Comment Matrix: 2017 Updates To 2000 CAPL Property Transfer Procedure (December, 2017)

Clause	Comments And Responses
General	
	Those are all the comments that I have on the PTP. Overall I think it is an excellent document and will work very well for its intended purpose. **(ABC, Private Practice Lawyer)** We would like to thank the committee for their hard work and time commitment to this document. In addition, we would like to express our appreciation for your consideration of our comments. **(Company B)** We circulated the 3rd draft of the Property Transfer Procedure to various departments within Company A and we do not have any additional comments. Thanks goes to you and the committee for all their hard work on this important industry document. **(Company A)**
General-Document Scope	
Shift of Content from Head Agreement	
Shift from Transferor and Transferee references	
Reduction in number of elections	
Likely modifications of timing and financial thresholds	General annotation page 1 – The paragraph re: "modifications to consider" is dense. This is an important annotation. A summary page elsewhere is a possible way of handling. **(Company B)** ***Response:*** *There is admittedly a lot of content included in that annotation. It needed to be included at the beginning of the document to set the stage for users who were attempting to become more familiar with the PTP. The annotations on the particular provisions referenced in that annotation also reinforce the need to assess the suitability of those data fields for the particular transaction.* *The election sheet included as Addendum I and the case studies included as Addendums III-VII each include comparable content. Given that those Addendums will all be made available to users in a Word format and the likelihood that users will use those documents to assist them in preparing their own Agreements, we believe that the likelihood that a prudent user would be unaware of this content seems low.* *We did have extra room to present the list again in a more user friendly format in the Addendum at the end of the document, though, so have made that change.*
Flexibility in use of Schedules	
General Format-Text and Annotations	
Article 1.00	**Definitions And Interpretation**
1.01-Def'n of Abandonment and Reclamation Obligations	
1.01-Def'n of AFE	
1.01-Def'n of Affiliate	
1.01-Def'n of Agreement	

Clause	Comments And Responses
1.01-Def'n of Asset Exchange	
1.01-Def'n of Assets	
1.01-Def'n of Base Purchase Price	
1.01-Def'n of Business Day	
1.01-Def'n of Closing	
1.01-Def'n of Closing Time	
1.01-Def'n of Deposit	
1.01-Def'n of Effective Date	
1.01-Def'n of Environmental Liabilities	
1.01-Def'n of Excluded Assets	Subsection (a) appears to involve circular logic with the definitions of "Excluded P&NG Rights" and "Excluded Tangibles". When I refer to those two definitions, they talk about Tangibles and P&NG Rights that "are retained by Vendor". Those definitions should be changed to reference a listing in an attached schedule so there is no doubt as to what is being excluded. **(ABC, Private Practice Lawyer)** ***Response:*** *The definitions were included because of an actual transaction in which the Purchaser was acquiring a portion of the Vendor's interests in an area. The use of a more traditional precedent required a multitude of customized changes to address that circumstance. As noted in the annotations on Excluded P&G Rights and Excluded Tangibles, it is mutually beneficial to be clear in the Schedule about the nature of the excluded rights, particularly in the context of a partial interest disposition. That being said, we did not go so far as to mandate that. Modified the annotations on Excluded Assets to be more transparent about that there as well.* Subsection (d) excludes fee simple interests and any overriding royalty, "unless specifically identified . . . on the Land Schedule or in the Head Agreement". It is not clear to me what "specifically identified" means. Presumably those items would be included in the Mineral Property Report that is typically used for the Land Schedule. Is that specific enough or is something more specific required? This should be clarified. Also, I believe this exclusion might trip up Purchasers as it is not something I view as being a standard exclusion – I consider it to be more of a negotiated item. Finally, "fee simple" is not qualified as applying only to mineral interests so it might inadvertently exclude a fee simple surface interest – such as a facility or a field office. **(ABC, Private Practice Lawyer)** ***Response:*** *1. Deleted the "specifically" reference. The onus is on a Vendor that shows a fee simple interest or an ORR being received on the Land Schedule or a property report used as a Land Schedule to be very clear about the intention to exclude that interest after showing it on the Land Schedule. In practice, a Vendor intending to exclude a fee simple mineral interest is probably very aware of the importance of this. Modified the annotation accordingly. 2. Qualified the "fee simple" reference by adding "mineral", with an associated modification to the annotation.* <u>Re handling of seismic</u>: Consider whether *Geophysical Data* (and/or *Seismic Data* and/or *Micro-seismic Data)* would be better as a Definition and then referred to as such throughout. Geophysical data could include potential field data (Gravity, Aeromagnetics, EM, CSEM, etc.) or other more esoteric datasets, such as Induced Seismicity monitoring. An annotation alerting parties that there may be change of control, relicensing, or other

Clause	Comments And Responses
	licensing fees due to various seismic data brokers depending upon the details of any Master License Agreements. It is also important that some Master License Agreements define derivative products (eg. interpretation maps) as being involved with licensed data such that if the licensed data must be returned/destroyed, so must the derivatives. With respect to the annotations, a reminder that only Vendor *owned* seismic can be transferred; licensed data cannot be as it is not owned. Vendor *partnered* data may be transferred if the vendor gives up its partial ownership of the data and does not retain any copy; data ownership cannot be split. Partners need to informed of change of partial ownership. This could be added as a further clarification on page 3 notes, Point (iii). **(Company B)** ***Response:*** *Modified the annotations somewhat.* *Any sale or licencing of geophysical data requires specialized content respecting the form of the licencing arrangement, tax allocations, etc.* *While it is possible that a low to modest value transaction for which the PTP was designed could include a sale or licencing of geophysical data, we believe that geophysical data is much more likely to be included in larger scale transactions for which the PTP would be unlikely to be used.* *Ultimately, we have chosen not to address the sale or licencing of geophysical data in the PTP because we concluded that the required incremental content to address it would have attracted comment that would have been a distraction to the broader objective of moving the PTP to closure and facilitating a transition to use for a significant demographic of our industry.* *As structured, users are required to address this issue on a custom basis for any transaction to which it is relevant, while having full flexibility to address in the manner that they see fit for their particular circumstances.* *That being said, this is something that might be considered as part of the next update of the PTP in several years. Considering the handling of geophysical data at that time could be simpler than would be the case at this time, as the Property Transfer Procedure is expected to have a much broader base of use at that point than is currently the case for the 2000 version.* Seismic: On page 3 notes, Point (iv) could be modified to include that the … *Vendor would often be willing to make proprietary geophysical data respecting the lands available to a Purchaser through the normal data licensing mechanism (at a preferential rate)* OR *sell their proprietary ownership to the Purchaser while retaining a license to use*…**(Company B)** ***Response:*** *Modified the annotations.*
1.01-Def'n of Excluded P&NG Rights	
1.01-Def'n of Excluded Tangibles	In the following Definitions we had asked for the wording to read: "Excluded Tangibles" means any residual interest being retained by the Vendor after Closing in any equipment in which other of the Vendor's interest therein is included in the Tangibles being disposed by it in the Transaction. However Jim changed the definition to read: **"Excluded Tangibles"** means any residual interest being retained by the Vendor after Closing in any tangible depreciable property and assets included in the Tangibles. So XYZ and I have talked and 1. we are not sure that depreciable is a word. And 2. the

Clause	Comments And Responses
	current wording does not make sense ... so at a minimum we suggest deleting everything after 'property' ..... But perhaps Jim should look at it again ... **(PASC JIR Committee)** ***Response:*** *1. "depreciable" is a word. 2. The reference needs to be connected a retained interest in tangibles that are included in the transaction, such as a retained working interest, participation, an excluded functional unit or an excluded pipeline segment. Modified to:* ***"Excluded Tangibles"*** *means any residual interest to be ~~being~~ retained by the Vendor after Closing in any tangible depreciable property and assets, insofar as they are otherwise included in the Tangibles.*
1.01-Definition of Extraordinary Damages	
1.01-Def'n of Facilities	
1.01-Def'n of General Conveyance	
1.01-Def'n of Gross Negligence or Wilful Misconduct	
1.01-Def'n of GST/HST	
1.01-Def'n of Head Agreement	
1.01-Def'n of Interest Amount	
1.01-Def'n of Interim Period	
1.01-Def'n of Lands	
1.01-Def'n of Land Schedule	
1.01-Def'n of Leases	
1.01- Def'n of Licencee Rating	
1.01- Def'n of Losses and Liabilities	
1.01- Def'n of Market Price	
1.01- Def'n of Miscellaneous Interests	
1.01-Def'n of Party	
1.01- Def'n of Permitted Encumbrances	Page 6 annotations – The initial sentence *(2nd paragraph of (ii))* stating "The assets are subject to a spectrum of regulatory controls" does not necessarily fit with the obligation to pay royalties particularly in a freehold context. Consider removing the initial sentence. **(Company B)** ***Response:*** *Modified the annotations somewhat.*
1.01-Def'n of Petroleum and Natural Gas Rights	This definition includes any "overriding royalty, net profits interest or other encumbrance in favour of the Vendor" in relation to the Lands. It appears to be at odds with the definition of "Excluded P&NG Rights". **(ABC, Private Practice Lawyer)** ***Response:*** *The definition is qualified to be subject to the exclusion of the Excluded Assets. Deleted "specifically" from the last line for consistency with the change made to the definition of Excluded Assets. Added a new annotation (iii) on the definition.*
1.01-Def'n of Petroleum	

Clause	Comments And Responses
Substances	
1.01-Def'n of Pipeline Records	
1.01-Def'n of Prime Rate	
1.01-Def'n of Property Transfer Procedure	
1.01-Def'n of Purchase Price	
1.01-Def'n of Purchaser	
1.01-Def'n of Regulations	
1.01-Def'n of Regulatory Authority	
1.01-Def'n of Representations and Warranties Certificate	
1.01-Def'n of Required Approvals	
1.01-Def'n of Right of First Refusal	
1.01-Def'n of Schedule	
1.01-Def'n of Scheduled Closing Date	
1.01-Def'n of Security Interest	
1.01-Def'n of Specific Conveyances	
1.01-Def'n of Surface Rights	
1.01-Def'n of Tangibles	**"Tangibles"** refers to property, etc. "at the location of the applicable well and in the vicinity of the Lands". The "and" in the previous quote appears to be conjunctive and effectively limits the definition only to include property at the location of the applicable Well. To remove ambiguity perhaps say the following "either at the location of the applicable Well or in the vicinity of the Lands, or both". **(ABC, Private Practice Lawyer)** ***Response:*** *Changed the "and" to "or".*
1.01-Def'n of Thirteenth Month Adjustment	
1.01-Def'n of Title and Operating Documents	
1.01-Def'n of Title Defect	
1.01-Def'n of Transaction	
1.01-Def'ns of Transferor and Transferee	
1.01-Def'n of Vendor	

Clause	Comments And Responses
1.01-Def'n of Wells	
1.02-Exclusion Of Assets	
1.03-References And Interpretation	
1.04-Optional And Alternate Provisions	
1.05-Interpretation If Types Of Assets Limited	
1.06-Interpretation If Closing Does Not Occur	
1.07-Conflicts And Enforceability	
1.08-Vendor's Knowledge	
1.09-Governing Law (Former 18.04)	
1.10-Time Of Essence (Former 18.05)	
1.11-No Amendment Except In Writing (Former 18.06)	
1.12-Waiver (Former 18.03)	
1.13-Supersedes Previous Agreements	Page 14 Annotations: Please consider adding to the commentary on 1.13 that where an *underlying* CA is not being fully superseded, it is important to review that CA to ensure its provisions continue to be appropriate given the transaction. **(Company B)** ***Response:*** *Modified.*
1.14-Legal Rules Of Construction	
1.15-Modifications To 2017 CAPL Property Transfer Procedure	
Article 2.00	**Acquisition And Disposition**
2.01-Disposition And Acquisition	
2.02-Base Purchase Price And Tax Allocation	It is our view that the allocation should be completed for each deal rather than providing for an 80/20 split. This current handling introduces risk that the parties may not adequately consider the nature of the transaction. **(Company B)** ***Response:*** *Our response to a similar comment on the first industry draft applies equally to this comment.* *One of our objectives when preparing the document was to minimize the number of elections and optional elements in the document to make the document more user friendly than the 2000 PTP. One of the things we did in this regard, for example, was to pick a value that we thought reflected the prevalent practice or a logical outcome without presenting it as an option, while recognizing that there are a number of these for which it would not be uncommon for the parties to choose a different value in any particular transaction. These are identified in the applicable text and in the bolded reference in the Schedules of Elections and Modifications included in the various Addendums at the end of the document.*

Clause	Comments And Responses
	As it is important for users to understand this approach as they begin to work with the document, an overarching annotation about this approach has been included at the beginning of the annotations. *In this particular case, we believe that the default in the document would reflect the most typical handling for a producing property.* *This item is included in the prompts included in the general introductory annotation on potential modifications and on the sample election sheet. It is also addressed more specifically in annotation (ii) on Clause 2.02, which reminds users of the overarching requirement to make an allocation that is reasonable for tax purposes and identifies circumstances in which the 80/20 split would not be appropriate.* *This is also reinforced in the miscellaneous annotations at the end of the document and the handling in the sample undeveloped property agreements included as Addendums V-VII that a user without significant A&D experience would probably be reviewing for an undeveloped property transaction.* *For this to be an issue in a Tangibles only transaction, for example, would probably require two users with very little A&D experience who chose not to familiarize themselves with the form of Agreement they were signing, who didn't review the annotations and who chose to ignore the prompts on the annotated election sheet to review certain listed data fields included in the PTP for appropriateness for their transaction.* *On a cost-benefit basis, we believe that the vast majority of users will agree with the current handling.*
2.03-Receipt And Handling Of Deposit	
2.04A-Adjustments To Base Purchase Price	
2.04B-Environmental Liabilities Taken Into Account (Moved from former Clause 2.01)	
2.04C-Form Of Payment (Was addressed in former Clause 2.01)	
2.05A-Handling Of GST/HST (Former Subclause 2.03A)	
2.05B-Handling Of Sales Taxes (Former Subclause 2.03B)	
2.05C-Reassessment (Former Subclause 2.03C)	
2.05D-GST/HST Amounts Payable Under Section 182 Of ETA	
2.06-Interest	

Clause	Comments And Responses
Accrual, Alt 1 (Former Clause 2.06, Alt 1)	
2.06-Interest Accrual, Alt 2 (Former Clause 2.06, Alt 2)	
2.06-Interest Accrual-General	
Article 3.00	**Closing**
3.01-Place Of Closing	
3.02-Effective Date Of Transfer	Transfer of Risk remains problematic. It is our opinion that it should not transfer before the Closing date. The assets are held by the seller and the seller has the risk of loss up to the closing date where they must be able to deliver the assets to the purchaser. **(Company B)** ***Response:*** *The starting point in the Response is to note that the construction in question only matters if Closing occurs for the applicable Assets. If Closing does not occur for those Assets because, for example, of substantial damage to the Tangibles or the exercise of a ROFR, the retrospective application of "risk" would not occur for the Assets for which Closing did not occur.* *The rationale for the current construction is ultimately linked to the "matching principle" that is the foundation of the accrual system of accounting (i.e., the costs and obligations associated with a revenue stream should be matched to that revenue stream). It also reflects the fact that assignors typically prepare their assignment document using the Effective Date/Adjustment Date as the "transfer date" for their transaction, even though this is inconsistent with a suggestion that the Closing Date is the only relevant trigger date for the sharing of responsibilities if Closing occurs.* *The logic for the current construction is addressed in more detail in the first annotation on the Clause, as follows:* *Although the Purchaser generally will acquire the benefits and obligations respecting the Assets retrospectively to an earlier Effective Date, it will not take possession of any operated Assets until the Closing Time. The provision was structured to link obligations (e.g., financial and liability and indemnification) to the Effective Date because: (a) it matched the net production income or loss being adjusted under Article 4.00 with the associated obligations (e.g., potential accrued liabilities) in accordance with the "matching principle" at the foundation of the accrual system of accounting; (b) the Purchaser has a high degree of influence on operational decisions under Article 5.00; (c) the Purchaser is protected by the "No Substantial Damage" condition in Clause 10.02 for any significant damage to the Tangibles; (d) the typical use of the Effective Date as the "transfer date" under any notice of assignment relating to a land agreement; (e) it encourages Parties to select the Effective Date on a current basis; and (f) as long as the net production income or loss during the Interim Period is handled in compliance with the requirements of the Canada Revenue Agency prescribed by Clause 4.03, it is unlikely that the CRA would otherwise concern itself with the terms negotiated by the Parties. Some companies prefer to follow the CRA's general historic practice of passing obligations at the Closing Time and regarding the Effective Date as simply an accounting reference date, particularly if the Interim Period is long. Those companies can address their concerns relatively easily by changing the Effective Date references in this Clause, Article 13.00 and the General Conveyance, and choosing a corresponding "transfer date" in the NOAs. Notwithstanding this Clause, the Purchaser would not have an insurable interest until Closing, such that a Purchaser would want to understand the policies of insurance held by the Vendor under Clause 5.02.*

Clause	Comments And Responses
	The one key point to note about the rationale for the handling in the document is that CRA requirements for the handling of net income are not otherwise determinative of the date at which parties choose to allocate risk. It's not apparent why a Vendor would ever want to use an Effective Date or Adjustment Date for certain financial matters, but not any damages that related to the period in which income was being generated for the account of the Purchaser, assuming Closing ultimately occurred.
3.03A-Deliveries At Closing	
3.04A-Vendor's Delivery Of Files	
3.04B-Vendor's Right Of Access To File Materials	
3.05-Distribution Of Specific Conveyances, Alt 1	
3.05-Distribution Of Specific Conveyances, Alt 2	
3.06-Electronic Transfers And Rentals	**Regulatory and Pipeline Transfers** My biggest issue is with the provisions dealing with transfer of regulatory approvals and also pipeline transfers (Sections 3.06 and 3.07). I think those sections may warrant further discussion. **Regulatory Transfers** - At the very least, in Section 3.06, a requirement should be added that the Purchaser post all required security deposits associated with receipt of the transfer of the Assets. Also, it may be a good idea to require the Vendor to post security and take such other steps as are necessary to facilitate the transfer out of the Vendor of the Assets. There are other things that also might be worth considering – such as the requirement to close in escrow pending completion of regulatory transfers. **Pipeline Transfers** - Regarding pipeline transfers, there may be situations where the transfer is not allowed because of pipeline records deficiencies. In this case, there should be a requirement for the parties to enter into a trust agreement and a contract operating agreement pursuant to which the Vendor continues to work to rectify the deficiencies until the pipelines are transferred. **(ABC, Private Practice Lawyer)** ***Response:*** *The final document was updated based on a discussion about these comments to include a mutual condition to Closing in Paragraph 10.01(e) respecting the circumstance in which one or both of the Parties were required to file a security deposit under the Regulations with respect to a contemplated transfer. The annotations were also updated to reinforce more fully to Parties the need to review carefully the regulatory requirements applicable to any contemplated licence transfers for a pending Transaction.* *Otherwise, the PTP does not address the situation in which the Licencee Rating for either Party is such that special provisions are required to transfer the licences for Wells or Tangibles. As noted in the general annotation at the beginning of the PTP and the annotations on Licencee Rating, Clause 1.07, Clause 3.06, Paragraphs 6.02(q), 6.04(d) and 10.01(e), the onus is on the Parties to add custom content in their Agreement to address their particular needs. Reviewing the Regulations for each Transaction is particularly important if they include a requirement for a review of a proposed transfer of a regulatory licence, permit or approval through a process in which that approval might not be granted (such as is currently the case following AER Bulletin 2017-13), since this could require the inclusion of a Closing in escrow process in the Agreement.* *There were two reasons for this approach. The first was the belief that the PTP should not attempt to predict or prescribe the handling of an important emerging issue that should be assessed and handled by the Parties and their applicable legal advisors on a*

Clause	Comments And Responses
	case by case basis. The second was that the fluidity of the Regulations on this area over time and across jurisdictions was such that any more specific handling of the issue in the PTP would potentially create unintended consequences for users over time. *Similar considerations apply to Clause 3.07 in terms of choosing not to modify the PTP to provide a more specific response to address current Alberta regulatory requirements that are evolving and the possibility that those requirements may be different than those of other jurisdictions. The definition of Pipeline Records and Clause 3.07 (and the related annotations) were modified based on our discussion about the comment, with the most notable change being the inclusion of an Alternate 3 that allows the Parties to negotiate in their Head Agreement a shared cost responsibility for certain identified deficiencies.* How does Bulletin 2017-13 – Changes to Process for Transfer Application Decisions impact this document? The Alberta Energy Regulator has introduced a Bulletin that is not yet well understood. The process outlined in the Bulletin indicates that all Related Applications will be submitted together. In addition, it incorporates a standardized public review period. This will delay the transfer of licenses for an unspecified amount of time and could even prevent them from being transferred. Closing in escrow is one possible outcome. With the passage of time, the ramifications and handling of transactions in light of the Bulletin should be clearer and the PTP draft will need to be amended accordingly. **(Company B)** ***Response:*** *For context, the AER issued this Bulletin in the summer at around the time the third draft of the PTP was released to industry for review. That Bulletin introduces a minimum 30 day review period for the transfer of regulatory licences in AB, with the potential for additional delays in determining if the transfer will be approved if there are any statements of concern filed by the public with respect to the applicable transfer.* *In practice, the parties to an A&D transaction involving an Alberta operated property will now frequently use a closing in escrow process because of the possibility that a transaction may have to be undone if the approvals are not ultimately obtained. Additional workarounds may also be required for particular transactions if the lands included in the transaction comprise both producing lands and undeveloped rights for which time sensitive operations are planned.* *There are two potential major responses we could have taken in the PTP because of this Bulletin. We could have structured the document to address this Bulletin specifically on a snapshot in time basis or we could alert users in a more generic sense that the onus is on the parties to structure their particular Agreement in the context of the Regulations of the applicable jurisdiction as they exist at the relevant time.* *Given the differences between jurisdictions, the possibility that these obligations could change over time and the possibility that the AER will modify the approach currently being applied under AER Bulletin 2017-13, we concluded that the second approach was preferable. As a consequence, we modified the annotations to refer in several provisions to the possibility that the Regulations could potentially require a different handling than contemplated in the PTP. The applicable annotations are: (i) the definition of Licencee Rating; (ii) the Conflicts Subclauses 1.07A and B; (iii) Clause 3.04 re file deliveries; (iv) Clause 3.06 re electronic transfers; (v) the Vendor and Purchaser reps on transfers-Paragraphs 6.02(q) and 6.04(d); (vi) the new mutual condition to Closing in Paragraph 10.01(e) introduced as a replacement for the former Paragraph 10.03(c); and (vii) Clause 11.01.* *This has the advantage of requiring the parties' business and legal advisors to consider specific regulatory requirements on a real time basis, without the false sense of security of a provision that may or may not reflect regulatory requirements in the applicable jurisdiction at the time of their transaction.*

Clause	Comments And Responses
3.07-Pipeline Records And Associated Licence Transfers	*Note: See the comments and responses on Clause 3.06.* Pipeline records - We agree with comments that it is highly unlikely that a purchaser would accept this liability. Consider reversing Alternative A and Alternative B. **(Company B)** ***Response:*** *Similar considerations as for AER Bulletin 2017-13 apply to Clause 3.07 in terms of choosing not to modify the PTP to provide a more specific response to address current Alberta regulatory requirements that are evolving and the possibility that those requirements may be different than those of other jurisdictions. The definition of Pipeline Records and Clause 3.07 (and the related annotations) were modified based on discussion about another commenting party's submission, with the most notable change being the inclusion of an Alternate 3 that allows the Parties to negotiate in their Head Agreement a shared cost responsibility for certain identified deficiencies.*
Article 4.00	**Adjustments**
4.01-Benefits And Obligations To Be Apportioned, Intro, Paragraphs (a)-(d)	
4.01-Benefits And Obligations To Be Apportioned, Paragraphs (e)-(g)	**Section 4.01(g) –** It may come as a surprise to a Purchaser that it is required to pay an additional amount on account of sulphur inventory. Many Purchasers might consider the value of the sulphur inventory to simply be part of the Base Purchase Price. Consider amending (g) accordingly. **(ABC, Private Practice Lawyer)** ***Response:*** *Notwithstanding that the total amount being paid may not change due to a sulphur pad, our understanding is that a tax allocation would be required.* *Modified the applicable reference to:* *The value of any such sulphur inventory forming part of the Assets will be calculated as of the Effective Date, and that calculated amount will be part of the Base Purchase Price, with a separate tax allocation for product inventory.* *Made a corresponding change to the annotations.*
4.01-Benefits And Obligations To Be Apportioned, Paragraphs (h)-(l)	
4.02A-Adjustment Statements	
4.02B-Audit Rights	
4.02C-Possible Further Adjustments	
4.02D-Audit Periods Before Effective Date	
4.02E-Extension Under Limitations Act (Former Subclause 4.02D)	**Section 4.02.E** – The two-year limitation period begins to run after expiry of the time in which an audit is permitted to be performed. The PTP specifies that an audit may be commenced within six months of the Final Statement of Adjustments but it does not mandate when the audit may be performed so I view 4.02.E as being ambiguous. Incidentally, this is the standard PASC language which has confused me many times over the years for exactly the same reason. **(ABC, Private Practice Lawyer)** ***Response:*** *The PASC language does not include the "expiry of" reference, such that it is not clear when using that clause what the end date would be. The "expiry of" reference has been included in the comparable provision of the CAPL documents to address that problem. It's two years from the date of the end of the permitted audit window.*
4.03-Adjustment	

Clause	Comments And Responses
For Income Tax-Interim Period Income	
4.04-Notifification Of Receipt Of Funds Accruing To Vendor	
Article 5.00	**Maintenance Of Business**
5.01-Assets To Be Maintained In Proper Manner	
5.02A-Vendor's Insurance Obligations (Some coverage in former Clause 5.01)	
5.02B-Insurable Event Occurs	
5.02C-Obligations After Closing	
5.03A-Vendor Notifications, Paragraphs (a)-(c) (Former Subclause 5.02A)	
5.03A-Vendor Notifications, Paragraphs (d)-(f) (Former Subclause 5.02A)	
5.03B-Elections During Interim Period (Former Subclause 5.02B)	
5.03C-Vendor Not Obligated To Propose Operations	
5.03D-Vendor May Refuse To Follow Certain Instructions	
5.04-Post-Closing Transitional Maintenance Of Assets	
5.05-Payment Of Rentals By Vendor	
5.06-Production Accounting During Month In Which Closing Occurs	
5.07-Transfer Of Incidental Obligations To Third Parties	
5.08A-Purchser's Ratification Of Actions (Former Subclause 5.04A)	

Clause	Comments And Responses
5.08B-Indemnification Obligations Of Purchaser (Former Subclause 5.04B)	
Article 6.00	**Representations And Warranties Of Parties**
6.01-Mutual Representations And Warranties	
6.02-Vendor's Representations And Warranties, Paragraphs (a)-(f)	
6.02-Vendor's Representations And Warranties, Paragraphs (g)-(j)	6.02(h): Remove "moved up this rep relative to 2000" as a clean up matter. **(Company B)** ***Response:*** *These types of references in provisions or in the headings were included in a number of provisions in the draft. This was done for the convenience of users familiar with the 2000 PTP to facilitate their transition to the 2017 document. While they will be included in the redlined comparison to the 2000 PTP, they were deleted from the final version of the document, as shown in the redline to the July draft.*
6.02-Vendor's Representations And Warranties, Paragraphs (k)-(o)	**Section 6.02(k)(iii)** – the representation respecting "existing circumstances" that may be a reportable event probably is a step too far for many Vendors as it is quite indeterminate. **(ABC, Private Practice Lawyer)** ***Response:*** *There's a (Clause 1.08 Vendor friendly) knowledge qualification at the beginning of the rep, and the test is that "…it reasonably believes to be a material and reportable event…", rather than just "reportable".*
6.02-Vendor's Representations And Warranties, Paragraphs (p)-(v)	
6.02-Vendor's Representations And Warranties, Paragraphs (w)-(bb)	
6.03A-Qualifications to Vendor's Representations	
6.03B-Assets Acquired On "As Is, Where Is" Basis (Substantive rewrite of former Subclause 6.05A)	
6.03C-Responsibility For Due Diligence (Substantive rewrite of former Subclause 6.05A)	
6.03D-Discharge By Purchaser (Former 6.05B)	
6.04-Purchaser's Representations And Warranties	

Clause	Comments And Responses
6.05A-Representations And Warranties To Survive Closing (Part of former Clause 6.04)	
6.05B-Claims For Breach (Part of former Clause 6.04)	
6.05C-Reliance (Part of former Clause 6.04)	
6.05D-Parties Confirm Intention To Limit Liability	
Article 7.00	**Third Party Rights And Consents**
7.00-General	
7.01A-Service Of Required Notices	
7.01B-Right Of First Refusal Values	It is standard for a purchaser's indemnity to be included. The rationale is to encourage "good behaviour" by the Purchaser providing the values since they know that they are offering an indemnity. The annotations mention indemnity, but the explanation for the exclusion of the indemnity does not address the reasoning above. As well, the annotation does not suggest that it is a standard inclusion. Consider having an optional clause which can be included or not. **(Company B)** ***Response:*** *Added an optional sentence about this point with a corresponding annotation. While we agree that this is used more often than had been presented in the annotation, we do not believe that it could be referred to as a "standard inclusion".*
7.01C-Challenge By Third Party	
7.01 D-Exercise Of Right Of First Refusal	
7.01E-Termination	
7.01F-Consents	
Article 8.00	**Purchaser's Review**
Article 8.00-General	We found it unclear as to whether further due diligence could be conducted following the execution of the PSA where due diligence had been conducted prior to executing the PSA. Consider a stronger statement indicating that where that is the case, further diligence is not permitted except only as provided for in 8.00(a) and (b). **(Company B)** ***Response:*** *Added a sentence at the end of the introduction to Article 8.00 that addressed the very limited application of the remainder of Article 8.00 much more directly than had been the case.*
8.01-Vendor To Provide Access	
8.02A-Notification Of Any Title Defects	
8.02B-Election Respecting Title Defects, Alt 1	
8.02B-Election Respecting Title Defects, Alt 2	**Section 8.02.B – Option 2 sub (c)** – delete the following: "insofar as that value is above the 10% threshold". As written, those words might be read as meaning that accounts will only be adjusted insofar as (or to the extent that) they exceed the 10% threshold. I don't believe this is what is intended. **(ABC, Private Practice Lawyer)**

Clause	Comments And Responses
	Response: *This was intentional. As noted in annotation (iii), "The 10% threshold in Paragraph (c) is, in effect, a deductible. In the absence of the deductible aspect, Purchasers would be encouraged to raise additional concerns to try to satisfy the 10% threshold and obtain a full recovery, an approach that the PTP does not reinforce."*
8.02C-Deemed Election	
8.02D-Title Defects And Closing (Had been part of former Subclause 8.02C)	
8.02E-Exclusion Of Affected Assets And Closing (Former Subclause 8.02D)	
8.02F-Title Defects Remedied After Closing (Former Subclause 8.02E)	
8.02G-Termination Election If Vendor Disputes Value (Former Subclause 8.02F)	
Article 9.00	**Dispute Resolution**
9.01-Consultation And Negotiation In Good Faith	
9.02-Arbitration Proceedings	
9.03-Limitation Periods And Interim Relief	
10.00	**Conditions To Closing**
10.01-Conditions For Benefit Of Each Party	It may be helpful to clarify the thought process regarding the interplay between 6.02(q) and 10.01(d) where the Vendor is unable to transfer its licenses as a result of its LMR. **(Company B)** ***Response:*** *Modified the annotations.* 10.03(c) (Now 10.01(e)): After the second "required" add "such as the case may be". So, the wording would be ".....Purchaser has deposited the amount required, or estimated to be required, *such as the case may be*, with the Purchaser's .." **(Company B)** ***Response:*** *Added ", as applicable,".*
10.02-Conditions For Benefit Of Purchaser	10.02(a): If there is material damage, money won't always compensate. What if there isn't enough insurance or it is unclear what insurance will cover? Who pays the deductible? If there is substantial damage to the asset, we would suggest that this is a reason for the Purchaser to cancel the transaction and to get their deposit back. **(Company B)** ***Response:*** *The real question was whether we delete the insurance reference entirely and address the insurance aspect in the annotations as an example of a circumstance in which the Purchaser might choose to agree and proceed to Closing or whether we adjust the insurance reference as requested.* *Between the two, the negative impact on operations in the serious mid to long term damage scenario, vs a much easier repair scenario saw us conclude that the Purchaser should be in the control position about whether it chooses to Close or whether it agrees*

Clause	Comments And Responses
	to accept the insurance proceeds. Modified the provision and the annotations accordingly.
10.03-Conditions For Benefit Of Vendor	
10.04-Waiver Of Conditions Precedent	
10.05A-Right To Terminate Agreement	
10.05B-No Right To Terminate Agreement After Closing (Part of former Subclause 10.05A)	
10.05C-Deemed Satisfaction Of Certain Conditions (Former Subclause 10.05B)	
10.06-Parties To Exercise Diligence With Respect To Conditions	
Article 11.00	**Operatorship**
11.01-Operatorship And Third Parties	
11.02-Signs And Notifications	
11.03-Identification And Removal Of Vendor's Excess Inventory	In regards to Section 11, our comments depend on whether we are the Vendor or Purchaser under the agreement). If we are the Vendor, then clause 11.03 places obligations on the company that need to be met within a certain time frame. Whether we can identify excess inventory quickly then move it within 45 days is not certain. If this is going to be a blanket template agreement, then we would recommend we increase this timeframe or delete it altogether. Same comment in 11.02 around the 60 days for signage, but based on the comments this may be an industry standard timeline. **(Company B)** ***Response:*** *For context, the timing in Clause 11.03 is identified as one of the data elements in the PTP that users should validate as appropriate for their transaction in the list of potential modifications included on page 1 of the annotations, in the miscellaneous annotations at the end of the PTP and on the sample election sheets included in the Addendums to the PTP. The possibility of a modification to the timing or the deletion of this Clause is also identified in the annotations on Clause 11.03.* *That timing seemed reasonable if you accept the premise for the provision, and is unlikely to be problematic for the typical low to modest value transaction for which the PTP is designed. If the timing were problematic due to the complexity of the Assets, their location or seasonal logistics or there were a philosophic concern with the provision, it would be easy (and probably not a particularly contentious item) for the parties to customize their Agreement to address the concern.* *A similar comment applies to the timing selected in Clause 11.02.* *This is a good example of a provision for which a particular user may have a general corporate preference change or a different potential handling depending on whether it is a Vendor and where it is a Purchaser.*

Clause	Comments And Responses
Article 12.00	**Failure To Close And Default**
12.01-Remedies Of Injured Party	It is our view that the return of the deposit is best to be the only remedy. We see this as a provision that will be frequently amended. The suggestion would be to have the first option as being a sole remedy for return of the deposit and then make it optional to do anything else. **(Company B)** ***Response:*** *This structure is the same as has been used in the 2000 PTP without any apparent objection by the many smaller to mid-sized companies that have been using the 2000 PTP for their low to modest value transactions. In that context, we do not believe that it is something that will be frequently amended by those companies and other similar companies that choose to use the PTP* *For companies that have a particular concern about the inclusion of Paragraph 12.01(b), it would be quite easy to delete the reference, and the change seems unlikely to be contentious. Even if a company had a corporate preference change to modify this provision, it seems unlikely to be something that would preclude a company otherwise actually otherwise interested in using the PTP from doing so.*
12.02-Interest Accrues On Amounts Owing	
12.02-Interest Accrues On Amounts Owing	
Article 13.00	**Liability And Indemnification**
13.01A-Vendor's Responsibility	
13.01B-No Extension Of Remedies	
13.01C-Period To Initiate Claim (Part of former Subclause 13.01B)	
13.01-Misc	
13.02-Responsibility Of Purchaser	
13.03A-Limitation On Vendor's Responsibility	Limitation on liability. It is inconsistent to say that the PTP is intended for small transactions and then to say the PTP needs amending for a small transaction with respect to the limit on liability being limited to the purchase price. As a result, we suggest the purchase price should as a limit should be mentioned as an option in the annotations, but the document itself should have a blank for an amount. This ensures that consideration is given to the number. **(Company B)** ***Response:*** *We consistently describe the PTP as being designed for use with a typical low to modest value transaction with limited complexity. We identified in the list of data fields that users might want to validate the appropriateness of this Subclause for a particular transaction and in the annotations on Subclause 13.03A that users may want to modify this Subclause for "smaller Transactions".* *Whether and how they choose to modify this Subclause for a particular transaction is ultimately a choice of the parties.* *While this had been an optional Subclause in the 2000 PTP, it was included as a base Subclause in the 2017 document because the current presentation reflects the typical handling. We continue to believe that the Subclause reflects the most typical handling in practice and that the deletion of the Subclause or the inclusion of some other limitation would happen in a much more limited number of circumstances than the comment suggests.*

Clause	Comments And Responses
	The onus is on parties that prefer a different handling to modify the PTP to provide their preferred outcome.
13.03B-Minimum Claim Amount	
13.04-General	
13.04A-Acknowledgements By Purchaser	
13.04B-Purchaser's Assumption Of Environmental Liabilities (Part of 2000 Clause 13.04)	
13.04C-Purchaser's Release Of Vendor (Part of 2000 Clause 13.04)	
13.04D-Vendor Responsibility For Representations And Fraud (Part of 2000 Clause 13.04)	
13.05-Notice Of Claims	
13.06-Substitution And Subrogation	
Article 14.00	**Assignment**
14.01-Assignments Before Closing	
14.02-Assignments By Purchaser After Closing	Add the following "However, in no event shall this operate as a bar to the Vendor to pursue such assignee." **(Company B)** ***Response:*** *Modified the text and annotations to address the concern.*
Article 15.00	**Notices**
15.01-Service Of Notice	Email and 15.01(b) - It is our view that the risk of this drafting is more than monitoring as is currently provided by the annotations. Delivery is deemed when the email hits your company email system regardless of whether it is received on a desktop. The annotations should indicate that where this risk is concerning to a company, a provision indicating that email service is valid only if the other party provides a confirmation of receipt could be an alternate handling. **(Company B)** ***Response:*** *The comment illustrates why users should be cautious about including an electronic address for service.* *Email notices are addressed in annotations (ii) and (iii). Annotation (ii) ultimately addresses the choice to allow fax and email notices, and annotation (iii) addresses the importance of regularly monitoring the applicable email account if the Parties have chosen to allow email notices.* *As noted in annotation (ii), the construction of the provision is consistent with the outcomes in the Electronic Transactions Act (Alberta). We are not willing to include this as an option for the reasons outlined in that annotation. Expanded the annotation somewhat on this point.* *Parties uncomfortable with this handling can choose not to allow electronic service of notice by not including a fax or email address in their Address for Service. In the alternative, a company is always free to modify this provision as a corporate preference choice.*

Clause	Comments And Responses
15.02-Addresses For Service	
Article 16.00	**Confidentiality And Use Of Information**
16.01-Purchaser's Obligation To Maintain Information Confidential	
16.02-Vendor's Confidentiality Obligation To Purchaser	
16.00-Other	Annotations: We believe it is uncommon to have the CA continue to apply and would remove the first sentence of that paragraph which begins with "While this would not be uncommon…". **(Company B)** ***Response:*** *We have modified the annotation somewhat. The essence of the first sentence was that a confidentiality agreement is sometimes not superseded by the P&S Agreement for a larger transaction and to offer a context for why that approach is not taken in the PTP. That remains a valid observation.*
Article 17.00	**Public Announcements**
17.01-Parties To Discuss Public Announcements	
Article 18.00	**Miscellaneous Provisions**
18.00-General	
18.01-No Merger	
18.02-Further Assurances	
18.03-Use Of Name	
18.04-Protection Of Personal Information	
18.05-Results Of Termination	I agree with the deletion in 18.05 A. In 18.05 B, the Purchaser must provide an executed officer's certificate confirming material has been returned or destroyed (if requested by the Vendor). Unless required for regulatory reasons, companies usually avoid requirements which involve an officer's sign-off that a contractual obligation has been fulfilled. Instead a written confirmation from the company may be a more acceptable choice. Also, given the wording of this clause, a company needs to ensure it can return all copies, summaries and extracts made during the process where they are the Purchaser. It is important to have a method of keeping track so a company can ensure it complies with this requirement. This commentary ought to be included in the annotations. **(Company B)** ***Response:*** *1. Modified to be a notice of confirmation from the Party. 2. Modified the annotations.* **Section 18.05.B** – In addition to allowing the Purchaser to retain Confidential Information in its system generated backups, it is quite common to allow the Purchaser to also retain Confidential Information that is incorporated in the records of its Board of Directors meetings. **(ABC, Private Practice Lawyer)** ***Response:*** *Modified the last paragraph and added an annotation.*
18.06-Enurement	
18.07-Electronic Signatures And Specific Conveyances	
18.08-Waivers For	

Clause	Comments And Responses
Saskatchewan	
Miscellaneous Comments	
Miscellaneous Annotations	ROFR (vx): There can be ROFRs in multiple agreements beyond only land and JV agreements although that is where a ROFR provision is predominately included. The current writing makes it seem like those are the only two places to look. We would suggest that the annotation be reworded to indicate that is primarily where ROFR's "reside". **(Company B)** ***Response:*** *Modified the annotation somewhat.* ROFR (vxi): Remove "this is academic ...". It is either an obligation or not. Additionally, there may be a representation that has been made. **(Company B)** ***Response:*** *Edited to "This is something that a Vendor needs to consider with respect to its Paragraph Subclause 6.02(f) representation that there are not any unscheduled ROFRs. In practice, this is unlikely to be an issue for a poor well."*
General Conveyance	
	Addendums
Addendum I	
Addendum II	
Addendum III	
Addendum IV	
Addendum V	
Addendum VI	