

Navigating the Offshore Joint Operating Agreement Exhibits

OCS Advisory Board Summer Seminar

August 14, 2018

Agenda

- ▶ Offshore Joint Operating Agreement
- ▶ Purpose of JOA Exhibits
- ▶ Overview of JOA Exhibits
 - Primary Exhibits
 - Optional Exhibits
- ▶ Questions

Offshore Joint Operating Agreement

- ▶ Shelf Joint Operating Agreement (2002)
 - 27 Articles
- ▶ Deepwater Joint Operating Agreement (2015)
 - 26 Articles

Shelf JOA - Table of Contents

- ▶ ARTICLE 1 - APPLICATION
- ▶ ARTICLE 2 - DEFINITIONS
- ▶ ARTICLE 3 - EXHIBITS
- ▶ ARTICLE 4 - OPERATOR
- ▶ ARTICLE 5 - AUTHORITY AND DUTIES OF OPERATOR
- ▶ ARTICLE 6 - VOTING AND VOTING PROCEDURES
- ▶ ARTICLE 7 - ACCESS
- ▶ ARTICLE 8 - EXPENDITURES
- ▶ ARTICLE 9 - NOTICES
- ▶ ARTICLE 10 - EXPLORATORY OPERATIONS
- ▶ ARTICLE 11 - DEVELOPMENT OPERATIONS
- ▶ ARTICLE 12 - PLATFORM AND DEVELOPMENT FACILITIES
- ▶ ARTICLE 13 - NON-CONSENT OPERATIONS
- ▶ ARTICLE 14 - ABANDONMENT, SALVAGE, AND SURPLUS
- ▶ ARTICLE 15 - WITHDRAWAL
- ▶ ARTICLE 16 - RENTALS, ROYALTIES, AND OTHER PAYMENTS
- ▶ ARTICLE 17 - TAXES
- ▶ ARTICLE 18 - INSURANCE
- ▶ ARTICLE 19 - LIABILITY, CLAIMS, AND LAWSUITS
- ▶ ARTICLE 20 - INTERNAL REVENUE PROVISION
- ▶ ARTICLE 21 - CONTRIBUTIONS
- ▶ ARTICLE 22 - DISPOSITION OF PRODUCTION
- ▶ ARTICLE 23 - APPLICABLE LAW
- ▶ ARTICLE 24 - LAWS, REGULATIONS, AND NONDISCRIMINATION
- ▶ ARTICLE 25 - FORCE MAJEURE
- ▶ ARTICLE 26 - SUCCESSORS, ASSIGNS, [AND PREFERENTIAL RIGHTS]
- ▶ ARTICLE 27 - ADMINISTRATIVE PROVISIONS

Deepwater JOA - Table of Contents

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- ▶ ARTICLE 5 - RIGHTS AND DUTIES OF OPERATOR
- ▶ ARTICLE 6 - EXPENDITURES AND ANNUAL OPERATING PLAN
- ▶ ARTICLE 7 - CONFIDENTIALITY OF DATA
- ▶ ARTICLE 8 - APPROVALS AND NOTICES
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- ▶ ARTICLE 14 - FACILITIES AND GATHERING SYSTEMS
- ▶ ARTICLE 15 - DISPOSITION OF HYDROCARBON PRODUCTION
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- ▶ ARTICLE 17 - WITHDRAWAL FROM AGREEMENT
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- ▶ ARTICLE 19 - RENTALS, ROYALTIES, AND MINIMUM ROYALTIES
- ▶ ARTICLE 20 - TAXES
- ▶ ARTICLE 21 - INSURANCE AND BONDS
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- ▶ ARTICLE 25 - FORCE MAJEURE
- ▶ ARTICLE 26 - ADMINISTRATIVE PROVISIONS

JOA Exhibits “A” – “G”

- ▶ **Exhibit “A”** Description of Leases, Working Interests of the Parties, and Representatives
- ▶ **Exhibit “B”** Insurance Provisions
- ▶ **Exhibit “C”** Accounting Procedure
- ▶ **Exhibit “D”** Gas Balancing Agreement
- ▶ **Exhibit “E”** Certification of Non-Segregated Facilities
- ▶ **Exhibit “F”** Security Interest Provisions
- ▶ **Exhibit “G”** Project Team and Technology Sharing

JOA Exhibits “H” – “O”

- ▶ **Exhibit “H”** Dispute Resolution Procedure *(Optional)*
- ▶ **Exhibit “I”** Well Data Trade and Confidentiality Agreement
- ▶ **Exhibit “J”** Tax Partnership *(Under Certain Fact Situations)*
- ▶ **Exhibit “K”** Health, Safety and Environment
- ▶ **Exhibit “L”** Geophysical Operations Provisions *(Optional)*
- ▶ **Exhibit “M”** Memorandum of Operating Agreement - Generic *(Optional)*
- ▶ **Exhibit “N”** Memorandum of Operating Agreement and Financing Statement **(Optional)**
- ▶ **Exhibit “O”** Decommissioning Escrow/Security Agreement *(Optional)*

JOA Exhibit "A" - Description of Leases, Working Interests of the Parties, and Representatives



- ▶ **Preamble** - Whereas the Parties own one or more Leases, identified in Exhibit "A", and desire to explore, appraise, develop, and operate the Leases for the production of Hydrocarbons
- ▶ **Working Interest** - The record title leasehold interest or, where applicable, the operating rights of each Party in and to each Lease (expressed as the percentage provided in Exhibit "A"). If a Party's record title interest is different from its operating rights, the Working Interest of each Party is the interest provided in Exhibit "A."
- ▶ **Designation of Representatives** - The names, mailing and e-mail addresses, and telephone and facsimile numbers of a designated representative and alternate for each Party to whom notices or responses shall be directed, are provided in Exhibit "A." The designated representative and the alternate may be changed by written notice to the other Parties.

JOA Exhibit "A" - Description of Leases, Working Interests of the Parties, and Representatives



Article 8 - Approvals and Notices (Deepwater JOA) - (Article 9 - Shelf JOA)

▶ Section 8.7 (Giving and Receiving Notices and Responses)

- (a) Written Notices
- (b) Receiving Notices - Emails and Facsimile
- (c) Rig on Location - Oral/telephone
- (d) Effective Notice - Confirmation (Leaving messages/automatic responses)
- (e) Ineffective Notices

▶ Section 8.9 (Designation of Representatives)

- The designated representative and the alternate may be changed by written notice to the other Parties

JOA Exhibit “B” - Insurance Provisions

Article 21 Insurance and Bonds

- ▶ 21.1 Insurance - The Operator shall provide and maintain the insurance coverage specified in Exhibit “B” and charge those Costs to the Joint Account. No other insurance shall be carried for the benefit of the Parties under this Agreement unless otherwise agreed by the Parties.

- ▶ 21.2 Bonding - The Costs of those bonds or financial guarantees acquired exclusively for the conduct of activities and operations under this Agreement shall be charged to the Joint Account including an amount equivalent to the reasonable cost of that bond or financial guarantee if the Operator provides that bond or guarantee itself and does not engage a third party to do so. The Operator shall require all contractors to obtain and maintain all bonds required by an applicable law, regulation, or rule.

JOA Exhibit “B” – Insurance Provisions

Operator Required Insurance (chargeable to the Joint Account)

- ▶ Workers Compensation
- ▶ Employers Liability
- ▶ Other insurance or surety bonds required by law or regulations

Each Party’s Insurance

- ▶ Commercial General Liability
- ▶ Automobile Liability
- ▶ Operator’s Extra Expense
- ▶ All Risk Property Damage
- ▶ Aircraft Liability
- ▶ Vessel Charter Legal Liability
- ▶ Etc.

Self Insurance

- ▶ Operator
- ▶ Non-operator(s)



JOA Exhibit “C” – Accounting Procedure

- ▶ *Accounting Procedure* - Processes and procedures to be followed by all parties under a JOA regarding any costs and expenses incurred or accrued as a result of activity conducted under the terms and conditions of the JOA.
- ▶ The Council of Petroleum Accountants Societies, Inc. (COPAS) is a professional organization comprised of the oil and gas industry's most knowledgeable and influential accounting professionals. COPAS has operated as a non-profit entity for more than 50 years and has over 4,000 members with 24 societies in the United States and Canada. The COPAS organization is the creator and custodian of:
 - 2012 Deepwater Accounting Procedure
 - 2005 Shelf Accounting Procedure
 - Accounting Guidelines
 - Model Form Interpretations
 - Model Form Modifications

JOA Exhibit “D” – Gas Balancing Agreement

Gas Balancing Provision - If for any reason a Party fails to take or market its full share of gas as produced, the gas balancing and accounting between the Parties shall be handled under Exhibit “D” .

▶ Key components that must be considered:

- Who has the right to take in-kind?
 - Operator has the sole right to take in-kind
 - All working interest have the right to take their proportionate share
- How is balancing conducted?
 - Cash - Based on actual proceeds received from sale of gas
 - In-kind - Balancing is in-kind

JOA Exhibit “D” – Gas Balancing Agreement (continued)

▶ Key components that must be considered:

- When does balancing occur?
 - Monthly
 - Yearly
 - End of Lease/Unit

▶ Key Point: Work with your Down/Mid Stream Marketing Department to find out what is preferable for their administration of gas balancing issues.

JOA Exhibit “E” - Certification of Non-Segregated Facilities

26.4.3 Fair and Equal Employment - Each of the Parties is an Equal Opportunity Employer, and the equal opportunity provisions of 30 CFR 270 and 41 CFR 60-1 are incorporated in this Agreement by reference. The affirmative action clauses concerning disabled veterans and veterans of the Vietnam era (41 CFR 60-250) and the affirmative action clauses concerning employment of the handicapped (41 CFR 60-741) are also incorporated in this Agreement by reference. In performing work under this Agreement, the Parties shall comply with (and the Operator shall require each independent contractor to comply with) the governmental requirements in Exhibit “E” that pertain to non-segregated facilities.

JOA Exhibit “F” - Security Interest Provisions (Texas)

6.3 **Security Rights** - (Pertaining to properties located offshore adjacent to the State of Texas). In addition to any other security rights and remedies provided by law with respect to services rendered or materials and equipment furnished under this Agreement for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the covenants and mutual undertakings of the Operator and the Non-Operating Parties, herein, the Parties shall have the following security rights:

- (i) First Lien in Favor of the Operator
- (ii) Security Interest in Favor of the Operator
- (iii) First Lien in Favor of the Non-Operating Parties
- (iv) Security Interest in Favor of the Non-Operating Parties

JOA Exhibit “F” - Security Interest Provisions (Louisiana)

6.3 *Security Rights* - (Pertaining to properties located offshore adjacent to the State of Louisiana.) In addition to any other security rights and remedies provided by law with respect to services rendered or materials and equipment furnished under this Agreement, for and in consideration of the covenants and mutual undertakings of the Operator and the Non Operating Parties herein, the Parties shall have the following security rights:

- (i) Mortgage in Favor of the Operator
- (ii) Security Interest in Favor of the Operator
- (iii) Mortgage in Favor of the Non-Operating Parties
- (iv) Security Interest in Favor of the Non-Operating Parties

JOA Exhibit “F” - Security Interest Provisions (Louisiana)

▶ Things to consider?

- Louisiana requires that a actual mortgage amount be included in the Exhibit.
 - What is the dollar amount that should be included?
 - ▶ \$25,000,000
 - ▶ \$100,000,000
 - ▶ \$250,000,000
- When should the Security Agreement be filed?
 - Upon execution of the Agreement?
 - Upon discovery?
 - Upon sanction?
- Where do you file of record?

JOA Exhibit "G" -Project Team and Technology Sharing

- ▶ 2.63 *Project Team* - A group of employees, contractors, and/or consultants of the Participating Parties or their respective Affiliates, who assists the Operator in carrying out the scope of work for the Selection Stage, Define Stage, and Execution Stage and the scope of work under Articles 12.8 (*Post-Production Project Team AFEs*) and 12.11 (*Enhanced Recovery and/or Pressure Maintenance Program Proposals*).
- ▶ 12.3.1 *Proposal of a Project Team*..... If the Selection AFE proposes the formation of a Project Team, the formation and administration of that Project Team shall be handled under Exhibit "G."

JOA Exhibit "G" - Integrated Project Team Exhibit (with Technology Sharing Provisions)

- ▶ **1.4 Integrated Project Team ("IPT")**: shall mean the group of management, supervisory, technical and support personnel drawn from the staff of the Participating Parties or their respective Affiliates or contractors and assigned or time-writing to the IPT. The IPT shall assist in planning the efficient appraisal, development and operation of the Contract Area. An IPT shall be formed to assist in the preparation of any Development Plan for an Initial Production System or Subsequent Production System for the Contract Area pursuant to Article 12.0 (*Development Plans*) of the Operating Agreement.
- ▶ **1.1 Confidential Work Product**: shall mean all proprietary geophysical, geological, geochemical, drilling, engineering or other similar technical data, along with information, reports, studies, analysis, models or similar data and documents that are developed by the Integrated Project Team within the scope of its work or received from or on behalf of the Parties for use in the Integrated Project Team's work. The term shall include all proprietary information developed by the Integrated Project Team, the cost of which is charged to the Joint Account. The provisions of this Exhibit shall not be applicable to "Confidential Data", as that term is defined in the Operating Agreement.

JOA Exhibit “H” - Dispute Resolution Procedure *(Optional)*

22.11 Dispute Resolution Procedure - Any claim, controversy, or dispute arising out of, relating to, or in connection with this Agreement or an activity or operation conducted under this Agreement shall be resolved under the Dispute Resolution Procedure in Exhibit “H” ...

JOA Exhibit “I” - Well Data Trade and Confidentiality Agreement

7.2.1 Trades of Confidential Data - Any Participating Party may propose the exchange or trade of any Confidential Data or other similar data and information owned by a third party. Upon approval of said exchange or trade by Vote of the Participating Parties, that approval shall bind all Participating Parties, and the Operator shall utilize the Well Data Trade and Confidentiality Agreement in Exhibit “I” in order to consummate that exchange or trade with the third party. The Operator shall promptly provide all Participating Parties copies of the third-party data obtained along with copies of any agreement relating to that exchange or trade.

JOA Exhibit “J” – Tax Partnership (Under Certain Fact Situations)

20.1 Internal Revenue Provision - Notwithstanding any provision in this Agreement to the effect that the rights and liabilities of the Parties are several, not joint or collective, and that the Agreement and the activities and operations under this Agreement do not constitute a partnership under state law, each Party elects to be excluded from the application of all or any part of the provisions of Subchapter K, Chapter 1, Subtitle A, of the Internal Revenue Code of 1986, as amended, or similar provisions of applicable state laws regardless of whether for federal income tax purposes this Agreement and the activities and operations under this Agreement are regarded as a partnership.

.... In addition, if in the future, the Parties unanimously agree in writing not to be excluded from the application of all or any part of the provisions of Subchapter K, Chapter 1, Subtitle A, of the Internal Revenue Code of 1986, as amended, or similar provisions of applicable state laws, the tax partnership thus created shall be governed by the tax partnership provisions of Exhibit “J”.

JOA Exhibit “K” - Health, Safety and Environment

5.10 *Health, Safety and Environment* - With the goal of achieving safe and reliable activities and operations in compliance with all applicable laws and regulations, including avoiding significant and unintended impact on (i) the health or safety of people, (ii) property, or (iii) the environment, the Operator shall, with the support and cooperation of the Non-Operating Parties, while it conducts activities or operations under this Agreement:

- (a) design and manage activities or operations to standards intended to achieve sustained reliability and promote the effective management of HSE risks;
- (b) apply structured HSE management systems and procedures consistent with those generally applied in the petroleum industry to effectively manage HSE risks and pursue sustained reliability of operations under this Agreement; and
- (c) conform with locally applicable HSE related statutory requirements that may apply.

In fulfilling its duties and obligations hereunder, the Operator shall act in accordance with the provisions of Exhibit “K.”

JOA Exhibit “L” - Geophysical Operations Provisions *(Optional)*

Proprietary Geophysical Operations: Proprietary Geophysical Operations means the acquisition and initial processing of a geophysical survey which (1) exclusively covers all or a portion of the Contract Area, (2) is conducted solely on behalf of and for the benefit of the Participating Parties, and (3) is not a group-shoot or speculative geophysical survey, shallow hazard survey or velocity survey (or similar wellbore geophysical operation). Any Party may propose Proprietary Geophysical Operations at any time during the term of this Agreement.

JOA Exhibit “M” - Memorandum of Operating Agreement (Generic) *(Optional)*

The purpose of the Memorandum is to more fully describe the liens, mortgages, pledges and security interests provided for in the Operating Agreement, and to place third parties on notice thereof, and to restate, grant and convey the same to the extent required to perfect the same fully in accordance with applicable state law.

JOA Exhibit “N” - Memorandum of Operating Agreement & Financing Statement - Louisiana *(Optional)*

The purpose of the Memorandum is to more fully describe the liens, mortgages, pledges and security interests provided for in the Operating Agreement, and to place third parties on notice thereof, and to restate, grant and convey the same to the extent required to perfect the same fully in accordance with Louisiana state law.

JOA Exhibit “O” - Decommissioning Escrow/Security Agreement *(Optional)*

- ▶ Decommissioning Escrow/Security Agreement - To meet its decommissioning liability obligation Security requirements as stated in the Operating Agreement and applicable regulations, the Parties may agree to execute a Decommissioning Escrow/Security Agreement (“DSA”) similar in form to that which is attached as Exhibit “O”. If fully executed, and accepted as security by the appropriate government entity, this DSA shall satisfy the decommissioning Security requirements created under the Joint Operating Agreement for the accrued decommissioning liabilities described in the DSA. The Parties will have the right and option to execute separate DSAs covering different decommissioning liabilities accrued on or associated with operations conducted under the provisions of this Agreement. The Parties may from time to time amend any DSA created pursuant to this provision upon agreement of the Parties executing the DSA.

