

COURT FILE NUMBER

1701-05131

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

APPLICANTS

PRIVATE EQUITY OAK LP by its General Partner  
PE12PXPE(OAK) GP LTD.

RESPONDENTS

OAK POINT ENERGY LTD., KEMEX LTD., KEMEX  
TECHNOLOGIES LTD., INSITE TECHNOLOGIES LTD.

AND IN THE MATTER OF THE RECEIVERSHIP OF OAK  
POINT ENERGY LTD., KEMEX LTD., KEMEX  
TECHNOLOGIES LTD., INSITE TECHNOLOGIES LTD.

DOCUMENT

**SECOND REPORT OF THE RECEIVER**

**May 7, 2018**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

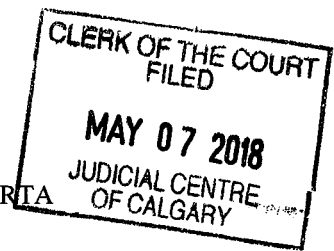
**RECEIVER**

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APPENDIX A	Listing of Patents
APPENDIX B	Redacted IP Transfer Agreement
CONFIDENTIAL APPENDIX C	Unredacted IP Transfer Agreement (not included)
APPENDIX D	Technology License Agreement Notice of Termination

## INTRODUCTION

1. Effective April 13, 2017 (the “Receivership Date”), pursuant to an order (the “Receivership Order”) of the Court of Queen’s Bench of Alberta (the “Court”) granted in these proceedings in Action No. 1701-05131 (the “Receivership Proceedings”), Alvarez & Marsal Canada Inc. was appointed receiver and manager (the “Receiver”), without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, including but not limited to real property and wherever situate including all proceeds thereof (the “Property”) of Oak Point Energy Ltd. (“Energy”) and Kemex Ltd., Kemex Technologies Ltd. and Insite Technologies Ltd. (collectively the “IP Companies” and the IP Companies together with Energy referred to as “Oak Point” or the “Company”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, (the “BIA”) and section 13(2) of the *Judicature Act*, RSA 2000, c J-2, in the within action.
2. The Receivership Order empowers and authorizes, but does not obligate, the Receiver to, among other things, manage, operate and carry on the business of the Company and to take possession and control of its Property and of any and all proceeds, receipts and disbursements arising out of or from the Property, and to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business.
3. The purpose of this second report of the Receiver (the “Second Report” or “this Report”) is to provide this Honourable Court with information in respect of the following:
  - a) the activities, generally, of the Receiver since the First Report;
  - b) an update on the closing of the previous sale of oil & gas leases;
  - c) the Receiver’s dealings with Diamond Head Investments Ltd. (“Diamond Head” or the “Royalty Owner”), the owner of an

Overriding Royalty Agreement (“ORR”) on the oil sands leases owned by Energy;

- d) the sale of the intellectual property to Oak Equity through a credit bid;
  - e) the Receiver’s application for the sealing of the Confidential Appendix “C” to this Report (the “Restricted Court Access Order”);
  - f) the actual cash flow results for the period from April 13, 2017 to April 24, 2018 (the “Reporting Period”);
  - g) the Receiver’s future course of action; and
  - h) the Receiver’s recommendations.
4. Capitalized words or terms not defined or ascribed a meaning in the Second Report are as defined or ascribed a meaning in the Receivership Order.
5. All references to dollars are in Canadian currency unless otherwise noted.

**TERMS OF REFERENCE**

6. Prior to the Receivership Date, Alvarez & Marsal Canada ULC (“A&M ULC”), an affiliate of the Receiver, was engaged as a financial advisor to the fulcrum secured creditor, Private Equity Oak LP (“Oak Equity”) and the engagement was consented to by Oak Point. The engagement commenced on March 9, 2017 and terminated immediately prior to the Receivership Date. In that role, A&M ULC from time to time reviewed, assessed and reported to Oak Equity on the operations and ongoing viability of Oak Point.
7. In preparing this Second Report, the Receiver has relied primarily upon information obtained prior to the Receivership Proceedings in its role as financial advisor, the representations of certain former management and employees of Oak Point and financial and other information contained in the Company’s books and records. The Receiver has not performed an audit, review or other verification of such information.

## **BACKGROUND AND OVERVIEW**

8. Energy was a small private oil sands company whose core assets included undeveloped lands and non-producing oil sands leases in the Athabasca area of Northern Alberta.
9. The oil sands leases were sold to Suncor Energy Inc. (“Suncor”) and the sale was approved by the Court on November 27, 2017 and closed on January 16, 2018.
10. The IP Companies hold various US and Canadian patents and other intellectual property (“IP”) related to the development of steam facilities for oil sands extraction using SAGD operations. The IP was not being utilized by the Company and the Company had been attempting to license or sell the IP prior to the Receivership.
11. The Company had no operations and no other material assets.
12. Further background to the Company and its financial circumstances is contained in the materials filed in support of and relating to the Receivership Order and the first report of the Receiver (“First Report”). These documents and other relevant information have been posted by the Receiver on its website at: [www.alvarezandmarsal.com/Oakpoint](http://www.alvarezandmarsal.com/Oakpoint) (the “Receiver’s Website”).

## **ONGOING ACTIVITIES OF THE RECEIVER**

13. Since the First Report, the Receiver’s ongoing activities have included, but are not limited to, the following:
  - a) attending various meetings and holding various communications with Oak Equity, concerning updates on the receivership proceedings of Energy, as well as updates on the sales process relating to the oil sands leases and IP;
  - b) closing the sale of Energy’s oil sands leases to Suncor, including but not limited to litigation and settlement negotiations with Diamond Head, preparation of conveyances and other transfer documentation,

- communication with the Alberta Energy Regulator (“AER”) on transferring licenses and preparing the final statement of adjustments;
- c) continued interaction with and instructions to Peter’s & Co, the sales agent, regarding the marketing of the IP;
  - d) continued instructions and interaction with the Receiver’s independent legal counsel, Osler, Hoskin & Harcourt LLP (“Osler”), in respect of the Receivership Proceedings, closing the sale to Suncor, settlement of the ORR claim by Diamond Head and preparation of the IP Transfer Agreement (as that term is defined below);
  - e) ensuring the statutory filing requirements of the Receiver are current and properly reported to the Canada Revenue Agency;
  - f) continued review and instructions to Energy’s patent agents in the United States and Canada with respect to the maintenance of various patents held by the IP Companies;
  - g) negotiations with Oak Equity regarding the purchase of the IP;

#### **ENERGY’S OIL AND GAS LEASES**

14. With the exception of two surface leases all oil sands leases and related surface leases and licenses held by Energy were transferred to Suncor. The request to transfer the leases and licenses was submitted immediately after closing, and the AER has approved the transfers except for the surfaces leases. The Receiver continues to follow up on the transfer of the surface leases, which it understands should happen shortly. The Receiver will disclaim any interest in the remaining two surface leases prior to seeking its discharge. There was no development on the two surface leases which were not transferred.

#### **CLOSING OF THE SALE TO SUNCOR**

15. The approval of the Suncor APA and Vesting Order was obtained on November 27, 2017.

16. Closing of the sale was however delayed, as the Vesting Order initially granted by Justice Dario was stayed. The Vesting Order vested off the ORR as it did not appear to be an interest in land. The Royalty Owner was given notice of the application but did not appear. Subsequent to the Vesting Order being granted the Royalty Owner brought an application on December 6, 2017 requesting a stay of the Vesting Order. Additionally, the Vesting Order was appealed by the Royalty Owner and it claimed the appeal stayed the Receiver from executing on the Vesting Order.
17. The Receiver and Suncor filed arguments in reply to the stay application and notwithstanding the arguments against the stay, a stay of the Vesting Order was granted to allow the Royalty Owner more time to file material in support of their position that the ORR was an interest in land and could not be vested off.
18. As a result of the stay of the Vesting Order, the Receiver and Suncor agreed to extend the closing of the sale to mid-January 2018 to attempt to resolve the matter with Diamond Head or alternatively to have the application heard by the Court.
19. Ultimately the Receiver and Suncor negotiated a settlement with Diamond Head, the stay of the Vesting Order was vacated and the sale to Suncor closed on January 16, 2018.

## **IP MARKETING EFFORTS AND IP TRANSFER AGREEMENT**

20. Since the date of the Receivership, the Receiver has taken steps to maintain the patents in both the United States and Canada. The Receiver had contracted the services of Fay Sharpe LLP in the United States and Prima IP Incorporated in Canada to act as patent agents on behalf of the Company during the receivership proceedings. A listing of the current patents held by the IP Companies is attached as Appendix A.
21. The sales process which was run by the Receiver is more fully discussed in the First Report. The sale of the IP was included in the original sales process.
22. The sales process initiated by the Receiver closed at about the time the Suncor offer was received. At that time, only two written offers had been received for the IP and both of these were for less than \$25,000. There was no interest in pursuing these offers by the Receiver and no support from Oak Equity to do so.
23. Subsequent to closing the sale to Suncor, the Receiver made further attempts to attract offers for the IP including by requesting that the two offerors to increase their offers. They both declined to do so. One further offer was received in the amount of \$175,000, but there was no interest in pursuing that offer as it was felt it was still too low and did not represent the value of the IP.
24. As no acceptable offers for the IP were received, the Receiver commenced negotiations with the Oak Equity to acquire the IP. The negotiations have resulted in the Oak Equity, making an offer for the IP by way of a credit bid. A version of the final agreement (“IP Transfer Agreement”) which redacts only the purchase price is attached as Appendix B and the unredacted version is attached as Confidential Appendix C.
25. The Receiver believes the offer and the credit bid to be fair and reasonable and has accepted the offer, subject to Court Approval.
26. The Receiver believes that approval of the IP Transfer Agreement is in the best interest of all stakeholders for the following reasons:



- a) the Receiver was authorized to market and sell the Company's Property pursuant to section 3(k) and 3(l) of the Receivership Order and acted in good faith and with due diligence in the sale of the assets and in accepting and executing the IP Transfer Agreement;
- b) there was an extensive and broad marketing process for the IP conducted by Peters & Co, an experienced marketing consultant and sales agent, to a large number of prospective purchasers over a reasonable timeframe;
- c) Oak Equity is the fulcrum creditor in these proceedings owed in excess of \$35,000,000 and has valid first priority security over the IP. As discussed in its First Report, the Receiver has received an opinion from its counsel that the security of Oak Equity is valid and enforceable. Additionally, the Vesting Order for the Suncor sale authorized the Receiver to distribute funds to Oak Equity;
- d) the Receiver is satisfied that the APA is the highest and best unconditional offer received and is considerably greater than the next highest offer received; and
- e) it is the offer with the least amount of closing risk, in the circumstances.

27. Accordingly, the Receiver requests that this Honorable Court approves the IP Transfer Agreement and grant a vesting Order in respect of the IP.

28. Oak Equity has requested the purchase price and certain other information remain confidential unless required to be disclosed to any governmental authority or regulatory authority or the public if required by law and/or in connection with obtaining an approval and vesting order from this Honourable Court.

29. Due to the purchaser's requirement of confidentiality and the sensitive business nature of the other information in the IP Transfer agreement, the Receiver is of the view that if the information is disclosed to third parties prior to the closing of the

sale of the Property, the disclosure would materially jeopardize the sale or, if the sale does not close, could materially jeopardize the value that the Receiver could subsequently obtain from a future sale of the IP. After conversations with the purchaser the Receiver also understands that the purchaser is likely to monetize the IP at some point, possibly by selling or licensing it in the future. As such, the Receiver is respectfully of the view that the purchase price is commercially sensitive and it is appropriate that the Court grant the Receiver's request for the Restricted Court Access Order to seal Confidential Appendix C containing the full content of the IP Transfer Agreement.

### **COURT APPROVAL AND VESTING ORDER**

30. The IP Transfer Agreement is conditional only upon the Court granting a Vesting Order vesting all of the Debtors' right, title and interest in the IP to the Purchaser free and clear of any Claims and Encumbrances (as defined in the Vesting Order).
31. Other than charges created by the Receivership Order and the security of the Purchaser registered at Alberta Personal Property Security Registry, the Receiver is not aware of any other priority Claims to be vested off.
32. The Receiver has the proceeds from the sale of assets to Suncor and those are sufficient to cover repayment of the Receiver's borrowings and any other charges of the Receiver.
33. The Purchaser is the secured creditor and has advised it has no objection to the terms of the Vesting Order.
34. The Vesting Order will also vest off any licenses issued by the Debtor's to use the IP. The Receiver is aware of only one such license being granted. On October 24, 2016, Energy entered into a non-exclusive licensing agreement with Nauticol Energy Ltd. ("Nauticol"), which enabled Nauticol to design, build, operate, maintain and improve Energy's modular design system (the "Licensing Agreement"). The Licensing Agreement included the right to sell the or to export to, sell, or use in any country products produced when practicing the process.

35. Shortly after the receivership date the Receiver had completed a review of the facts and circumstances of the Licensing Agreement and determined that it was in the best interest of all Energy's stakeholders that the Licensing Agreement be disclaimed and terminated effective May 5, 2017.
36. A Notice of Termination was sent to Ken James, Chief Executive Officer of Nautical on May 5, 2017. Nautical has not formally or legally or otherwise disputed the disclaimer. A copy of the correspondence sent to Ken James is attached as Appendix D.
37. The Receiver, based on discussions with its Counsel, is of the view that the Licensing Agreement and any other similar rights that may have been granted by the Debtors' is an encumbrance which capable of being vested off by the Court.

#### **RECEIPTS AND DISBURSEMENTS – APRIL 13, 2017 TO APRIL 24, 2018**

38. The following is a statement of the Receiver's consolidated receipts and disbursements of the Company during the Reporting Period:

<b>Oak Point Energy Ltd. - In Receivership</b>	
<b>Interim Statement of Receipts &amp; Disbursements</b>	
<b>April 13, 2017 to April 24, 2018</b>	
<b>Receipts</b>	
Cash on hand at date of Receivership	\$ 121,301
Receiver's Certificate (borrowings)	\$ 325,000
Sale of Assets	\$ 2,087,998
Miscellaneous refunds	\$ 3,775
Bank Interest	\$ 422
	<b>\$ 2,538,496</b>
<b>Disbursements</b>	
Professional remuneration	
Receiver's fees	\$ 222,227
Pre-receivership advisory fees	\$ 53,435
Legal fees	\$ 158,998
General & Administrative Expenses	
IT Services	\$ 14,277
Patent agent services	\$ 45,535
Marketing consultant commissions	\$ 202,033
Storage fees	\$ 12,237
Contractor Fees	\$ 7,980
Office move expenses	\$ 2,603
Miscellaneous Expenses	\$ 3,409
Office rent and corporate insurance	\$ 42,752
Property taxes & Surface Lease fees	\$ 14,931
Receivership filing fees	\$ 280
Bank fees	\$ 32
GST Paid on disbursements	\$ 33,173
	<b>\$ 813,901</b>
Cash on hand	<b>\$ 1,724,595</b>

39. The most significant realization was from the sale of the oil sands leases to Suncor. The sale proceeds are net of the settlement agreement with the ORR owner.

40. In order to pay ongoing costs at the inception of the proceedings, the Receiver was required to borrow under Receiver's Certificates. The Receiver will repay the borrowings prior to its discharge.

### **RECEIVER'S BORROWINGS**

41. Pursuant to paragraph 20 of the Receivership Order, the Receiver has been empowered to borrow up to a cumulative amount of \$1,000,000 (or such greater amount as the Court may further Order)
42. The Receiver issued one Receiver's Certificate in the amount of \$325,000. The Receiver's Certificate is attached together as Appendix E to the Receiver's First Report.
43. The terms of the Receiver's Certificate includes an interest rate of 12% per annum, which, in the Receiver's view, is commercially reasonable in the circumstances. Pursuant to paragraph 20 of the Receivership order, the Receiver's Certificate No. 1 has a charge over the whole of the Property by way of a fixed and specific charge as security.

### **COMPLETION OF RECEIVERSHIP**

44. The Receiver has to complete the following tasks to complete the administration of the Receivership:
- a) finalize the transfer of the surface leases to Suncor
  - b) close the IP Transfer Agreement
  - c) complete the final regulatory filings and administrative matters; and
  - d) apply to this Court for an Order approving the final distribution of the remaining funds held by the Receiver and discharging the Receiver.

### **RECOMMENDATIONS**

45. The Receiver respectfully recommends that this Court approve and grant:

- a) the Approval and Vesting Order sought by the Receiver in respect of the IP Transfer Agreement;
- b) the Restricted Court Access Order with respect to the Confidential Appendix C to this Report; and
- c) approval of the actions, conduct and activities of the Receiver throughout the Receivership Proceedings and as reported in the Second Report.

All of which is respectfully submitted this 7<sup>th</sup> day of May 2018.

**ALVAREZ & MARSAL CANADA INC.,  
in its capacity as Receiver of Oak Point and not in  
its personal or corporate capacity**



Orest Konowalchuk, CPA, CA, CIRP, LIT  
Senior Vice President

## APPENDIX A

### Listing of Patents

Reference No.	Country	Patent/Application No.	Title	Filed	Issued	Owner on Record
068589-P0002-CA	Canada	CA 2880092	BITUMEN RECOVERY PROCESS	8/21/2013		Kemex Ltd.
068589-P0006-CA	Canada	CA 2912273	DETACHABLE PIPE RACK MODULE WITH DETACHABLE	2/9/2015		Kemex Ltd.
068589-P0006-CA-DIV	Canada	CA 2970883	DETACHABLE PIPE RACK MODULE WITH DETACHABLE	2/9/2015		Kemex Ltd.
057733-0014	United States	US 9,028,655	CONTAMINANT CONTROL SYSTEM IN AN EVAPORATIVE WATER TREATING SYSTEM	3/29/2011	5/12/2015	1nSite Technologies Ltd.
057733-P0015-CA	Canada	CA 2735097	A Contaminant Control System in an Evaporative Water Treating System	3/29/2011		1nSite Technologies Ltd.
226763	United States	US 9,095,784	VAPOUR RECOVERY UNIT FOR STEAM ASSISTED GRAVITY DRAINAGE (SAGD) SYSTEM	3/29/2011	8/4/2015	1nSite Technologies Ltd.
057733-P0018-CA	Canada	CA 2735069	Vapour Recovery Unit For Steam Assisted Gravity Drainage (SAGD) System	3/29/2011	4/12/2016	1nSite Technologies Ltd.
226767	United States	US 8,945,398	WATER RECOVERY SYSTEM SAGD SYSTEM UTILIZING A FLASH DRUM	3/29/2011	2/3/2015	1nSite Technologies Ltd.
057733-P0021-CA	Canada	CA 2735061	An Improved Water Recovery System SAGD System Utilizing A Flash Drum	3/29/2011	7/18/2017	1nSite Technologies Ltd.
226807	United States	US 8,951,392	COMPACT EVAPORATOR FOR MODULAR PORTABLE SAGD PROCESS	4/15/2011	2/10/2015	1nSite Technologies Ltd.
057733-P0024-CA	Canada	CA 2737624	Compact Evaporator for Modular Portable SAGD Process	4/15/2011		1nSite Technologies Ltd.
057733-P0099-CA	Canada	CA 2879257	EVAPORATOR SUMP AND PROCESS FOR SEPARATING CONTAMINANTS RESULTING IN HIGH QUALITY STEAM	1/20/2015		1nSite Technologies Ltd.
250101	United States	14/617,394	DETACHABLE PIPE RACK MODULE WITH DETACHABLE CONNECTORS FOR USE IN A PROCESSING FACILITY	2/9/2015		Kemex Ltd.
240101	United States	14/601,792	EVAPORATOR SUMP AND PROCESS FOR SEPARATING CONTAMINANTS RESULTING IN HIGH QUALITY STEAM	1/21/2015		1nSite Technologies Ltd.
	United States	14/594,884	EVAPORATOR FOR SAGD PROCESS	5/7/2015		1nSite Technologies Ltd.

**APPENDIX B**

**IP Transfer Agreement (Redacted)**

**THIS ASSET TRANSFER AGREEMENT** is made as of March 31, 2018 (the “**Effective Date**”)

**BETWEEN:**

**ALVAREZ & MARSAL CANADA INC. (the “Receiver”), in its capacity as court-appointed Receiver of OAK POINT ENERGY LTD., KEMEX LTD., KEMEX TECHNOLOGIES LTD. AND INSITE TECHNOLOGIES LTD. (collectively, the “Debtor Companies”), and not in its personal or corporate capacity (“Vendor”)**

- and -

**Private Equity Oak LP, a partnership existing under the laws of Alberta (the “Purchaser”), by its general partner, PE12PXPE (OAK) GP LTD.**

**RECITALS:**

- A. **WHEREAS** the Receiver was appointed as receiver of the Property of the Debtor Companies pursuant to the terms of the Receivership Order granted on April 13, 2017;
- B. **AND WHEREAS** the Vendor wishes to sell the Purchased Assets to the Purchaser and the Purchaser wishes to purchase the Purchased Assets from the Vendor, all upon and subject to the terms and conditions set forth in this Agreement;
- C. **NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the premises, mutual covenants, agreements and warranties in this Agreement, the Parties covenant and agree as follows:

## **ARTICLE 1 DEFINITIONS AND PRINCIPLES OF INTERPRETATION**

### **1.1 Definitions**

Whenever used in this Agreement, the following words and terms have the meanings set out below:

“**Affiliate**” means any Person that controls, is controlled by or is under common control with a Party, or which controls, is controlled by or under common control with a Person which controls such Party; for the purposes of this definition, the term “controls” and “controlled by” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person whether through the ownership of voting securities or by contract, partnership agreement, trust arrangement or other means, either directly or indirectly, that results in control in fact, provided that direct or indirect ownership of shares of a corporation carrying not less than fifty (50%) percent of the voting rights shall constitute control of such corporation. For certainty, a partnership which is a Party and which is comprised of corporations



which are Affiliates shall be deemed to be an Affiliate of each such corporation and its other Affiliates.

“**Agreement**” means this Asset Transfer Agreement and all amendments or restatements, as permitted, and references to “**Article**” or “**Section**” mean the specified Article or Section of this Agreement;

“**Contracts**” means contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, commitments, entitlements or engagements;

“**Court**” means the Court of Queen’s Bench of Alberta;

“**Court Approval**” means the approval of the Transaction by the Court by granting the Vesting Order;

“**Debt**” means the debts, liabilities and obligations of the Debtor Companies that are and will become owing to the Purchaser by the Debtor Companies, which as of March 31, 2018 is expected by the Purchaser to be \$39,806,844.62 with interest accruing at a *per diem* rate (as of April 1, 2018) of \$21,811.97, plus any further costs, fees and expenses as may accrue in accordance with the loan documentation between the Purchaser and the Debtor Companies, as amended and adjusted from time to time.

“**Encumbrance**” means any pledge, lien, collateral assignment, security interest, mortgage, title retention, conditional sale or other security arrangement, or any charge, adverse claim of title, ownership or right to use, or any other encumbrance of any kind whatsoever;

“**Governmental Authorities**” means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law, rule or regulation-making organizations or entities:

- (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or
- (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

“**Governmental Authorizations**” means authorizations, approvals, including franchises, orders, certificates, consents, directives, notices, licences, permits, variances, agreements, instructions, registrations or other rights issued to or required by Vendor by or from any Governmental Authority;

“**Intellectual Property**” means: all intellectual property rights whether registered or not, owned by or licensed to the Debtor Companies including any or all of the following, and including the items listed in Schedule “A” hereto:

- (a) all patents and utility models and applications therefor and all provisionals, re-issuances, continuations, continuations-in-part, divisions, revisions,

supplementary protections certificates, extensions, and re-examinations thereof and all equivalent or similar rights anywhere in the world in inventions and discoveries including without limitation invention disclosures;

- (b) industrial designs and similar rights and registrations and applications for registration thereof;
- (c) trade-secrets, confidential information and other proprietary know-how;
- (d) all copyrights in copyrightable works, and all other worldwide rights of authorship related thereto, and all applications, registrations and renewals in connection therewith; and
- (e) all registered and unregistered trade-marks, service marks, trade names, trade dress, logos, distinguishing guises, business, corporate and product names and slogans and registrations and applications for registration thereof and all goodwill associated with the foregoing, owned by or licensed to the Debtor Companies.

For the avoidance of doubt, Purchaser acknowledges and agrees that the Debtor Companies' rights in the Intellectual Property include whatever statutory, common law and other rights that may exist in the Intellectual Property vested in the Debtor Companies and their respective Affiliates, including those arising as a result of the use thereof by the Debtor Companies, Affiliates of the Debtor Companies and authorized parties;

**"ITA"** means *Income Tax Act* (Canada);

**"Laws"** means applicable laws (including common law and civil law), statutes, by-laws, rules, regulations, Orders, ordinances, protocols, codes, guidelines, treaties, policies, notices, directions, decrees, judgements, awards or requirements, in each case of any Governmental Authority;

**"Orders"** means orders, injunctions, judgments, administrative complaints, decrees, rulings, awards, assessments, directions, instructions, penalties or sanctions issued, filed or imposed by any Governmental Authority or arbitrator;

**"Parties"** means Vendor and the Purchaser collectively, and **"Party"** means any one of them;

**"Person"** means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, governmental authority, and where the context requires any of the foregoing when they are acting as trustee, executor, administrator or other legal representative;

**"Property"** has the meaning given to it in the Receivership Order;

**"Purchase Price"** has the meaning given in Section 2.1;

**"Purchased Assets"** means:

- (a) any and all right, title and interest Vendor has in any Intellectual Property; and
- (b) all rights in any jurisdiction (including Intellectual Property rights, the right to apply for patents in all jurisdictions of the world, priority rights and rights to sue for and to collect damages for past, present and future infringements) relating to (a).

**“Receivership Order”** means the order issued by the Court in the Receivership Proceedings on April 13, 2017, as amended, modified or supplemented from time to time;

**“Receivership Proceedings”** means the proceedings before the Court and identified as Court Action No. 1701-05131;

**“Transaction”** means the transaction for the purchase and sale of the Purchased Assets as contemplated by this Agreement; and

**“Vesting Order”** means the order of the Court vesting the Purchased Assets in the name of the Purchaser free and clear of any encumbrances.

## 1.2 Certain Rules of Interpretation

In this Agreement:

- (a) **Governing Law** – This Agreement is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable in the Province of Alberta.
- (b) **Headings** – Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (c) **Including** – Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”.
- (d) **No Strict Construction** – The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.
- (e) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and *vice versa* and words importing gender include all genders.
- (f) **Severability** – If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other parties or circumstances.

- (g) **Statutory references** – A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, revises, restates, supplements or supersedes any such statute or any such regulation.
- (h) **Time** – Time is of the essence in the performance of the Parties' respective obligations.

## 1.2 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

## ARTICLE 2 PURCHASE AND SALE

### 2.1 Purchase and Sale

Vendor hereby sells, transfers, conveys, assigns and delivers to the Purchaser and the Purchaser hereby purchases, as of the Effective Date, all of Vendor's right, title and interest throughout the world in and to the Purchased Assets.

### 2.2 Consideration

The purchase price (the "**Purchase Price**") shall be [REDACTED] exclusive of all applicable sales and transfer taxes, being the amount equal to the fair market value of the Purchased Assets as of the Effective Date. The Purchase Price shall be payable by way of set off against and reduction of the Debt by the amount of balance of the Purchase Price.

### 2.3 Taxes

Subject to the remainder of this Section 2.3, the Purchaser shall pay directly to the appropriate taxing authorities any and all federal and provincial sales, transfer and other similar taxes payable in respect to the transfer of the Purchased Assets pursuant to this Agreement, if any. Notwithstanding the foregoing sentence, the Parties shall jointly elect under subsection 167(1) of Part IX of the *Excise Tax Act* (Canada) and any corresponding provisions of applicable provincial legislation imposing a similar value-added or multi-stage tax, that no tax shall be payable with respect to the transfer of the Purchased Assets pursuant to this Agreement. The Parties shall make such election(s) in the prescribed form containing prescribed information pursuant to the *Excise Tax Act* (Canada) or the applicable provincial legislation, as the case may be, and shall each file such election in compliance with the requirements of the *Excise Tax Act* (Canada) or the applicable provincial legislation, as the case may be.

## **2.4 Vendor's Representations and Warranties**

Vendor represents and warrants as follows to the Purchaser and acknowledges and confirms that the Purchaser is relying upon such representations and warranties in connection with the purchase of the Purchased Assets:

### **(a) *Status of Vendor***

Each of the Debtor Companies is a corporation validly existing under the laws of its jurisdiction of registration.

### **(b) *Residence of Vendor***

The Debtor Companies are Canadian corporations within the meaning of Section 89(1) of the ITA.

### **(c) *Third Party Interests***

To the best of the Vendor's information and knowledge there are no third party interests which would create any impediment to the vesting of title in the Purchaser.

## **2.5 Disclaimer**

Except for the representations and warranties set forth in Section 2.4, the Receiver disclaims all representations, warranties or conditions with respect to the Purchased Assets not specifically set forth in this Agreement, including implied representations, warranties or conditions of merchantable quality and fitness for a particular purpose and those arising by statute or otherwise in law or from course of dealing or usage of trade.

## **2.6 Purchaser's Representations and Warranties**

The Purchaser represents and warrants to Vendor as follows:

### **(a) *Status of the Purchaser***

The Purchaser is a limited partnership existing under the laws of Alberta and has all necessary partnership power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement.

## **2.7 Effective Conveyance**

This Agreement shall operate as an actual conveyance, transfer, assignment and setting over, as of the Effective Date, of all Vendor's right, title and interest in and to the Purchased Assets.

## **2.8 Survival**

All representations and warranties made in Sections 2.4 and 2.6 shall survive the Effective Date and the payment of the Purchase Price for the Purchased Assets for a period of two years.

## **2.9 Preconditions to Transfer**

Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any of the Purchased Assets, in whole or in part, or any rights thereto or thereunder if the agreement to assign or attempt to assign, without the consent of a third party, would constitute a breach of any agreement or in any way adversely affect the rights of Vendor or the Purchaser. Until such consent is obtained, or if an attempted assignment thereof would be ineffective or would adversely affect the rights of any Part so that the Purchaser would not, in fact, receive all such rights, the Parties will cooperate with each other in any arrangement designed to provide for the Purchaser the benefits of any such agreement.

## **ARTICLE 3 CONDITIONS PRECEDENT**

### **3.1 Requirement for Court Approval**

The Parties acknowledge and agree that Closing is conditional upon the Vendor having obtained the Court Approval in form and substance satisfactory to the Purchaser, acting reasonably. The Purchaser and the Vendor shall proceed diligently and in good faith and use reasonable commercial efforts to obtain the Court Approval. In the event that the Court refuses to grant the Court Approval, this Agreement shall terminate and the Vendor and the Purchaser shall have no further liabilities or obligations to each other with respect to this Agreement or the Transaction.

## **ARTICLE 4 GENERAL**

### **4.1 Notices**

Any notice, consent or approval required or permitted to be given in connection with this Agreement (in this Section referred to as a “Notice”) shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile or other electronic means:

- (a) if to the Purchaser:

Private Equity Oak LP  
1100 - 10830 Jasper Avenue  
Edmonton, Alberta T5J 2B3

Attention: Rod Girard  
E-mail: [rod.girard@aimco.alberta.ca](mailto:rod.girard@aimco.alberta.ca)

- (b) if to Vendor:

Alvarez & Marsal Canada Inc.  
Suite 1100, 250 – 6<sup>th</sup> Avenue SW  
Calgary, AB T2P 3H7



Attention: Tim Reid  
E-mail: [treid@alvarezandmarsal.com](mailto:treid@alvarezandmarsal.com)

Any Notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a business day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the Notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a business day then the Notice shall be deemed to have been given and received on the next business day.

Any Party may, from time to time, change its address by giving Notice to the other Parties in accordance with the provisions of this Section.

#### **4.2 Assignment**

No Party may assign this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld, conditioned or delayed.

#### **4.3 Amendment**

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party to be bound thereby.

#### **4.4 Enurement**

This Agreement enures to the benefit of and is binding upon the Parties and their respective heirs, attorneys, guardians, estate trustees, executors, trustees, successors (including any successor by reason of amalgamation of any Party) and permitted assigns.

#### **4.5 Further Assurances**

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to complete the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by the other Party as may be reasonable necessary or desirable to effect the purpose of this Agreement and carry out its provisions.

#### **4.6 Execution and Delivery**

This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile or other electronic means and all such counterparts shall together constitute one and the same agreement.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the Effective Date.

**ALVAREZ & MARSAL CANADA INC., in its capacity as court-appointed Receiver of OAK POINT ENERGY LTD. KEMEX LTD., KEMEX TECHNOLOGIES LTD. AND INSITE TECHNOLOGIES LTD., and not in its personal or corporate capacity**

By:



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Name: Orest Konowalchuk, CPA, CA, CIRP, LIT

Title: Senior Vice President

**PRIVATE EQUITY OAK LP, by its general partner, PE12PXPE (OAK) GP LTD.**

By:



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Name: Rod Girard

Title: Director



**SCHEDULE "A"**

Reference No.	Country	Patent/Application No.	Title	Filed	Issued	Owner on Record
068589-P0002-CA	Canada	CA 2880092	BITUMEN RECOVERY PROCESS	8/21/2013		Kemex Ltd.
068589-P0006-CA	Canada	CA 2912273	DETACHABLE PIPE RACK MODULE WITH DETACHABLE CONNECTORS FOR USE IN A PROCESSING FACILITY	2/9/2015		Kemex Ltd.
068589-P0006-CA-DIV	Canada	CA 2970883	DETACHABLE PIPE RACK MODULE WITH DETACHABLE CONNECTORS FOR USE IN A PROCESSING FACILITY	2/9/2015		Kemex Ltd.
057733-0014	United States	US 9,028,655	CONTAMINANT CONTROL SYSTEM IN AN EVAPORATIVE WATER TREATING SYSTEM	3/29/2011	5/12/2015	1nSite Technologies Ltd.
057733-P0015-CA	Canada	CA 2735097	A Contaminant Control System in an Evaporative Water Treating System	3/29/2011		1nSite Technologies Ltd.
226763	United States	US 9,095,784	VAPOUR RECOVERY UNIT FOR STEAM ASSISTED GRAVITY DRAINAGE (SAGD) SYSTEM	3/29/2011	8/4/2015	1nSite Technologies Ltd.
057733-P0018-CA	Canada	CA 2735069	Vapour Recovery Unit For Steam Assisted Gravity Drainage (SAGD) System	3/29/2011	4/12/2016	1nSite Technologies Ltd.

Reference No.	Country	Patent/Application No.	Title	Filed	Issued	Owner on Record
226767	United States	US 8,945,398	WATER RECOVERY SYSTEM SAGD SYSTEM UTILIZING A FLASH DRUM	3/29/2011	2/3/2015	1nSite Technologies Ltd.
057733-P0021-CA	Canada	CA 2735061	An Improved Water Recovery System SAGD System Utilizing A Flash Drum	3/29/2011	7/18/2017	1nSite Technologies Ltd.
226807	United States	US 8,951,392	COMPACT EVAPORATOR FOR MODULAR PORTABLE SAGD PROCESS	4/15/2011	2/10/2015	1nSite Technologies Ltd.
057733-P0024-CA	Canada	CA 2737624	Compact Evaporator for Modular Portable SAGD Process	4/15/2011		1nSite Technologies Ltd.
057733-P0099-CA	Canada	CA 2879257	EVAPORATOR SUMP AND PROCESS FOR SEPARATING CONTAMINANTS RESULTING IN HIGH QUALITY STEAM	1/20/2015		1nSite Technologies Ltd.
250101	United States	14/617,394	DETACHABLE PIPE RACK MODULE WITH DETACHABLE CONNECTORS FOR USE IN A PROCESSING FACILITY	2/9/2015		Kemex Ltd.
240101	United States	14/601,792	EVAPORATOR SUMP AND PROCESS FOR SEPARATING CONTAMINANTS RESULTING IN HIGH QUALITY STEAM	1/21/2015		1nSite Technologies Ltd.
	United	14/594,884	EVAPORATOR	5/7/2015		1nSite

<b>Reference No.</b>	<b>Country</b>	<b>Patent/Application No.</b>	<b>Title</b>	<b>Filed</b>	<b>Issued</b>	<b>Owner on Record</b>
	States		FOR SAGD PROCESS			Technologies Ltd.

**CONFIDENTIAL APPENDIX C**

**IP Transfer Agreement (Unredacted and not included herein)**

**APPENDIX D**

**Technology License Agreement – Notice of Termination**



BY EMAIL AND COURIER

May 5, 2017

NAUTICOL ENERGY LTD.  
SUITE 1500, 202 6<sup>TH</sup> AVE SW  
Calgary, Alberta T2P 2R9

Attention : Ken James, Chief Executive Officer

**Re: Technology License Agreement between Oak Point Energy Ltd. and Nauticol Energy Ltd.  
Notice of termination**

Dear Sirs :

As you know, on April 13, 2017, the Court of Queen's Bench of Alberta granted an Order whereby Alvarez & Marsal Canada Inc. was appointed receiver (the "**Receiver**") of Oak Point Energy Ltd. ("**Oak Point**"), Kemex Ltd., Kemex Technologies Ltd. and InSite Technologies Ltd. (collectively the "**Debtors**").

Reference is made to the *Technology License Agreement* (the "**License Agreement**") between Oak Point and Nauticol Energy Ltd. ("**Nauticol**") dated October 24, 2016 which contemplates a perpetual, freely transferable, irrevocable, non-exclusive license to use, practice and/or develop certain intellectual property rights of Oak Point (the "**Intellectual Property**").

We also refer you to the *Third Amended and Restated Debenture* (the "**Debenture**") executed on September 28, 2015 by Oak Point and Private Equity Oak LP ("**PEOL**") which reflects the issuance by the former to the latter of a 15.0% senior secured redeemable convertible debenture in the principal amount of twenty-five million dollars (\$25,000,000) due December 31, 2016. Pursuant to the Debenture, all of Oak Point's obligations thereunder are stated to be secured by a fixed and specific mortgage and charge in and to all of Oak Point's present and after-acquired property, assets and undertakings including, inter alia, the Intellectual Property.

The Receiver has been advised of the following:

- a) the License Agreement was executed by Ken James as President and CEO of Oak Point and Mark Tonner as President of Nauticol on October 24, 2016. At the time, Mr. James was also a director and/or officer of Nauticol and Mr. Tonner was also a director and advisor of Oak Point;
- b) the transactions contemplated by the License Agreement occurred outside of Oak Point's ordinary course of business and were not duly submitted to Oak Point's Board of

Directors for approval or ratification. While some directors may have been made aware of the proposed transaction, at least one director of Oak Point, Rod Girard, was not advised or consulted in connection therewith;

- c) PEOL was not made aware of the existence of the License Agreement until March 2017. PEOL did not consent to or ratify the transactions contemplated in the License Agreement in connection with the Intellectual Property. The Receiver has been advised that upon learning of the existence of the License Agreement, PEOL requested, on numerous occasions, that it be terminated and the transactions contemplated therein be unwound without delay;
- d) The License Agreement was entered into a few months before the Debenture came to maturity. Having benefited from a one year extension of the maturity date and a corresponding interest holiday granted by PEOL in early 2016, Oak Point was unable to come up with a viable refinancing or restructuring plan. At the time of executing the License Agreement all parties therefore knew that Oak Point was facing an imminent liquidity crisis as a result of its inability to repay amounts owed under the Debenture by December 31, 2016;
- e) The Initial License Fee (as defined in the License Agreement) in the amount of \$100,000 would have been paid by Nauticol to Oak Point several months after the execution of the License Agreement on or about February 1<sup>st</sup>, 2017. Section 2.1 of the License Agreement provides that the license in connection with the Intellectual Property is only to be granted upon payment of the License Fee. In that regard, the License Agreement granted Nauticol a *de facto* free option to license the Intellectual Property while engineering services were being performed by Oak Point. The granting of the license in the Intellectual Property therefore occurred well after PEOL demanded payment of the amounts owed under the Debenture and issued a notice under s. 244 of the *Bankruptcy and Insolvency Act* (“BIA”);
- f) no solicitation process was conducted or third party evaluations were sought by Oak Point prior to the execution of the License agreement; and
- g) the parties to the License Agreement were not dealing at arm’s length in the context of the negotiation and execution of the License Agreement. At the time it was executed, Oak Point and Nauticol shared common shareholders, directors and officers and operated from the same physical premises.

All of the foregoing raises serious questions with respect to the propriety of the grant of the License Agreement. While Nauticol had previously indicated some willingness to terminate the License Agreement, during a discussion with Mark Tonner on April 20, 2017, the Receiver was advised that Nauticol is no longer prepared to terminate the License Agreement. This was due to the claims that substantial amounts would have been paid to Oak Point by Nauticol pursuant to an *Engineering Services Agreement* dated August 25, 2016 (the “**Engineering Agreement**”) whereby Oak Point provided engineering services to Nauticol. Section 19.2 of the *Engineering Agreement*, however, provides that



drawings and specifications prepared by Oak Point (including pre-existing know-how embodied therein) shall remain the property of Oak Point. In fact, Nauticol specifically agreed to use same solely for the purpose intended at the time of preparation. With this in mind it is difficult to conceive how Nauticol may realistically claim any rights in the Intellectual Property as a result of the Engineering Agreement.

It is well established that a court appointed receiver is not bound by a debtor's contracts nor is it personally liable for the performance thereof. A receiver when considering to disclaim or cease to perform a contract will be required to act in a fair and equitable manner having regard to the interests of all parties not preferring one party over another. At the same time, it is recognized that, when so acting, it does not mean that all stakeholders must be equally satisfied with the course of conduct chosen by the receiver. If a receiver's decision is within the broad bounds of reasonableness, and if it proceeds fairly, having considered the interests of all stakeholders, the court will support the receiver's decision.

We hereby advise you that, following a review of the facts and circumstances of this matter, and given the process for the sale of Oak Point's assets which is about to be initiated, the Receiver has determined that it is in the best interest of all Oak Point's stakeholders that the License Agreement be disclaimed and terminated effective immediately. The License Agreement will certainly not enhance the chances of disposing the Intellectual Property and may in fact prevent the Receiver from marketing and obtaining the best possible price for the Intellectual Property. The Receiver is of the view that it is advisable to market and eventually sell Oak Point assets, including the Intellectual Property, free and clear of any liens, charges and encumbrances, including the License Agreement, in order to maximize realization. Obviously Nauticol or related parties will be at liberty to: a) submit an offer for all or a portion of Oak Point's assets in the context of a fair and transparent process and b) file a claim in respect of damages, if any, that may result from the termination of the License Agreement if and when a Claims Procedure is established in the pending receivership proceedings.

Yours truly,

Alvarez & Marsal Canada Inc.

By:



Tim Reid, Managing Director

