# OFFTAKE AGREEMENT

McAsphalt Industries Ltd.

**("McAsphalt")**

**-and-**

Empower
Environmental
Solutions Calgary
Ltd. **("Empower
Calgary")**

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## OFFTAKE AGREEMENT RELATING TO BUILDING AND OPERATING AN ASPHALT SHINGLE REPROCESSING FACILITY

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THIS OFFTAKE AGREEMENT is made, entered into and effective as of March 1st 2023 (the "**Effective Date**"),

**BY AND BETWEEN**

McAsphalt Industries Ltd., ("**McAsphalt**") a statutory body established under the law of Ontario and registered under No. 1990841, whose address is 8800 Sheppard Ave. East Scarborough, ON M1B 5R4.

**AND**

Empower Environmental Solutions Calgary Ltd. ("**Empower Calgary**"), a limited liability company incorporated under the laws of Alberta, with an office in the City of Calgary, whose address is 1100, 396 11 Avenue, Calgary, Alberta, T2R 0C5.

**WHEREAS:**

(1) Reference is made to the heads of terms signed between McAsphalt and Northstar Clean Technologies Inc., an affiliate of Empower Calgary, dated September 23rd 2022.

(2) Empower Calgary will be building and operating an asphalt shingle reprocessing facility in Rocky View County near Calgary, Alberta (the "**Calgary Facility**").

(3) The Calgary Facility will extract oxidized liquid asphalt (the "**Product**") as well as aggregate, paper fiber, and fiberglass strands (the "**Constituent Components**") from asphalt shingles that would otherwise be sent to a landfill.

(4) McAsphalt and Empower Calgary (collectively, the "**Parties**", and each individually a "**Party**") are desirous of entering into this Agreement whereby Empower Calgary has agreed to design, build and finance the Calgary Facility and to sell all the Product produced by Empower Calgary at the Calgary Facility exclusively to McAsphalt (or at the direction of McAsphalt, to such other person or persons as McAsphalt may direct), and McAsphalt has agreed in exchange to purchase 100% of the Product on the terms and conditions provided in this Agreement.

**NOW THEREFORE** in consideration of the premises, and the mutual covenants set forth herein, together with other good and valuable consideration, the receipts and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

## 1. Definitions, Interpretation and Appendices

Terms used in this Agreement but not otherwise defined have the respective meanings set out below:

### 1.1 Defined terms

"**3rd Party Facilities**" means, [redacted]

"**3rd Party Sales Agreement(s)**" [redacted]

"**Additive Storage Tank**" [redacted]

"**Affiliate**" means any company, partnership, joint venture, or entity controlled by, controlling or under common control with a Party hereto. For the purposes of this definition, "control" means the direct or indirect beneficial ownership of fifty percent (50%) or more of the stock entitled to vote in the election of directors or, if there is no such stock, fifty percent (50%) or more of the owners' interest in such company, partnership, joint venture, or entity;

"**Agreement**" means this agreement and all its attachments, as amended, renewed, or updated from time to time, and references to paragraphs, sections or appendices are references to paragraphs, sections and appendices in this Agreement;

"**Annual Production Nomination**" means the annual update on forecast Product produced at the Calgary Facility which shall be provided by Empower Calgary to McAsphalt no later than November 30th of each year;

"**Applicable Law**" means, in respect to any Party, asset, operation, transaction or other matter or circumstance: (a) statutes, including all regulations, rules and other statutory instruments promulgated thereunder; (b) judgments and orders of courts of competent jurisdiction; (c) rules, directives, orders, rulings, and decrees, issued by governmental authorities exercising jurisdiction in respect to the applicable Party, asset, operation, transaction or other matter or circumstance; and the terms and conditions of permits, licenses, authorizations or approvals issued by governmental exercising jurisdiction or power over or in respect to the applicable Party, asset, operation, transaction or other matter or circumstance; which are applicable to such Person, asset, operation, transaction or other matter or circumstance as at the applicable time;

"**Authorization**" means any approval, consent, license, permit, authorization or exemption, granted or to be granted by a Governmental Authority which is: (i) necessary for the validity or the exercise of rights or performance of obligations by a party under this Agreement, any of the other Agreements or the subsequent Agreements or any sub-contracts entered into by any of the parties to the Agreements or the subsequent Agreements; or (ii) required for the construction and operation of the Calgary Facility; or (iii) required to fulfill obligations under this Agreement;

"**Blending Facilities**" means [redacted]

"**Blended Product**" means [redacted]

"**Blended Product Specification**" means the specification that the Blended Product must meet, as described in Appendix B;

"**Business Day**" means a day on which banking institutions are generally open for the transaction of commercial business in Calgary, Alberta, but does not include a Saturday or a Sunday or a statutory holiday in such city;

"**Joint Calgary Facility Infrastructure**" means [redacted]

"**Commercial Operation Date**" means the date on which the Commissioning Period is completed, as agreed, in writing, by the Parties through the Construction & Commissioning Committee;

"**Constituent Components**" has the meaning ascribed to this term in Recital (3);

"**Construction/Commissioning**" means the carrying out of all activities by Empower Calgary necessary to make the Calgary Facility safe, ready, and usable, for continuous operation, including, without limitation, the carrying out of those activities necessary to ensure compliance with Applicable Law;

"**Commissioning Period**" means the period of not more than [redacted] before the Commercial Operation Date which allows the Parties to achieve the product specifications in accordance with Appendix B to commercially operate the Calgary Facility and the Joint Calgary Facility Infrastructure;

"**Construction/Commissioning Period**" means the period elapsing from the date where all Conditions Precedent listed in Section 2.3 are met and the Commercial Operation Date;

"**Delivery Period**" means [redacted]

"**Final Sales Tank**" means the storage tank that holds the Blended Product before it is delivered to McAsphalt's Truck(s);

"**Force Majeure Event**" means an act of God, act of government, weather impediment, fire, explosion, war, civil commotion, strike or other labor disturbance, or any other cause beyond a Party's reasonable control;

"**Joint Infrastructure Cost Recovery Charge**" [redacted]

"**Insolvency Event**" means, in relation to a Party, the occurrence of one or more of the following:

(1) the Party becomes insolvent, is unable to pay its debts, fails or admits in writing its inability generally to pay its debts as they become due or ceases to meet its liabilities generally as they become due or gives notice to any of its creditors that it has suspended or is about to suspend payment of its debts generally;
(2) the Party is dissolved or has a resolution passed for its dissolution, winding-up or liquidation (other than pursuant to a consolidation, reorganization, reincorporation, amalgamation or merger);
(3) the Party makes a general assignment, arrangement or composition with or for the benefit of its creditors;
(4) the Party institutes, seeks relief under or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law, any companies or corporations legislation or similar law affecting creditors' rights, including without limitation the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Winding Up and Restructuring Act* (Canada) or a petition is presented for its winding-up or liquidation;
(5) the Party takes any steps for, or becomes the subject of any proceeding for, liquidation, dissolution, winding up or other termination of its existence including the appointment of an administrator, provisional liquidator, conservator, receiver, receiver manager, trustee, custodian or similar official for it or for all or substantially all its assets and, in the case that such a proceeding is instituted against it, such proceeding is not dismissed, discharged or stayed within thirty (30) days of being instituted;
(6) a person takes possession or seizes all or substantially all of the Party's assets including by way of execution, attachment, garnishment or distraint, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or litigated on or against all or substantially all of its assets; or
(7) the Party causes or is subject to any event which has an analogous effect to any of the events specified in clauses (1) to (6) above (inclusive) or takes any action in furtherance of, or indicates its consent to, approval of, or acquiescence in, any of the foregoing;

"**Governmental Authority**" means any 1) federal, provincial, territorial, municipal, local or other government, governmental or public department, central bank, court, minister, governor-in-counsel, cabinet, commission, tribunal, board, bureau, agency or instrumentality, domestic or foreign; 2) subdivision or authority of any of the foregoing; or 3) quasi-governmental body exercising any regulatory authority;

"**Landlord**" means the person leasing the property on which the Calgary Facility sits to Empower Calgary;

"**McAsphalt Additive**" means [redacted]

"**Non-Delivery Period**" [redacted]

"**Person**" means an individual or a body corporate, trust, partnership, fund, an unincorporated association, or organization;

"**Product**" refers to [redacted]

"**Product Storage Tank(s)**" means [redacted]

"**Product Specification**" The specification that the Product and the Blended Product must meet as described in Appendix B;

"**Purchase Price**" means the applicable adjusted price per tonne for the Product, calculated in accordance with Appendix A;

"**Quarterly Production Nomination**" means the forecasted Product delivery nominations, schedule, and deadlines that Empower Calgary will provide to McAsphalt for each calendar quarter, no later than thirty (30) days prior to the beginning of such quarter;

"**Term**" means the operational term under this Agreement, pursuant to Section 2;

"**tonnes(t)**" means 1,000 kilograms or 2,204 pounds;

"**Truck(s)**" means a motorized road transport vehicle equipped to transport Product and Blended Product in accordance with Applicable Law.

**1.2 <u>Interpretation</u>**

In this Agreement, unless the context otherwise requires:

i. Reference to a day, month or year is a reference to a calendar day, month or year.

ii. References to clauses are references to clauses to or contained in this Agreement or Appendices attached herein.

iii. Words in the singular shall be interpreted as including the plural and vice versa, and words denoting natural persons shall be interpreted as referring to corporations and any other legal entities and vice versa.

iv. The terms “including” and “include” shall be construed without limitation.

v. In the event of any conflict between the clauses of the Agreement and clauses of the Appendix, the clauses of the Agreement shall prevail.

vi. Headings are for convenience only and shall not affect the construction of this Agreement.

vii. Save as provided to the contrary in this Agreement, where an obligation is required to be performed by a specified time and is not so performed, such obligation shall continue (until performed) notwithstanding that the time specified for its performance has elapsed.

viii. References to any statutes, acts or regulations shall include references to statutes, acts or regulations as amended from time to time or to any statute from time to time replacing, extending or consolidating the same.

ix. References to this Agreement or the subsequent Agreement (or any of them) shall, in each case be construed as references to this Agreement as amended, varied, novated, supplemented or replaced from time to time.

x. The words “other” and “otherwise” shall not be construed *ejusdem generis* with any foregoing words where a wider construction is possible.

xi. Any covenant by a Party not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person so far as this is within its power or control.

xii. The expression "person" shall include any legal or natural person, partnership, trust, company, joint venture, Government (whether national or county) or any agency thereof, local authority or other body (whether corporate or unincorporate).

xiii. If a definition of a particular term or expression in this Agreement imposes substantive rights and obligations on a Party to this Agreement, such rights and obligations shall be given effect to and shall be enforceable notwithstanding that they are contained in a definition.

xiv. A Party shall be construed so as to include its successors in title, permitted assigns and permitted transferees.

xv. A requirement that payment be made on a day which is not a Business Day shall be construed as a requirement that the payment be made on the next Business Day.

xvi. Unless otherwise provided herein, where a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed.

**1.3 The Appendices consist of the following:**

Appendix A [redacted]
Appendix B [redacted]
Appendix C [redacted]
Appendix D [redacted]

## 2. <u>Term</u>

2.1 This Agreement is in full force and effect as of the date hereof and each Party declares that it has received required internal approvals to sign the Agreement. Empower Calgary warrants that it has secured the land to build the Calgary Facility and the Joint Calgary Facility Infrastructure.

The Term of the Agreement is five (5) years commencing on the Commercial Operation Date, which Term shall be renewed automatically for succeeding terms of three (3) years each unless either Party gives written notice to the other Party at least one hundred and eighty days (180) prior to the expiration of any Term of its intention not to renew ("Term" includes both the initial term and any renewal terms).

2.2 Each Party expects that, and will work diligently to the extent within their power to ensure, the following will be completed no later than April 21, 2023 (the "**Conditions Precedent**"):

2.2.1 Empower Calgary will have secured the requisite funding to design and construct the Calgary Facility; and

2.2.2 Empower Calgary will have secured or will have implemented a plan approved by McAsphalt (acting reasonably) to secure, all third-party infrastructure requirements from the Landlord and any required Governmental Authority.

If one or more of the Conditions Precedent has not been completed by April 21, 2023, then the Parties will work cooperatively in good faith to address the outstanding matter or matters to the reasonable satisfaction of both Parties. If a mutually satisfactory resolution is not reached by May 19, 2023, then each Party will have the right to terminate this Agreement by written notice to the other. In the event the Agreement is terminated pursuant to this Paragraph, each Party will bear its own costs incurred to the date of termination.

2.3 The Parties will form a Construction & Commissioning Committee comprising members appointed by Empower Calgary and McAsphalt to inter-alia a) review progress of the Construction/Commissioning of the Calgary Facility b) monitor/oversee the Construction/Commissioning of the Joint Calgary Facility Infrastructure, c) develop and approve the measurement of quantities and quality test control of the Product and the Blended Product at Final Sales Tank, d) approve any spend requests on the Joint Calgary Facility Infrastructure, e) determine, in writing, the Commercial Operation Date, and f) perform such other functions as the Parties may agree in writing.

2.4 Save otherwise agreed by the Parties, the Construction & Commissioning Committee will be disbanded on the Commercial Operation Date.

2.4.1 If the Commissioning Period exceeds six (6) months, the Construction & Commissioning Committee may, in writing, approve an extension of the Commissioning Period ("**Commissioning Period Extension Date**").

2.4.2 If the Construction & Commissioning Committee agrees to extend the Commissioning Period, the Commissioning Period will be extended for a maximum of twenty-four months from the Commissioning Period Extension Date.

2.4.3 If the Calgary Facility or the Joint Calgary Facility Infrastructure does not achieve the Commercial Operation Date within twenty-four (24) months from the Commissioning Period Extension Date, this Agreement will automatically end without any liabilities for the Parties (save opened disputes or on-going breach).

2.5 Empower Calgary will promptly inform McAsphalt of any event or circumstances related to the Calgary Facility and the Joint Calgary Facility Infrastructure that would delay the achievement of the Commercial Operation Date.

## 3. <u>Non-Delivery Period</u>

[redacted]

[redacted]

## 4. Commissioning Period and Delivery Period

4.1 During the Commissioning Period and the Delivery Period, McAsphalt will deliver McAsphalt Additive and pick up Blended Product. The Product and the McAsphalt Additive will be blended in the Blending Facilities to produce the Blended Product and the Blended Product will be transferred to the Final Sales Tank.

4.1.1 McAsphalt shall deliver to Empower Calgary only McAsphalt Additive that meets the specification for McAsphalt Additive (the "**McAsphalt Additive Specification**") as described in Appendix B.

4.1.2 Save the risks inherent to its custody and storage on site, Empower Calgary shall have no liability related to the McAsphalt Additive or McAsphalt Specification. Empower Calgary shall only use the McAsphalt Additive as provided by McAsphalt as described in the McAsphalt Additive Specification in Appendix B and shall blend the Product with McAsphalt Additive as per McAsphalt instructions and manuals.

4.1.3 McAsphalt will deliver McAsphalt Additive to the Calgary Facility at McAsphalt's sole expense and according to a mutually agreed schedule, to be determined in accordance with the Annual Production Nomination and the Quarterly Production Nomination schedule. McAsphalt has complete and unconditional ownership of the McAsphalt Additive until the McAsphalt Additive is unloaded into the Additive Storage Tank at which time ownership and risk are transferred to Empower Calgary.

4.1.4 The Blended Product must meet at all times the Blended Product Specifications outlined in Appendix B.

4.1.5 If McAsphalt changes the specification of the McAsphalt Additive, it shall provide 180-day notice to Empower Calgary and work with Empower Calgary to assess and ensure that the change does not unduly disrupt the processes and operation of the Calgary Facility and the Joint Calgary Facility Infrastructure. The Parties will work together to address any changes required in the Joint Calgary Facility Infrastructure to accommodate a change in the McAsphalt Additive and will agree, in writing, as to the steps to be taken to ensure a smooth transition to the change in the McAsphalt Additive.

4.1.6 If, despite such assessment and coordination, McAsphalt causes any process or operational disruption to the Calgary Facility, McAsphalt will be responsible for any production delays, shut-down costs and other reasonable and justified expenses resulting to the change in McAsphalt Additive.

4.2 McAsphalt shall pay for all Product processed during the Commissioning Period and delivered to the Product Storage Tank(s) in accordance with Appendix A as long as the Product meets the Product Specification described in Appendix B.

4.3 Empower Calgary will deliver the Blended Product from the Final Sales Tank to McAsphalt's Trucks during the Commissioning Period and the Delivery Period. Upon delivery and Blended Product fully loaded into McAsphalt's Trucks, McAsphalt has unconditional ownership of the Blended Product.

4.4 Any and all deliveries of Product and Blended Product to McAsphalt is FOB the Calgary Facility.

4.5 During Delivery Period, the Deemed McAsphalt Product and the McAsphalt Additive will be blended in the Blending Facilities and the Blended Product will be transferred to the Final Sales Tank before being delivered to McAsphalt's Trucks.

4.6 Parties will agree, in writing, to the appropriate measuring procedures on the Product transferred to the Final Sales Tank from the Product Storage Tank(s) and the McAsphalt Additive Tank.

## 5. Constituent Components

5.1 Empower Calgary may offer to sell separately Constituent Components to McAsphalt during the Commissioning Period, the Delivery Period, or the Non-Delivery Period, at a price to be mutually agreed between Empower Calgary and McAsphalt. Empower Calgary will have no obligation to offer, and McAsphalt will have no obligation to purchase, the Constituent Components.

## 6. Third Party Sales of Product

[redacted]

7. **Joint Calgary Facility Infrastructure**

[redacted]

[redacted]

## 8. Nominations Schedule

8.1 Empower Calgary will provide McAsphalt with an Annual Production Nomination and a Quarterly Production Nomination. Planned maintenance of the Calgary Facility will be incorporated into the Annual Production Nomination.

8.2 Unplanned Calgary Facility outages will be promptly communicated to McAsphalt by Empower Calgary. Empower Calgary will not be accountable for any costs incurred by McAsphalt for failure to deliver Product or Blended Product during any Calgary Facility outages not otherwise attributable to Calgary Empower.

8.3 McAsphalt will provide Empower Calgary with a schedule of McAsphalt Additive to be delivered to the Calgary Facility for the next calendar month.

8.4 The Parties will notify each other promptly of any actual or anticipated delays in supplying the Products or the McAsphalt Additive, as appropriate.

8.5 Both Parties acknowledge and agree that actual production and sale volumes and schedules may vary significantly from forecasts. McAsphalt personnel and Empower Calgary personnel will interact frequently to optimize management of actual volumes of Product and McAsphalt Additive.

## 9. Take or Pay

[redacted]

## 10. Purchase Price, Invoice and Payment

10.1 The Purchase Price of the Product is calculated in accordance with Appendix A.

10.2 Empower Calgary will provide to McAsphalt monthly invoices for the Purchase Price and, where applicable, Constituent Components purchased by McAsphalt in the previous month, net the Third-Party Sales Margin Sharing in accordance with Appendix C plus the Joint Infrastructure Cost Recovery Charge in accordance with Appendix D.

10.3 After each calendar month during the Term, Empower Calgary will prepare an invoice or invoices, as applicable, for the previous month and will send the invoices to McAsphalt electronically.

10.4 The currency of invoicing and payment will be the Canadian dollar.

10.5 McAsphalt will make all payments it is required to make to Empower Calgary under this Agreement by electronic fund transfer (EFT) payment within thirty (30) days of invoice receipt. Remittance should be made to:

[redacted]

10.6 In the event the payment due date falls on a Sunday, or Monday banking holiday, payment shall be due on the next succeeding banking day. In the event the payment due date falls on a Saturday or on a bank holiday other than a Monday, payment will be due on the first preceding banking day.

10.7 In the event that payment is not received by Empower Calgary from McAsphalt within five (5) days from receipt of notice from Empower Calgary following the payment due date that the payment was not received, interest on overdue payments shall be paid for the period starting on and including the due date for payment and ending on, but excluding the date of the payment, at the Prime Rate quoted by the Bank of Canada for the applicable period plus three (3%) percent.

10.8 The interest payment shall be calculated by applying the interest rate determined above to the overdue balance on the basis of actual calendar days elapsed divided by 360, compounded daily.

10.9 In addition to the Purchase Price payable by McAsphalt to Empower Calgary pursuant to this Agreement, McAsphalt shall pay to Empower Calgary all applicable sales taxes, value added taxes (such as VAT and GST), and other taxes and levies payable pursuant to Applicable Law, which shall be paid by McAsphalt to Empower Calgary at the same time as the Purchase Price invoiced under Paragraph 10.3. Empower Calgary shall identify such taxes separately on each invoice.

10.10 Empower Calgary's invoices shall meet all legal requirements. McAsphalt may accept copies of invoices, however, receipt of the original invoice is still required.

10.11 Invoices shall be sent to:

[redacted]

[redacted]

10.13 Save where expressly provided herein or agreed in writing by the Parties, each Party will support its internal and external costs associated with the performance of this Agreement or the design and construction of the Calgary Facility or the Joint Calgary Facility Infrastructure.

**11. <u>Rights and Responsibilities of Empower Calgary</u>**

11.1 Risk of loss for the Product and the Blended Product remains with Empower Calgary until it is loaded onto McAsphalt's Trucks at the Calgary Facility.

11.2 Empower Calgary is responsible for providing a safety data sheet for the Product, as required by Applicable Law.

11.3 Empower Calgary shall be free to use the same or similar facility design of the Joint Calgary Facility Infrastructure in any future facilities.

11.4 All trademark and intellectual property rights associated with the Empower Calgary's proprietary asphalt shingle processing technology are the exclusive rights of Empower Calgary.

**12. <u>Rights and Responsibilities of McAsphalt</u>**

12.1 McAsphalt will have exclusive rights to the proprietary chemical mix of the McAsphalt Additive.

12.2 McAsphalt is responsible for providing a safety data sheet, as required by Applicable Law, for the McAsphalt Additive to Empower Calgary and for the Blended Product to McAsphalt's customers.

12.3 All trademark, process and intellectual property rights associated with the Blended Product are the exclusive rights of McAsphalt.

12.4 McAsphalt will support Empower Calgary in planning, regulatory and government agency engagement with respect to the Calgary Facility. Such support includes but is not limited to:

a. Sustainable Development Technology Canada

b. Emissions Reduction Alberta

c. Calgary Economic Development

d. Alberta Environment and Parks (provide information, as required in regulatory process)

e. City of Calgary (provide information, as required in permitting process)

**13. Lifecycle Analysis and Environmental credits**

[redacted]

**14. Insurance**

14.1 Empower Calgary shall, without limiting its obligations or liabilities as stated elsewhere in this Agreement, obtain and continuously maintain at its own expense and cost, the following insurance coverages:

a. Workers' Compensation insurance covering all employees, partners and directors in accordance with Applicable Law.

b. General liability insurance, including coverage for completed operations hazards.

c. Property liability insurance for an amount equal to at least the replacement cost of the Joint Calgary Facility Infrastructure, the Product, the Deemed McAsphalt Product, Product Storage Tank(s), McAsphalt Additive Tank and

Blended Product.

d. Automobile liability insurance covering all owned and non-owned motor vehicles operated or used by Empower Calgary.

e. Equipment insurance covering all construction machinery, temporary buildings, equipment, and tools used by Empower Calgary in the construction of the Joint Calgary Facility Infrastructure.

f. Such other insurance that may be required by McAsphalt acting reasonably.

14.2 Such insurance shall be maintained for at least two (2) years following the termination of the Agreement.

14.3 Empower Calgary's general liability insurance shall name McAsphalt as an additional insured with respect to liability arising out of the operations of Empower Calgary in performing the obligations under this Agreement and shall provide that the insurer shall waive any right of subrogation against McAsphalt. Empower Calgary's equipment insurer shall also waive any right of subrogation against McAsphalt.

14.4 Prior to Commissioning and upon request by McAsphalt during its completion, Empower Calgary shall provide to McAsphalt a certificate of insurance in respect of the required insurance coverages (or a certified copy of the entire policy or policies, if so requested), and a clearance certificate or similar instrument of the relevant authority or authorities. The insurer(s) shall provide thirty (30) days prior written notice of cancellation to McAsphalt.

14.5 Empower Calgary will purchase appropriate insurance for the Empower Calgary Product Storage Tank(s), including appropriate fire, tank rupture and environmental coverage and Product loss due to potential loss of Deemed McAsphalt Product in the Empower Calgary Product Storage Tank(s).

14.6 Empower Calgary shall indemnify and hold McAsphalt harmless from any claims, demands, losses, costs, damages, actions, suits, or proceedings arising from the Empower Calgary's failure to obtain the insurance required hereunder.

## 15. Indemnity

15.1 Obligation to Indemnify and Hold Harmless. Each Party shall indemnify, defend and hold harmless the other Party, its parent, subsidiaries, Affiliates, successors and assigns and each of their officers, directors, managers, shareholders and employees (each an "**Indemnitee**" and collectively the "**Indemnitees**") from any damage to property, any injury to person (including death), and any direct demands, claims, expenses, fines and losses of any type (including, but not limited to reasonable legal expenses incurred by the

Indemnitee in defending any legal action pertaining to the above) to the extent resulting from (a) the indemnifying Party's negligence, gross negligence or willful misconduct in performing or failing to perform its obligations under this Agreement, or (b) the indemnifying Party's breach of any representation, warranty or covenant contained in this Agreement or in any of its Exhibits. Where the personal injury, death, damage to property or loss is the result of the joint negligence, gross negligence or willful misconduct, the Parties shall indemnify each other in proportion to their respective allocable share of such joint negligence, gross negligence or willful misconduct. If either Party is strictly liable under Applicable Law, the other Party's duty of indemnification shall be in the same proportion that its negligence, gross negligence, or willful misconduct contributed to the loss for which the first Party is strictly liable.

For purposes of this Agreement,

a. the term "**negligence**" includes active or passive negligence;

b. the term "**gross negligence**" means any act which is, without regard to the magnitude of the resulting damage (i) a marked and flagrant departure from the standard of conduct of a reasonable person acting in the circumstances at the time of the alleged misconduct, or (ii) such wanton and reckless conduct, indifference or omissions as constitutes in effect an utter disregard for harmful, foreseeable and avoidable consequences; and

c. the term "**willful misconduct**" is defined by Applicable Law. .

15.2 Notice and Tender. The Indemnitee (a) shall, within sixty (60) days of receiving notice of any claim, lawsuit, action or proceeding subject to this indemnity, give written notice of such claim, lawsuit, action or proceeding to the indemnifying Party and shall tender the defense of such matter to the indemnifying Party, and (b) shall have the right, but not the duty, to participate in the defense of any such claim, lawsuit, action or proceeding and to be represented by counsel of such Indemnitee's choosing at its own expense, without in any way relieving the indemnifying Party of its obligations under this indemnity. If the Indemnitee fails to give such notice and tender such defense within the 60-day period, it shall be solely responsible for any loss with respect to such claim to the extent it is attributable to such failure. However, the failure to give such notice and tender such defense within the 60-day period, shall not result in a forfeiture or waiver of any rights to indemnification for any loss not attributable to such failure. The indemnifying Party may not, without the Indemnitee's consent, which shall not be unreasonably withheld or delayed, settle or compromise any claim or consent to any entry of judgment that does not include a full release of the Indemnitee from all liability on the claim.

The Indemnitees shall at all times use all reasonable commercial efforts to mitigate the costs associated with the event and circumstances which triggered the indemnification, including the management of the claim.

15.3 Consequential Damages. Neither Party shall be liable to the other under this Agreement (for breach, by way of an indemnity or otherwise) for any incidental, punitive, consequential, special, or indirect damages, including without limitation, loss of profits or goodwill, regardless of whether either Party has been advised of the possibility of such damages. Subject to the foregoing, each Party shall bear full responsibility without limits per occurrence for gross negligence or willful misconduct attributable to its managerial and senior supervisory personnel and, in no event, will a Party be required to release or indemnify the other Party for gross negligence or willful misconduct attributable to the other Party's managerial or senior supervisory personnel. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement limits or excludes either party's liability for fraud or fraudulent misrepresentation.

## 16. Undertakings and Warranties of the Parties

16.1 Undertakings of the Parties: Parties to this Agreement undertake to comply with Applicable Law at all times.

16.2 Representations and Warranties of the Parties:

The parties represents and warrants that as of the Effective Date:

16.2.1 The parties are corporations validly existing under the laws of Alberta and hold all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions, and provisions hereof;

16.2.2 all necessary governmental action required to authorize the execution, delivery and performance by the Parties of this Agreement and the transactions contemplated hereby has been taken;

16.2.3 this Agreement constitutes valid, legal and binding obligations of the Parties, enforceable in accordance with its terms;

16.2.4 the Parties acknowledge that there are no foreseen actions, suits or proceedings pending or threatened, against or affecting the Parties before any court or administrative body or arbitral tribunal which might materially adversely affect the ability of the Parties to meet and carry out its obligations under this Agreement; and

16.2.5 the execution, delivery and performance by the Parties of this Agreement has been duly authorized and will not contravene any provision of, or constitute a default under, any other Agreement or instrument to which it is a party or by which it or its property may be bound.

## 17. Restrictive Covenants

17.1 Confidentiality

17.1.1 Throughout the Term of this Agreement, except as set forth herein, the Parties shall keep confidential and shall not disclose to any Person any information, documentation, records, and data respecting this Agreement, the Parties, the transactions contemplated hereby, and the respective facilities of each Party (collectively the "**Confidential Information**"), without the prior written consent of the other Party, such consent not to be unreasonably withheld. A Party may disclose Confidential Information to such of its employees, consultants, advisors and Affiliates that have a legitimate commercial need to know such information, but only on the condition that the confidentiality requirements herein are disclosed to and enforced upon such Persons. A Party shall be liable to the other Party for a breach of confidentiality by a Person to whom Confidential Information was disclosed.

17.1.2 Paragraph 17.1 does not apply to information which:

17.1.2.1 is or becomes part of the public domain through no act or default of the Party receiving the Confidential Information;

17.1.2.2 is furnished by a third party to a Party, provided that such Party has no knowledge that the information was received directly or indirectly by the third party in breach of obligations of confidentiality to the other Party;

17.1.2.3 is required to be disclosed pursuant to a provision of this Agreement, any regulation or any order of a court or regulatory agency having jurisdiction, including the rules and requirements of any securities commission or stock exchange having jurisdiction over a Party or any of its Affiliates; or

17.1.2.4 is disclosed to such parties as may be reasonably necessary in the conduct of the transactions contemplated hereby, operations of the Parties' respective facilities, or the construction of their respective facilities, provided that such third parties have agreed to confidentiality provisions substantially the same as those set forth herein.

17.1.2.5 is required to be disclosed to fulfill its disclosure obligations under Applicable Laws or stock exchange requirements.

17.1.3 Each Party acknowledges that the unauthorized disclosure of Confidential Information may irreparably harm the other Party and that, in addition to any other remedies available at law or in equity, each Party may seek injunctive relief in order to prevent the disclosure or use of such information.

17.1.4 For additional clarity, under no circumstances will Empower Calgary disclose commercial pricing, production and logistics terms, third-party sales arrangements or Blended Product specifications.

17.1.5 Any press releases will be jointly approved and issued by the Parties. The publishing date will be mutually agreed.

17.1.6 The confidentiality duty of the Parties set out in this Section shall survive the termination of this Agreement.

17.2 Intellectual Property Ownership

Except as expressly set forth herein, as between the Parties, each Party is and shall remain the owner of all intellectual property that it owns or controls as of the Effective Date or that it develops or acquires thereafter.

17.3 No Competition

Each Party shall be prohibited to compete with the other Party's activities at the Calgary Facility, unless otherwise agreed, in writing, by the Parties.

17.4 Non-Disparagement

17.4.1 The Parties shall not (and shall use reasonable efforts to ensure that their directors and officers shall not), while performing their obligations under this Agreement or at any time thereafter, disparage the other Party (or its Affiliates) in any way that materially and adversely affects the goodwill, reputation or business relationships of that Party or its Affiliates with the public generally, or with any of its customers, vendors or employees.

17.4.2 Notwithstanding the foregoing, this Section shall not prohibit either Party from rebutting claims or statements made by any other Person.

17.5 Non-Solicitation

17.5.1 The Parties agree that during the period from the Effective Date until one year following the Commercial Operation Date, the Parties shall not, directly or indirectly, solicit or recruit any person who is, as of the Effective Date, an employee of the other Party or an Affiliate of the other Party or becomes an employee of the other Party during that time period.

## 18. Anti-corruption and Compliance with Code of Ethics

18.1 Each Party represents that it has not offered, promised or given financial or other advantage to a governmental official, public official or any other person in connection with any matter or agreement that is the subject of this Agreement.

18.2 Each Party agrees and represents on behalf of itself, its respective Affiliates, directors, officers, employees, agents, consultants and representatives that they shall not, directly or indirectly,

a. pay, offer, give or promise to pay or authorize the payment of, any monies or other things of value to:

i. a government official or an officer or employee of a government or any department, agency or instrumentality of any government;

ii. an officer or employee of a public international organization;

iii. any person acting in an official capacity for or on behalf of any government or department, agency, or instrumentality of such government or of any public international organization;

iv. any political party or official thereof, or any candidate for political office;

v. any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities, or

b. engage in other acts or transactions, in each case if this is in violation of or inconsistent with the applicable anti-bribery or anti-money laundering legislation of any government having jurisdiction over the matters contemplated by this Agreement, including, as may be applicable, The Corruption of Foreign Public Officials Act (Canada) and any applicable country legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

18.3 Each Party agrees that they shall, in connection with the performance of their obligations and the exercise of their rights under this Agreement, deal with their customers, employees, suppliers, and other persons, organizations, and governments in a fair manner consistent with its own code of ethics and undertake to conduct themselves, and will require its employees, directors, officers, affiliates, agents or representatives to conduct themselves, in all matters concerning this Agreement or that may reasonably be perceived as concerning the Agreement, in a manner consistent with the values and the principles promoted in its own code of ethics.

18.4 Each Party acknowledges that it has received or has been given access to the respective code of ethics of the other Parties before entering into this Agreement. The McAsphalt code of ethics and anti-corruption code of conduct is available at Documents - Bouygues and the code of ethics of Empower Calgary is available here.

18.5 Each Party agrees that a non-compliance with the principles established in its code of ethics constitutes a material breach of this Agreement.

## 19. Default and Termination

19.1 If a Party:

i. has failed to pay any amount due to the other Party on or before the thirtieth (30th) business day from receipt of notice from the other Party following the due date for such amount that the payment was not received;

ii. has breached or defaulted in the performance of any other material obligation under this Agreement or of any representations hereunder, and has not remedied or taken demonstrable steps to remedy such breach or default within ten (10) business days after written notice of such default is provided to the other Party (and in the case of demonstrable steps, continues to diligently pursue curative action of the default and cures the default within an additional ninety (90) day period); or

iii. is subject to an Insolvency Event;

then the other Party may, at its option and in addition to any other remedies available to it, terminate this Agreement as of a specified date by written notice to the defaulting Party, provided however that no such termination may be made with effect prior to the expiry of the initial five (5) year Term.

19.2 In the event of default by either of the Parties in any of the terms and conditions herein set forth, the defaulting Party shall pay all reasonable costs and expenses incurred in enforcing this Agreement or recovering damages for its breach, including reasonable legal expenses and fees.

## 20. Force Majeure Event

20.1 In the event that either Party is unable to meet its obligations under this Agreement as a result of a Force Majeure Event, the Party experiencing the

Force Majeure Event may suspend its obligations under this Agreement for the duration of that event as provided below in Paragraphs 20.2 through 20.6. For the purposes of this Section 20 and Section 9, a "**Empower Calgary Force Majeure Event**" is a Force Majeure Event affecting Empower Calgary's ability to meet its obligations and a "**McAsphalt Force Majeure Event**" is a Force Majeure Event affecting McAsphalt's ability to meet its obligations.

20.2 Force Majeure Notice. If, as a result of any Force Majeure Event, the affected Party is unable to perform its obligations under this Agreement and gives written notice of same to the non-affected Party within forty-eight (48) hours of its occurrence, then (i) the failure will not be deemed a breach or default; and (ii) the applicable time periods for the Parties to perform will be extended, but only to the extent and for the period the Force Majeure Event prevents the affected Party from performing its obligations. The affected Party shall notify the non-affected Party, within forty-eight (48) hours of the initial written notification of the condition of the unforeseen event.

20.3 Empower Calgary Force Majeure Event. Upon the declaration of a Force Majeure Event by Empower Calgary, McAsphalt will continue throughout the duration of the Empower Calgary Force Majeure Event to make full payment to Empower Calgary of its Joint Infrastructure Cost Recovery Charge; provided, however, that McAsphalt's obligations under this Paragraph 20.3 will be subject to the provisions of Paragraph 20.5 in the circumstances described therein.

20.4 McAsphalt Force Majeure Event. Upon the declaration of a Force Majeure Event by McAsphalt, McAsphalt shall be obligated to continue throughout the duration of the McAsphalt Force Majeure Event to make full payment to Empower Calgary of its (a) Joint Infrastructure Cost Recovery Charge, (b) Product produced and transferred to the Product Storage Tank(s) during the McAsphalt Force Majeure Event, (c) reasonable costs related to shut down of the Calgary Facility due to the McAsphalt Force Majeure Event and (d) any reasonable and agreed start-up costs required to re-instate full production at the Calgary Facility; provided, however, that Empower Calgary shall use commercially reasonable efforts to reduce the costs, fees and expenses incurred by McAsphalt during the McAsphalt Force Majeure Event.

20.5 Extended Empower Calgary Force Majeure Event: If at any time during or after the initial Term, a Empower Calgary Force Majeure Event extends beyond one hundred and eighty (180) days, or upon notice from Empower Calgary that such Force Majeure Event is reasonably expected to extend beyond one hundred and eighty (180) days, then McAsphalt may by written notice to Empower Calgary terminate this Agreement, effective on or after the 181st day, or alternatively the Parties may negotiate new terms.

20.6 During any Empower Calgary Force Majeure Event, McAsphalt may, at its own cost, replace the Product with another product from a third party selected by McAsphalt but any such election will not reduce or otherwise affect McAsphalt's obligations to Empower Calgary pursuant to this Agreement.

**21. Governing Law and Dispute Resolution**

21.1 Governing Law: This Agreement shall be governed by and construed in accordance with the laws of Alberta and the laws of Canada applicable therein. The Parties hereto irrevocably agree that the Courts of Alberta are to have exclusive jurisdiction to settle any disputes or claims which may arise out of or in connection with this Agreement and submit to the exclusive jurisdiction of those Courts.

21.2 Amicable settlement:

21.2.1 The Parties shall use their best efforts and attempt in good faith to amicably settle any dispute, controversy, or claim arising out of or in connection with this Agreement or the interpretation thereof.

21.2.2 If the matter is not resolved by negotiation the parties may refer the dispute to the court of Alberta only.

21.2.3 Nothing in this clause shall prevent any Party from obtaining interim relief on an urgent basis from the courts of Alberta.

21.3 Exclusivity: Neither Party shall have any right to commence or maintain any legal proceeding concerning a dispute until it has been resolved in accordance with Section 21.2 above, and then only to enforce or execute the decision under such procedure.

**22. Miscellaneous**

22.1 Assignment or Transfer

22.1.1 Any assignment or transfer by a Party of all (but not part only) of its rights and obligations under this Agreement is permitted but only with the prior written consent of the other Party, provided that:

i. such consent shall not be unreasonably withheld or delayed if the Party wishing to assign can satisfy the other Party of such proposed assignee's financial, technical, legal status, and ability to observe and perform this Agreement; and

ii. the Party wishing to assign shall have given notice to that effect to the other Party and such notice shall have given sufficient information to show the status and ability of the proposed assignee to carry out the terms of this Agreement.

22.1.2 No assignment pursuant to above clause shall be effective unless and until the assigning Party has:

i. procured the proposed assignee to covenant directly with the other Party (in a form reasonably satisfactory to such Party) to observe and perform all the terms and conditions of this Agreement and if reasonably required by the other Party arrange for a guarantee or other equivalent security in favor of such other Party in respect of all obligations or liabilities to be assigned; and

ii. provided to the other Party a certified copy of the assignment (excluding the consideration paid or payable for such assignment).

22.2 Variation

This Agreement may not be varied nor any of its provisions waived except by an agreement in writing signed by the Parties. The Parties record that any such variation or waiver shall be treated as confidential and shall not be disclosed to any other person, save as required under Applicable Law.

22.3 Survival of Rights

The expiry or termination of this Agreement shall not affect any rights or obligations which may have accrued prior to such expiry or termination and shall not affect obligations of each of the Parties under this Agreement which are expressed to continue after such expiry or termination.

22.4 Notices

Any notice or other communication given or made under or in connection with the matters contemplated by this Agreement shall be in writing as follows:

22.4.1 Any such notice or other communication shall be addressed as provided in Section 8.4.2 below and, if so addressed, shall be deemed to have been duly given or made as follows:

i. if sent by personal delivery, upon delivery at the address of the relevant Party;

ii. if sent by post, five (5) Business Days after the date of posting provided that proof is given that the notice was properly addressed and duly dispatched by post; and

iii. if sent by electronic mail, upon confirmation of receipt by the intended recipient. Provided that if, in accordance with the above provisions, any such notice or other communication would otherwise be deemed to be given or made outside normal working hours in the place of service of the notice or other communication, it shall be deemed to be given or made at the start of normal working hours on the next Business Day.

22.4.2 The relevant address of each Party for the purposes of this Agreement is:

[redacted]

22.4.3 A Party may notify the other Party of a change to its name or address for the purposes of above clause provided that such notification shall only be effective on:

i. the date specified in the notification as the date on which the change is to take place; or

ii. if no date is specified or the date specified is less than five (5) Business Days after the date on which notice is given, the date falling five (5) Business Days after notice of any such change has been given.

22.4.4 Notwithstanding the above, any notice given in writing in English, and received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause.

22.4.5 The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment of or variation to this Agreement may be given or concluded via email.

**23. Entire Agreement**

This Agreement, along with the appendices and amendments to it, constitutes the entire Agreement between the Parties with respect to its subject matter and expressly excludes any warranty, condition or other undertaking implied at law or by custom and supersedes all previous Agreements and understandings between the Parties with respect to its subject matter and each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking by the other Party not fully reflected in the terms of this Agreement.

**24. Severance**

The invalidity or unenforceability of any clause of this Agreement shall not affect the validity or enforceability of the remainder of this Agreement, and the invalidity or unenforceability of any provision of any clause shall not affect the validity or unenforceability of the remaining provisions of such clause, provided that, in the event that any clause is held for any reason to be invalid or unenforceable, the Parties shall negotiate in good faith to replace the invalid or unenforceable clause with a new clause, the effect of which is as near to that of the invalid and unenforceable clause as possible and provided that if this is not possible the Parties shall negotiate in good faith to make such other changes to the provisions of this Agreement as shall most nearly preserve the overall commercial intention of the Parties in entering into this Agreement.

**25. Counterparts**

This Agreement may be executed in counterparts and by each Party on a separate counterpart, each of which when executed and delivered shall constitute an original, but both counterparts shall together constitute one and the same instrument. Signatures delivered by electronic means of communication shall be deemed for all purposes to be original counterparts of this Agreement or any amendment of this Agreement.

Empower Calgary and McAsphalt have signed this Agreement as of the date provided in the opening paragraph to indicate their consent to be bound by its terms.

**Empower Environmental Solutions Calgary Ltd.**

/s/ "signed"

NAME: Aidan Mills

TITLE: President and CEO, Northstar Clean Technologies Inc.
Director, Empower Environmental Solutions Calgary Ltd.

**McAsphalt Industries Limited**

/s/ "signed"

NAME:

TITLE:

**Appendix A: Pricing for Product**

[redacted]

[redacted]

## Appendix B: Specifications

[redacted]

## Appendix C: Third-Party Sales Margin Sharing

[redacted]

**Appendix D**

**Joint Infrastructure Cost Recovery Charge and 3rd Party Infrastructure Cost Recovery Charge**

[redacted]

# APPENDIX E : JOINT CALGARY INFRASTRUCTURE LAYOUT

[redacted]