

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is dated the _____ day of _____, 200_.

BETWEEN:

Innovative Energy Consulting Pty Ltd. (ABN 81 122 373 719) of 13 North Maleny Road, Maleny, Queensland, a corporation organised and existing under the laws of Australia (“**IEC**”)

and

WHEREAS:

- (A) the Parties are negotiating a possible transaction and business relationship (the “**Transaction**”) pursuant to _____;
- (B) the Parties wish to exchange certain Confidential Information with each other for purposes of evaluating _____ and determining the terms and conditions upon which they could enter into the Transaction with each other; and
- (C) each Disclosing Party is prepared to allow the Receiving Party access to such Confidential Information on the condition that the Transaction is kept confidential and the Disclosing Party’s interest in such Confidential Information is protected as contemplated by the terms of this Agreement.

NOW THEREFORE the Parties mutually covenant and agree as follows:

1. **Definitions:**

In this Agreement, the following capitalized words and phrases shall have the following meanings:

“**Advisors**” means all Persons working wholly or partially for or on behalf of another Person as consultants, advisors, contractors or otherwise but excludes all Employees of the Person;

“**Affiliates**” means with respect to a non-individual Person, any other non-individual Person Controlled, directly or indirectly, by that non-individual Person, or any non-individual Person (a “**Controlling Entity**”) that Controls, directly or indirectly that non-individual Person or any non-individual Person directly or indirectly under the Control of a Controlling Entity; and “**Control**” means ownership of more than fifty percent of the voting power of a non-individual Person; Control shall be deemed to exist through (i) the direct or indirect

ownership of 50% or more of the nominal value of the equity or the issued share capital or of 50% or more of the shares or equity entitling the holders to vote for the appointment of directors or individuals performing similar functions, or (ii) the right by any other means to appoint directors or individuals performing similar functions, who have a majority vote;

“Confidential Information” means all information and other data and knowledge, whether factual, interpretative or otherwise, associated with or related to the Disclosing Party, its business, the _____ and/or the Transaction (including confirmation that the Parties are in discussions concerning a potential Transaction) in any form (whether oral, written, machine readable or otherwise) and whenever and howsoever obtained by the Receiving Party; provided that “Confidential Information” shall not include any information which the Receiving Party can show:

- (i) was, at the time of its disclosure by the Disclosing Party to the Receiving Party, already in the public domain;
- (ii) entered the public domain after its disclosure by the Disclosing Party to the Receiving Party other than as a result of disclosure by the Receiving Party in violation of this Agreement or any of its past or present Employees or past or present Advisors;
- (iii) was lawfully in the Receiving Party’s possession at the time of its disclosure by the Disclosing Party to the Receiving Party and was not acquired by the Receiving Party:
 - (A) on a confidential basis; or
 - (B) to its knowledge, after reasonable inquiry, as a result of a breach by a Third Party of any obligation of confidence upon that Third Party;
- (iii) was lawfully received by the Receiving Party from a Third Party after disclosure to the Receiving Party by the Disclosing Party, and the Receiving Party received the information from that Third Party other than:
 - (A) on a confidential basis; or
 - (B) to its knowledge, after reasonable inquiry, as a result of a breach by the Third Party of any obligation of confidence upon that Third Party;

“Disclosing Party” means either IEC or _____, as the case may be, which discloses Confidential Information to the other Party;

“Employee” means any director, officer or other individual in an employee relationship with a Person;

“Evaluation” means (i) the assessment, analysis, evaluation and other similar activities related to the _____, the Transaction, the Disclosing Party and/or its business; and (ii) any negotiations or discussions related to the _____ or the Transaction between the Disclosing Party and the Receiving Party;

“Parties” means Provident and Nexen and **“Party”** means either of them as the context may require;

“**Person**” means any individual, corporation, partnership, branch, business unit, limited partnership, sole proprietorship, governmental or regulatory body, un-incorporated organization or any other entity of any nature whatsoever;

“**Receiving Party**” means either IEC or _____, as the case may be, which receives Confidential Information from the other Party; and

“**Third Party**” means any Person other than one that is a Party to this Agreement.

Derivations of any of the foregoing words and phrases shall have a corresponding meaning.

2 **Obligation of Confidence:**

2.1 Subject to Section 2.2, the Receiving Party shall preserve as strictly confidential and private the Confidential Information, and shall not disclose or reveal, or allow to be disclosed or revealed, the Confidential Information in any manner, directly or indirectly, to any Third Party except as expressly permitted hereunder. The Receiving Party shall be liable for any breach of the intent of this Agreement by any of its Employees or any of its Advisors and shall take all reasonable steps necessary to ensure compliance with this Agreement by such Persons including the initiation of appropriate judicial proceedings.

2.2 The Receiving Party may disclose the Confidential Information:

2.2.1 only to its Employees and Employees of its Affiliates who have a need to know the Confidential Information for the purposes of conducting the Evaluation and only after each such Employee acknowledges to the Receiving Party that the Confidential Information is being disclosed subject to the terms of this Agreement and the Employee agrees with the Receiving Party to fully comply with the provisions of this Agreement both during and after its employment by the Receiving Party or its Affiliate (as applicable); and

2.2.2 only to its Advisors and Advisors to its Affiliates who have a need to know the Confidential Information for the purposes of conducting the Evaluation and only after each such Advisor acknowledges to the Receiving Party that the Confidential Information is being disclosed subject to the terms of this Agreement and agrees with the Receiving Party to be bound by the terms and conditions of this Agreement or hold the Confidential Information subject to a confidentiality obligation not less onerous than that contained herein.

3 **Restricted Use:**

The Receiving Party shall ensure that the Confidential Information is used by it, its Employees and its Advisors only for the purpose of conducting the Evaluation and for no other purpose whatsoever.

4 **Disclosure Required By Law:**

4.1 Subject to Section 4.2, no announcement or disclosure relating to the Transaction or their prospective interest in the Transaction will be made or solicited by either Party or on its behalf without the other Party’s prior written

consent (which may be given on such terms as the other Party considers appropriate).

4.2 The Receiving Party may disclose such Confidential Information as required under applicable law provided that, if such a disclosure is required, the Receiving Party shall:

- (i) promptly notify the Disclosing Party of the situation with all relevant details;
- (ii) take all reasonable steps to limit the amount and degree of disclosure and otherwise preserve the confidentiality of the applicable Confidential Information;
- (iii) to the extent reasonably possible, consult with the Disclosing Party prior to the disclosure and assist the Disclosing Party in seeking a protective order or other remedy in order to limit or restrict the disclosure or otherwise preserve the confidentiality of the applicable Confidential Information; and
- (iv) disclose only such portion of the Confidential Information as is required to be disclosed by applicable law and only to the extent required to be disclosed by applicable law.

6 Title:

The Receiving Party shall obtain no right, title, estate or other interest of any nature whatsoever in or to Confidential Information received from the Disclosing Party.

7 Return / Destruction of Confidential Information:

7.1 The Receiving Party shall, within 5 days of written notice received from the Disclosing Party, return and deliver to the Disclosing Party or destroy, all Confidential Information directly or indirectly in its control including, without limitation, all documents, notes, extracts, summaries, memoranda, copies and other materials whether in the form of writing, machine readable data or any other format whatsoever. If the Confidential Information is in the form of materials generated internally by the Receiving Party, the Receiving Party may, instead of providing such materials to the Disclosing Party, destroy such materials. Notwithstanding the foregoing, and where not in conflict the Confidentiality Agreements the Parties have entered into with Encana concerning the Transaction, the Receiving Party may retain one copy of the Confidential Information, analyses, or extracts thereof for its corporate records in accordance with its internal operating policies.

7.2 The Receiving Party will if required by the Disclosing Party following receipt of a written notice under Section 7.1 confirm in writing (such confirmation to be signed by Director of the Receiving Party) its compliance and the compliance of its Advisors, Affiliates and/or employees with Section 7.1.

8 Remedies:

8.1 The Receiving Party shall be liable, indemnify and hold the Disclosing Party harmless from and against any and all claims, expenses (including reasonable legal fees incurred) and other liabilities or damages of whatever nature suffered by the Disclosing Party as a result of any breach or threatened breach of this Agreement by the Receiving Party, its or its Affiliate's past or present Employees, its or its Affiliate's past or present Advisors or any Person obtaining the Confidential Information directly or indirectly from or through the Receiving Party. Notwithstanding anything to the contrary elsewhere herein contained, in no event shall either Party be liable to the other Party hereunder for any indirect, consequential, punitive or special damages.

8.2 The Parties agree that monetary damages are not an adequate or sufficient remedy for a breach of this Agreement. Therefore, in addition to any applicable monetary damages, the Disclosing Party shall also be entitled to injunctive relief and other judicial relief to prevent breaches of this Agreement.

9 Term:

This Agreement shall terminate on the earlier of the execution of a definitive agreement between IEC and _____ regarding the Transaction or two years from the date of this Agreement.

10 Miscellaneous:

10.1 This Agreement shall not impose upon either Party any obligation to provide information (confidential or otherwise) to the other Party. This Agreement shall not oblige either Party to continue its pursuit of the Project or enter into any further agreement or document related thereto. Either Party may stop pursuing the Project at any time and for any reason without any liability whatsoever to the other Party save as arising from this Agreement.

10.2 Each Receiving Party acknowledges that (i) the information supplied by the Disclosing Party may not be accurate or complete; and (ii) if the Parties proceed to a binding and enforceable agreement, such agreement will contain the only representations and warranties upon which each Party will be entitled to rely in relation to the Transaction. Therefore the Disclosing Party is not liable for or in relation to the information provided by it to the Receiving Party pursuant to this Agreement.

10.3 Any amendments to this Agreement must be in writing and executed by both Parties in order to be effective. No delay or failure to complain shall constitute a waiver of any rights of a Party or the obligations of the other Party. Any waiver of any right of a Party or obligation of the other Party must also be in writing and signed by the waiving Party and such waiver shall impact only the right or obligation expressly noted in such waiver.

10.4 Neither Party may assign any rights or obligations under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. This Agreement shall be binding upon and enure to the benefit of the Parties and their respective Affiliates, successors and permitted assigns.

- 10.5 If individual provisions of this Agreement are determined by an authority with due jurisdiction to be legally invalid, void or unenforceable, such shall not affect the validity or enforceability of the remaining provisions of this Agreement. The Parties shall replace the invalid, void or unenforceable provision with a valid and enforceable provision which comes as close as possible to the original provision as regards its commercial intent.
- 10.6 This Agreement shall be governed by and construed in accordance with Queensland, Australia law. The Parties hereby submit to the non-exclusive jurisdiction of the courts of Queensland in relation to any legal proceedings arising out of this agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement by their duly authorised representative as of the date hereof.

Innovative Energy Consulting Pty Ltd _____.

By: _____

By: _____