

**Innovative Energy Technologies Program – Intellectual Property Agreement made  
this \_\_\_\_\_ day of \_\_\_\_\_, 2011**

**between**

**HER MAJESTY THE QUEEN in right of Alberta, as  
represented by the Minister of Energy  
(the “Crown”)**

and

**[INSERT]  
(the “Operator”)**

**Definitions and interpretation**

1. (1) In this Agreement

“Affiliate” means an Affiliate as described in subsection (3);

“Agreement” means this agreement;

“Application” means Application No. ##-### submitted under the Regulation respecting the [INSERT PROJECT TITLE] dated [INSERT APPLICATION DATE];

“Approval” means the Approval issued or to be issued under the Regulation for the Project;

“Background Technology” means Technology: (i) that is owned by the Operator or in respect of which the Operator has a license to use in connection with the Project; (ii) that pre-dates the commencement of the Term; (iii) that is necessary for performing the New Technology; and (iv) for which similar technology is not commercially available;

“Business Days” means Monday to Friday, not including a Holiday;

“Commercial Technology” means technology that is commercially available;

“Commercial Opportunities” include licensing rights to Project Technology;

“Computer Software” includes computer databases, files and programs either in human or machine readable form including programs owned by a Third Party or licensed by a Third Party to the Operator or Participant for specific applications related to the Project, but excluding general, commercially available or ‘shrink wrap’ Third Party software;

“Confidentiality Period” means the period from the date of disclosure pursuant to section 4(1) to the earlier of the dates set out in section 6(1) (a) to (c), subject to section 8;

“Holiday” has the same meaning as in section 28(1)(x) of the *Interpretation Act* (Alberta);

“Invention” means any new and useful art, process, apparatus, machine, article or manufacture or composition of matter, or any new and useful improvement therein conceived, generated, developed, enhanced, substantiated or first reduced to practice;

“Minister” means the Minister responsible for the Regulation;

“New Technology” means Technology: (i) developed or acquired by the Operator, a Participant or both after the date of the Approval in the course of and for the use of the Project and prior to the Project Completion Date; and (ii) includes, without limitation, the reports and materials required in Schedule “A”;

“Participant” means a Person with whom the Operator has contracted for the purposes of carrying out the Project or with whom such Person or the Operator is Affiliated, including those Persons in Schedule B, and does not include contractors who are supplying goods or services to the Operator or Participants for use on the Project or any licensee of all or any part of the Project Technology, nor are the Participants parties to this Agreement;

“Person” means any individual, partnership, corporation, business trust, trust, joint stock company, unincorporated association, joint venture, governmental authority or any other entity that has legal capacity to own property in their own name or to sue or be sued;

“Program” means the Innovative Energy Technologies Program as established in the Regulation;

“Project” means the Project as set out in the Approval;

“Project Completion Date” means the earlier of (i) the date on which the Crown has approved the final report submitted by the Operator pursuant to section 4(3); or (ii) the date of the consent of the Crown to the termination of the Approval and this Agreement;

“Project Technology” means the Background Technology and the New Technology;

“Regulation” means the *Innovative Energy Technologies Regulation* (AR 250/2004), as amended from time to time;

“Statutory Protection” or “Statutorily Protect” refers to the initiation of protection of intellectual property by means established by statute in any jurisdiction including, without limitation, in the case of Canada, the *Patent Act* (Canada), the *Industrial Design Act* (Canada), the *Copyright Act* (Canada), and the *Trade-Marks Act* (Canada);

“Supporting Documents” means documents and records of any kind whatsoever respecting Technology related to the Project;

“Technology” includes (i) technical know-how that is acquired, obtained, generated, developed, produced, enhanced, substantiated or first reduced to practice and that is proprietary in nature, (ii) Inventions, whether or not covered by the claims of a patent, and all patents issued in respect of Inventions, (iii) all documentation, writings, works, Computer Software, and other materials setting forth, containing, evidencing, pertaining to or relating to technical know-how or Inventions described in paragraphs (i) and (ii) and all copyrights in those writings, works, Computer Software or materials, (iv) all works or materials necessary for the practice or use of Technology, and (v) copyrights that protect works or materials referred to in paragraph (iv);

“Technology Transfer Plan” means a plan that includes undertaking Statutory Protection, pursuing Commercial Opportunities with Third Parties on commercially reasonable terms for the Project Technology, or both within the dates, periods or both proposed by the Operator;

“Term” means the period beginning on the date set out in the Approval and ending on the Project Completion Date, or such other date as may be agreed by the parties in writing;

“Third Party” means a Person other than a party to this Agreement or a Participant.

(2) Schedule A – “Submission Requirements”, Schedule B – “Participant List”, and Schedule C – Operator’s Contact Information for Notices are attached to and form part of this Agreement.

(3) For the purposes of this Agreement,

(a) two corporations will be considered to be Affiliated with one another if one of them controls the other, or if both of them are controlled by the same Person, and

(b) a corporation will be considered to control another corporation if the corporation has the power to direct or cause the direction of the management and policies of the other corporation, whether directly or indirectly, through one or more intermediaries or otherwise, and whether by virtue of the ownership of shares or other equity interests, the holding of voting rights or contractual rights, or otherwise.

(4) References in this Agreement to section numbers are to the corresponding numbered provisions of this Agreement.

(5) If the Operator is represented by more than one body corporate the obligations of the bodies corporate are joint and several.

#### **Project Technology ownership and obligations**

2. (1) Subject to sections 8 and 10 of this Agreement,

(a) Project Technology developed by the Operator or Participants or owned by the Operator or Participants belongs to the Operator or Participants, and

(b) the Operator or Participants may file for Statutory Protection of New Technology arising out of this Agreement at the Operator’s or Participant’s expense.

(2) In the event that either: (i) the Operator or a Participant enters into any contract or arrangement whatsoever which would assign ownership of all or part of the Project Technology to a Third Party or (ii) the Operator or a Participant enters into an exclusive license with a Third Party for the use of the Project Technology, the Operator shall comply with the requirements of section 15 (a) to (c).

(3) The Operator shall, directly or indirectly through an Affiliate, provide or be prepared to provide a license to the Project Technology to Third Parties (subject to any restrictions on sublicensing under any licenses from Third Parties that are commercially available and constitute Project Technology) or provide a means of Third Party access to the Project Technology, in each case for use in the Province of Alberta and on commercially reasonable terms determined by the Operator at the Operator's discretion.

(4) The Operator shall contract with Participants to ensure that Participants will do all acts, execute all documents, and give all consents required respecting Project Technology to enable the Operator to comply with this Agreement.

#### **Initial disclosure of Technology**

3. (1) As of the date of this Agreement, the Operator has identified all Commercial Technology and disclosed all Background Technology including, without limitation, those matters required by section 1 of Schedule "A" required by the Operator for the purposes of the Project, including Background Technology owned by the

- (a) Operator,
- (b) Participants,
- (c) Operator and Participants,
- (d) Third Parties, and
- (e) Crown and Crown agents or managers on behalf of the Crown.

(2) As part of the disclosure for the purposes of subsection (1), the Operator shall also disclose the terms and conditions on which the Background Technology,

- (a) is or will be used by the Operator or Participants in connection with the Project, and
- (b) is or will be available to prospective licensees.

#### **Reporting and copies of documents**

4. (1) The Operator shall, at least once each year on June 30 for the previous calendar year of each year during the Term, or more frequently as required by the Minister in writing:

- (a) identify any additional or potential Participants;
- (b) identify additional Background Technology used or to be used for the Project;

- (c) identify Commercial Technology used or to be used as part of the Project Technology;
- (d) disclose New Technology;
- (e) disclose the terms and conditions on which the Project Technology
  - (i) is or will be used by the Operator in connection with the Project; and
  - (ii) is available to prospective licensees;
- (f) advise whether the Operator at the Operator's cost, or the Participant at the Participant's cost will seek or will have sought Statutory Protection for the New Technology; and
- (g) report on the implementation of the Technology Transfer Plan, if a Technology Transfer Plan has been approved.

(2) The Operator shall provide to the Crown within 60 days after receiving written notice from the Crown

- (a) copies of patents, license agreements, other agreements and other reasonably necessary information or Supporting Documents referred to in section 3(1) for Background Technology and subsection (1) for New Technology; and
- (b) any other information regarding Project Technology.

(3) The Operator must have disclosed all New Technology alone or in combination with Background Technology prior to licensing New Technology to a Third Party.

(4) The Operator shall provide a final report that meets the requirements of Schedule "A", and as more specifically prescribed by the Crown, within 3 months of the end of the Term. The Crown shall advise the Operator if it accepts the report or if it requires further information. In the event that the Crown requires further information the Crown shall assess such additional information as is submitted and provide its response as soon as is reasonably practicable.

**Disclosure harmful to business interests**

5. Subject to the *Freedom of Information and Protection of Privacy Act* (Alberta), in reporting to the Crown pursuant to sections 3 and 4, the Operator may identify classes of information and records as being confidential in writing with or prior to disclosure, or may identify records and mark records expressly as confidential or indicate in writing with disclosure or delivery of the records, that the disclosure of confidential records would be harmful to the business interests of the Operator, a Participant or a licensee of the Operator where disclosure of confidential records would reveal

- (a) trade secrets, or

(b) commercial, financial, scientific or technical information, and

the disclosure in relation to the Operator, a Participant, or a licensee of the Operator could reasonably be expected to

(c) harm significantly the competitive position or interfere significantly with the negotiating position, or

(d) result in undue financial loss or gain.

Except as otherwise permitted by this Agreement and subject to the *Freedom of Information and Protection of Privacy Act* (Alberta), the Crown shall keep all such information and records in confidence.

**Crown's right to publish**

6. (1) Subject to section 8, the Crown may, in the Crown's discretion, on reasonable notice to and in consultation with the Operator, prepare reports for publication or publish reports provided by the Operator reporting on New Technology disclosed pursuant to section 4 following the earlier of

(a) publication of the New Technology by the Operator or a Participant,

(b) the expiry of 2 years following disclosure pursuant to section 4,

(c) the expiry of 2 years after the date the New Technology should reasonably have been disclosed to the Crown pursuant to section 4, in the Crown's opinion.

(2) The Crown may, on reasonable written notice to the Operator and in consultation with the Operator, publish records and information identified as confidential for the purposes of section 5, after compliance with subsection (3), that:

(a) do not in the Crown's discretion satisfy the requirements of section 5,

(b) were previously known to the Crown from a source other than the Operator and free of any obligation to keep such information confidential,

(c) were previously received from a Third Party without similar restriction and without breach of an agreement,

(d) are or become published or in the public domain by other than unauthorized disclosure, or

(e) are approved for release by written authorization of the Operator.

(3) In conducting consultation with the Operator pursuant to this section, the Crown shall provide to the Operator at least 90 days notice in writing and of the proposed disclosure, including details of the disclosure, and will receive and in good faith consider any submission by the Operator relating to a request not to disclose all or a portion of such proposed disclosure or to modify such proposed disclosure.

(4) Subject to section 8, the Operator consents to the publication of the New Technology at the end of the Confidentiality Period.

(5) The Operator hereby agrees to provide an irrevocable, royalty and fee free, world wide, non-exclusive license to the Crown to reproduce the New Technology that is disclosed by the Operator in reports and Supporting Documents provided to the Crown, at the time the Crown is entitled to publish such reports and Supporting Documents concerning the New Technology pursuant to the terms of this Agreement. The Operator shall also arrange for irrevocable waivers of moral rights in favour of the Crown and the Crown's licensees and assignees.

(6) The Operator shall provide the Crown all reasonable assistance in the analysis of Project Technology disclosed pursuant to this section for the purposes of preparing reports for publication.

**Operator's duty of confidentiality**

7. (1) The Operator shall maintain as confidential during the Confidentiality Period and for the purposes of an approved Technology Transfer Plan pursuant to section 8, if the Technology Transfer Plan includes confidentiality provisions, all records and information identified by the Operator as confidential for the purposes of section 5 and shall not disclose these records or information to any Third Parties unless

(a) the Operator discloses under an obligation of confidentiality,

(b) the Operator consents to disclosure or publication of the disclosed records or information for the purposes of section 6,

(c) the Operator elects to have the disclosed records or information freely available by publication or otherwise,

(d) the records and information are or become published or in the public domain other than by disclosure by the Operator or Participants,

(e) an application is made for Statutory Protection,

(f) the Operator discloses pursuant to an approved Technology Transfer Plan pursuant to section 8, or

(g) the Crown provides prior written consent.

(2) If records or information identified by the Operator as confidential for the purposes of section 5 are disclosed without an obligation of confidentiality, the disclosure shall be constructive notice to the Crown that the Operator consents to disclosure or publication of the records or information disclosed and shall not be treated as a breach of this Agreement.

#### **Technology Transfer Plan**

8. (1) The Confidentiality Period may be extended if the Operator elects to pursue Statutory Protection or Commercial Opportunities for the Project Technology by filing a Technology Transfer Plan for the Crown's approval and the Crown approves the Technology Transfer Plan pursuant to subsection (2).

(2) To request that the Confidentiality Period be extended pursuant to subsection (1), the Operator must provide a Technology Transfer Plan within 30 days of the expiry of the Confidentiality Period and the Crown shall review and consider the Technology Transfer Plan pursuant to subsection (4). Notwithstanding such additional information as may be requested by the Crown in a Technology Transfer Plan, a Technology Transfer Plan shall disclose whether the Operator has elected to pursue Statutory Protection or Commercial Opportunities for any part of the Project Technology and shall provide, in reasonable detail information regarding such Statutory Protection or Commercial Opportunities including the Operator's anticipated dates or periods for filing or obtaining such Statutory Protection or entering into a license agreement with a Third Party regarding a Commercial Opportunity.

(3) The Operator may submit a Technology Transfer Plan at any time during the Term for the duration of the Term. The Operator may propose revisions to the Technology Transfer Plan during the Term for the Crown's approval.

(4) On receipt of a Technology Transfer Plan or a proposed revision to the Technology Transfer Plan, the Crown shall review the Technology Transfer Plan or proposed revision and advise the Operator if approval is granted or request changes prior to approval. Without otherwise limiting the discretion of the Crown to approve the Technology Transfer Plan as described in this subsection, if the Technology Transfer Plan discloses that the Operator or an Affiliate of the Operator has applied for one or more patents in Canada covering any Project Technology, the Confidentiality Period shall be extended until the earlier of (i) the date the Canadian patent authority makes the application related to such patent or patents open to public inspection in accordance with the *Patent Act* (Canada); (ii) the date of issue of such patent or patents in Canada; or (iii) the date such patent application is abandoned or is denied without further right of appeal of such denial. In the event that the Operator has applied for one or more patents covering any Project Technology in jurisdictions other than Canada, the Crown shall in good faith consider the adverse effect of publication upon the ability of the Operator to obtain such patents and shall further consider extending the Confidentiality Period to the extent reasonably necessary to allow the Operator to obtain such patents in such other jurisdictions.

(5) If (i) the Operator has not actively implemented an approved Technology Transfer Plan, in the Crown's discretion, according to the dates, periods or both set in the Technology Transfer Plan; or (ii) the Operator is in breach of section 2(3), the Operator shall, on the Crown's notice in writing (which shall set out the details of the Crown's assessment of the Operator's failure to actively implement an approved Technology Transfer Plan or the Operator's breach of section 2(3)),

- (a) take reasonable steps to implement the Technology Transfer Plan,
- (b) submit proposed revisions to the Technology Transfer Plan pursuant to subsection (6), or
- (c) remedy the breach of section 2(3).

(6) In the event of receipt of notice from the Crown pursuant to subsection (5) that Operator has failed to actively implement an approved Technology Transfer Plan, the Operator may submit to the Crown proposed revisions to the Technology Transfer Plan and the Crown shall review the proposed revisions and advise the Operator whether approval is granted or request changes prior to approval.

(7) If, within 120 Business Days from receipt by the Operator of the notice from the Crown pursuant to subsection (5), the Operator has not (i) received approval to the proposed revisions to the Technology Transfer Plan; (ii) taken reasonable steps to implement the original Technology Transfer Plan; or (iii) remedied the breach of section 2(3),

- (a) the Crown may disclose the Project Technology by any means, including publication, and the Operator hereby agrees to provide an irrevocable, royalty and fee free, world wide, non-exclusive license to the Crown to reproduce the Project Technology in reports and Supporting Documents disclosed to the Crown;
- (b) the Operator shall grant to the Crown an irrevocable, royalty and fee free non-exclusive perpetual license to sublicense the Project Technology for commercial or other exploitation either with or without royalties; or
- (c) the Crown may publish in accordance with clause (a) and require the license referred to in clause (b).

#### **Crown as owner of New Technology**

9. (1) The Operator may request that the Crown undertake Statutory Protection of New Technology in the name of the Crown and at the Crown's expense. On receipt of notice of a request from the Operator, the Crown shall have 90 days or such further time as the parties agree to consider the request.

(2) The Crown may agree to the request, subject to conditions, or may deny the request.

**Operator's duty to assist – New Technology assigned to the Crown**

10. If New Technology is assigned and transferred to the Crown pursuant to section 9, the Operator shall provide to the Crown all reasonable assistance to enable the Crown to

- (a) Statutorily Protect in Canada or any other jurisdiction the Crown chooses,
- (b) obtain a license from Participants for the use of Background Technology on terms and conditions disclosed as required by section 3(2), and
- (c) do all acts and execute all documents, make declarations and the like that are necessary or desirable to the extent that the Statutory Protection shall issue in the name of the Crown.

**Prohibition against licensing pending election**

11. If the Operator makes a request for the Crown to undertake Statutory Protection of certain New Technology pursuant to section 9, the Operator shall not grant a license for that New Technology until after the expiry of the period in section 9.

**Operator's rights to a license**

12. In the event the Crown Statutorily Protects the New Technology in the Crown's name pursuant to section 9, the Operator and the Participants shall have an irrevocable royalty and fee free non-exclusive world wide, perpetual personal license to use but not to sublicense the New Technology. This license shall not be assignable or otherwise disposed of by the Operator without the Crown's prior written consent.

**Crown's license for non-commercial use**

13. In addition to the Crown's license rights in section 8, the Operator shall grant to the Crown, without payment or royalties, fees, costs, or charges, an irrevocable, non-exclusive, world-wide license in perpetuity to any New Technology for non-commercial use by the Crown, its agents and contractors.

**Operator's duty – licensing matters**

14. (1) The Operator shall provide all reasonable assistance to the Crown for the purposes of sections 8 and 13 and shall do all acts and execute all documents, make declarations and the like that are necessary or desirable to permit the Crown to license and use the New Technology.

(2) The parties shall ensure that all sublicenses granted pursuant to a license under this Agreement shall be within the scope of that license.

**Divestiture of Project and Project Technology rights**

15. In the event of a sale, assignment, transfer or other divestiture of the Project during the Term (for greater certainty, excluding a mortgage or grant of other security interest in the Project), with or without the Project Technology, or in the case of New Technology for which a license has been granted to the Crown for the purposes of section 8, whether by assignment of this Agreement or otherwise, the Operator shall

- (a) provide prior written notice to the Crown,

(b) impose on the purchaser, assignee or transferee (“purchaser”) all of the Operator’s obligations under this Agreement by an assignment and novation agreement to which the Crown will be a party, and

(c) provide reasonable assistance to the Crown at the Operator’s cost to enforce the obligations undertaken by the purchaser.

**Events of default and remedies for breach**

16. (1) The following constitute events of default:

(a) the Operator is materially in breach of any provision of this Agreement;

(b) the Operator ceases to carry out the Project during the Term as determined by the Minister;

(c) the Operator becomes insolvent within the meaning of the *Bankruptcy and Insolvency Act* (Canada), a receiver, receiver-manager, or trustee is appointed with respect to the property and assets of the Operator, or the Operator makes any proposal, assignment or arrangement with its creditors, or any steps are taken or proceedings commenced by any Person for the dissolution, winding up or termination of the Operator’s existence, or the liquidation of the Operator’s assets; or

(d) the Operator ceases to carry on operations.

(2) If an event of default occurs during the Term and the Operator, upon receiving notice in writing of the breach, fails to (i) take reasonably appropriate remedial action within 60 days (or on such shorter period as may be reasonable under the circumstances in the Minister’s discretion, but in no event less than 21 days), and (ii) diligently pursue such remedial action until the breach is remedied, the Minister may on notice to the Operator take any or all of the actions specified in section 10(2) and (3) of the Regulation in addition to any other remedies available to the Crown.

**Site visits, inspections, audits**

17. (1) The Crown shall have the right, but will not be obligated to appoint an individual from time to time as its technical representative who shall be entitled to receive notice of and monitor some or all or a portion of the activities related to the Project and be entitled to request and receive all information generated from it. The Crown shall be at liberty to replace that individual at any time with advance written notice to the Operator.

(2) During the Term the Operator shall allow any Person or Persons representing the Crown reasonable access at any time during the Operator’s business hours, on giving the Operator 48 hours prior written notice to the place or places where the Project is being conducted, and to examine and inspect all or any part of the Project or any of the Supporting Documents, records, documents or writings related to the Project. The Crown shall be responsible for the conduct of its representatives, including the technical representatives, and shall ensure that these representatives are bound by the confidentiality provisions of this Agreement.

(3) The exercise of the Crown's right of access pursuant to subsection (2) is subject to the reasonable direction and requirement of the Operator regarding safety and conduct while on the Project site.

(4) The Crown agrees in the exercise of access pursuant to subsection (2) to indemnify the Operator and Participants and hold them harmless against all claims, losses and costs, including reasonable solicitor client costs, made against them as a result of injuries, damage or loss arising out of this access except in the case of negligence, illegal acts or omissions or wilful misconduct on the part of the Operator or a Participant.

(5) The Operator shall

(a) keep and maintain, and cause its employees, Participants, consultants and contractors and other Third Parties who are employed or engaged in connection with the Project to establish and maintain complete and accurate Supporting Documents, books, records and accounts, of all activities, costs and expenditures relating to the Project;

(b) on request of the Crown, make available to the Crown for inspection, reproduction, audit or any other reasonable purpose every such Supporting Document, book, account or record; and

(c) ensure that all records and writings relating to the Project are not destroyed without the Crown's written authorization for a period of 5 years after the end of the Term.

**Hold Harmless**

18. (1) The Operator shall hold harmless the Crown, the Crown's employees and agents from and against all claims, demands, losses, costs, including reasonable solicitor client costs, damages, actions, suits or proceedings (collectively "Claims"), whatsoever and by whomsoever made, brought or prosecuted, in any manner to the extent the Claims are based upon or arise out of, relate to, are occasioned by or are attributable to:

(a) the negligence, illegal act, omission or wilful misconduct of the Operator or a Participant or their employees or agents;

(b) the infringement or alleged infringement by the Operator or a Participant or their employees or agents of any form of Statutory Protection of a Third Party or the misappropriation or other wrongful use of the confidential and proprietary information of a Third Party by the Operator or a Participant or their employees or agents; and

(c) any royalties or other payments that may be payable by the Operator or a Participant;

in the performance of this Agreement by the Operator or a Participant or their employees or agents.

(2) The Operator's obligation in subsection (1) is contingent on the following conditions:

(a) the Crown must notify the Operator in writing as soon as is reasonably practicable after the Crown becomes aware of a Claim or possibility thereof; and

(b) the Crown must use its reasonable efforts to provide the Operator with all information related to the action that is requested by the Operator.

(3) The Operator shall not be liable hereunder for any settlement made by the Crown without the Operator's prior written approval.

(4) The Crown shall hold harmless the Operator and the Participants, their directors, officers, employees and agents from and against all Claims whatsoever and by whomsoever made, brought or prosecuted, in any manner to the extent the Claims are based upon or arise out of, relate to, are occasioned by or are attributable to:

(a) the negligence, illegal act, omission or wilful misconduct of the Crown or its employees or agents;

(b) the disclosure of Project Technology contrary to this Agreement by the Crown or its employees or agents; and

(c) the infringement or alleged infringement by the Crown or its employees or agents of any form of Statutory Protection of a Third Party or the misappropriation or other wrongful use of the confidential and proprietary information of a Third Party by the Crown or its employees or agents.

(5) The Crown's obligation in subsection (4) is contingent on the following conditions:

(a) the Operator must notify the Crown in writing as soon as is reasonably practicable after the Operator becomes aware of a Claim or possibility thereof;

(b) the Operator must use its reasonable efforts to provide the Crown with all information related to the action that is requested by the Crown.

(6) The Crown shall not be liable hereunder for any settlement made by the Operator without the Crown's prior written approval.

(7) For the purposes of these hold harmless obligations, each party shall consult the other prior to taking action in a manner that would substantially adversely affect the other.

### **Infringement**

19. In the event the Operator uses Project Technology contrary to law or in the event of meritorious claims by a Third Party, the Operator shall (i) modify or replace the affected portion of the Project including the Project Technology, (ii) modify or replace the Project Technology, or (iii) obtain the rights to use the infringing Project Technology for the benefit of the Operator, the Crown and licensees whether licensees of the Operator or the Crown pursuant to this Agreement. The Operator shall immediately notify any licensees and cease making or using the affected portion of the Project including the Project Technology until the Operator is able to modify, replace or obtain rights to the Project Technology according to one or more of paragraphs (i)-(iii).

### **Representations and warranties**

20. The Operator represents and warrants to and in favour of the Crown that

- (a) the Operator is duly authorized by license or otherwise to use the Background Technology that the Operator has or will have in place for the Project,
- (b) the Participants are as set out in Schedule B,
- (c) if the Operator is a corporation, the Operator is a corporation duly incorporated or registered, is validly subsisting and is in good standing under the laws of the Province of Alberta,
- (d) the Operator has all the necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement,
- (e) the execution and delivery of this Agreement and the completion of the transactions herein contemplated have been duly authorized by all necessary corporate action by the Operator,
- (f) this Agreement is a valid and binding obligation of the Operator, enforceable against the Operator in accordance with its terms, subject to limitations imposed by law in connection with insolvency, reorganization or other laws affecting rights of creditors and members generally, and to the extent that equitable remedies such as specific performance and injunction are only available at the discretion of the courts, and
- (g) the person or persons executing this Agreement on behalf of the Operator have been duly authorized to do so, and the Operator will be fully bound by such execution.

**Notices**

21. All notices, consents and other communications under this Agreement must be in writing, and are effective when delivered by any means, including fax transmission to the following respective addresses:

For the Crown:

Innovative Energy Technologies Program  
Alberta Energy  
Research & Technology Branch  
North Tower, Petroleum Plaza  
9945 - 108 Street  
Edmonton, Alberta T5K 2G6  
Fax: (780) 644-3234

For the Operator:

Contact information for the Operator is provided in Schedule "C".

Either party may change its address information by giving notice to the other in the above manner.

**Dispute Resolution**

22. (1) In the event of any dispute or material disagreement regarding the interpretation or application of any provision of this Agreement, and if discussion between senior officials of the parties fails to produce a resolution, then the parties agree to jointly refer the matter to consensual mediation. Mediation will proceed on the following basis:

- (a) if the parties cannot agree on a mediator they will ask the President or Executive Director of the Alberta Arbitration and Mediation Society to assist in the selection process;
- (b) the parties will share the cost of the mediator equally and bear their own costs incurred with respect to the mediation; and
- (c) no evidence of anything said or of any admission or communication made in the course of the mediation shall be admissible in any legal proceeding, except with the consent of both parties.

(2) Nothing in subsection (1) shall prevent the Crown from proceeding with any or all of the actions specified in section 10(2) and (3) of the Regulation in addition to any other remedies available to the Crown upon any event of default described in section 16.

**Survival on Termination**

23. (1) Those provisions that by their nature are intended to survive termination of this Agreement shall survive such termination, including, without limitation, provisions of sections 2, 5-12, 14, 18-27 and 29-30.

(2) Notwithstanding termination pursuant to section 28, licenses and sublicenses granted for Project Technology pursuant to this Agreement survive termination of this Agreement.

**No Agency**

24. Nothing in this Agreement is intended to constitute the Operator as an agent of the Minister for any purpose, or to create any relationship of agency, partnership or joint venture between the Minister and the Operator.

**Further Assurances**

25. The parties agree to do all such acts and provide such further assurances and instruments, from time to time, as may reasonably be required in order to carry out the provisions of this Agreement according to their spirit and intent.

**Amendment, Waiver, Representations**

26. No amendment of this Agreement is effective unless made in writing and signed by a duly authorized representative of each of the Minister and the Operator. No waiver of any provision of this Agreement is effective unless made in writing, and any such waiver has effect only in respect of the particular provision or circumstance stated in the waiver. No representation by either of the parties with respect to the performance of any obligation under this Agreement is capable of giving rise to an estoppel unless the representation is made in writing.

**Assignment**

27. (1) Subject to section 15, in the event of a divestiture of substantially all assets of the Operator, such as a corporate reorganization of the Operator, except as required by the Regulation, the Approval or both, the Crown's consent is not required.

(2) The Crown may assign this Agreement or any right, benefit, obligation or liability under it to a

- (a) corporation established by the Crown by statute,
- (b) corporation in which the Crown is a member,
- (c) Provincial corporation or Crown-controlled organization as defined by the *Financial Administration Act* (Alberta), or
- (d) delegated Person, for example, as contemplated by Schedule 10 of the *Government Organization Act* (Alberta).

**Termination**

28. This Agreement shall terminate upon the earlier of the expiry of the Term, concurrently with termination of the Approval, or as set out in the Approval.

**Severance**

29. In the event any provision of the Agreement is held invalid, illegal, or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall not affect the remainder of this Agreement, which shall be and remain in full force and effect, enforceable in accordance with its terms.

**Entire Agreement**

30. This Agreement together with the Approval is the entire Agreement between the Crown and the Operator with respect to the Project, and supersedes all previous agreements, negotiations, and understandings. There are no agreements, representations, warranties, terms, conditions or commitments except as expressed in this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

**HER MAJESTY THE QUEEN in right of [INSERT]  
Alberta, as represented by the Minister of  
Energy**

Per: \_\_\_\_\_ Per: \_\_\_\_\_  
Name: Name:  
Title: Title:

**Schedule A**  
**Submission Requirements**

1. The Operator shall provide to the Crown information generated before the start of the Project relating to production history, well data, facilities debottlenecking, geological data in the Project area, experimental studies, field pilot, engineering studies and any other data that may impact the Project, in the Operator's control or possession and that are specific to the Project.
2. The Operator shall provide the Crown with a reproducible copy of all data of any kind which results from the Project, including without limitation, geological, reservoir, injection, production, EUB performance data, monitoring, product, product treating and handling, equipment maintenance, performance, documents, maps, drawings, evaluations, analyses, interpretations, calculations, reports and any clarification required to understand the data. This data must be submitted in a reproducible electronic format. If requested by the Crown, the Operator shall meet with the Crown to explain any data or to update the Crown on the conduct of the Project.
3. The Operator shall prepare a final Project report, which shall contain the results, conclusions, analyses, interpretations and final evaluations of the Project.
4. All submissions made by the Operator are
  - (a) at the Operator's cost; and
  - (b) to be to the Crown's satisfaction.

**Schedule B**  
**Participants List**

FOR REVIEW PURPOSES ONLY

Schedule C

Contact Information for Notices

FOR REVIEW PURPOSES ONLY