**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

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| In re: | § | Chapter 11 |
| WEATHERLY OIL & GAS, LLC[1] | § | Case No. 19-31087 (MI) |
| Debtor. | § | |

**DEBTOR'S EMERGENCY MOTION FOR AUTHORITY TO ENTER INTO A NEW MANAGEMENT SERVICES AGREEMENT WITH WEATHERLY OPERATING, LLC**

**THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE. A HEARING WILL BE HELD TO CONSIDER THIS MOTION ON APRIL 9, 2019 AT 1:45 P.M. (CT) IN COURTROOM 404, 515 RUSK STREET, HOUSTON, TX 77002.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

The above-captioned debtor and debtor in possession (the "Debtor") respectfully states as follows in support of this motion (this "Motion"):

[1] The Debtor in this chapter 11 case, along with the last four digits of the Debtor's federal tax identification number, is: Weatherly Oil & Gas, LLC (4115). The Debtor's service address is: 777 Taylor St., Suite 902, Fort Worth, TX 76102.

## Relief Requested

The Debtor seeks entry of an order on an emergency basis, substantially in the form attached hereto as **Exhibit A** (the "Order") authorizing the Debtor to enter into a new Management Services Agreement by and between the Debtor and non-Debtor affiliate Weatherly Operating, LLC ("OpCo"),[2] effective as of March 1, 2019 (the "New MSA").

## Jurisdiction and Venue

1. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. The Debtor confirms its consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are §§ 105, 363 and 365 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code") and Bankruptcy Rule 6004.

## Background

4. The Debtor is an oil and gas acquisition and exploration company with a focus on the AR-LA-TX region. The Debtor operates over 800 well bores on 200,000 net acres. Of those well bores, over half are shut-in or are not producing. The Debtor also owns non-operating working interests in various wells. Across all regions, the Debtor's oil and gas production averages 28.4 million cubic feet equivalent per day.

[2] OpCo is an affiliate of the Debtor under Section 101 of the Bankruptcy Code solely because it is an entity that operates the business of the Debtor pursuant to an agreement.

5. On February 28, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief filed under chapter 11 of the Bankruptcy Code. The Debtor is operating its business and managing its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On March 15, 2019, the United States Trustee appointed an official committee of unsecured creditors in this case [ECF No. 102]. No request for the appointment of a trustee or examiner has been made.

6. In connection with the filing of the chapter 11 case, the Debtor entered into a Transaction Support Agreement dated February 28, 2019, by and among Company, OpCo, the Consenting Lenders, the Administrative Agent, Cargill and the Sponsors (each as defined therein) (the "TSA"), that provides the support of the Debtor's stakeholders for a sale of substantially all of the Debtor's assets, followed by confirmation of a chapter 11 plan.

**The Sale of the Debtor's Assets**

7. The Debtor initiated this chapter 11 case to stabilize its business operations and to maximize the value of its estate for the benefit of all its stakeholders through the sale of its assets in a private sale process (the "Sale Process"). As part of its prepetition restructuring initiatives, the Debtor conducted a significant marketing process to sell substantially all of its assets, including its Non-Core, Sligo Non-Op, Overton, SligoOp, Shelby, and Robertson & Leon assets (collectively, the "Assets").

8. Specifically, the Debtor, with the assistance of its sales agent, TenOaks Energy Partners, LLC ("TenOaks"), conducted an extensive campaign to market and sell certain oil and gas assets located in East Texas (the "Texas Assets") and North Louisiana (the "Louisiana Assets," and together with the Texas Assets, the "Marketed Assets") beginning on September 21, 2018. TenOaks offered the Texas Assets and Louisiana Assets to be sold together or separately. The process resulted in 47 separate parties executing confidentiality agreements in order to review

information related to the Debtor's assets and operations. Ultimately, the Debtor determined that the proposal from BRG Lone Star, Ltd. ("BRG") to acquire certain of the Texas Assets, referred to as the "Non-Core Assets" in the TSA, and a sale to EnSight IV Energy Partners, LLC ("EnSight") for certain of the Louisiana Assets, referred to as the "Sligo Non-Op Assets" in the TSA, were the highest or otherwise best offers received. The Non-Core Assets and Sligo Non-Op Assets are referred to as the "Group 1 Assets" in the TSA.

9. Unfortunately, the Debtor began experiencing disputes with certain vendors, which ultimately rendered the Debtor unable to consummate a purchase and sale agreement with common representations and warranties. The Debtor could not warrant that the Marketed Assets could be sold free and clear of liens, interests, and encumbrances, and potential buyers would not take the Marketed Assets subject to those liens. During this time of vendor disputes and delays, the Debtor and TenOaks remained engaged with BRG and EnSight regarding potential transactions, subject to obtaining the assets free and clear of all liens, claims, and encumbrances pursuant to Bankruptcy Code section 363(f).

10. On the Petition Date, the Debtor documented the sale of certain of the Group 1 Assets, as follows: (a) the Debtor and BRG executed a Purchase and Sale Letter Agreement (the "PSA") for the Debtor's sale of the Non-Core Assets to BRG for a purchase price of $6,150,000 (the "BRG Sale"); and (b) the Debtor and EnSight, the current operator of the Sligo Non-Op Assets, executed a Letter Agreement (the "Letter Agreement") for the Debtor's sale of the Sligo Non-Op Assets to EnSight for a purchase price of $11,650,000 (the "EnSight Sale"). In connection therewith, the Debtor filed motions for Court approval of its entry into the PSA [ECF No. 29] and the Letter Agreement [ECF No. 28], including (a) its entry into the PSA and the Letter Agreement, (b) the Debtor's sale of the applicable assets free and clear of liens, claims, interests, and

encumbrances, (c) the assumption and assignment of certain executory contracts associated with the Non-Core Assets, and (d) certain related relief. The PSA contemplates a closing date that is fourteen days after the Court's approval of the BRG Sale, and the Letter Agreement requires that the closing occur within fifteen business days following entry of the order approving the EnSight Sale. On March 26, 2019, the Court approved the EnSight Sale [ECF No. 149] and the BRG Sale [ECF No. 150].

## The Management Services Agreement

### A. The Terms of the Existing MSA.

11. As illustrated in the organizational chart contained in the Debtor's First Day Declaration [ECF No. 30, p. 3], the Debtor and OpCo are not commonly owned. The Debtor is owned 99.774% by Weatherly East Texas, LLC ("WET") and 0.226% by Weatherly Energy Capital, LLC ("WEC"). The Debtor's former CEO, Mr. Perry Reed, owns 100% of WEC and WEC, in turn, owns 100% of OpCo. Mr. Reed has no ownership interests in or control over WET or its direct or indirect equity sponsors; WET has no ownership interest in or control over either WEC or OpCo. That certain Management Services Agreement, dated as of August 31, 2017, by and between the Debtor and OpCo (the "Existing MSA"), was entered into at the same time as capital interests in the Debtor (representing 0.226% of the equity interests of the Debtor) and incentive interests in the Debtor were issued to WEC. This structure (*i.e.*, having services provided by a separate entity, owned by one or more management team members, to an asset holding company in which such management team member(s) indirectly hold incentive interests) is common in private equity funding arrangements and, among other things, permits certain risks, such as employer-related risks, to be shifted away from the asset holding company.

12. Pursuant to the Existing MSA, OpCo manages the day-to-day operations of the Debtor and implements the decisions and resolutions of the Debtor's Management Committee (*i.e.*,

the equivalent of the board of directors of the Debtor) with respect to the Debtor's business. OpCo's Services (defined below) directly support the Debtor's exploration and production revenue, which totaled approximately $34.7 million in 2018, and are critical to the ongoing operation of the Debtor's business. OpCo has approximately 42 employees.

13. The Debtor does not have any employees (including any management employees) of its own, and has historically relied upon OpCo for an array of services that are necessary to maximize stakeholder value. Accordingly, the Debtor relies upon OpCo and its personnel to, among other things (collectively, the "Services"):

(a) implement the current business plan and DIP Budget by developing, engineering, managing, supervising, operating, maintaining, or repairing the Debtor's assets, or causing the Debtor to enter into contracts to those ends,
(b) administer and maintain the Debtor's leases,
(c) maintain and update land records and databases relating to the Debtor's assets,
(d) generate, verify, or process all internal and external division orders and transfer orders required in the normal course of business,
(e) identify, pay, and invoice all rentals, shut-in payments, and other payments required by the Debtor's leases and other contracts relating to the Debtor's oil and gas interests, such as lease settlement, shut-in royalties, minimum royalties, payments in lieu of production, royalties, overriding royalties, production payments, net profit payments, and other similar burdens associated with the ownership and operation of the Debtor's oil and gas interests,
(f) identify, pay and invoice all rentals, surface and right of way payments required by the Debtor's leases and other contracts relating to the Debtor's oil and gas interests,
(g) engage with counterparties to continue, extend or renew the Debtor's leases,
(h) assist the Debtor with complying with and administering the Debtor's debt instruments and other contracts,
(i) perform accounting, bookkeeping, treasury and finance services, including billings, collections and cash management services,
(j) perform tax services,
(k) perform risk management services,
(l) maintain the Debtor's books and records and provide reports, statements, forecasts, notices and other items to be prepared for equity holders,
(m) manage compliance services, information technology, data processing services, or sales, processing and transportation of hydrocarbon production,
(n) prepare reports, filings and information required by law to be furnished to governmental authorities,
(o) assist with maintaining the Debtor as operator of record for the oil and gas interests it operates or has a reasonable likelihood of operating,

(p) give notice of any upcoming maintenance, repair, and modification projects that will cause material curtailment or interruption of deliveries of hydrocarbons from the Debtor's assets for more than 15 days,
(q) provide prompt written notice to the Debtor of any casualty loss, condemnation or taking with respect to the Assets;
(r) assist with preparation of sales materials with respect to the sale of any of the Debtor's assets, including coordinating with investment bankers, brokers, or other sale advisors, meeting with potential purchasers, and other activities as requested,
(s) coordinate with consultants and advisors engaged by the Debtor, and
(t) other duties as determined by the Debtor and agreed to by OpCo that are necessary to maximize stakeholder value.

14. Under the Existing MSA, the Debtor pays OpCo a modest $270,833 monthly fee for the General and Administrative Costs[3] which includes, among other things, the salaries of a multi-disciplinary corporate personnel team comprised of up to 17 individuals, rent and software costs (the "G&A Fee"). Pursuant to the Existing MSA, the Debtor also reimburses OpCo dollar-for-dollar for any third-party costs OpCo incurs in connection with the Services, including the wages, benefits, and payroll taxes for field employees, lease of fleet vehicles, and usage of fuel cards.

**B. Negotiations Resulting in the Terms of the New MSA.**

15. Prior to the commencement of this case, the Debtor, in consultation with its advisers, undertook a rigorous process to determine whether to seek to amend the Existing MSA or, alternatively, to reject the Existing MSA and develop its own internal corporate organization independent of OpCo. These efforts were necessary to create transparency and ensure that the Debtor's estate was not saddled with unnecessary expense solely due to the Debtor's corporate structure. At the conclusion of that process, the Debtor, in consultation with its advisers determined that the costs to stand up a new corporate organization independent of OpCo outweighed the benefits. For example, the Debtor determined that it may cost nearly triple the

[3] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the New MSA.

G&A Fee to hire a team to replace OpCo, and if it did, the Debtor would lose the institutional knowledge and corresponding stability that OpCo provides.

16. Accordingly, the Debtor, in a sound exercise of its business judgment, determined that the more prudent course of action was to seek to enter into a new MSA on more favorable terms. The Debtor's discussions with OpCo resulted in an agreement in principle on the material terms of a new MSA, as memorialized in the TSA. Under that iteration of the MSA, the parties agreed to reduce the G&A Fee by approximately $30,000 per month, from $270,833 to $240,000 per month, and to reserve a portion of the delta between the G&A Fee and OpCo's actual management salary costs to fund an incentive plan for OpCo's employees at no additional cost or expense to the Debtor.

17. Following the commencement of this case, the parties memorialized the modifications to the Existing MSA contemplated by the TSA in the New MSA.[4] The New MSA will provide several benefits to the Debtor. More specifically, the New MSA:

- further reduces the G&A Fee, such that all expenses incurred by OpCo in performing, or supporting the performance of the Services are ***passed through at cost***, including (i) salaries, wages, overtime, benefits, and payroll tax for management and field employees, (ii) rent, parking, and other overhead, (iii) oil and gas consultant fees, (iv) software and IT management, (v) bank service fees, (vi) lease of fleet vehicles, and (vii) usage of fuel cards;
- creates an incentive compensation structure that will align the Debtor's and OpCo's respective priorities, and under which CRO, in consultation with the Administrative

[4] Following the first day hearing, where the Court made some observations regarding the relationship between the Debtor and OpCo, the parties engaged in further discussions to address the Court's concerns. Those discussions were also incorporated into the New MSA.

Agent, will determine the maximum bonus for each Eligible OpCo Employee (defined below) if all milestones under the TSA are satisfied, and the quantum of bonus payments in the aggregate, with consent of the Administrative Agent (such consent not to be unreasonably withheld);

- requires that the Bonus Pool be held in escrow;
- funds an allowance of $50,000 to permit OpCo to pay for the fees and expenses of its counsel (necessary to ensure that the New MSA was negotiated at arms-length).

18. As revised, the New MSA allows the Debtor to obtain OpCo's Services with no mark-up, creating cost-efficiency and transparency. By preserving the existing corporate structure, the Debtor avoids the transition costs, distraction, and delay associated with attempting to hire away OpCo's personnel, and having to create the systems, functions and infrastructure necessary to onboard employees and take over operations required to maximize value in the ongoing sale process under the timeline required under the DIP loan and the TSA. In fact, the Debtor's analysis revealed that although possible, the Debtor would have ultimately been at a disadvantage had it sought to exit its relationship with OpCo. In addition to the effort required to lure away a critical mass of OpCo's employees, the Debtor would have had to offer OpCo's employees benefits (or reimbursement) at least equivalent to OpCo's current plans, obtain alternative office space and technology, and transfer the myriad contracts necessary to run the Debtor's operations (including fleet vehicles and fuel cards) from OpCo's name to the Debtor's. In light of the tight milestones governing this case, this was not a palatable approach.

19. For its part, OpCo will perform the Services, as well as any additional services related to the administration of this chapter 11 case and the Debtor's Sale Process, in exchange for less consideration, provided OpCo's employees are eligible for bonus payments under the

Incentive Plan (as defined below). The Debtor also may terminate the New MSA on 14-days' notice, providing greater flexibility than the termination right under the Existing MSA.

**C. The Debtor's and OpCo's Need to Incentivize Employee Performance.**

20. The Debtor's restructuring process has adversely affected employee morale. As a result, during the past year, four employees resigned from OpCo due to the overhang of the Debtor's restructuring process. At the same time, the Sale Process has increased OpCo's day-to-day responsibilities, requiring more work of fewer people and further depressing employee morale, while the Debtor's inevitable liquidation hangs overhead.

21. The Debtor's ability to preserve the value of the Assets, continue normal operations, and maximize recovery through the Sale Process hinges on OpCo's ability to maximize employee performance. The assistance of OpCo and its key employees during the Sale Process is vital if the Debtor is to receive the highest and best offers for the Assets and consummate such transactions and, thereby, maximize value for the benefit of its creditors and stakeholders.

22. Accordingly, to ensure that OpCo and its team's interests are sufficiently aligned with the Debtor's priorities and new obligations that have arisen following the commencement of this chapter 11 case, the New MSA provides potential bonus payments to eligible OpCo employees (the "Incentive Plan"). More specifically, the Incentive Plan is designed to: (a) maximize employee contributions to the Sale Process; (b) provide for the successful winding down of the Debtor's affairs; and (c) maximize the value of the Debtor's estate for the benefit of all creditors.

23. The Debtor and OpCo have identified nine (9) OpCo employees (the "Eligible OpCo Employees") whose institutional knowledge and skill are essential to the Debtor's efforts in this chapter 11 case, including the Sale Process. In addition to the Services typically provided by OpCo pursuant to the Existing MSA, the Eligible OpCo Employees will assume added management responsibilities in connection with the chapter 11 case and the Sale Process. Though

the Debtor and its advisors conducted a robust marketing effort prepetition, the Sale Process will continue during the chapter 11 case and will require extensive efforts by the Eligible OpCo Employees if it is to succeed.

24. Among other things, the Eligible OpCo Employees—under the direction of the Debtor's financial advisors—have been and will continue to be critical to negotiating and finalizing several potential transactions with respect to the Assets and closing any such transactions, attracting additional bidders, complying with diligence requests, and negotiating the terms of any additional bids for any of the Debtor's assets. The Eligible OpCo Employees will have to do this under the already-extraordinary pressures of running the Debtor's day-to-day business and dealing with the added demands of the chapter 11 case.

25. In exchange, the Eligible OpCo Employees may participate in the Incentive Plan which will allow them to receive bonuses based on a percentage of their salary upon the completion of certain milestones. The aggregate amount of the Incentive Plan is $242,500, and comes at no additional cost to the Debtor over and above what it would have paid under the Existing MSA.

26. As set forth in the New MSA, an overview of the Incentive Plan follows:

- **Participation:** A total of nine (9) Eligible OpCo Employees representing a cross-section of various functions necessary to run the Debtor's business, including managers, engineers, land administrators and landmen, field superintendents, and technicians. The Eligible OpCo Employees have salaries ranging from $80,000 to $225,000, a mean salary of $145,556, a median salary of $145,000.[5]
- **Cost:** The maximum cost of the Incentive Plan is $242,500.
- **Incentive Payments and Payment Schedule:** The Eligible OpCo Employees have been selected only if they meet one or more of the following criteria:
    - the OpCo employee is deemed critical to executing the sale and restructuring process due to unique knowledge of the business and leadership roles in the functional organization;

[5] As described in further detail below, one OpCo employee that is eligible for the Bonus Pool arguably qualifies as a statutory insider. The Debtor respectfully submits that section 503(c) of the Bankruptcy Code is inapplicable to the relief requested because the New MSA's compensation structure is designed to incentivize, not retain, employees.

- the OpCo employee is deemed to be a key member of management and/or operations and facilitates day-to-day functions of the Debtor's business; and
- the OpCo employee is deemed a retention risk.

| Salary Range | No. of Participants | Average Salary | Average Incentive Payment | Average % of Salary |
|---|---|---|---|---|
| >$160,000 | 2 | $212,500 | $45,000 | $21% |
| $120,001 to $159,999 | 4 | $148,750 | $26,250 | $18% |
| <120,001 | 3 | $96,667 | $15,833 | $16% |

- **Payment Dates**: Payments under the Incentive Plan shall be earned upon completion of the milestones delineated in the New MSA, and become payable on the effective date of any plan of reorganization or liquidation (the "Payout Date").
- **Eligibility**: Eligible OpCo Employees shall have an opportunity to earn bonuses from the Bonus Pool upon the completion of each milestone described below, payable upon the Payout Date, except that an Eligible OpCo Employee shall not be entitled to receive any bonus (x) unless such Eligible OpCo Employee diligently worked in good faith (in the sole discretion of CRO) towards achieving the Restructuring Transaction (as defined in the TSA) or (y) if such Eligible OpCo Employee is not employed by Service Provider on the Payout Date (clauses (x) and (y), together, "Ineligible Employees"), and provided further, that each Ineligible Employee's bonus amount (if any) shall revert to the Debtor on the Payout Date, the date of such Ineligible Employee's departure from Service Provider, or at the sole discretion of CRO, if the Plan Effective Date is not reached within one hundred twenty (120) calendar days of the Petition Date (as such milestone may be extended under the TSA), as applicable.
- **Milestones**: Each Eligible Employee may earn:
  - Fifteen percent (15%) of his or her Maximum Bonus, upon the Debtor having (i) commenced the chapter 11 case by the Petition Date, and (ii) filed the Financing Motion, TenOaks Retention Application, and the Vendor Payments Motion no later than one (1) calendar day after the Petition Date;
  - Fifteen percent (15%) of his or her Maximum Bonus, upon the Debtor, no later than one (1) calendar day after the Petition Date, having filed the Group 1 Sale Motions;
  - Fifteen percent (15%) of his or her Maximum Bonus, upon all assets on the Asset Repair List having been repaired, provided, that the cost of such repairs must not have exceeded the Asset Repair Budget Amount;
  - Forty-five percent (45%) of his or her Maximum Bonus, upon (i) the Group 1 Asset Sales having closed within forty-five (45) calendar days of the Petition Date and (ii) the Group 2 Asset Sales having closed within eighty-nine (89) calendar days of the Petition Date; and

- Ten percent (10%) of his or her Maximum Bonus, upon having worked ninety-five percent (95%) of all Business Days from the Petition Date to and including the Plan Effective Date, with certain key personnel only being eligible to earn this portion if all Eligible OpCo Employees satisfy this requirement.

27. The Incentive Plan is necessary to reward the key executive and employees for their efforts during the Sale Process and to ensure effective management during this critical time for the Debtor's business. Because the Incentive Plan is funded from the reduction in the G&A Fee that would have been due to OpCo under the Existing MSA over the course of the bankruptcy case, no additional consideration from the Debtor to OpCo is needed to fund the Incentive Plan.

## Basis for Relief

### A. Entry into the New MSA Is in the Debtor's Ordinary Course of Business Under Bankruptcy Code Section 363(c).[6]

28. Section 363(c) of the Bankruptcy Code provides that a debtor in possession "may enter into transactions . . . in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). The ordinary course of business standard embodied in this provision is intended to allow a debtor in possession the flexibility to run its business during its chapter 11 proceedings. *Moore v. Brewer (In re HMH Motor Servs., Inc.)*, 259 B.R. 440, 448-49 (Bankr. S.D. Ga. 2000). A debtor in possession may therefore use, sell, or lease property of the estate without the need for prior court approval if the transaction is in the ordinary course of business. *See In re Seatco, Inc.*, 257 B.R. 469 (Bankr. N.D. Tex 2001) (explaining that a debtor can enter into contractual obligations in the ordinary course of business without court approval*); Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612,

[6] The Debtor believes that entry into the New MSA is in the ordinary course of business. Nonetheless, out of an abundance of caution, the Debtor is filing this Motion seeking authority to enter into the New MSA.

616 (Bankr. S.D.N.Y. 1986) (holding that ordinary course of business use of estate property does not require a prior hearing); *Armstrong World Indus. Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.),* 29 B.R. 391, 394 (Bankr. S.D.N.Y. 1983) (holding that where a debtor in possession is merely exercising the privileges of its status, there is no general right to notice and a hearing concerning particular transactions conducted in the ordinary course of business).

29. The Bankruptcy Code does not define "ordinary course of business." *In re Commercial Mortg. & Fin. Co.*, 414 B.R. 389, 393 (Bankr. N.D. Ill. 2009). However, courts have clarified that the standard is meant "to embrace the reasonable expectations of interested parties of the nature of transactions that the debtor would likely enter in the course of its normal, daily business." *In re Roth American, Inc.*, 975 F.2d 949, 952 (3d Cir. 1992) (stating that section 363 of the Bankruptcy Code is designed to allow a debtor in possession "flexibility to engage in ordinary transactions without unnecessary . . . oversight"); *Med. Malpractice Ins. Assoc. v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997) (finding that "ordinary course of business" is meant "to embrace the reasonable expectations of interested parties of the nature of transactions that the debtor would likely enter in the course of its normal, daily business") (quoting *In re Watford*, 159 B.R. 597, 599 (M.D. Ga. 1993)); *In re Coordinated Apparel, Inc.*, 179 B.R. 40, 43 (Bankr. S.D.N.Y. 1995); *See also In re Cowin*, No. 13-30984, 2014 WL 1168714, at *40-41 (Bankr. S.D. Tex. March 21, 2014).

30. The two tests ordinarily applied by courts to determine the ordinary course of business are the "horizontal" test and the "vertical" test. *Denton Cnty. Elec. Co-Op., Inc. v. Eldorado Ranch (In re Denton Cnty. Elec. Coop., Inc.)*, 281 B.R. 876, 882 n.12 (Bankr. N.D. Tex. 2002). The "horizontal test" focuses on the way businesses operate within a given industry. *See*

*In re Patriot Place, Ltd.*, 486 B.R. 773, 793 (Bankr. W.D. Tex. 2013). The "vertical test" focuses on the expectations of creditors. *Id.* Entry into the New MSA satisfies both tests.

31. Under the horizontal test, management agreements like the New MSA are typical arrangements among companies in the Debtor's industry, particularly with operators backed by capital from private equity funds. Accordingly, the Debtor believes entry into the New MSA falls within the standard, ordinary course practice of companies in the oil and gas industry and should be permitted.

32. Under the vertical test, creditors' reasonable expectations of a debtor's "ordinary course of business" are based on the debtor's specific prepetition business practices and norms, and the expectation that the debtor will conform to those practices and norms while operating as a debtor in possession. *See In re Patriot Place*, 486 B.R. at 793*; In re Garofalo's Finer Foods, Inc.*, 186 B.R. 414, 425 (N.D. Ill. 1995). Thus, a fundamental characteristic of an "ordinary" postpetition business transaction is its similarity to a prepetition business practice. *See In re Patriot Place*, 486 B.R. at 793 ("The primary focus is on the debtor's pre-petition practices and conduct.")*; Marshack v. Orange Commercial Credit (In re Nat'l Lumber & Supply, Inc.)*, 184 B.R. 74, 79 (9th Cir. B.A.P. 1995); *James A. Phillips*, 29 B.R. at 394. The size, nature, and type of business, and the size and nature of the transactions in question, are all relevant to determining whether the transactions at issue are ordinary. *U.S. ex rel. Harrison v. Estate of Deutscher*, 115 B.R. 592, 598 (M.D. Tenn. 1990); *Johns-Manville Corp.*, 60 B.R. at 617. "Accordingly, a postpetition transaction undertaken by the debtor that is similar in size and nature to prepetition transactions undertaken by the debtor would be within the ordinary course of business." *Garofalo's*, 186 B.R. at 426.

33. The Debtor respectfully submits that its entry into the New MSA is an ordinary course transaction that is permitted without Court approval under Bankruptcy Code section 363(c). Among other things, the New MSA covers substantially similar Services as those provided under the Existing MSA, which the Debtor entered into in the ordinary course of business prepetition, and which is customary in this industry.

**B. Entry into the New MSA Is also Appropriate Under Bankruptcy Code Section 363(b).**

34. To the extent that the Debtor's entry into the New MSA implicates a transaction outside of the ordinary course of business, the Debtor submits that its entry into the New MSA satisfies Bankruptcy Code section 363(b). Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Courts apply the business judgment standard when evaluating transactions under section 363(b) of the Bankruptcy Code. *See ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, LLC)*, 650 F.3d 593, 601 (5th Cir. 2011) (citing *In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010)); *In re Global Home Prods., LLC*, 369 B.R. 778, 783 (Bankr. D. Del. 2007).

35. The business judgment rule shields certain debtor decisions—such as the continuation of the Debtor's prepetition compensation practices—from judicial second guessing. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F. 2d 1303, 1311 (5th Cir. 1985) ("More exacting scrutiny would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially."). Under the business judgment standard, so long as a debtor's decision is reasonable and in the best interests of the bankruptcy estate, courts generally defer to the business judgment of the debtor's management. *See Stanziale v. Nachtomi (In re Tower Air, Inc.)*, 416 F.3d 229, 238 (3d Cir. 2005) ("Overcoming the

presumptions of the business judgment rule on the merits is a near-Herculean task…it may be accomplished by showing either irrationality or inattention."); *In re Pisces Energy, LLC*, 2009 WL 7227880, at *6 (Bankr. S.D. Tex. 2009) ("In the absence of a showing of bad faith . . . the debtor's business judgment will not be altered."); *In re Global Home Prods., LLC*, 369 B.R. at 783 (applying the business judgment standard to transactions under section 363 of the Bankruptcy Code).

36. Section 105(a) of the Bankruptcy Code further provides that the court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Section 105(a) allows the bankruptcy court to "fashion such orders as are necessary to further the substantive provisions of the [Bankruptcy] Code." *Southmark Corp. v. Grosz (In re Southmark Corp.)*, 49 F3d 1111, 1116 (5th Cir. 1995) (explaining that the Court's broad powers must be exercised only within the confines of the Bankruptcy Code).

37. As noted above, at this juncture, the Debtor has limited options: (a) enter into the New MSA; (b) replace OpCo with higher cost providers; or (c) attempt to hire away OpCo's employees and incur greater expense to do so. The latter two options unnecessarily waste both time and money and would, at best—delay—or, at worst—cripple—the Sale Process, imperiling the Debtor's going concern value. Thus, the Debtor's entry into the New MSA at this time benefits the estate by locking in the favorable economic terms at virtually no premium, and ensuring that there is a knowledgeable and motivated team in place to usher the Debtor through the Sale Process while maximizing estate value. Accordingly, the Debtor's decision to enter into the New MSA is a sound exercise of its business judgment and is in the best interest of the Debtor, its estate, its creditors, and all parties in interest and, therefore, the Debtor's entry into the New MSA is appropriate under Bankruptcy Code section 363(b).

**C. The Incentive Plan Is Not Subject to Bankruptcy Code Section 503(a) or 503(c).**

38. One of the Eligible OpCo Employees is a statutory insider of the Debtor by virtue of his position as a member of the Debtor's Management Committee. Prior to the Petition Date, he also served as the Debtor's Chief Executive Officer and indirectly owns 0.226% of the Debtors' equity. During negotiation of the terms of the New MSA, he resigned from his position as the Debtor's Chief Executive Officer, retained separate counsel, and resumed negotiations with the Debtor at arms-length.

39. Because the Incentive Plan is funded from the consideration paid to OpCo under the Existing MSA, the Debtor believes the Incentive Plan is not subject to the requirements of Bankruptcy Code section 503(a) or 503(c). Nevertheless, out of an abundance of caution, the Debtor also submits that the Incentive Plan satisfies the standards under Bankruptcy Code section 503(c). Bankruptcy Code section 503(c)(1) restricts payments made to "insiders of the debtor for the purpose of inducing such person to remain with the debtor's business"—*i.e.*, those insider plans that are essentially "pay to stay" plans. *See, e.g.*, *In re Velo Holdings, Inc.*, 472 B.R. 201, 209 (Bankr. S.D.N.Y. 2012) (finding that an incentive-based plan alleviated the need for a section 503(c)(1) analysis); *In re Borders Grp., Inc.*, 453 B.R. 459, 471 (Bankr. S.D.N.Y. 2011) (finding that "the Debtors [had] met their burden of establishing that the [compensation program was] incentivizing, thereby alleviating the need for a section 503(c)(1) analysis") (quoting *In re Dana Corp.*, 358 B.R. 567, 584 (Bankr. S.D.N.Y. 2006)).

40. To be clear, because only one of the Eligible OpCo Employees is arguably a statutory "insider," it is not necessary to subject the non-insider participants to the enhanced scrutiny of Bankruptcy Code section 503(c)(1). As it relates to the one potential "insider," the Incentive Plan nevertheless satisfies Bankruptcy Code section 503(c)(1) because it is primarily incentivizing. Moreover, consistent with Bankruptcy Code section 503(c)(3), the Incentive Plan

is "justified by the facts and circumstances" and should be approved. The amount related to the one potential insider, if all benchmarks are satisfied by the individual in accordance with the Incentives Plan, is $40,000.

***i. The Incentive Plan Is Permissible Under Bankruptcy Code Section 503(c)(1) Because It Is Primarily Incentivizing Given the Difficult-to-Achieve Performance Metrics That Trigger Payments.***

41. The Incentive Plan is primarily incentivizing in nature in that the Eligible OpCo Employees must cooperate and assist in the bankruptcy process in order to meet the milestones. Bankruptcy Code section 503(c)(1) imposes limitations solely with respect to insider retention plans. *See* 11 U.S.C. § 503(c)(1). The provision does not apply to performance-based incentive plans, or to retention plans to non-insiders. *See, e.g.*, *Velo Holdings*, 472 B.R. at 209 (finding that an incentive-based plan alleviated the need for a section 503(c)(1) analysis); *Borders Grp.*, 453 B.R. at 471 (finding that "the Debtors [had] met their burden of establishing that the [compensation program was] incentivizing, thereby alleviating the need for a section 503(c)(1) analysis"); *In re Glob. Aviation Holdings Inc.*, 478 B.R. 142, 150 (Bankr. E.D.N.Y. 2012) (finding that section "503(c)(1) is inapplicable because [plan employees] are not insiders"). In determining whether an employee bonus plan is primarily incentivizing, courts consider whether the plan is "designed to motivate insiders to rise to a challenge or merely report to work." *In re Hawker Beechcraft, Inc.*, 479 B.R. 308, 313 (Bankr. S.D.N.Y. 2012).

42. The Incentive Plan incentivizes Eligible OpCo Employees to assist the Debtor's professionals with the myriad new tasks associated with operating as a debtor-in-possession while undergoing several consecutive and simultaneous asset sale processes. It further incentivizes the Eligible OpCo Employees to operate in a cost-effective manner—including completing asset repairs timely and within budget. The Incentive Plan creates maximum stability through the sale

process, and thus is in the best interests of the Debtor, its estate, its creditors, and all parties in interest. The Incentive Plan promotes the best possible outcome for creditors in a situation where the Eligible OpCo Employees might otherwise be focused on finding other employment opportunities.

43. Specifically, each of the milestones in the Incentive Plan represents a challenging—and meaningful—goal. The first and second milestones (requiring filing of certain of the Debtor's first day motions and sale motions by a date certain) have already been met, but required substantial effort from the Eligible OpCo Employees prepetition in the form of providing the Debtor with the diligence necessary to complete its first day motions. The third milestone requires that certain assets be repaired within budget, thereby incentivizing Eligible OpCo Employees to preserve and maintain the Debtor's assets while containing costs. The fourth, and largest percentage of the Maximum Bonus, is earned by ensuring that (i) the Group 1 Asset Sales close within forty-five (45) calendar days of the Petition Date, and (ii) the Group 2 Asset Sales close within eighty-nine (89) calendar days of the Petition Date. Those hurdles are far from "lay-ups." Closing the sales has required and will continue to require detailed institutional knowledge about the Assets that is simply not easily replicated—creating substantial additional work for the Eligible OpCo Employees, all while continuing to manage the Debtor's operations. Finally, the last 10% of the Maximum Bonus requires the Eligible OpCo Employees to work ninety-five percent (95%) of all Business Days from the Petition Date to and including the Plan Effective Date, ensuring that the Eligible OpCo Employees stay engaged instead of focused on their next endeavor. The Debtor believes that the successful achievement of these milestones will maximize the value of the Assets and thus, will maximize the return to the creditors.

44. In short, the milestones are not "lay-ups"; the milestones challenge OpCo's team to perform at the highest levels and to cooperate in facilitating the sale process. Because the Eligible OpCo Employees will receive payments under the Incentive Plan only upon the achievement of timing milestones, restructuring priorities, budget milestones, and ultimately, the efficient sale of Assets, the value-maximizing milestones of this program are no different in kind than a host of similar incentive-based compensation programs that bankruptcy courts in this district have consistently approved. *See, e.g.*, *In re Exco Resources, Inc.*, Case No. 18-30155 (MI) (Bankr. S.D. Tex. May 23, 2019); *In re CJ Holding Co.*, No. 16-33590 (Bankr. S.D. Tex. Nov. 4, 2016) (approving key employee incentive plan based on financial and operational metrics); *In re Midstates Petroleum Co., Inc.*, No. 16-32237 (Bankr. S.D. Tex. Aug. 12, 2016) (approving key employee incentive plan based on operational metrics); *In re Ultra Petroleum Corp.*, No. 16-32202 (Bankr. S.D. Tex. June 28, 2016) (approving key employee incentive plan based on operational metrics); *In re Greenhunter Resources, Inc.*, No. 16-40956 (Bankr. S.D. Tex. April 22, 2016) (approving key employee incentive plan based on financial metrics). The Incentive Plan should be approved.

***ii. The Incentive Plan Is Justified by the Facts and Circumstances of This Chapter 11 Case and Satisfies Bankruptcy Code Section 503(c)(3).***

45. The Debtor believes that the Incentive Plan is an ordinary course transaction. Even if the Incentive Plan is determined not to be in the ordinary course, however, the Debtor need only show that approval of the Incentive Plan is justified by the facts and circumstances of this chapter 11 case. This standard is essentially the same as the business judgment standard that is applied under section 363(b) of the Bankruptcy Code, and discussed at length above. *See Velo Holdings*, 472 B.R. at 212 ("Courts have held that the 'facts and circumstances' language of section 503(c)(3) creates a standard no different than the business judgment standard under section 363(b)."); *Dana*

*Corp.*, 358 B.R. at 576; *Glob. Home Prods.*, 369 B.R. at 783 ("If [the proposed plans are] intended to incentivize management, the [section 503(c)(3)] analysis utilizes the more liberal business judgment review under § 363."); *In re Mesa Air Grp.*, 2010 WL 3810899, at *4 (Bankr. S.D.N.Y. Sept. 24, 2010).

46. In determining whether a compensation plan satisfies the justified-by-the-facts standard under Bankruptcy Code section 503(c)(3), courts consider several factors, including: (a) whether the plan is calculated to achieve the desired performance; (b) whether the cost of the plan is reasonable in the context of a debtor's assets, liabilities, and earning potential; (c) whether the scope of the plan is fair and reasonable or discriminates unfairly among employees; (d) whether the plan is consistent with industry standards; (e) whether the debtor performed due diligence in investigating the need for the plan; and (f) whether the debtor received independent counsel in performing due diligence, creating, and authorizing the plan. *See Glob. Home Prods.*, 369 B.R. at 786 (setting forth the section 503(c)(3) factors noted above); *Dana Corp.*, 358 B.R. at 576–77 (noting various factors "courts consider . . . in determining if the structure of a compensation proposal and the process for developing the proposal meet the 'sound business judgment' test" under section 503(c)(3)). As set forth below, each of these factors favors approval of the Incentive Plan in this case.

(a) ***The Incentive Plan Is Calculated to Achieve the Desired Performance***. The Incentive Plan is designed to achieve value-driving operational and financial objectives as well as certain sale objectives in order to maximize value for stakeholders in a very challenging time for the Debtor's business. The Incentive Plan requires the Debtor to meet certain goals with respect to: (a) filing of key documents, (b) repairs and budgeting, and (c) successful and timely closing of asset sales. Finally, the Incentive Plan promotes employee stability throughout the bankruptcy and

sale process. Payments under the Incentive Plan are tailored to motivate the Eligible OpCo Employees to successfully drive the initiatives necessary to attain these goals. Indeed, these objectives were specifically chosen as both critical to achieving the desired performance here (maximization of value for all stakeholders) and also within the direct control of the Eligible OpCo Employees.

(b) ***The Cost of the Incentive Plan Is Reasonable***. The estimated total postpetition cost of the Incentive Plan at maximum payout levels is approximately $242,500.00 in the aggregate which amounts to less than 1% percent of the Debtor's revenue in 2018. The cost is reasonable in the context of the Debtor's assets, liabilities, and potential realization from asset sales. If the Debtor fails to meet the performance goals set forth in the Incentive Plan, the Eligible OpCo Employees are not entitled to receive a payout.

(c) ***The Scope of the Incentive Plan Is Fair and Reasonable***. The scope of the Incentive Plan is fair, reasonable, and does not discriminate unfairly among Eligible OpCo Employees. The Eligible OpCo Employees were carefully selected as those that could drive the company performance and the sale process. Following the Petition Date, certain participants were eliminated and others added after the Debtor had the benefit of time to gauge which OpCo employees were truly necessary and substantial contributors to the process going forward.

(d) ***The Incentive Plan Is Consistent with Market Practices***. The Debtor's financial advisors created the Incentive Plan in consultation with the Debtor, the Consenting Lenders, and Consenting Stakeholders—all parties to the TSA—so the Incentive Plan is uniquely tailored to the specific needs of this chapter 11 case. The Debtor's financial advisors also verified that the Incentive Plan is similar in structure, number, and scope to those of other companies in the E&P industry and in various other industries. In conducting their analysis, the Debtor's

professionals reviewed compensation programs implemented by other companies in the E&P industry. The Incentive Plan, like other programs in the E&P industry, relies heavily on multiple performance metrics. Based on this data, the Debtor's professionals concluded that the design, structure, and award opportunities available under the Incentive Plan are reasonable and consistent with industry and postpetition benchmarks.

(e) ***The Debtor Performed Due Diligence in Investigating the Need for the Plan***. The Incentive Plan was specifically crafted to address the needs of this particular case and negotiated at arms-length over an extended period of time. The Incentive Plan is designed to solve for an acute employee morale and motivation issue created by the Debtor's imminent liquidation. Because so much critical work remains to be done by a limited set of individuals in a very short period of time, the Eligible OpCo Employees must be appropriately incentivized and compensated. The Incentive Plan acknowledges and addresses that need in a deliberate and targeted manner.

(f) ***Whether the Debtor Received Independent Counsel in Performing Due Diligence, Creating, and Authorizing the Plan.*** As explained above, the Incentive Plan is the product of a rigorous arms-length negotiation with several constituencies party to the TSA. It is part and parcel of the TSA because all of the parties with the most at-stake here have recognized the need to align OpCo's employees with the overall value-maximizing goals of the bankruptcy process. In light of that, and the relatively small sum of the Bonus Pool, the Debtor believes it satisfies the procedural requirement that this element embodies.

47. For these reasons, the Debtor respectfully submits that continuing the Incentive Plan is a proper exercise of the Debtor's business judgment; is justified by the facts and circumstances of this chapter 11 case; and satisfies the requirements of Bankruptcy Code section 503(c)(3). The Incentive Plan will incentivize the Debtor's team to achieve financial results

needed to successfully steer the Debtor through this chapter 11 case and will result in value maximization that will inure to the ultimate benefit of all parties in interest. Accordingly, the Debtor respectfully requests that the Court issue an order approving and authorizing the Debtor to implement the Incentive Plan as part of the MSA.

**Request for Emergency Relief and Waiver of Bankruptcy Rules 6004(a) and 6004(h)**

48. The Debtor's first payment under the New MSA is contingent upon Court approval of this Motion, but must be funded by April 14, 2019 in order for OpCo to make its next semi-monthly payment to OpCo's employees on April 15, 2019. Therefore, to implement the foregoing successfully, and prevent hardship to OpCo's employees, the Debtor requests that the Court enter an order on an emergency basis approving the New MSA; providing that the notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtor has established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Reservation of Rights**

49. Nothing contained herein is intended or should be construed as (a) an admission as to the validity or priority of any claim or lien against the Debtor, (b) a waiver of the Debtor's rights to subsequently dispute such claim or lien on any grounds, (c) an implication or admission that any particular claim is of a type specified or defined in the Motion, or (d) a waiver of the Debtor's or any other party in interest's rights under the Bankruptcy Code or any otherapplicable law.

50. NoticeNotice of the hearing on the relief requested in this Motion has been provided by the Debtor in accordance and compliance with Bankruptcy Rules 4001 and 9014, as well as the Local Bankruptcy Rules, and is sufficient under the circumstances. Without limiting the forgoing, due notice was afforded, whether by facsimile, electronic mail, overnight courier or hand delivery, to parties-in-interest, including: (a) the Office of the United States Trustee for the Southern District of Texas; (b) entities listed as holding the 30 largest unsecured claims against the Debtor; (c) the

agent under the Debtor's prepetition credit facility; (d) the Office of the United States Attorney for the Southern District of Texas; (e) the state attorneys general for states in which the Debtor conducts business; (f) the Internal Revenue Service; (g) the Environmental Protection Agency and similar state environmental agencies for states in which the Debtor conducts business; (h) OpCo; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests that the Court enter the Order granting the relief requested in this Motion and granting such other and further relief as is appropriate under the circumstances.

Houston, Texas
March 31, 2019

/s/ *Matthew D. Cavenaugh*
Matthew D. Cavenaugh (TX Bar No. 24062656)
Elizabeth C. Freeman (TX Bar No. 240009222)
Kristhy M. Peguero (TX Bar No. 24102776)
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**PROPOSED COUNSEL FOR THE DEBTOR AND DEBTOR IN POSSESSION**

**Certificate of Service**

I certify that on March 31, 2019, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

*/s/ Matthew D. Cavenaugh*
Matthew D. Cavenaugh

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

| | | |
|---|---|---|
| In re: | § | Chapter 11 |
| WEATHERLY OIL & GAS, LLC[1] | § | Case No. 19-31087 (MI) |
| Debtor. | § | |

**ORDER AUTHORIZING THE DEBTOR TO ENTER INTO A NEW MANAGEMENT SERVICES AGREEMENT WITH WEATHERLY OPERATING, LLC**

(Relates to ECF No. ____)

Upon the motion (the "Motion")[2] of the above-captioned debtor and debtor in possession (the "Debtor") for entry of an order (this "Order") authorizing the Debtor to enter into the New MSA, substantially in the form attached hereto as **Exhibit 1**, effective as of March 1, 2019, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, creditors, and other parties in interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the

[1] The Debtor in this chapter 11 case, along with the last four digits of the Debtor's federal tax identification number, is: Weatherly Oil & Gas, LLC (4115). The Debtor's service address is: 777 Taylor St., Suite 902, Fort Worth, TX 76102.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Debtor's entry into the New MSA is authorized and approved, effective as of March 1, 2019.

2. The Debtor is authorized, but not directed, to pay all amounts payable to OpCo, in each case to the extent payable pursuant to, and on the terms and conditions set forth in the New MSA.

3. Notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a).

4. Notwithstanding entry of this Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.

5. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

6. The terms of this Order are subject to the *[Final DIP Order*] [ECF No. ___] and any other order entered in this chapter 11 case authorizing the Debtor to continue to use cash collateral or the Debtor's entry into a postpetition financing facility.

7. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

8. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Houston, Texas
Dated: April ___, 2019

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

New MSA

*Execution Version*

# MANAGEMENT SERVICES AGREEMENT

**BY AND BETWEEN**

**WEATHERLY OIL & GAS, LLC,**
**AS COMPANY,**

**AND**

**WEATHERLY OPERATING, LLC,**
**AS SERVICE PROVIDER**

**EXHIBIT 1**

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**EXHIBIT 1**

# MANAGEMENT SERVICES AGREEMENT

This MANAGEMENT SERVICES AGREEMENT (this "***Agreement***"), is entered into, effective as of March 1, 2019 (the "***Effective Date***"), by and between WEATHERLY OIL & GAS, LLC, a Delaware limited liability company ("***Company***"), and WEATHERLY OPERATING, LLC, a Texas limited liability company ("***Service Provider***"). Company and Service Provider are hereinafter each referred to as a "***Party***" and are collectively referred to as the "***Parties***").

## RECITALS

WHEREAS, Weatherly Energy Capital, LLC, a Delaware limited liability company, and sole member of Service Provider ("***Parent***"), is a party to that certain First Amended and Restated Limited Liability Company Agreement of Company, dated as of August 31, 2017, by and between Vortus and Parent (as amended, modified, supplemented or amended and restated from time to time, the "***LLC Agreement***"); and

WHEREAS, the Parties entered into a separate Management Services Agreement dated as of August 31, 2017, which shall terminate upon execution of this Agreement (the "***Existing MSA***"); and

WHEREAS, on February 28, 2019, Company filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "***Chapter 11 Case***"); and

WHEREAS, in connection with the filing of the Chapter 11 Case, Company entered into a Transaction Support Agreement dated February 28, 2019, by and among Company, Service Provider, the Consenting Lenders, the Administrative Agent, Cargill and the Sponsors (each as defined therein) (the "***TSA***"), that provides the support of Company's secured creditors and equity holders for a sale of substantially all of Company's assets via several sale transactions, followed by a liquidation pursuant to a plan to be consistent in form and substance with the TSA containing the agreed restructuring and recapitalization transactions with respect to Company's capital structure (such plan, the "***Plan***"); and

WHEREAS, as contemplated in and as part of the consideration provided by Service Provider in exchange for the rights more fully described in the TSA, and in connection with the filing of the Chapter 11 Case and the TSA, the Parties desire to enter into this Agreement to, among other things, (i) ensure continuity of service from Service Provider through the Term (as defined below) of this Agreement and to assist Company in accomplishing the objectives set forth in the TSA, (ii) reduce the amount of compensation (relative to the Existing MSA) paid by Company to Service Provider under Section 3.1 during the Term of this Agreement, (iii) establish an employee bonus program providing certain employees with an opportunity to earn bonuses upon the completion of certain milestones described in Section 3.7 below, payable on the Plan Effective Date by funds deposited by Service Provider into the Escrow Account (as defined below) as provided herein, and (iv) grant certain audit rights to CRO under Section 3.5; and

WHEREAS, pursuant to this Agreement, Service Provider shall, at the direction of Company's officers, act on behalf of Company, manage the day-to-day operations of Company's Business (as defined below), and perform certain other services on behalf of Company;

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## ARTICLE I
## DEFINITIONS

1.1. Definitions. All capitalized terms not otherwise defined herein shall have the meanings given them in the LLC Agreement. As used in this Agreement, the following terms and any form or tense of such terms shall have the respective meanings set forth below:

"***Action***" means any action, suit, arbitration, inquiry, proceeding, investigation, condemnation, or audit by or before any court or other Governmental Authority or any arbitrator or panel of arbitrators.

"***Administrative Agent***" means Angelo, Gordon Energy Servicer, LLC.

"***Affiliate***" means, with respect to any Person, a Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with, such Person.

"***Agreed Rate***" means 15% (or, if such rate is contrary to any applicable usury Law, the maximum rate permitted by such applicable Law).

"***Agreement***" is defined in the preamble.

"***Asset Repair Budget Amount***" means $153,000.

"***Asset Repair List***" means the Asset Repair List attached as **Exhibit A** to this Agreement.

"***Assets***" means, as of any date of determination, Company's right, title and interest at such time in all items of economic value owned or leased by Company, including Oil and Gas Interests, other real property, Facilities and other equipment and other tangible personal property, and Contracts, data and records, and other intangible personal property.

"***Audit Period***" is defined in Section 3.5(b).

"***Bonus Pool***" is defined in Section 3.1.

"***Business***" means activities conducted by Company with respect to the Assets.

"***Business Day***" means a day (other than a Saturday or Sunday) on which commercial banks in Houston, Texas, are generally open for business.

"***Business Hours***" means 9:00 a.m. to 5:00 p.m. CT of a Business Day.

"***Calendar Month***" means any of the months of the Gregorian calendar.

"***Calendar Year***" means a period of twelve (12) consecutive Calendar Months commencing on the first day of January and ending on the following 31st day of December, according to the Gregorian calendar.

"***Change of Control***" means, at any time, that the Weatherly Group has sold, transferred, conveyed or exchanged more than 50% of its aggregate Percentage Interest in Company as it existed on the Effective Date.

"***Chapter 11 Case***" is defined in the recitals.

"***Claim***" means any and all debts, losses, liabilities, duties, claims, damages, obligations, payments (including those arising out of any demand, assessment, investigation, settlement, judgment, or compromise relating to any actual or threatened Action), costs and reasonable expenses including any reasonable attorneys' fees and any and all reasonable expenses whatsoever incurred in investigating, preparing, or defending any Action, whether matured or unmatured, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, known or unknown.

"***Claim Notice***" is defined in Section 5.5(b).

"***Company***" is defined in the preamble.

"***Company Indemnified Parties***" is defined in Section 5.3.

"***Confidential Information***" is defined in Section 8.14(a).

"***Contracts***" means any written or oral contract or agreement, including an agreement regarding indebtedness, lease, mortgage, license agreement, purchase order, commitment, letter of credit or any other legally binding arrangement.

"***Control***" and its derivatives mean, with respect to any Person, the possession, directly or indirectly, of (a) the power to direct or cause the direction of the management and policies of a Person, whether by Contract or otherwise, (b) without limiting any other subsection of this definition, if applicable to such Person (even if such Person is a corporation), where such Person is a corporation, the power to exercise or determine the voting of more than fifty percent (50%) of the voting rights in such corporation, (c) without limiting any other subsection of this definition, if applicable to such Person (even if such Person is a limited partnership), where such Person is a limited partnership, ownership of a majority of the equity of the sole general partner of such limited partnership, or (d) without limiting any other subsection of this definition, if applicable to such Person, in the case of a Person that is any other type of entity, the right to exercise or determine the voting of more than fifty percent (50%) of the Equity Interests in such Person having voting rights, whether by Contract or otherwise.

"***CRO***" means the individual employed by Ankura Consulting Group, LLC, in that individual's capacity as Chief Restructuring Officer of Company.

"***DIP Budget***" means that certain DIP Budget, attached as Exhibit 2 to the Financing Motion, as may be amended from time to time.

"***Effective Date***" is defined in the preamble.

"***Eligible Employees***" means the employees of Service Provider designated by the CRO.

"***Emergency***" means any emergency outside of the reasonable control of Service Provider that Service Provider reasonably believes endangers property, lives or the environment.

"***Equity Interests***" means, with respect to any Person, (a) capital stock, membership interests, partnership interests, other equity interests, rights to profits or revenue and any other similar interest in such Person, (b) any security or other interest convertible into or exchangeable or exercisable for any of the foregoing, whether at the time of issuance or upon the passage of time or the occurrence of some future event, and (c) any warrant, option or other right (contingent or otherwise) to acquire any of the foregoing.

"***Escrow Account***" means the account maintained by Escrow Agent with respect to the Bonus Pool.

"***Escrow Agent***" means Texas Capital Bank, N.A., a national banking association.

"***Facilities***" has the meaning set forth in the definition of "Oil and Gas Interests".

"***Financing Motion***" means the Debtor's Emergency Motion for Entry of Interim and Final Orders (a) Authorizing Limited Use of Cash Collateral, (b) Obtaining Post-Petition Credit Secured by Senior Liens, (c) Granting Adequate Protection, (d) Scheduling a Final Hearing and (e) Granting Related Relief, filed at ECF No. 26 in the Chapter 11 Case.

"***Field and Operations Employee***" means each of Paul Knetsch, Erik Knetsch and Rick Knetsch.

"***Force Majeure Event***" means any event not reasonably within the control of the Party claiming the force majeure, including the following to the extent such events are not reasonably within the control of the Party claiming the force majeure: act of God, act of the public enemy, war, blockade, public riot, act of terrorism, lightning, fire, storm, flood, earthquake or other act of nature, explosion, governmental action (including changes in Laws, regulations or policies with the effect of Law or, in each case, the enforcement thereof), and governmental delay or restraint (including with respect to the issuance of permits); provided, however, that a "Force Majeure Event" shall not (a) include lack of financing or funds, or (b) apply to the extent affecting only such Party's or such Party's Affiliate's employees, any strike, work stoppage or other organized labor difficulty.

"***GAAP***" means United States generally accepted accounting principles.

"***Governmental Authority***" means any federal, state, local, municipal, tribal or other government; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, regulatory or taxing authority or power; and any court or governmental tribunal, including any tribal authority having or asserting jurisdiction.

"***Group 1 Assets***" means the "Non-Core" and "Sligo Non-Op" assets.

"***Group 1 Asset Sales***" means the sale of the Group 1 Assets.

"***Group 1 Sale Motion***" means any motion filed in the Chapter 11 Case seeking approval of the sale of the Group 1 Assets.

"***Group 2 Assets***" means each of the "Overton," "Sligo Op," "Shelby," and "Robertson & Leon" assets, and any other asset for which a purchase and sale agreement or other transaction agreement is entered into.

"***Group 2 Asset Sales***" means the sale of the Group 2 Assets.

"***Hydrocarbons***" means oil, gas, casinghead gas, coal bed methane, condensate and other gaseous and liquid hydrocarbons or any combination thereof.

"***Indemnified Party***" is defined in Section 5.5(a).

"***Indemnifying Party***" is defined in Section 5.5(a).

"***Ineligible Employees***" is defined in Section 3.7.

"***Intellectual Property***" means the following intellectual property rights, both statutory and under common law: (a) works of authorship and copyrights, registrations and applications for registration thereof and all associated renewals, (b) trademarks, service marks, trade names, slogans, domain names, logos, trade dress, and registrations and applications for registrations thereof, (c) inventions and patents, as well as any reissued and reexamined patents and extensions corresponding to the patents, and any patent applications and disclosures, as well as any related continuation, continuation in part and divisional applications and patents issuing therefrom, (d) trade secrets and confidential information, including ideas, designs, concepts, compilations of information, methods, techniques, procedures, processes and other know-how, whether or not patentable, (e) mask works and registrations and applications therefor, (f) rights in industrial and other protected designs and any registrations and applications therefor, and (g) all rights to sue or otherwise recover for past, present and future infringements, misappropriations, dilutions, and other violations of any of the foregoing.

"***Insurance Motion***" means the Debtor's Emergency Motion for Entry of an Order (a) Authorizing the Debtor to (i) Continue Prepetition Insurance Coverage and Satisfy Prepetition Obligations Related Thereto, (ii) Renew, Supplement, and Enter into New Insurance Policies, and (iii) Continue and Renew Surety Bond Program, and (b) Granting Related Relief, filed at ECF No. 22 in the Chapter 11 Case.

"***Key Personnel***" means Perry Reed.

"***Law***" means any constitution, decree, resolution, law, statute, act, ordinance, rule, directive, order, treaty, code or regulation and any injunction or final non-appealable judgment or any interpretation of the foregoing, as enacted, issued or promulgated by any Governmental Authority.



**EXHIBIT 1**

"***Leases***" has the meaning set forth in the definition of "Oil and Gas Interests".

"***LLC Agreement***" is defined in the recitals.

"***Loss***" and "***Losses***" are defined in Section 5.2.

"***Maximum Bonus***" means the maximum bonus each Eligible Employee may earn if all of the milestones in Section 3.7 occur. For the avoidance of doubt, CRO shall consult with Administrative Agent with regard to the Maximum Bonus for each Eligible Employee, and the amount of such payments individually and in the aggregate must be consented to by Administrative Agent, such consent not to be unreasonably withheld. The aggregate amount of the Maximum Bonus for all Eligible Employees shall not exceed the product of $60,625 *times* the number of Calendar Months that Service Provider provides services under this Agreement commencing with the March 2019 Calendar Month, which the total amount for the four-month Term of this Agreement is $242,500.

"***Oil and Gas Interest***" means (a) (i) any oil and gas lease or oil, gas and mineral lease and interests in such leases (including leasehold interests, royalty and overriding royalty interests and production payments), any mineral fee interests and any other mineral or royalty interests, and (ii) all rights and interests in lands and leases pooled, unitized or communitized with any such leases or mineral interests (the foregoing, collectively, "***Leases***") and options to acquire the same, (b) any wells or future wells located on a Lease, (c) any oil, gas or mineral unitization, pooling, operating or communitization Contracts, declarations or orders, and any interests in the units created thereby, (d) any oil and gas sales, purchase, transportation, gathering, balancing, exchange and processing Contracts, any casinghead gas Contracts, any operating agreements, farmout agreements, farmin agreements, saltwater disposal agreements, water injection agreements or line well injection agreements, (e) any road use agreements, surface use agreements, rights of way, easements, licenses, permits, surface leases and other agreements and instruments relating to Leases, other real property or the production of Hydrocarbons therefrom, (f) any personal property, improvements, lease and well equipment, pipelines, pumps, sulfur recovery facilities, dehydration facilities, treating facilities, valves, meters, separators, tanks, tank batteries, and other fixtures located on, attributable to, or used in connection with any other Oil and Gas Interest (such items being referred to in this Agreement as "***Facilities***"), and (g) any land and lease files, abstracts and title opinions, production records, well files, accounting records, tax records, seismic records and surveys, gravity maps, electric logs, engineering, geological or geophysical maps, data, and records, and other files, documents and records related to any other Oil and Gas Interest.

"***Parent***" is defined in the recitals.

"***Party***" and "***Parties***" are defined in the preamble.

"***Payout Date***" means the Plan Effective Date.

"***Person***" means any individual, corporation, company, partnership, limited partnership, limited liability company, trust, estate, Governmental Authority or any other entity.

"***Petition Date***" means February 28, 2019.

"***Plan***" is defined in the recitals.

"***Plan Effective Date***" means the date upon which all conditions to the effectiveness of the Plan have been satisfied or waived in accordance with the terms thereof and the TSA.

"***Reasonable and Prudent Service Provider***" is defined in Section 2.8.

"***Required Coverage***" is defined in Section 5.7(a).

"***Service Costs***" means (i) the normal, customary and reasonable expenses and costs actually incurred by Service Provider in a Calendar Month during the Term related to (a) salaries, wages, overtime, benefits, and payroll tax for management and field employees, (b) rent, parking, supplies, and other overhead, (c) oil and gas consultant fees, (d) software and IT management, (e) bank service fees, (f) lease of fleet vehicles, (g) usage of fuel cards, (h) fees paid by Service Provider to regulatory agencies on behalf of Company, (i) tax return preparation costs, (j) travel related expenses in connection with attendance at proceedings in the Chapter 11 Case, and (k) such other expenses and costs approved by the CRO in the CRO's sole discretion, to the extent and only to the extent required to perform, or supporting the performance of, the Services for such Calendar Month and (ii) $60,625 for each of the April, May and June 2019 Calendar Months. For the avoidance of doubt, the Service Costs in item (i) above shall be billed to or reimbursed by the Company at cost.

"***Service Fee***" is defined in Section 3.1.

"***Service Provider***" is defined in the preamble.

"***Service Provider Indemnified Parties***" is defined in Section 5.2.

"***Services***" is defined in Section 2.1.

"***TenOaks***" means Ten Oaks Energy Partners, LLC.

"***TenOaks Retention Application***" means a retention application filed in the Chapter 11 Case seeking to retain TenOaks as sales agent.

"***Term***" is defined in Section 4.1.

"***Termination Effective Date***" means the date of the termination of this Agreement in accordance with the terms hereof.

"***Third Party***" means a Person other than a Party or its Affiliates (or, in the case of Service Provider, other than any member of the Weatherly Group).

"***Third Party Claim***" is defined in Section 5.5(b).

"***TOAIA***" means the Texas Oilfield Anti-Indemnity Act, Tex. Civ. Prac. & Rem. Code 127.001 et seq., as amended.

"***Transferred Assets***" is defined in Section 4.5.

"***TSA***" is defined in the recitals.

"***Vendor Payments Motion***" means any motion seeking authority to pay certain creditor obligations, in full satisfaction of such creditor obligations, to designated lien creditors or vendors whose services are critical to maintaining the value of Company.

"***Weatherly Group***" means Service Provider, Parent, Key Personnel and such Persons' respective Affiliates.

## ARTICLE II
## POWER AND AUTHORITY; SERVICES

2.1. Service Provider Power and Authority; Services. Service Provider shall have the responsibility for assisting the CRO in the day-to-day management of Company's Business and implementation of all decisions and resolutions of the Management Committee with respect to Company's Business, subject to and in accordance with the terms of this Agreement, the LLC Agreement and the DIP Budget. In connection therewith and subject to the limitations set forth in Section 2.3, Service Provider shall provide the following services, some of which have been provided by Service Provider prior to the Petition Date and approval of this Agreement by the Bankruptcy Court (the "***Services***") (in each case (x) relating to Company's Business, (y) subject to the availability of cash funds of Company and (z) to the extent not prohibited under applicable Law):

(a) implementing the DIP Budget, including, subject to Section 2.3:

(i) causing Company to enter into Contracts in accordance with the DIP Budget or as otherwise approved by the Management Committee; and

(ii) performing all actions necessary or appropriate to develop, engineer, manage, supervise, operate, maintain and repair the Assets, in each case, in accordance with the DIP Budget or as otherwise approved by CRO;

(b) administering and maintaining all Leases included in the Assets;

(c) maintaining and updating all land records and databases relating to the Oil and Gas Interests included in the Assets;

(d) generating, verifying and processing all internal and external division orders and transfer orders required in the normal course of business;

(e) identifying, paying and appropriately invoicing all rentals, shut-in payments and other payments required by the Leases or other Contracts relating to such Oil and Gas Interests, including lease settlement, shut-in royalties, minimum royalties, payments in lieu of production, royalties, overriding royalties, production payments, net profit payments and other similar burdens that are associated with the ownership and operation of such Oil and Gas Interests;

(f) identifying, paying and appropriately invoicing all rentals, surface and right of way payments required by the Leases or other Contracts relating to such Oil and Gas Interests;

(g) continuing, in the ordinary course of business, extension or renewal of Leases included in the Assets;

(h) to the extent applicable, assisting Company to comply with and administer Company's debt instruments and other Contracts, including marketing Contracts;

(i) assisting in any liquidation process of Company;

(j) performing accounting, bookkeeping, treasury and finance services, including billings, collections and cash management services;

(k) performing tax services, including providing prompt written notice to Company and the Management Committee of any and all notices it receives from the Internal Revenue Service concerning Company;

(l) performing risk management services, including management of the procurement of insurance as approved by Company;

(m) in accordance with Article 8 of the LLC Agreement, maintaining, on behalf of Parent, in its capacity as Administrative Member, Company's books and records and providing, or causing to be provided, the reports, statements, forecasts, notices and other items set forth in Section 8.3 of the LLC Agreement to be prepared and/or provided by Parent, in its capacity as Administrative Member;

(n) performing and managing matters relating to:

(i) compliance services with respect to applicable Laws and Contracts;

(ii) information technology and data processing services; and

(iii) sales, processing and transportation of Hydrocarbon production;

(o) providing prompt written notice to Company of any Action or Claim that is asserted against the Assets, Company or, to the extent related to the Assets or the Services, Service Provider;

(p) preparing and furnishing to the requisite Governmental Authority, as well as to Company, all reports, filings and information required by Law to be furnished to such Governmental Authority in connection with the ownership by Company, or the operation of, the Assets;

(q) in each case, in accordance with the terms and conditions of this Agreement, including Section 2.3:

(i) negotiating, executing, modifying, administering, and extending, on behalf of Company, and causing Company to enter into, Contracts necessary in order for Service Provider's fulfillment of its obligations under this Section 2.1 or as otherwise directed by the Management Committee; and

(ii) maintaining, materially complying with (to the extent within the control of Service Provider) and enforcing (subject to obtaining Company's approval prior to instigating any suit or proceeding on behalf of Company) all Contracts that (1) are entered into by Company at Service Provider's direction or otherwise, if such Contract has been provided to Service Provider, and (2) relate to the Assets or to Service Provider's fulfillment of its obligations under this Section 2.1;

(r) taking appropriate actions and providing Company appropriate assistance reasonably necessary to install and maintain Company as operator of record for those Oil and Gas Interests which Company (and Service Provider through this Agreement) operates or would have a reasonable likelihood of operating under applicable Contracts relating to such Oil and Gas Interests;

(s) providing prompt written notice to Company of any upcoming maintenance, repair and modification projects that will result in any material curtailment or interruption of deliveries of Hydrocarbons from the Assets of more than fifteen (15) days;

(t) at the request of Company: (i) assisting Company with the preparation of sales materials with respect to the sale of any Assets of Company or the sale of any Equity Interests of Company; (ii) coordinating with investment bankers, brokers or other sale advisors in connection with setting up a data room and creating other materials in connection with any such sale process; (iii) meeting with potential purchasers and their financial advisors to discuss the Business of Company and the Assets of Company; and (iv) participating in such other activities associated with any such sales process that may be reasonably requested by Company;

(u) at the request of Company, coordinating with, assisting and otherwise operating as a liaison between Company and any consultants engaged by Company, including banks, legal advisors, lenders, financial services institutions, brokers, brokerage firms and reserve engineers;

(v) providing prompt written notice to Company of any casualty loss, condemnation or taking with respect to the Assets;

(w) assisting Company in achieving the milestones described in the TSA and herein;

(x) responding to information requests from the CRO and Company's counsel in the Chapter 11 Case and otherwise coordinating with the CRO and such counsel; and

(y) performing such other duties as may be determined from time to time by Company and CRO, and agreed to by Service Provider.

Notwithstanding anything herein to the contrary and for the avoidance of doubt (A) the Services shall not require Service Provider to be the operator of record of any of the Oil and Gas Interests held by Company, and (B) in no event shall Service Provider ever permit itself to be named operator of record of any Oil and Gas Interests held by Company.

2.2. Emergency. Service Provider shall take any and all actions required or appropriate in response to an imminent Emergency, and all such actions shall be considered within the scope of the Services to be provided by Service Provider under this Agreement. Notwithstanding anything to the contrary in this Agreement, in the case of an imminent Emergency, while acting as a Reasonable and Prudent Service Provider, Service Provider may, without any prior notice to, or approval from, Company, take such steps and incur such costs and expenses that, in Service Provider's reasonable opinion, are required to deal with such imminent Emergency, including the safeguarding of life and property. In such event, Service Provider shall use commercially reasonable efforts to notify Company of the existence or occurrence of such an imminent Emergency as soon as possible after the Emergency occurs, but in any event within twenty-four (24) hours of its being put on notice of such an imminent Emergency, setting forth the nature of the imminent Emergency, the corrective action taken or proposed to be taken, and the actual or estimated cost and expense associated with such corrective action. In addition, in the event of an imminent Emergency, Service Provider may, after using commercially reasonable efforts to obtain Company's prior approval of any such press release, issue such press releases or other public announcements as it deems reasonably necessary, while acting as a Reasonable and Prudent Service Provider, in light of the circumstances and shall promptly thereafter provide Company with a copy of any such press release or other public statement.

2.3. Limitations on Service Provider's Authority.

(a) Notwithstanding anything herein to the contrary, only with the prior written approval of Company may Service Provider:

(i) cause or direct Company to enter into Contracts with Third Parties, subject to Section 2.3(b), and make any modifications, amendments or extensions thereto, as may be necessary for Service Provider to perform the Services and fulfill its obligations (other than indemnification obligations) under this Agreement, in each case, to the extent any such Contract is (A) contemplated in the DIP Budget, or as otherwise approved by CRO, (B) not likely to result in annual (I) obligations of Company in excess of five hundred thousand dollars ($500,000), in the aggregate, or (II) revenues to Company in excess of five hundred thousand dollars ($500,000), in the aggregate (other than any such revenue generating Contracts that may be terminable without penalty or liability on sixty (60) days or less notice) or (C) required in connection with Service Provider's response to an imminent Emergency pursuant to Section 2.2; and

(ii) subject to Section 2.3(b), to the extent that Service Provider or another member of the Weatherly Group serves as the Tax Matters Member under the LLC Agreement, take such actions as are necessary for such Person to fulfill its duties in such capacities.

(b) Without the prior written approval of Company, other than as expressly authorized by this Agreement, Service Provider shall not (i) cause or direct Company to take any actions or (ii) to the extent that Company or the Assets would be bound thereby, take any actions on behalf of Company.

(c) Company agrees to execute and deliver (or to cause its officers to execute and deliver) each of those Contracts that Service Provider (i) is authorized to cause Company to enter into in accordance with this Agreement, and (ii) has directed Company to execute and deliver in accordance with this Agreement.

(d) Company shall provide Service Provider with access to all agreements and any other existing authorizations or Contracts secured or executed in association with the Assets that are required for Service Provider's performance of the Services under this Agreement.

2.4. Ownership of Property. The Parties agree and acknowledge that Service Provider shall not, by virtue of its role as "Service Provider" hereunder, have any direct ownership interest in the Assets (or in any of the equipment, materials or other property related thereto and purchased by Company directly or by Service Provider on behalf of Company), and that neither Service Provider nor any Affiliate of Service Provider shall be deemed to have any direct or indirect ownership interest in the Assets (or in any equipment, materials and other property related thereto and purchased by Company either directly or on behalf of Company by Service Provider) solely by virtue of its role as "Service Provider" hereunder.

2.5. Service Provider's Delegation of Authority.

(a) Service Provider shall be permitted to delegate authority to the employees of Service Provider in order to perform the Services. Service Provider may not delegate any authority, power, or right that could not be exercised directly by Service Provider under this Agreement or the LLC Agreement. Service Provider shall have the right to cause Company to enter into, and direct the officers of Company to execute, Contracts in accordance with the terms of this Agreement (subject to Section 2.3).

(b) Service Provider shall provide personnel to staff and perform the Services, which may be accomplished to the extent necessary by (i) full-time employees of Service Provider, (ii) any other employees of Service Provider, or (iii) Third Party contractors engaged by Service Provider.

(c) Notwithstanding anything to the contrary contained herein, Service Provider is not responsible for determining, and makes no representation or warranty concerning, whether it is entitled or authorized under Leases and all operating agreements and similar Contracts affecting the Oil and Gas Interests included in the Assets to provide the Services as contemplated in this Agreement. In addition to its other indemnification

obligations pursuant to, and otherwise in accordance with Article V, Company shall indemnify and hold harmless the Service Provider Indemnified Parties from and against any Losses related to any Third Party Claim that Service Provider is not entitled or authorized to provide the Services.

2.6. Other Business Pursuits. Neither Service Provider nor any employee or officer of Service Provider or its Affiliates shall be required to perform the Services as such Person's sole and exclusive occupation, and Service Provider and the employees and officers of Service Provider or its Affiliates may have other occupations and activities in addition to those relating to this Agreement; provided, however, that the Key Personnel shall devote sufficient business time, attention and energy to the performance of the Services and Company's Business in order that the Service Provider meets its obligation under this Agreement to act as a Reasonable and Prudent Service Provider, it being understood that, subject to the Key Personnel's devotion of such sufficient time, attention and energy, the Services and Company's Business are not required to be the primary focus of such Key Personnel's day-to-day activities; provided, that neither Service Provider, nor any Key Personnel, nor any of their respective Affiliates shall agree to provide any services to any other Person with a priority that is superior to the Services provided to Company.

2.7. Certain Conditions of Service.

(a) Except as provided in this Agreement, or to the extent that the express terms of the LLC Agreement require Management Committee approval for an action by Service Provider with respect to the Services, Service Provider shall have complete authority and discretion to elect the means, manner and method of performing the Services.

(b) Subject to the terms of this Agreement, Service Provider may utilize subcontractors to provide any of the Services.

(c) Service Provider shall perform the Services as an "independent contractor" of Company and nothing in this Agreement is intended, and nothing shall be construed, to create an agency, employer/employee, partnership, joint venture, association or other similar relationship between Service Provider and Company or any of their respective Affiliates or any of their employees.

(d) Notwithstanding anything to the contrary, all matters pertaining to the employment, supervision, compensation, promotion and discharge of any personnel of Service Provider or its Affiliates are the responsibility of Service Provider and/or its Affiliates, as appropriate. All such employment arrangements are solely Service Provider's and/or its Affiliates' obligations (including the payment of wages, salaries and employee benefits with respect to such personnel), and Company shall have no liability with respect thereto.

(e) Notwithstanding anything herein to the contrary, Company and Service Provider acknowledge that employees of Affiliates of Service Provider may assist Service Provider in providing the Services hereunder without further consent from Company.

2.8. Performance Standard. Service Provider shall perform the Services (a) in a good and workmanlike manner, (b) with due diligence and dispatch, (c) in accordance and compliance

with the terms of this Agreement, all applicable Leases and all operating agreements and similar Contracts affecting the Oil and Gas Interests included in the Assets, (d) as a reasonable and prudent oil and gas operator, (e) with at least the same degree of diligence and care that it exercises with respect to the construction, development, management, operation, and maintenance of its own assets and those of its Affiliates, (f) with a standard of care at least equal to what a reasonable industry participant similar to Company would expect to obtain from a competent third-party service provider, under a similar agreement negotiated and performed on an independent, arm's-length basis, and (g) in compliance with all Laws (performance in accordance with clauses (a) through (g) of this Section 2.8 is referred to herein as acting as a "***Reasonable and Prudent Service Provider***").

## ARTICLE III
## PAYMENTS

3.1. Consideration. For each Calendar Month during the Term, Company shall pay to Service Provider as the sole consideration for the Services for such Calendar Month, an amount equal to the Service Costs (such amount for each such Calendar Month, the "***Service Fee***").

In addition to the Service Fee, within three (3) Business Days of the execution of this Agreement, but subject to the final reconciliation of (i) Third Party Costs (as such term is defined in the Existing MSA) and the salaries, wages, overtime, benefits, and payroll taxes for field employees for the months of January 2019 and February 2019 (the sum of which shall be referred to as the "***Existing MSA Reconciliation Amount***"), and (ii) the Service Costs for the month of March 2019 in accordance with Section 3.2 below, Company shall also make a one-time payment of fifty thousand dollars ($50,000) to Service Provider for legal and other incidental fees incurred or expected to be incurred by Service Provider during the Term, which payment shall be credited against any (i) Existing MSA Reconciliation Amount that remains unpaid by Service Provider, and (ii) Service Costs owed by Service Provider to Company for the month of March 2019 under this Agreement.

Within three (3) Business Days of receipt of each such Service Fee, Service Provider shall deposit sixty thousand six hundred twenty-five dollars ($60,625) into the Escrow Account, which funds shall be set aside for any incentive bonus payments to be paid in accordance with Section 3.7 below, except solely with respect to the Service Fee for March 2019, which amount shall be deposited by Service Provider in the Escrow Account within three (3) Business Days of the execution of this Agreement (collectively, the "***Bonus Pool***").

3.2. Payment Terms.

(a) No later than five (5) calendar days prior to the beginning of each Calendar Month, Service Provider shall deliver to Company an invoice for (i) the Service Costs that Service Provider estimates in good faith will be actually incurred by Service Provider during such Calendar Month under and in accordance with the DIP Budget, and (ii) the amount of any credit to be applied for the immediately succeeding Calendar Month pursuant to Section 3.2(b).

(b) If the actual Service Costs incurred by Service Provider during any Calendar Month (i) exceed the estimated amount of Service Costs paid to Service Provider for such Calendar Month pursuant to the applicable invoice delivered pursuant to Section 3.2(a), and (ii) have been explicitly approved by Company and CRO, including any approved costs that relate to approved overhead reimbursements received by Company, then Service Provider shall deliver to Company an invoice for such difference. If the actual Service Costs incurred by Service Provider during any Calendar Month are less than the estimated amount of Service Costs paid to Service Provider for such Calendar Month pursuant to the applicable invoice delivered pursuant to Section 3.2(a), Service Provider shall promptly notify Company (but in any event within three (3) Business Days) and Company shall be entitled upon request to a credit in the amount of such difference, which credit shall be applied to the monthly invoice delivered by Service Provider pursuant to Section 3.2(a) for the succeeding Calendar Month, or with respect to the final month of the Term, Company shall be entitled to a reimbursement payment equal to such difference due and payable within ten (10) calendar days. The Parties shall meet no less frequently than monthly to evaluate the actual Service Costs incurred by Service Provider.

(c) Each invoice delivered by Service Provider or Company pursuant to this Agreement shall be due and payable no later than ten (10) calendar days after the receipt of such invoice. Service Provider shall provide to Company such documentation as Company or any Committee Member may reasonably request to support each such invoice.

(d) Except for the Service Fee for the April 2019 Calendar Month that is contingent upon court approval, the Service Fee with respect to each Calendar Month shall be due and payable on or prior to the first Business Day of the Calendar Month to which such Service Fee relates. The Service Fee for the April 2019 Calendar Month shall be paid by Company on the day the Bankruptcy Court approves this Agreement, or the next Business Day thereafter.

(e) If Company disputes in good faith all or any portion of an invoice delivered by Service Provider pursuant to this Agreement, Company may deliver written notice of such dispute to Service Provider within five (5) calendar days of receipt of such invoice, setting forth in reasonable detail the reasons for such dispute. Notwithstanding the delivery of any such written notice of dispute, Company shall pay to Service Provider the undisputed portions of such invoice in accordance with the terms of this Agreement. If it is determined by the Parties or otherwise that any amount not paid by Company to Service Provider should have been paid, then Company shall promptly reimburse Service Provider the amount of such agreed upon disputed payment. The prevailing Party in any dispute arising pursuant to this Section 3.2(e) shall be entitled to recover reasonable attorneys' fees and any and all reasonable out of pocket costs and expenses associated with such dispute from the other Party.

(f) All payments shall be made by a wire or ACH transfer of immediately available funds, to the account (or accounts) designated by the Person entitled to receipt of such payment, from time to time, no later than 1:00 p.m. (Fort Worth, Texas, time) on the due date.

(g) If Company fails to pay Service Provider any amount due to Service Provider hereunder when due, such amount shall bear interest at the Agreed Rate from the due date of such payment to the date such amount is paid by Company.

3.3. Taxes. In addition to other amounts owed pursuant to this Agreement, Company shall be responsible for, and shall pay, all taxes applicable to (a) the provision of the Services by Service Provider (whether or not such taxes increase or decrease in the future), and (b) the ownership, operation, maintenance or control of the Assets of Company. Service Provider may, from time to time, invoice Company for the amount of any such foregoing described taxes that Service Provider pays in connection with the performance of the Services in accordance with the terms of this Agreement, or is otherwise required by applicable Law to pay directly to the relevant taxing authority in connection with this Agreement, and any such invoice shall be due and payable to Service Provider no later than ten (10) calendar days after receipt thereof by Company. Notwithstanding anything to the contrary contained herein, each Party shall be responsible for (i) income taxes resulting from amounts paid or payable to it under this Agreement, and (ii) employment taxes and social security payments relating to its own employees. For the avoidance of doubt, Service Provider, and not Company, shall treat the providers of Services under this Agreement as employees for tax purposes.

3.4. Maintenance of Accounts and Records.

(a) In accordance with Section 8.1 of the LLC Agreement, Service Provider shall maintain, separately in accordance with GAAP, (i) accurate accounts of all expenses, costs, and liabilities accrued or incurred by it in performing the Services, and (ii) accurate accounts, on behalf of Company, of (A) all expenses, costs, and liabilities accrued or incurred by Company in connection with this Agreement and under Company's Contractual commitments, and (B) all revenues accrued, invoiced, and received by Service Provider on behalf of Company. Service Provider shall maintain any operations-related information that normally would be included as part of such accounting documentation, including volumes of production price received for hydrocarbon sales, lease operating expenses, processing charges, gathering and transportation expenses, invoicing, cash collections, cash payments and property tax allocations and reconciliations.

(b) Service Provider shall prepare and submit to Company and the Management Committee each of the statements, reports and notices set forth in Section 8.3 of the LLC Agreement, at such time and in such manner as described therein.

(c) On the tenth Business Day of each Calendar Month during the Term, Service Provider shall submit to Company and the Management Committee its then-current books and records, including a summary accounting of all Service Costs of Service Provider in the preceding Calendar Month.

(d) Service Provider shall cause the audited financial statements of Company prepared pursuant to Section 8.3(a)(i) of the LLC Agreement to be audited by Company's independent certified public accountants.

(e) For a period of three (3) years, or longer if required by Law, Service Provider (i) shall maintain copies of (A) all invoices, operating and maintenance records, and all other documentation relating to the costs and expenses of the Services, (B) all payroll information and similar materials, and (C) all other records relating to the Services as required by Law, and (ii) shall make available to the Committee Members, at Company's expense, at Service Provider's offices, copies of each such invoice, document or record within two (2) Business Days after Service Provider's receipt of a request from Company. Service Provider shall not be required to retain originals of such records and may determine to retain only electronic copies of such records.

(f) Service Provider shall furnish Company with such other reports, statistics, records, statements, and other data as Company may reasonably request from time to time.

3.5. Audit.

(a) Company and CRO shall each have the right to audit costs charged to Company's accounts and other accounting records maintained under this Agreement. Additionally, CRO shall have the right to audit the bonus payments made by Service Provider in accordance with Section 3.7, as well as Service Provider's funding of the Bonus Pool in accordance with Section 3.1.

(b) CRO and Company shall each have the right to audit Service Provider's books and records and any books and records maintained by Service Provider for Company for any Calendar Year within the twenty-four (24) Calendar Month period immediately preceding the audit, (such twenty-four (24) Calendar Month period, the "***Audit Period***"). For the sake of clarity, such Audit Period may include dates prior to the Effective Date. CRO or Company, as applicable, must provide Service Provider a written notice of any claims for all discrepancies disclosed by said audit and related to the Audit Period. The cost of each such audit shall be borne by Company. Any such audit shall be conducted in a manner designed to result in a minimum of inconvenience and disruption to the operations of Service Provider. Unless otherwise mutually agreed, any audit shall be conducted at the principal office of Service Provider and during Business Hours.

(c) CRO or Company, as applicable, may request information prior to the commencement of the audit, and Service Provider shall, to the extent available, provide the information requested as soon as practical in order to facilitate the forthcoming audit, but in no event more than three (3) days after the written request. The information requested shall be limited to that normally used for pre-audit work.

(d) At the conclusion of an audit, Service Provider, Company and CRO shall use good faith efforts to settle outstanding matters within thirty (30) calendar days. To this end, CRO or Company, as applicable, will make a reasonable effort to prepare and distribute a written report to Service Provider, CRO, Company and the Management Committee, as soon as reasonably practicable and in any event within fourteen (14) calendar days after the conclusion of an audit. The report shall include all Claims arising from such audit together with comments pertinent to the operation of the accounts and records. Service Provider shall make a reasonable effort to reply to the report in writing as

soon as possible and in any event no later than ten (10) calendar days after delivery of the report.

(e) All adjustments resulting from an audit agreed to among Service Provider, Company and CRO shall be reflected promptly in Service Provider's books and records and/or the books and records of Company maintained by Service Provider and reported to the Management Committee and Company. If any dispute shall arise in connection with an audit and no settlement can be reached as provided in Section 3.5(d) within thirty (30) calendar days after the notice of such dispute has been made, unless otherwise agreed by Service Provider, Company and CRO, the provisions of Section 14.2 of the LLC Agreement shall apply.

3.6. Disputed Charges. Without limiting Company's rights pursuant to Section 3.5, Company may in good faith, within twenty-four (24) months following the end of the applicable Calendar Year, take written exception to any invoice rendered by Service Provider for any expenditure or any part thereof, on the ground that the same was not a cost incurred by Service Provider for which Service Provider is entitled to reimbursement pursuant to this Agreement. If the amount as to which such written exception is taken or any part thereof is ultimately determined to be an expense for which Service Provider is not entitled to reimbursement pursuant to this Agreement, such amount or portion thereof (as the case may be) shall be paid by Service Provider to Company together with interest thereon at the Agreed Rate.

3.7. Employee Bonus.

(a) At Company's request, and as contemplated in the TSA, Service Provider has agreed to adopt a key employee incentive bonus plan ("***WOP Employee Incentive Plan***") to incentivize Eligible Employees of Service Provider to assist Company in achieving the objectives contemplated in the TSA to provide additional support services to Company related to the Chapter 11 Cases that are in addition to services required to be provided to Company in the Existing MSA, all of which require more work and longer hours than what was contemplated in the Existing MSA. Service Provider agrees that the WOP Employee Incentive Plan will provide Eligible Employees an opportunity to earn bonuses from the Bonus Pool upon the completion of each milestone described below, payable upon the Payout Date, except that an Eligible Employee shall not be entitled to receive any bonus (x) unless such Eligible Employee diligently worked in good faith (in the sole discretion of CRO) towards achieving the Restructuring Transaction (as defined in the TSA) or (y) if such Eligible Employee is not employed by Service Provider on the Payout Date (clauses (x) and (y), together, "***Ineligible Employees***"), and provided further, that each Ineligible Employee's bonus amount (if any) shall revert to Company, and will be distributed by the Escrow Agent to Company from the Escrow Account, on the Payout Date, the date of such Ineligible Employee's departure from Service Provider, or at the sole discretion of CRO, if the Plan Effective Date is not reached within one hundred twenty (120) calendar days of the Petition Date (as such milestone may be extended under the TSA), as applicable. Company shall have no obligation to pay awards, if any, under the WOP Employee Incentive Plan, which will be the sole obligation of Service Provider and funded from the Escrow Account.

(b) Service Provider agrees that the WOP Employee Incentive Plan shall provide that each Eligible Employee may earn:

(i) Fifteen percent (15%) of his or her Maximum Bonus, upon Company having (i) commenced the Chapter 11 Case by the Petition Date, and (ii) filed the Financing Motion, TenOaks Retention Application, and the Vendor Payments Motion no later than one (1) calendar day after the Petition Date;

(ii) Fifteen percent (15%) of his or her Maximum Bonus, upon Company, no later than one (1) calendar day after the Petition Date, having filed the Group 1 Sale Motions;

(iii) Fifteen percent (15%) of his or her Maximum Bonus, upon all assets on the Asset Repair List having been repaired, provided, that the cost of such repairs must not have exceeded the Asset Repair Budget Amount;

(iv) Forty-five percent (45%) of his or her Maximum Bonus, upon (i) the Group 1 Asset Sales having closed within forty-five (45) calendar days of the Petition Date and (ii) the Group 2 Asset Sales having closed within eighty-nine (89) calendar days of the Petition Date; and

(v) Ten percent (10%) of his or her Maximum Bonus, upon having worked ninety-five percent (95%) of all Business Days from the Petition Date to and including the Plan Effective Date; provided, that, Key Personnel may only achieve this milestone if all Eligible Employees achieve this milestone.

(c) On the Payout Date, Company and Service Provider shall submit joint written instructions to the Escrow Agent to distribute the then balance of the Escrow Account to Service Provider for distribution of bonuses to Eligible Employees in accordance with the WOP Employee Incentive Plan, except that any such amounts relating to Ineligible Employees will be distributed to Company.

(d) The provisions of this Section 3.7 shall survive any termination of this Agreement.

## ARTICLE IV
## TERM; TERMINATION

4.1. Term. This Agreement will commence on the Effective Date and will remain in effect until 5:00 p.m. central time on June 30, 2019 unless earlier terminated in accordance with Section 4.2, Section 4.3 or Section 4.4 (the "***Term***"). For the avoidance of doubt, and without limiting any obligation of Company that accrued but remains unpaid or unperformed as of the expiration of the Term, Company shall have no obligations with respect to this Agreement beyond the expiration of the Term.

4.2. Company Termination.

(a) Company may terminate this Agreement effective immediately upon written notice to Service Provider following the occurrence of any one or more of the following:

(i) the Weatherly Group no longer (A) having the right to appoint any Committee Member of Company, or (B) holding any Percentage Interest in Company;

(ii) a Change of Control occurs;

(iii) a sale, transfer or other disposition by Company of all or substantially all of the Assets of Company;

(iv) any act or omission constituting gross negligence or willful misconduct on the part of Service Provider in connection with the performance of the Services; or

(v) any Field and Operations Employee becomes an Ineligible Employee.

(b) Company may terminate this Agreement for any other reason or no reason at all upon fourteen (14) days' prior written notice to Service Provider.

4.3. Service Provider Termination. Service Provider may terminate this Agreement effective immediately upon written notice to Company following the occurrence of any one or more of the following:

(a) [reserved];

(b) a sale, transfer or other disposition by Company of all or substantially all of the Assets of Company;

(c) a default in payment of Service Fees that is not cured within two days of receipt of written notice of such default; or

(d) a material default by Company in the performance of any of Company's covenants or obligations under this Agreement (other than a default in payment of Services Fees), if:

(i) such material default is capable of being cured, and such material default is not cured within thirty (30) days after delivery by Service Provider of a written notice of such material default; provided, however, that if such material default cannot be cured within such thirty (30) day period, Company shall have up to sixty (60) days from receipt of such notice to cure such material default if such material default is capable of being cured within such period and Company proceeds diligently to cure such material default; or

(ii) such material default is not capable of being cured.

4.4. Automatic Termination. This Agreement shall automatically terminate immediately upon the dissolution, liquidation and winding up of Company pursuant to the terms of the LLC Agreement.

4.5. Effect of Termination. The terms of Articles IV, V(other than Section 5.7), VII and VIII shall survive any termination of this Agreement. The termination of this Agreement shall not relieve either Party of any liability or obligation accruing or that had accrued prior to the Termination Effective Date (including any reimbursements pursuant to Section 3.2 or any Employee Bonuses earned pursuant to Section 3.7) or deprive a Party not in breach of its rights to any remedy otherwise available to such Party. Upon the Termination Effective Date, Service Provider shall promptly assign and deliver to Company the following (collectively, the "***Transferred Assets***"): (a) all Contracts to the extent related to the operation of Company or its Assets or the Business and, in each case, to which Service Provider or any of its Affiliates is a party or by which any of them is bound or is otherwise entitled to an assignment of rights or assumption of obligations and all interests, rights, claims and benefits of Service Provider, such Affiliate or Company pursuant to or associated therewith, including all rights with respect to any warranties, guarantees, indemnities and other rights against any Person thereunder, in all cases subject to Company's assumption of the liabilities and obligations of Service Provider or such Affiliate thereunder that correspond to the rights and benefits so assigned to Company (by way of example only and not as any limitation, if the rights and benefits of any Transferred Asset are only assigned to Company with respect to post-Termination Effective Date time periods, then Company shall only be required to assume post-Termination Effective Date obligations and liabilities), (b) any and all permits, licenses, orders, approvals, variances, waivers, franchise rights and other authorizations from any Governmental Authority held by Service Provider or any of its Affiliates as of the Termination Effective Date to the extent relating to the operation of Company or its Assets or the Business, (c) all documents, files, and books and records received from Company or any Third Party or generated by Service Provider or its Affiliates with respect to the Assets, the Business and/or the Services, (d) all Intellectual Property held by Service Provider or any of its Affiliates as of the Termination Effective Date to the extent relating to the operation of Company or its Assets or the Business as conducted in the ordinary course by Service Provider pursuant to this Agreement as of the Termination Effective Date, (e) all equipment, software licenses, communication equipment, computers, computer hardware, computer software, servers, networks, network connections, Distributed Control System (DCS) equipment, Programmable Logic Controllers (PLC) and other associated equipment, including, for the avoidance of doubt, SCADA systems and the supporting equipment required to operate SCADA systems held by Service Provider or any of its Affiliates as of the Termination Effective Date to the extent relating to the operation of Company or its Assets or the Business as conducted in the ordinary course by Service Provider pursuant to this Agreement as of the Termination Effective Date, in each case to the extent Company has borne or paid Service Costs incurred in connection with the acquisition thereof, and (f) all equipment, trucks, automobiles, motor vehicles, trailers, other transportation equipment, machinery, fixtures, furniture, office equipment and other tangible personal property and improvements, including tanks, boilers, buildings, fixtures, injection facilities, saltwater disposal facilities, compression facilities, pumping units and engines, flow lines, pipelines, gathering systems, gas and oil treating facilities, machinery, roads, and other appurtenances, improvements and facilities and all inventories of materials, parts, raw materials, components,

supplies, goods and products held by Service Provider or any of its Affiliates as of the Termination Effective Date to the extent relating to the operation of Company or its Assets or the Business as conducted in the ordinary course by Service Provider pursuant to this Agreement as of the Termination Effective Date, in each case to the extent Company has borne or paid Service Costs incurred in connection with the acquisition thereof. Notwithstanding anything in the foregoing portions of this Section 4.5 to the contrary, (i) Service Provider shall not be required to assign any Transferred Asset to Company if (A) this Agreement was terminated by Company (or expires) pursuant to Section 4.1 or Section 4.2(b) or Service Provider pursuant to Section 4.3, (B) the transfer of such Transferred Asset would require the payment of a fee or other consideration, and (C) Company has not agreed to pay such fee or other consideration, and (ii) if (A) this Agreement was terminated by Company pursuant to Section 4.2(a) (other than Section 4.2(a)(iii)), and (B) the transfer of any Transferred Asset would require the payment of a fee or other consideration, then Service Provider shall be required to pay such fee or other consideration in order that such Transferred Asset may be assigned to Company.

## ARTICLE V
## LIMITS OF RESPONSIBILITY; EXCULPATION; INDEMNIFICATION

5.1. Exculpation. Except as set forth in Section 5.3, neither Service Provider nor any other Service Provider Indemnified Party shall be liable to Company for any, and Company hereby releases Service Provider Indemnified Parties for all, Losses incurred by reason of any act or omission of Service Provider (including through its employees or employees of any of its Affiliates) in connection with this Agreement or the performance of the Services, EVEN IF SUCH LOSSES AROSE IN WHOLE OR IN PART FROM THE ACTIVE, PASSIVE, SOLE OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, BREACH OR OTHER FAULT OF ANY SERVICE PROVIDER INDEMNIFIED PARTY, BUT EXCLUDING THOSE LOSSES THAT ARE CAUSED BY (A) THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY SERVICE PROVIDER INDEMNIFIED PARTY OR ANY OF SERVICE PROVIDER'S CONTRACTORS AND SUBCONTRACTORS PERFORMING SERVICES HEREUNDER OR (B) THE INTENTIONAL AND WILLFUL BREACH BY ANY SERVICE PROVIDER INDEMNIFIED PARTY OF THIS AGREEMENT.

5.2. Indemnification by Company. Company shall, to the fullest extent permitted by Law, reimburse, indemnify, defend and hold Service Provider and its Affiliates and their respective equity holders, members, partners, owners, directors, managers, officers, employees and agents (the "***Service Provider Indemnified Parties***") harmless of and from any and all Claims of any nature whatsoever (including claims for personal injury, death or property damage and including reasonable attorneys' fees and court costs) (each a "***Loss***" and collectively, "***Losses***") suffered by any Service Provider Indemnified Party as a result of, caused by, or arising out of (a) any breach by Company of this Agreement and (b) any Action, claim or demand commenced by a Third Party relating to the acts or omissions by any of the Service Provider Indemnified Parties in connection with providing or failing to provide the Services, except to the extent such Losses are caused by (i) the gross negligence or willful misconduct of any Service Provider Indemnified Party or any of Service Provider's contractors and subcontractors performing Services hereunder or (ii) the intentional and willful breach by any Service Provider Indemnified Party of this Agreement. THE REIMBURSEMENT, INDEMNITY, DEFENSE, AND HOLD HARMLESS RIGHTS SET FORTH IN THIS SECTION 5.2 SHALL BE APPLICABLE EVEN IF SUCH LOSSES AROSE

IN WHOLE OR IN PART FROM THE ACTIVE, PASSIVE, SOLE OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, BREACH OR OTHER FAULT OF ANY SERVICE PROVIDER INDEMNIFIED PARTY, BUT EXCLUDING THOSE LOSSES THAT ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY SERVICE PROVIDER INDEMNIFIED PARTY OR THE INTENTIONAL AND WILLFUL BREACH BY ANY SERVICE PROVIDER INDEMNIFIED PARTY OF THIS AGREEMENT.

5.3. Indemnification by Service Provider. Service Provider shall, to the fullest extent permitted by Law, reimburse, indemnify, defend and hold each of Company and its Affiliates and their respective equity holders, members, partners, directors, owners, managers, officers and employees (the "***Company Indemnified Parties***") harmless of and from any and all Losses suffered by any Company Indemnified Party as a result of, caused by, or arising out of (a) the gross negligence or willful misconduct of any Service Provider Indemnified Party or any subcontractor in connection with providing or failing to provide the Services, or (b) the intentional and willful breach by any Service Provider Indemnified Party of this Agreement.

5.4. Indemnity Amount. Except as otherwise provided in this Article V, in the event that either Company or Service Provider, as applicable, is obligated to indemnify and hold an Indemnified Party harmless under this Article V, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds or other Third Party recovery actually received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds or recovery.

5.5. Indemnification Procedures. All claims for indemnification under this Agreement shall be asserted and resolved as follows:

(a) For purposes of this Agreement, the term "***Indemnifying Party***" when used in connection with particular Losses shall mean the Party having an obligation to indemnify another Party or Person(s) with respect to such Losses pursuant to this Article V, and the term "***Indemnified Party***" when used in connection with particular Losses shall mean the Person(s) having the right to be indemnified with respect to such Losses by a Party pursuant to this Article V.

(b) To make a claim for indemnification under this Article V, the Party that is related to the applicable Indemnified Party shall notify the Indemnifying Party of the particular claim under this Section 5.5, including the specific details of and specific basis under this Agreement for its claim (the "***Claim Notice***"). In the event that the claim for indemnification is based upon a claim by a Third Party against the Indemnified Party (a "***Third Party Claim***"), such related Party shall provide the Claim Notice on behalf of its related Indemnified Party promptly after the Indemnified Party has actual knowledge of the Third Party Claim and shall enclose a copy of all papers (if any) served with respect to the Third Party Claim; provided, that the failure of any related Party to give notice of a Third Party Claim as provided in this Section 5.5 shall not relieve the Indemnifying Party of its indemnification obligations except to the extent such failure materially prejudices the Indemnifying Party's ability to defend against the Third Party Claim and only to the extent of the actual damages caused to the Indemnifying Party by the failure to receive timely Claim Notice. In the event that the claim for indemnification is based upon an inaccuracy

or breach of a representation, warranty, covenant or agreement, the Claim Notice shall specify the representation, warranty, covenant or agreement that was inaccurate or breached.

(c) In the case of a claim for indemnification based upon a Third Party Claim, the Indemnifying Party shall have thirty (30) days from its receipt of the Claim Notice to notify the Indemnified Party whether it admits or denies its liability to defend the Indemnified Party against such Third Party Claim at the sole cost and expense of the Indemnifying Party. The Indemnified Party is authorized, prior to and during such thirty (30) day period, at the expense of the Indemnifying Party, to file any motion, answer or other pleading that it shall deem necessary or appropriate to protect its interests or those of the Indemnifying Party and that is not prejudicial to the Indemnifying Party.

(d) If the Indemnifying Party admits its liability to defend and indemnify the Indemnified Party against a Third Party Claim, it shall have the right and obligation to diligently defend, at its sole cost and expense, such Third Party Claim. The Indemnifying Party shall have full control of such defense and proceedings, including any compromise or settlement thereof. If requested by the Indemnifying Party, the Indemnified Party agrees to cooperate in contesting any Third Party Claim which the Indemnifying Party elects to contest. The Indemnified Party may participate in, but not control, at its own expense, any defense or settlement of any Third Party Claim controlled by the Indemnifying Party pursuant to this Section 5.5(d). An Indemnifying Party shall not, without the written consent of the Party related to the applicable Indemnified Party (i) settle any Third Party Claim or consent to the entry of any judgment with respect thereto which does not include an unconditional written release of the Indemnified Party from all Losses in respect of such Third Party Claim, or (ii) settle any Third Party Claim or consent to the entry of any judgment with respect thereto in any manner that may materially and adversely affect the Indemnified Party (other than as a result of money damages covered by the indemnity).

(e) If the Indemnifying Party does not admit its liability to defend and indemnify against a Third Party Claim, or admits its liability to defend the Indemnified Party against the Third Party Claim and fails to diligently prosecute or settle such Third Party Claim, then the Indemnified Party shall have the right to defend against the Third Party Claim at the sole cost and expense of the Indemnifying Party, with counsel of the Indemnified Party's choosing, subject to the right of the Indemnifying Party to admit its liability and assume the defense of the Third Party Claim at any time prior to settlement or final determination thereof. If the Indemnifying Party has not yet admitted its liability to defend and indemnify the Indemnified Party against the Third Party Claim, the related Party to the Indemnified Party in question shall send written notice to the Indemnifying Party of any proposed settlement and the Indemnifying Party shall have the option for ten (10) days following receipt of such notice to (i) admit in writing its liability to indemnify the Indemnified Party from and against the liability and consent to such settlement, (ii) if liability is so admitted, reject, in its reasonable judgment, the proposed settlement, or (iii) deny liability. Any failure by the Indemnifying Party to respond to such notice shall be deemed to be an election under subsection (i) above.

(f) In the case of a claim for indemnification not based upon a Third Party Claim, the Indemnifying Party shall have thirty (30) days from its receipt of the Claim Notice to (i) cure the Losses complained of, (ii) admit its liability for such Losses, or (i) dispute the claim for such Losses. If the Indemnifying Party does not notify the Indemnified Party within such thirty (30) day period that it has cured the Losses or that it disputes the claim for such Losses, the amount of such Losses shall conclusively be deemed a liability of the Indemnifying Party hereunder.

5.6. Other Indemnification Matters.

(a) Each Party agrees that it will not, under any circumstances, object to any indemnification obligation it may owe to another Party under this Agreement on the grounds that such indemnification obligation is unenforceable under, or in conflict with, the TOAIA.

(b) SPECIAL PROVISIONS FOR TEXAS.

(i) IN THE EVENT THE TOAIA MAY NOT BE EXCLUDED UNDER SECTION 7.1, WITHOUT LIMITING ITS OBLIGATIONS UNDER SECTION 5.7, COMPANY AGREES TO CARRY (AND AGREES THAT SERVICE PROVIDER MAY ON ITS BEHALF CAUSE COMPANY TO CARRY) INSURANCE IN THE TYPES AND IN THE MINIMUM AMOUNTS REASONABLY APPROPRIATE AND CONSISTENT WITH STANDARD INDUSTRY PRACTICE TO SUPPORT THE INDEMNITY OBLIGATIONS OF COMPANY UNDER THIS ARTICLE V AND, REGARDLESS OF AMOUNTS SPECIFIED IN ANY DOCUMENT OTHER THAN THIS AGREEMENT, IT IS AGREED THAT THE MONETARY LIMITS OF INSURANCE SO REQUIRED HEREUNDER SHALL AUTOMATICALLY BE AMENDED TO CONFORM TO THE MAXIMUM MONETARY LIMITS PERMITTED UNDER THE TOAIA.

(ii) IT IS AGREED THAT COMPANY SHALL NAME SERVICE PROVIDER AND ITS AFFILIATES PROVIDING THE SERVICES AS ADDITIONAL INSUREDS AND ALL RIGHTS OF RECOVERY, UNDER SUBROGATION OR OTHERWISE, WHICH THE INSURER MAY HAVE AGAINST SERVICE PROVIDER AND ITS SUBSIDIARIES, AFFILIATES, MEMBERS, OFFICERS, EMPLOYEES OR AGENTS FOR CLAIMS UNDER SUCH POLICIES SHALL BE WAIVED, EXCEPT, IN EACH CASE, WITH RESPECT TO ANY CLAIMS RELATED TO (I) THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY SERVICE PROVIDER INDEMNIFIED PARTY OR ANY SUBCONTRACTOR IN CONNECTION WITH PROVIDING OR FAILING TO PROVIDE THE SERVICES, OR

(II) THE INTENTIONAL AND WILLFUL BREACH BY ANY SERVICE PROVIDER INDEMNIFIED PARTY OF THIS AGREEMENT.

(iii) UNDER TEXAS LAW, IF COMPANY DOES NOT CARRY INSURANCE IN THE MINIMUM OR MAXIMUM AMOUNTS STATED IN THE INSURANCE REQUIREMENTS OF THIS SECTION 5.6, OR COMPANY'S INSURER BECOMES INSOLVENT, OR COMPANY'S INSURER REFUSES TO COVER A CLAIM BASED ON BREACH OF THE INSURANCE CONTRACT BY COMPANY, OR IN THE EVENT COMPANY'S INSURANCE IS EXHAUSTED FOR ANY REASON BELOW THE MINIMUM LEVELS REQUIRED BY THIS SECTION 5.6 (EVEN ON THE SAME INCIDENT PAID ON BEHALF OF COMPANY OR ANY PERSON OTHER THAN SERVICE PROVIDER), THEN IT IS AGREED THAT COMPANY HAS APPROVED SELF-INSURANCE UNDER THE TOAIA TO COVER THE AMOUNT OF INDEMNITY OWED TO SERVICE PROVIDER INDEMNIFIED PARTIES UP TO THE MINIMUM OR MAXIMUM AMOUNTS STATED IN THE INSURANCE REQUIREMENTS OF THIS SECTION 5.6.

(iv) IT IS THE INTENTION OF THE PARTIES HERETO THAT SERVICE PROVIDER WILL RECEIVE THE BENEFIT OF THE INDEMNITIES IN RESPECT OF SERVICE PROVIDER INDEMNIFIED PARTIES SET FORTH IN THIS ARTICLE V REGARDLESS OF WHAT MAY HAPPEN AFTER THIS AGREEMENT IS SIGNED THAT MIGHT AFFECT THE INSURANCE REQUIRED TO BE OBTAINED BY COMPANY.

5.7. Insurance.

(a) At Company's expense as a Service Cost, Service Provider shall at all times during the Term obtain and maintain the following insurance (as such may be changed with the approval of Company, the "***Required Coverage***"):

(i) the insurance coverages set forth in the Insurance Motion;

(ii) Workers' Compensation as required by statute and Employer's Liability with a limit of not less than one million dollars ($1,000,000) each accident/disease;

(iii) Commercial Auto Liability with a combined single limit for bodily injury (including death) and/or property damage of not less than one million dollars ($1,000,000) per occurrence covering all owned, hired and/or non-owned vehicles to be used in the operations under this Agreement; and



**EXHIBIT 1**

(iv) such other insurance coverages as may be mandated from time to time by the Management Committee, including any insurance required by Company's credit providers pursuant to any debt instrument of Company.

(b) Company shall be the direct policy holder and primary insured under each policy obtained by Service Provider on behalf of Company hereunder, including the Required Coverage.

(c) The Required Coverage shall be obtained from a broker selected by Service Provider and approved by Company.

(d) The purpose of the Required Coverage shall be to insure, among other things, Company and Service Provider against liability arising from or in connection with: (i) Service Provider's (and any of its contractors and subcontractors) performance of the Services described hereunder; and (ii) the ownership and operation of the Assets and Business.

(e) For insurance coverage obtained pursuant to Section 5.7(a), Service Provider, where permitted by Law, will provide that the applicable insurer shall waive any right of recovery, under subrogation or otherwise, which the insurer may have or acquire against Company and its subsidiaries, Affiliates, directors, Members, officers, or agents for claims under such policies. The Commercial Auto Liability and any other liability coverage shall, where applicable, name Company and each Member as an "additional insured." Such insurance shall be primary and non-contributing to any other insurance that is available to Company or any of the parties named as an additional insured.

(f) Service Provider shall require all contractors and subcontractors to carry insurance related to the Assets under terms usual and customary in the industry.

## ARTICLE VI
## FORCE MAJEURE

6.1. Excused Performance. A Party shall not be responsible or liable for or deemed in breach of this Agreement for any delay or failure in the performance of its obligations under this Agreement to the extent such performance is prevented by a Force Majeure Event; provided, that:

(a) the affected Party gives the other Party prompt written notice describing the particulars of the Force Majeure Event and the proposed cure; provided, that the delivery of any notice of Force Majeure by Company shall be a Conflict Activity;

(b) the suspension of performance is of no greater scope and of no longer duration than is reasonably attributable to the Force Majeure Event;

(c) the affected Party uses commercially reasonable efforts to remedy its inability to perform its obligations under this Agreement or the Force Majeure Event; and

(d) when the affected Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

6.2. No Preclusion. The existence of a Force Majeure Event shall not relieve any Party of (a) any of its payment obligations under this Agreement, or (b) any other obligation under this Agreement to the extent that performance of such other obligation is not precluded by such Force Majeure Event.

6.3. Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by a Force Majeure Event extend this Agreement beyond its Term.

## ARTICLE VII
## GOVERNING LAW; WAIVER OF CONSEQUENTIAL DAMAGES

7.1. Governing Law. THIS AGREEMENT AND THE LEGAL RELATIONS AMONG THE PARTIES SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICTS OF LAW RULE OR PRINCIPLE THAT MIGHT REFER CONSTRUCTION OF SUCH PROVISIONS TO THE LAWS OF ANOTHER JURISDICTION AND EXCLUDING THE TOAIA TO THE MAXIMUM EXTENT THE TOAIA MAY BE EXCLUDED. ALL OF THE PARTIES HERETO CONSENT TO THE EXERCISE OF JURISDICTION IN PERSONAM BY THE UNITED STATES FEDERAL DISTRICT COURTS OR STATE COURTS LOCATED IN TARRANT COUNTY, IN THE STATE OF TEXAS FOR ANY ACTION ARISING OUT OF THIS AGREEMENT, THE ASSOCIATED AGREEMENTS OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY. ALL ACTIONS OR PROCEEDINGS WITH RESPECT TO, ARISING DIRECTLY OR INDIRECTLY IN CONNECTION WITH, OUT OF, RELATED TO, OR FROM THIS AGREEMENT, THE ASSOCIATED AGREEMENTS OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY SHALL BE EXCLUSIVELY LITIGATED IN THE UNITED STATES FEDERAL DISTRICT COURTS OR STATE COURTS HAVING SITES IN FORT WORTH, TEXAS (AND ALL APPELLATE COURTS HAVING JURISDICTION THEREOVER). EACH PARTY HERETO WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ASSOCIATED AGREEMENTS OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.

7.2. Waiver of Consequential Damages. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EACH PARTY HEREBY EXPRESSLY DISCLAIMS, WAIVES AND RELEASES THE OTHER PARTY FROM AND EXCLUDES ANY RECOVERY FOR ITS OWN SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, INCIDENTAL, AND INDIRECT DAMAGES (INCLUDING LOSS OF, DAMAGE TO OR DELAY IN PROFIT, REVENUE OR PRODUCTION) RELATING TO, ASSOCIATED WITH, OR ARISING OUT OF THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY, EXCEPT TO THE EXTENT ANY SUCH PARTY SUFFERS SUCH DAMAGES TO A THIRD PARTY, WHICH DAMAGES (INCLUDING COSTS OF DEFENSE AND REASONABLE ATTORNEY'S FEES) SHALL NOT BE EXCLUDED BY THIS PROVISION AS TO RECOVERY HEREUNDER. NO LAW, THEORY, OR PUBLIC POLICY SHALL BE

GIVEN EFFECT WHICH WOULD UNDERMINE, DIMINISH, OR REDUCE THE EFFECTIVENESS OF THE FOREGOING WAIVER, IT BEING THE EXPRESS INTENT, UNDERSTANDING, AND AGREEMENT OF THE PARTIES THAT SUCH DAMAGE WAIVER, EXCLUSION, DISCLAIMER, AND RELEASE IS TO BE GIVEN THE FULLEST EFFECT, NOTWITHSTANDING THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), GROSS NEGLIGENCE, WILLFUL MISCONDUCT, STRICT LIABILITY OR OTHER LEGAL FAULT OF ANY PARTY.

## ARTICLE VIII
## MISCELLANEOUS

8.1. Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute for all purposes one agreement. Any signature hereto delivered by a Party by electronic mail transmission shall be deemed an original signature hereto.

8.2. Notices. All notices and communications required or permitted to be given hereunder, shall be sufficient in all respects if given in writing and delivered personally, or sent by bonded overnight courier, or mailed by U.S. Express Mail or by certified or registered United States Mail with all postage fully prepaid, or sent by electronic mail (provided any such electronic mail is confirmed either orally or by written confirmation).

If to Company:

Weatherly Oil & Gas, LLC
777 Taylor St., Suite 902
Fort Worth, Texas 76102
Attention: Scott Pinsonnault
Telephone: (214) 771-6133
Email: scott.pinsonnault@ankura.com

with a copy to:

Jackson Walker LLP
1401 McKinney Street
Suite 1900
Houston, TX 77010
Attention: Matthew Cavenaugh
E-mail: mcavenaugh@jw.com

If to Service Provider:

Weatherly Operating, LLC
777 Taylor St., Suite 902
Fort Worth, Texas 76102
Attention: Perry T. Reed
Telephone: (817) 945-8650
Email: PReed@weatherlyresources.com

Any notice given in accordance herewith shall be deemed to have been given when (a) delivered to the addressee in person or by courier, (b) transmitted by electronic mail during Business Hours, or if transmitted after Business Hours, on the next Business Day, in each case, provided the receipt of such transmission is confirmed by the recipient, or (c) upon actual receipt by the addressee after such notice has either been delivered to an overnight courier or deposited in the United States Mail if received during Business Hours, or if not received during Business Hours, then on the next Business Day, as the case may be. The Parties may change the addresses, and email addresses to which such communications are to be addressed by giving written notice to the other Parties in the manner provided in this Section 8.2.

8.3. Waiver; Rights Cumulative. Any of the terms, covenants, or conditions hereof may be waived only by a written instrument executed by or on behalf of the Party waiving compliance. No course of dealing on the part of any Party, or its respective officers, employees, agents, or representatives, nor any failure by a Party to exercise any of its rights under this Agreement shall operate as a waiver thereof or affect in any way the right of such Party at a later time to enforce the performance of such provision. No waiver by any Party of any condition, or any breach of any term or covenant contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term or covenant. The rights of the Parties under this Agreement shall be cumulative, and the exercise or partial exercise of any such right shall not preclude the exercise of any other right.

8.4. Entire Agreement. This Agreement constitutes the entire agreement among the Parties pertaining to the Services and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties pertaining to the subject matter hereof. No Party has relied upon any warranties or representations of the other Party, except as specifically set forth in this Agreement.

8.5. Amendment. This Agreement may be amended only by an instrument in writing executed by all of the Parties and expressly identified as an amendment or modification.

8.6. Parties in Interest. Nothing in this Agreement shall entitle any Person other than the Parties, or the Parties' respective related Indemnified Parties hereunder, to assert any claim, cause of action, remedy or right of any kind; provided, that only a Party will have the right to enforce the provisions of this Agreement on its own behalf or on behalf of any of its related Indemnified Parties (but shall not be obligated to do so).

8.7. Successors and Permitted Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns.

8.8. Assignment. No Party may assign this Agreement or its obligation or duties hereunder (except as expressly provided for herein) without the prior written consent of the other Party.

8.9. Further Assurances. In connection with this Agreement and the transactions contemplated hereby, each Party shall execute and deliver all such future instruments and take

such other and further action as may be reasonably necessary or appropriate to carry out the provisions of this Agreement and the intention of the Parties as expressed herein.

8.10. Preparation of Agreement. Each of the Parties and their respective counsels participated in the preparation of this Agreement. In the event of any ambiguity in this Agreement, no presumption shall arise based on the identity of the draftsman of this Agreement.

8.11. Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any adverse manner to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

8.12. No Recourse. For the avoidance of doubt, the provisions of this Agreement shall not give rise to any right of recourse against any current or former stockholder, member, partner, owner, director, manager, officer or employee (solely as a result of such Person's capacity as such) of Service Provider or of Company or any of their respective officers, directors, employees, agents or representatives.

8.13. Interpretation. All references in this Agreement to Articles, Sections, subsections and other subdivisions refer to the corresponding Articles, Sections, subsections and other subdivisions of or to this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any Articles, Sections, subsections and other subdivisions of this Agreement are for convenience only, do not constitute any part of this Agreement, and shall be disregarded in construing the language hereof. The words "this Agreement", "herein", "hereby", "hereunder" and "hereof", and words of similar import, refer to this Agreement as a whole and not to any particular Article, Section, subsection or other subdivision unless expressly so limited. The words "this Article", "this Section", and "this subsection", and words of similar import, refer only to the Article, Section or subsection hereof in which such words occur. The word "including" (in its various forms) means "including without limitation". All references to "$" or "dollars" shall be deemed references to United States dollars. Each accounting term not defined herein will have the meaning given to it under GAAP. Pronouns in masculine, feminine or neuter genders shall be construed to state and include any other gender, and words, terms and titles (including terms defined herein) in the singular form shall be construed to include the plural and vice versa, unless the context otherwise requires. References to any Law or agreement shall mean such Law or agreement as it may be amended from time to time. References herein to any action by, request of, or consent or approval of, Company means an action by, request of, or consent or approval of, "the Management Committee of the Company", and, as required by the definition of "Conflict Activity" in the LLC Agreement, may mean an action by, or consent or approval of, of "the Management Committee of the Company as a Conflict Activity".

8.14. Confidentiality.

(a) Service Provider agrees that information related to well data, production data and other commercially or operationally sensitive information relating to the Business that is typically considered confidential shall be considered "Confidential Information" hereunder, shall be kept confidential and shall not be disclosed at any time during the Term and for a period of one (1) year following the end of the Term to any Person that is not a Party, except:

(i) to a Member;

(ii) to an Affiliate of a Member;

(iii) to the extent such Confidential Information is required to be furnished in compliance with applicable Law, or pursuant to any legal proceedings or because of any order of any Governmental Authority that is binding upon a Party;

(iv) to prospective or actual attorneys or accountants engaged by a Party where disclosure of such Confidential Information is appropriate to such attorney's or accountant's work for such Party;

(v) to prospective or actual contractors and consultants engaged by a Party where disclosure of such Confidential Information is appropriate or essential to such contractor's or consultant's work for such Party;

(vi) to a bank or other financial institution to the extent appropriate or essential to a Party arranging for funding for Company or Service Provider;

(vii) to the extent such Confidential Information must be disclosed pursuant to any rules or requirements of any stock exchange having jurisdiction over a Party or its Affiliates; provided that if such Party desires to disclose information in an annual or periodic report to its or its Affiliates' shareholders and the public and such disclosure is not expressly required pursuant to any rules or requirements of any stock exchange, then such Party shall comply with Section 8.14(c);

(viii) to its respective employees, subject to each Party taking customary precautions to ensure such Confidential Information is kept confidential; and

(ix) any Confidential Information which, through no fault of or breach of this Agreement by a Party, becomes a part of the public domain.

(b) Disclosure as pursuant to Section 8.14(a)(v) shall not be made unless prior to such disclosure Service Provider has instructed the recipient to keep the Confidential Information strictly confidential for the term of this Agreement and to use such

Confidential Information for the sole purpose described in Section 8.14(a)(v) with respect to such disclosing Party.

(c) Without limiting the prohibitions contained in this Section 8.14 on the disclosure of Confidential Information, Company acknowledges that: (i) knowledge of Confidential Information (absent any breach of this Section 8.14) by any Service Provider Indemnified Party will not preclude any oil and gas operation or activity by such Service Provider Indemnified Party; (ii) Service Provider Indemnified Parties may retain mental impressions of Confidential Information; and (iii) Service Provider Indemnified Parties shall not be precluded from working on projects solely because of such mental impressions.

8.15. Publicity.

(a) During the Term and for a period of three (3) years following the end of the Term, without prior written consent of Company, Service Provider will not issue, or permit any agent or Affiliate of Service Provider to issue, any press releases or otherwise make, or cause any agent or Affiliate of it to make, any public statements with respect to this Agreement, any Confidential Information or the activities contemplated hereby or thereby, except where such release or statement is deemed in good faith by such releasing Party to be required by Law or under the rules and regulations of a recognized stock exchange on which shares of such Party or any of its Affiliates are listed, and in any case, prior to making any such press release or public statement, Service Provider shall provide a copy of the proposed press release or public statement to the Management Committee reasonably in advance of the proposed release date as necessary to enable the Management Committee to provide comments on it; provided the Management Committee must respond with any comments within two (2) Business Days after its receipt of such proposed press release.

(b) Notwithstanding anything to the contrary in Section 8.15(a) or Section 8.14(c), in the event of any Emergency endangering property, lives or the environment, Service Provider may issue such press releases or public announcements as it deems necessary in light of the circumstances and shall promptly provide the Management Committee with a copy of any such press release or announcement.

8.16. Termination. The Parties acknowledge and agree that the Existing MSA is hereby terminated with the understanding that the provisions of Section 4.5 of the Existing MSA that address the effect of termination of the Existing MSA shall remain in effect.

***[Signature Page Follows]***

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

WEATHERLY OIL & GAS, LLC

By: _____
Name: Scott Pinsonnault
Title: Chief Restructuring Officer

WEATHERLY OPERATING, LLC

By: _____
Name: Perry T. Reed
Title: Chief Executive Officer

**EXHIBIT 1**

**EXHIBIT A**

**Weatherly Oil & Gas, LLC**
**Asset Repair List**
**1/7/2019**

| Location | Description | Budget as of 1/7/2019 | Impact | Production Gained |
|---|---|---|---|---|
| Paulsen #1 | Heater Seal Blowout/Enviro Cleanup | $ 15,000 | Enviro/ Land Owner /In Compliance | 3-10 BOPD |
| Middlebrook #2 | Replace washout | 12,000 | Access to Leases/ Truck/ LO | 40 MCFPD |
| Preston Heirs #1,5,8 | Road Repair | 4,000 | Access to Leases/ Truck/ LO | 100 MCFPD |
| Catherine 1H | Road Repair | 20,000 | Access to Leases/ Truck/ LO | |
| Bethany | Lease Road Repair | 10,000 | Access JW Compressor, Water Trucks | 1500 MCFPD |
| McDuffie #8 | Replace washout | 4,000 | Access to Leases/ Truck/ LO | 40 MCFPD |
| Duke 1H | Road Repair | 8,000 | Access to Leases/ Truck/ LO | 280 MCFPD |
| Damuth #1 | Replace washout | 15,000 | Access to Leases/ Truck/ LO | 260 MCFPD |
| Stanley Crossman #1 | Replace washout | 2,000 | Access to Leases/ Truck/ LO | 80 MCFPD |
| Rayan #13 | Replace washout | 2,000 | Access to Leases/ Truck/ LO | 150 MCFPD |
| Preston 10/14 | Replace washout | 2,000 | Access to Leases/ Truck/ LO | 500 MCFPD |
| Bob Sessions #1, #3 | Repair CG w/welder, 1 load material, road blade | 4,000 | Safety Issue/Land Owner/Water trucks | 125 MCFPD |
| Finish N SLIGO 12' | Repair 7/19/18 Wells were SI, BLM Area | 50,000 | Enviro/ Land Owner /In Compliance | 1000 MCFPD |
| N SLIGO 8" | Repair/Remediation | 5,000 | Enviro/ Land Owner /In Compliance | 1300 MCFPD |
| **TOTAL** | | **$ 153,000** | | |



**EXHIBIT A**