

**PURCHASE AND SALE AGREEMENT**

**between**

**XTO ENERGY CANADA HOLDINGS LP**

**- and -**

**WHITECAP RESOURCES INC.**

**in relation to the entire issued share capital and partnership interests in**

**XTO ENERGY CANADA ULC AND XTO ENERGY CANADA**

June 28, 2022

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## PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made as of the 28<sup>th</sup> day of June, 2022.

### BETWEEN:

**XTO ENERGY CANADA HOLDINGS LP**, a limited partnership formed pursuant to the laws of Alberta, having an office in the City of Calgary, in the Province of Alberta, by its general partner, **XTO ENERGY CANADA GPCO LTD.**, a corporation formed pursuant to the laws of Alberta, having an office in the City of Calgary, in the Province of Alberta ("**Vendor**")

- and -

**WHITECAP RESOURCES INC.**, a corporation formed pursuant to the laws of Alberta, having an office in the City of Calgary, in the Province of Alberta ("**Purchaser**")

### WHEREAS:

- A. Vendor owns one hundred percent (100%) of the issued and outstanding shares (the "**Shares**") in XTO Energy Canada ULC, an unlimited liability corporation formed pursuant to the laws of Canada (the "**Company**").
- B. Vendor and the Company collectively own one hundred percent (100%) of the partnership interests in XTO Energy Canada, a general partnership formed under the laws of Alberta (the "**Partnership**").
- C. Vendor desires to sell and Purchaser desires to purchase the Purchased Interests upon and subject to the terms and conditions hereinafter set forth.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the premises, mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

In this Agreement, including any schedules:

**"Abandonment and Reclamation Obligations"** means all past, present and future obligations in respect of the:

- (a) proper plugging, re-plugging, and abandonment of the Wells;
- (b) abandonment, closure, decommissioning, demolition, disposition, dismantling and removal of structures, foundations, buildings, pipelines, equipment and other facilities, whether located within, upon or under the Lands or lands pooled or unitized therewith comprising all or part of the Facilities; and

- (c) restoration, remediation, rehabilitation and reclamation of the surface and subsurface locations of each of those items described in subsection (a) and (b) above, including all Lands to which the Surface Rights relate,

all in accordance with generally accepted oil and gas industry practices in the jurisdiction where the Facilities are located and in compliance with the Regulations, and including all obligations relating to any wells, pipelines, facilities and Tangibles that were abandoned, removed or decommissioned prior to the Effective Date;

**"Accounts Payable"** means, without double counting, invoices received by the Purchased Entities (including Sales Taxes), but unpaid, as of the Effective Date;

**"Accruals"** means, without double counting, the amounts accrued by the Purchased Entities for activities performed prior to the Effective Date (excluding the Kakwa Adjustment), but unpaid, as of the Effective Date;

**"Additional Interests"** means any Interests in which, as of the date hereof (as if the Additional Interests Transaction has not then been effected), neither Purchased Entity holds any right, title, estate or interest, which Additional Interests shall, for certainty, include Vendor Group's entire right, title, estate and interest in and to the KAPS Transportation Services Agreement, the Vendor Group Seismic Data, the Shared Interests and each agreement listed on Schedule L where any member of Vendor Group is a party;

**"Additional Interests Transaction"** has the meaning given in Section 3.7;

**"Adjustment"** means the Contributions Adjustment, Permitted Leakage Adjustment, Leakage Adjustment and Working Capital Adjustment;

**"AER"** means Alberta Energy Regulator and any predecessor thereof or successor thereto;

**"AFE"** means the authorities for expenditure, operations notices, amounts budgeted pursuant to the unit agreements and mail ballots, if any, set out in Schedule F;

**"Affiliate"** means, a corporation, partnership or trust that is affiliated with the Person for which the expression is being applied, and, for the purpose of this definition:

- (a) a corporation, partnership or trust is affiliated with another corporation, partnership or trust if it directly or indirectly controls or is controlled by that other corporation, partnership or trust, and for the purpose of determining whether a corporation, partnership or trust so "controls" or is so "controlled":
  - (i) a corporation is directly controlled by another corporation, partnership or trust if 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 the votes attached to those shares are sufficient, if exercised, to elect a majority of the directors of the corporation;
  - (ii) subject to paragraph (iii) below, a partnership is directly controlled by another partnership, corporation or trust if that partnership, corporation or trust holds more than a 50% aggregate voting interest in the partnership;

- (iii) a limited partnership is controlled by the Person that controls the general partner of such limited partnership or, if there is more than one general partner, by any Person that controls a general partner or general partners having more than a 50% aggregate voting interest in the general partner or general partners;
  - (iv) a trust is controlled by the Person that is entitled to elect or appoint the majority of the trustees of the trust; and
  - (v) a corporation, partnership or trust is indirectly controlled by another corporation, partnership or trust if control, as defined in paragraphs (i) through (iv) above is exercised through one or more other corporations, partnerships or trusts; and
- (b) where two or more corporations, partnerships or trusts are affiliated at the same time with the same corporation, partnership or trust, they will be deemed to be affiliated with each other;

**"Aged Receivables"** means those Debtors set forth in Schedule H;

**"Aged Receivables Amount"** means an amount equal to the difference between **[dollar amount redacted]** and the amount of any allowance for doubtful accounts against the Debtors carried by the Purchased Entities (without duplication), determined in accordance with generally accepted accounting principles, *less* that amount, on account of the Aged Receivables, collected by a Purchased Entity prior to the date the Final Statement of Adjustments is delivered to Vendor pursuant Section 2.8(a), whether by:

- (a) direct payment by such debtor to a Purchased Entity;
- (b) payment by such debtor to a member of Vendor Group, on behalf of a Purchased Entity, and such Vendor Group member subsequently makes direct payment of such amount to a Purchased Entity; provided that any such payment made by a Vendor Group member to a Purchased Entity shall be deemed to not constitute a Contribution but instead shall be deemed a collection by the applicable Purchased Entity of the applicable Aged Receivable; or
- (c) netting (as agreed to by the applicable Purchased Entity and the debtor of the applicable Aged Receivables) of an Aged Receivable (or a portion thereof) against a payable due to such debtor;

**"Agreement"** means this purchase and sale agreement between Vendor and Purchaser;

**"Alternative Financing"** has the meaning given in Section 3.8(d);

**"Applicable Law"** means, in relation to any Person, transaction or event, all applicable provisions of laws, statutes, rules, Regulations, official directives and orders of any Governmental Authority (whether administrative, legislative, executive or otherwise) and final, non-appealable judgements, orders and decrees of all courts, commissions or bodies exercising similar functions in actions or proceedings in which the Person in question is a party, by which it is bound or having application to the transaction or event in question, including Environmental Law and Applicable Privacy Laws;

**"Applicable Privacy Laws"** means any and all applicable Regulations relating to privacy and the collection, use and disclosure of Personal Information in all applicable jurisdictions, including but not

limited to the *Personal Information Protection and Electronic Documents Act* (Canada) and/or any comparable provincial law, including the *Personal Information Protection Act* (Alberta);

**"Approved Offer"** has the meaning given in Section 7.1(b);

**"ASPE"** means accounting standards for private enterprises;

**"Associated Facilities"** means the rights and obligations of the Purchased Entities and Vendor Group related to the surface of any lands (other than Surface Rights) used in connection with the Wells or the Facilities, including but not limited to access roads, temporary access roads, temporary workspace, borrow sites, campsites, remote sumps, remote cement return pits, log deck (storage) areas or land treatment areas;

**"Base Purchase Price"** has the meaning given in Section 2.3(a);

**"Business Day"** means any day of the week except Saturday, Sunday or any statutory holiday in Alberta;

**"Canadian Tax Act"** means the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supplement) as amended;

**"Captive"** has the meaning given in Section 3.3(b)(i);

**"Cash Balance"** means the amounts equal to the cash held by the Purchased Entities as of the Effective Date;

**"Claim"** means any claim, notice, direction, order, demand, lawsuit, proceeding, arbitration or governmental investigation, in each case, whether asserted, threatened, pending or existing;

**"Closing"** means the completion of the purchase and sale of the Purchased Interests to Purchaser on the Closing Date, as contemplated by this Agreement;

**"Closing Date"** has the meaning given in Section 4.1;

**"Commissioner"** means the Commissioner of Competition appointed under subsection 7(1) of the Competition Act or his or her designee;

**"Commitment Period"** has the meaning given in Section 7.7(a);

**"Company"** has the meaning given in the recitals;

**"Company Partnership Interests"** means a 40% partnership interest in the Partnership held by the Company;

**"Competition Act"** means the *Competition Act* (Canada) RSC, 1985, c. C-34;

**"Competition Act Approval"** shall mean, in respect of the Transaction, any of the following has occurred: (i) the issuance of an advance ruling certificate by the Commissioner under section 102(1) of the Competition Act; or (ii) confirmation in writing by the Commissioner that the Commissioner does not, at that time, intend to make an application under section 92 of the Competition Act in respect of the Transaction, and, either: (1) the applicable waiting period under subsection 123(1) of the Competition Act shall have expired or shall have been terminated under subsection 123(2) of the

Competition Act, or (2) the obligation to submit a notification under Part IX of the Competition Act shall have been waived pursuant to paragraph 113(c) of the Competition Act;

**"Confidential Information"** has the meaning given in the Confidentiality Agreement;

**"Confidentiality Agreement"** means that confidentiality agreement dated January 14, 2022, between IORL and Purchaser with respect to the Transaction;

**"Consequential Losses"** means all consequential losses, which include indirect, special, punitive, exemplary or incidental losses howsoever and whenever caused and which may also include loss of sales, production, profits, revenues, expectation or opportunity, if, in any such case, any such losses are consequential losses, but, notwithstanding the foregoing, does not include:

- (a) any amounts paid or payable by a Party or its Representatives to a third party in respect of any losses, which are and shall be deemed to be direct losses; or
- (b) any losses other than in (a) above, howsoever described or referred to, which are direct losses including, for certainty, any losses that are the direct and reasonably foreseeable result of the event giving rise to such damage and not based on any special circumstances of a party;

**"Contribution"** means, without double counting, any cash contribution to the Purchased Entities by any member of the Vendor Group;

**"Contributions Adjustment"** means an amount equal to any Contributions actually made to either of the Purchased Entities during the Interim Period;

**"Debt Commitment Letter"** has the meaning given in Section 5.3(l);

**"Debt Letters"** has the meaning given in Section 5.3(l);

**"Debtors"** means, without double counting, the sums of current accounts receivable, determined in accordance with generally accepted accounting principles incurred by and owing to either of the Purchased Entities prior to the Effective Date, which remain outstanding as of the Effective Date; provided that, notwithstanding anything herein to the contrary, the amount of Debtors so determined shall be reduced by an amount equal to the Aged Receivables Amount;

**"Deposit"** has the meaning given in Section 2.2(a);

**"DFS Provisions"** has the meaning given in Section 12.6;

**"Dollar"** or **"\$"** means a Canadian dollar;

**"Effective Date"** means May 1<sup>st</sup>, 2022;

**"EMCL"** means ExxonMobil Canada Ltd.;

**"Employee List"** has the meaning given in Section 7.1(a);

**"Employees"** means, currently anticipated to be, seventy-three (73) individuals who are employed by a member of Vendor Group, whether on a full-time or part-time basis, in duties for the benefit of the

Purchased Entities or pertaining to the Interests and Facilities, and "**Employee**" means any one (1) of them;

**"Employment Liabilities"** means all Claims relating to salaries, wages, bonuses, incentive compensation, pensions, insurance, benefits, awards (including back pay awards granted retroactively for wages or benefits), notice of termination, pay in lieu of notice, termination pay or severance pay (including statutory, contractual or common law reasonable notice or pay in lieu thereof), redundancy, or any other termination pay, vacation pay, holiday pay and overtime pay and all complaints, demands or Claims for violations of human rights, occupational health and safety, worker's compensation, employment standards, pay equity, employment equity and privacy legislation and all Claims for reinstatement, damages (including damages for unjust dismissal, wrongful dismissal or unfair dismissal, constructive dismissal and termination), awards, Losses, compensation, charges, liabilities, fines, penalties, taxes, interest, withholding taxes (including Taxes and all related interest and penalties incurred directly with respect thereto) and all other amounts, however described or denominated, and all related costs, expenses and other charges, including all legal and attorneys' fees and costs of litigation, hearings, proceedings, internal and external investigations, document and data productions and discovery, transcripts, payments, settlements, judgments, awards, awards of legal and attorneys' fees, interest and penalties, however described or denominated, known or unknown, direct or indirect, to the extent arising out of, or related to, or in any way connected with the employment or termination of employment or constructive dismissal of Employees or Transferred Employees;

**"Encumbrance"** means any charge, lien, royalty, rights of pre-emption, reduction of interest, mortgage, pledge, or Security Interest or other encumbrance or adverse Claim whatsoever, or any agreement to create any of the foregoing;

**"Environment"** means the components of the earth and includes:

- (a) ambient air, land, surface and sub-surface strata, groundwater, surface water;
- (b) all layers of the atmosphere;
- (c) all organic and inorganic matter and living organisms; and
- (d) the interacting natural systems that include components referred to in (a) to (c);

**"Environmental and End-of-Life Liabilities"** means any and all past, present and future Liabilities relating to arising from or in respect of the Facilities and accruing directly or indirectly in connection with any or all of the construction of, ownership of or operation of the Facilities and with the disposal of any or all of the Facilities at the end of their use, including:

- (a) Environmental Matters;
- (b) Environmental Claims;
- (c) Abandonment and Reclamation Obligations; and
- (d) Losses, Liabilities and Claims suffered or incurred by third parties as a result of any of the foregoing,

in each case, whether accruing, occurring or arising on, before or after the Closing Date;

**"Environmental Claim"** means any actual or potential Claim made, asserted or threatened by a Person alleging a breach of or non-compliance with Environmental Law or other Liability in respect of the Environment;

**"Environmental Law"** means Applicable Law respecting the protection of the Environment or imposing Liability as a result of adverse effects to the Environment, including public safety and transportation or handling of hazardous substances, and, including without limitation, any reference to Alberta Tier 1 and Tier 2 Soil and Groundwater Remediation Guidelines;

**"Environmental Matters"** means any activity, event or circumstance pertaining to or relating to the past, present or future assets or activities of the Purchased Entities and their respective predecessors, successors and assigns, and whether caused by an Environmental Claim or otherwise, which occur or accrue in whole or in part prior to, on or subsequent to the Closing Date, involving a breach of or non-compliance with Environmental Laws including, but not limited to, any activity, event or circumstance regarding:

- (a) the storage, use, holding, collection, accumulation, assessment, generation, manufacture, construction, processing, treatment, stabilization, disposition, handling, transportation or release of hazardous substances;
- (b) the protection of the Environment;
- (c) pollution, reclamation or restoration of the Environment;
- (d) any seismic programs conducted on or in respect of the Facilities;
- (e) Liabilities for damage to protected species, natural habitats and sites of special scientific or archeological interest; or
- (f) Liabilities associated with the production, handling, storage or disposal of any naturally occurring substances produced in conjunction with the Petroleum Substances,

in each case, relating solely to the Facilities or that has or have accrued or hereafter accrue from or in respect of the Facilities;

**"ExxonMobil Policies"** has the meaning given in Section 3.3(a);

**"Facilities"** means the Petroleum Substances exploration, appraisal, production, processing, transportation, and redelivery facilities, Associated Facilities, Tangibles, and Pipelines, used from time to time (whether prior to or on Closing) that relate to the ownership, operation, development or exploration of all or any part of the Interests, the operations or the Leases, including Wells (whether or not such Wells have been plugged or abandoned), structures, plants, machinery, equipment and Pipelines (or any of them);

**"Final Resolution"** has the meaning given in Section 2.8(d);

**"Final Statement of Adjustments"** has the meaning given to it in Section 2.8(a);

**"Financial Statements"** means the unaudited financial statements of the Purchased Entities as at December 31, 2021 for the year ended December 31, 2021, and the notes thereto;

**"Financing"** has the meaning given in Section 5.3(l);

**"Financing Source Parties"** has the meaning given in Section 12.6;

**"Financing Sources"** has the meaning given in Section 5.3(l);

**"Fundamental Representations"** means representations and warranties set forth in Sections 5.1(a), 5.1(b), 5.1(c), 5.1(h), 5.1(k), 5.1(l), 5.1(m), 5.1(o) and 5.1(r);

**"Governmental Authority"** means any governmental, regulatory or administrative authority, department, agency, commission, board, bureau, branch, official, panel or tribunal of any nature (both domestic and foreign), any Crown corporation, any court or private arbitrator or arbitral tribunal and any other Person exercising or entitled to exercise any legislative, judicial, quasi-judicial, administrative, executive, investigative, regulatory, licensing or taxing authority or power, having jurisdiction or power over any Person, property, operation, transaction or other matter or circumstance, as the context so requires;

**"Gross Negligence or Willful Misconduct"** means any act or failure to act (whether sole, joint or concurrent) by any person or entity which was intended to cause, or which was in reckless disregard of or wanton indifference to, harmful consequences such person or entity knew, or should have known, such act or failure would have on the safety or property of another person or entity;

**"Hydrocarbons Inventory"** means the value of Petroleum Substances, which have been produced prior to the Effective Date, but which have not been sold by the Purchased Entities as of the Effective Date, including Petroleum Substances in storage in tanks or other facilities, and any Petroleum Substances in any pipeline, terminal, or other facility (including dead stock, liquid stock, or line fill);

**"Indebtedness"** means any indebtedness for or in respect of:

- (a) monies borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialized equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock, or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract, which would, in accordance with generally accepted accounting principles, be treated as a finance or capital lease;
- (e) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back, or sale and leaseback agreement) having the commercial effect of a borrowing;
- (f) all indebtedness of the type in (a) to (e) above guaranteed by a Purchased Entity;
- (g) all indebtedness of the type in (a) to (f) above secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Encumbrance on the Purchased Interests or property owned by a Purchased Entity (including the Company Partnership Interests owned by the Company);
- (h) deferred purchase price obligations (unless included in the Working Capital Adjustment);

- (i) letters of credit, performance bonds and surety bonds of the Purchased Entities to the extent drawn upon; and
- (j) any interest payable in connection with the indebtedness referred to in (a) to (i) above;

**"Indemnified Party"** means the subject Party and its Representatives being indemnified by the other Party pursuant to and in accordance with the terms of this Agreement;

**"Indemnifying Party"** means the subject Party covenanting and agreeing to indemnify the other Party and its Representatives pursuant to and in accordance with the terms of this Agreement;

**"Independent Accounting Firm"** has the meaning given in Section 2.8(c);

**"Intercompany Service Agreements"** means the service or supply contracts, agreements and/or arrangements between a member of Vendor Group and either Purchased Entity set out in Schedule C under the heading "Intercompany Service Agreements";

**"Interests"** means the entire right, title, estate and interest of the Purchased Entities and Vendor Group:

- (a) in each Lease and Facility;
- (b) in the other Title and Operating Documents; and
- (c) the Purchased Entities Seismic Data,

together with all the rights and Liabilities attaching thereto, including:

- (d) the right to take and receive Petroleum Substances attributable to the interests referred to in paragraph (a) above, produced on or after the Effective Date, and to receive the gross proceeds from the sale or disposition thereof;
- (e) a consequent share of the right, title and interest in and to the jointly owned funds, jointly owned property, including the Facilities, and all other assets attributable to the interests referred to in paragraph (a) above; and
- (f) all rights and Liabilities associated with such interests referred to in paragraph (a) above, including in respect of any property which directly relates to the Leases,

and, for certainty, the Interests includes the Additional Interests;

**"Interim Period"** means the period from and including the Effective Date up to, but not including, the Closing Date;

**"Interim Statement of Adjustments"** has the meaning given in Section 2.7;

**"IORL"** means Imperial Oil Resources Limited;

**"KAPS Transportation Services Agreement"** means the agreement made as of January 31, 2019, between Keyera Partnership and Canada Imperial Oil Limited, as amended;

**"Kakwa Adjustment"** means *[dollar amount redacted]*, which amount accounts for the Purchased Entities' share of tie-in and surface pre-build costs that it would have been responsible for in respect

of the Kakwa Wells and the Kakwa Surface Sites had the Purchased Entities (or either of them) exercised their or its, as applicable, participation election under the applicable joint venture agreement with Purchaser;

**"Kakwa Surface Sites"** means each of the following surface sites used in connection with the development and production of the Kakwa Wells: 104/13-31-62-5W6, 102/12-31-62-5W6 and 103/12-31-62-5W6;

**"Kakwa Wells"** means each of the following wells: 100/16-34-62-5W6, 102/16-34-62-5W6, 102/9-34-62-5W6, 103/9-34-62-5W6, 103/13-31-62-5W6, 104/13-31-62-5W6, 102/12-31-62-5W6 and 103/12-31-62-5W6;

**"Lands"** means the lands and formations described in Schedule D, the Interests and all lands pooled or unitized therewith and, except as otherwise expressly noted in Schedule D, includes the Petroleum Substances within, upon or under those lands and within such formations, together with the right to explore for and recover Petroleum Substances, to the extent those rights are attributable to the Interests;

**"Leakage"** means (without double counting) any of the following by either of the Purchased Entities (including pursuant to or in connection with the Additional Interests Transaction and/or the Pre-Signing Date Reorganization, including as permitted by the terms of Sections 3.2(g) and 3.7):

- (a) the declaration, making, or payment of any dividend, distribution, or return of capital (including any deemed dividend) in favor of any member of Vendor Group;
- (b) the payment of any sum to any member of Vendor Group, or on behalf of any member of Vendor Group, other than on an arm's length basis and in the ordinary course of business;
- (c) the sale, purchase, transfer, or disposal of any asset to any member of Vendor Group that is made at less than the fair market value, to the extent the actual amount received by the applicable Purchased Entity in respect of such sale, purchase, transfer, or disposal is less than the fair market value;
- (d) the giving of a guarantee or indemnity in respect of the obligations of any member of Vendor Group;
- (e) the forgiveness, release, or waiver of any debt or Claim outstanding against any member of Vendor Group;
- (f) the repayment of any debt or amount owed to a member of Vendor Group which debt or amount is not included in the Working Capital Adjustment;
- (g) the payment of any legal, Tax, financial or transactional advisory or services fees directly related to the sale of the Purchased Interests;
- (h) the payment of any bonus or commission to any employee of the Purchased Entities or any member of Vendor Group, to the extent such bonus is directly related to the sale of the Purchased Interests and the cost of any run-off insurance for any such Persons;
- (i) the entry into any binding agreement to carry out any of the foregoing;

- (j) any amount paid or agreed to be paid by the Purchased Entities for the Additional Interests, except for the issuance of additional shares by the Company to Vendor as full and final compensation for the transfer of such Additional Interests to the Company in accordance with Section 3.7(a) but only if such shares are included in the Shares to be sold, assigned, transferred and conveyed to Purchaser pursuant to this Agreement without any additional consideration payable by Purchaser;
- (k) the net amount of all benefits and obligations of every kind and nature relating to the ownership and operation of the Additional Interests and accruing in respect of the Additional Interests, including rentals, Taxes **[calculation methodology redacted]**, maintenance, development, capital and operating costs, accounts receivable, proceeds from the sale of production and revenues from processing and transportation fees, in each case, from the Effective Date to the effective date of the Additional Interests Transaction;
- (l) any amount arising from a breach of Section 3.2(g) by Vendor, any other member of Vendor Group and/or either of the Purchased Entities, where Section 3.2(g) shall be read as if the covenants therein were given by Vendor, each other member of Vendor Group and each Purchased Entity as if they were all a party hereto; or
- (m) the payment of any Tax by either Purchased Entity as a consequence of any matter referred to in paragraphs (a) through (l) above (but, in each case, excluding any recoverable Sales Taxes),

in each case, excluding Permitted Leakage;

**"Leakage Adjustment"** means an amount equal to any Leakage actually made or incurred by the Purchased Entities or, in respect of the Additional Interests, by applicable members of Vendor Group that hold or held an interest in the Additional Interests, during the Interim Period or that arises as a result of the sale of the Purchased Interests, the Additional Interests Transaction or the Pre-Signing Date Reorganization, whether paid or payable prior to, at, or after Closing;

**"Leases"** means, collectively, the various leases, reservations, permits, licenses and other documents of title by virtue of which the Purchased Entities (or either of them) or Vendor Group, are entitled to explore for, drill for, recover, remove or dispose of Petroleum Substances within, upon or under the Lands, including those leases, reservations, permits, licences and other documents of title set out in Schedule D and, includes, if applicable, all renewals and extensions of those documents and all documents issued in substitution therefor;

**"Liabilities"** means all liabilities and obligations, whether under common law, in equity, under Applicable Law or the Regulations, contracts or otherwise, whether tortious, contractual, vicarious, statutory or otherwise, absolute or contingent, and whether based on fault, strict Liability or otherwise;

**"Losses"** means, in respect of a Person and in relation to a matter, all losses, costs and damages (including all penalties and fines), whether or not involving a third party Claim, which such Person suffers, sustains, pays or incurs in connection with such matter and includes Taxes (other than income taxes or refundable taxes), reasonable costs of legal counsel and other consultants and reasonable costs of investigating and defending Claims arising from the matter, regardless of whether such Claims are sustained but shall not include Consequential Losses;

**"Material Adverse Effect"** means any change, event or effect that is, or would reasonably likely be, materially adverse to the business, Liabilities, assets, results of operation or financial condition of the Purchased Entities, taken as a whole, excluding any such change, event or effect arising out of, in

connection with or resulting from: (i) general global, national or regional business, political, market, regulatory or social conditions (or changes therein), including in respect of interest or currency rates or the financial or capital markets; (ii) the current COVID-19 pandemic; (iii) any act of terrorism, war, military action or the escalation or worsening thereof, act of God, natural disaster, similar calamity or other force majeure event; (iv) any adoption, implementation, change or proposed change in Applicable Law (or interpretations thereof); (v) any change in the economic, business, financial, Environment, regulatory or legal enforcement generally affecting the industries or market sectors in which the Facilities are owned and operated; (vi) changes in applicable accounting principles or any applicable regulatory accounting rules (or the enforcement, implementation or interpretation thereof); (vii) any action or omission by Purchaser; (viii) any action, omission, change, effect, circumstance or condition attributable to or contemplated by the execution, delivery or performance of this Agreement or the Transaction or the announcement of the Transaction (including any adverse effect proximately caused by threatened or actual loss of, or disruption in, any customer, supplier, vendor, employee or landlord relationships or loss of any personnel, or by reason of the identity of Purchaser or any communication by Purchaser regarding its plans or intentions with respect to the Purchased Entities); (ix) compliance with the terms of this Agreement; (x) any action taken, or failure to take any action, or such other change or event, in each case, to which Purchaser has consented in writing; (xi) the failure of the Purchased Entities to meet internal projections, estimates, forecasts or revenue or earning predictions for any period; or (xii) any matter of which Purchaser is aware on the date hereof;

**"Material Agreements"** means, in relation to any Purchased Entity or any member of the Vendor Group that holds or held an interest in the Additional Interests, any contract, agreement, commitment or undertaking, pursuant to which such Person is a party or by which that Person is bound, of the type described below, but excluding any seismic contracts or agreements that are related to the Purchased Entities Seismic Data or the Vendor Group Seismic Data:

- (a) any fidelity or surety bond or completion bond or guarantee in respect of the obligations of a third party;
- (b) any agreement, contract or commitment (other than a Title and Operating Document) relating to capital expenditures and involving future payments in excess of **[dollar amount redacted]** or any purchase order or contract for the purchase of materials in excess of **[dollar amount redacted]**;
- (c) any material non-competition, area of exclusion or non-solicitation agreement;
- (d) any agreement, contract or commitment relating to the disposition or acquisition of assets or any interest in any business enterprise outside the ordinary course of business;
- (e) non-arm's length transactions which are not in the ordinary course of business;
- (f) any mortgage, indenture, guarantee, loan or credit agreement, security agreement or other agreement or instrument relating to the borrowing of money or extension of credit;
- (g) any agreement or contract providing for options, swaps, floors, caps, collars, forward sales or forward purchases involving commodities, commodity prices, indices, interest rates, foreign exchange or other derivatives;
- (h) the contracts and agreements required to be disclosed in Schedule E;
- (i) agreements containing change of control provisions;

- (j) joint marketing or development agreements;
- (k) any other agreement, contract or commitment (other than the Title and Operating Documents and the Product Sales Agreements) that involves payments or revenues of **[dollar amount redacted]** or more;

**"Negative Balance"** has the meaning given in the definition of **"Working Capital Adjustment"**;

**"Non-Hydrocarbons Inventory"** means the value of inventory (including stores and spares) held by the Purchased Entities as of the Effective Date, net of any Non-Hydrocarbons Inventory Provisions;

**"Non-Hydrocarbons Inventory Provisions"** means both general and specific provisions, made for obsolete, slow moving, or defective items of Non-Hydrocarbons Inventory, as adopted by the Purchased Entities as of the Effective Date;

**"Objection Date"** has the meaning given in Section 2.8(b);

**"Offer Date"** means the date that the applicable Employees are provided an offer of employment by Purchaser in accordance with the terms of this Agreement, which such date shall be (i) four (4) weeks after execution of this Agreement for Employees; or (ii) such other date as agreed between the Parties in writing provided that all Employees are made offers of employment on the same date;

**"On-Leave Employees"** has the meaning given in Section 7.6;

**"Operator"** means either of the Purchased Entities, or any applicable member of the Vendor Group, in its capacity as operator of any of the Interests as designated under agreements governing the ownership and operation of the Interests;

**"Organizational Documents"** means, any certificate of incorporation, articles of incorporation, partnership agreements, bylaws or similar formation or governing documents and instruments;

**"Other Assets"** means any current assets (determined in accordance with generally accepted accounting principles) of the Purchased Entities as of the Effective Date, including amounts prepaid on account of expenditures to be incurred on or after the Effective Date, but excluding Cash Balances, Debtors, Hydrocarbon Inventory, Non-Hydrocarbon Inventory and Underlifts;

**"Other Liabilities"** means any current liabilities (determined in accordance with generally accepted accounting principles) of the Purchased Entities as of the Effective Date, and including liabilities for which either Purchased Entities maintains a reserve in its account but excluding (a) any Accounts Payable, Accruals and Overlifts, and (b) for the avoidance of doubt, any Environmental and End-of-Life Liabilities or contingent Liabilities;

**"Outside Date"** means December 31, 2022;

**"Overlift"** or **"Underlift"** means the amount in barrels (or converted to barrels if another unit of measurement is used) by which the aggregate amount of Petroleum Substances lifted and attributable to the Interests, relative to any partner working interests in joint properties, before the Effective Date exceeds (in the case of Overlift) or falls short of (in the case of Underlift) the aggregate amount of production entitlement before the Effective Date attributable to the Interests, as valued in Dollars. For the purposes of valuation of Overlift or Underlift, the Petroleum Substances volumes shall be taken from the closing stocks, as of the Effective Date, shown in the reports produced by the relevant

operator. The value of any Overlift or Underlift shall be in accordance with the market price published by S&P Global Platts prevailing at the Effective Date;

**"Parent Guarantees"** means the parent guarantees delivered by Vendor to and in favour of Purchaser concurrently with execution of this Agreement;

**"Partnership"** has the meaning given in the recitals;

**"Partnership Agreement"** means the amended and restated partnership agreement for the Partnership dated December 31, 2021 among the Company, EMCL and IORL, as amended or amended and restated as of the date hereof;

**"Partnership Fiscal Year"** has the meaning given in Section 11.2(b);

**"Party"** means Vendor or Purchaser, and **"Parties"** means both of them;

**"Permit Transfers"** means transfers of Permits related to the Interests (including for certainty the Registered Interests and the Additional Interests) that are in the name of a member of Vendor Group.

**"Permits"** means permits, licenses, approvals and authorizations issued or granted by Governmental Authorities.

**"Permitted Encumbrances"** means:

- (a) the Encumbrances described in Schedule D;
- (b) easements, rights of way, servitudes and similar rights in land including rights of way and servitudes for highways and other roads, railways, sewers, drains, gas and oil pipelines, gas and water mains, electric light, power, telephone, telegraph or cable television conduits, poles, wires and cables that burden the Interests, in existence on the date of this Agreement;
- (c) any right reserved to or vested in any government or other public authority by the terms of any Lease, franchise, grant or permit forming part of the Facilities, or by any statutory provision, to terminate any Lease, franchise, grant or permit, or to require annual or other periodic payments as a condition of the continuance of them;
- (d) any right of general application reserved to or vested in any Governmental Authority to levy Taxes on Petroleum Substances or the revenue from them, and governmental restrictions on production rates or on the operation of any property or otherwise affecting the value of any property;
- (e) Encumbrances described or set out in any disclosed Material Agreements;
- (f) Encumbrances described in, and the terms and conditions of, the Title and Operating Documents, including provisions for penalties and forfeitures under the Title and Operating Documents as a consequence of non-participation in operations; provided that: (i) an Encumbrance created pursuant to a Title and Operating Document will only be a Permitted Encumbrance pursuant to another item of this definition; and (ii) a Preferential Right created pursuant to a Title and Operating Document will only be a Permitted Encumbrance if such Preferential Right is not triggered by the Transaction, the Additional Interests Transaction or the Pre-Signing Date Reorganization;

- (g) any rights reserved to or vested in any municipality or governmental, statutory or public authority to control or regulate any of the Facilities in any manner and all applicable Regulations;
- (h) the right reserved or vested in any Person to create or incur a lien:
  - (i) as security, in favour of a Person conducting the development or operation of any of the Facilities, for the Purchased Entities' proportionate share of the costs and expenses of the development or operation but only to the extent those liens relate to costs and expenses for which payment is not due,
  - (ii) for Taxes, assessments or governmental charges which are not due, and/or
  - (iii) that is a mechanics' lien, builders' lien or materialmens' lien in respect of services rendered or goods supplied but only to the extent such lien relates to goods or services for which payment is not due;
- (i) the reservations, limitations, provisos and conditions in any original grant from the Crown of any of the Lands or interests in them, and statutory exceptions to title;
- (j) liens incurred, created and granted in the ordinary course of business to a public utility, municipality or Governmental Authority in connection with operations conducted with respect to the Facilities, but only to the extent those liens relate to costs and expenses for which payment is not due;
- (k) any lien which has been created or incurred pursuant to subsections (h) to (j) but is being contested in good faith by a Purchased Entity;
- (l) any Security Interest encumbering the either Purchased Entity's interest in and to the Facilities or any part or portion thereof, in respect of which such Purchased Entity delivers a discharge or no interest letter to Purchaser, in a form satisfactory to Purchaser, at or prior to Closing;
- (m) any Encumbrances, defects, or irregularities (other than those in subsections (a) to (l) above and (n) below) that in aggregate do not materially interfere with the ownership or use of the Interests; and
- (n) liens for current Taxes, impositions, assessments, fees, rents or other charges levied or assessed or imposed by a Governmental Authority that in each case are not yet due or are not in arrears;

**"Permitted Leakage"** means (without double counting) any of the following by either of the Purchased Entities during the Interim Period:

- (a) any payments under the Intercompany Service Agreements or other payments made in the ordinary course of business to a member of Vendor Group for the provision of services, in either case, consistent with past practices;
- (b) any payments made in the ordinary course of business to a member of Vendor Group in respect of salaries, pension contributions, performance or other bonuses, or other reimbursements, benefits, or expenses due to any employee of Vendor Group to the extent any such employee provided services to either of the Purchased Entities or in respect of the Interests in the ordinary course of such employee's employment;

provided that any such payments shall be: (i) reasonably calculated to pertain to only that portion of the time that such employee was performing duties for the benefit of the Purchased Entities or pertaining to the Interests during the Interim Period; and (ii) consistent with past practices;

- (c) any premium payments made, directly or indirectly, to Captive for insurance or reinsurance provided to the Purchased Entities in the ordinary course of business not to exceed **[dollar amount redacted]** per month *plus* the amount of any deductibles or fees required to be paid under Captive in the event of any claims arising during the Interim Period and approved by Purchaser;
- (d) any payments made to a member of Vendor Group in respect of the settlement of intercompany balances between the Purchased Entities and a member of Vendor Group, provided such balances existing at the Effective Date are recorded as Liabilities included in the Working Capital Adjustment or Indebtedness;
- (e) the payment to Vendor of any amounts that have been specifically taken into account in the calculation of any Adjustment, other than the Leakage Adjustment and/or Permitted Leakage Adjustment;
- (f) any payments of items, other than as referred to in paragraphs (a) to (e) above, that are expressly approved or requested in writing by Purchaser; and
- (g) the payment of any Tax by either Purchased Entity with respect to any items referred to in paragraphs (a) through (f) above;

**"Permitted Leakage Adjustment"** means a Permitted Leakage for which the applicable member of Vendor Group has not been reimbursed by the Purchased Entities prior to Closing;

**"Person"** means any individual, body corporate, partnership (limited or general), trust, trustee, executor or similar official, Governmental Authority or other entity;

**"Personal Information"** means information about an identifiable individual, but excludes such individual's business contact information (consisting of the individual's name, position name or title, business telephone number, business address, business e-mail or business fax number when used for the purpose of contacting such individual in his or her capacity as an employee or official of an organization and for no other purpose) which has been or is to be disclosed and/or conveyed to Purchaser and/or its Affiliates by or on behalf of any member of the Vendor Group, the Purchased Entities or an Affiliate of any member of the Vendor Group or the Purchased Entities as a result of or in conjunction with the Transaction;

**"Petroleum Substances"** means petroleum, natural gas and all related hydrocarbons, whether gaseous, liquid or solid, and all other substances that may be produced in association with them, whether hydrocarbons or not (including sulphur);

**"Pipelines"** means the pipelines associated with the Wells and Facilities;

**"Positive Balance"** has the meaning given in the definition of **"Working Capital Adjustment"**;

**"Pre-Effective Date Period"** means, in respect of each of the Company and the Partnership, the period beginning on and including January 1, 2022 and ending on the Effective Date;

**"Pre-Signing Date Reorganization"** means, between the Effective Date and the date of this Agreement, any transaction or series of transactions by or among the Vendor Group entities and any Purchased Entities that directly or indirectly involves the Purchased Interests or any Purchased Entities, including any reorganization, amalgamation, merger, consolidation or similar arrangement;

**"Preferential Right"** means a right of first refusal, pre-emptive right of purchase or similar contractual right under any Title and Operating Document whereby a third party has the right to purchase or acquire any of the Interests as a consequence of the Transaction, the Additional Interests Transaction or the Pre-Signing Date Reorganization;

**"Product Sales Contracts"** means the agreements required to be described in Schedule E;

**"Property Expenses"** means (a) all operating expenses incurred by the Purchased Entities in the ownership and operation of the Facilities (including all insurance premiums or any other costs of insurance attributable to the Purchased Entities' and/or their respective Affiliates' insurance and to coverage periods from and after the Effective Date but excluding in all cases, all costs and expenses of bonds, letters of credit or other surety instruments), (b) all capital expenditures (in each case) incurred in the ownership and operation of the Facilities in accordance with Section 3.2 paid by the Purchased Entities to third parties and, where applicable, in accordance with the relevant operating or unit agreement, if any, and (c) the Purchased Entities' share of overhead costs charged to the Facilities and paid to third parties under the relevant operating agreement or unit agreement, if any;

**"Purchase Price"** has the meaning given in Section 2.3;

**"Purchase Price Interest"** has the meaning given in Section 2.5;

**"Purchased Entities"** means, collectively, the Company and the Partnership and **"Purchased Entity"** means any one of them;

**"Purchased Entities Partner Seismic Data"** means those records, books, documents, licenses, reports and data, including all processed data, associated with the proprietary 2D seismic lines and 3D seismic surveys as set out in Schedule I under the heading "Joint", and all microseismic data, if any, in the defined areas, that are owned jointly by any member or both members of the Purchased Entities with one or more Persons (other than a Purchased Entity);

**"Purchased Entities Proprietary 100% Seismic Data"** means those records, books, documents, licenses, reports and data, including all processed data, associated with the proprietary 2D seismic lines and 3D seismic surveys as set out in Schedule I under the headings "Proprietary", and all microseismic data, if any, in the defined areas that is owned one hundred percent (100%) individually or jointly by any member of both members of the Purchased Entities;

**"Purchased Entities Seismic Data"** means the Purchased Entities Partner Seismic Data, the Purchased Entities Proprietary 100% Seismic Data and the Purchased Entities Licensed Seismic Data;

**"Purchased Entities Licensed Seismic Data"** means those records, books, documents, licenses, reports and data, including all processed data, associated with the 2D seismic lines and 3D seismic surveys as set out in Schedule I under the headings "Commercial/Trade", and all microseismic data, if any, in the defined areas that is licensed, in whole or in part, individually or jointly, by any member or both members of the Purchased Entities;

**"Purchased Interests"** means, collectively, the Purchased Partnership Interests and the Shares;

**"Purchased Partnership Interests"** means a sixty percent (60%) partnership interest in the Partnership held by Vendor;

**"Purchaser Closing Deliverables"** means those items set forth in Section 4.3(e);

**"Purchaser Indemnified Parties"** whether used in the context of an indemnity or a release provision means collectively Purchaser, its Affiliates, and their respective Representatives;

**"Purchaser's Losses"** has the meaning given in Section 6.1(a);

**"Registered Interests"** means interests in Crown and/or freehold petroleum and/or natural gas leases and licences, Permits, caveats and similar items comprising part of the Interests (including for certainty the Additional Interests) that are registered in the name of any member of Vendor Group on the records of a Governmental Authority, legal title to which cannot be registered in the name of a Partnership pursuant to Applicable Law.

**"Regulations"** means all statutes, Applicable Laws, rules, orders, directives and regulations made by governments or governmental agencies having jurisdiction over the Interests or the Parties, and includes the terms and conditions of any approval, permit, Lease, or authorization issued by government or governmental agencies which affect the Interests or the Parties;

**"Representatives"** means, in relation to a Party or any Affiliate of a Party, its directors, officers, advisors, agents and employees;

**"Sales Taxes"** means any value added, sales and use taxes, fees or charges imposed by provincial or federal legislation on the recipient of goods or services, including the goods and services tax and harmonized sales tax as provided for in the *Excise Tax Act* (Canada), or any other value added tax that may be imposed as a result of an amendment to, addition to or replacement of the foregoing;

**"Security Interests"** means any assignment, security, mortgage, charge, pledge, negative pledge, lien or other security interest whatsoever or howsoever created or arising whether absolute or contingent, fixed or floating, perfected or not, which encumbers either Purchased Entities' title in and to the Interests or any part or portion thereof or the proceeds to be received therefrom;

**"Seismic License Agreement"** means a seismic license agreement to be executed by Purchaser and each applicable member of Vendor Group at Closing, in substantially the form attached hereto as Schedule M, pursuant to which the Vendor Group 100% Proprietary Seismic Data will be licensed to the applicable member of Vendor Group by Purchaser without further charge;

**"Shared Interests"** means the facilities, transportation, gathering systems, batteries, contracts and services owned or provided by any member of Vendor Group which are substantially relied on by a Purchased Entity for the production, handling, transportation or marketing of production from the Interests, including for certainty the Additional Interests;

**"Shares"** has the meaning given in the recitals, and includes all issued and outstanding shares in the capital of the Company including any shares that may be issued in connection with the Additional Interests Transaction and/or the Pre-Signing Date Reorganization;

**"Site Visit"** has the meaning given in Section 3.1(a);

**"Specific Conveyances"** means all conveyances, assignments, transfers, novations and other documents or instruments that are reasonably required or desirable, in accordance with normal oil and

gas industry practices, to convey, assign and transfer any member of Vendor Group's title to the Registered Interests to the Company or Purchaser as agent and nominee for the Partnership or to the Additional Interests to the Company and to novate the Company into the Title and Operating Documents in respect of the Additional Interests that are contracts in the place and stead of a member of Vendor Group to the extent they relate to the Additional Interests.

**[defined term redacted]**

**"Surface Rights"** means the interests of the Purchased Entities in all rights that are, or were, held to enter upon, use or occupy the surface of any of the Lands, and any lands which are or were used, held for use or to be crossed in connection with, or to gain access to the Facilities and includes any specified land as defined in the *Conservation and Reclamation Regulation*, A/R 115/93 (Alberta);

**"Survival Period"** means a period of **[time period redacted]** following the Closing Date; provided that the Survival Period in respect of: (a) Vendor's Tax indemnity provided in Section 6.1(b) and Tax Representations and Warranties shall continue following the Closing Date until **[time period redacted]** after the relevant Governmental Authority is no longer entitled to assess or reassess liability against or in respect of the Purchased Entities for Tax; (b) the Fundamental Representations shall continue until **[time period redacted]**; and (c) in respect of the Final Statement of Adjustments, such period of time as is required under Section 2.8 to settle the Final Statement of Adjustments;

**"Tangibles"** means the interest of the Purchased Entities in any tangible depreciable property or assets located within or on the Lands or governed under the Title and Operating Documents that are used or useful solely in connection with production, gathering, treatment, storage, compression, processing, transportation, injection, or removal of Petroleum Substances or other operations relating to the Interests, and includes all tangible depreciable property and assets that form part of or are used in connection with them (including the tangible equipment, if any, relating to the Wells and downhole equipment and includes pipelines that have been abandoned but not removed), but specifically excludes the Associated Facilities, the Pipelines and the other facilities (other than the Tangibles) comprising part of the Facilities as well as any computer technology utilized in connection with operations on the Lands;

**"Tax Pools"** means undepreciated capital cost of any particular class of depreciable property, earned depletion base, cumulative Canadian exploration expense, cumulative Canadian development expense, cumulative Canadian oil and gas property expense, foreign exploration and development expense, capital losses, non-capital losses, share issue costs and investment tax credits, all as defined in the Canadian Tax Act, and financing expenses referred to in paragraph 20(1)(e) of the Canadian Tax Act;

**"Tax Refund"** means any refund, rebate, repayment or other recovery of Taxes of the Purchased Entities (whether paid by way of a cash refund or credited against any liability for Taxes) from a Governmental Authority with respect to a taxation period (or any portion thereof) ending on or before the Effective Date (including any interest);

**"Tax Representations and Warranties"** means Vendor's Tax representations and warranties in Section 5.1(ii);

**"Tax Returns"** means all reports, forms, elections, declarations, designations, schedules, agreements, statements, estimates, declarations of estimated Tax, information statements, returns and all other similar documents (whether in tangible, electronic or other form) required by Applicable Law to be filed with or provided to a Governmental Authority with respect to Taxes or Tax information

reporting, and whether in tangible or electronic form, including any claims for refunds of Taxes, and any re-filings, amendments or supplements of the foregoing;

**"Taxes"** or **"Tax"** means all forms of taxes, contributions, duties, levies, imposts, charges, assessments, Liabilities, deductions, and withholdings, direct or indirect, imposed by any Governmental Authority, including Sales Taxes, for which a Person is liable under Applicable Law, and includes all penalties, charges, interest, fines, costs, expenses, loss of relief, allowance, and credit relating to any form of, or Claim for, taxes or other imposition referred to herein;

**"Title and Operating Documents"** means all contracts, deeds, titles, instruments, books, records and documents relating to the Interests, the Leases, the Lands, the Surface Rights, Associated Facilities or the Tangibles, or any rights in relation to them or that otherwise affects or encumbers Vendor Group's or either Purchased Entity's interests and obligations in the Facilities and Interests, including Product Sales Contracts, unit agreements, operating agreements, construction and/or ownership agreements, royalty agreements, assignments, farmout or farmin agreements, option agreements, participation agreements, pooling agreements, sale and purchase agreements, trust declarations and asset exchange agreements;

**"Transaction"** means the sale and purchase of the Purchased Interests pursuant to this Agreement;

**"Transfer Date"** means, in relation to a Transferred Employee, the date on which such Transferred Employee becomes an employee of Purchaser, which such date shall be the Closing Date, or such other date as set out in this Agreement or as agreed by the Parties in writing;

**"Transfer Taxes"** has the meaning given in Section 11.3(a);

**"Transferred Employee"** means an Employee who has accepted an offer of employment from Purchaser and transfers to Purchaser as of Closing;

**"Transition Services Agreement"** means a transition services agreement to be executed by Purchaser and Vendor at Closing, in substantially the form attached hereto as Schedule K;

**"Vendor Closing Deliverables"** means those items set out in Section 4.2(f);

**"Vendor Group"** means Vendor and its Affiliates (other than the Purchased Entities); provided, for certainty, that Vendor Group shall include former or current Affiliates of Vendor that hold or held an interest in the Purchased Interests and/or Additional Interests;

**"Vendor Group 100% Proprietary Seismic Data"** means those records, books, documents, licenses, reports and data, including all processed data, associated with the proprietary 2D seismic lines and 3D seismic surveys as set out in Schedule I under the headings "Proprietary", and all microseismic data, if any, in the defined areas that is owned one hundred percent (100%) individually or jointly by any one or more of the members of Vendor Group;

**"Vendor Group Interests"** has the meaning given in Section 2.10;

**"Vendor Group Partner Seismic Data"** means those records, books, documents, licenses, reports and data, including all processed data, associated with the proprietary 2D seismic lines and 3D seismic surveys as set out in Schedule I under the headings "Joint", and all microseismic data, if any, in the defined areas, that are owned jointly by any one or more of the members of Vendor Group with one or more other Persons (which other Persons are not a member of Vendor Group);

**"Vendor Group Seismic Data"** means Vendor Group Partner Seismic Data, Vendor Group 100% Proprietary Seismic Data and Vendor Group Licensed Seismic Data;

**"Vendor Group Licensed Seismic Data"** means those records, books, documents, licenses, reports and data, including all processed data, associated with the 2D seismic lines and 3D seismic surveys as set out in Schedule I under the headings "Commercial/Trade", and all microseismic data, if any, in the defined areas that is licensed, in whole or in part, individually or jointly, by any one or more of the members of Vendor Group;

**"Vendor Indemnified Parties"** whether used in the context of an indemnity or a release provision means collectively Vendor, its Affiliates, and their respective Representatives;

**"Wells"** means all producing, shut-in, water source, observation, disposal, injection, abandoned, suspended and other wells associated with the Interests or directly relating to current or prior operation of the Lands, including the wells described in Schedule B; and

**"Working Capital Adjustment"** shall be an amount equal to the monetary value of working capital held by the Purchased Entities as of the Effective Date, and be calculated by:

- (a) adding together the amounts of Cash Balance, Debtors, Non-Hydrocarbons Inventory, Hydrocarbons Inventory, Underlifts, and Other Assets (the "**Positive Balance**") for the Interests;
- (b) adding together Accounts Payable, Accruals, Other Liabilities, and Overlifts (the "**Negative Balance**") for the Interests; and
- (c) deducting the Negative Balance from the Positive Balance.

## 1.2 Schedules

The following schedules are annexed to and form a part of this Agreement:

Schedule A	Purchased Interests
Schedule B	Wells
Schedule C	Disclosure Schedule
Schedule D	Interest and Leases
Schedule E	Product Sales Contracts
Schedule F	Expenditures for Which Purchaser is Responsible
Schedule G	Form of Resignation and Mutual Release Agreement
Schedule H	Aged Receivables
Schedule I	Seismic Data
Schedule J	Shared Interests
Schedule K	Form of Transition Services Agreement
Schedule L	Material Agreements
Schedule M	Form of Seismic License Agreement

The Parties agree that if, as a result of the due diligence review conducted by Purchaser, as herein provided, the Parties mutually agree any portion of the schedules as set forth and described in this Section 1.2 requires amendment, correction and/or revision, then, without affecting the ability of either Party to rely on any condition precedent not satisfied as a result of the discovery of the fact requiring the amendment, each of Vendor and Purchaser shall act diligently and in good faith to so document any such requisite amendment, correction and/or revision. Unless the context otherwise requires, words and expressions defined in this Agreement will have the same meanings in the Schedules and the interpretation provisions set out in this Agreement apply to the Schedules. Unless otherwise indicated, no reference to or disclosure of any item or other matter in the Schedules shall be construed as an admission or indication that such item or other matter is material.

### 1.3 Certain Rules of Interpretation

- (a) **Headings.** The insertion of headings in this Agreement is for convenience of reference only and does not affect the construction or interpretation of this Agreement.
- (b) **Including.** Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".
- (c) **Number and Gender.** This Agreement shall be read and interpreted with such changes to number and gender as may be required by the context.
- (d) **Entire Agreement.** This Agreement and the Confidentiality Agreement constitute the entire agreement between the Parties for the purchase and sale of the Purchased Interests and may be amended only by written instrument executed by Vendor and Purchaser.
- (e) **Time.** In this Agreement all times are Mountain Standard Time or Daylight Saving Time, whichever is in effect pursuant to the *Daylight Saving Time Act* (Alberta).
- (f) **Time Periods.** Unless otherwise specified, time periods within or following which any payment is to be made or an act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following, if the last day of the period is not a Business Day.
- (g) **Knowledge.** In this Agreement references to a Party's knowledge, information, belief or awareness and similar references mean the actual knowledge of the officers of such Party (which, in the case of Vendor, includes the officers of the Purchased Entities and the applicable members of Vendor Group that hold or held an interest in the Additional Interests and the Purchased Interests) primarily responsible for the matters at issue, after a reasonable inquiry of its (and, in the case of Vendor, the Purchased Entities', and the applicable members of Vendor Group that hold or held an interest in Additional Interests and Purchased Interests) applicable files and records and current employees but does not include the knowledge of any other Person nor constructive or deemed knowledge. Except as stated above, a Party shall have no obligation to make any inquiry of other Persons or other Person's files and records (other than, in the case of Vendor, the files and records of the Purchased Entities, and the applicable members of Vendor Group that hold or held an interest in the Additional Interests and Purchased Interests) and of any public office in connection with representations which are made herein in respect of its knowledge, information, belief or awareness.

- (h) **Conflict.** In the event of conflict or inconsistency between a provision in the body of this Agreement and a provision in any of the schedules, the provision in the body of this Agreement shall prevail to the extent of the conflict or inconsistency.
- (i) **Invalidity.** If any provision of this Agreement is held to be invalid, illegal or unenforceable, the invalidity, illegality or unenforceability will not affect any other provision of this Agreement and this Agreement will be construed as if the invalid, illegal or unenforceable provision had never been contained herein, unless the deletion would result in such a material change as to cause the completion of the Transaction to be unreasonable.
- (j) **Construction.** This Agreement has been prepared through the joint efforts of the Parties and shall not be construed against a Party by reason of having been prepared by such Party.
- (k) **References.**
  - (i) A reference to a statute includes all Regulations made pursuant to the statute and, unless otherwise specified, the provisions of any statute or regulation which amends, supplements or supersedes the statute or the regulation after the date of this Agreement.
  - (ii) Unless the context requires otherwise, references in this Agreement to Articles, Sections or Schedules are to Articles, Sections or Schedules to this Agreement.
  - (iii) All references herein to any agreement (including this Agreement), document or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all schedules and exhibits attached thereto.
  - (iv) The words "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions shall be construed as referring to this Agreement in its entirety and not to any particular Section or portion of it.
  - (v) A reference to a Person includes that Person's successors and permitted assigns.
- (l) **Currency and Payment Obligations.** Except as otherwise expressly provided in this Agreement:
  - (i) all Dollar amounts referred to in this Agreement are stated in Canadian Dollars;
  - (ii) any payment contemplated by this Agreement shall be made by wire transfer of immediately available funds to an account specified by the payee; and
  - (iii) except in the case of any payment due on the Closing Date, any payment due on a particular day must be received by and be available to the payee not later than 2:00 p.m. on the due date at the payee's address for notice under Section 12.2 or such other place as the payee may have specified in writing to the

payor in respect of a particular payment and any payment made after that time shall be deemed to have been made and received on the next Business Day;

- (m) **Calculation of Interest.** In calculating interest payable under Section 2.5 for any period of time, the first day of such period shall be included and the last day of such period shall be excluded. The calculation of interest shall be calculated daily at **[interest rate redacted]** per annum and not compounded.
- (n) **No Strict Construction.** The language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to the express their mutual intent, and no rule of strict construction shall be applied to any Person.
- (o) **Accounting Principles.** Whenever in this Agreement reference is made to generally accepted accounting principles, such reference shall be deemed to be to the generally accepted accounting principles from time to time approved by the Chartered Professional Accountants of Canada, or any successor entity thereto, applicable as at the date on which such principles are to be applied or on which any calculation or determination is required to be made in accordance with generally accepted accounting principles.

## **ARTICLE 2 PURCHASE OF PURCHASED INTERESTS**

### **2.1 Purchase and Sale**

Vendor hereby agrees to sell, assign, transfer and convey the Purchased Interests to Purchaser and Purchaser agrees to purchase and accept the Purchased Interests from Vendor, upon the terms and subject to the conditions set forth in this Agreement.

### **2.2 Deposit**

- (a) The amount of **[percentage redacted]** of the Base Purchase Price, equal to **[dollar amount redacted]** (the "**Deposit**"), will be paid as a deposit by Purchaser to Vendor by wire transfer, which transfer shall be initiated by Purchaser concurrently with execution of this Agreement and shall be received by Vendor no later than the following Business Day.
- (b) If this Agreement is terminated by Vendor pursuant to:
  - (i) Section 10.1(b) due to Purchaser's failure to fulfill any obligation under this Agreement; or
  - (ii) pursuant to Section 10.1(e),

and at such time Purchaser was not entitled to terminate this Agreement pursuant to Section 10.1(c) due to Vendor's failure to fulfil any obligation under this Agreement or pursuant to Section 10.1(e), then the Deposit shall be forfeited to Vendor. The Parties acknowledge and agree that the Deposit is not liquidated damages and forfeiture of the Deposit to Vendor, as provided in this subsection (b), shall not be construed as a penalty and shall be in addition to, and not in lieu of, any other rights and remedies Vendor may have under law or in equity for Purchaser's failure to perform as provided

herein and Purchaser irrevocably waives any right it may have to raise as a defense that any such liquidated damages are excessive, punitive or a Consequential Loss.

- (c) If this Agreement is terminated pursuant to Section 10.1 and Vendor is not entitled to claim forfeiture of the Deposit as a result of such termination in accordance with the terms of Section 2.2(b), the Deposit will be refunded to Purchaser within five (5) Business Days of such termination to such account as Purchaser may provide to Vendor.
- (d) In the event that Closing occurs in accordance with the terms and conditions of this Agreement, Vendor will retain and credit the Deposit against the Purchase Price in partial satisfaction of Purchaser's obligation to pay the Purchase Price at Closing.

### **2.3 Payment of Purchase Price and Closing Deliverables**

On or prior to Closing, Purchaser will deliver to Vendor the Purchaser Closing Deliverables and the consideration for the sale of the Purchased Interests (the "**Purchase Price**"), and which amount shall be equal to the amount resulting from the following calculation:

- (a) \$1,880,000,000.00 ("**Base Purchase Price**"), plus
- (b) the Purchase Price Interest; minus
- (c) the Deposit; plus or minus
- (d) the adjustments under Section 2.6,

by way of wire transfer, to the accounts designated by Vendor in Schedule A. Payment of amounts on account of the Purchase Price to such designated accounts shall be deemed to have been made to Vendor.

On or prior to Closing, Vendor will deliver to Purchaser the Vendor Closing Deliverables.

### **2.4 Allocation of Purchase Price**

The Purchase Price shall be allocated as set out in Schedule A.

### **2.5 Purchase Price Interest**

Subject to Closing occurring, simple interest (and, for certainty, not compounded), at **[interest rate redacted]** per annum, shall be payable on:

- (a) the Base Purchase Price from the Effective Date up to (and including) the date the Deposit is paid; and
- (b) the Base Purchase Price, *minus* the sum of the Deposit and *plus or minus* (as the case may be) any amount by which the Base Purchase Price is increased or reduced by the Adjustment, from the day after the date the Deposit is paid up to (and including) **[time period redacted]**,

(the "Purchase Price Interest").

## **2.6 Adjustments**

Subject to all other terms of this Agreement, including the terms of this Section 2.6 and without duplication, the purchase of the Purchased Interests is on the basis that the Purchased Entities are cash free and debt free as at the Effective Date, and in furtherance thereof the Parties will adjust the Purchase Price as follows:

- (a) a positive Working Capital Adjustment shall increase the Purchase Price;
- (b) a negative Working Capital Adjustment shall decrease the Purchase Price;
- (c) the Contributions Adjustment shall increase the Purchase Price;
- (d) the Leakage Adjustment shall decrease the Purchase Price;
- (e) the Kakwa Adjustment shall decrease the Purchase Price;
- (f) the amount of any Purchased Entities' Indebtedness on the Effective Date, including any amounts owed to any member of Vendor Group, shall decrease the Purchase Price;
- (g) the Adjustments (other than the Working Capital Adjustment, which shall be an amount equal to the monetary value of working capital attributable to the Interests as of the Effective Date) shall:
  - (i) be based on expenditures, payments, costs, and income (including all Property Expenses and other sums which may have been paid or received prior to the Effective Date and expected to be paid or received up to (and including) the Closing Date), which are incurred during the Interim Period; and
  - (ii) not include expenditures, payments, costs, and income, which may be made or received during the Interim Period, but which were incurred in respect of the period prior to the Effective Date;
- (h) no item taken into account in calculating any one part of an Adjustment shall be taken into account in calculating any other part of an Adjustment or Adjustments so as to result in any Party making or receiving double payment;
- (i) Vendor is entitled to an amount equivalent to Purchase Price Interest;
- (j) Vendor shall receive an adjustment for any amounts due under Section 7.8(b);
- (k) Vendor is entitled to an amount equivalent to the Permitted Leakage Adjustment; and
- (l) each line item shall be expressed in Canadian Dollars to the nearest Canadian Dollar.

## **2.7 Interim Statement of Adjustments**

Vendor shall prepare and deliver to Purchaser a statement no later than five (5) Business Days prior to the Closing Date that shall set forth a written statement of adjustments to be made in accordance

with this Agreement (the "**Interim Statement of Adjustments**"), including all amounts underlying the items set forth in Section 2.6, and Vendor will make available to Representatives of Purchaser all information reasonably necessary (including information in the possession or control of the Purchased Entities or a member of Vendor Group) for Purchaser to confirm, subject to the Final Statement of Adjustments, the calculations in the Interim Statement of Adjustments no later than two (2) Business Days prior to the Closing Date.

## 2.8 Final Statement of Adjustments

- (a) Within *[time period redacted]* following the Closing Date, Purchaser shall prepare, with Vendor's cooperation, and deliver to Vendor a final statement of all adjustments to be made in accordance with this Agreement (the "**Final Statement of Adjustments**"). Vendor shall provide, or cause to be provided to Purchaser access to, and Purchaser shall be entitled to audit, the relevant records of Vendor Group to the extent reasonably required by Purchaser to aid in the preparation of such Final Statement of Adjustments. Purchaser shall provide to Vendor the right to review the Final Statement of Adjustments and access to, and Vendor shall be entitled, until the Objection Date, to audit the relevant records and working papers of Purchaser to aid in such review. Audits conducted pursuant to this Section 2.8 will be conducted upon reasonable notice from the auditing Party at its sole expense during normal business hours at the offices of the audited Party or at such other premises where those records are maintained. The net amount will be remitted by the Party who in the net result is obliged to make payment (based on the difference between the Interim Statement of Adjustments and the Final Statement of Adjustments) within twenty (20) Business Days of receipt by Vendor of the Final Statement of Adjustments, unless Vendor provides written notice pursuant to Section 2.8(b). No subsequent adjustment shall be made pursuant to this Section 2.8 unless and only to the extent expressly provided for in this Section 2.8.
- (b) If Vendor is of the opinion that any change is required to be made to the Final Statement of Adjustments as prepared by Purchaser, it shall, on or before that date which is twenty (20) Business Days after the delivery of the Final Statement of Adjustments by Purchaser to Vendor (the "**Objection Date**"), give written notice to Purchaser of any such proposed change, including the reason for such change. If Vendor does not notify Purchaser of any proposed change on or before the Objection Date, then Vendor shall be deemed to have accepted the Final Statement of Adjustments as of the Objection Date.
- (c) If Vendor gives written notice to Purchaser of any proposed change to the Final Statement of Adjustments on or before the Objection Date, and if the proposed change is disputed by Purchaser and the Parties fail to resolve the dispute within thirty (30) days after the Objection Date, then either Party shall request the matter be referred to the Calgary office of an international accounting firm, by sending notice of such request to the other Party. The selection of such accounting firm shall be mutually agreed on by the Parties and shall become, for the purposes of this Agreement, the "**Independent Accounting Firm**". If the Parties are unable to mutually agree on the Independent Accounting Firm, within ten (10) days after receipt by the non-referring Party of such notice from the referring Party, then, upon the request of either Party, the ADR Institute of Canada shall appoint the Independent Accounting Firm. Once the Independent Accounting Firm has been agreed by the Parties or appointed, as applicable, the Independent Accounting Firm shall be requested to render its decision without qualifications, other than the usual qualifications relating to engagements of

this nature, within fourteen (14) days after the dispute is referred to it. The decision of the Independent Accounting Firm shall be final and binding upon the Parties and shall not be subject to appeal by either Party. The fees and expenses of the Independent Accounting Firm shall be shared equally by Vendor and Purchaser.

- (d) Upon agreement with respect to all matters in dispute, or upon a decision of the Independent Accounting Firm with respect thereto, (in either case, the “**Final Resolution**”) such amendments shall be made to the Final Statement of Adjustments as may be necessary to reflect such Final Resolution, as the case may be. The net amount (based on the difference between the Interim Statement of Adjustments and the Final Statement of Adjustments) will then be remitted by the Party who in the net result is obliged to make payment by no later than five (5) Business Days after such Final Resolution. In such event, references in this Agreement to the Final Statement of Adjustments shall refer to the Final Statement of Adjustments, as so amended.

## **2.9 Leakage**

Subject to Closing occurring, Vendor shall be responsible for and shall, within *[time period redacted]* following a demand therefor, pay to Purchaser an amount equal to any Leakage actually made, paid or incurred by the Purchased Entities during the Interim Period, to the extent such Leakage was not included in the Leakage Adjustment or otherwise taken into account in the Final Statement of Adjustment, provided that, Vendor shall not be liable under this Section 2.9 unless a notice of a Claim under Section 2.9 is given by Purchaser to Vendor, by no later than *[time period redacted]* following Final Resolution.

## **2.10 Vendor Group Interests**

It is the intention of the Parties that, upon completion of the Transaction, Purchaser will, with effect from and after the Effective Date, own, through ownership of the Purchased Entities, all of the directly and indirectly owned interests of Vendor Group and the Purchased Entities in and to the Lands (set out in Schedule D) and the Facilities, including for the avoidance of doubt the Additional Interests, and in and to all petroleum substances, including all lands, leases, tangibles, facilities, associated facilities, wells, miscellaneous interests and permits associated with such petroleum substances, falling within the Lands or comprising part of the Facilities (collectively, the “**Vendor Group Interests**”), and where title to any of the Vendor Group Interests is held by a member of Vendor Group and not, by completion of the Transaction, conveyed to or held by a Purchased Entity, Vendor will, and will cause such other members of Vendor Group to, transfer and convey such Vendor Group Interests to, as designated by Purchaser, Purchaser or to one or both of the Purchased Entities, in any case without additional compensation.

## **2.11 Seismic Data**

- (a) For Vendor Group Partner Seismic Data, if, following Closing, Purchaser reasonably determines that a license for any Vendor Group Partner Seismic Data is required to ensure that Purchaser or a Purchased Entity has all necessary rights to enjoy the benefits thereof, Vendor shall, and shall cause each applicable member of Vendor Group to, make good faith and commercially reasonable efforts to seek an agreement to license such Vendor Group Partner Seismic Data to Purchaser (or, at Purchaser’s election, to a Purchased Entity) from the other owners thereof, whereupon Vendor shall cause the applicable members of Vendor Group and Purchaser shall (or shall cause the applicable Purchased Entity to) enter into such agreement to license with such other owners provided such agreement is on terms acceptable to Purchaser and

otherwise consistent with the terms of this Agreement. If such other owners in the Vendor Group Partner Seismic Data agree to provide licences to some or all of the Vendor Group Partner Seismic Data any license fees due to these owners will be for Purchaser's account, however Vendor shall, and shall cause each applicable member of Vendor Group, to waive any such licence or other fees for its or their own account. Vendor shall cause its and Vendor Group's data management agent to deliver and transfer a copy of such Vendor Group Partner Seismic Data to Purchaser (or, at Purchaser's election, to a Purchased Entity). All costs associated with copying, reproducing, handling and delivering such Vendor Group Partner Seismic Data to Purchaser or such Purchased Entity, including any broker or deletion fees and any other data management agent fees, shall be at Purchaser's sole cost and expense.

- (b) For Vendor Group Licensed Seismic Data, if, following Closing, Purchaser reasonably determines that a new license for any Vendor Group Licensed Seismic Data is required to ensure that Purchaser or a Purchased Entity has all necessary rights to enjoy the benefits thereof, Vendor shall, and shall cause each applicable member of Vendor Group to, make good faith and commercially reasonable efforts to seek an agreement to license such Vendor Group Licensed Seismic Data to Purchaser (or, at Purchaser's election, to a Purchased Entity) from the owner(s) thereof, whereupon Vendor shall cause the applicable members of Vendor Group and Purchaser shall (or shall cause the applicable Purchased Entity to) enter into such agreement to license with such owner(s) provided such agreement is on terms acceptable to Purchaser and otherwise consistent with the terms of this Agreement. If such owner(s) of the Vendor Group Licensed Seismic Data agree to provide licences to some or all of the Vendor Group Licensed Seismic Data, any license fees due to these owner(s) will be for Purchaser's account. Vendor shall cause its and Vendor Group's data management agent to deliver and transfer a copy of such Vendor Group Licensed Seismic Data to Purchaser (or, at Purchaser's election, to a Purchased Entity). All costs associated with copying, reproducing, handling and delivering such Vendor Group Licensed Seismic Data to Purchaser or such Purchased Entity, including any broker or deletion fees and any other data management agent fees, shall be at Purchaser's sole cost and expense.
- (c) Following Closing, Vendor shall cause its and Vendor Group's data management agent to deliver or transfer the Vendor Group 100% Proprietary Seismic Data to Purchaser (or, at Purchaser's election, to a Purchased Entity). All costs associated with copying, reproducing, handling and delivering the Vendor Group 100% Proprietary Seismic Data to Purchaser or such Purchased Entity, including any data management agent fees, shall be at Purchaser's sole cost and expense.

## **2.12 Parent Guarantees**

Purchaser acknowledges receipt of the Parent Guarantees dated as of the date hereof.

## **ARTICLE 3 INTERIM MATTERS**

### **3.1 Access to Facilities, Premises, Information and Records**

- (a) Subject to the provisions of this Section 3.1, prior to Closing,
  - (i) Purchaser shall be entitled, at its sole risk and expense, to visit the Facilities on a date agreed by Purchaser and Vendor for the purpose of inspecting the

Facilities and completing an inventory of Company-operated and Partnership-operated areas of the Facilities; and

- (ii) Vendor shall and shall cause each other member of Vendor Group and the Purchased Entities to, upon reasonable notice, provide Purchaser and its Representatives access, during normal business hours and at such other time or times as Purchaser may reasonably request, to Purchased Entities' and Vendor Group's premises, books, contracts, records, properties, employees and management personnel pertaining to the Purchased Entities and the Interests, and shall furnish to Purchaser all information concerning the Employees and the Purchased Entities' business, properties and employees as Purchaser may reasonably request. Without limiting the foregoing, Vendor shall use commercially reasonable efforts to cause Purchaser and its legal Representatives to have access to material land, legal and title documents and related files, geologic maps, well files and well logs, books, papers, financial information and pertinent documents and agreements,

(collectively, the "**Site Visit**").

- (b) At least ten (10) days prior to the agreed date of the Site Visit, referred to in Section 3.1(a)(i), Purchaser shall provide Vendor with a written request indicating the locations within areas operated by a member of Vendor Group or a Purchased Entity of the Facilities that Purchaser proposes to visit and the Representatives that Purchaser proposes to attend. Vendor may, acting reasonably, cause the applicable member of Vendor Group or Purchased Entity to approve such request and impose such conditions as it considers reasonable.
- (c) If Purchaser makes a written request for access to areas of the Facilities operated by a Person other than a Purchased Entity or member of Vendor Group, Vendor shall use reasonable endeavors to facilitate Purchaser's access by making initial contact with the operators of such areas and identifying dates available for such Site Visit, but Purchaser shall be responsible for making all arrangements to review such areas or the Facilities, at Purchaser's expense.
- (d) Any Site Visit is subject to:
  - (i) there being no disruption to operations;
  - (ii) Purchaser complying at all times with the reasonable instructions of the Purchased Entities or their or its Representatives;
  - (iii) Purchaser being wholly responsible for all damage it causes to the Facilities and Vendor and the Purchased Entities' premises;
  - (iv) Purchaser observing all Applicable Law and relevant policies of Vendor, the Purchased Entities or any third party relating to security, health, and safety and information exchange; and
  - (v) any applicable third party restrictions.
- (e) The provisions of the Confidentiality Agreement shall continue to be applicable to any Confidential Information made available by Vendor and the Purchased Entities

pursuant to the provisions of this Agreement or Confidential Information derived by Purchaser from information made available under this Agreement, including any environmental assessment by either Party.

- (f) Purchaser shall be liable to Vendor Indemnified Parties for all Losses and Liabilities, and as a separate and independent covenant, shall indemnify and save harmless Vendor Indemnified Parties from and against all Losses and Liabilities that may be brought or suffered by any one or more of them or which any one or more of them sustain, pay or incur, in connection with Vendor's obligations set out in this Section 3.1 and/or a Site Visit, except to the extent such Losses and Liabilities are the result of Vendor's Gross Negligence or Willful Misconduct.

### **3.2 Interim Provisions**

Between the date of this Agreement and the Closing Date:

- (a) Vendor shall use commercially reasonable efforts to keep Purchaser reasonably apprised in a timely manner of every circumstance, action, occurrence or event occurring or arising after the date hereof that would be relevant and material to a prudent operator of the business and operations of the Purchased Entities and the business and operations of the Additional Interests, acting reasonably;
- (b) Vendor shall, and shall cause the Purchased Entities and the applicable members of Vendor Group to, confer with Purchaser prior to taking action (other than in emergency situations) with respect to any material operational matters involved in the Purchased Entities' business or the Additional Interests, and Purchaser's Representatives may attend material operational meetings held by the Purchased Entities or, as pertains to the Additional Interests, by the applicable members of Vendor Group; provided that Purchaser may attend such meetings solely as an observer and none of the Purchased Entities or the Vendor Group shall have any duty to consult with or take the advice of Purchaser in respect of matters addressed at any such meeting except as may otherwise be required by this Agreement;
- (c) Vendor shall cause the Purchased Entities to continue to operate the Purchased Entities' business in the ordinary course of business and cause the applicable members of Vendor Group to operate the business in respect of the Additional Interests in the ordinary course of business, in each case in compliance with Applicable Law and the terms and conditions of all Leases and Title and Operating Documents, and in a manner that maintains relations with Employees and the suppliers, customers and landlords of the Purchased Entities or in respect of the Additional Interests, as applicable, in each case accordance with past custom and practice;
- (d) Vendor shall and shall cause the Purchased Entities to: (i) not make or rescind any Tax Return, except as required by Applicable Law; (ii) not make a request for a Tax ruling with any Governmental Authority; (iii) not settle or compromise any Claim, action, suit, litigation, proceeding, arbitration, investigation, audit or controversy relating to Taxes except for Taxes in respect of the Pre-Effective Date Period or in respect of prior taxation years or period; and (iv) not change in any material respect any of its methods of reporting income, deductions or accounting for Tax purposes from those employed in the preparation of its Tax Return for a taxation year ending prior to the date hereof, except as required by Applicable Law;

- (e) Vendor will not allow or cause the Purchased Entities to, directly or indirectly materially reduce the amount or amend the characterization of any of the Purchased Entities' individual categories of Tax Pools except in a manner consistent with practices followed in prior years or as required by Applicable Law;
- (f) Vendor shall inform Purchaser if any Purchased Entity makes a Tax filing that is outside of the ordinary course of business, including making, amending or rescinding any Tax Return;
- (g) Vendor shall not, and shall cause the Purchased Entities to not, without the prior written approval of Purchaser:
  - (i) subject to Section 3.7, allot or issue any shares, partnership units or other securities in the Purchased Entities, or create or enter into any option over Purchased Interests, or any rights convertible into, or capable of becoming, Purchased Interests in the Purchased Entities;
  - (ii) issue any debt securities or incur any Indebtedness;
  - (iii) declare, set aside or pay any dividend, reduction of capital, cash distribution, or other distribution in stock or property or any combination thereof except (A) to the extent only of any Cash Balance; and (B) to the extent that any such dividend, reduction of capital or other distribution is adjusted as Leakage;
  - (iv) redeem, reclassify, split, combine, repurchase or otherwise acquire or offer to redeem, reclassify, split, combine, repurchase or otherwise acquire any of its securities, or make any changes with respect to its or their capital structure;
  - (v) sell, transfer, or create any Encumbrances over any of the Purchased Interests;
  - (vi) subject to Section 3.7, (A) acquire (by merger, consolidation, acquisition of stock or assets or otherwise), directly or indirectly, in one or more transactions, any Person or any securities, properties, interests or businesses of any Person or (B) acquire any assets in a single transaction in excess of ***[dollar amount redacted]***;
  - (vii) make any change in any method of accounting or audit practice, except as required by generally accepted accounting principles,
  - (viii) materially change any of the Purchased Entities' cash management practices, policies and procedures with respect to collection of accounts receivable, establishment of resources for uncollectable accounts, Accruals of accounts receivable, inventory control, prepayment of expenses, payment of trade Accounts Payable, Accruals of other expenses, deferral of revenues and acceptance of customer deposits;
  - (ix) permit any Purchased Entity to hire an employee;
  - (x) make changes to the terms of any Employee compensation, benefits plans, change of control or termination rights (unless such changes are concurrently made to the applicable Vendor's other employees);

- (xi) make any proposal for winding up or liquidation of either Purchased Entity;
  - (xii) initiate, settle, waive, release or abandon any material Claim, litigation, arbitration, expert, or other dispute resolution proceedings or administrative or criminal proceedings against or otherwise involving either of the Purchased Entities, or make any admission of Liability by or on behalf of such Purchased Entity;
  - (xiii) make any amendment to Organizational Documents of the Purchased Entities;
  - (xiv) change the Purchased Entities' residence for Tax purposes or allow the Partnership to cease to be a "Canadian partnership" for purposes of the Canadian Tax Act;
  - (xv) discontinue, cease to operate, or make any material change to either of the Purchased Entities' business;
  - (xvi) amalgamate with, merge into, or otherwise consolidate with any other entity, or acquire, or agree to acquire, any business or shares from any other entity;
  - (xvii) permit either Purchased Entity to incur any Indebtedness, except as is necessary for it to (i) carry on operations in the ordinary course of business, or (ii) perform its obligations under this Agreement; or
  - (xviii) offer, agree, or arrange to do any of the matters described in this Section 3.2(g);
- (h) Vendor shall, and shall cause the Purchased Entities and the applicable members of Vendor Group, to the extent that the nature of the Purchased Entities' and the applicable members of Vendor Group's interest permit, to continue to cause the Interests (including for certainty the Additional Interests) to be operated and maintained in a proper and prudent manner in accordance with good industry practices and the agreements governing the ownership and operation of the Interests (including for certainty the Additional Interests). Vendor shall not, and shall cause the Purchased Entities, the applicable members of Vendor Group to not, without the prior written approval of Purchaser:
- (i) authorize or make any expenditure in respect of the Interests (including for certainty the Additional Interests), other than:
    - (A) usual operating expenditures incurred and allocable to the Interests (including for certainty the Additional Interests) pursuant to existing operating agreements and/or in accordance with past practice;
    - (B) capital expenditures required in accordance with accepted industry practice, for which either Purchased Entity's share does not exceed **[dollar amount redacted]** for any single operation; and
    - (C) expenditures in the case of emergency or otherwise necessary to protect lives, the Environment, property or income;

- (ii) propose or initiate any material operations in respect of the Interests (including for certainty the Additional Interests);
  - (iii) surrender, forfeit, abandon, sell, lease, transfer, assign, encumber, pledge, license or otherwise dispose of or create any Encumbrance in respect of any of the Interests (including for certainty the Additional Interests) other than: (A) sales or disposals of Petroleum Substances in the ordinary course of business; (B) in accordance with the Non-Hydrocarbons Inventory Provisions; and (C) Permitted Encumbrances;
  - (iv) amend or terminate any Material Agreement, Product Sales Contract or Lease or enter into any new agreement or instrument relating to the Interests if the new agreement or instrument would have been a Material Agreement, Product Sales Contract or Lease had it been entered into prior to the date hereof; or
  - (v) offer, agree, or arrange to do any of the matters described in this Section 3.2(h); and
- (i) If Purchaser does not respond to a request for an approval pursuant to Section 3.2(d) or 3.2(h) within two (2) Business Days, it will be deemed to have given its approval. Purchaser will be responsible for any expenditures incurred by the Purchased Entities in accordance with this Section 3.2. Any election by Purchaser not to participate in an operation or exercise of an option will not result in any reduction in the value of the Facilities if the Purchased Entities' Interest if the applicable Facility is terminated, reduced, or altered as a result of such election, nor will it constitute a title default or a breach of Vendor's representations and warranties herein.
- (j) If and to the extent required or expected to be required by Purchaser for any regulatory filing, Vendor shall provide Purchaser with all available documentation, access, consultation, information and assistance that it may reasonably required by Purchaser to prepare audited financial statements for either or both of the Purchased Entities (including, for certainty, as pertains to the Additional Interests) for such periods as Purchaser may require for such filings, provided that: (i) the auditor selected by Purchaser for preparation of such audited financial statements shall not be PWC; and (ii) Purchaser shall be responsible for all costs incurred by Vendor and the Purchased Entities in connection with the foregoing.

### 3.3 Insurance

- (a) Exxon Mobil Corporation, along with its predecessors and Affiliates, including Vendor and the Purchased Entities, may have or have had coverage under various insurance policies ("**ExxonMobil Policies**") covering their interests.
- (b) It is understood and agreed by Purchaser that:
  - (i) from and after Closing, no insurance coverage shall be provided under the ExxonMobil Policies to the, the Purchased Entities' business or Purchaser or any of its Affiliates, including any policies insured or reinsured by Ancon Insurance Company, Inc. ("**Captive**");

- (ii) from and after Closing, Purchaser assumes any and all responsibilities for effecting and maintaining insurance in respect of the Purchased Entities' business and the Interests and replacing Captive, where applicable;
- (iii) from and after Closing, Purchaser shall indemnify and defend Vendor, and its Affiliates against, and shall hold them harmless from, any Claim made after the Closing for insurable events occurring or arising after Closing against any of the ExxonMobil Policies by Purchaser, its Affiliates, the Purchased Entities or any Person claiming to be subrogated to the Purchased Entities' or Purchaser's rights, including all costs and expenses (including attorneys' fees) related thereto. Such indemnity shall cover, without limitation, any Claim by an insurer for reinsurance, retrospective premium payments or prospective premium increases attributable to any such Claim.

Notwithstanding any provision of this Agreement to the contrary, for a period of *[time period redacted]* after the Closing, Purchaser's company-wide insurance policies in effect as of the date hereof shall: (1) cover Vendor and its Representatives as additional insureds for Purchaser's Liabilities arising from or assumed under this Agreement; and (2) be primary as to all other policies (including any deductibles or self-insured retentions). It is further agreed that Purchaser and its insurers providing coverage shall waive all rights of subrogation and/or contribution against Vendor and its Representatives to the extent Liabilities are assumed by Purchaser.

### **3.4 Competition Act Approval**

The Parties shall use all commercially reasonable efforts to obtain the Competition Act Approval as soon as reasonably practicable after the date hereof and, in any event, on or before the Outside Date. Each Party shall provide such information and cooperation as the other Party may reasonably request in connection therewith. Without limiting the generality of the foregoing:

- (a) Each of the Parties shall promptly furnish to the other such information and assistance as the other Party may reasonably request in order to prepare any notification, application, filing or request to, or response to a request from, the Commissioner or any Governmental Authority.
- (b) Purchaser or Vendor may, acting reasonably, make a request that each of the Parties prepare a notification filing pursuant to section 114(1) of the Competition Act, in which case each of Purchaser and Vendor shall, within ten (10) Business Days after such request, make the requisite notification filing.
- (c) Purchaser shall as soon as is practicable and in any event within five (5) Business Days after the execution of this Agreement, make a submission to the Commissioner requesting the issuance of an advance ruling certificate under section 102 of the Competition Act in respect of the Transaction, or in the alternative, a letter from the Commissioner that he does not at that time intend to make an application under section 92 of the Competition Act in respect of the Transaction, and a waiver under section 113(c) of the Competition Act. Purchaser shall provide Vendor and its external legal counsel with a reasonable opportunity to review and comment on the submission prior to Purchaser making the submission to the Commissioner and shall consider such comments in good faith.

- (d) All requests and enquiries from or on behalf of the Commissioner or any Governmental Authority shall be dealt with by the Parties in consultation with each other. Each of the Parties shall:
  - (i) promptly notify the other Party of any communications of any nature from or on behalf of the Commissioner or any Governmental Authority relating to the Transaction and provide the other with copies thereof;
  - (ii) use commercially reasonable efforts to furnish the Commissioner with any information requested by the Commissioner as promptly as possible;
  - (iii) permit the other Party and their external legal counsel an advance opportunity to review and comment upon any proposed written communications of any nature with the Commissioner or any Governmental Authority relating to the Transaction and shall consider such comments in good faith, and provide the other Party with final copies thereof; and
  - (iv) neither of the Parties shall participate in any substantive meeting, communication or discussion (whether in person, by e-mail, by telephone or otherwise) with the Commissioner or any Governmental Authority in respect of any filing, review, investigation, request for information or inquiry concerning the Transaction unless it consults with the other Party in advance and gives the other Party the opportunity to attend and participate thereat.
- (e) Purchaser agrees to take all reasonable commercial actions that are necessary or advisable or as may be required by any Governmental Authority to obtain the Competition Act Approval as soon as practicable.
- (f) Purchaser shall be responsible for all filing fees payable to any Governmental Authorities in respect of the applications and filings made in connection with obtaining the Competition Act Approval. Each Party will pay all other costs incurred by it in connection with obtaining the Competition Act Approval.
- (g) Notwithstanding any requirement in this Section 3.4 or any other provision in this Agreement, where a Party is required to provide information to the other Party that the disclosing Party deems to be competitively sensitive, the disclosing Party may restrict the provision of such competitively sensitive information only to the external legal counsel of the other Party, provided that the disclosing Party also provides a redacted version of any such information to the other Party.
- (h) The Parties shall keep each other regularly informed of the progress being made to obtain the Competition Act Approval and, as soon as is reasonably practicable, and, in any event, within one (1) Business Day, notify the other Party of the Competition Act Approval being obtained, or the occurrence of any event which will, or is reasonably likely to, result in the Competition Act Approval not being obtained on or before the Outside Date.

### **3.5 AER Obligations**

Notwithstanding anything else to the contrary in this Agreement, if for any reason at any time the AER requires the posting of a security deposit with the AER or the taking of any other action by Purchaser in order to approve the Transaction (but, for certainty, excluding the Additional Interests Transaction

and Pre-Signing Date Reorganization), Purchaser shall deliver such security deposit to the AER within five (5) Business Days of such notice, which security deposit shall be in the form, amount and manner prescribed by the AER or take such other action within the period of time required by the AER. In addition, Purchaser shall, within five (5) Business Days following Closing, take all such actions as may be required to update the AER with all necessary information related to the change of control of the Purchased Entities.

### **3.6 Privacy Covenant**

Purchaser agrees that it will only use and disclose the Personal Information disclosed to it by the Purchased Entities in connection with the Transaction or as otherwise permitted by Applicable Privacy Laws. Purchaser further agrees that if the Transaction is not completed for any reason at any time, Purchaser will, if the Personal Information supplied to it is still in the custody of or under the control of Purchaser, either destroy the Personal Information or return it to IORL in compliance with the terms of the Confidentiality Agreement.

### **3.7 Additional Interests Transaction**

Prior to the Closing Date, Vendor (i) shall cause ExxonMobil Canada Resources Company to sell, transfer and convey its entire right, title, estate and interest in and to the Additional Interests to another member of the Vendor Group; (ii) shall cause the applicable members of Vendor Group that hold an interest in the Additional Interests to sell, transfer and convey their respective entire right, title, estate and interest in and to the Additional Interests to the Company on a tax-deferred basis for Company shares; and (iii) shall cause the applicable members of Vendor Group that hold an interest in the Additional Interests to sell, transfer and convey their respective entire right, title, estate and interest in and to such Company shares to Vendor and such Company shares shall be included and conveyed to Purchaser as part of the Shares on terms and conditions satisfactory to Purchaser acting reasonably including that no Encumbrances are placed on the Additional Interests, no cash or other non-share consideration is paid by or due from the Purchased Entities after the Effective Date (the "**Additional Interests Transaction**"); provided that:

- (a) the Additional Interests Transaction shall not result in any adverse Tax consequences to Purchaser or the Purchased Entities that are not indemnified herein by Vendor; and
- (b) prior to implementing the Additional Interests Transaction, Vendor shall provide Purchaser with the documentation for the implementation of same and afford Purchaser a reasonable opportunity to review and comment on such documentation, and Vendor agrees to consider such comments, acting reasonably and in good faith. The review and comment by Purchaser contemplated in this Section 3.7(b) shall in no way whatsoever (i) release, be deemed to release or permit Vendor to make a Claim that it has been released from its obligations hereunder or in any way qualify any of the covenants or representations and warranties made by Vendor hereunder; or (ii) impair or derogate from the terms of Section 3.7(a).

Vendor shall keep Purchaser reasonably informed with respect to all material activities concerning the status of the Additional Interests Transaction and cooperate in good faith in connection with all of Purchaser's reasonable requests for information related to the Additional Interests Transaction. Vendor shall provide, as soon as reasonably practicable following the completion thereof, but in any event not later than one (1) Business Day prior to the Closing Date, evidence, satisfactory to Purchaser, acting reasonably, that the Additional Interests Transaction has been completed.

### 3.8 Purchaser's Financing for the Transaction

- (a) Purchaser shall use its best efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable to arrange and obtain the Financing on the terms and conditions described in the Debt Letters, including using its best efforts to (i) maintain in effect the Debt Letters, (ii) satisfy on a timely basis all conditions to obtaining the Financing as set forth in the Debt Letters that are within its or any of its Affiliate's control, (iii) negotiate and enter into definitive agreements with respect thereto on the terms and conditions contemplated by the Debt Letters so that such agreements are in effect no later than the Closing, (iv) comply with its obligations under the Debt Letters and definitive agreements with respect thereto, (v) subject to the terms and conditions set forth in the Debt Letters, consummate the Financing at or prior to the Closing, and (vi) enforce its rights under the Debt Commitment Letter in the event of any breach or default by any Financing Source thereunder. Purchaser acknowledges and agrees that, notwithstanding anything to the contrary contained herein, its obligation to consummate the transactions contemplated hereby is not subject to any financing contingency or condition.
- (b) Purchaser shall keep Vendor reasonably and promptly informed with respect to all material developments concerning the Financing pursuant to the Debt Letters. Without limiting the foregoing, Purchaser agrees to notify Vendor promptly if at any time (i) any Debt Letter shall expire or be terminated for any reason, (ii) any Financing Source that is a party to any Debt Letter notifies Purchaser in writing that such Financing Source no longer intends to provide financing to Purchaser on the terms set forth therein, or (iii) Purchaser receives any notice, or other communication with respect to, any actual or threatened breach, default, termination or repudiation by any party to any Debt Letter.
- (c) Notwithstanding anything in this Agreement to the contrary, Purchaser shall not amend, supplement or otherwise modify, or waive any of its rights under (or provide any consent to like effect), any Debt Letter, in each case, in any manner that would (directly or indirectly): (i) reduce the aggregate amount of the Financing, (ii) add, expand or otherwise modify the conditions precedent or contingencies to the funding on the Closing Date, (iii) otherwise expand, amend, modify or waive any provision of any Debt Letter in a manner that in any such case would reasonably be expected to (x) delay or make less likely the funding of the Financing (or satisfaction of the conditions precedent to the funding of the Financing) on the Closing Date or otherwise prevent, delay or impair the transactions contemplated by this Agreement in any material respect or (y) adversely affect the ability of Purchaser to timely consummate the transactions contemplated hereby or (iv) adversely affect the ability of Purchaser to enforce its rights against the other parties to the Debt Commitment Letter as so amended, replaced, supplemented or otherwise modified or waived, relative to the ability of Purchaser to enforce their rights against such parties to the Debt Commitment Letter as in effect on the date hereof; provided, however, that Purchaser may replace or amend any Debt Letter to add lenders, arrangers, agents, bookrunners, managers and other financing sources who had not executed such Debt Letter as of the date hereof if the addition of such additional parties, individually or in the aggregate, would not prevent, delay or impair the availability of the Financing or the consummation of the transactions contemplated by this Agreement. Purchaser shall promptly deliver to Vendor true and complete copies of any amendment, supplement or other modification or waiver of (or consent under) the Debt Letters. In such event, the terms "Debt Commitment Letter" and "Debt Letter", as applicable, as used herein shall be deemed

to include any Debt Letter as amended, supplemented, modified, waived or consented to in accordance with this Section 3.8(c).

- (d) If all or any portion of the Financing becomes unavailable, or any of the Debt Letters shall be withdrawn, repudiated, terminated or rescinded for any reason whatsoever, then Purchaser shall use its best efforts to arrange and obtain, as promptly as practicable, from the same and/or alternative financing sources, alternative financing and on terms and in an amount sufficient to enable Purchaser to consummate the transactions contemplated by this Agreement. In the event any alternative financing is obtained in accordance with this Section 3.8(d) (the "**Alternative Financing**"), references in this Agreement to the Financing shall also be deemed to refer to such Alternative Financing, and if one or more commitment letters are entered into or proposed to be entered into in connection with such Alternative Financing, references in this Agreement to the Debt Commitment Letter or the Debt Letters shall also be deemed to refer to such commitment letters relating to such Alternative Financing, and all obligations of Purchaser pursuant to this Section 3.8 shall be applicable thereto to the same extent as Purchaser's obligations with respect to the Financing. Purchaser shall promptly provide Vendor with a correct and complete copy of any commitment letter and any related fee letter (or similar agreements) relating to such Alternative Financing (redacted as set forth herein with respect to the original Debt Letters).

### **3.9 Financing Cooperation from Vendor**

- (a) Subject to the limitations set forth in this Section 3.9, and unless otherwise agreed by Purchaser, prior to the Closing, Vendor will, and will use its reasonable efforts to cause its Affiliates and the Purchased Entities and the respective Representatives of Vendor, its Affiliates and the Purchased Entities to, use its or their reasonable efforts to cooperate with Purchaser as reasonably requested by Purchaser in connection with Purchaser's arrangement, syndication and obtainment of the Financing. Such cooperation will include using reasonable efforts to:
  - (i) prepare and furnish to Purchaser as promptly as practicable all unaudited financial statements and any other information with respect to the Purchased Entities as is reasonably requested by Purchaser or any Financing Source and is required (x) for the marketing, arrangement and syndication of the Financing or (y) in the preparation of customary information documents or lender presentations relating to the Financing; and
  - (ii) at least five (5) Business Days prior to the Closing, furnish (to the extent requested at least ten (10) Business Days prior to the Closing) all documentation and other information required by a Governmental Authority or any Financing Source with respect to the Purchased Entities under applicable "know your customer" and anti-money laundering rules and regulations.
- (b) Nothing contained in this Section 3.9 shall require any such consent, cooperation or assistance to the extent that it would (i) require Vendor, the Purchased Entities, or any of their respective Affiliates or Representatives to pay any commitment or other fees, reimburse any expenses or otherwise incur any Liabilities (other than the payment of reasonable out-of-pocket costs related to such cooperation which shall be promptly reimbursed by Purchaser on demand) or give any indemnities, (ii) unreasonably interfere with the ongoing business or operations of Vendor or the Purchased Entities, (iii) require Vendor, the Purchased Entities or any of their respective Affiliates or

Representatives to enter into or approve any agreement, certificate, instrument or other documentation effective prior to the Closing, (iv) result in any conflict with this Agreement or Vendor's, the Purchased Entities' or any of their respective Affiliates' or Representatives' Organizational Documents, any Material Agreement or Applicable Law, (v) reasonably be expected to result in a violation of Applicable Law or any Liability on the part of Vendor or any of its Affiliates or Representatives, (vi) provide access to or disclose information that Vendor reasonably determines could jeopardize any solicitor-client privilege of, or conflict with any confidentiality requirements applicable to, Vendor or any of its Affiliates or (vii) require any action by Vendor, its Affiliates (excluding for certainty the Purchased Entities) or their Representatives after the Closing. No action, Liability or obligation of the Purchased Entities or any of their respective Affiliates or Representatives under any certificate, agreement, arrangement, document or instrument (including resolutions) relating to the Financing shall be effective until immediately after the Closing.

## **ARTICLE 4 CLOSING**

### **4.1 Closing Date**

The Closing shall take place at 8:00 am at the office of Vendor on the later to occur of: (a) August 31, 2022; (b) the date that is ten (10) Business Days after the condition precedent in Sections 4.2(a) and 4.3(a) have been satisfied; and (c) any other date prior to the Outside Date mutually agreed to in writing by the Parties ("**Closing Date**"). For tax and accounting purposes, Closing shall be deemed to occur at the first moment at the beginning of the Closing Date.

### **4.2 Purchaser's Conditions Precedent**

The following are conditions precedent to Purchaser's obligation to complete the Transaction:

- (a) the Competition Act Approval shall have been obtained;
- (b) the Additional Interests Transaction has been completed in accordance with Section 3.7;
- (c) Vendor's representations and warranties contained in Section 5.1 shall, without reference to materiality (including references to Material Adverse Effect) contained in such representations and warranties, be true and correct in all material respects on the date of this Agreement and on the Closing Date and Purchaser shall have received a certificate to that effect at Closing signed by an officer of Vendor;
- (d) Vendor (and each other member of Vendor Group as if each such member were a party to this Agreement in place and stead of Vendor) shall have complied with its material covenants and obligations under this Agreement that were required to be complied with prior to the Closing Date and Purchaser shall have received a certificate to that effect at Closing signed by an officer of Vendor;
- (e) Vendor shall have delivered to Purchaser at or prior to Closing discharges, releases or no interest letters of any security held by any third party encumbering the Purchased Entities' interest in and to the Facilities and Interests or any part or portion thereof, which discharges, releases or no interest letters are reasonably requested by Purchaser at least five (5) Business Days prior to Closing; and

- (f) on the Closing Date, Vendor shall have delivered to Purchaser, and Purchaser shall have confirmed receipt of, the following documents:
- (i) a Transition Services Agreement in the form attached as Schedule K, executed by each party thereto other than Purchaser;
  - (ii) a Seismic Licence Agreement in the form attached as Schedule M, executed by each party thereto other than Purchaser;
  - (iii) a receipt for the amount paid by Purchaser pursuant to Section 4.3(b);
  - (iv) appropriate transfer documents in respect of the Purchased Interests, duly executed by Vendor in favor of Purchaser, together with a security register of the Company and a partnership register in respect of the Partnership evidencing the cancellation of the Purchased Interests registered in the name of Vendor, and the registration of the Purchased Interests in the name of Purchaser;
  - (v) the Specific Conveyances referred to in Section 4.4 executed by the applicable members of Vendor Group and, as appropriate, the Company;
  - (vi) the statutory registers and books, the common seal (if any), and any Organizational Documents of the Purchased Entities;
  - (vii) a resignation and mutual release agreement for each director of the Company in the form set out at Schedule G, such resignation and mutual release agreement to take effect on and from Closing;
  - (viii) duly executed documents to the satisfaction of Purchaser, acting reasonably, evidencing the termination of all Intercompany Service Agreements in accordance with Section 9.1;
  - (ix) certified written resolution of (A) the board of directors of XTO Energy Canada GPco Ltd., in its capacity as general partner of Vendor, and (B) XTO Energy Canada GPco Ltd., in its capacity as the general partner of Vendor, in each case, authorizing the execution, delivery and performance of this Agreement, the execution, delivery and performance of all documents and agreements for the consummation of the Additional Interests Transaction and the execution, delivery and performance of all other documents and agreements to be delivered at or prior to Closing in accordance herewith to which Vendor is a party; and
  - (x) certified written resolution of the directors of the Company approving the transfer of the Shares and the Additional Interests Transaction.

The preceding conditions are for the sole benefit of Purchaser and may be waived in whole or in part by Purchaser in writing. If any of the preceding conditions are not satisfied or waived by Purchaser on or before the Outside Date, Purchaser may terminate this Agreement by written notice to Vendor on or before the Outside Date and Section 10.1 shall apply.

#### **4.3 Vendor's Conditions Precedent**

The following are conditions precedent to Vendor's obligation to complete the Transaction:

- (a) the Competition Act Approval shall have been obtained;
- (b) on the Closing Date, Purchaser shall have delivered to Vendor a wire transfer in an amount equal to the Purchase Price set out in the Interim Statement of Adjustments;
- (c) Purchaser's representations and warranties contained in Section 5.3 shall be true and correct in all material respects on the date of this Agreement and on the Closing Date and Vendor shall have received a certificate to that effect at Closing signed by an officer of Purchaser;
- (d) Purchaser shall have complied with its material covenants and obligations in this Agreement that were required to be complied with prior to the Closing Date and Vendor shall have received a certificate to that effect at Closing signed by an officer of Purchaser; and
- (e) on the Closing Date, Purchaser shall have delivered to Vendor, and Vendor shall have confirmed receipt of, the following documents:
  - (i) the Competition Act Approval to be obtained by Purchaser;
  - (ii) a Transition Services Agreement in the form attached as Schedule K, executed by Purchaser;
  - (iii) a Seismic Licence Agreement in the form attached as Schedule M, executed by Purchaser; and
  - (iv) certified written resolution of the directors of Purchaser authorizing the execution, delivery and performance of this Agreement and all other documents and agreements to be delivered at Closing in accordance herewith to which Purchaser is a party.

The preceding conditions are for the sole benefit of Vendor and may be waived in whole or in part by Vendor in writing. If any of the preceding conditions are not satisfied or waived by Vendor on or before the Outside Date, Vendor may terminate this Agreement by written notice to Purchaser on or before the Outside Date and Section 10.1 shall apply.

#### **4.4 Specific Conveyances**

- (a) The Parties acknowledge that (i) certain Registered Interests are held as nominee and agent for the Partnership by one or more members of Vendor Group for the Partnership; and (ii) upon completion of the Additional Interests Transaction, one or more members of Vendor Group will hold title to certain of the Additional Interests in trust for the Company. Vendor shall use commercially reasonable efforts to cause each such member of Vendor Group to prepare Specific Conveyances for delivery at Closing to transfer title to those Registered Interests and Additional Interests held in its name to the Company. Such Specific Conveyances which are in respect of Registered Interests shall be made to Company unless by July 15, 2022 Purchaser directs Vendor to make such Specific Conveyances to Purchaser, in which case

Vendor shall ensure that such Specific Conveyances are so prepared. The Person to whom such Specific Conveyances of Registered Interests are made shall receive them as a nominee and agent for the Partnership. The balance of the Specific Conveyances in respect of the Additional Interests shall be made to the Company. Vendor shall prepare such Specific Conveyances, or cause such Specific Conveyances to be prepared, at its cost and none of them shall confer or impose upon a Party any greater right or obligation than contemplated in this Agreement. It shall not be necessary for such Specific Conveyances to have been executed prior to or at Closing by Persons (other than the applicable members of Vendor Group).

- (b) Promptly after Closing, and at Purchaser's cost, Vendor shall deliver all Specific Conveyances to third parties and Governmental Authorities in accordance with normal industry practices and shall attend to the registration of Specific Conveyances with Governmental Authorities in accordance with normal industry practices. Purchaser shall use all reasonable efforts so that, as soon as reasonably practicable following Closing, the Company or Purchaser (in the case of the Registered Interests) and the Company (in the case of the Additional Interests) is recognized by third parties as the holder of the subject Interests in the place and stead of the applicable member of Vendor Group and shall where Vendor is the registering party, promptly take whatever steps are necessary to verify such registrations.
- (c) Purchaser shall bear all costs, fees and deposits of every nature and kind incurred in registering any Specific Conveyances and registering any further assurances required to convey the Registered Interests to the Company or to Purchaser as a nominee and agent for the Partnership and to convey the Additional Interests to the Company.
- (d) Notwithstanding the foregoing in this Section 4.4, in the case of any Specific Conveyances that are Registered Interests, Permit Transfers or Crown petroleum and/or natural gas lease or licence transfers which may be filed electronically with the applicable Governmental Authority, Vendor shall, promptly following the Closing Time, cause the applicable member of Vendor Group to submit electronic transfers for such Registered Interests, Permits and Crown petroleum and/or natural gas leases or licences and Purchaser shall or shall cause the Company to accept such electronic transfers from such member of Vendor Group without delay; provided that, if Purchaser in good faith, acting reasonably, determines that any of the electronic transfers are not complete and accurate, or the applicable Governmental Authority refuses to process any such transfers because of some defect therein, the Parties shall cooperate to duly complete or to correct such incomplete or inaccurate electronic transfers as soon as practicable and, thereafter, Vendor shall cause the applicable member(s) of Vendor Group to promptly re-submit such electronic transfers and Purchaser shall or shall cause the Company to accept such electronic transfers from such member(s) of Vendor Group without delay.
- (e) If, for any reason any Governmental Authority requires a Party or the Company, in each case, as pertains to Permit Transfers to make a deposit, to provide any performance assurances, undertakings, information or other documentation or to take any action as a condition of or a prerequisite for the approval of any Permit Transfers, then:
  - (i) as soon as reasonably practicable after receiving notice of such requirement, and at its sole cost, the applicable Party shall, or Purchaser shall on behalf of the Company, make any such deposits, provide such performance

assurances, undertakings, information or other documentation and take such action, as the case may be; and

- (ii) if the applicable Party, or Purchaser on behalf of the Company, fails to make a deposit with such Governmental Authority or other Third Party as required under Section 4.4(e)(i) within five (5) days of receipt of notification that such deposit is required, the other Party shall have the right, but not the obligation, to make such deposit on behalf of such Party or the Company, as applicable, and such Party acknowledges and agrees that:
  - (A) the other Party shall be such Party's or the Company's, as applicable, agent with full power and authority to make such deposit for and on behalf of such Party or the Company;
  - (B) such Party shall, and Purchaser shall on behalf of the Company, as applicable, reimburse the other Party for the amount of any such deposit made by the other Party; and
  - (C) in addition to all other rights that may be available to the other Party for the collection of such amounts from such Party, the other Party shall have the right to set-off the amount of any such deposit against any monies payable by the other Party to such Party pursuant to this Agreement or any other agreement between Vendor or Vendor's Affiliates and Purchaser or Purchaser's Affiliates.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES**

### **5.1 Vendor's Representations**

Vendor represents and warrants to Purchaser at the date hereof, and on the Closing Date, as follows:

- (a) Vendor is a limited partnership duly formed pursuant to the laws of Alberta, and validly subsisting under the Applicable Laws of those jurisdictions in which it is required to be registered for the purposes of the Transaction and has the requisite capacity, power and authority to execute and deliver this Agreement and all other agreements and instruments to be executed and delivered hereunder and to perform its obligations under this Agreement and all other agreements and instruments to be executed and delivered hereunder;
- (b) the execution and delivery of this Agreement and all other agreements and instruments to be executed and delivered hereunder, the conduct of the Additional Interests Transaction and Pre-Signing Date Reorganization and the completion of the sale of the Purchased Interests in accordance with the terms of this Agreement have been duly authorized by all necessary action by Vendor and do not violate or conflict with any provision of:
  - (i) the Organizational Documents relating to it or the Purchased Entities; or
  - (ii) any Regulation applicable to it or the Purchased Entities, or any agreement or instrument to which it or the Purchased Entities is a party, or by which it is

- otherwise bound and of which it has knowledge, or any judgment, decree or order applicable to it;
- (c) this Agreement is, and all documents executed and delivered pursuant to this Agreement will be, legal, valid and binding obligations of Vendor enforceable against Vendor in accordance with their terms;
  - (d) while Vendor does not warrant title to the Interests, Vendor does represent and warrant:
    - (i) none of Vendor Group nor the Purchased Entities have committed any act that would result in any of the Interests (including for certainty the Additional Interests) being cancelled and that the Interests (including for certainty the Additional Interests) are free and clear of all material liens, Encumbrances, demands and royalties or other interests created by, through or under any member of Vendor Group or the Purchased Entities, except for the Permitted Encumbrances; and
    - (ii) subject to the rents, covenants, conditions and stipulations in the Title and Operating Documents, the Purchased Entities are entitled to hold and enjoy the Interests (including, immediately following the implementation of the Additional Interests Transaction, the Additional Interests) without any lawful interruption by any Person claiming by, through or under any member of Vendor Group or the Purchased Entities;
  - (e) to Vendor's knowledge, there are no material AFEs pursuant to which expenditures are or may be made, nor any other financial commitments outstanding or due for the Interests or their operations on the date hereof, or that may become due for the Interests (including for certainty the Additional Interests) or their operations after the Closing Date other than those described in Schedule F, those to which Purchaser has given its consent and those for which no consent was required pursuant to the Leases and operating agreements relating to the Lands;
  - (f) where either of the Purchased Entities is Operator and, as pertains to the Additional Interests, where any member of the Vendor Group is operator:
    - (i) none of the applicable members of Vendor Group that hold or held an interest in the Additional Interests nor the Purchased Entities have received any notices, orders or directives from any Governmental Authority for any matter concerning the Environment or Environmental and End-of-Life Liabilities relating to the Interests (including for certainty the Additional Interests), including with respect to any release or the use, storage, treatment, transportation, handling or disposition of Environmental contaminants, that has not been complied with in all material respects, or any demands or notices issued by any Governmental Authority with respect to a breach of Environmental Law applicable to the Interests (including for certainty the Additional Interests), which demand or notice remains outstanding; and
    - (ii) to Vendor's knowledge, none of the applicable members of Vendor Group that hold or held an interest in the Additional Interests nor the Purchased Entities have operated the Interests (including for certainty the Additional Interests) in

a manner that could reasonably constitute a material breach of Environmental Law that has not been remedied in all material respects;

- (g) except as described in Schedule C, there are no outstanding charges, Claims, or unsatisfied judgments against Vendor Group or the Purchased Entities in existence or, to Vendor's knowledge, contemplated or threatened, against Vendor Group pertaining to the Interests (including for certainty the Additional Interests) or the Purchased Entities or that seek to prevent the consummation of the Transaction or Additional Interests Transaction;
- (h) no member of Vendor Group has, and neither Purchased Entity has, incurred any Liability, contingent or otherwise, for brokers' or finders' fees for this Transaction or the Additional Interests Transaction for which Purchaser or a Purchased Entity will have any Liability;
- (i) except as described in Schedule E, no member of the Vendor Group is, and neither Purchased Entity is, party to, or bound by, any:
  - (i) contract for the sale of Petroleum Substances allocable to the Interests (including for certainty the Additional Interests);
  - (ii) gas balancing, or similar agreements, pertaining to the Petroleum Substances allocable to the Interests (including for certainty the Additional Interests);
  - (iii) agreements for the transportation, processing, handling or disposal of Petroleum Substances allocable to the Interests (including for certainty the Additional Interests); or
  - (iv) prepayment arrangement, including "take-or-pay" or similar provisions contained in contracts for the sale of Petroleum Substances, production payment or any other arrangement to deliver Petroleum Substances allocable to the Interests (including for certainty the Additional Interests) at some future time without receiving full payment for them,

which cannot be cancelled or terminated by such member of the Vendor Group or a Purchased Entity without penalty on sixty (60) days' notice or less;

- (j) Vendor is a "Canadian partnership" for purposes of the Canadian Tax Act;
- (k) (i) Vendor is the sole legal and beneficial owner of the Purchased Interests set forth in Schedule A and it is entitled to transfer and assign full legal and beneficial ownership of the Purchased Interests to Purchaser on the terms set out in this Agreement free and clear of all Encumbrances, and no Person has the right to call for the allotment, conversion, issue, sale, or transfer of any share or loan capital, or any other security of any kind giving rise to a right over the capital of either Purchased Entity; and (ii) the Company is the sole and legal beneficial owner of Company Partnership Interests free and clear of all Encumbrances;
- (l) (i) the Shares constitute the whole of the issued and outstanding share capital of the Company and are fully paid and free from all Encumbrances or commitments to create any Encumbrances; and (ii) the Company Partnership Interests held by the Company and the Purchased Partnership Interest collectively constitute the whole of the issued

and outstanding equity of the Partnership and are fully paid and free of Encumbrances or commitments to create Encumbrances;

- (m) each Purchased Entity is a corporation or a general partnership, as applicable, duly formed, validly existing, and in good standing under the laws of the jurisdiction of its organization;
- (n) the copies of the Organizational Documents of the Purchased Entities which have been disclosed in the data room as at the date that is at least three (3) days before the date hereof, are true, accurate, and complete in all material respects;
- (o) the Purchased Entities have all requisite power and authority to carry on their businesses as presently conducted and as conducted immediately following the implementation of the Additional Interests Transaction and the Purchased Entities are not parties to or bound or affected by, nor immediately following the implementation of the Additional Interests Transaction will the Purchased Entities be parties to or bound or affected by, any commitment, agreement, judgment, injunction, order, decree or document binding upon it, containing any covenant expressly prohibiting, restricting or limiting its freedom or ability, in any material respect, to: (i) compete in any line of business or geographic region; (ii) transfer or move any of its assets or operations; or (iii) conduct any business practice of the Purchased Entities, as now conducted or as conducted immediately following the implementation of the Additional Interests Transaction;
- (p) all material returns, particulars, resolutions, and other documents which the Purchased Entities are required by Applicable Law to file with, or deliver to, any Governmental Authority have been correctly made up and filed or delivered and all statutory books and registers of such Purchased Entity have been properly kept in all material respects;
- (q) no step has been taken by any Person against either Purchased Entity to wind it up, appoint a controller or administrator, seize or take possession of any of its assets, or make any arrangement, compromise, or composition with any of its creditors. The Purchased Entities are solvent under the laws of the jurisdiction of their organization and able to pay all of their debts as and when they become due and payable;
- (r) neither Purchased Entity owns, directly or indirectly, any equity of any corporation, partnership, limited liability company, association, or other entity, other than the Company's ownership of the Company Partnership Interests;
- (s) there are no outstanding stock appreciation rights, phantom equity, profit sharing plan or similar rights, agreements, arrangements or commitments payable to any Employee or any employee of the Purchased Entities and which are based upon the revenue, value, income or any other attribute of the Purchased Entities;
- (t) the financial books, records and accounts of the Purchased Entities, in all material respects, (i) have been maintained in accordance with good business practices on a basis consistent with prior years, (ii) are stated in reasonable detail and accurately and fairly reflect the material transactions and dispositions of the assets of the Purchased Entities, and (iii) accurately and fairly reflect the basis for the Purchased Entities' Financial Statements. The corporate records and minute books of the Purchased Entities have been maintained substantially in compliance with Applicable Laws and

are complete and accurate in all material respects and full access thereto has been provided to Purchaser;

- (u) the Purchased Entities have no Liabilities or obligations that would be required to be reflected on a financial statement prepared in accordance with ASPE, other than (i) Liabilities or obligations reflected or reserved against in the balance sheets (or the notes thereto) included in the Financial Statements, (ii) Liabilities or obligations that have occurred or arisen after the date of the Financial Statement in the ordinary course of business, and (iii) Liabilities that would not reasonably be expected to have a material effect on the Purchased Entities;
- (v) the Purchased Entities' Financial Statements fairly present, in accordance with ASPE, the financial position and condition of the Purchased Entities at the date thereof and the results of the operations of the Purchased Entities for the period then ended and reflect in accordance with ASPE, all material assets, Liabilities or obligations (absolute, accrued, contingent or otherwise) of the Purchased Entities as at the date thereof and have been prepared in conformity with ASPE applied on a consistent basis throughout the period involved. There has been no material change in the Purchased Entities' accounting policies since;
- (w) to Vendor's knowledge, no member of the Vendor Group nor any of the Purchased Entities are in default under, and there exists no event, condition or occurrence which, after notice or lapse of time or both, would constitute such a default under any of the Title and Operating Documents to which any of them is a party or by which any of them is bound which would, individually or in the aggregate, have a Material Adverse Effect. The Purchased Entities are not in violation of any Applicable Laws which violation could have a Material Adverse Effect;
- (x) up to the time of Closing, the Purchased Entities are insured against all such Losses and risks and in such amounts as are prudent and customary in the oil and gas exploration and production business in the jurisdictions in which they operate; and all policies of insurance insuring the Purchased Entities or its business, assets, employees, officers and directors are in full force and effect. The Purchased Entities are not in default with respect to any of the provisions contained in any such insurance policy and has not failed to give any notice or present any material Claim under any such insurance policy in due and timely fashion;
- (y) there has not been any material change in the capital, assets or Liabilities of the Purchased Entities from the position set forth in the Financial Statements and the Purchased Entities have not incurred or suffered a material adverse change since such date and since that date there have been no material facts, transactions, events or occurrences which would have a Material Adverse Effect on the capital, assets or Liabilities, condition (financial or otherwise) or results of the operations of the Purchased Entities;
- (z) *Material Agreements.*
  - (i) Vendor has disclosed to Purchaser all Material Agreements;
  - (ii) all Material Agreements are in full force and effect and are unamended, true and correct copies of which have been provided to Purchaser, and there are no outstanding material defaults (or events or state of facts which would

constitute a material default with the passage of time or giving of notice or both) under any such Material Agreement on the part of Vendor Group or the Purchased Entities or, to the knowledge of Vendor, on the part of any other party to such Material Agreement; and

- (iii) neither Vendor Group nor either of the Purchased Entities have received or given any notice of default under any such Material Agreement which remains uncured. Vendor Group and the Purchased Entities have complied with, performed, observed and satisfied in all material respects, all material terms, conditions, obligations and Liabilities which have heretofore arisen;
- (aa) (i) to Vendor's knowledge, none of the Wells in which a member of Vendor Group or either of the Purchased Entities hold an interest has been produced in excess of applicable production allowables imposed by any Applicable Laws or any Governmental Authority and Vendor does not have any knowledge of any impending change in production allowables imposed by any Applicable Law or any Governmental Authority that may be applicable to any of the Wells in which a member of Vendor Group or either of the Purchased Entities holds an interest, other than changes of general application in the jurisdiction in which such Wells are situate; (ii) no member of Vendor Group nor either of the Purchased Entities have received notice of any production penalty or similar production restriction of any nature imposed or to be imposed by any Governmental Authority; and (iii) none of the Wells in which a member of the Vendor Group or either of the Purchased Entities hold an interest is subject to any such penalty or restriction other than as set out in Schedule D;
- (bb) to Vendor's knowledge, and except for an immaterial failure to pay, all royalties in respect of the Interests payable, or performable by a member of Vendor Group or either of the Purchased Entities on or prior to the date hereof, have been: (i) duly paid in a timely manner; (ii) duly performed; or (iii) provided for in the accounts of the Purchased Entities;
- (cc) those Facilities for which a member of Vendor Group or either of the Purchased Entities is operator and, to Vendor's knowledge, those Facilities for which no member of Vendor Group or neither of the Purchased Entities is operator, have been operated and, as applicable, abandoned and/or reclaimed in all material respects in accordance with good oil field practice, which were in effect as of the date that the Facilities were abandoned and/or reclaimed, and the requirements of Applicable Laws;
- (dd) no member of Vendor Group nor either of the Purchased Entities have received any offset notices under the terms of any Lease that remain outstanding in any material respect. The Purchased Entities have not received any advance payments for petroleum or services not already delivered or provided prior to receipt of payment;
- (ee) to Vendor's knowledge, all material fees in respect of seismic and well data in respect of which a Purchased Entity, a member of Vendor Group or the relevant operator has a license, that were payable prior to the date hereof have been duly paid;
- (ff) no Purchased Entity is, and following the implementation of the Additional Interests Transaction no Purchased Entity will be, subject to any contractual earning arrangements whereby either Purchased Entity is required to undertake operations to earn an interest in any lands or production therefrom;

- (gg) the Purchased Entities have no employees;
- (hh) to Vendor's knowledge:
  - (i) the Purchased Entities are not currently engaged in any unfair employment or labour practice and no unfair employment or labour practice complaint, grievance or arbitration proceeding is pending or, to the knowledge of Vendor threatened against the Purchased Entities with respect to the Employees or any of them;
  - (ii) the Purchased Entities have not experienced any labour strike or stoppage in the past two (2) years, nor is there any labour strike or stoppage occurring or, to the knowledge of Vendor, threatened in respect of any of the Employees;
  - (iii) there are no outstanding Claims, complaints or proceedings by any Employee, relating to occupational health and safety or workers' compensation and the Purchased Entities have not been advised that any such Claims, complaints or proceedings may be filed;
  - (iv) with respect to the Employees, no collective agreement currently exists or is being negotiated by the Purchased Entities;
  - (v) within the last two (2) years preceding the date of this Agreement, no trade union, council of trade unions, employee bargaining agency, employee association or affiliated bargaining agent holds bargaining rights with respect to the Assets, by way of certification, interim certification, voluntary recognition, or succession rights, or has applied or, to the knowledge of Vendor, threatened to apply to organize, certify or establish any trade union or employee association as the bargaining agent of any of the Employees;
  - (vi) there are no current or pending union organizing activities or applications for certification involving the Employees;
  - (vii) all individuals who are or were performing consulting or other services for the Purchased Entities are or were correctly classified under all Applicable Laws by the Purchased Entities as either "independent contractors" or "employees" as the case may be, and neither the Purchased Entities nor Vendor have received any notice from any Governmental Authority disputing such classification;
  - (viii) the Purchased Entities' workers' compensation accounts are in good standing; and
  - (ix) other than as disclosed in the Employee List, no Employee is on a paid or unpaid leave (other than vacation) as at the date the Employee List was provided to Purchaser;
- (ii) *Tax Representations.*
  - (i) the Company is not a non-resident for the purposes of the Canadian Tax Act and is a taxable Canadian corporation within the meaning of subsection 89(1) of the Canadian Tax Act;

- (ii) the Partnership is a "Canadian partnership" and a "Canadian resident partnership" for purposes of the Canadian Tax Act;
- (iii) each of the Purchased Entities has, and on the Closing Date will have, duly and on a timely basis prepared and filed all Tax Returns required to be filed by it prior to the Closing Date, and such Tax Returns are, or will be, true, complete and correct in all material respects;
- (iv) except as disclosed in Schedule C, each Purchased Entity has duly and timely paid all material Taxes, including all instalments on account of Taxes for the current year that are due and payable by it whether or not assessed by the appropriate Governmental Authority.
- (v) except as disclosed in Schedule C, each Purchased Entity has paid, or accrued on an estimated basis in the Company Financial Statements, all Taxes due and payable for all periods ending on the period end date in the Company Financial Statements;
- (vi) each Purchased Entity has withheld from any amount paid or credited to any Person, including its officers and directors and any non-resident of Canada (for purposes of the Canadian Tax Act), the amount of all Taxes required by Applicable Laws to be withheld from any amount and duly and in a timely manner remitted the same to the appropriate Governmental Authority;
- (vii) there are no material Encumbrances on any of the assets of either Purchased Entity (including, following the Additional Interests Transaction, the Additional Interests) for unpaid Taxes (other than in respect of Taxes not yet due and payable);
- (viii) copies of all Tax Returns and all material written communications to or from any Governmental Authority relating to the Taxes of the Purchased Entities have been made available to Purchaser, to the extent relating to periods or events in respect of which any Governmental Authority may by Applicable Law assess or otherwise impose any such Tax on the Company;
- (ix) except as disclosed in Schedule C, the Purchased Entities have not made, prepared and/or filed any elections, designations or similar filings relating to Taxes or entered into any agreement or other arrangements in respect of Taxes or Tax Returns that has effect for any period ending after the Closing Date;
- (x) none of Sections 17, 78, 80, 80.01 to 80.04, 160 or 191.3 of the Canadian Tax Act, or any equivalent provision of the Tax legislation of any province or any other jurisdiction, have applied or will apply to the Purchased Entities at any time up to and including the Closing Date;
- (xi) the Purchased Entities have not entered into any transactions or arrangements with Persons with whom it does not deal at arm's length for purposes of the Canadian Tax Act otherwise than for consideration equal to fair market value;
- (xii) except as disclosed in Schedule C, the Purchased Entities have collected all material amounts on account of any sales or Transfer Taxes, including goods

and services, harmonized sales and provincial or territorial Sales Taxes, required by Applicable Laws to be collected by it and has duly and timely remitted to the appropriate Governmental Authority any such amounts required by Applicable Laws to be remitted by it;

- (xiii) except as disclosed in Schedule C, the Company has not issued any "flow-through shares" as defined in the Canadian Tax Act;
- (xiv) except as disclosed in Schedule C, the Purchased Entities have not received any assessments, reassessments, suits or Claims now subsisting against any of the Purchased Entities in respect of any Taxes, and to the knowledge of Vendor, there are no matters that are the subject of any audit, investigation, objection, appeal, legal proceedings or agreement with any Governmental Authority relating to Claims for Taxes now in progress, pending or threatened against any of the Purchased Entities;
- (xv) the Purchased Entities are not a party to any sharing, indemnity or allocation agreement or arrangements relating to Taxes;
- (xvi) there are no agreements, waivers or other arrangements providing for an extension of time with respect to the assessment or reassessment of any Tax or the filing of any Tax Returns by, or the payment of any Tax by, the Purchased Entities; and
- (xvii) the Company does not have any outstanding obligations to incur and/or renounce any Canadian exploration expenditures or Canadian development expenditures to any purchaser of the Shares of the Company that have not yet been fully expended and renounced;
- (xviii) except as disclosed in Schedule C, the Purchased Entities have not filed, or have been required or are currently required to file, any Tax Returns with any Governmental Authority outside of its jurisdiction of incorporation, and no Claims have ever been made by a Governmental Authority that any of the Purchased Entities is or may be subject to Tax in a jurisdiction where it does not file Tax Returns;
- (xix) the Purchased Entities have not received any COVID-19 subsidy amounts to which it was not entitled. The Purchased Entities have not deferred any payroll tax obligations as permitted under applicable COVID-19 related measures enacted, promulgated or offered as an administrative relief by a Governmental Authority;
- (xx) as of December 31, 2021, the Tax Pools of the Purchased Entities, as disclosed in Schedule C, are correct in all material respects, and since January 1, 2022, neither any member of Vendor Group nor the Purchased Entities have taken any action, except in a manner consistent with practices followed in prior years or as required by Applicable Law, that would materially reduce the amount of the aforementioned Tax Pools of the Purchased Entities; and
- (xxi) the Company is a registrant in accordance with the provisions of the *Excise Tax Act* (Canada) with the assigned registration number of **[number redacted]** and the Partnership is a registrant in accordance with the provisions of the

*Excise Tax Act* (Canada) with the assigned registration number of **[number redacted]**; and

- (jj) *Shared Facilities and Services*. Schedule J sets out a list of the material Shared Interests which are not, and will not at Closing (after giving effect to the Additional Interests Transaction), be owned by the Purchased Entities (or either of them).

## 5.2 Limitation

- (a) Vendor makes no representations or warranties respecting any matter or thing except as contained in Section 5.1. Except to the extent provided for in the representations and warranties contained in Section 5.1, Vendor hereby expressly negates any representations or warranties by it and disclaims any Liability and responsibility for any representation or warranty that may have been made or alleged to have been made and contained in any document or statement made or communicated by it to Purchaser including any opinion, information or advice provided to Purchaser by any Representative of Vendor in respect of:
  - (i) the quantity, quality or recoverability of Petroleum Substances attributable to the Interests;
  - (ii) estimates of prices or future cash flows arising from the sale of Petroleum Substances produced from the Lands or estimates of other revenues attributable to the Interests or continued availability of transportation to sell those Petroleum Substances;
  - (iii) any environmental data or reports or other interpretations or evaluation of the Environment arising in connection with or related to the Interests and any assessments or evaluations of the accuracy, completeness, volume, nature or estimated cost of the work required to fully satisfy and discharge the Environmental and End-of-Life Liabilities or, for greater certainty, the Abandonment and Reclamation Obligations;
  - (iv) any express or implied warranty regarding the Purchased Entities' title to any of the Interests;
  - (v) any express or implied representations or warranties regarding any Tax attributes arising in connection with or related to the Purchased Entities the Interests or the Transaction pursuant to Applicable Law or any Governmental Authority;
  - (vi) any engineering, geological or other interpretations or economic evaluations in respect of the Interests;
  - (vii) the quality of any data or information supplied by the Purchased Entities to Purchaser; and
  - (viii) the quality, condition, fitness or merchantability of any physical assets forming part of the Interests, including all installations, structures, platforms, Pipelines, terminals, plants, equipment, machinery, and the Facilities; all such assets are transferred hereunder on an "as is, where is, and with all faults";

- (b) Purchaser acknowledges it has made, and will continue prior to Closing Date to make, its own independent examination, investigation, analysis, evaluation and verification of the Facilities and Interests, including Purchaser's own estimate and appraisal of the extent and value of the Petroleum Substances attributable to the Lands; and
- (c) Except for Vendor's express representations and warranties in Section 5.1, Purchaser forever releases and discharges Vendor from any Claims and all Losses and Liabilities to Purchaser or Purchaser's assigns and successors, as a result of the use or reliance upon advice, information or materials pertaining to the Interests which was delivered or made available to Purchaser prior to the date hereof by Vendor or either of the Purchased Entities in contemplation of the Transaction, including any of the materials contained in any data room, any evaluations, projections, reports and interpretive or non-factual materials prepared by or for Vendor or either Purchased Entity, or otherwise in Vendor's or either Purchased Entity's possession or control, and Vendor shall not have any Liability or obligations as a result of any inaccuracy, error or omission therein.
- (d) Nothing in this Section 5.2 shall limit any claims by Purchaser for fraud of Vendor.

### **5.3 Purchaser's Representations**

Purchaser represents and warrants to Vendor at the date hereof and on the Closing Date, as follows:

- (a) Purchaser is a corporation formed pursuant to the laws of Alberta and the Applicable Laws of those jurisdictions in which it is required to be registered for the purposes of this Transaction and has the requisite capacity, power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement;
- (b) the execution and delivery of this Agreement and all other agreements and instruments to be executed and delivered hereunder and the completion of the purchase of the Purchased Interests in accordance with the terms of this Agreement have been duly authorized by all necessary action by Purchaser and do not and will not violate or conflict with any provision of:
  - (i) the constating documents relating to it or any Regulation applicable to it, or
  - (ii) any agreement or instrument to which it is a party, or by which it is otherwise bound and of which it has knowledge, or any judgment, decree or order applicable to it;
- (c) this Agreement and all documents executed and delivered pursuant to this Agreement will be, legal, valid and binding obligations of Purchaser enforceable against it in accordance with their terms and Purchaser has not incurred any Liability, contingent or otherwise, for broker's or finder's fees for this Transaction for which Vendor will have any Liability;
- (d) Purchaser is not a "non-Canadian" within the meaning of the *Investment Canada Act* (Canada);
- (e) Purchaser is not a non-resident of Canada for the purpose of the Canadian Tax Act;

- (f) Purchaser has not incurred any Liability, contingent or otherwise, for brokers' or finders' fees for this Transaction for which Vendor will have any Liability;
- (g) all board of directors or other internal approvals that are required by Purchaser in connection with the Transaction have been or will be obtained by Closing;
- (h) subject to receipt of the Competition Act Approval, Purchaser meets all qualification requirements of third parties, and in particular the AER, to purchase and take a transfer of ownership of the Purchased Interests, including the change of control of the applicable Interests for which Purchaser is intended to replace Vendor following Closing, failing which Purchaser shall accede to, comply with and perform the lawful requirements of such third parties, and in particular the AER including the placing of any security deposit with the AER;
- (i) Purchaser is not aware of any facts or circumstances pertaining to Purchaser that could reasonably be expected to result in Purchaser being determined to pose "an unreasonable risk" as contemplated under AER Directive 067;
- (j) Purchaser represents and warrants that it is a registrant in accordance with the provisions of the *Excise Tax Act* (Canada), with the assigned registration number **[number redacted]**;
- (k) subject to the terms and conditions of the Debt Letters, Purchaser will have available at Closing and after Closing, as applicable, immediately available funds sufficient to pay the Purchase Price and the fees and expenses of Purchaser related to the transactions contemplated by this Agreement; and
- (l) Purchaser has delivered to Vendor true and complete fully executed copies of: (i) the commitment letter, dated as of June 28, 2022, between Purchaser and National Bank of Canada, National Bank Financial Markets, The Toronto-Dominion Bank, Royal Bank of Canada and Canadian Imperial Bank of Commerce (the "**Debt Commitment Letter**"), and (ii) letters evidencing or effecting the Fee Arrangements (as defined in the Debt Commitment Letter), dated as of June 28, 2022 between Purchaser and National Bank of Canada, National Bank Financial Markets, The Toronto-Dominion Bank, Royal Bank of Canada and Canadian Imperial Bank of Commerce, in each case, including all exhibits, schedules, annexes and amendments to such letters in effect as of the date of this Agreement (as redacted to remove only the fee amounts and other economic terms; provided that none of such redactions affect the conditionality, timing, availability or aggregate principal amount of the Financing) (collectively with the Debt Commitment Letter, the "**Debt Letters**"), pursuant to which and subject to the terms and conditions thereof, each of the parties thereto (other than Purchaser) acting as a lender, arranger, bookrunner, underwriter, initial buyer, placement agent, administrative agent, trustee or a similar representative in respect of all or any part of the funding necessary to consummate the transactions contemplated by this Agreement (collectively, the "**Financing Sources**") have committed to lend the amounts set forth therein to Purchaser (the provision of such funds as set forth therein, the "**Financing**") for the purposes set forth in such Debt Letters. The Debt Letters have not been amended, restated or otherwise modified or waived prior to the execution and delivery of this Agreement, and the respective commitments contained in the Debt Letters have not been withdrawn, rescinded, amended, restated or otherwise modified or waived in any respect prior to the execution and delivery of this Agreement and no such withdrawal, rescission, amendment, restatement or other modification is

contemplated as of execution of this Agreement (other than to add lenders, arrangers, agents, bookrunners, managers and other financing sources to the extent permitted by Section 3.8). As of the execution and delivery of this Agreement, the Debt Letters are in full force and effect and constitute the legal, valid and binding obligation of each of Purchaser and the other parties thereto. There are no conditions precedent (express or implied) or contingencies directly or indirectly related to the Financing pursuant to the Debt Letters, other than as expressly set forth in the Debt Commitment Letter. As of the date hereof, no event has occurred which, with or without notice, lapse of time or both, would constitute a breach or default on the part of Purchaser under the Debt Letters or, to Purchaser's knowledge, any other party to the Debt Letters. As of the date hereof, there are no side letters or other agreements directly or indirectly related to the Financing that could affect the conditionality, principal amount, timing or availability of the Financing other than as expressly set forth in the Debt Letters. Purchaser has fully paid all commitment fees or other fees required to be paid on or prior to the date hereof in connection with the Financing. As of the date of this Agreement, Purchaser has no reason to believe that any of the conditions to the Financing contemplated by the Debt Letters will not be satisfied on a timely basis or that the Financing contemplated by the Debt Letters will not be made available on the Closing Date;

- (m) Purchaser is not aware of any fact, matter, or circumstance, which is inconsistent with Vendor's representations and warranties or might give rise to a Claim for breach of any Vendor's representation and warranty;
- (n) no step has been taken by any Person against Purchaser to wind it up, appoint a controller or administrator, seize or take possession of any of its assets, or make any arrangement, compromise, or composition with any of its creditors. Purchaser is solvent under the laws of the jurisdiction of its organization and able to pay all of its debts as and when they become due and payable; and
- (o) there is no action, suit, investigation, or proceeding pending against it, or to the best of its knowledge or belief, threatened against or affecting it, before any court, arbitrator, Governmental Authority, which in any manner challenges or seeks to prevent, enjoin, alter, or materially delay the Transaction.

## **ARTICLE 6 RECOURSE**

### **6.1 Vendor's Indemnity**

- (a) Except as provided in Section 6.2, the remaining provisions of this Article 6 and subject to Closing, Vendor shall be responsible for, and timely and fully satisfy; and fully indemnify, defend, and hold harmless each Purchaser Indemnified Party from and against: all Claims, Losses and Liabilities which it suffers, sustains, pays or incurs as a consequence of a breach by Vendor (or any other member of Vendor Group as if each such member were a party to this Agreement in place and stead of Vendor) of a representation and warranty made by Vendor in Section 5.1 or a breach by Vendor (or any other member of Vendor Group as if each such member were a party to this Agreement in place and stead of Vendor) of any of the covenants made by Vendor in this Agreement, except any such Claims, Losses or Liabilities as have been caused by or result from the Gross Negligence or Willful Misconduct of any of Purchaser Indemnified Parties (the "**Purchaser's Losses**").

- (b) Provided that Closing has occurred, Vendor shall be liable for and, as a separate independent covenant, shall indemnify Purchaser for:
- (i) all Taxes attributable to the Purchased Entities for any period ending on or before the Closing Date, other than:
    - (A) any Taxes attributable to the Interim Period; or
    - (B) Taxes taken into account in the Final Statement of Adjustments;
  - (ii) any Taxes attributable to the Purchased Entities arising in respect of the Additional Interests Transaction and/or Pre-Signing Date Reorganization; and
  - (iii) all Losses and Liabilities as a result of any breach of the Tax Representations and Warranties,

and, for purposes of this Section 6.1(b) and subject to Section 11.2, "**Taxes attributable to the Interim Period**" shall be calculated by Vendor acting reasonably and in a manner consistent with Section 2.8, as if the relevant Purchased Entity's first relevant taxation year or period ended immediately before the Effective Date and its next relevant taxation year or period for the Interim Period began at the first moment in time on the Effective Date and ended immediately before the Closing Date.

## **6.2 Purchaser's Indemnity**

Except as provided in Section 6.1 including any claim of Purchaser for breach of Vendor's representations and warranties in Section 5.1 and subject to Closing, Purchaser shall:

- (a) assume, be responsible for, and timely and fully satisfy; and fully indemnify, defend, and hold harmless each Vendor Indemnified Party from and against any and all Claims, Losses and Liabilities which they suffer, sustain, pay or incur as a consequence of, and agrees to reimburse them for, a breach by Purchaser of any representation or warranty contained in Section 5.3 or a breach by Purchaser of any of the covenants made by it in this Agreement; and
- (b) assume, be responsible for, and timely and fully satisfy; and fully indemnify, defend, and hold harmless each Vendor Indemnified Party from and against any and all Environmental and End-of-Life Liabilities in connection with the Facilities and Interests (or any part thereof), howsoever arising, whether arising before, on, or after the Effective Date, and regardless of how such Claims, Losses and Liabilities arose or arise (including whether arising due to the negligence or breach of duty (statutory or otherwise) on the part of any Vendor Indemnified Party, regardless of who may be at fault or otherwise responsible under any contract or Applicable Law, whether they were foreseeable or unforeseeable, or known or unknown to Vendor or Purchaser at the date of this Agreement),

except any such Claims, Losses or Liabilities as have been caused by or result from the fraud, Gross Negligence or Willful Misconduct of any of Vendor Indemnified Parties.

## **6.3 Environmental and End-of-Life Liabilities**

Purchaser acknowledges that:

- (a) the Purchased Interests, the Purchased Entities' business and the assets of the Purchased Entities, including any physical assets forming part of the Interests, including all installations, structures, Pipelines, terminals, plants, equipment, machinery, and the Facilities, are being transferred through the sale of the Purchased Interests on an "as is, where is, and with all faults" basis in respect of Environmental Matters and, subject to the breach of any of Vendor's representations in Section 5.1 for which Purchaser is entitled to indemnification pursuant to Section 6.1, Purchaser shall, if Closing occurs, assume Liability for all Environmental and End-of-Life Liabilities attributable to the Purchased Interests, Purchased Entities' business and assets of the Purchased Entities whether or not such Environmental and End-of-Life Liabilities are within the knowledge or imputed knowledge of Vendor, or any of their Representatives or contractors;
- (b) certain assets of the Purchased Entities, including any physical assets forming part of the Interests, including all installations, structures, Pipelines, terminals, plants, equipment, machinery, and the Facilities, have been used for the exploration, development and production of Petroleum Substances, which includes the storage, sale and transfer of petroleum products, other hydrocarbons, or their derivatives and additives and that discharges of such Petroleum Substances, products, other hydrocarbons, derivatives and additives into the soil and/or groundwater may have occurred from time to time in the past; and
- (c) except for the representation in Section 5.1(f), Vendor has not made, does not make, and shall not be required to provide any other warranty or representation with respect to the condition of such assets of the Purchased Entities (environmental or otherwise).

If Closing occurs, subject to the breach of any of Vendor's representations in Section 5.1 for which Purchaser is entitled to indemnification pursuant to Section 6.1 and except for any fraudulent actions by any member of Vendor Group or by the Purchased Entities prior to Closing, Purchaser shall be solely liable for, and in addition, shall indemnify and hold each of Vendor Indemnified Parties harmless from, any Claims, Losses or Liabilities which are directly or indirectly, incurred, sustained or suffered by or asserted against any Vendor Indemnified Party on or after the Effective Date relating to, arising out of, resulting from or in any way connected with any Environmental and End-of-Life Liabilities whether they arise before or after the Effective Date and whether or not they relate to activities that occurred prior to the Effective Date.

#### **6.4 Limitations on Vendor's Indemnity**

Other than in respect of (1) the tax indemnification pursuant to Section 6.1(b) to which the Claim thresholds in Sections 6.4(a) and 6.4(b) and the cumulative liability cap in Section 6.4(c) shall not apply; (2) completion and payment of the Final Statement of Adjustments and Leakage Adjustments in accordance with Sections 2.8 and 2.9 and the timing set out therein; (3) a failure of Vendor to fulfil its obligations under Section 3.7; and (4) the intentional breach any member of Vendor Group or the fraudulent actions by any member of Vendor Group or by the Purchased Entities prior to Closing:

- (a) No Claim by Purchaser and/or its Representatives shall be made against Vendor pursuant to Section 6.1 for any Purchaser's Losses arising from or in respect of an individual Claim (other than in respect of Fundamental Representations) made in relation to this Agreement unless the Purchaser's Losses in respect of such individual Claim exceeds **[dollar amount redacted]**, in which event, subject to Sections 6.4(b) and 6.4(c), all of such Losses, and not only the amount in excess of the **[dollar amount redacted]** threshold, may be recovered.

- (b) No Claim by Purchaser and/or its Representatives shall be made against Vendor pursuant to Section 6.1 unless the aggregate of all of the Purchaser's Losses in respect of all such Claims arising under Section 6.4(a) (other than in respect of Fundamental Representations) exceeds an amount equal to **[dollar amount redacted]** in which event, subject to Sections 6.4(c), 6.4(d) and 6.4(e), all of such Losses, and not only that portion of the accumulated aggregate Losses in excess of such amount, may be recovered.
- (c) The maximum cumulative Liability of Vendor in respect of the indemnity contained in Section 6.1(a) and breaches of the representations, warranties and covenants made by Vendor in this Agreement shall not exceed **[percentage redacted]** of the Purchase Price, provided that the maximum cumulative Liability of Vendor in respect of the indemnity continued in Section 6.1(a) for breaches of the Fundamental Representations shall not exceed **[percentage redacted]** of the Purchase Price.
- (d) No Claim against Vendor for performance of the indemnity contained in Section 6.1(a) or in respect of a breach of any covenant, representation or warranty made by Vendor in this Agreement shall be made or be enforceable, whether by legal proceedings or otherwise, unless written notice of such Claim is given by Purchaser to Vendor within the applicable Survival Period.
- (e) No Claim shall be made or be enforceable against Vendor for performance of the indemnity contained in Section 6.1(a) or in respect of a breach of any covenant, representation, or warranty made by Vendor arising out of:
  - (i) any fact, matter or circumstance known to Purchaser at Closing. Vendor shall not be liable to the extent that the relevant fact, matter or circumstance which causes any Claim and Vendor's representations and warranties shall be qualified by any fact, matter or thing that is disclosed in:
    - (A) any document delivered to Purchaser or its Representatives pursuant and prior to the date of this Agreement;
    - (B) any report or written or oral communication delivered prior to the date of this Agreement to any Purchaser Indemnified Party or to any of their respective directors, officers, employees, agents or advisers;
    - (C) a Schedule to this Agreement or in the data room as at the date that is three (3) days prior to the date of this Agreement; or
    - (D) all matters which have been disclosed prior to the date of this Agreement as a result of the inspection by Purchaser of the Interests;
  - (ii) any passing of, or any change in, on or after the date of this Agreement, any Applicable Law (including any passing of, or change in, Applicable Law on or after the date of this Agreement which takes place retrospectively);
  - (iii) any act, default, omission, transaction, or arrangement by Purchaser or any of its Affiliates (or any of its or their respective directors, officers, employees, agents, or successors in title) on or after the date of this Agreement;

- (iv) fraud, bad faith, or Gross Negligence or Willful Misconduct of Purchaser or any of its Affiliates (or any of its or their respective directors, officers, employees, agents, or successors in title); or
- (v) any matter or thing done, or omitted to be done, by Vendor pursuant to, or in compliance with, the terms of this Agreement or any other document to be entered into as part of the Transaction, or otherwise at Purchaser's request in writing or with Purchaser's written consent.
- (f) Provided Closing occurs, Purchaser's sole remedy for a misrepresentation, default, breach, or failure on the part of Vendor under, or in relation to, this Agreement is limited to the indemnities contained in Section 6.1(a) and is limited by the provisions of this Article 6.
- (g) A Party's Losses and Liabilities hereunder shall be deemed reduced by the amount of any insurance proceeds and by the amount of any Tax benefits received by such Party with respect to such Losses or Liabilities.
- (h) Vendor shall not be liable in respect of a Claim, Loss or Liability to the extent that the Claim, Loss or Liability is expressly provided for or included in any adjustments.
- (i) Purchaser shall not be entitled to recover from Vendor the same sum, or obtain payment, reimbursement, or restitution more than once in respect of any one Claim, Loss or Liability which gives rise to one or more Claims, Loss or Liability.

## **6.5 Indemnification Procedures for Third Party Claims**

- (a) In the case of third party Claims, including in respect of Tax matters ("**Third Party Claims**") with respect to which indemnification is sought hereunder, the Indemnified Party shall give prompt written notice of any such Claim made against it, and in any event within sixty (60) days, or, in the case of Tax matters, within twenty (20) days, after it receives notice of any such Claim, to the Indemnifying Party stating the nature and basis for that Claim and the nature and basis of the Claim by Purchaser or Vendor, as the case may be, for indemnification hereunder. A failure to give that notice within that period shall, without limiting the effect of any applicable Survival Period, not preclude the Indemnified Party from obtaining such indemnification but its right to indemnification shall be reduced to the extent that any such delay materially prejudiced the defence of the Claim or materially increased the amount of liability, whether determined through adjudication or settlement, or cost of defense.
- (b) The Indemnifying Party shall have the right, by notice to the Indemnified Party given not later than fifteen (15) days after its receipt of the notice described in Section 6.5(a), to assume the control of the defence, compromise and settlement of that Third Party Claim so long as (i) the Indemnifying Party conducts the defense of the Claim in good faith, and (ii) such assumption shall, by its terms, be without material cost to the Indemnified Party, provided however, if the Claim involves the seeking of an injunction or other similar equitable non-monetary relief against the Indemnified Party, the Indemnified Party shall have the right to control the defense of that part of the Claim. If the Indemnifying Party assumes the control of the defence, compromise and settlement of such Claim, as against the Indemnified Party, it will be conclusively established for the purposes of this Agreement that those Claims are within the scope of the indemnification set out in this Article 6 and the Indemnifying Party shall

reimburse the Indemnified Party for all reasonable legal fees and expenses on a solicitor and its own client basis in connection therewith incurred by the Indemnified Party prior to that assumption by the Indemnifying Party. The Indemnifying Party shall thereafter keep each Indemnified Party reasonably informed with respect to the status of that Claim.

- (c) On the assumption of control of any Claim by the Indemnifying Party pursuant to Section 6.5(b), the Indemnifying Party shall diligently proceed with the defence, compromise or settlement of that Claim at its sole risk, cost and expense and, in connection therewith, the Indemnified Party shall cooperate fully, but at the expense of the Indemnifying Party with respect to any out-of-pocket expenses incurred, to make available to the Indemnifying Party all pertinent information and witnesses under the Indemnified Party's control and take such other steps as in the opinion of counsel for the Indemnifying Party are reasonably necessary to enable the Indemnifying Party to conduct that defence. The Indemnifying Party shall not settle that Claim unless that settlement includes, as a term thereof, the giving by the claimant or the plaintiff of a full, complete and unconditional release of the Indemnified Party from any and all liability with respect to that Claim. As long as the Indemnifying Party is contesting any such Claim in good faith and on a timely basis, the Indemnified Party shall not pay or settle any such Claim without the consent of the Indemnifying Party. If the defendants in any such Claim shall include both an Indemnified Party and the Indemnifying Party and such Indemnified Party shall have reasonably concluded that counsel selected by the Indemnifying Party has a conflict of interest or that, because of the availability of different or additional defences to that Indemnified Party, the interests of the Indemnified Party are best served by having separate defence counsel, that Indemnified Party shall have the right to select separate counsel to participate in the defence of that Claim on its behalf at the expense of the Indemnifying Party (to the extent only that the fees and expenses of such separate counsel are reasonably allocable to that part of the Claim for which the Indemnifying Party is liable hereunder), but only to the extent such Claim gives rise to indemnification hereunder, and provided further, that the Indemnifying Party shall not be obligated to pay the expenses of more than one separate counsel for all Indemnified Parties.
- (d) If the Indemnifying Party shall fail to notify the Indemnified Party of its desire to assume control of the defence, compromise or settlement of any Third Party Claim within the period of time prescribed above in Section 6.5(b), or shall notify the Indemnified Party that it will not assume control of the defence, compromise or settlement of any such Claim, then the Indemnified Party may assume the control of the defence, compromise and settlement of any such Claim, at the sole cost and expense of the Indemnifying Party to be reimbursed and repaid to the Indemnified Party, in which event it may do so in such manner as it may deem appropriate and the Indemnifying Party shall be bound by any determination made in that Claim or any settlement thereof effected by the Indemnified Party, provided that any such determination or settlement shall not affect the right of the Indemnifying Party to otherwise dispute the Indemnified Party's claim for indemnification. The Indemnifying Party shall be permitted to join in the defense of that Claim and to employ counsel at its own expense.
- (e) The final determination of any Claim governed by this Section 6.5 will be binding and conclusive on the Parties as to the validity or invalidity, as the case may be, of that Claim.

- (f) Amounts payable by the Indemnifying Party to the Indemnified Party in respect of any Third Party Claims for which the Indemnified Party is entitled to indemnification under this Section 6.5 shall be paid by the Indemnifying Party to the Indemnified Party as and when such amounts are suffered, sustained, paid or incurred by the Indemnified Party.

## **6.6 Consequential Losses**

Notwithstanding anything to the contrary contained in this Agreement, in no event shall a Party be liable for Consequential Losses in respect of the covenants, agreements, representations, warranties and indemnities contained in this Agreement or in any certification, agreement or other document furnished pursuant to this Agreement suffered, sustained, paid or incurred by the other Party or its respective Representatives, provided that this Section 6.6 shall not preclude a Party from entitlement to indemnification for Losses (including Consequential Losses):

- (a) which a Person (other than a Party and its Affiliates and their Representatives) suffers, sustains, pays or incurs;
- (b) which a Party or its Representatives suffers, sustains, pays or incurs that are due to a breach of the Confidentiality Agreement by the other Party or its Representatives, as applicable; and/or
- (c) which a Party or its Representatives suffers, sustains, pays or incurs that are the direct and reasonably foreseeable result of the event giving rise to such damage and not based on any special circumstances of such Party or its Representatives.

## **6.7 Purchaser's Release of Vendor**

- (a) With effect as of the Closing Date, Purchaser's sole recourse in connection with the Transaction and the acquisition of the Purchased Interests is contained in this Agreement and it shall not have or assert, and shall cause the Purchased Entities to not have or assert, and hereby expressly waives, any Claim against Vendor or its Representatives not provided for in or permitted by this Agreement including Claims arising out of or in connection with:
  - (i) any act, representation, statement, neglect or omission by or on behalf of Vendor, its Affiliates or their Representatives which is not contained in this Agreement;
  - (ii) any receipt or review of, or any comment or discussion arising from any report, or other information or other material made available to Purchaser, its Affiliates or Representatives by or on behalf of Vendor relating to the Interests other than an express representation herein contained; or
  - (iii) any other state, nature, quality or condition of the Interests.
- (b) Without limiting, and in addition to, any release provided herein, but subject to the breach of any Vendor representation and warranty in Section 5.1 and except for any fraudulent actions by a member of Vendor Group or the Purchased Entities, Purchaser covenants and agrees to release Vendor and its Affiliates and Representatives with effect as and from the Closing Date, from each and every Claim, Loss or Liability whatsoever that Purchaser may now have or may have hereafter, or howsoever suffer,

sustain or incur in regard to, arising out of, or in any way connected with the Purchased Entities' Environmental and End-of Life Liabilities. Purchaser further covenants and agrees that, subject to the breach of any Vendor representation and warranty in Section 5.1 and except for any fraudulent actions by any member of Vendor Group or the Purchased Entities, in respect of the Interests, it will not directly or indirectly attempt to compel Vendor or its Affiliates to study, investigate, remediate, control, clean up, remove or manage or to pay for the study, investigation, remediation, control, clean up, removal or management of any Environmental and End-of-Life Liabilities, or seek damages or other remedies therefor.

- (c) It is understood and agreed that: (i) the terms of this Section 6.7 shall not in any way impact, impair or derogate Purchaser's rights pursuant to and in accordance with the terms of the Parent Guarantees notwithstanding anything therein to the contrary, and (ii) this Section 6.7 and all of the other covenants of Purchaser contained herein shall not expire with or be terminated, merged or extinguished by Closing and the indemnities in this Agreement shall survive Closing.

## **ARTICLE 7 EMPLOYEES AND EMPLOYEE BENEFITS**

### **7.1 Employees**

- (a) Within five (5) Business Days of the execution of this Agreement, Vendor shall deliver to Purchaser a list of all Employees identifying the name, age, position, status (full-time, part-time, fixed-term or temporary), length of service, location of employment, active or inactive status (including reason for leave of absence and return to work, if known), salary, compensation and benefits of each such Employee (the "**Employee List**").
- (b) No later than fourteen (14) days prior to the applicable Offer Date, Purchaser shall provide Vendor with copies of all proposed employment offer templates and with all relevant employment information that will be included in each individual offer of employment to Employees pursuant to Section 7.2, for Vendor's review to ensure that they are compliant with all requirements under this Agreement, including **[inclusion redacted]**. No later than five (5) days after the receipt by Vendor of the proposed employment offer templates, Vendor shall provide Purchaser with its comments thereto. Purchaser shall accept all reasonable comments to make the offers compliant with all requirements under this Agreement, including **[inclusion redacted]** (the resulting offers, each an "**Approved Offer**").
- (c) Vendor shall provide Purchaser with, or cause Purchaser to be provided with, access to the Employees for one meet and greet session with each such Employee to be completed within ten (10) Business Days following the date of execution of this Agreement and as agreed to by each Employee.

### **7.2 Employment Offers**

Subject to the requirements in this Article 7, Purchaser shall make offers of employment on the Offer Date to those Employees who Purchaser, in its sole discretion, wishes to hire; provided always that Purchaser must make offers of employment to not less than **[percentage redacted]** of the Employees. All Employees shall have ten (10) days to accept Purchaser's offer of employment. No later than fourteen (14) days prior to the applicable Offer Date, Purchaser shall advise Vendor of those Employees

who will receive an offer of employment and those Employees who will not receive an offer of employment.

### **7.3 Offers of Employment**

All offers that are required to or may be made by Purchaser on the applicable Offer Date shall:

- (a) be effective as of the Closing Date and be conditional upon the occurrence of Closing;
- (b) recognize each Employee's prior years of recognized service with Vendor or its Affiliates as set forth in the Employee List for all purposes, including but not limited to calculation of notice of termination, termination pay, or severance pay (whether contractual, statutory or common law), vacation, benefits and any other employment-related entitlements;
- (c) conform in all material respects with the Approved Offer for the applicable Employee; and
- (d) conform with this Article 7.

### **7.4 Offers Status List**

Within five (5) Business Days after the due date of each Employees' response to Purchaser's employment offers, Purchaser shall deliver to Vendor a list of those Employees who have accepted employment offers and thereby agreed to become Transferred Employees as of the Closing Date. In addition, within five (5) Business Days after the due date of the Employees' response to Purchaser's employment offers, Purchaser shall deliver to Vendor a list of those Employees who have declined or failed to respond to the employment offers. Purchaser shall also inform Vendor, as soon as reasonably practicable, upon each On-Leave Employee becoming a Transferred Employee. If an Employee receives an employment offer from Purchaser but any such Employee: (i) does not accept an offer of employment from Purchaser; or (ii) fails to respond to the employment offer; then each such Employee shall be dealt with by Vendor or its Affiliates and Purchaser shall have no Liabilities associated with any such Employee. Liabilities and Employment Liabilities in respect of termination or severance pay associated with Employees who do not receive an employment offer from Purchaser and are terminated by Vendor or its Affiliates at or prior to Closing shall be, subject to Sections 2.6, 7.8(b) and 7.9(b), the responsibility of Vendor.

### **7.5 Pre-Employment Screening**

Purchaser hereby agrees to waive any pre-employment screening, including criminal background checks, with respect to the Employees.

### **7.6 Employees on Leave on Effective Date**

Notwithstanding the foregoing, in respect of Employees who are on short-term disability, long-term disability leave, or any other leave of absence on the Transfer Date (the "**On-Leave Employees**"), the effective date of employment with Purchaser shall not be the Transfer Date. Rather, Purchaser's offer of employment to any such On-Leave Employee shall specify that Purchaser's offer of employment is conditional upon the On-Leave Employee being capable of returning to work on a full-time or part-time basis to perform the Employee's normal duties and responsibilities, or modified duties and responsibilities, on or before **[time period redacted]** after the Transfer Date, and the date on which such On-Leave Employee returns to work on a full-time or part-time basis to perform the

Employee's normal duties and responsibilities, or modified duties and responsibilities, shall be the effective date of employment with Purchaser and Purchaser shall have a duty to accommodate such On-Leave Employee's return to work to the point of undue hardship.

#### **7.7 Post-Transfer Date Employment of Transferred Employees**

- (a) Following the Transfer Date, Purchaser shall not, for a period of ***[time period redacted]*** following the Transfer Date (the "**Commitment Period**"): (i) make any changes to the employment terms of the Transferred Employees such that their employment terms are no longer on terms that conform in all material respects with the Approved Offer for the applicable Employee, including reductions to the compensation and remuneration of the Transferred Employees, including base salary and benefit plans; or (ii) terminate the employment of any of the Transferred Employees, except for cause. For greater certainty, the Commitment Period under this Section 7.7(a) will in all cases commence on the Transfer Date, and end ***[time period redacted]*** thereafter, regardless of whether a Transferred Employee commences employment with Purchaser on the Transfer Date, or on any date thereafter.
- (b) On the Transfer Date (or on the date the Transferred Employee commences employment with Purchaser, if later than the Transfer Date), the Transferred Employees shall be immediately enrolled and participate in all of Purchaser's employee benefit plans and programs which are generally available to Purchaser's employees. At the time that a Transferred Employee retires, such Employee shall be eligible to participate in Purchaser's employee benefit plans and programs based upon their age and length of service of the Transferred Employees both with Vendor, its Affiliates, and Purchaser and which are generally available to employees of Purchaser who retire as well as any Vendor pension and benefits programs to which they have accumulated an entitlement through their employment with Vendor.

#### **7.8 Purchaser Liabilities and Obligations**

Purchaser shall be responsible for all Employment Liabilities:

- (a) relating to the employment of all Transferred Employees or the termination thereof on and after the Transfer Date; and
- (b) ***[allocation of responsibility for certain employment liabilities redacted]***.

#### **7.9 Vendor Liabilities and Obligations**

Vendor shall be responsible for all Employment Liabilities:

- (a) relating to the employment of all Transferred Employees prior to the Transfer Date; and
- (b) ***[allocation of responsibility for certain employment liabilities redacted]***.

## **ARTICLE 8 POST-CLOSING**

### **8.1 De-branding and Financial Statement Continuity**

Following the Closing Date, Purchaser shall, unless otherwise agreed to by Vendor in writing,

- (a) procure that each Purchased Entity promptly (and, in any event, within thirty (30) days following the Closing Date) undertakes all legal, regulatory, and administrative formalities to record and give effect to the change of such Purchased Entity's corporate, trade, company, fictitious, and all other business names, and to cease use of any domain names or URLs which incorporate or reference Vendor's or its Affiliates' names;
- (b) be responsible for notifying other working interest owners, suppliers, contractors, governmental agencies and any other third party of its acquisition of the Purchased Interests of the Purchased Entities. Purchaser is responsible for all costs of registration and all costs associated with obtaining execution by third parties where their execution is required. One copy of those documents evidencing execution by third parties shall be provided to Vendor by Purchaser as soon as is reasonably possible;
- (c) at its own cost and expense, remove from the Facilities, signage, and other related items, any reference to Vendor or its Affiliates, or any derivation of their names, or any other trade names related to Vendor or its Affiliates;
- (d) shall cease, to make use of any stationery, invoices, forms, seals, logos, or other similar articles showing or referencing Vendor's or its Affiliates' names, or any derivation of their names, or any other trade names related to Vendor or its Affiliates;
- (e) the register of shareholders of the Company is updated, evidencing the transfer of the Purchased Interests from Vendor to Purchaser; and
- (f) the records maintained by relevant Governmental Authority and applicable registries are updated to evidence that:
  - (i) Purchaser is the sole shareholder of the entire issued share capital in the Company;
  - (ii) the resignations of the existing directors, company secretary, and auditors of the Company and the appointments of the directors, company secretary, and auditors of the Company nominated by Purchaser have been registered; and
  - (iii) the registered address of each Purchased Entity has been changed to that nominated by Purchaser.
- (g) If and to the extent required by Purchaser for any regulatory filing, Vendor shall following Closing and until completion of the audited financial statements continue providing the information, support and assistance required by Section 3.2 of this Agreement in the preparation of audited financial statements in respect of the Purchased Entities for the required periods, provided that Purchaser shall be responsible for and reimburse Vendor for all third party costs incurred by Vendor in connection with the foregoing.

## 8.2 Preservation of Data; Access

For a period of *[time period redacted]* after Closing, Purchaser shall, and shall cause the Purchased Entities to:

- (a) preserve and retain the documents contained in the data room, all accounts, books, and data (including as pertains to the Purchased Entities Seismic Data and Vendor Group Seismic Data) relating to the Interests, which is in the possession or control of the Purchased Entities, and all other corporate, accounting, legal, auditing, and other books and records related to the Purchased Entities and the Interests for the period prior to Closing;
- (b) to the extent reasonably required by Vendor in connection with any audit, Tax investigation, lawsuit, discovery, dispute process or other process required to comply with Applicable Law, permit, and procure that its Affiliates shall, subject to confidentiality restrictions in favor of third parties relative to disclosure, permit Vendor and its authorized Representatives to have reasonable access to examine the data and other documents referred to in Section 8.2(a) for purposes of (i) audits and Taxes relating to periods prior to the Effective Date; (ii) matters relating to a Transferred Employee relating to a period prior to the Closing Date; (iii) compliance with Applicable Law in respect of a period prior to the Effective Date; or (iv) any Claim commenced or threatened against a Vendor Indemnified Party; and
- (c) permit Vendor and its Representatives to meet with employees of Purchaser or the Purchased Entities on a mutually convenient basis in order to obtain reasonable additional information and explanations with respect to such data and other documents referred to in Section 8.2(a);

provided that, if any data or other documents referred to in Section 8.2(a) are related to any facts, which are the subject of a dispute between the Parties, then such obligations on Vendor and rights of Purchaser or the Purchased Entities under this Section 8.2 shall continue until such dispute is settled. If Purchaser disposes of a Purchased Entity or if a Purchased Entity disposes of any of the Interests, in either case, to a third party, Purchaser will take reasonable steps to enable Vendor to have continued reasonable access to those materials for the period provided in this Section; provided that neither Purchaser nor the Purchased Entities will be required to retain copies of those materials following any such disposition.

## ARTICLE 9 VENDOR GROUP ARRANGEMENTS

### 9.1 Termination of Intercompany Service Agreements

Effective at Closing, Vendor shall, and shall cause each other member of the Vendor Group and the Purchased Entities to:

- (a) terminate all Intercompany Service Agreements in respect of the Purchased Entities, without any party having any continuing Liabilities to the other, other than for payment in respect of the provision of goods or services up to and including the Closing Date; and
- (b) settle, pay, forgive, or otherwise release all amounts due under the Intercompany Service Agreements (for the avoidance of doubt, any receivables arising after the

Effective Date under the Intercompany Service Agreements shall be paid on or prior to Closing, even if the due date is not until after Closing).

## **ARTICLE 10 TERMINATION**

### **10.1 Termination**

This Agreement may be terminated at any time prior to Closing in the following circumstances:

- (a) by mutual written agreement of the Parties;
- (b) by Vendor in accordance with Section 4.3;
- (c) by Purchaser in accordance with Section 4.2;
- (d) by Vendor or by Purchaser by delivering written notice to the other Parties, if the Closing does not occur by the Outside Date; provided that the right to terminate this Agreement under this Section 10.1(d) shall not be available to Vendor or Purchaser due to such Party's failure to fulfill any obligation under this Agreement has caused or resulted in the failure of the Closing to occur by the Outside Date; or
- (e) by Vendor or by Purchaser by delivering written notice to the other Parties, if Purchaser or Vendor, as the case may be, fails to comply in all material respects with Section 12.1,

and any other breach of this Agreement, at law or in equity, by Vendor or Purchaser shall only give rise to a Claim for damages. Any termination of this Agreement pursuant to this Section 10.1 shall be effective immediately upon the delivery of a written notice of termination. If a Party is in breach of any representation, warranty, covenant or agreement in this Agreement such that any of the conditions set forth in Section 4.2 or 4.3, as applicable, of the other Party(ies) could not be satisfied prior to the Outside Date (and such breach has not been waived by the applicable Party(ies), the non-breaching Party(ies) shall provide notice of such breach to the breaching Party(ies) and the non-breaching Party(ies) may not terminate this Agreement pursuant to Section 10.1(b), 10.1(c) or 10.1(e) (as applicable) until the earlier of: (i) thirty (30) days after such notice is delivered; and (ii) one (1) Business Day prior to the Outside Date.

### **10.2 Effect of Termination**

- (a) Subject to Section 10.2(c), if this Agreement is terminated in accordance with Section 10.1, then except for the obligations under Sections 2.2, 12.4, 12.6, 12.11 and the Confidentiality Agreement, and the covenants, warranties, representations or other obligations breached prior to the time at which termination occurs, the Parties shall be released from all of their obligations under this Agreement and each Party shall be responsible for its own costs.
- (b) If this Agreement is terminated in accordance with Section 10.1, Purchaser shall immediately cease using any Confidential Information and promptly return to Vendor all Confidential Information delivered to Purchaser by Vendor, and destroy all copies and reproductions (both written and electronic) in its possession and in the possession of any Person that received Confidential Information from Purchaser.

- (c) The provisions of this Section 10.2, Sections 1.1, 2.2, Article 6, 12.1, 12.2, 12.4, 12.6, 12.9, 12.11 and the Confidentiality Agreement shall survive termination of this Agreement.

## **ARTICLE 11 TAX MATTERS**

### **11.1 General**

- (a) Purchaser shall retain all books, records, and documentation relating to all Tax periods ending on or after the Closing Date in accordance with, and for the period required by Applicable Law. Vendor shall, upon request, have reasonable access to all such books, records, and documentation for all Tax periods occurring on or after the Effective Date.
- (b) Each Party shall provide the other Party with reasonable information, and cooperation, which may be required by the other Party, for the purpose of preparing and filing Tax Returns or claims for refund, determining a liability for Taxes or a right to refund of Taxes or in conducting or responding to any audit by any Governmental Authority, or determining the amount of any Tax hereunder. The cooperation and information shall include providing copies of all relevant portions of relevant Tax Returns, together with relevant accompanying schedules and records. Each Party shall cooperate with all reasonable requests of the other Party made in connection with contesting the imposition of Taxes. including providing reasonable employee availability.
- (c) If required, Purchaser agrees to cause the Company to cooperate and amend any Tax Return in respect of the Company's joint election between the Company and any applicable member of Vendor Group that holds an interest in the Additional Interests pursuant to section 85 of the Canadian Tax Act (and the corresponding provisions of any applicable provincial tax legislation), which enabled such members to transfer the Additional Interests owned by them on a full or partial income tax-deferred basis (at the option of such members) to the Company. Vendor will be solely responsible for the payment of any Taxes, including penalties, in respect of any such amendments.
- (d) In the event that Purchaser receives any Tax Refund for Taxes arising from, or attributable to, any Tax period ending on or before the Effective Date, Purchaser shall pay Vendor an amount equal to the Tax Refund, which amount shall be due and payable as soon as is reasonably practicable and, in any event, within five (5) Business Days of Purchaser's receipt of such Tax Refund. Purchaser shall, upon request of Vendor, provide to Vendor such information, as Vendor may reasonably request, to verify the calculation of the amount of such Tax Refund pursuant to this Article 11.
- (e) Save with the prior written consent of Vendor, Purchaser shall not take any action or step that may cause, or have the potential of causing, an increase in any Vendor's Liabilities for Taxes in connection with the Purchased Entities for any Tax period occurring prior to the Closing Date.

### **11.2 Tax Returns**

- (a) Vendor shall be responsible for, and have the conduct of preparing and submitting to the relevant Governmental Authority all Tax Returns of the Purchased Entities for all taxation years or periods ending on or before the Closing Date. Such Tax Returns shall

be (i) true, complete and correct in all material respects; and (ii) prepared in a manner consistent with practices followed in prior years with respect to similar Tax Returns of the Purchased Entities except as otherwise required by Applicable Law. Vendor shall deliver to Purchaser a complete and accurate copy of each Tax Return prepared by it pursuant to this Section in draft not less than, in the case of Tax Returns pertaining to Sales Taxes, ten (10) days before the filing due date of such Tax Return and, in the case of all other Tax Returns, not less than thirty (30) days before the filing due date of such Tax Return for review and comment by Purchaser. Purchaser's comments submitted to Vendor not less than, in the case of Tax Returns pertaining to Sales Taxes, five (5) days prior to the filing due date of the applicable Tax Return, and, in the case of all other Tax Returns, not less than ten (10) days prior to the filing due date of the applicable Tax Return shall be considered in good faith by Vendor acting reasonably. Purchaser shall reimburse Vendor in respect of any Taxes paid by Vendor on account of the Purchased Interests in respect of the Interim Period.

- (b) Purchaser shall be responsible for, and have the conduct of preparing and submitting to the relevant Governmental Authority, all Tax Returns of the Purchased Entities for all taxation years or periods ending after the Closing Date. In respect of the Partnership's fiscal period beginning on January 1, 2022 and ending on or before December 31, 2022 (the "**Partnership Fiscal Year**"), Purchaser shall be responsible for the preparation of the Tax Return for the Partnership Fiscal Year. Purchaser shall prepare such Partnership Tax Return in accordance with Applicable Law, the Partnership Agreement as amended pursuant to this Agreement, and consistent with prior practice of the Purchased Entities (including prior Tax elections and accounting methods or conventions utilized by the Purchased Entities) and shall deliver to Vendor a draft not less than thirty (30) days before the filing due date of such Tax Return for review and comment by Vendor. Vendor's comments submitted to Purchaser not less than ten (10) days prior to the filing due date of such Tax Return shall be considered in good faith by Purchaser.
- (c) The Parties agree that the Partnership Agreement will be amended such that for the Partnership Fiscal Year the net income or loss of the Partnership Fiscal Year for purposes of the Canadian Tax Act shall be allocated at the end of the Partnership Fiscal Year to the partners who are (or were) members of the Partnership at any time during the Partnership Fiscal Year. The net income or loss of the Partnership that is attributable to the Pre-Effective Date Period ("**Pre-Effective Date Income**") shall be allocated to the partners of the Partnership as of the Effective Date pro rata based on each partner's respective Sharing Percentage (as defined in the Partnership Agreement) as at the Effective Date; provided that, the Pre-Effective Date Income shall be calculated by Purchaser, acting reasonably, as if:
  - (i) the Partnership's fiscal period ended immediately before the Effective Date;
  - (ii) the Partnership would be able to claim (to the maximum extent permitted under the Canadian Tax Act or applicable provincial tax law), for the Pre-Effective Date Period, all of its discretionary deductions and reserves (including capital cost allowance); and
  - (iii) the Partnership would be able to claim (to the maximum extent permitted by partners under the Canadian Tax Act or applicable provincial tax law), for the Pre-Effective Date Period, the amount of all "Canadian exploration expenses", "Canadian development expenses", and "Canadian oil and gas property

expenses", each as defined in the Canadian Tax Act, that have been incurred by the Partnership during the Pre-Effective Date Period; that is, as if all of the aforementioned resource expenses incurred during the Pre-Effective Date Period were to be renounced without any calendar year pro-ration and such resource expenses incurred during the Pre-Effective Date Period shall be allocated to the partners of the Partnership which were partners as of the day immediately prior to the Effective Date.

### 11.3 Transfer Taxes

- (a) Purchaser shall be liable for, bear the cost of, and promptly pay any and all notarial fees and all transfer, stamp, documentary, registration, and other similar Taxes, including all share transfer Taxes ("**Transfer Taxes**"), Sales Taxes, and such other Taxes (including any financial transaction Tax, indirect transfer Tax, and any similar Tax) and duties, if applicable, where such fees, Transfer Taxes, and duties are incurred in connection with, and payable as a result of the Transaction or the execution and delivery of this Agreement or any other document related to the Transaction or the Additional Interests Transaction or the Pre-Signing Date Reorganization, excluding any Vendor income taxes imposed on Vendor's gain upon sale of the Purchased Interests or the Pre-Signing Date Reorganization. Purchaser shall be responsible for, at its own expense:
  - (i) executing and filing all necessary Transfer Tax Returns and other documentation in respect of such fees, Transfer Taxes and duties; and
  - (ii) arranging for the payment of such fees, Transfer Taxes and duties, including fulfilling any administrative or reporting obligation in question in connection with the payment of such fees, Taxes, and duties.
- (b) Purchaser shall fully indemnify, defend, and hold harmless each Vendor Indemnified Party from and against any and all Liabilities arising out of, or in connection with, the Transfer Taxes and duties in Section 11.3(a), and Purchaser shall promptly reimburse Vendor, upon request, within five (5) Business Days.

### 11.4 Tax Refunds

- (a) At the request of Vendor and at Vendor's cost, Purchaser shall, or shall procure that the Company shall, take commercially reasonable efforts to seek to obtain the benefit of any Tax Refund arising from, or attributable to, any Tax period ending on or before the Effective Date.
- (b) If the Company receives the benefit of any Tax Refund arising from, or attributable to, any Tax period ending on or before the Effective Date, and such Tax Refund is not provided for or included in the Final Statement of Adjustments, then the amount of such Tax Refund shall:
  - (i) be set off against any payment then due from Vendor; and
  - (ii) to the extent there is an excess of the Tax Refund after any amounts have been set off, the excess shall be paid to Vendor.

**ARTICLE 12  
GENERAL**

**12.1 Anti-Bribery and Corruption**

Vendor and Purchaser shall each comply with all applicable anti-bribery and corruption and anti-money laundering laws and regulations in connection with the Transaction, and shall procure that no directors, officers, employees, agents, Representatives, consultants, contractors, or advisors of Vendor or Purchaser, respectively, (or any Affiliates of Vendor or Purchaser, respectively) shall offer, propose, give, or agree to give any Person, or solicit, accept, or agree to accept from any Person, either directly or indirectly, any payment, gift, promise, or other advantage, whether directly or indirectly by intermediaries, to any public Person (being any Person exercising an administrative, judicial, or legislative function, including any Person exercising a public function for the account of a Governmental Authority or a public international organization) in the case where such payment, gift, promise, or advantage would violate any applicable anti-bribery or anti-corruption laws or regulations.

**12.2 Notices**

All notices, requests, consents, Claims, demands, waivers and other communications hereunder by a Party to the other Party shall be in writing, and shall be deemed to have been given:

- (a) when delivered to addressee by hand;
- (b) when received by the addressee if sent by a nationally recognized courier; or
- (c) when delivered to addressee by email, in which case for such notice to be effective, at least one Representative of each Party addressee must acknowledge receipt of such email (provided that an automated response from the email account or server of the intended recipient does not constitute an affirmative reply) and the notice must be in portable document format (pdf),

in each case if received during normal business hours of such addressee on a Business Day, or on the next Business Day. Such communications must be sent to the respective Party at the following addresses (or at such other address) for such Party as shall be specified for such purpose in a notice given in accordance with this Section 12.2.

VENDOR: XTO Energy Canada Holdings LP  
Mail Address: PO Box 2480 Station  
Calgary, Alberta T2P 3M9  
Courier Address: 505 Quarry Park Blvd. SE  
Calgary, Alberta T2C 5N1  
Attention: Land Manager  
Email: **[contact information redacted]**

With a copy to:

Blake, Cassels & Graydon LLP  
Address: Suite 3500 Bankers Hall East  
855 – 2nd Street S.W.  
Calgary, Alberta  
T2P 4J8  
Attention: **[contact information redacted]**

Email: **[contact information redacted]**

PURCHASER: Whitecap Resources Inc.

Address: Suite 3800, East Tower, 525 8<sup>th</sup> Ave. SW  
Calgary, Alberta  
T2P 1G1

Attention: **[contact information redacted]**  
Email: **[contact information redacted]**

With a copy to:

Attention: **[contact information redacted]**  
Email: **[contact information redacted]**

### 12.3 Further Assurances

Vendor and Purchaser shall on and after Closing Date, at the request of the other and without further consideration, do and perform all further acts and execute and deliver all further documents reasonably required and co-operate in securing execution of all documents by third parties where required to give effect to the Transaction and to ensure the carrying out of the terms of this Agreement.

### 12.4 Confidentiality

- (a) Purchaser and its Representative acknowledge and agree that the use and disclosure of Confidential Information shall be governed by the Confidentiality Agreement. The Parties acknowledge that the terms of this Agreement and the identity of the Parties hereto shall be considered as Confidential Information that is governed by the Confidentiality Agreement applied *mutatis mutandis*.
- (b) Vendor and Purchaser shall cooperate with each other in releasing information concerning this Agreement and the Transaction, and shall furnish to and discuss with each other drafts of all press and other releases prior to publication, provided that no public announcement shall include the name of the other Party to this Agreement, or information that concerns this Agreement or the Transaction or identifies the other Party to this Agreement or its business, without the consent of that other Party. No Party shall (and each Party shall cause its respective Affiliates not to) make a public disclosure without the other Party's consent, provided that this Section 12.4(a) does not prevent either Party from furnishing information to any (i) Governmental Authority or to the public if required by the Regulations, however, the Parties shall advise each other in advance of any public statement they propose to make regarding this Agreement so that the other Party may seek a protective order or other remedy if appropriate; or (ii) Governmental Authority if and to the extent that such disclosure is required in order to obtain the Competition Act Approval.

### 12.5 No Joint Venture, Partnership, or Agency

Nothing contained in this Agreement shall be deemed to create a joint venture, partnership, Tax partnership, or agency relationship between the Parties.

## **12.6 Assignment**

This Agreement may not be assigned by either Party without the consent of the other, which consent may be withheld at the sole discretion of such Party. Notwithstanding the foregoing, without the prior written consent of Vendor but upon at least three (3) Business Days' prior written notice to Vendor, Purchaser may grant a Security Interest against its rights and obligations under this Agreement for collateral security purposes to any Financing Source, but any such grant shall not release Purchaser from its obligations hereunder. The Financing Sources and each of their respective Affiliates and their and their respective Affiliates' respective current, former and future direct or indirect equity holders, controlling Persons, stockholders, agents, Affiliates, members, managers, general or limited partners, assignees or Representatives (collectively, the "**Financing Source Parties**") shall be express third-party beneficiaries with respect to this Section 12.6, and Sections 12.10, 12.13 and 12.14 (collectively, the "**DFS Provisions**").

## **12.7 Enurement**

This Agreement enures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

## **12.8 Time of Essence**

Time is of the essence.

## **12.9 Governing Law**

This Agreement will be interpreted and enforced in accordance with the laws in force in the Province of Alberta, and each of the Parties submits to the jurisdiction of the courts of the Province of Alberta for the interpretation and enforcement of this Agreement.

## **12.10 Amendments and Waiver**

No modification of or amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by all Parties; provided that no such modification of or amendment to any DFS Provision (and any other provision of this Agreement to the extent that any modification or amendment of such other provision would modify the substance of any DFS Provision) shall be effective without the prior written consent of the Financing Sources. No waiver of any breach of any term or provisions of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, shall be limited to the specific breach waived. No failure on the part of any Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy in law or in equity or by statute or otherwise conferred. Notwithstanding anything to the contrary contained in this Agreement, the DFS Provisions (and any other provision of this Agreement to the extent that any extension, waiver or modification of such other provision would modify the substance of any DFS Provision) may not be extended or waived without the prior written consent of the Financing Sources.

## **12.11 Expenses**

Each Party shall pay its costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant hereto.

### **12.12 No Rescission**

Unless expressly provided otherwise in this Agreement, neither Vendor nor Purchaser shall have the right, including any right under common law or any right in respect of any Claim, other than in the case of fraud, to delay or defer Closing, or either before, on, or after Closing, to rescind, terminate, or fail to perform this Agreement, or any part of it, and shall not be entitled to treat the other Party as having repudiated this Agreement.

### **12.13 Third Party Beneficiaries**

Except for the DFS Provisions (which are intended for the benefit of the Persons identified therein), this Agreement is not intended to confer any rights or remedies on any Person other than the Parties.

### **12.14 Liability of Financing Source Parties**

Without limiting the rights of Purchaser under the Debt Letters, notwithstanding anything to the contrary contained herein, Vendor agrees that neither it, nor any of its Affiliates or Representatives, shall (a) have any rights or Claims (and hereby waives any rights or Claims) against any Financing Source Party in connection with this Agreement, the Financing or the transactions contemplated hereby or thereby, and no Financing Source Parties shall have any rights or Claims against Vendor or any of its Affiliates or Representatives in connection with this Agreement, the Financing or the transactions contemplated hereby or thereby, in each case whether at law or equity, in contract, in tort or otherwise or (b) commence (and, if commenced, agrees to dismiss or otherwise terminate, and not to assist) any Claim against any Financing Source Party in connection with this Agreement, the Financing or the transactions contemplated hereby or thereby. In addition, in no event will any Financing Source Party be liable to Vendor or any of its Affiliates or Representatives for consequential, special, exemplary, punitive or indirect damages (including any loss of profits, business or anticipated savings) or damages of a tortious nature arising out of or relating to this Agreement or the transactions contemplated hereby. Nothing in this Section 12.14 shall limit the rights that Purchaser or any of its Affiliates has to the Financing or pursuant to the Debt Letters or any related financing documentation, including documentation in respect of the foregoing.

### **12.15 Counterpart**

This Agreement may be executed in as many counterparts as are necessary and all executed counterparts together shall constitute one agreement.

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

THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF THE DATE FIRST WRITTEN:

**XTO ENERGY CANADA HOLDINGS LP**, by its  
general partner, **XTO ENERGY CANADA GPCO  
LTD.**

Per: (signed)  
Name: **[name redacted]**  
Title: **[title redacted]**

**WHITECAP RESOURCES INC.**

Per (signed)  
Name: **[name redacted]**  
Title: **[title redacted]**

Per (signed)  
Name: **[name redacted]**  
Title: **[title redacted]**

**SCHEDULE A  
PURCHASED INTERESTS**

*[schedule contents redacted]*

**SCHEDULE B  
WELLS**

*[schedule contents redacted]*

**SCHEDULE C  
DISCLOSURE SCHEDULE**

*[schedule contents redacted]*

**SCHEDULE D  
INTEREST AND LEASES**

*[schedule contents redacted]*

**SCHEDULE E  
PRODUCT SALES CONTRACTS**

*[schedule contents redacted]*

**SCHEDULE F  
EXPENDITURES FOR WHICH PURCHASER IS RESPONSIBLE**

*[schedule contents redacted]*

**SCHEDULE G  
FORM OF RESIGNATION AND MUTUAL RELEASE AGREEMENT**

*[schedule contents redacted]*

**SCHEDULE H  
AGED RECEIVABLES**

*[schedule contents redacted]*

**SCHEDULE I  
SEISMIC DATA**

*[schedule contents redacted]*

**SCHEDULE J  
SHARED INTERESTS**

*[schedule contents redacted]*

**SCHEDULE K  
FORM OF TRANSITION SERVICES AGREEMENT**

*[schedule contents redacted]*

**SCHEDULE L  
MATERIAL AGREEMENTS**

*[schedule contents redacted]*

**SCHEDULE M  
FORM OF SEISMIC LICENSE AGREEMENT**

*[schedule contents redacted]*