.

8.00 PURCHASER'S REVIEW

This optional Article 8.00 will ____ /will not ____ (Specify) apply herein. If it is not selected to apply, the Parties agree that:

(a) Clause 8.01 will apply, *mutatis mutandis*, to any due diligence review conducted by the Purchaser prior to execution of the Agreement with respect to the respective duties of the Parties for the conduct of any such due diligence review and any Losses and Liabilities accruing as a consequence of any such due diligence review; and

(b) Subclause 8.02D will apply, *mutatis mutandis*, to the Purchaser's acquisition of the Assets at Closing following any such due diligence review and any related identification of its concerns to the Vendor with respect to title to any of the Assets, with the deletion of the phrase "that were identified by the Purchaser in the notice issued under Subclause 8.02A" therefrom.

8.01 Vendor To Provide Access

Upon reasonable prior notice by the Purchaser to the Vendor, the Vendor will, subject to the Regulations, the Title and Operating Documents, any other existing contracts or other restrictions and the confidentiality obligations under Article 16.00, provide the Purchaser and its representatives:

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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).)

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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.

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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.

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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.

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ii) The PTP is silent about due diligence concerns that do not pertain to the Vendor's title (i.e., 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.

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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:

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(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.

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(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.

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(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.

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(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.

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(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.

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

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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 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.)

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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. 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.

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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.

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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.)

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(a) with reasonable access to the Vendor's records, files and documents constituting the Miscellaneous Interests at the Vendor's office during normal business hours, for the purpose of the Purchaser's review of the Assets and the Vendor's title thereto, including the Title and Operating Documents, provided that: (i) the Purchaser may not copy or photograph any such records, files and documents without the Vendor's consent; and (ii) the Vendor may exclude from the Title and Operating Documents commercial or business terms that do not affect the Assets and any documents then subject to legal privilege; and

(b) with a reasonable opportunity to inspect the field location of the Assets during normal business hours, while accompanied by a representative of the Vendor reasonably designated by it, at the Purchaser's sole cost, risk and expense, insofar as the Vendor can reasonably provide that access. However, the Purchaser may not, without the Vendor's consent, take any samples during that inspection, including water and soil samples.

The Purchaser will ensure that its representatives visiting the Vendor's offices or the location of any of the Assets under this Clause comply with any reasonable requirements of the Vendor or the operator of the inspected Assets, as applicable, including any site requirements respecting health, safety and environment. The liability and indemnification obligations in Clause 13.02 will apply, *mutatis mutandis*, to any Losses and Liabilities accruing due to the acts or omissions of the Purchaser and its representatives relating to the access provided under this Clause.

8.02 Title Review And Title Defects

A. *Notification Of Any Title Defects*-The Purchaser will conduct its review of the Vendor's title to the Assets with reasonable diligence. Not later than seven Business Days prior to the Scheduled Closing Date (or such other date as the Parties may agree in writing), the Purchaser will give the Vendor notice of the Purchaser's Title Defects. It will specify in that notice: (i) those Title Defects in reasonable detail and the Purchaser's relative priority for rectification; (ii) the Assets directly affected thereby ("the Affected Assets"); (iii) any material agreements or documents related to the Title Defects that appeared to be missing; and (iv) the Purchaser's reasonable requirements for the curing of those Title Defects. The Vendor will diligently make reasonable efforts to cure those Title Defects not later than three Business Days prior to the Scheduled Closing Date.

B. *Election Respecting Title Defects*-Alternate ____ (Specify 1 or 2) will apply in this Subclause.

Alternate 1 (Delay Closing, Waive Or Terminate Agreement)

Insofar as the Title Defects described in the notice in the preceding Subclause have not been cured to the Purchaser's reasonable satisfaction, it may elect, by notice to the Vendor at least two Business Days before the Scheduled Closing Date, to:

(a) *delay the Closing Time to such later date as is agreed by the Parties, to provide the Vendor with additional time to cure the remaining Title Defects, at which time this Subclause will again apply to any then uncured Title Defects;*

(b) *waive the uncured Title Defects and proceed with Closing; or*

(c) *terminate the Agreement, in which case Clause 18.05 will apply to that termination.*

Alternate 2 (Elections Dependent On Value Threshold)

Insofar as the Title Defects described in the notice in the preceding Subclause have not been cured to the Purchaser's reasonable satisfaction, it will, not later than two Business Days before the Scheduled Closing Date, give the Vendor notice of the Title Defects that the Purchaser is not prepared to waive. It will include in that notice the bona fide value it reasonably attributed to each affected interest, having regard to such factors as the likelihood that the applicable Title Defect will manifest itself and the Purchaser's reasonable requirements for its remedy. The Parties will proceed with Closing, without adjustment to the Base Purchase Price due to those uncured Title Defects, unless the total value reasonably attributed to them by the Purchaser in that notice exceeds 10% of the Base Purchase Price. If the total value so attributed to those uncured Title Defects exceeds that amount, it may

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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. The 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 chose 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, Purchaser's 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(n) 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

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elect, by notice to the Vendor not later than two Business Days before the Scheduled Closing Date, to:

(a) *delay the Closing Time to such later date as is agreed by the Parties, to provide the Vendor with additional time to cure the remaining Title Defects, at which time this Subclause will again apply to any then uncured Title Defects;*

(b) *waive the uncured Title Defects and proceed with Closing;*

(c) *proceed with Closing for only those Assets not directly affected by the applicable uncured Title Defects, in which case the value and description of the Assets will be amended under Clause 1.02 and accounts adjusted accordingly insofar as that value is above that 10% threshold, provided that the Vendor may, by notice to the Purchaser: (i) delay Closing by three Business Days; and (ii) at or prior to that delayed Closing Time, terminate the Agreement if the Purchaser has made this election and attributed a value of 25% or more of the Base Purchase Price to the applicable Affected Assets in its notice of Title Defects; or*

(d) *subject to the application of Subclause 8.02G, if the Vendor does not agree with the value attributed to the Affected Assets by the Purchaser in its notice of Title Defects, terminate the Agreement if the total attributed value of the Affected Assets for which the Title Defects remain uncured is 25% or more of the Base Purchase Price.*

C. *Deemed Election*-Failure of the Purchaser to make an election under this Clause on or before the Closing Time will be deemed to be an election under Paragraph 8.02B(b).

D. *Title Defects And Closing*-Upon Closing, the Purchaser will be deemed to have waived permanently all Title Defects pertaining to the acquired Assets that were identified by the Purchaser in the notice issued under Subclause 8.02A. However, this Subclause will not limit the Purchaser's rights with respect to other Title Defects respecting the acquired Assets that are subsequently discovered by the Purchaser, insofar only as those Title Defects are a result of the breach of the Vendor's obligations under Clause 5.03 with respect to material commitments during the Interim Period or, subject to the limitations in Clauses 6.03 and 13.01 on survival of certain of the Vendor's obligations, in breach of the Vendor's representations and warranties under Article 6.00.

E. *Exclusion Of Affected Assets And Closing*-This Subclause applies if: (i) Alternate 2 has been selected to apply in Subclause 8.02B; (ii) the Purchaser elects to proceed with Closing under Paragraph (c) thereof; and (iii) the Vendor does not terminate the Agreement thereunder. In such event, the Base Purchase Price for Closing will exclude the value attributed to the Affected Assets by the Purchaser under Subclause 8.02B or such other value as the Parties may agree. Insofar as the Parties have not agreed on the value of the Affected Assets, they will determine that value, as of the Effective Date, under the dispute resolution process in Article 9.00, provided that this value will not exceed the value so attributed to those Affected Assets by the Purchaser. The Parties will promptly adjust accounts accordingly after a determination of the value of the Affected Assets under Article 9.00.

F. *Title Defects Remedied After Closing*-This Subclause applies if: (i) Alternate 2 has been selected to apply in Subclause 8.02B; (ii) Closing proceeds under Paragraph (c) thereof; and (iii) within 30 days after the Closing Time for the Assets for which Closing had occurred, the Vendor cures or rectifies uncured Title Defects to the reasonable satisfaction of the Purchaser for any of the Affected Assets for which Closing did not occur. In such event, the Vendor may, by notice to the Purchaser within that period, require it to proceed to acquire those Affected Assets, subject to any obligation of the Vendor to comply at that time with any applicable Right of First Refusal under the Title and Operating Documents. The Agreement will apply, *mutatis mutandis*, to that acquisition, as of the Effective Date, and the Parties will complete a new agreement in the form of the Agreement with respect to any such acquisition. The Base Purchase Price for those Affected Assets will be the amount of the reduction in the Purchase Price applicable to the exclusion of those Affected Assets from Closing, subject to the adjustments provided in Article 4.00 and any interest accrual under Clause 2.06, if selected, commencing from the date that the Vendor serves its notice under

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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.).

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this Subclause. The Purchase Price for those Affected Assets will be payable by the Purchaser at the Closing Time for the disposition of those Affected Assets, but in no event later than 45 days after the Closing Time hereunder.

G. *Termination Election If Vendor Disputes Value*-This Subclause applies if: (i) Alternate 2 has been selected to apply in Subclause 8.02B; (ii) the Purchaser elects to terminate the Agreement under Paragraph (d) thereof; and (iii) the Vendor does not agree with the value allocated by the Purchaser to the Affected Assets for which the Title Defects remain uncured. In such event, the Vendor may, by notice to the Purchaser within two Business Days after the Purchaser's notice to terminate the Agreement, require the applicable values to be determined under the dispute resolution process in Article 9.00. If the Vendor serves that notice, the Parties will be deemed to have agreed to delay the Closing Time until two Business Days after the determination of value of the Affected Assets under Article 9.00, at which point Subclause 8.02B will again apply using the values so determined, subject to any obligation of the Vendor to comply at that time with any applicable Right of First Refusal under the Title and Operating Documents.

9.00 DISPUTE RESOLUTION

9.01 Consultation And Negotiation In Good Faith

The Parties will attempt to resolve any dispute between them arising hereunder through consultation and negotiation in good faith.

9.02 Arbitration Proceedings

A Party that wishes to pursue further proceedings for a dispute that was not resolved through negotiation must refer it to binding arbitration for final resolution if it pertains to one or more of:

(a) the degree to which it is reasonable for the Vendor to exclude rights from the Surface Rights for its other operations under the definition of Surface Rights in Clause 1.01;

(b) any adjustment under Article 4.00;

(c) the value or allocation for a Right of First Refusal notice under Subclause 7.01B; or

(d) if required under Clause 8.02, the value of Assets for which any Title Defects remain uncured thereunder.

Each Party to the dispute will have a fair opportunity to participate in the preparation of the description of the mandate to be provided to the arbitrator and to present its perspective on the issue(s) in dispute during the arbitration process. Unless otherwise agreed, any such arbitration (and any other arbitration the Parties agree to conduct hereunder) will be conducted in Calgary, Alberta in a timely manner by a single arbitrator under the "ADRIC Arbitration Rules" of the ADR Institute of Canada Inc. (or any replacement for them), in conjunction with the *Arbitration Act* (Alberta). Except as otherwise provided in this Clause, a Party may commence a court action for any other dispute.

9.03 Limitation Periods And Interim Relief

A. *Suspension Of Limitation Periods*-For the purpose of determining any applicable limitation periods (and provided the Regulations permit an extension thereof), all limitation periods pertaining to a particular dispute will be suspended for an arbitration, from the time: (i) a Party issues a notice to arbitrate under Clause 9.02 for a matter specified in any of the enumerated Paragraphs thereof; or (ii) the Parties otherwise agree in writing to arbitrate that dispute, as applicable, until 45 days after termination of the arbitration under the Regulations and the associated processes governing that arbitration, or such later date as may be agreed by the applicable Parties. Subject to the preceding sentence, each Party waives all rights it may have to assert the expiry of any such limitation period during that time as a defence or bar in any civil proceeding for that dispute.

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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 significant investments in Canada by non-Canadians in order to ensure such benefit to Canada". Pursuant to subsections 14.1(1) and (2) of the Act, starting as of April 24, 2015, the reviewable threshold is an enterprise value of $600MM 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) member. The same threshold applies for non-WTO members that are investing in a Canadian business that, immediately prior to investment, was controlled by a WTO investor. The enterprise value of a business is calculated using sections 3.4, 3.5 and 3.6 of the Investment Canada Regulations. If the investment is being made by a WTO member that is a state-owned enterprise, the reviewable threshold is reduced to an enterprise value of $375MM. That value is scheduled to increase every two years until 2021.

According to the Minister's guideline for "Acquisitions of Oil and Gas Interests", acquiring a working interest in a property where 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 may be subject to either notification or review, depending on the size of the interest being acquired and the asset size of the business. If the entire potential interest owned exceeds 50%, the Transaction will be subject to the Act. Acquisition of a minority interest may be subject to the Act if there is an acquisition of a controlling interest in a corporation, which holds the minority working interests. 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 conducted in Canada. One relevant component of the legislation is the regulation of mergers. 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 92 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.

In addition, the Commissioner of Competition must be notified of all mergers that exceed both party size and transaction size thresholds prior to completion. These thresholds are currently $400MM and $87MM respectively, but should be reviewed at the time of any applicable Transaction. Failure to notify is 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 section 6 and 7 of the Regulations, the effective date for these calculations is 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 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(f).

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(a).)

Paragraph 10.01(d): 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 include this requirement in lower value Transactions and Transactions including only undeveloped lands.

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, subject to a qualification if there are insurance proceeds accruing for the benefit of the Purchaser under Subclause 5.02B. 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

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Investment Canada Approval - *The Investment Canada Act* was enacted in 1985 to provide for the review of significant investments in Canada by non-Canadians in order to ensure such benefit to Canada. It encourages investment in Canada by providing that the acquisition of control of a Canadian business (whether or not controlled by a Canadian) by a non-Canadian, non-member of the World Trade Organization (WTO) will only be reviewable if the asset value of the entire business is at least $5MM in the case of direct acquisition and $50MM in the case of an indirect acquisition. If the non-Canadian is a member of WTO, as is the case with U.S. companies, the threshold is $150MM in constant 1992$ for any direct acquisition ($192MM in 2000).¶
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Refer to the website for the *Investment Canada Act* at *investcan@ic.gc.ca* for information to assist in determining if a transaction is subject to notification or review. The site also contains a specific guideline entitled Acquisitions of Oil and Gas Interests that addresses such matters as the notion of a business (i.e., each unit or J.V. agreement, but not ORRs), the nature of control and the use of book value. The website also includes electronic application forms.¶
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Approval under the *Competition Act* - *The Competition Act* (Canada) is a complex federal law governing business conduct in Canada, one component of which is the regulation of mergers that may restrict competition. Because of the complexity of the area, a detailed review is beyond the scope of these notes. All merger transactions, including those that involve the sale of assets, are subject to examination under this Act. However, an asset sale may also require a premerger notification filing under Section 114 of the Act, if it satisfies a basic threshold as to the size of the Parties and the size of the proposed transaction. Specifically, the notification provisions require that: (a) the Parties and their affiliates have assets in Canada that exceed $400MM in aggregate book value or have gross revenues from sales in, from or into Canada that exceed $400MM for a prescribed annual period (Section 109); and (b) either the aggregate book value of the sold assets or the gross revenues from sales in, from or into Canada applicable to those ass ... [157]

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B. *Interim Relief*-Notwithstanding anything to the contrary in this Article, a Party may, at any time it believes it necessary to protect its interest while attempting to resolve a dispute under this Article, seek interim or provisional relief, in the form of a temporary restraining order, preliminary injunction or other interim equitable relief respecting that dispute.

10.00 CONDITIONS TO CLOSING

10.01 Conditions For Benefit Of Each Party

The obligation of a Party to complete the Transaction is subject to the following conditions precedent that have been included for the mutual benefit of the Parties:

(a) **Required Approvals:** Any Required Approvals will have been obtained;

(b) **Rights Of First Refusal:** All Rights of First Refusal will have been exercised, been waived or lapsed by the effluxion of time at or prior to the Closing Time;

(c) **Compliance**: The other Party will have complied in all material respects with its obligations under the Agreement to be performed or complied with at or prior to the Closing Time;

(d) **Representations And Warranties Correct:** The representations and warranties made by the other Party under Article 6.00 were true and correct in all material respects as of the Effective Date, the execution of the Agreement and the Closing Time, except for those changes thereto that necessarily arise as the result of the operation of the provisions of the Agreement, and, if required by the Agreement, the other Party will have delivered a Representations and Warranties Certificate to that effect at Closing;

(e) **No Action Or Proceeding:** No third party claim that would materially and adversely affect the Assets is or will be pending before any court or Regulatory Agency seeking to restrain or prohibit the Transaction; and

(f) **Additional Conditions:** Any additional conditions precedent for the mutual benefit of the Parties that are specified as such in the Head Agreement, which are deemed to be made under this Clause for all purposes hereunder.

10.02 Conditions For Benefit Of Purchaser

The obligation of the Purchaser to complete the acquisition hereunder is subject to the following conditions precedent that have been included for its sole benefit:

(a) **No Substantial Damage:** Except as consented to in writing by the Purchaser or as covered by insurance proceeds for the benefit of the Purchaser under Subclause 5.02B, no substantial unrepaired damage or physical alteration of the Tangibles will have occurred between the earlier of the Effective Date or the date of the Agreement, as applicable, and the Closing Time which would materially and adversely affect the value of the Assets;

(b) **Delivery Of Conveyance Documents:** The Vendor will have delivered to the Purchaser a General Conveyance and those other documents and materials described in Subclause 3.03A that are to be provided to the Purchaser at Closing;

(c) **Discharge Of Security Interests:** If requested by the Purchaser, by notice to the Vendor a reasonable time prior to the Closing Time, the Vendor will have delivered to the Purchaser, at no cost to the Purchaser, registrable discharges of all Security Interests or a "no interest" letter that is satisfactory to the Purchaser, acting reasonably, from the financial institution(s) or other third parties holding those Security Interests; and

(d) **Additional Conditions:** Any additional conditions precedent for the benefit of the Purchaser that are specified as such in the Head Agreement, which are deemed to be made under this Clause for all purposes hereunder.

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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 Purchaser 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 Purchaser does not involve its lawyer).

Paragraph 10.03(d): The Vendor may also choose to add additional conditions precedent in the Head Agreement under Paragraph 10.03(d). 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(f).

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(f).

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(f), 10.02(d) or 10.03(d). 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.

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10.03 Conditions For Benefit Of Vendor

The obligation of the Vendor to complete the disposition hereunder is subject to the following conditions precedent that have been included for its sole benefit:

(a) **Required Payment:** The Purchaser will have tendered to the Vendor in the prescribed manner all amounts required to be paid by the Purchaser hereunder at or prior to the Closing Time, as applicable;

(b) **Delivery Of Conveyance Documents:** The Purchaser will have delivered to the Vendor copies of a General Conveyance and, insofar as provided to the Purchaser for execution for Closing under Subclause 3.03A, the Specific Conveyances executed by the Purchaser;

(c) **Required Regulatory Deposits**: If the Purchaser reasonably anticipates, based on the Regulations or its Licencee Rating as of the Closing Time, that a deposit will be required under the Regulations to effect the approval of any licence transfers for any of the Wells or Tangibles, it will have provided the Vendor with reasonable evidence that the Purchaser has deposited the amount required, or estimated to be required, with the Purchaser's lawyer or such other nominee of the Purchaser as is acceptable to the Vendor, with an irrevocable direction to pay it to the appropriate Regulatory Authority promptly after Closing; and

(d) **Additional Conditions:** Any additional conditions precedent for the benefit of the Vendor that are specified as such in the Head Agreement, which are deemed to be made under this Clause for all purposes hereunder.

10.04 Waiver Of Conditions Precedent

The Party for the benefit of which any condition precedent has been included may waive it, in whole or in part, by notice to the other Party. However, neither Party may waive the existence or operation of any Right of First Refusal or any condition that has been included respecting Required Approvals.

10.05 Failure To Satisfy Conditions

A. *Right To Terminate Agreement*-If any condition precedent in Clause 10.01, 10.02 or 10.03 has not been satisfied at or before the Closing Time and it has not been waived under Clause 10.04 by the Party for the benefit of which it was included, that Party may terminate the Agreement by notice to the other Party. In such event, Closing will not proceed, and the Parties will be released from all further obligations hereunder, except for: (i) the handling of any Deposit under Article 12.00 because Closing did not occur; (ii) the confidentiality obligations under Article 16.00; and (iii) any liability for breach of Clause 10.06.

B. *No Right To Terminate Agreement After Closing*-A Party may not terminate the Agreement after Closing for the other Party's failure to satisfy a condition precedent. Any remedies after Closing for the failure to satisfy such a condition will be limited to damages, if applicable.

C. *Deemed Satisfaction Of Certain Conditions*-Notwithstanding the preceding Subclauses of this Clause, but subject to Clause 10.04, each additional condition precedent included in the Head Agreement under Paragraph 10.01(e), 10.02(d) or 10.03(d), if any, that is to be satisfied on or before a specified time prior to the Closing Time will be deemed to have been met or waived, unless the Party for the benefit of which it exists notifies the other Party prior to that time that the condition has not been met.

10.06 Parties To Exercise Diligence With Respect To Conditions

Each Party will proceed in good faith and use reasonable efforts with respect to all matters within its control to satisfy the conditions referred to in Clauses 10.01, 10.02 and 10.03. A Party that fails to comply with its obligations under this Clause with respect to a particular condition may not rely on the failure to satisfy that condition as a basis for the termination of the Agreement under Clause 10.05.

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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.)

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 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.

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11.00 OPERATORSHIP

11.01 Operatorship And Third Parties

Nothing in the Agreement will be interpreted as an assignment of the Vendor's rights as operator of any of the Assets under the Title and Operating Documents or as any assurance by the Vendor that the Purchaser will be able to serve as operator for any of the Assets thereunder at or after Closing. The Vendor will take such steps with third parties under the Title and Operating Documents as are reasonably appropriate to enable the Purchaser to be substituted for the Vendor for those Assets then operated by the Vendor.

11.02 Signs And Notifications

After Closing, the Vendor and Purchaser will coordinate the removal of any signs that indicate the Vendor's ownership or operation of the Assets. It will be the Purchaser's responsibility to erect or install any signs that may be required by the Regulations to indicate that the Purchaser is the owner or operator of the Assets. The Purchaser will complete any such replacement of signs within 60 days after the Closing Time, and the Vendor may proceed with the replacement of those signs at the Purchaser's expense, insofar as they are not replaced by that time. It will also be the Purchaser's responsibility to notify suppliers, contractors, governmental agencies, gas transporters and other affected third parties of its interest in the Assets as soon as practicable (but in no event longer than 60 days) after the Closing Time.

11.03 Identification And Removal Of Vendor's Excess Inventory

Prior to Closing, the Vendor will identify to the Purchaser any excess inventory of materials described in Paragraph (o) of the definition of Excluded Assets. Unless otherwise agreed in writing by the Purchaser, the Vendor will remove that excess inventory within 45 days after Closing.

12.00 FAILURE TO CLOSE AND DEFAULT

12.01 Remedies Of Injured Party

If a Party (the "Defaulting Party") fails to comply with an obligation under the Agreement and Closing does not occur as a result, the other Party (the "Injured Party") may, by notice to the Defaulting Party, elect:

(a) to continue to treat the Agreement as binding and enforceable;

(b) to treat the Agreement as terminated because of the Defaulting Party's failure to fulfil its obligations and, if the Injured Party so decides and subject to Article 9.00, pursue a claim for damages, provided that any Deposit and interest accrued thereon under Clause 2.03 will be:

(i) returned to the Purchaser if the Purchaser is the Injured Party; or

(ii) retained in trust by the Vendor's solicitors until the resolution of the dispute if the Vendor is the Injured Party or there is a dispute as to which Party is the Injured Party, in which case those amounts will be applied towards satisfaction of the damages or promptly returned to the Purchaser, as applicable, in due course; or

(c) if there is a Deposit, to treat the Agreement as terminated by reason of the non-fulfilment of the obligations of the Defaulting Party and to limit the Injured Party's remedy for that default to the handling of the Deposit on the basis set forth in this Paragraph (c). If the Defaulting Party is the Purchaser, the Deposit and the interest accrued thereon will be forfeited to the Vendor as a genuine pre-estimate of liquidated damages and not as a penalty, having regard to the Base Purchase Price, the amount of time between the date of the Agreement and the Scheduled Closing Date (or any extension thereto agreed upon in writing), the risk that the Vendor may not be able to enter into another transaction respecting the Assets for similar consideration in a timely manner and the time and expense of the Vendor's efforts to complete the Transaction. If the Defaulting Party is the Vendor, the Deposit and the interest accrued thereon under Clause 2.03 will be refunded to the Purchaser forthwith. If the Injured

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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 affect 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 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.

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Party elects to proceed under this Paragraph, it will be deemed to have waived all other remedies that may otherwise have been available to it at law or equity for that default, subject to any application of Subclause 2.05D to any required adjustment for GST/HST.

However, the Injured Party will be deemed to treat the Agreement as binding and enforceable until it elects, by notice to the Defaulting Party, to apply Paragraph (b) or, if applicable, (c) of this Clause.

12.02 Interest Accrues On Amounts Owing

Subject to Subclause 8.02E, any amount owing to a Party by the other Party hereunder after Closing and remaining unpaid will bear interest, compounded and computed monthly at the rate of two percent per annum above the Prime Rate, from the day that amount was due to be paid until the day it is paid, regardless of whether prior notice of the accrual of interest hereunder has been given.

13.00 LIABILITY AND INDEMNIFICATION

13.01 Responsibility Of Vendor

A. *Vendor's Responsibility*-This Clause 13.01 is subject to: (i) the Vendor's responsibility for its Gross Negligence or Wilful Misconduct under Clause 5.08 with respect to the manner in which it has maintained the Assets on behalf of the Purchaser; (ii) the Vendor's responsibility for fraud with respect to the representations and warranties made by it and any other information provided by it to the Purchaser hereunder, as contemplated in Clause 6.05; (iii) the limitations on Losses and Liabilities for which the Vendor may be responsible under Clause 13.03; and (iv) the potential responsibility of the Vendor for certain Environmental Liabilities under Subclause 13.04B. Provided Closing has occurred, the Vendor will:

(a) be liable to the Purchaser for its Losses and Liabilities; and, in addition

(b) indemnify, hold harmless and defend the Purchaser, its Affiliates and the directors, officers, and employees of the Purchaser and its Affiliates from and against all Losses and Liabilities;

as a direct result of the Vendor's breach, on or prior to the Closing Time, of any of the representations and warranties of the Vendor under the Agreement, except any Losses and Liabilities insofar as they are caused by a breach of the Purchaser's representations or warranties under Article 6.00 or by the Gross Negligence or Wilful Misconduct of the Purchaser, any of its Affiliates, the respective directors, officers, agents, employees of the Purchaser or any of its Affiliates or any assign of the Purchaser.

B. *No Extension Of Remedies*-The responsibility prescribed by the preceding Subclause is not a title warranty, and does not create: (i) an extension of any representation or warranty made by the Vendor under Clauses 6.01 and 6.02; (ii) an additional remedy for the Vendor's breach thereof; or (iii) any extension of the Purchaser's rights under Clause 8.02 with respect to Title Defects.

C. *Period To Initiate Claim*-Subject only to Subclause 4.02C and in the absence of fraud, no claim or action may be commenced by the Purchaser under this Clause, unless, within one year after the Closing Time, the Purchaser has provided written notice describing the claim in reasonable detail to the Vendor. The Purchaser hereby waives any rights it may have at law or otherwise to commence such a claim or action after that period in the absence of such a notice.

13.02 Responsibility Of Purchaser

This Clause is subject to: (i) the Vendor's responsibility for its Gross Negligence or Wilful Misconduct under Clause 5.08 with respect to the manner in which it has maintained the Assets on behalf of the Purchaser; and (ii) the Vendor's responsibility for fraud with respect to the representations and warranties made by it and any other information provided by it to the Purchaser hereunder, as contemplated in Clause 6.05. Provided Closing has occurred, the Purchaser will:

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<#>Subject to Clauses 6.04, 13.03 and 13.04 and provided Closing has occurred, the Transferor will:¶
<#>be liable to the Transferee for its Losses and Liabilities; and, in addition:¶
<#>indemnify and hold harmless Transferee and each of its directors, officers, agents and employees from and against all Losses and Liabilities:¶
as a direct result of any matter attributable to the Assets and occurring or accruing prior to the Effective Date, except any Losses and Liabilities insofar as they are caused by the gross negligence or wilful misconduct of the Transferee, or any of its directors, officers, agents, employees or assigns. ...o Extension Of Remedi ... [39]

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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 $1.0), 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 Subcause 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 a 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 law as they know it, but the law as it 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 does 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

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(a) be liable to the Vendor for its Losses and Liabilities; and, in addition

(b) indemnify, hold harmless and defend the Vendor, its Affiliates and the directors, officers and employees of the Vendor and its Affiliates from and against all Losses and Liabilities;

as a direct result of any matter attributable to the Assets and occurring or accruing on or subsequent to the Effective Date, except any Losses and Liabilities insofar as they are caused by a breach of the Vendor's representations or warranties under Article 6.00 or by the Gross Negligence or Wilful Misconduct of the Vendor, its Affiliates or the directors, officers or employees of the Vendor or any of its Affiliates. The responsibility prescribed by this Clause, however, does not provide an extension of any representation or warranty made by the Purchaser under Clauses 6.01 and 6.04, or an additional remedy for the Purchaser's breach thereof.

13.03 Limit On Responsibility For Losses And Liabilities

A. *Limitation On Vendor's Responsibility*-The Vendor's total liabilities and indemnities to the Purchaser under the Agreement, including any claims relating to any breaches of the representations and warranties made by the Vendor under Article 6.00, will not exceed the Purchase Price, as adjusted under Clause 4.02, except insofar as due to fraud.

B. *Minimum Claim Amount*-No claim will be made against a Party by the other Party under the Agreement unless the total Losses and Liabilities alleged by the Party making the claim exceed $25,000. If the Parties agree, or a court determines, that those Losses and Liabilities exceed that amount, the Party responsible for those Losses and Liabilities will be responsible for them for that claim only insofar as they exceed that amount.

13.04 Assets Acquired On "As Is" Basis

A. *Acknowledgements By Purchaser*-Notwithstanding the previous provisions of this Article, the Purchaser acknowledges that it is acquiring the Assets on an "as is" basis, as of the Effective Date. The Purchaser acknowledges that: (i) it is familiar with the condition of the Assets, including the past and present use of the Petroleum and Natural Gas Rights and the Tangibles; (ii) the Vendor has provided the Purchaser with a reasonable opportunity to inspect the Assets under Clause 8.01 if Article 8.00 was selected to apply or prior to execution of the Agreement if Article 8.00 was not selected to apply; and (iii) the Purchaser is not relying upon any representation or warranty of the Vendor as to the condition, environmental or otherwise, of the Assets, except as is specifically made under Clause 6.02.

B. *Purchaser's Assumption Of Environmental Liabilities*-Provided Closing has occurred and subject to any responsibility specifically retained by the Vendor under Subclause 13.04D or otherwise under the Agreement, the Purchaser will:

(a) be solely liable and responsible to the Vendor for its Losses and Liabilities; and, in addition

(b) indemnify, hold harmless and defend the Vendor, its Affiliates and the directors, officers and employees of the Vendor and its Affiliates from and against all Losses and Liabilities;

as a direct result of any matter attributable to any Abandonment and Reclamation Obligations and other Environmental Liabilities pertaining to the acquired Assets, regardless of the date from which they may have accrued and without regard to their cause or causes. In addition, the Vendor will also retain those other rights and remedies available to it under the Regulations, under the common law or otherwise with respect to any claim it may have against the Purchaser with respect to those Losses and Liabilities.

C. *Purchaser's Release Of Vendor*-Except as otherwise provided specifically in the Agreement, the Purchaser hereby releases the Vendor from any claims it may have against the Vendor with respect to all Abandonment and Reclamation Obligations and other Environmental Liabilities with respect to the acquired Assets under the Regulations, at common law or

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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 that 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).

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.

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otherwise, including the right to name the Vendor as a third party under any action commenced against the Purchaser.

D. *Vendor Responsibility For Representations And Fraud*-Nothing in this Clause 13.04 will operate to limit any representation or warranty made by the Vendor under Clause 6.02 with respect to the environmental condition of the Assets or to affect the Purchaser's right to make a claim against the Vendor for the breach thereof hereunder or for fraud, subject to any time restrictions prescribed by Clause 6.05 or 13.01.

13.05 Notice Of Claims

A. *Notification Of Claim*-If a claim is asserted by a third party after Closing in circumstances that may give rise to an indemnity under this Article, the Party against which that claim is asserted must give notice thereof to the other Party as soon as is reasonably possible, including with that notice reasonable details about that claim. The Parties will consult about that claim and in determining if that claim and any legal proceedings relating thereto should be resisted, compromised or settled.

B. *Sharing Of Information*-A Party must make available to the other Party all information in its possession or to which it has access that may be relevant to a claim described in Subclause 13.05A, excluding any communications or correspondence that are subject to legal privilege. The Purchaser must provide the Vendor with access to the Assets to which that claim relates insofar as is reasonably necessary in connection with that claim. No such claim for indemnity will apply if the claim is settled or compromised without the written consent of the indemnifying Party, which consent may not be unreasonably withheld or delayed.

13.06 Substitution And Subrogation

Insofar as is possible, each Party will have full rights of substitution and subrogation in and to all representations and warranties by others previously given or made respecting the Assets.

14.00 ASSIGNMENT

14.01 Assignments Before Closing

Prior to Closing, neither Party may assign any interest in or under the Agreement or to the Assets without the prior written consent of the other Party (which consent may be withheld in its sole discretion), except insofar as may be required by the Vendor: (i) to comply with its obligations respecting any Right of First Refusal; (ii) because of any earning or payout recovery under the Title and Operating Documents and included in the Permitted Encumbrances; (iii) as a result of any changes in the Vendor's interest in the Assets due to the operation of Clause 5.03 with respect to the maintenance of the Assets during the Interim Period; or (iv) to address deficiencies in the Vendor's title to the Assets, such as recognition under the Title and Operating Documents of any interest held by the Vendor on behalf of a third party.

14.02 Assignments By Purchaser After Closing

No assignment, transfer or other disposition of any of the Assets by the Purchaser after Closing will relieve it from its obligations to the Vendor under the Agreement.

15.00 NOTICES

15.01 Service Of Notice

This Clause is subject to Clause 15.02 with respect to a change in a Party's address for service. Whether or not stipulated herein, each notice and notification required or permitted hereunder must be in writing and served on a Party at its current address for service under Clause 15.02 by:

(a) delivering the notice to a Party personally or by private courier. A notice so served will be deemed to be received by that Party when actually delivered, if that delivery is during normal business hours on any Business Day. If a notice is not delivered on a Business Day or is

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Deleted: The Transferor will have the option to claim payment or performance of those obligations from the Transferee or its assignee, and to bring proceedings for any default against either or all of them. However, nothing in this Agreement will entitle the Transferor to receive duplicate payment or performance of the same obligation.
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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(i) 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 summer 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.

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

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delivered after those business hours, it will be deemed to have been received at the beginning of the first Business Day after the time of the delivery; or

(b) by facsimile or other electronic medium, if included in its address for service. A notice served by facsimile will be deemed to be received when actually received by that Party, if received during normal business hours on any Business Day, or at the beginning of the next Business Day if receipt is after those normal business hours. A notice served by other electronic medium is presumed to be received: (i) when the notice or notification enters the recipient Party's information system and becomes capable of being retrieved and processed by that Party if those events occur during normal business hours on any Business Day; or (ii) at the beginning of the next Business Day if those events are after those business hours.

15.02 Addresses For Service

The Parties' initial addresses for service of notices hereunder are:

A Party may change its address for service by notifying each other Party, and each Party will notify each other Party of any such changed address for service in a timely manner. Notwithstanding the requirements of Clause 15.01, a Party may change its address for service by mailing that notice to each other Party's address for service. Any such changed address for service will thereafter be effective for all purposes of the Agreement. Unless otherwise agreed in writing, no Party may select as an address for service under this Clause an address that does not permit delivery of a notice under Paragraph 15.01(a) to a civic address of that Party.

16.00 CONFIDENTIALITY AND USE OF INFORMATION

16.01 Purchaser's Obligation To Maintain Information Confidential

A. *Obligations Before Closing*-Until Closing, the Purchaser will use information obtained by it hereunder only for the purpose of the Transaction. Subject to Subclause 16.01C for information in the public domain, it will take such measures respecting internal security and access to information as are appropriate to keep that information confidential from third parties, except insofar as the Vendor has agreed to its release or the Purchaser discloses it:

(a) as required by the Regulations applicable to it, provided that: (i) it will request any confidentiality protection permitted thereunder; (ii) it will use reasonable efforts not to disclose the identity of the Vendor; and (iii) any such disclosure beyond that required by those Regulations is subject to the requirements of Article 17.00 for public announcements;

(b) to its Affiliates and the employees, contractors, officers and directors of the Purchaser and its Affiliates insofar only as is reasonably appropriate for the completion of the Transaction, provided that: (i) the Purchaser is responsible for ensuring that each such Affiliate, employee, contractor, officer and director maintains the disclosed information confidential under this Article; and (ii) it will be liable to, and, in addition, will indemnify, hold harmless and defend the Vendor from and against any Losses and Liabilities it suffers because of the failure of any such Affiliate, employee, contractor, officer or director to maintain that information confidential;

(c) insofar only as is reasonably appropriate for the completion of the Transaction, to its lenders, legal counsel, auditors, underwriters, financial and other professional advisors and credit rating agencies, provided that: (i) the Purchaser is responsible for ensuring that each such applicable third party takes such measures with respect to internal security and access to information as are appropriate to ensure that no

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ix) 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.

ii) 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 would not be uncommon 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.

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such information will be disclosed by it to any other third party or used by it for other than the contemplated purpose; and (ii) the Purchaser will be liable to, and, in addition, will indemnify, hold harmless and defend the Vendor from and against any Losses and Liabilities it suffers because of the failure of any of those lenders, legal counsel, auditors, underwriters, financial and other professional advisors and credit rating agencies to maintain that information confidential; or

(d) insofar as is required by any legal or administrative proceedings or because of any order of a court or any Regulatory Authority binding on it, provided that it will promptly notify the Vendor of any such anticipated disclosure and that the Purchaser will request any confidentiality protection permitted thereunder.

B. *Confidentiality Obligations After Closing*-Upon Closing, the Purchaser's right to use or disclose the information obtained by it hereunder from the Vendor with respect to the Assets will be subject only to: (i) any applicable Title and Operating Documents; and (ii) except insofar only as required or permitted for a public announcement under Article 17.00, a continuing obligation after Closing to maintain confidential information about the commercial terms of this Agreement. However, the Purchaser will continue to treat as confidential under this Clause 16.01 any additional information obtained by it from the Vendor hereunder that does not relate to the Assets, including any information respecting interests for which Closing did not occur because those interests were excluded from the Assets under Clause 1.02. Subject to Subclause 16.01C, the Purchaser will not use any such information without the Vendor's prior written consent.

C. *Obligation Does Not Apply To Information In Public Domain*-Notwithstanding the preceding Subclauses of this Clause, the confidentiality obligation in this Clause will not apply to information insofar as it is in the public domain, provided that specific items of information will not be considered to be in the public domain only because more general information is in the public domain. For this purpose, information is in the public domain insofar as it:

(a) is or becomes publicly available through no act or omission of the Purchaser or its Affiliates, directors, officers, employees, contractors or advisors in breach of this Article;

(b) is already in possession of the Purchaser, or any of its Affiliates, under the Title and Operating Documents or without prior restriction on disclosure;

(c) is subsequently obtained lawfully by Purchaser from a third party which, after reasonable inquiry, the Purchaser does not reasonably believe is obligated to the Vendor to maintain that information confidential; or

(d) can be demonstrated by the Purchaser as having been independently developed by the Purchaser or any of its Affiliates without reference to the information required to be kept confidential hereunder.

16.02 Vendor's Confidentiality Obligation To Purchaser

The Vendor may disclose information pertaining to the Transaction, the Agreement and the Purchaser's identity, insofar only as is required to enable it to fulfil its obligations under the Agreement, including those pertaining to Rights of First Refusal and other third party rights under Article 7.00. Except as provided in Article 17.00 with respect to certain public announcments, the obligations in Subclause 16.01A will otherwise apply, *mutatis mutandis*, to the Vendor before Closing and in the two-year period following Closing with respect to the commercial terms of this Transaction.

17.00 PUBLIC ANNOUNCEMENTS

17.01 Parties To Discuss Public Announcements

A. *Party To Provide Draft*-Except insofar as is provided in this Clause, Article 16.00 respecting confidentiality and the use of information or elsewhere in the Agreement, a Party proposing to make a public announcement or release under this Clause will provide the other Party, by

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<#>is or becomes publicly available through no act or omission of the Transferee or its consultants or advisors;¶
<#>is subsequently obtained lawfully from a third party, which, after reasonable inquiry, the Transferee does not reasonably believe is obligated to the Transferor to maintain that information as confidential; ¶
<#>is already in the Transferee's possession at the time of disclosure to it hereunder, without restriction on disclosure; or¶
<#>is required to be disclosed under the Regulations or by the direction of any court, tribunal or other regulatory body having jurisdiction.¶
However, specific items of information will not be considered to be in the public domain merely because more general information respecting the Assets is in the public domain.

Deleted: Consultants And Advisors Bound

Deleted: If the Transferee employs consultants, advisors or agents to assist in its review of the Assets, it will ensure that they comply with the restrictions on the use and disclosure of information set forth in Clause 16.01.¶
Confidentiality Agreement

Deleted: Notwithstanding Clause 16.01, the obligations of the Transferee under this Article are in addition to, and not in substitution for, its obligations under any confidentiality agreement made between the Transferor and the Transferee for its possible acquisition of the Assets, except as otherwise provided in that agreement.¶

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.

Deleted: i) Stock exchange requirements generally require publicly traded companies to make timely, full, true and plain disclosure respecting 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.¶
¶
For this purpose, the TSE rules provide that Amaterial 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 TSE may also require a company to make a public announcement if trading volumes are anomalous or rumours or speculation exist. ¶ TSE requirements provide that disclosure is generally required upon information becoming known to management or, if known, upon the information becoming material. The general rule is for disclosures to be made at the proposal stage. However, the TSE may allow the disclosure to be deferred if early disclosure could compromise the company=s interests and the potential harm caused by the disclosure to the company and its investors outweighs the consequences of delay (i.e., 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 TSE 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, Aneither 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 would be a Amaterial change@ is a subjective one, as a transaction that would be Amaterial@ for one company would not necessarily be Amaterial@ to another. As noted in the TSE Policy Statement on Timely Disclosure and Related Guidelines, AThe 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 Asignificant@ or Amajor@ in the context of a smaller company=s business and aff... [203]

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notice, with a draft of it for its comment not later than two Business Days before the proposed disclosure to the public. The proposed disclosure is subject to the other Party's prior approval, which approval may not be unreasonably withheld. A Party that fails to object to that disclosure, by notice to the other Party within that period, will be deemed to approve it. A Party that issues such a notice will specify the nature of its objection in reasonable detail and any suggested modifications to the proposed public announcement or release.

B. *Regulatory And Securities Requirements*-Except as otherwise provided in this Clause, Article 16.00 and elsewhere in the Agreement, any Party may make a public announcement or release under this Article about the Transaction, including disclosure in an annual report or other periodic report or presentation to shareholders or the public. Notwithstanding Subclause 17.01A (but subject to the restrictions herein about use of another Party's name or trademark, unless otherwise required under the Regulations), a Party is not prohibited from making any such public announcement or release before expiry of the time prescribed by Subclause 17.01A, insofar only as required by the Regulations, securities laws or stock exchange requirements applicable to it.

18.00 MISCELLANEOUS PROVISIONS

18.01 No Merger

The covenants, representations, warranties, liabilities and indemnities in the Agreement will survive Closing, subject to the limitations expressly set forth in the Agreement, including those relating to liability and indemnification under Article 13.00. They will be deemed to apply to the General Conveyance, the Specific Conveyances and all other instruments conveying any of the Assets from the Vendor to the Purchaser. They will not merge with any of those documents, notwithstanding the terms of those documents and any rule of law, equity or statute to the contrary, and all such rules are hereby waived.

18.02 Further Assurances

At the Closing Time and thereafter as may be necessary, each Party will, on a timely basis and without further consideration, complete such other documents and take such other actions as may be reasonably required to fulfil its obligations under the Agreement. However, except as may otherwise be addressed specifically in the Agreement, the Vendor will not be obligated to sign any certificate or otherwise make any other affirmation in connection with any prospectus or other disclosure or securities' filing that Purchaser may be obligated, or otherwise wish, to issue or file.

18.03 Use Of Name

Subject to Articles 16.00 and 17.00 for permitted disclosures of information and public announcements and except as otherwise expressly provided hereunder, no Party may use the name or trademark of another Party in connection with the financing of the Transaction or any other activities of the Party, the sale of any securities or the formation or promotion of any enterprise, without first obtaining that other Party's prior written consent in each instance. A Party may refuse its consent to any such request in its sole discretion.

18.04 Protection Of Personal Information

The Parties recognize that there might be disclosure under the Agreement of information about an identifiable individual that is personal in nature and is not otherwise publicly available from sources that have no obligation of confidentiality or non-disclosure. Each Party will ensure that it and each of its employees, contractors, agents, officers, directors and Affiliates that have access to information associated with the Transaction will comply with all Regulations and other applicable privacy laws that govern any such personal information that is disclosed or obtained in connection with the Agreement or the Transaction. Each Party will limit the use, collection and disclosure of that personal information, if any, to those purposes that relate to the Agreement and the Transaction, and will otherwise limit disclosure of any such personal information to such disclosure as is required by the Regulations. Each Party will use appropriate security measures to protect against accidental or inappropriate disclosure of all such personal information, including direction to its representatives to protect and safeguard any such personal information to which they obtain access hereunder.

Deleted: The Parties will cooperate with each other in releasing to third parties information concerning this Agreement and the transaction contemplated herein. A Party will provide the other Party with a draft of all press releases and other releases of information for dissemination to the public a sufficient time prior to its release to enable the other Party to review that draft and provide any comments it may have. The proposed release is subject to the prior written approval of the other Party, which approval may not be unreasonably withheld or delayed. However, a Party may provide information about this transaction to any governmental agency, any regulatory authority or to the public, insofar only as is required by the Regulations or securities laws or stock exchange requirements applicable to the Party, and a Party may provide information about this transaction to a bank or other financial institution to obtain financing or any required consent of its bank or other financial lender. The Transferor may also disclose information pertaining to this Agreement and the identity of the Transferee, insofar as is required to enable the Transferor to fulfil its obligations pertaining to Rights of First Refusal and other third party rights under Article 7.00.¶

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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.

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.

18.05 Results Of Termination

A. *Release From Certain Obligations*-If the Agreement is terminated prior to Closing, the Parties will be released from all obligations under the Agreement, except for those relating to: (i) default under Article 12.00; (ii) the handling of information under Articles 16.00 and 17.00; and (iii) any representation, warranty or other obligation breached prior to that termination.

B. *Return Of Certain Materials And Amounts*-If the Agreement is terminated prior to Closing:

(a) the Purchaser will promptly return to the Vendor or destroy all materials delivered to it by the Vendor hereunder and all copies, summaries or extracts of them that may have been made by or for the Purchaser (including any such materials relating to the personal information described in Clause 18.04), and, upon request in writing from the Vendor, it will provide an executed officer's certificate confirming, after reasonable inquiry by that officer, that this has been done; and

(b) subject to any application of Article 12.00 due to the default or alleged default of the Purchaser, the Vendor will promptly return to the Purchaser any Deposit and the interest accrued thereon under Clause 2.03.

For the purposes of Paragraph (a) of this Subclause, materials delivered to the Purchaser by the Vendor and stored by the Purchaser in electronic format will be deemed to be destroyed when deleted by the Purchaser, provided that the Purchaser may retain copies of these materials insofar as only they are incidentally stored in its automatically generated system backups and archives, as long as no attempt is made by the Purchaser to retrieve them after termination of the Agreement.

18.06 Enurement

Subject to the provisions hereof, the Agreement will enure to the benefit of the Parties and their respective trustees, receivers, receiver-managers, successors and permitted assigns.

18.07 Electronic Signatures And Specific Conveyances

A. *Exclusions From This Clause*-The authority in this Clause does not apply to Specific Conveyances that create or transfer interests in land, guarantees, negotiable instruments, documents of title and other documents excluded at the applicable time under section 7 of the *Electronic Transactions Act* (Alberta) or other comparable Regulations that apply.

B. *Potential Use Of Electronic Signatures*-Except as provided in the preceding Subclause, a Party may execute any of the Specific Conveyances prepared to effect the Transaction through use of an electronic signature. A Party that intends to execute any of the Specific Conveyances through use of an electronic signature will provide the other Party with a copy of a sample electronic signature of its applicable representative(s), including with that electronic signature the name and title of each such representative.

C. *Electronic Signature Is Binding*-The electronic signature of a Party's representative satisfying the requirements in the preceding Subclause that appears on a Specific Conveyance will be sufficient to cause the applicable Specific Conveyance to be a valid and binding obligation of the Party represented by that individual, without need for an original signature on that Specific Conveyance, and will be of the same legal effect and validity as an original signature evidencing execution by that Party.

D. *Used Solely For Specific Conveyances*-The Parties will receive and use any electronic signature provided under this Clause solely for the purpose of embedding it into the applicable Specific Conveyances and for no other purpose whatsoever. A Party that receives an electronic signature of a representative of the other Party will ensure that it removes that electronic signature from its records in a timely manner following Closing, such that it cannot be used by that Party for any other purpose.

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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.

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Miscellaneous Annotations

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-VI after the General Conveyance. Those examples demonstrate the potential efficiency enhancements in processing those Transactions by using the PTP.

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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 a 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.

18.08 Waivers For Saskatchewan

A. *Waiver Of The Land Contracts (Actions) Act-The Land Contracts (Actions) Act* (Saskatchewan) will have no application to any action, as defined therein, with respect to the Agreement.

B. *Waiver Of The Limitation Of Civil Rights Act-The Limitation of Civil Rights Act* (Saskatchewan) will have no application to the Agreement, or any mortgage, charge or other security for the payment of money made, given or created by this Agreement, or any agreement or instrument renewing or extending or collateral to the Agreement, or the rights, powers or remedies of the Vendor under the Agreement.

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 PTR 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

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Deleted: c) . If it already owns an interest in the property, the proposed Transferee may also hold a Right of First Refusal with third parties. If so, the Transferee should exercise its ROFR. The owners exercising the ROFR have been provided with priority over the Transferee under the Operating Procedure. If another offeree exercised its ROFR and the proposed Transferee did not also make that election, the offeree would acquire the applicable interest in its entirety.¶
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Deleted: e) . One of the problems faced by Transferors attempting to comply with their ROFR obligations arises out of novation agreements that are still only partially completed or notices of assignment that have not yet reached their binding date. Until such time as the recognition is finalized, the "previous" parties have the right to exercise the Right of First Refusal, not their successors. A prudent Transferor should forward the notice to both the previous parties and their known successors.¶
¶
f) . One question that has arisen historically with respect to a butterfly transaction is whether the Transferor is required to comply with a Right of First Refusal obligation. The transfer of Assets to NEWCO would literally be exempt fr... [204]

This is Schedule " " to the Agreement dated _____, between _____

GENERAL CONVEYANCE

( ) Area, (Province)

This General Conveyance made this _____day of _____, ____.

BETWEEN:

(hereinafter called the "Vendor")

- and -

(hereinafter called the "Purchaser")

Whereas the Vendor has agreed to convey an interest in the Assets to the Purchaser and the Purchaser has agreed to acquire an interest in the Assets in accordance with that certain agreement dated the _____ day of _____, _____ between the Vendor and the Purchaser (hereinafter referred to as "the Agreement");

And Whereas all of the conditions precedent to the obligations of the Vendor and the Purchaser to complete the Transaction have either been fulfilled or waived in the manner provided in the Agreement;

In consideration of the premises hereto and the covenants and agreements hereinafter set forth and contained, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions**

In this General Conveyance, the definitions provided for in the Head Agreement and in the Property Transfer Procedure included as a Schedule to the Agreement are adopted by reference in this General Conveyance.

2. **Conveyance**

The Vendor, for the consideration provided for in the Agreement, the receipt and sufficiency of which is acknowledged by the Vendor, hereby sells, assigns, transfers and conveys to the Purchaser, and the Purchaser hereby acquires from the Vendor, all of the right, title, estate and interest of the Vendor (whether absolute or contingent, legal or beneficial) in and to the Assets, to have and to hold the same, together with all benefit and advantage to be derived therefrom, absolutely, subject to the terms of the Agreement, the Permitted Encumbrances and compliance with the terms of the Title and Operating Documents.

3. **Effective Date**

The transfer of the Assets from the Vendor to the Purchaser and the assumption of the benefits and obligations associated with the Assets by the Purchaser will be effective as of the Effective Date, notwithstanding that possession of the Assets did not pass to the Purchaser until the date hereof.

4. **Subordinate Document**

This General Conveyance is executed and delivered by the Parties under the Agreement for the purposes of the provisions of the Agreement, and the terms hereof are to be read in conjunction with the terms of the Agreement. The covenants, representations, warranties and indemnities contained

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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 check both the land and J.V. 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 will be academic with respect to 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?

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Deleted: Since that decision, Alberta has amended The Law of Property Act to address a Right of First Refusal. Subsection 59.1(1) 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.¶

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in the Agreement are incorporated herein as fully and effectively as if they were set out herein, and there will not be any merger of any covenant, representation, warranty or indemnity contained in the Agreement by virtue of the execution and delivery hereof, notwithstanding any rule of law, equity or statute to the contrary. The Agreement will prevail if there is a conflict between the provisions of the Agreement and this General Conveyance.

5. **Governing Law**

This General Conveyance will be treated as a contract made in the Province of Alberta. This General Conveyance will be subject to and be interpreted and enforced in accordance with the laws in effect in the Province of Alberta, including the federal laws of Canada applicable therein, provided that this does not affect the Parties' obligations to comply with the Regulations applicable to any Assets located outside the Province of Alberta. Subject to any application of the dispute resolution processes in Article 9.00 of the Agreement, each Party accepts and attorns to the exclusive jurisdiction of the courts of the Province of Alberta in the Judicial District of Calgary and all courts of appeal therefrom with respect to this General Conveyance and any associated legal proceedings between the Parties.

6. **Enurement**

This General Conveyance enures to the benefit of and binds upon the Parties and their respective trustees, receivers, receiver-managers, successors and permitted assigns.

7. **Further Assurances**

Each Party will, after the date of this General Conveyance, on a timely basis and without further consideration, complete such other documents and take such other actions as may be reasonably required to carry out the terms of this General Conveyance.

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8. **Counterpart Execution**

This Agreement may be executed in counterpart. When each Party has executed a counterpart, all counterparts taken together will constitute one and the same Agreement.

IN WITNESS WHEREOF the Parties have duly executed this General Conveyance as of the date above.

(VENDOR'S NAME)	**(PURCHASER'S NAME)**
Per: _____	Per: _____
Per: _____	Per: _____

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Note: The Parties would need to modify the Vendor and Purchaser references to Transferor and Transferee references for an Asset Exchange.