GUIDANCE NOTES TO AIPN 2012 MODEL JOINT OPERATING AGREEMENT

Guidance Note on Model Forms:
The following model forms, some of which are referenced in this Model JOA, are available from AIPN:

- Data Exchange Agreement
- Gas Transportation Agreement (2009)
- Lifting Agreement (2001)
- LNG Master Sales Agreement (SPA) - 2009
- Service Contracts (2002)
- Study and Bid Group Agreement (2006)
- Unitization and Unit Operating Agreement (2006)

Guidance Notes on use of Model JOA with a Concession or License:
The following list sets out basic instructions for modifying the model JOA for use with concessions or licenses instead of production sharing contracts. Given the wide variety of types of Contracts existing, the following list may not necessarily be an exhaustive one of modifications needed to adapt this model JOA for a concession or license. Terms and conditions of the actual Contract should be thoroughly evaluated in this regard and the model JOA reconciled with the Contract.

First Recital, second paragraph, page 1 = Modify as appropriate to reflect the underlying Government concession, license, lease or instrument and retain the defined term “Contract”, for example:

Alternative Provision, Choose one

Alternative # 1
WHEREAS, the Parties have entered into __________________________ (identify by name and date) ________________, (the “Contract”)

Alternative # 2
WHEREAS, the Parties hold licenses granted by _______________ (identify by name and date) ________________, (the “Contract”) covering certain areas located in the
_____________________________, referred to as the “Contract Area”, and more particularly described in Exhibit B to this Agreement; and

Article 1- “Cost Hydrocarbons” definition = Delete.
Article 1 “Profit Hydrocarbons” definition = Delete.
Article 7.5.D = Delete the two first sentences of this Article.
Article 9.2 (ALTERNATIVE #3) - “Cost Hydrocarbons and Profit Hydrocarbons” = Change to “the production”.
Article 9.3.A (ALTERNATIVE #1) - Delete Paragraph 8.
Article 9.3(B) (ALTERNATIVE #1) - Delete Paragraph 10.
Article 13.2.B (ALTERNATIVE #1) - “Cost Hydrocarbons and Profit Hydrocarbons” = Change to “the production”.
Article 15.2.A.8 - “with Article 20.3” = change to “with Article 19.3”.
Article 19 - ALLOCATION OF COST / PROFIT HYDROCARBONS = Delete entire Article and remove from Table of Contents.
Article 20 - Re-number as Article 19 (and also in the Table of Contents).

Guidance Note on Civil Law:

The Model JOA is written for use in a wide variety of types of jurisdictions. However, some of the legal concepts and mechanisms are taken from the common law and may need to be adapted for use in jurisdictions other than those based on a common law tradition. These Guidance Notes aim at providing the users of the Model JOA some information regarding the main issues and concerns which may require particular attention when the Operating Agreement adopts or contemplates adopting the laws of a Civil Law jurisdiction, instead of a Common Law jurisdiction, as governing law. These Guidance Notes do not purport to address issues or concerns of a commercial or technical nature which would exist wherever the Model JOA is used.

In this Guidance Note:

“Civil Law” means, for the sole purpose of simplicity and clarity, the “Civil Law” (or Roman derived law) system of law and any other Law from a jurisdiction that is not Common Law, but the variety of legal systems worldwide is vastly more complex.

“Common Law” means the legal systems throughout the world deriving from English law.

So, the terms “Civil Law jurisdiction” and “Common Law jurisdiction” mean any country whose system of law belongs to either the Civil Law (or other) tradition, or to the Common Law tradition respectively. Other capitalized terms used in this Guidance Note have the meaning assigned to them in the Model JOA, and references to Articles and Sections are to those of the Model JOA.

The nuances between the legal systems are even relevant during the negotiations of a JOA. For instance, under Civil Law all parties to an agreement have the obligation to act/negotiate in good faith to come to an agreement, and the concept of ‘reasonableness’ is set out in Civil
Codes or in case law. There is no such symmetrical obligation under many Common Law jurisdictions, and therefore any obligation to act in good faith or ‘reasonably’ should be expressly set out in the contract.

In addition, even where the governing law of an Operating Agreement is the law of a Common Law jurisdiction, these Guidance Notes may still provide useful information if the host Government contract is governed by other applicable law. Indeed, from a legal and practical point of view, the Model JOA is generally subject to the host government contract and the enforceability of many provisions of the Model JOA are closely dependent on the legal context in the country where the petroleum operations are to be performed. As an example, the assignment of a Party’s Participating Interest (including as a result of the operation of the forfeiture or withdrawal provisions) will take place in relation to the host government contract, and the JOA and therefore will be subject to the provisions of both agreements and, in addition, to the regulations of the host country.

While all Civil Law jurisdictions share notable similarities, due to the hybrid solutions that are found in different countries, the differences that exist among Civil Law jurisdictions in the treatment of issues such as those referred to in these Guidance Notes do not permit a universal solution via standard form provisions or articles. This is the main reason for addressing the issues and concerns described below in the form of Guidance Notes rather in the form of Optional and/or Alternative provisions to be directly incorporated in the Model JOA.

These Guidance Notes are intended only to provide focus points to be considered and further analyzed by users of the Model JOA in Civil Law jurisdictions, depending on their own circumstances and needs, and therefore do not contain specific recommendations in the particular context of any individual JOA. Given the wide variety of types of Contracts existing, the following list may not necessarily be an exhaustive one of modifications needed to adapt this model JOA to the applicable contract and law. Terms and conditions of the applicable contract and law should be thoroughly evaluated in this regard and the model JOA reconciled with them.

Article 4.2.B.18 Rights and Duties of Operator - Provisions to be included in contracts with independent contractors

In most Civil Law jurisdictions, the Operator usually acts both on its behalf (to the extent of its Participating Interest) and as agent on behalf of the Non-Operators. It is therefore necessary to assess to what extent the provision under paragraph (a) (establishing that contractor can only enforce the contract against Operator) is lawful and enforceable in such context. This point should be checked mainly in light of the governing law of each relevant contract executed by the Operator with the contractors.

For example, in some but not all Civil Law jurisdictions, where the Operator acts as an “agent without authority to represent” (i.e. acts de facto in the interest of the Non-Operators but without explicit or implied authority to represent them) the Non-Operators are not directly bound by the contracts executed with independent contractors and these contractors may not enforce their contracts against such Non-Operators. On the other hand, in other Civil Law jurisdictions, the enforcement of such contracts against the Non-Operators may not be avoided (or, alternatively, a full exclusion of liabilities of the Non-Operators towards such independent contractors may not be obtained). In such cases where the Operator acts as an agent on behalf of the Non-Operators under contracts executed with independent contractors, special
consideration should be given to the need for inclusion into the relevant contract of a specific provision excluding the joint and several liability of the co-venturers.

As to Article 4.2.B.18.b relating to the enforcement of contractual indemnities on behalf of the Non-Operators and the recovery of losses and damages suffered by them, it seems to be workable under Civil Law even in the cases where the Non-Operators are not directly bound by the contract. In fact, the concept of “third party beneficiaries” is a well-known concept under Civil Law.

Article 4.6.A Limitation of liability of Operator - release/limitation of Operator’s liability towards Non-Operators

Restrictions on the release/limitation of Operator’s liability may exist under Civil Law, but significant differences exist among Civil Law jurisdictions in this respect, and it is not workable to propose either an amendment to the existing Section 4.6 of the Model JOA or a general Civil Law Optional Provision which would be satisfactory. This provision should therefore be carefully drafted in light of the requirements of the specific governing law of the Operating Agreement in order to be fully enforceable.

Article 4.6.B Limitation of Liability of Operator - Indemnification of Operator by Non-Operators from claims ... brought by third parties

The concept of “indemnity” (as traditionally understood in Common Law) needs to be treated with care in a Civil Law context: to be indemnified, one needs to suffer a damage and the injured party must show an adequate causation (so there is a question of remoteness), and the level of ‘damage’ (and hence of compensation) could depend on it. A classic causality test under French Law for instance would be:

Past events that can only be a direct cause, "given the likely interplay of natural forces and human actions". The harm suffered must be certain and ‘irremediable’. So if it is capable of being remedied, its recovery is questionable. This leads us to a more general comparative point:

Under English (Common) Law, an indemnity to the Operator applies even if the Operator does not mitigate a loss, whereas generally in Civil Law jurisdictions there is an automatic duty for an Operator to mitigate any losses.

Secondly, in Civil Law jurisdictions this indemnification provision may be construed as a kind of guarantee with similar legal effects as the coverage provided for under third party liability insurance contracts. Further investigations may be needed as to a potential re-classification of such indemnification provisions as insurance coverage, therefore subject to specific regulations. The legal restrictions on enforceability of this indemnification provision are, in principle, less stringent than those that may affect the provisions establishing exclusion or limitation of liability. In any event, applicable law should be consulted.

Article 7 Operations by less than all Parties - General Comment

Unlike the Common Law, Civil Law in general does not recognize the distinction between “legal interest” and “beneficial (or economic) interest”. As an “alternative” some Civil Law countries (Poland for instance) use in E&P operations the distinction (arising from Roman law) between the right to dispose (akin to a legal interest) and the right to benefit (akin to a “beneficial” interest). It could be more difficult to assert the enforceability of provisions calling for exclusive operations if such operations are not specifically permitted under applicable law or the Contract.
Therefore, Exclusive Operations in a Civil Law context (which context also includes the situation where the operations are carried out in a Civil Law jurisdiction) should be used much more as a “fall-back” to avoid deadlocks rather than a pure right of exploration/appraisal à la carte as permitted under Common Law.

Article 7.4.F.2 Operations by less than all Parties - notion of economic interest and notion of fiduciary duty

The notions of “economic interest” and “fiduciary duty” referred to respectively in the above Sections are unknown under Civil Law. They should be replaced, to the extent practicable, by concepts that may be valid and enforceable under the relevant Civil Law jurisdiction. The relevant law should be scrutinized. Language similar to that suggested in these Guidance Notes for situations where Government approval for withdrawal is not obtained (see comment on Article 13.7) can be adopted with the appropriate adjustments.

Article 8 Default - General Comment

Some lawyers may argue that, during the production period, and maybe even the development period, a Common Law default provision is of doubtful enforceability in a Civil Law context if it is considered to be “punitive” – which might prevent a party from being removed from a license/concession despite the provisions of the JOA. The forfeiture remedy is believed to be enforceable during the exploration period under English law. Under Civil Law jurisdictions a judge would normally consider a damages award in the event of default, whereas under Common Law the equitable ‘specific performance’ remedy could also be available.

Article 8.1 Definition of Security

Under the Operating Agreement, the definition of “Security” includes a guarantee or standby letter of credit that would be issued by a bank. In some Civil Law jurisdictions, the Drafters should be particularly careful in making sure that it is qualified as a guarantee that is ‘autonomous” from the underlying contract (being the JOA) so that it can be called upon in accordance with its terms, without being dependent on a claim under the underlying contract.

Article 8.4 Remedies

(A) Under some systems (Argentine for instance), the transfer of hydrocarbons of a defaulting party in favor of the other parties, to be sold by the Operator in order to satisfy the defaulting party’s debts under the Agreement, may be considered as a transfer in trust (transferencia fiduciaria) in favor and for the benefit of the non-defaulting parties. Consequently, the parties may evaluate the necessity of clarifying that the transfer is made in trust pro-rata in favor and for the benefit of the non-defaulting parties, with Operator acting as their agent.

(D) Similarly, the Forfeiture clause (proposed as Alternative No. 1) may be deemed unconscionable in some circumstances pursuant to Section 656 of the Argentinian Civil Code. In order to avoid any uncertainties as to if and to what extent the Forfeiture clause may be enforced in its own terms, it may be preferable to choose the Buy-out clause (proposed as Alternative No. 2), where the percentage proposed in item (iii) in the second paragraph should be carefully examined in order to avoid any objection on grounds of unconscionability.

(E) In some Civil Law jurisdictions, Participating Interests may not be subject to “mortgage” (in the meaning of a property right or jus in rem, as opposed to a right enforceable against a debtor or jus in personam). In many cases the Participating Interest may be pledged as
collateral since a Participating Interest could be treated as a movable intangible future or present good that is put in place as a guarantee to an obligation. However the beneficiary of the pledge cannot take title to pledged assets without first having obtained a court order.

(F) Practical issues as to the implementation of the assignment of the Participating Interest of the Defaulting Party. The irrevocable nature of the deemed power of attorney should be carefully investigated under Civil Law. The law of some Civil Law jurisdictions may provide that if the power of attorney is given in the common interest of both the agent and the principal it is possible to stipulate that the power of attorney can be revoked only by mutual agreement. However, in many cases, the unilateral revocation of the power of attorney by the grantor will only be sanctioned by the payment of damages. Some other Civil Law jurisdictions may provide for other types of restrictions such as that the power of attorney may be irrevocable but only for a limited period of time.

Regarding the provision under which, pending Government approval (of the transfer of the Participating Interest of the Defaulting Party) the Defaulting Party shall hold its Participating Interest in trust for the non-Defaulting Parties: the “trust” mechanism either does not exist at all under some Civil Law jurisdictions, or is confined to specific circumstances (as a result of a narrow definition of whom a trustee can be) that are not relevant in E&P operations. Therefore such provision would need to be adapted carefully. One possible solution could be to replace the reference to trust by the following language: “In the event the Government approvals are not timely obtained, the Defaulting Party shall, without prejudice to Article 8.2, (a) not be entitled to participate in any further operations in the Contract Area or in any decisions related thereto, (b) do any and all acts, in its name but for the benefit of non-Defaulting Parties, as may be necessary to carry out the operations under this Agreement, or to exercise any rights or discharge any obligations relating to the Contract Area, and (c) abandon to the non-Defaulting Parties all rights to Hydrocarbons generated from the operations in the Contract Area”.

Article 12.2.E Encumbrance over the Participating Interest

Certain type of Encumbrances (which would constitute in rem guarantees, i.e., mortgage) may be prohibited in certain Civil Law jurisdictions. It may be also necessary to revise the definition of Encumbrance.

Article 12.2.E General comment regarding the existence of pre-emption rights by operation of law

In certain Civil Law jurisdictions, pre-emption rights may result from statutory law. For instance, in some Civil Law jurisdictions, the co-owners of property and the co-holders of contractual rights may pre-empt by law transfers of any of such properties and/or contractual rights to third parties. If the Parties wish not to have pre-emption rights at all, it is advisable to include a clear exclusion provision in the Operating Agreement.

Article 13.2 Partial or Complete Withdrawal

In the case where partial withdrawal is not addressed or permitted under the host Government contract (under Civil Law), partial withdrawal within the Operating Agreement should be carefully addressed in light of the remarks above regarding Exclusive Operations under Article 7.

Article 13.7 Approvals

If the Government does not approve a Party’s withdrawal, this Article gives the withdrawing Party the option to hold its Participating Interest in trust rather than retract its notice of
withdrawal. Since “trust” is not a Civil Law concept, Drafters may either exclude such option or replace it by provisions, along the lines described below, stating a good faith obligation to execute a trust arrangement (which can be governed by a law of a Common Law jurisdiction, different from the law governing the Operating Agreement itself) and defining the rights and obligations of the Parties pending the execution of such trust arrangement. The language below is to be adjusted on the basis of the alternative chosen in Article 13.2(B) with respect to partial withdrawals.

“A withdrawing Party shall promptly join in such actions as may be necessary or desirable to obtain any Government approvals required in connection with the withdrawal and assignments. The non-withdrawing Parties shall use reasonable efforts to assist the withdrawing Party in obtaining such approvals. Any penalties or expenses incurred by the Parties in connection with such withdrawal shall be borne solely by the withdrawing Party. If the Government does not approve a Party’s withdrawal and assignment to the other Parties, then the withdrawing Party, by notice to the other Parties within ten (10) Days after receiving notification of the Government’s refusal of its approval, shall at its option either (1) retract its notice of withdrawal by notice to the other Parties and remain a Party as if such notice of withdrawal had never been sent or (2) propose to the non-withdrawing Parties to enter into a trust arrangement by which the withdrawing Party shall, with respect to the entirety of the Contract Area (or, in the case of partial withdrawal pursuant to Article 13.2(B), the operations in the part of the Contract Area in which such withdrawing Party has not retained an interest), hold its Participating Interest in trust for the sole and exclusive benefit of the non-withdrawing Parties with the right to be reimbursed by the non-withdrawing Parties for any subsequent costs and liabilities incurred by it for which it would not have been liable, had it successfully and formally withdrawn. A withdrawing Party failing to give timely notice to the other Parties of its election pursuant to the preceding sentence shall be deemed to have elected to retract its notice of withdrawal and remain a Party as if such notice of withdrawal had never been sent. If the withdrawing Party proposes to enter into a trust arrangement, pursuant to this Article 13.7, all the Parties shall use all reasonable efforts to promptly negotiate in good faith and execute such trust arrangement, provided that, pending such execution, and subject to any other applicable provisions of this Agreement, the non-withdrawing Parties shall hold harmless and indemnify such withdrawing Party from all costs, obligations and liabilities arising from or incurred incident to the operations in the Non-Retained Area (as defined below) (excluding however any costs, obligations and liabilities to be satisfied by such withdrawing-Party as described in Articles 13.4 and 13.8), and such withdrawing-Party shall, (a) not be entitled to participate in any further operations in the Non-Retained Area for which such Party has no ongoing financial responsibility or in any decision relating to such operations, (b) do any and all acts, in its name but for the benefit of the non-withdrawing Parties, as may be necessary to carry out operations in the Non-Retained Areas, or to exercise any rights or discharge any obligations relating to such areas, and (c) abandon to the non-withdrawing Parties all its rights to Hydrocarbons generated from the operations in the Non-Retained Area. For the purposes of this Article 13.7, “Non-Retained Areas” shall mean the Contract Area or, in case of partial withdrawal, any part of the Contract Area in which a withdrawing Party has not retained an interest.”

Article 14.1 Relationship of Parties

The 2nd sentence of the existing clause may need to be extended to exclude a legal entity with a separate juridical personality or corporation or civil society in order cover other types of legal entities existing under Civil Law. Having said that, its enforceability is not certain: Under some
Civil Law jurisdictions, a JOA could be treated as a joint venture even if the contract says otherwise.

Very few Civil Law jurisdictions qualify in law what is the very nature of the specific relationship of the Parties under an agreement such as an Operating Agreement. However some of these jurisdictions do so through the concept, or form, of consortium (Brazil and Peru, as an example) or, in Argentina, through the concept of UTE - Unión Transitoria de Empresas (Transitory Union of Companies). Should the Operating Agreement be submitted to the law of one of these jurisdictions, the Drafters should take note of the relevant legal form that may be imposed, and if such form necessarily applies, Article 14.1 should state that the relationship between the Parties is within such form rather than stating negatively what it is not as provided in the current AIPN language. Recognize that application of such form may itself carry legal repercussions, as the applicable law may dictate certain characteristics of the concept and may not permit the participants to alter such characterizations.

The references in this Article to agent and servant may need to be further analyzed under applicable Civil Law as to their implication and meaning throughout the Operating Agreement, in particular in the context of the role of the Operator.

Article 16  Force Majeure

Civil Law jurisdictions generally have a legal definition of force majeure, even though the criteria for force majeure may vary from one jurisdiction to another.

In all cases the parties remain free to contractually adapt the definition and effect of force majeure to their specific needs, and we are witnessing a growing tendency even in Civil Law countries to have a detailed contractual definition of Force Majeure. However such flexibility may not rise to the level of overriding legal restrictions as to limitation of/exculpation from liabilities: a too broad or flexible definition of force majeure could amount to an exculpatory clause and be re-classified as such by the courts or arbitrators, and therefore be subject to the restrictions that may be imposed by the applicable Civil Law jurisdiction on such exculpatory clauses.

Guidance Note on Unconventional Resources:

This model JOA is not designed to accommodate industry practices with respect to shale gas and other unconventional gas projects. The drafter may wish to consider referring to the annotations at the end of the Canadian Association of Petroleum Landmen (CAPL) 2007 model form which discuss a range of issues to consider, as well as several articles in the CAPL Negotiator magazine. In addition the drafter should consider modifying the requirement that Development Wells must be part of an approved Development Plan; modifying the requirement that Exclusive operations may not be conducted during development and production; allowing contingent drilling; specifying criteria for use of technology for horizontal drilling; setting out consequences of varying depth and horizontal length of well, and allowing use of infrastructure.

Guidance Note to Definitions: A party using this model must compare and reconcile definitions set out in this Agreement and definitions set out in the Contract, and consider the laws and regulations of the host country and of other countries applicable to this Agreement and to each of the Parties.
Guidance Note to definition of Anti-Bribery Laws and Obligations: The UK Bribery Act provides that if any persons associated (including JV Partners or contractors) with a UK Company pays a bribe (which includes facilitation payments) anywhere in the world, then the UK Company and individual employees can be criminally liable. To ensure their own compliance with this provision, parties which are subject to the UK Bribery Act may wish all parties to be obligated to comply with the laws of all parties’ place of incorporation, such that non-UK companies comply with the UK standard, in which case alternative #2 should be selected.

Guidance Note to definition of Appraisal Operations: Drafter should ensure that selection, or not, of the option is consistent with Law and with the definition of Exploration Operations.

Guidance Note to definition of Crude Oil: depending on whether natural gas liquids (NGLs) are considered as part of Crude Oil under the Contract, the preparer may have to modify the definition of Crude Oil, because NGLs are in a liquid state at standard pressure but not standard temperature.

Guidance Note to definition of Exploration Operations: Drafter should ensure that selection, or not, of the option is consistent with Law and with the definition of Appraisal Operations.

Guidance Note to definition of Joint Property: This definition should be reviewed in light of the Alternative chosen in Article 15 with regard to Venture Information.

Guidance Note to definition of Natural Gas: Need to reconcile definitions of Natural Gas and Crude Oil under this Agreement and the Contract with respect to standard temperature and pressure and classification of natural gas liquids.

Guidance Note to definition of Operator Indemnitee: Consider whether Operator treats leased employees, consultants, servants, agents and secondees, as independent contractors with a knock for knock indemnity arrangement and whether Operator Indemnitees should be limited to only “employees” or should include leased employees, consultants, servants, agents or secondees.

Guidance Note to definition of Senior Supervisory Personnel: The definition is used in the context of the limitation on Operator’s liability under Article 4.6 and should be consistent with Operator’s management of operations and activities in the host country.

Guidance Note to Article 1.2.F: Note that Exhibit […] – Integrated Project Teams in these Guidance Notes contemplates that the provisions in the Exhibit will prevail over the provisions in the body of the Model JOA. If the Integrated Project Teams Exhibit is used then Article 1.2.F should be adapted.

Guidance Note to Article 2.2: Because the termination option incorporates by reference termination events referred to elsewhere in the Model JOA, the drafter should consider whether the provision is useful in clarifying the duties of the co-venturers under the JOA and the Contract in the context of a termination event.

Guidance Note to Article 3.1: If the drafter is providing for the possibility of joint marketing related to gas monetization in under-developed markets consider modifying the scope of both the included and the excluded activities in the context of the applicable anti-competition laws.

Guidance Note to Article 3.4: This Guidance Note contemplates a situation in which the Government Oil & Gas Company has a right under the Contract to elect to participate as part of Contractor in Joint Operations in each Exploitation Area at the time of declaration of Commercial Discovery for such area, to be carried for the types of costs set out in the Contract, and to repay carried costs out of a portion Government Oil & Gas Company’s share of Cost Hydrocarbons. If this situation is applicable, then the drafter may consider incorporating the following text as Article 3.4.C of the Agreement or in a separate carry arrangement. Note that the following definition of Participating Interest replaces the original, and
with respect to each use of “Participating Interest” in the Agreement the drafter should consider whether such use is intended to mean both “Primary Participation” and “Secondary Participation”, in which case such use of “Participating Interest” should not be changed, or whether such use is not intended to mean both “Primary Participation” and “Secondary Participation”, in which case such use of “Participating Interest” should be replaced with “Primary Participation” or “Secondary Participation” as appropriate.

If this situation is applicable, the following defined terms should be incorporated into the definitions.

“Carried Costs means those costs, obligations and liabilities of operations that under the Contract and applicable Law the Parties are required to bear for the Government Oil & Gas Company.

Government Net Lifting Entitlement means with respect to each Calendar Month the quantity of Hydrocarbons that is allocated to the Government Oil & Gas Company in the corresponding final lifting schedule, net of a quantity of Hydrocarbons equivalent to the value of the Government Oil & Gas Company’s share for such Calendar Month of: (i) applicable royalties and production taxes, plus (ii) the costs of Production Operations and operations for Decommissioning, plus (iii) any obligation under the Contract to supply Hydrocarbons to the local market.

Participating Interest means each Party’s undivided share (expressed as a percentage to two decimal places) of the total shares of all Parties in the rights, interests, obligations, and liabilities of the Parties derived from the Contract and this Agreement, consisting of a Primary Participation and a Secondary Participation.

Primary Participation means each Party’s undivided share (expressed as a percentage to ___ (____) decimal places) of the total shares of all Parties of all rights, interests, obligations and liabilities of the Parties derived from the Contract and this Agreement, except rights, interests, obligations, and liabilities attributable to such Party’s Secondary Participation.

Secondary Participation means each Party’s undivided share (expressed as a percentage to two decimal places) of the total shares of all Parties of the Carried Costs, of the right to reimbursement of such costs and of voting.

Unrecovered Carried Costs means for each Calendar Month with respect to each Exploitation Area in which the Government Oil & Gas Company elects to participate, an amount equal to (a) the total of the Carried Costs actually incurred by the Parties, plus interest on each Carried Cost at the Agreed Interest Rate from the date incurred until recovered, less (b) the total of the net proceeds actually received by the Parties from the sale of their respective shares of the Government Net Lifting Entitlement.”

If this situation is applicable, the following text should be incorporated as Article 3.4.C

3.4.C Despite Article 3.2.A, from the date the Government Oil & Gas Company participates in [the Contract Area / an Exploitation Area], such Government Oil & Gas Company shall become a Party to this Agreement and the Participating Interests of the Parties with respect to such Exploitation Area shall be:

<table>
<thead>
<tr>
<th>Party</th>
<th>Participating Interest</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>Primary Participation</td>
</tr>
<tr>
<td></td>
<td>Secondary Participation</td>
</tr>
<tr>
<td>______</td>
<td>___%</td>
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<tr>
<td>______</td>
<td>___%</td>
</tr>
</tbody>
</table>
If this situation is applicable, the following text should be incorporated as Article 3.4.D

3.4.D Despite Article 3.3, with respect to [the Contract Area / each Exploitation Area] in which the Government Oil & Gas Company participates:

3.4.D.1 Carried Costs shall be borne by the Parties in proportion to their respective Secondary Participations;

3.4.D.2 All costs, obligations, and liabilities other than Carried Costs shall be borne by the Parties in proportion to their respective Primary Participations;

3.4.D.3 So long as there are Unrecovered Carried Costs ________ percent (___%) of the Government Net Lifting Entitlement will be allocated to the Parties in proportion to their respective Secondary Participations; and

If this situation is applicable, the following text should be incorporated as Article 3.4.E

3.4.E For so long as there are Unrecovered Carried Costs each Party’s Participating Interest for the purposes of any vote shall be deemed to be equal to its respective Secondary Participation.

If this situation is applicable, the following text should be incorporated as Article 3.4.F

3.4.F Concerning Article 12:

3.4.F.1 The Government Oil & Gas Company may Transfer its Participating Interest in the Contract and the right to be carried, to another entity wholly owned by the Government and designated to act as the Government Oil & Gas Company; provided that such Transfer will not be effective unless permitted by applicable Law and until the Transferee becomes a Party to this Agreement.

3.4.F.2 The Government Oil & Gas Company may Transfer its Participating Interest in the Contract (but not the right to be carried) to another entity not wholly owned by the Government; provided that such Transfer will not be effective unless permitted by applicable Law and until the Transferee becomes a Party to this Agreement and pays the Unrecovered Carried Costs in cash (in United States dollars, or other manner agreed by the Parties), to the Parties in proportion to their respective Secondary Participations. Transfers by the Government Oil & Gas Company under this Article 3.4.F.2 are subject to the same restrictions on Transfer (such as providing evidence of creditworthiness and undertaking of obligations) and pre-emption rights (such as preferential rights or rights of first negotiation) as are applicable to Transfers by any other Party under this Agreement.

3.4.F.3 If the Government Oil & Gas Company ceases to be wholly owned by the Government, the Government Oil & Gas Company shall no longer be considered as such for the purposes of this Agreement, shall not be entitled to be carried and shall immediately pay the Unrecovered Carried Costs in cash (in United States dollars or other manner agreed by the Parties) to the Parties in proportion to their respective Secondary Participations. Changes in Control of the Government Oil & Gas Company under this
Article 3.4.F.3 are subject to the same restrictions on Change of Control (such as providing evidence of creditworthiness and undertaking of obligations) and pre-emption rights (such as preferential rights or rights of first negotiation) as are applicable to Changes of Control by any other Party under this Agreement.”

Guidance Note to Article 4: The Operator is conducting activities on behalf of all co-venturers and in general should neither gain nor lose by virtue of being the Operator. The drafter should use great care in selecting the alternatives and options with respect to Operator’s limitation of liability. In addition the draft should consider that Operator standard of conduct may vary by jurisdiction with respect to implied duties of good faith (honesty), fair dealing (disclosure), prohibition against self-dealing, and fiduciary duties (especially with respect to misuse of funds), and that enforceability of provisions to limit or exclude implied duties and liabilities may vary by jurisdiction.

Guidance Note to Article 4.2.B.18: Drafter should consider whether Operator’s duties with respect to service contracts should be expanded to include a duty to review service contractor technical capability, monitor and bench mark service contractor performance and inspect service contractor equipment.

Guidance Note to Article 4.3.D: A model Secondment Agreement may be acquired through the AIPN

Guidance Note to Article 4.6: Consider whether under applicable law the indemnification portions of Article 4.6, Article 7.3 and Article 7.9 must be set out in conspicuous language or meet other legal requirements to be enforceable.

Guidance Note to Article 4.6.D: Parties negotiating a JOA may wish to consider whether to limit Operator’s liability to its Gross Negligence / Willful Misconduct and if so, whether a further limit to only its Senior Supervisory personnel is appropriate.

Guidance Note to Article 4.6.D Alternative #3: Consider whether the amount stated as a financial limitation should be adjusted in accordance with an inflation or other index.

Guidance Note to Article 5.4: The drafter may wish to consider whether an Integrated Project Team is appropriate and if so insert the following text in Article 5.4 empowering the Operating Committee to establish an integrated project team.

“The Operating Committee may establish an integrated project team, as set out in Exhibit [___], to pool the talents and capacities of all Parties participating in a project.”

Guidance Note to IPT Provisions Exhibit: If the Operating Committee is to be empowered to establish an integrated project team, the drafter may wish to insert the draft Integrated Project Team Provisions, which is set out at the end of these Guidance Notes.

Guidance Note to Article 5.9.C: The drafter may wish to split items with multiple proposals and/or to add items, in order to allow different levels of approval for such proposals.

Guidance Note to Article 6.1.C.1.b: The designation of “contingent” with respect to the operations specified in a particular line item contemplates that the contingent items may become firm budget items subject to: Operator approval, Operating Committee vote and/or government approval and satisfaction of one or more conditions precedent before such operation will be undertaken. The over-expenditure authority is intended to be the mechanism to provide flexibility as to the estimated costs of a particular line item.

Guidance Note to Article 6.2.A.1: This alternative is inapplicable where Minimum Work Obligations require Testing or Completing of an Exploration Well.
Guidance Note to Article 6.2.A.2: This alternative is inapplicable where Minimum Work Obligations require Testing or Completing of an Appraisal Well.

Guidance Note to Article 6.6.D: Drafter should consider requiring Operator to include in service contracts rights relating to HSE auditing of service contractors and/or causing service contractors to conduct an HSE assessment and having the right to observe and monitor.

Guidance Note to Article 6.8: If Article 6.8 is not chosen, the definition of an AFE in Article 1.2 and all references to AFEs in the Agreement are to be removed. Drafter should also consider whether the exclusion of Minimum Work Obligation wells in Art 6.8 is appropriate in the current environment, bearing in mind that the early wells in a new block may well be higher risk than later wells.

Guidance Note to Article 6.8.B: As a variation of Alternative 2 and 3 consider making AFEs for approval only during Exploration Operations and Appraisal Operations.

Guidance Note to Article 6.8.C: The Parties may wish to consider whether AFE’s for drilling a well should include the following additional information:

“Where the Operator is preparing AFEs (whether or not requiring long lead AFEs) for a batch of similar wells to be drilled in continuity with each other, the information and assurance process below shall be carried out once for that batch.

Where commitments are required in respect of long lead items such as casing and other tubulars, wellheads, xmas trees and/or the hire of a rig the Operator will issue a long lead item AFE (“LLI AFE”) for the well as required under Article 6.8.

Prior to the issue of the LLI AFE the Operator will prepare and circulate to all Parties technical supporting documentation for the well in draft form as follows:

a. Proposed top hole and bottom hole locations
b. Full well budget estimate (+/- 25% accuracy)
c. Basis for well design
d. Casing design document
e. Operational sequence (i.e. planned activity summary)
f. Major items proposed to be covered by the LLI AFE (including details of proposed rig and major components e.g. BOP system, if selected)

The Parties shall have 15 Business Days from receipt of the full set of documentation to review these documents. Pursuant to Article 5.5 (B), any Non-Operator may call an Operating Committee meeting to comment on the documents. The Operator shall take into account these comments and the Operating Committee shall decide if it is satisfied that the LLI AFE is ready to be issued by the Operator for approval.

If the above mentioned documents have been approved by the Operating Committee, the Operator shall issue the LLI AFE for Operating Committee approval together with updated drafts of the above mentioned documents (to the extent any changes have resulted from this process).

Prior to the issue of the final AFE, and at least three months prior to the planned commencement date (or such lesser period as the Operating Committee shall agree), the Operator shall issue to the Parties the following updated documentation in draft form:

a. Proposed top hole and bottom hole locations
b. Full well budget estimate (+/- 15% accuracy)
c. Basis for well design
d. Casing design document
e. Well operations program
f. Unless fully covered by the approved LLI AFE, details of proposed rig and major components e.g. BOP system
g. Operator’s relevant technical standards, procedures and guidelines (unless the current versions of these have already been supplied)
h. Details of staff and contractor (including subcontractors) competency assurance
i. Operator organization chart and levels of responsibility

The Parties shall have 15 Business Days from receipt of the full set of documentation to review these documents. Pursuant to Article 5.5.B, any Non-Operator may call an Operating Committee meeting to comment on the documents. The Operator shall take into account these comments and the Operating Committee shall decide if it is satisfied that the Full Well AFE may be issued by the Operator.

If the above mentioned documents have been approved by the Operating Committee, the Operator shall issue the final AFE for approval by the Parties together with updated drafts of the above mentioned documents (to the extent any changes have resulted from this process).

If at any time prior to or during the undertaking of the well operation the Operator determines that there is a need to amend the basis for well design and/or the well operations program, the Operator shall propose such amendment to the Operating Committee for their consideration and approval.”

Guidance Note to Article 7.1.B: Drafter may want to consider whether Exclusive Operations relating to declaring a Discovery, proposing an Appraisal Plan, declaring a Commercial Discovery, proposing a Development Plan may be conducted prior to completing the Minimum Work Obligation.

Guidance Note to Article 7.1.C: Drafter should consider whether to insert a provision to the effect that, if an Exclusive Operation in an earlier period or phase of the Contract is to be used as a Joint Operation to fulfill a Minimum Work Obligation in the current phase or period of the Contract, then the Non-Consenting Parties must re-instate. Drafter should also consider in such circumstance what if any premium should be payable.

Guidance Note to Article 7.4.B.1: Drafter should consider in the context of the Contract and the Law whether the remedy results in different participating interests within a discovery. One possible “solution” to Article 7.4.B.1 remedy would be to “unitize” the wells in the discovery if declared commercial, rather than separately metering the wells.

Guidance Note to Article 8: Drafter should consider that the default provisions are an issue with financing and lenders may request subordination of the JOA default rights to the lender’s default rights. However the co-venturers should carefully consider whether to take a subordinated position.

Guidance Note to Article 8.4: Default remedies must be considered and modified in the context of the requirements of the Contract and applicable laws and regulations of the host country.

Guidance Note to Article 8.4.B: Consider whether the “Reserve Fund” is redundant if a “Security” for decommissioning (the cost of which is part of the Total Amount in Default) is already required under the
JOA or Contract, or amounts to a penalty if the non-defaulting Parties are not yet required to post a “Security” for decommissioning.

**Guidance Note to Article 8.4.H:** Drafter should consider that in certain jurisdictions it may be possible to enforce cross charges

**Guidance Note to Article 9.2:** AIPN has a model lifting agreement

**Guidance Note to Article 9.3.B:** AIPN has a model gas sales agreement

**Guidance Note to Article 9.4:** Drafter should revise or delete if Alternative #2 to Article 9.3 is chosen.

**Guidance Note to Article 12:** Transfer provisions must be considered and modified in the context of the requirements of the Contract and applicable laws and regulations of the host country.

**Guidance Note to Article 12.2:** Drafter should consider requiring assignee’s financial capability to include demonstration of enforceability of JOA transfer restrictions and default remedies under the laws of jurisdiction of incorporation, especially arising from bankruptcy. Alternatively, Drafter should consider requiring assignor to remain liable for assignee

**Guidance Note to Article 12.2.E.4:** If possible, the Parties should agree in advance to the form of such subordination agreement and attach such form as an Exhibit to this Agreement.

**Guidance Note to Article 14.1:** Drafter should consider whether there is a duty of good faith and fair dealing even if not fiduciary duty under the applicable Law, and whether these concepts should be clarified? Drafter should also consider whether, despite the disclaimer of fiduciary duty, the operator has a fiduciary duty when handling funds on behalf of the Parties? Similarly, does the operator have a duty when acting as Operator not to engage in self-dealing or to disclose self-dealing?

**Guidance Note to Article 15.5:** AIPN is preparing a model data exchange agreement

**Guidance Note to Article 17:** In some jurisdictions a notice once given may not be revoked or changed while in other jurisdictions a notice once given may be changed or revoked unless others have relied on such notice. Depending on the jurisdiction Article 17 may need to be adapted to accomplish the intent of the Parties.

**Guidance Note to Article 18.1:** The provisions of this Agreement must be analyzed taking into consideration the law chosen in this Article 18.1 and any other applicable law. Drafter must consider the implications of choosing civil law jurisdictions.

**Guidance Note to Article 18.1:** Drafter should consider including the following provision in JOAs under English law: “The Parties agree to exclude both: (i) the right to apply to the court to determine any question of law under Section 45 of the Arbitration Act of 1996 of the law of England; and (ii) the right to appeal to the court under the said Arbitration Act on a question of law arising out of any award made in the proceedings.”

**Guidance Note to Article 18.2:** Drafter should consider whether to include dispute resolution mechanisms that precede arbitration.

**Guidance Note to Article 18.2.B:** Insert, if Article 18.2.C is chosen:

**Guidance Note to Article 18.2.C:** To govern mediation under Article 18.2.C consider choosing the mediation rules of the institution chosen below for purposes of conducting any arbitration.

**Guidance Note to Article 18.2.C:** Insert following if Article 18.2.B is chosen:

**Guidance Note to Article 18.2.C:** Insert following if Article 18.2.B is chosen:
Guidance Note to Article 18.2.D: If the Host Government is a Party to this Agreement, consider whether the Rules of Procedure for Arbitration of the International Centre for Settlement of Investment Disputes (ICSID) would be appropriate and, if so, designate an alternative arbitral institution for disputes for which ICSID may lack jurisdiction.

Guidance Note to Article 18.2.D: The drafter should consider whether non-administered arbitration is enforceable in the host country, particularly in China.

Guidance Note to Article 18.2.D.1: Drafter should insert the name of a well-respected arbitral institution or a set of widely used non-administered arbitration rules. Examples include: Rules of Arbitration of the International Chamber of Commerce (ICC); Arbitration Rules of the London Court of International Arbitration (LCIA); International Arbitration Rules of the International Centre for Dispute Resolution (ICDR); Arbitration Rules of the Singapore International Arbitration Centre (SIAC); Arbitration Rules of the Institute of the Stockholm Chamber of Commerce (SCC Institute); United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules. If UNCITRAL Rules are selected Drafter needs to specify the appointing authority shall be [____________ Arbitral Institution].

Guidance Note to Article 18.4: Confirm the authority of each Party to waive its sovereign immunity under applicable local laws.

Guidance Note to Article 18.2.C: Drafter should consider whether Article 19 is applicable in light of the Contract and Laws.

Guidance Note to Article 20.1: The parties should consider the differences between the different anti-bribery acts applicable to each Party and the effect on Joint Operations, such as facilitating payments that are allowed under the FCPA if properly reported, and not allowed under the UK Bribery Act. The UKBA provides that individuals and companies will commit a criminal offence if they either give or receive a bribe and this includes bribery involving (i) Public Officials and (ii) private individuals/workers in the private sector.

Guidance Note to Article 20.1.A: The parties should consider whether to include a warranty and covenant of compliance with all provisions of the applicable anti-bribery laws, such as provisions on books and records, reporting, etc., in addition to the warranty and covenant of non-payment of bribes.

Guidance Note to Article 20.1.B: The Parties should consider the extent to which disclosure under Article 20.1.B has broader implications under each Party’s reporting requirements.

Guidance Note to Article 20.2: Drafter should consider the implications of the restriction on conflicts of interest in context of Operator representation of This venture in dealings with other ventures in which Operator has an interest, such as unitization where Operator or its Affiliate is a party to another block, and such as joint sales, transportation, or processing where Operator or its Affiliate is a party to buyer, transporter or processor. Possible solutions: disclosure of conflict, recusal to act on behalf of co-venture in such situations, and where there is an area of mutual interest applicable. AIPN is preparing model AMI Agreement.

Guidance Note to Exhibit E Decommissioning Procedures: Decommissioning security arrangements may be set out in the Contract or the Laws and Regulations of the Host Country, in which event the provisions of this Exhibit should be tailored to track the decommissioning security arrangements specified in the Contract or the Laws and Regulations of the Host Country. If decommissioning security arrangements are not addressed in the Contract or the Laws and Regulations of the Host Country and the Parties to the JOA desire to establish a separate decommissioning security arrangement, care must be taken in evaluating the type of security arrangement to be utilized. Conceptually this Exhibit, if the Parties do not agree to alternative security, sets up a “fund” into which each of the Parties is required to
contribute after a specified trigger has been achieved. The “fund” has a direct financial impact on all contributing parties (which is one reason most industry participants prefer to use an alternative) and also raises the issue of the separateness of the “fund” from the assets of the entity holding the fund (for bankruptcy and other reasons). The use of the “trust” structure is a common law way of addressing separation of assets (the fund is owned by the trustee) and has major limitations in a civil law jurisdiction which must be addressed. Alternative security structures that are frequently used in lieu of a “fund” include: (a) provision of a corporate guarantee from a creditworthy entity (often a parent company or other Affiliate) for a party's share of decommissioning security costs; or (b) provision of a bank guarantee or letter of credit from a creditworthy financial institution for a party's share of decommissioning security costs.

**Guidance Note to Exhibit E Section 2:** The Parties should consider the extent to which the scope of this Exhibit must be adapted to the applicable legal regime. If Parties that have divested their Participating interest remain liable (even remotely) for Decommissioning Costs, the Parties should consider whether such former Parties should remain beneficiaries under the Security arrangements for Decommissioning. Also, the Parties should consider whether the host government should be a party to the Decommissioning Security arrangements.

**Guidance Note to Exhibit E Section 3:** The timeframe in this Exhibit contemplates the preliminary plan for decommissioning in the Development Plan, including a preliminary estimate of costs, and updating such plan and estimate through the approval process of the Decommissioning Work Program and Budget under Article 6.5.

**Guidance Note to Exhibit E Section 4.3:** If the Parties consider that the Decommissioning Security should not ramp up over time but should be fully funded from the Trigger Date, the following could be inserted in lieu of the formula in Section 4.3

\[(A) \text{ in respect of the Calendar Year in which the Trigger Date falls and each subsequent Calendar Year beginning during the first half of the Run Down Period:} \]
\[\text{Trust Fund Cash Call} = (PI \times [\text{TBD Multiplier}>1] \times DC) - (PI \times NV) - (\text{Fund} + \text{Security})\]

\[(B) \text{ in respect of each Calendar Year beginning in the second half of the Run-Down Period:} \]
\[\text{Trust Fund Cash Call} = (PI \times [\text{TBD Multiplier}>=1] \times DC) - (PI \times NV) - (\text{Fund} + \text{Security})\]

where:

- PI is the Participating Interest of the Party on whom the Trust Fund Cash Call is made,
- DC is the latest Decommissioning Cost estimate, discounted at the Discount Rate, delivered by Operator,
- NV is the Net Value,
- Fund is the total funds of that Party held in trust in the Decommissioning Trust Fund,
- Security is the total amount of security provided by that Party that satisfies the requirements of Section V of this Exhibit.
EXHIBIT [\_]  
INTEGRATED PROJECT TEAM PROVISIONS

**Guidance Note to Exhibit [\_] Section 1:** These functions could include preparing the Development Plan or carrying out a special project during the Development Phase, such as the planning, design, engineering, fabrication, transportation and installation of a production system and associated facilities, such as: offshore surface structures, subsea structures and any other type of structure to develop and produce Hydrocarbons, or facilities located downstream of the wellhead connections installed either within or outside the Contract Area used to enhance, handle, process, or transport Hydrocarbons to processing facilities. Note that the Scope of Work may not fall outside of the scope of the Agreement as a consequence of these provisions being part of the Agreement.

1. **Definitions.**

   Except as otherwise provided in this Exhibit, capitalized terms used in this Exhibit shall have the meaning given to those terms in the Agreement. For purposes of this Exhibit, certain terms are defined as follows:

   “Integrated Project Team” or “IPT” means a group of employees and contract workers of the Participating Parties or of their respective Affiliates, selected under this Exhibit, who shall assist Operator in performing the Scope of Work.

   “Participating Parties” means for a Joint Operation, all Parties, and for an Exclusive Operation, the Consenting Parties.

   “Scope of Work” means those functions constituting part of a Joint Operation or an Exclusive Operation that are described in a separate memorandum issued by Operator, approved by the Operating Committee or issued by a Participating Party or Participating Parties with the necessary Participating Interests, as may be authorized under Section 4 of this Exhibit.

2. **Purpose.**

   The purpose of an IPT established under this Exhibit is to pool the talents and capacities of all Participating Parties in performance of the Scope of Work.

3. **Work to be Performed.**

   The performance of functions within the Scope of Work has been delegated by Operator and the Operating Committee (consisting of the Consenting Parties, in the case of an Exclusive Operation) to the IPT. The IPT shall carry out such functions under this Exhibit in a manner consistent with the Contract and the Law.

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2012 Model JOA Guidance Notes approved 12-02-17 w/ tech corrections
Guidance Note to Exhibit [ ] Section 4: Drafter should consider whether the Participating Parties need to sign this Scope of Work? Do they have a right to object (other than opposing a budgetary allocation for the IPT)?

(a) The Operating Committee by vote shall have the right to form an IPT. To that effect, any Participating Party or Participating Party desiring to propose an IPT to the Operating Committee must, at least [__] Days before the proposed commencement of activities by the IPT, deliver to all Participating Parties a memorandum describing in detail the anticipated Scope of Work to be undertaken by the IPT, the estimated type and number of staff required to complete that Scope of Work, the estimated duration of the project, and the estimated costs.

Optional Provision, Choose if Desired.

(b) In addition, any Participating Party or Participating Parties having a Participating Interest of at least [_______] percent (____%) shall have the right to propose the formation of an IPT. To that effect, at least [___] Days before the proposed commencement of activities by the IPT, the Participating Party or Participating Parties proposing formation of an IPT shall deliver to all Participating Parties a memorandum describing in detail the anticipated Scope of Work to be undertaken by the IPT, the estimated type and number of staff required to complete that Scope of Work, the estimated duration of the project, and the estimated costs. Concerning any IPT proposed by a Participating Party or Participating Parties under this Section,

Alternative Provision, Choose One

Alternative #1

Operator shall as soon as reasonably practicable approve (such approval not to be unreasonably withheld) or reject such IPT, considering the expertise and experience of Operator’s and other Participating Parties’ personnel and potential benefits of the IPT to the conduct of Joint Operations or Exclusive Operations, as applicable.

Alternative #2

the IPT shall be deemed approved provided the required percentage Participating Interest in this Section 4(C) is met.

Optional Provision, Choose if Desired.

(c) An Integrated Project Team may be formed only for a Scope of Work involving:

Alternative Provision, Choose One

Alternative #1

(i) preparation of a Development Plan;
(ii) design of above ground infrastructure provided for in a Development Plan;
(iii) procurement of above ground infrastructure provided for in a Development Plan; or
(iv) ______________________
**Alternative #2**

an operation exceeding $___________ in anticipated cost.

(d) If the IPT is approved under this Section, Operator shall proceed to implement the IPT as described herein, subject to the proposal complying with the other terms of this Exhibit. Creation of an IPT is contingent upon the Operating Committee’s authorization of the applicable expenditures in the applicable Work Program and Budget. No Participating Party shall have a right not to participate in an IPT properly approved under this Section regarding operations in which it is participating.

**Guidance Note to Exhibit [ ] Section 4(e):** Drafter should consider if a subgroup of Parties holding less than a passmark vote in the Operating Committee is entitled to form an IPT, should that same subgroup be entitled to pay the costs rather than obtain Operating Committee approval of funds in the Work Program and Budget? Otherwise, the Parties who oppose the IPT could effectively veto it by refusing to approve a budget for it.

(5) Project Manager.

The IPT shall have a Project Manager who shall be appointed by Operator and may be removed and replaced in the manner described in Sections 6 and 8. Operator shall appoint the first Project Manager promptly after approval of an IPT. The Project Manager as representative of Operator shall be responsible for directing, supervising, and overseeing the work of the IPT. Subject to the terms of this Exhibit and the Scope of Work and the decisions of the Operating Committee not in conflict with the Agreement, the Project Manager shall determine the manner, means and method in which the Scope of Work is performed by the IPT, and the locations where it is performed.

(6) Staffing.

(a) The Project Manager shall promptly prepare an organizational chart for the IPT and submit it to the Operating Committee for approval. Each Participating Party shall be entitled to nominate representatives as candidates to serve as members of the IPT, subject to the terms of the Agreement. All IPT members must have the required qualifications and experience commensurate with the scope of work assigned to the IPT and must be either employees or contract workers of a Participating Party or its Affiliates.

**Alternative Provision, Choose one**

**Alternative #1**

The Project Manager shall determine the staffing of the IPT from representatives nominated by each Participating Party, provided that the Project Manager shall use reasonable efforts to include one or more qualified representatives from each Participating Party who nominates such representatives.

**Alternative #2**

The Project Manager shall staff each position on the IPT with the nominee that the Project Manager considers the best for the position, considering the expertise and experience of each of the nominees, as well as their ability to work in a team, and the expertise and experience required for the position, without regard to employer.
ALTERNATIVE #3

The IPT shall be composed of representatives designated by each Participating Party in proportion to its respective Participating Interest in the relevant Joint Operation or Exclusive Operation; provided that the appointment of IPT members shall be a right and not an obligation for the Participating Parties. If a Participating Party fails or declines to designate all or any of its corresponding designees, the remainder shall be appointed by the other Participating Parties in proportion to their respective Participating Interests. The Project Manager shall determine which specific positions are filled by the representatives designated by each Participating Party, provided that the Project Manager shall use reasonable efforts to allocate positions at each level of seniority below the Project Manager among the representatives of the Participating Parties in rough proportion to each Participating Party’s Participating Interest, to the extent each Participating Party has made qualified individuals available.

(b) The Project Manager shall have the right at any time to terminate the participation of any IPT member if:

(i) the IPT member engages in serious misconduct or violates any substantive or material laws, that in the Project Manager’s reasonable judgment significantly impairs the IPT member’s ability to perform the IPT member’s role;

(ii) the IPT member breaches the confidentiality obligations under the Agreement, any confidentiality agreement signed by it regarding the IPT, or Section 20.1 of the Agreement;

(iii) the IPT member fails repeatedly to comply with directions given by the Project Manager or workplace rules, regulations, and policies applicable at the place he or she is working on IPT matters;

(iv) the IPT member after receiving notice of unsatisfactory performance fails to perform his or her role in a manner that in the Project Manager’s reasonable judgment is satisfactory; or

(v) the Participating Party who nominated the IPT member ceases to be a Participating Party.

Immediately after any termination, the Project Manager shall notify the Participating Party who nominated the IPT member, setting out the reasons for such termination. The Operating Committee by vote of Non-Operators holding a combined Participating Interest of at least ________ percent (___%) of the Participating Interest held by the Non-Operators may terminate the participation of the Project Manager on the grounds described in clauses (1) through (5) above.

(c) In the event of a vacancy, whether by resignation, removal, or otherwise, the vacant position shall be filled by:

ALTERNATIVE PROVISION, CHOOSE ONE

ALTERNATIVE #1

the Project Manager requesting nominations and following the same procedure as was followed for initial selection.
Alternative #2

the Participating Party who nominated the IPT member who resigned or was removed providing a replacement IPT member.

(d) Service on the IPT is not an exclusive commitment, and members may continue to perform other functions on behalf of the Participating Party provided that they do not materially interfere with such members’ duties regarding the IPT.

(e) Operator may neither solicit nor hire any IPT member during the period of the IPT or for a period of twenty-four (24) months after the termination of the IPT without obtaining the prior written consent of the nominating Participating Party.

Optional Provision, choose if desired.

(f) The Participating Party who nominated each IPT member shall require that IPT member to enter into a confidentiality agreement with Operator regarding the information obtained by such IPT member in connection with his or her work on the IPT.

(7) Status of and Responsibility for the IPT Members.

(a) The IPT members must be employees or contract workers of the Participating Parties or of their respective Affiliates at all times during their membership in the IPT. The Project Manager shall have no authority to terminate such employment or to administer disciplinary action regarding an IPT member, other than to terminate such member’s participation in the IPT as described in Section 6.

(b) The relevant Participating Party or Affiliate shall remain at all times responsible for their salaries, benefits, insurance, and any other compensation, as well as payroll taxes, government unemployment and similar assessments, workers’ compensation and employers’ liability insurance and any other direct costs that the employer must bear under applicable law.

(c) The relevant Participating Party or Affiliate shall be responsible for obtaining any work permits, visas, and other administrative authorizations required to allow its IPT members to work and reside in the location where the IPT work is being performed. Operator shall provide any assistance reasonably requested by such Participating Party in connection with obtaining such permits, visas and authorizations.

(d) IPT Members shall be entitled to vacation under the normal personnel policies of the relevant Participating Party or Affiliate. Vacation may only be taken after consultation with the Project Manager and is subject to the IPT’s reasonable operational requirements.

(e) If so requested, the Project Manager shall provide the relevant Participating Party or Affiliate with a summary of work accomplishments and a performance Appraisal Operations of the IPT member in the format that Operator uses to assess its employees.

(8) Withdrawal of an IPT Member.

A Participating Party shall have the right to withdraw any of its participants in an IPT with ___ Days prior notice to the Project Manager; provided, however that the removal shall not take effect until substitution of a replacement IPT member has taken place.
(9) Reports.

The Project Manager shall prepare and submit progress reports to the Operating Committee of the work assigned to the IPT.

**Alternative Provision, Choose One**

**Alternative #1**

Each Calendar Quarter

**Alternative #2**

Each month

**Alternative #3**

On the frequency determined by the Operating Committee, and a final report upon the completion of the Scope of Work.

(10) Costs.

(a) All costs of the IPT that are within the Work Program and Budget shall be charged to the Joint Account or the account maintained for Exclusive Operations, as applicable, under the Accounting Procedure, including the amounts paid by each Participating Party or its Affiliates with respect to its designee members during their participation in the IPT that would be chargeable by Operator under Section 2.2 of the Accounting Procedure if such members were its employees (prorated based on time sheets where the IPT member handles other functions during a given Day).

(b) Within fifteen (15) Days after the end of each Calendar Month, each Participating Party shall submit an invoice to Operator for reimbursement of such costs incurred during the prior month, accompanied, where applicable, by the relevant time sheet information. Within fifteen (15) Days of the receipt of each invoice, but no sooner than the fifteenth Day of the month after the month in which the costs were incurred, Operator shall pay the amount of the invoice to the Participating Party in __________ [insert currency] by wire transfer of immediately available funds.

(c) Operator shall pay all amounts invoiced in full, whether or not disputed, and waives any right of set off, provided that Operator’s payment of any charge shall be without prejudice to its right to later contest the charge. If Operator disputes all or any portion of an invoice, Operator and the applicable Participating Party shall confer as soon as practicable to resolve the Dispute. If the Dispute is resolved by negotiation, or by the process of Article 18 of the Agreement, in favor of Operator, such Participating Party shall refund the disputed amount, together with interest at the Agreed Interest Rate (as of the date the Dispute is resolved or decided) from the date paid until the date refunded.

(d) Any amounts not paid on or before the date due under this Exhibit shall bear interest from the date due until paid in full at the Agreed Interest Rate.

(11) Audit.

(a) The audit rights of the Participating Parties under the JOA shall include the right to audit the accounts pertaining to any IPT in which they are participating.
(b) In addition, any Participating Party may audit the records of another Participating Party relating to costs charged by the audited Participating Party under Section 10. The provisions of Section [1.8.3] of the Accounting Procedure shall apply mutatis mutandis to such audit, unless otherwise agreed by the Participating Parties. Should such charges be rejected under Section [1.8.3], such charges shall be charged back to the Participating Party who had originally charged them.

(12) Liabilities.

If any IPT member

**Optional Provision, choose if desired.**

who is a Senior Supervisory Personnel of the appointing Participating Party or its Affiliates, engages in Gross Negligence / Willful Misconduct that proximately causes the Parties to incur damage, loss, cost, or liability for claims, demands or causes of action resulting from the acts or omissions of the IPT member within the Scope of Work:

**Alternative Provision, choose one**

**Alternative #1**

the Joint Account (or, in the case of an Exclusive Operation, the account maintained for the Participating Parties)

**Alternative #2**

Operator, under Section 4.6

**Alternative #3**

the Non-Operator who nominated such member, to the extent Operator would be liable for such Gross Negligence/Willful Misconduct of its own employees under Article 4.6 of the Agreement

**Optional Provision, choose if desired.**

, but excluding cases where such member was acting at the express direction of the Operator or Project Manager,

shall bear such damage, loss, cost, or liability. In all other cases, Operator, on behalf of the Joint Account (or, in the case of an Exclusive Operation, the account maintained on behalf of the Participating Parties) and subject to the limitation on liability of Operator and indemnification rights of Operator under Article 4.6 of the Agreement, shall indemnify each Participating Party, its Affiliates and its and their directors, officers, and employees from any such damage, loss, cost, or liability resulting from the acts or omissions of the IPT member within the Scope of Work. The nominating Party shall indemnify Operator from any damage, loss, cost, or liability arising out of claims brought by or on behalf of a IPT member in respect of such member’s employment status, rights or conditions. Each indemnity obligation set out in this Section 12 shall apply even though such damage, loss, cost, or liability is caused in whole or in part by a pre-existing defect, any indemnitees’ sole or concurrent negligence (either active or passive) or strict liability, or other legal fault.
(13) Status of the IPT.

An IPT has no separate legal existence and for administrative purposes shall function as a part of Operator’s organization. An IPT is not an agent or other representative of any Party and has no authority to contract or bind or incur financial commitments on behalf of any Party. Though as part of performing the Scope of Work various members of the IPT may make decisions regarding matters within that scope, the IPT is not a deliberative body and shall not hold votes.

(14) Term.

The IPT shall remain in place until the earliest of (i) completion of the Scope of Work, (ii) decision of the Operating Committee to terminate the IPT by a vote under Article 5.9 of the Agreement, or (iii) [specify applicable date]. Upon dissolution of the IPT, Operator shall conduct any further work remaining within the Scope of Work which remains in the approved Development Plan and/or Work Program and Budget.

(15) Conflict of Agreements

In the event of a conflict between the terms of the Agreement and the terms of this Exhibit, the terms of the Agreement shall prevail.