INITIAL CONSIDERATIONS – JOINT OPERATING AGREEMENT

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**Joint Operating Agreement Definition**

The Joint Operating Agreement (JOA) governs the relationship between parties having working interests in the same parcel of land (“joint lands”) and provides agreement for the exploration, development and operation of the joint lands. (This is normally the first agreement the parties will enter into.) The agreement's primary purposes are to allow parties to delineate the division of costs and benefits and to establish and/or point to a set of rules by which the parties will operate the jointly owned lands.

**What is a JOA?** - A JOA is created when two or more parties acquire a parcel of land at a provincial Crown land sale or from a freehold mineral owner by virtue of a mineral lease or by virtue being area of mutual interest lands. JOA’s can also be used for the administration of complicated deals, resulting in an unclear chain-of-title with different parties, working interests and encumbrances (royalties) involving different parcels of land.

**The JOA document consists of:**

The main body of the agreement (“Head Agreement”) includes the:

1. Date of Agreement
2. Identification of the Parties
3. Statement of the intent of the Agreement
4. Definitions not already identified in the CAPL Operating Procedure or if the definitions differ from the CAPL Operating Procedure
5. Effective Date of the Agreement
6. Identification of the Operator
7. Terms of the Agreement
8. Signatory area for all parties to execute the Agreement

Schedules are attachments to the Head Agreement and there can be any number of schedules including the following:

* **Schedule “A”** - commonly outlines the Title Documents, Joint Lands and Working Interests, as well as any Encumbrances relating to the Joint Lands.
* **Schedule “B”** commonly has the Canadian Association of Petroleum Landmen (CAPL) Operating Procedure as well as the Petroleum Accountants Society of Canada (PASC) Accounting Procedure (attached either as the full document or simply as an election rate sheet).
* **Other Schedules** can be attached as well, such as maps, well requirement sheet, etc.

The CAPL Operating Procedure specifically governs the appointment and replacement of Operator, lists the functions and duties of the Operator as well as those of the remaining working interest owners, the sharing of costs and expenses, the ownership and disposition of production, independent operations, surrender and other miscellaneous items, such as litigation, force majeure, notices and transfers of interest. This form JOA was designed for use in conjunction with the 2015 CAPL Operating Procedure.

The PASC Accounting Procedure sets out overhead rates, audit procedures and general accounting requirements.

These Procedures are incorporated into the Head Agreement to form the overall JOA. In older forms of JOAs, such as prior to the creation and standardization of CAPL and PASC Procedure documents, agreements were lengthy and allowed for varied interpretations due to the lack of "standard" agreed-upon terms and wording. The modern JOA incorporates these Procedures to reduce complexity and need for interpretation. As such, the Committee omitted unnecessary or duplicative provisions where possible.

**Notes:**

* It is **imperative** that a contract landman / administrator **accurately** and **correctly** document the fundamental key negotiated terms, details and obligations into the agreement. If these items and issues are not properly addressed, it opens the door for dispute(s) and quite possibly, a lawsuit between the parties.
* Ensure you get the document executed ASAP. There are consequences that arise from operating with an unexecuted JOA, not the least of which is legal ramifications, plus drafting Assignment Agreements instead of NOA’s for the transfer of interest between companies.
* This JOA is provided as a standard form of document. Any complicating factors at play, particularly with regard to the operation and production of unconventional resources, may require additional terms or changes depending on each specific party's needs. We recommend that you consult a legal professional prior to entering into a JOA if your specific case is non-standard or unique. Examples of additional clauses, depending on the situation, might include Plant Participation, Area of Mutual Interest, Segregation, Special Environmental Provisions, Lease Selection and Special Penalty Provisions.
* Please note that Clause 4.4 (Multiple Completions and Operating Procedure) and Clause 4.5 (Pad Site Sharing Agreement Required In Due Course) are not contractually necessary, but are included for transparency.

This is a template for the following, Note that options are in red:

**JOINT OPERATING AGREEMENT**

**(Using the 2015 CAPL)**

**Name Area, Province**

**THIS** **AGREEMENT DATED** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**BETWEEN/AMONG:**

**COMPANY ONE,** a body corporate, having an office in the City of \_\_\_\_\_\_\_\_\_\_\_\_, in the Province of \_\_\_\_\_\_\_\_\_\_\_. (**"ONE SHORT”**)

and

**COMPANY TWO**, a general partnership, by its Managing Partner **COMPANY TWO LTD.**  having an office in the City of \_\_\_\_\_\_\_\_\_\_, in the Province of \_\_\_\_\_\_\_\_\_ (**"TWO SHORT”**)

and

**COMPANY THREE**, an individual, having a residence in the City/Town of \_\_\_\_\_\_\_\_\_\_\_\_\_, in the Province of \_\_\_\_\_\_\_\_\_ (**"THREE SHORT”**)

**BACKGROUND**

The Parties are the holders of certain interests in the Title Documents covering the lands that comprise the Petroleum Substances, as described in Schedule “A”.

The Parties have entered into this Agreement to provide for the exploration, development, maintenance and operation of the Joint Lands and the Title Documents.

**IN CONSIDERATION** of the terms and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. **DEFINITIONS AND INTERPRETATION**

Except as otherwise defined in this Agreement, the definitions set out in the Operating Procedure shall apply, mutatis mutandis, to this Agreement and:

“**Effective Date**” means \_\_\_\_\_\_\_\_\_\_\_\_\_.

“**Encumbrances**” means those royalties, overriding royalties, production payments, net profits interests or other charges of a similar nature (other than the lessor royalty accruing under the Title Documents) that apply against the Joint Lands or the production of Petroleum Substances therefrom, described as “Encumbrances” in Schedule “A”.

“**Operating Procedure**” means the standard form 2015 CAPL Operating Procedure, together with the standard form 1996 PASC Accounting Procedure, with the elections and amendments as described in Schedule “B”, which documents are incorporated by reference into this Agreement and become effective as of the Effective Date.

“**Reserved Formations**” means any rights held by a Party that are not included in the Joint Lands, but that coincide by surface area with all or a portion of the Joint Lands.

1. **SCHEDULES**

The following Schedules are attached to and incorporated into this Agreement:

* + 1. Schedule “A”, which describes the Title Documents, the Joint Lands, the Encumbrances and the Working Interests; and
    2. Schedule “B”, which contains the elections and amendments to the Operating Procedure.

1. **TITLE DOCUMENTS AND ENCUMBRANCES**

## 3.1 Representations And Warranties

No Party warrants title to its Working Interest in the Joint Lands*.* However, each Party confirms that:

* + 1. prior to the execution of this Agreement, it has not received or otherwise become aware of, any notice of default related to the Title Documents which makes any of them subject to termination or forfeiture that has not been remedied;
    2. it is unaware of any act or omission which it reasonably believes would result in a default under the terms of the Regulations or the Title Documents;
    3. it has the authority to enter into this Agreement;
    4. it is unaware that the terms of the Title Documents have not been complied with to the extent necessary to keep them in full force and effect; and
    5. its Working Interest is not encumbered with any burdens except the lessor royalty applicable to the Title Documents and any Encumbrances.

## 3.2 Joint Lands Not To Be Encumbered

In addition to the provisions of Article 15.00 of the Operating Procedure, no Party will do, or cause to be done, anything to encumber the Joint Lands or otherwise impact the Title Documents held by it which might reasonably result in any portion of any of those Title Documents becoming subject to termination or forfeiture.

1. **OPERATING PROCEDURE**

**4.1 Application Of Operating Procedure**

As of the Effective Date, and except as may otherwise be provided herein, the Operating Procedure as amended by this Agreement:

1. governs the relationship of the Parties as to their respective Working Interests; and
2. applies to all Operations conducted with respect to the exploration, development and operation of the Joint Lands and the production of Petroleum Substances therefrom.

## 4.2 Appointment Of Initial Operator

Subject to the provisions of this Head Agreement and the Operating Procedure, (Company Short Name) accepts the appointment of initial Operator and agrees to assume, as of the Effective Date, the duties, obligations and rights of the Operator under the Operating Procedure.

## 4.3 Maintenance Of Title Documents – Title Administrator

Notwithstanding the appointment of Operator under the preceding Clause, if a different Party is maintaining and administering any of the Title Documents, that Party shall have the same rights and obligations as the Operator under the Operating Procedure with respect to the maintenance and administration of the Title Documents with respect to each Title Document that includes rights in addition to the Joint Lands and for which that Party is the designated representative of the lessee or licensee under the applicable Title Document. The Operator shall become the Title Administrator in due course with respect to any such Title Document that ceases to include rights in addition to the Joint Lands.

## 4.4 Multiple Completions And Operating Procedure

Notwithstanding the provisions of Article 9.00 and Article 10.00 of the Operating Procedure, under no circumstance may a Party Complete a well in one or more formations included in the Joint Lands with any other formations or substances not included in the Joint Lands without the consent of the other Parties, which consent may be refused by a Party for any reason. If the Parties agree to the conduct of any such Completion program, they shall do so under such separate agreement as they may agree at the time.

## 4.5 Pad Site Sharing Agreement Required In Due Course

Insofar as there are any shared Well Pads serving wells governed by this Agreement and other wells not governed by this Agreement, the nature of the cost allocations, management of shared facilities and potential liability and indemnification obligations are such that it is the Parties’ intention that any such Well Pad shall ultimately be governed by a pad site sharing agreement using as a starting point the 2018 PJVA-CAPL Model Pad Site Sharing Agreement.

1. **INSURANCE**

## 5.1 Requirement To Carry Additional Insurance

Each Participating Party shall, in addition to the insurance provisions of the Operating Procedure, carry independently, but in proportion to its Participating Interest in the particular Operation under the Operating Procedure [Replace the introduction of this Clause with the following if the Operator carries this additional insurance on behalf of the Parties: The Operator, in addition to the insurance provisions of the Operating Procedure, shall carry for the Joint Account]:

(a) “Control of Well Insurance” with a limit of liability for its respective Participating Interest share of at least $[•],000,000.00 (based on a 100% Participating Interest); and

(b) “Comprehensive General Liability Insurance” with a limit of liability for its respective Participating Interest share of at least $[•],000,000.00 (based on a 100% Participating Interest), provided that this coverage may be arranged using “General Liability” and “Excess/Umbrella” coverage in combination.

## 5.2 Evidence Of Additional Insurance

In addition to the Operator’s obligations pursuant to Clause 3.11 of the Operating Procedure, each Party shall, upon request by any other Party, provide evidence of the following required coverage within 14 days following receipt of that request:

(a) with respect to “Control of Well Insurance”: control of well; underground blowout; cost of re-drilling/extra expense; seepage, pollution and clean up; deliberate well firing; care custody and control; and evacuation coverage; and

(b) with respect to “Comprehensive General Liability Insurance”: pollution liability; contractual liability; tortious liability; contractor’s protective liability; and products and completed operations liability.

1. **OTHER OPERATIONS AND RESERVED FORMATIONS**

## 6.1 Right To Conduct Operations In Reserved Formations

Notwithstanding any other provision contained in this Agreement, each Party shall have the right to drill a well to explore and develop any of its Reserved Formations and to produce or otherwise carry on other operations with respect to its Reserved Formations. That Party shall conduct any other such operations with respect to the Reserved Formations in a manner that shall not interfere with Operations on the Joint Lands.

## 6.2 Responsibility For Operations In Reserved Formations

* + 1. Any Party carrying on operations with respect to its Reserved Formations under the preceding Clause shall:
       1. be liable to the other Parties in their capacity as Working Interest owners of the Joint Lands for all losses, costs, damages and expenses whatsoever which they may suffer, sustain, pay or incur by reason of any matter or thing arising out of or in any way attributable to or connected with those other operations; and
       2. indemnify, defend and save those other Parties harmless from and against all claims, liabilities, actions, causes of action, proceedings, demands, losses, costs, damages and expenses whatsoever which may be brought against or suffered by those other Parties, or which they may suffer, sustain, pay or incur in their capacity as Working Interest owners of the Joint Lands, by reason of any matter or thing arising out of or in any way attributable to or connected with those other operations.
    2. Notwithstanding the preceding Subclause (a), there shall be no liability of one Party to another under that Subclause for consequential, indirect, punitive or exemplary damages, including, but not limited to, loss of profits, loss of opportunity, opportunity costs, reservoir or formation damage, the inability to produce Petroleum Substances or a delay in their production, except insofar as the damaged Party is legally determined to be responsible for any such damages suffered by a third party.

## 6.3 Responsibility For Operations In Joint Lands

The provisions of the preceding Clause shall apply, mutatis mutandis, to the Parties’ Operations, activities and obligations with respect to the Joint Lands relative to the Reserved Formations.

1. **GOODS AND SERVICES TAX**

## 7.1 Joint Election For Refundable Taxes

Effective as of the Effective Date, the Parties hereby elect jointly to have the Operator or any successor to the initial Operator, account for any refundable taxes in the nature of value added tax, goods and services tax or other sales taxes in the course of any joint venture activity attributable to the electing participants pursuant to Subsection 273(1) of the Excise Tax Act or other applicable Regulations.

## 7.2 Authority With Respect To Refundable Taxes And Marketing Arrangements

For the purposes of Subsection 273(1) of the Excise Tax Act or other applicable Regulations imposing refundable taxes in the nature of value added tax, goods and services tax or other sales taxes, the authority granted under this Agreement with respect to the handling of any refundable taxes by the Operator also covers any marketing arrangements between the Operator and any other Parties under which the Operator agrees to market production of Petroleum Substances on behalf of any such other Parties.

1. **COUNTERPART EXECUTION**

This Agreement may be executed in counterpart, and when each Party has executed a counterpart, all counterparts together shall constitute one and the same agreement.

The Parties have executed this Agreement to be effective as of the Effective Date.

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| Per: |  |  | Per: |  |
|  |  |  |  |  |

Execution page to the Joint Operating Agreement dated **{enter “Agreement Date”}** between/among **{enter “Full Name of First Party”}** and **{enter “Full Name of Second Party”} and {enter “Full Name of Third Party”}**

**SCHEDULE “A”**

to the Joint Operating Agreement

dated **{enter “Agreement Date”}** between/among

**{enter “Full Name of First Party”}** and **{enter “Full Name of Second Party”}** and **{enter “Full Name of Third Party”}**

|  |  |  |  |
| --- | --- | --- | --- |
| **Title Documents** | **Joint Lands** | **Encumbrances** | **Working Interests** |
|  |  | **\* ORR** |  |
|  |  |  |  |

**Encumbrances**

**\* e.g. 15% ORR paid by Party E 50%, Party A 25%, Party B 25% and paid to Party C 50%, Party D 50%, based on 75% of production; as described in the Farmout Letter Agreement dated February 28, 2012.**

**SCHEDULE “B”**

to the Joint Operating Agreement

dated **{enter “Agreement Date”}** between/among

**{enter “Full Name of First Party”}** and **{enter “Full Name of Second Party”}** and **{enter “Full Name of Third Party”}**

# CAPL OPERATING PROCEDURE - 2015

**Clause 1.01-Market Price Definition, optional sentence:** Will Apply \_\_\_ -or- Will Not Apply \_\_\_

**Clause 1.01-Production Facility, optional Paragraph(f):**

Will \_\_\_ Apply -or- Will Not \_\_\_ Apply

Estimated cost less than $ \_\_\_\_\_\_\_\_\_, if applies

**Subclause 3.11C-Required Insurance:** Replace the first sentence with the following: In addition to the obligations in Subclauses 3.11A and B and the requirements to carry specified policies of coverage under the Head Agreement: Alternate (a) \_\_\_ (b) \_\_\_

***(Consider for special operating areas for which a longer Commencement period is required:***

**Paragraph 7.01(b) and Subclause 10.03B:**  Change reference from 120 days to \_\_\_\_\_ days.)

**Subclause 10.02G-Receiving Party May Not Defer Response:**

Will \_\_\_ Apply -or- Will Not \_\_\_ Apply

Above base of \_\_\_\_\_ formation, if applies

**Subclause 10.04A-Operator for Independent Operation:** Alternate (a) \_\_\_ (b) \_\_\_

**Paragraph 10.07A(e)-Penalty Where Independent Well Results in Production:**

Development Well: \_\_\_\_\_% Exploratory Well: \_\_\_\_\_%

**Subclause 10.10A–Definition of Title Preserving Well:** \_\_\_\_ days

**Subclause 10.13B, optional Paragraph (d):** Will \_\_\_ Apply -or- Will Not \_\_\_ Apply

**Article 21.00–Dispute Resolution:** Will \_\_\_ Apply -or- Will Not \_\_\_ Apply

**Paragraph 21.03(k)–Arbitration Proceedings for unresolved audit exceptions, if Article 21.00 applies:**

Will \_\_\_ Apply -or- Will Not \_\_\_ Apply

Estimated total adjustment of less than $ \_\_\_\_\_\_\_\_\_\_\_, if applies

**Clause 22.02-Addresses For Service:**

COMPANY ONE COMPANY TWO

Address Address

Fax No. Fax No.

**Clause 24.01-Right to Dispose:** Alternate A \_\_\_ B \_\_\_

If Alternate B, the date at which ROFR expires is \_\_\_\_\_\_\_\_\_\_\_\_\_

**Paragraph 24.02(f)–Exception for all Earning Agreements:** Will \_\_\_ Apply -or- Will Not \_\_\_ Apply

**PASC 1996 ACCOUNTING PROCEDURE**

**Clause 105 - Operating Fund**: proportionate share of %

**Clause 110 - Approvals**: Clause in the Agreement **- or -** Approval from or more owners, etc. totalling %;

Vote within **15 business days** from receipt or be **deemed** to have voted **affirmative**.

**Clause 112 - Expenditure Limitations without owner approval**:

(a) single capital expenditures not in excess of $

(c) full settlement of damage claim not in excess of $

**Clause 202(b) - Employee Benefits**: %

**Clause 213 - Camp and Housing**: (shall / shall not) be chargeable

**Clause 216 - Warehouse Handling**: % of the costs of such Material

**Clause 221 - Allocation Options**: (Applicable or Not Applicable)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Clause** | **Cost** | **Options for Charging Joint Account** | | | |
| Fixed $/Month | | | **Other** |
| **Subject to 302(e)** | **Not Subject to 302(e)** | **% of Direct Cost Well/m3** |
| 204 | Automotive |  |  |  |  |
| 207(c) | Prod Office |  |  |  |  |
| 212 | Communications |  |  |  |  |
| 213(a) | Camp |  |  |  |  |
| 214 | Measurement & Control |  |  |  |  |

**Clause 302 - Overhead Rates**:

(a) For each Exploration Project: % of Cost and/or (b) For each Drilling Well % of Cost and/or

(1) % of first $ (1) % of first $

(2) % of next $ (2) % of next $

(3) % of cost exceeding (1) and (2) (3) % of cost exceeding (1) and (2)

(c) For each Initial Construction Project % of Cost and/or (d) For Subsequent Construction Project % of Cost and/or

(1) % of first $ (1) % of first $

(2) % of next $ (2) % of next $

(3) % of cost exceeding (1) and (2) (3) % of cost exceeding (1) and (2)

(e) For Operations and Maintenance:

(1) % of the cost, and/or

(2) $ per producing well per month; or

(3) $ flat rate per month

**Rates in Sub-clauses 302(e)(2) & 302(e)(3)**  (shall / shall not)

be adjusted as of the first day of July each year following the year in which the Agreement became effective.

**Clause 406 - Pricing of Joint Material Purchases, Transfers, and Dispositions** $ for requiring approval.

**Clause 501 - Inventories**: every five (5) years or as otherwise approved by the Owners.