

FERTILIZER OFFTAKE AGREEMENT

THIS AGREEMENT is made as of the 5th day of January, 2021 (the “**Effective Date**”).

BETWEEN:

OSTARA USA, LLC, a Delaware limited liability company with an address at Suite 690 – 1199 West Pender Street, Vancouver, BC, V6E 2R1, Canada

(“**Ostara**”);

AND

CLEAN WATER SERVICES, a water resources management utility service district with an address at 2550 SW Hillsboro Hwy., Hillsboro, Oregon 97123, USA

(“**Customer**”)

WHEREAS:

- A. Customer has entered into agreements (together the “**System Agreements**”) to construct and has constructed Ostara Nutrient Recovery Systems at the Sites;
- B. Customer and a predecessor Affiliate of Ostara entered into the Offtake Agreement dated August 26, 2008 (in respect of the Durham AWWTF (the “**Original Durham Offtake Agreement**”)) and the Byproduct Removal Agreement dated February 11, 2011 (in respect of the Rock Creek AWWTF (together with the Original Durham Offtake Agreement, the “**Original Offtake Agreements**”)) relating to, among other things, the purchase of Fertilizer produced by the Nutrient Recovery Systems, subject to exceptions stated in the Agreement; and
- C. Ostara has requested that Customer renegotiate the terms of the Original Offtake Agreements, including terminating the Original Offtake Agreements and replacing them with the terms and conditions of this Agreement; and
- D. All the Fertilizer produced by the Nutrient Recovery Systems will be purchased by Ostara from Customer pursuant to this Agreement. Ostara will have sole responsibility for marketing, selling and distributing all Fertilizer purchased by it under this Agreement, subject to any exceptions set forth in the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the above recitals and the representations, warranties, covenants and agreements set forth below in this Agreement, the sufficiency of which is acknowledged by all parties, the parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following words will have the following meanings:

- (a) “**Additional Support**” has the meaning set forth in Section 3.3;
- (b) “**Agreement**” means this Fertilizer Offtake Agreement;
- (c) “**Affiliate**” means, in respect of a party or person, an Entity with which that party or person is affiliated when: (i) one Entity is affiliated with another Entity, if one of them is the subsidiary of the other or both are subsidiaries of the same Entity or each of them is controlled by the same person; and (ii) if any Entities are affiliated with the same Entity at the same time, they are deemed to be affiliated with each other;

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- (d) **“Ancillary Advisory Opportunities”** has the meaning set forth in Section 8.4;
- (e) **“Bag”** means a flexible intermediate bulk container used for storing and transporting Fertilizer with a nominal capacity of one (1) Ton/Tonne; for certainty, Ostara’s Bag requirements are set out in Schedule B;
- (f) **“Bag Sales”** means sales of Fertilizer completed under this Agreement by way of Bags and, for certainty, does not include Bulk Sales;
- (g) **“Bag Sales Scale”** has the meaning set forth in Section 5.2(a);
- (h) **“Base Logistics Support”** has the meaning set forth in Section 3.2;
- (i) **“Baseline DAP Index Price”** means the most recent quarterly DAP price set forth in the World Bank Commodities Price Data Sheet as of the Effective Date;
- (j) **“Basic Information Requests”** has the meaning set forth in Section 8.3;
- (k) **“Bulk Sales”** means sales of Fertilizer completed under this Agreement on a bulk-product basis utilizing the Bulk Storage Silo and, for certainty, does not include Bag Sales;
- (l) **“Bulk Sales Scales”** has the meaning set forth in Section 5.2(b);
- (m) **“Bulk Storage Silo”** means the industrial bin or other container integrated into the Nutrient Recovery Systems to accommodate Bulk Sales, into which the finished-product Fertilizer is ultimately delivered by the Nutrient Recovery Systems and retained for temporary storage at the Sites until such time as such Fertilizer is either:
 - (i) removed by Customer (or its agent or designee) and placed in on-Site or other medium-term storage; or
 - (ii) Delivered;
- (n) **“Business Day”** means any day other than a Saturday, Sunday or other day on which chartered banks in British Columbia or the location of the Sites, are not open for commercial banking business;
- (o) **“Calendar Quarter”** means January 1 – March 31, April 1 – June 30, July 1 – September 30 and October 1 – December 31, of each year of the Term;
- (p) **“Claim”** has the meaning set forth in Section 10.3;
- (q) **“Confidential Information”** means: (i) the commercial terms of this Agreement, including, for certainty, the Fertilizer Price; and (ii) any and all information disclosed to Customer by Ostara that has been created, discovered, or developed by or for Ostara, or that has been made known to Ostara by a third-party and that is not generally known by any person or Entity other than Ostara or an Affiliate of Ostara or the directors, officers, employees, contractors, representatives or agents of Ostara or such Affiliates;
- (r) **“Confidential Information Owner”** has the meaning set forth in Section 8.2;
- (s) **“Customer Retained Product”** has the meaning set forth in Section 2.2;
- (t) **“DAP”** has the meaning set forth in Section 6.1(b);
- (u) **“Delivery”** or **“Delivered”** means and is deemed to have occurred:

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- (i) in the case of Bag Sales, after the Fertilizer has been weighed and bagged by Customer (or Customer's agent or designee) according to the official Handling Guidelines for Flexible Intermediate Bulk Containers published by the Flexible Intermediate Bulk Container Association (FIBCA) and immediately upon such Fertilizer having been loaded at the applicable Site by Customer (or Customer's agent or designee) onto Ostara's (or Ostara's lessor's, agent's or designee's) trucks or railcars, as applicable (without damage to the Bag or loss or damage to the Fertilizer); and
- (ii) in the case of Bulk Sales, after the Fertilizer has been weighed by the applicable Load Cell(s) and immediately upon such Fertilizer having been loaded at the applicable Site by Customer (or Customer's agent or designee) onto Ostara's (or Ostara's lessor's, agent's or designee's) trucks or railcars, as applicable (without loss or damage to the Fertilizer);
- (v) **"Direct Sale Product"** shall have the meaning set forth in Schedule A;
- (w) **"Direct Sale Product Price"** has the meaning set forth in Section 6.1(a)(i);
- (x) **"Disclosing Party"** has the meaning set forth in Section 8.2;
- (y) **"Dispute"** has the meaning set forth in Section 11.1;
- (z) **"Dryer Outlet"** means the exit flange area of the drying unit integrated within the Nutrient Recovery Systems to reduce the moisture content of the Fertilizer;
- (aa) **"Durham AWWTF"** means Customer's wastewater treatment facility located at 16580 SW 85th Avenue, Tigard, Oregon USA;
- (bb) **"Early Termination Payment Amount"** has the meaning set forth in Schedule C;
- (cc) **"Effective Date"** has the meaning set forth on the face page hereof, January 5, 2021;
- (dd) **"Entity"** means a corporation, partnership, limited partnership, limited liability partnership, limited liability company, trust, joint venture or other business or governmental authority;
- (ee) **"Excess Fertilizer"** shall have the meaning set forth in Section 4.4;
- (ff) **"Excess Fertilizer Storage Fee"** has the meaning set forth in Section 4.4;
- (gg) **"Excluded Rights"** has the meaning set forth in Section 9.3;
- (hh) **"Fertilizer"** means the struvite by-product produced by the Nutrient Recovery Systems;
- (ii) **"Fertilizer Price"** means either the Direct Sale Product Price or the Processed Product Price, as applicable, as set forth in Section 6.1(a);
- (jj) **"Fertilizer Price Floor"** has the meaning set forth in Section 6.1(d);
- (kk) **"Force Majeure Event"** has the meaning set forth in Section 13.3;
- (ll) **"Full Potential Term"** means the ten (10) year period commencing on the Effective Date;
- (mm) **"Governing Act"** has the meaning set forth in Section 2.3;

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- (nn) **“Impurities”** has the meaning set forth in Section 2.3;
- (oo) **“Indemnified Party”** and **“Indemnifying Party”** has the meanings set forth in Section 10.3;
- (pp) **“Initial Term”** has the meaning set forth in Section 12.1;
- (qq) **“Intellectual Property”** means inventions, trade secrets, know-how, technology, trademarks, trademark applications, patents, patent applications, copyright, copyright registrations and copyright applications with respect to any Intellectual Property owned or licensed by Ostara;
- (rr) **“License Agreement”** means license(s) to use the following technology:

| Yes | No | Technology |
|-------------------------------------|--------------------------|--------------------------------------|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Pearl |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | PRISM |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Software |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | WASSTRIP™ Licensed Technology |

Customer shall only have a license to use the technologies listed above to the extent the corresponding boxes are checked; if boxes are not checked, then Customer has no license to use the technology represented by such boxes under this Agreement;

- (ss) **“Load Cell(s)”** means the original weight measuring technology integrated within the Nutrient Recovery Systems as a component of the Bulk Storage Silo, for purposes of weighing Fertilizer sold by way of Bulk Sales;
- (tt) **“Material Breach”** has the meaning set forth in Section 12.2(a);
- (uu) **“Non-Conforming Fertilizer”** has the meaning set forth in Section 2.6;
- (vv) **“Non-Conforming Fertilizer Price”** has the meaning set forth in Section 2.6;
- (ww) **“Non-Conformance Notice”** has the meaning set forth in Section 2.7;
- (xx) **“Normal Business Hours”** means any time between 8:00 a.m. and 4:00 p.m. at the applicable Site during a Business Day;
- (yy) **“Nutrient Recovery Systems”** means the nutrient recovery systems (and associated plant process enhancements, if any) constructed on the Sites pursuant to the System Agreements, including the technology covered by the License Agreement, and **“Nutrient Recovery System”** means one of them;

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- (zz) “**Operations Manual**” means Ostara’s Facility Operations and Maintenance Manual, as amended by Ostara from time to time;
- (aaa) “**Original Offtake Agreements**” has the meaning set forth in Recital B;
- (bbb) “**Owner Commitment Letter**” means the letter agreement in respect of the “Sponsor Financing Commitment” of Wheatsheaf in the form set out in Schedule D;
- (ccc) “**Pallet**” means a flat, portable, stackable platform structure (most typically of wood construction) that is used to support goods while in storage and to facilitate loading and unloading of goods during short and long-haul transport, compliant with the requirements set out in the Operations Manual;
- (ddd) “**Pearl**” means Ostara’s proprietary Pearl[®] nutrient recovery system;
- (eee) “**PLCs**” means the programmable logic controllers responsible for controlling and monitoring the operational activities undertaken by the Nutrient Recovery Systems;
- (fff) “**PRISM**” means Ostara’s proprietary process information system for phosphorous recovery;
- (ggg) “**Processed Product**” shall have the meaning set forth in Schedule A;
- (hhh) “**Processed Product Price**” has the meaning set forth in Section 6.1(a)(ii);
- (iii) “**Recipients**” has the meaning set forth in Section 8.1;
- (jjj) “**Remaining Full Potential Term**” has the meaning set forth in Schedule C;
- (kkk) “**Rock Creek AWWTF**” means Customer’s wastewater treatment facility located at 3235 SW River Road, Hillsboro, Oregon USA;
- (lll) “**Renewal Term**” has the meaning set forth in Section 12.1;
- (mmm) “**Sample**” has the meaning set forth in Section 2.5;
- (nnn) “**Scales**” means, collectively, the Bag Sales Scale and the Bulk Sales Scales;
- (ooo) “**Seeding Product**” means small-granule fertilizer product for use in the production of Fertilizer by the Nutrient Recovery Systems (as outlined in the Operations Manual);
- (ppp) “**Sites**” means, together, the Durham AWWTF and the Rock Creek AWWTF, and “**Site**” means one of them;
- (qqq) “**Software**” means the software developed by Ostara and/or its third-party licensors for the monitoring, analysis and control of the Nutrient Recovery Systems and associated plant processes, including PRISM;
- (rrr) “**Specifications**” has the meaning set forth in Section 2.3;
- (sss) “**Stipulated Judgment**” means the Stipulation and General Judgment of Specific Performance duly executed by the parties and delivered to Customer concurrent with the delivery of this Agreement on the conditions set forth herein, in the form attached as Schedule F hereto;

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- (ttt) “**System Agreements**” has the meaning set forth in Recital A;
- (uuu) “**Term**” has the meaning set forth in Section 12.1;
- (vvv) “**Ton/Tonne**” means:
- United States short ton equal to 2,000 lbs; and
 - metric tonne equal to 1,000 kg;
- (www) “**Truck Scale**” means a scale or set of scales, whether or not mounted permanently or on a concrete foundation or otherwise, that is used to weigh entire road vehicles and their contents, and which may be physically situated at a Site or beyond Site boundaries on a public or private roadbed;
- (xxx) “**Truck Scale Measurement**” has the meaning set forth in Section 5.5;
- (yyy) “**Visual Non-Conformances**” means unintended or unexpected physical abnormalities or irregularities of the Fertilizer that are apparent upon simple visual inspection, as contemplated by the Operations Manual;
- (zzz) “**WASSTRIP™ License Agreement**” means the Amended and Restated WASSTRIP® License Agreement dated effective January 1, 2017, by and between Clean Water Institute and Ostara Nutrient Recovery Technologies Inc.;
- (aaaa) “**WASSTRIP™ Licensed Technology**” means the proprietary WASSTRIP® technology for the removal of phosphorus and magnesium upstream of the Nutrient Recovery Systems, as governed by the WASSTRIP™ License Agreement;
- (bbbb) “**Weight Reconciliation**” has the meaning set forth in Section 5.5; and
- (cccc) “**Wheatsheaf**” means Wheatsheaf Group Limited.
- 1.2 Termination of Original Offtake Agreements. Ostara and Customer hereby agree and confirm that notwithstanding article III (*Term*) of the Original Offtake Agreements, the Original Offtake Agreements are hereby deemed to be and are hereby terminated and of no further force or effect as of the Effective Date, with the intended result that this Agreement shall govern all purchases and sales of Fertilizer produced by the Nutrient Recovery Systems on and after the Effective Date and shall otherwise apply to Customer and Ostara as contemplated herein. All Fertilizer produced by the Nutrient Recovery Systems prior to the Effective Date of this Agreement shall be governed by the Original Offtake Agreements.
- 1.3 Schedules. The following are the Schedule(s) attached hereto, hereby incorporated by this reference and deemed to be a part hereof:
- (a) Schedule “A” – Fertilizer Specifications;
 - (b) Schedule “B” – Bag Specifications;
 - (c) Schedule “C” – Termination Payments;
 - (d) Schedule “D” – Form of Owner Commitment Letter;
 - (e) Schedule “E” – Process Control Transition Plan; and
 - (f) Schedule “F” – Form of Stipulation and General Judgment of Specific Performance.

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- 1.4 Headings. Headings have been inserted in these provisions for convenience of reference only and will not affect their meaning or construction.
- 1.5 References. Unless the context requires otherwise, any references in this Agreement to the singular will include the plural, plural the singular, and references to Recitals, Articles, Sections and Schedules will be references to this Agreement.
- 1.6 Inclusiveness. Words and phrases denoting inclusiveness (such as “including” or “includes”), whether or not stated as being without limitation, are not limited by their context or the words or phrases which precede or succeed them.
- 1.7 Currency. All amounts herein reflect United States Dollars (“US\$”), lawful currency of the United States of America.

2. FERTILIZER PURCHASE AND SALE

- 2.1 Purchase and Sale. Except as expressly set out herein, Ostara agrees to purchase from Customer and Customer agrees to sell to Ostara (or such Affiliate of Ostara as may be designated by Ostara from time to time), either as Bag Sales or Bulk Sales in accordance with the terms hereof and the capabilities of the Nutrient Recovery Systems, all Fertilizer produced by the Nutrient Recovery Systems during the Initial Term, and the Renewal Term exercised by Ostara pursuant to Article 12. Nothing in this Agreement shall require Customer to produce any minimum amount of Fertilizer.
- 2.2 Prohibition on Transfer and Use of Product. Except as otherwise expressly permitted by Ostara in its sole discretion, Customer shall not sell, assign or otherwise transfer any Fertilizer to any other person or Entity or use or dispose of any Fertilizer (except for disposal of nominal quantities in connection with maintenance or cleaning of the Nutrient Recovery Systems in the normal course of business) or permit any third party to do any of the foregoing. Notwithstanding the foregoing and for certainty, Ostara agrees that Customer shall be entitled to retain and thereafter, use, distribute, or sell, up to fifty (50) Tons/Tonnes of Processed Product per contract year (“**Customer Retained Product**”), solely in connection with its “Clean Water Grow” program or as otherwise agreed by Ostara acting reasonably; provided, however, that Customer shall provide Ostara not less than sixty (60) days’ advance written notice of its intent to secure Customer Retained Product as contemplated herein, which notice shall: (i) specify the quantity of Processed Product that Customer so wishes to retain and the date on which Customer will be taking possession of such Customer Retained Product; and (ii) include a confirmation that the use of such Customer Retained Product will comply with the requirements of this Section. For certainty, Ostara will have no liability or other obligations whatsoever in respect of Customer Retained Product.
- 2.3 Fertilizer Specifications. All Fertilizer purchased and sold under this Agreement shall, at the time of Delivery, conform to the specifications set out in Schedule “A” (the “**Specifications**”), as may be adjusted by mutual agreement of the parties from time to time in writing. In addition, Customer will: (i) ensure that each Delivery of Fertilizer to Ostara is substantially uniform in quality and physical characteristics and free of paints, chemicals, foreign objects, organic material, magnetic material and other impurities (collectively, “**Impurities**”); and (ii) promptly notify Ostara of any information of which it becomes aware which may result in Impurities or which may otherwise compromise the Fertilizer, including uncharacteristic color, moisture-content or odor. In addition, Customer is required to ensure all Fertilizer and

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its processing fully comply with the following as now in force and as hereafter amended (the one selected, the “**Governing Act**”):

- US EPA; 40 CFR Part 503 (the Rule or Regulation), Standards for the Use or Disposal of Sewage Sludge.
- EU Fertilisers Regulation (STRUBIAS).

However, Ostara understands and agrees that the WASSTRIP™ Licensed Technology is not governed by or subject to 40 CFR Part 503 regulations.

- 2.4 Compliance. Customer shall be required to obtain all permits and licenses, file for and comply with all registrations, put in place all processes, conduct all testing, prepare and file all reports, and otherwise ensure that Customer is in full compliance with the Governing Act including all applicable laws, regulations, directives and orders that apply to the Governing Act and all at Customer’s sole cost and expense.
- 2.5 Sampling. Customer will conduct visual sampling of Fertilizer on a daily basis in accordance with sampling protocols consistent with past practice (subject to changes reasonably determined by Customer) and will: (a) advise Ostara immediately in the event of any Visual Non-Conformances; (b) promptly take all reasonable actions to minimize and stop the occurrence of such Visual Non-Conformances. Further, Customer will sample all Fertilizer in accordance with the sampling protocol for Bag Sales or Bulk Sales (as applicable) set forth in the Operations Manual and will, on a weekly basis in respect of both Bag Sales and Bulk Sales (or such other less or more frequent basis as determined by Ostara acting reasonably), deliver (utilizing Ostara’s account) all such Fertilizer samples (each a “**Sample**”) to the location designated by Ostara. All Samples will be delivered in bags meeting the requirements and specifications set out in the Operations Manual for such purpose. Customer will, in the case of:
- (a) Bag Sales, obtain a Sample from each Bag of Fertilizer; and
 - (b) Bulk Sales, obtain a Sample from the Dryer Outlet on a daily basis and obtain a representative sample of each Bulk truck shipment.
- 2.6 Non-Conforming Fertilizer. Ostara, at its cost, will coordinate for all Samples to be tested and analyzed with reference to the Specifications. All Fertilizer not meeting the Specifications (for any reason, including as a result of a change in the quality of the feed stream or any failure of Customer or its employees, contractors, agents or representatives to comply with the Operations Manual or otherwise with the reasonable instructions of Ostara), will be deemed to be non-conforming Fertilizer (the “**Non-Conforming Fertilizer**”). Subject to receipt by Customer of a Non-Conformance Notice (as defined in Section 2.7), Customer and Ostara will in good faith and each acting reasonably, use best commercial efforts to negotiate a mutually-agreed downward-adjusted per-Ton/Tonne price (the “**Non-Conforming Fertilizer Price**”) for the Non-Conforming Fertilizer, which price will take into account all reasonably relevant factors, including the particular component(s) of the Specifications which such Non-Conforming Fertilizer has failed to satisfy and the resultant impact on the value to Ostara of such Non-Conforming Fertilizer as compared to the value to Ostara of Fertilizer that satisfies the Specifications. In the event the parties do not agree on a Non-Conforming Fertilizer Price, Customer shall be entitled to retain and use for its own internal purposes, or to distribute

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and/or sell such Non-Conforming Fertilizer under its “Clean Water Grow” program as contemplated by Section 2.2, which Tons/Tonnes shall, for certainty, be considered “Customer Retained Product” for the purpose of Section 2.2. In the event that the aggregate of the Non-Conforming Fertilizer for which a Non-Conforming Fertilizer Price cannot be agreed by the parties, together with other Fertilizer retained by Customer as contemplated by Section 2.2, exceeds the fifty (50) Tons/Tonnes per contract year limit for Customer Retained Product set forth in Section 2.2, the parties agree to promptly discuss and negotiate in good faith with each acting reasonably, a mutually-acceptable arrangement in respect of all Non-Conforming Fertilizer exceeding such fifty (50) Ton/Tonne limit.

- 2.7 Notification of Non-Conforming Fertilizer. If Ostara determines through testing and analysis as set forth in this Agreement, that all or any portion of any Fertilizer is Non-Conforming Fertilizer, Ostara will give Customer notice (a “**Non-Conformance Notice**”) of its rejection of such Non-Conforming Fertilizer (such notice to include the reasons for such rejection and the results of the applicable testing and analysis), within fourteen (14) days after Ostara’s receipt of the applicable Sample in respect of such Fertilizer pursuant to Section 2.5. Ostara and Customer each acknowledge and agree that it is in the best interest of both parties to ensure that all Fertilizer has been tested and analyzed as set forth in this Agreement, prior to Ostara taking Delivery thereof. Accordingly, for certainty and notwithstanding any other provision of this Agreement, the parties agree that Ostara will not be required to take Delivery of any Fertilizer for which the fourteen (14) day Sample testing period contemplated by this Section has not expired.

3. OPERATIONS

- 3.1 Customer’s Operational Requirements. Customer, or its agent or designee, will perform the day-to-day operation and maintenance of the Nutrient Recovery Systems consistent with past practice (subject to changes reasonably determined by Customer), including:
- (a) providing such utilities and services as may be required by the Nutrient Recovery Systems, including any required electricity, natural gas, drainage, water (potable and non-potable), heat, and instrument quality air;
 - (b) providing any Bags and Pallets required for bagging and packaging the Fertilizer for Delivery;
 - (c) handling and treating any foul air;
 - (d) handling and disposing of any dust residues produced by the Nutrient Recovery Systems;
 - (e) recording and transmittal to Ostara of Nutrient Recovery Systems operational data as reasonably required by Ostara for its business purposes, including data relating to Fertilizer production volumes and associated particle sizing;
 - (f) remotely monitoring the Nutrient Recovery Systems on a routine basis throughout each day if an operator is not physically in attendance, and responding to alarms in accordance with the escalation and reporting procedures for alarms set forth in the Operations Manual;
 - (g) inspecting and maintaining the Nutrient Recovery Systems, and

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- (h) Provision of chemicals, as required, for operation.
- 3.2 Ostara Base Logistics Support. At no additional charge to Customer, Ostara will provide for the scheduling of trucks or railcars, as applicable, to pick up Fertilizer from the Sites and will provide basic advisory support to Customer (as determined by Ostara acting reasonably) in connection with Customer's chemical purchasing activities ("**Base Logistics Support**") throughout the Initial Term, and the Renewal Term.
- 3.3 Ostara Additional Support. If Customer requests operational support from Ostara in excess of the Base Logistics Support ("**Additional Support**") and Ostara agrees to provide such Additional Support, all such Additional Support will be provided at Ostara's then prevailing rates for labor, time and material services. In such circumstances, Ostara will provide a rate sheet to Customer in advance of the provision of any such Additional Support. All expenses and materials relating to Additional Support will be provided at Ostara's actual cost-plus fifteen percent (15%).
- 3.4 Process Control. To support Customer's operations of the Nutrient Recovery Systems as contemplated by this Agreement, Ostara will promptly provide and/or otherwise support the transfer and delivery to Customer of all source code necessary for Customer to operate the PLCs, together with necessary historical PRISM and other data, in each case as is determined by Ostara acting reasonably and in good faith, in accordance with the plan described in Schedule E.
- 3.5 Chemicals. Customer will procure and otherwise be responsible for all chemicals required to operate the Nutrient Recovery Systems and will provide all services and equipment necessary to schedule and receive deliveries of such chemicals, subject to Base Logistics Support as provided in Section 3.2.
- 3.6 Qualified Personnel. Each party's personnel (including all employees, contractors, agents or other representatives of each such party) performing its obligations hereunder will be appropriately skilled, trained and equipped by such party and the other party will have no responsibility or obligation therefor.
- 3.7 Access. Customer acknowledges that benefits will accrue to both parties as awareness and adoption of Pearl[®], WASSTRIP[™] Licensed Technology and Fertilizer technologies continues to increase. Accordingly, Customer agrees to permit Ostara reasonable access to the Nutrient Recovery Systems during Normal Business Hours upon reasonable prior notice (as determined by Customer), for any *bonafide* business purpose, including inspections and private tours.

4. DELIVERIES AND STORAGE

- 4.1 Preparation for Sale. Customer will harvest, dry and screen (based on size) all Fertilizer produced by the Nutrient Recovery Systems. In the event of:
- (a) Bag Sales, Customer will also bag the Fertilizer in Bags for Delivery in accordance with the requirements of the Operations Manual. For certainty, each Bag must be filled to within one percent (1%) of its target capacity of 1 Ton/Tonne. Customer will ensure that an Ostara-approved label identifying the Fertilizer size and content information (in accordance with the requirements of the Operations Manual), is firmly affixed to each Bag; and

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- (b) Bulk Sales, Customer will retain the Fertilizer in the Bulk Storage Silo in accordance with the requirements of the Operations Manual and complete such other tasks as are reasonably required to ensure Fertilizer sold by way of Bulk Sales is readied for Delivery as contemplated hereunder.
- 4.2 Loading. Customer is responsible for loading the Fertilizer at the Sites during Normal Business Hours in accordance with Ostara's loading instructions and without damage to Bags (in the case of Bag Sales) or loss or damage to the Fertilizer. Ostara (as contemplated by Section 6.1(a)(i) and Section 6.1(a)(ii)), is responsible for all costs of transporting Direct Sale Product and Processed Product, in each case from the Sites after the Fertilizer has been loaded onto Ostara's (or Ostara's lessor's or agent's) trucks or railcars, as applicable. Additionally, Ostara shall provide trucks with side-loading capability that do not require use of a loading dock.
- 4.3 Notice of Collection and Delays. Ostara and Customer will use reasonable efforts to coordinate the scheduling and completion of all Deliveries but, for certainty, Customer will be required to accommodate Deliveries only during Normal Business Hours. In connection with the foregoing, Ostara shall provide Customer not less than one (1) Business Day advance notice in the event Ostara desires to take Delivery of Fertilizer. If Customer is unable to accommodate the Delivery timing requested by Ostara or anticipates a need to delay any requested Delivery, Customer shall be entitled to such delay provided: (i) Customer promptly notifies Ostara of the duration of the anticipated delay; and: (ii) Ostara has not already engaged a truck or railcar, as applicable, in respect of the applicable Delivery. In no event may any such delay extend beyond ten (10) days.
- 4.4 Storage of Fertilizer. At all times during the Term, Customer will, at no cost to Ostara, store in a mutually agreed dry location at the Sites or another location agreed by Ostara in its sole discretion:
- (a) in the case of Bag Sales, up to 40 (forty) Bags of Fertilizer at each Site; and
 - (b) in the case of Bulk Sales, not less than forty (40) Tons/Tonnes of Fertilizer and twenty (20) Tons/ Tonnes of Seeding Product at each Site
- (all Bags and Bulk Sales Tons/Tonnes exceeding the quantities identified in (a) or (b) above, being "**Excess Fertilizer**").

Customer shall from time-to-time throughout the Term, promptly notify its primary Ostara logistics contact (currently Patrick Mitchell: pmitchell@ostara.com) upon the Fertilizer storage facilities at a Site reaching seventy-five percent (75%) of such Site's storage capacity.

In the event of Excess Fertilizer, Customer may give Ostara notice in writing requiring removal of all or a portion of such Excess Fertilizer at Ostara's expense. Ostara will collect all Excess Fertilizer within seven (7) days of any such Customer notice unless Customer and Ostara agree to alternate storage arrangements (including payment and pick-up terms) prior to the expiry of such seven (7) day period. Unless alternate storage, Delivery and payment arrangements are agreed to in writing, Excess Fertilizer will be deemed to be Delivered upon the earlier to occur of: (i) pick-up by Ostara (or Ostara's lessor's or agent's) trucks or railcars, as applicable; and (ii) the expiry of the above-noted seven (7) day period (and any extension thereto agreed by Customer). Notwithstanding the foregoing, Customer agrees to

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accommodate short-term storage of Excess Fertilizer if such storage can reasonably be accommodated at the applicable Site; provided, however, that any such storage shall be paid for by Ostara monthly in advance in an amount per Ton/Tonne (the “**Excess Fertilizer Storage Fee**”) to be negotiated by Customer and Ostara acting reasonably and in good faith. Failure to timely pay any portion of the Excess Fertilizer Storage Fee shall constitute forfeiture by Ostara of all rights and other interests in and to the applicable Excess Fertilizer and in such circumstances, Customer shall be deemed to be the owner of such Excess Fertilizer and thereby be entitled, to retain, use, distribute or sell, or at Ostara’s sole expense, dispose of the Excess Fertilizer as Customer deems reasonable and appropriate and, for certainty, such Excess Fertilizer shall not constitute Customer Retained Fertilizer.

- 4.5 Title and Risk. Until Delivered to Ostara under the terms of this Agreement, Customer will be responsible for all loss, damage and injury to Fertilizer (including Fertilizer in storage) that was not caused directly or indirectly by the negligence or wilful misconduct of Ostara. Following such Delivery, the ownership of and the risk of loss in the Fertilizer will shift to Ostara. For certainty, Customer will at all times be the owner of and bear all risks associated with Customer Retained Product and at no time will title or risk therein transfer to Ostara.

5. WEIGHTS AND RECORDS

- 5.1 Weighing of Fertilizer. Prior to Delivery, Fertilizer will be weighed by Customer or Customer’s agent or designee using the Bag Sales Scale or the Bulk Sales Scales (as applicable) and all costs associated therewith will be borne by Customer. A net weight will be determined and reported by Customer to Ostara for each Fertilizer Delivery and subject to manifest error, the aggregate net weight determined during any monthly period will be deemed to be the quantity of Fertilizer Delivered.

- 5.2 Scales. The Scale(s) used to weigh the Fertilizer will be:

- (a) in the case of Bag Sales, the original weight scale integrated within the Nutrient Recovery Systems for purposes of weighing Fertilizer sold in Bags (the “**Bag Sales Scale**”); and
- (b) in the case of Bulk Sales, the Load Cell(s) and the Truck Scale (together, the “**Bulk Sales Scales**”).

The Bag Sales Scale, the Load Cell(s) and the Truck Scale (if such Truck Scales are owned or leased by or on behalf of Customer) will be maintained and operated in accordance with the Operating Manual and must, unless otherwise agreed by Ostara, be professionally calibrated (at Customer’s cost), no less frequently than the earlier of: (i) every twelve (12) months; and (ii) such other time as is reasonably required by Ostara in view of or to reasonably prevent any measurement errors, inaccuracies or inconsistencies. Notwithstanding the foregoing and for certainty, the weight of Fertilizer sold by way of Bulk Sales shall be determined solely based on the readings of the Load Cell(s) unless reference to the Truck Scale is required in connection with a Weight Reconciliation as contemplated by Section 5.5 below.

- 5.3 Customer Records. Customer will keep accurate and satisfactory records of the weights of all Fertilizer Delivered hereunder and of all Scale calibrations and other maintenance (except

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calibrations and maintenance in respect of Truck Scales not owned or leased by or on behalf of Customer) and will provide Ostara with copies of such records promptly upon receipt thereof by Customer.

- 5.4 Representative Present. Ostara will have the right, at its cost, to have a representative present at any and all times to observe Customer's determination of Fertilizer weights. If Ostara questions the accuracy of any Fertilizer weights, Ostara will so advise Customer and Customer will permit Ostara's representative to test the Scales and weighing methods (except with respect to Truck Scales not owned or leased by or on behalf of Customer).
- 5.5 Weighing Methods. If the Bag Sales Scale or the Load Cell(s) are determined by an accredited professional, reasonably recognized by Customer, to be in error by a margin of greater than one percent (1%), Customer will investigate the error and advise Ostara of the amount and the estimated duration of the error. Customer will make adjustments to the affected Fertilizer weight records and:
- (a) if the adjustments indicate that money is owed to Customer, Ostara will include the amount due with any subsequent payment to be made to Customer; provided that if the amount due exceeds US\$5,000, Ostara may pay the amount owing in equal installments over four (4) consecutive months commencing on the month in which such next subsequent payment is due; and
 - (b) if the adjustments indicate that money is owed to Ostara, Ostara will deduct the amount due from any subsequent payment to be made to Customer until the amount owed to Ostara is repaid in full.

Notwithstanding the foregoing, if the weight of Fertilizer Delivered as calculated by a Load Cell varies as compared with the weight of the same Fertilizer as calculated by the applicable Truck Scale, the weight of such Fertilizer as calculated by the Truck Scale (the "**Truck Scale Measurement**") shall govern and be determinative for all purposes hereunder. In such circumstances, the parties shall effect a reconciliation (a "**Weight Reconciliation**") to reflect the Truck Scale Measurement and the process identified in Section 5.5(a) or 5.5(b), as applicable, shall apply.

If Customer cannot establish or there is otherwise uncertainty as to the amount and duration of the error, the parties will attempt in good faith with each acting reasonably, to reach an agreed resolution and such resolution shall assume that the error was in effect for no longer than the last half of the period since the most recent calibration of the applicable Scale(s). Should the parties be unable to agree on this determination, the parties may elect to resolve the Dispute in accordance with the Dispute resolution procedures set forth in Article 11. In connection with any such Dispute, the parties will, unless there is substantial evidence to the contrary, assume that the error was in effect for no longer than the last half of the period since the most recent calibration of the applicable Scale(s) and any award, order or decision will be in accordance with the same.

6. INVOICING AND PAYMENT

6.1 Fertilizer Price.

- (a) Subject to the provisions of this Article 6, the price (the "**Fertilizer Price**") to be paid by Ostara to Customer for each Ton/Tonne of Fertilizer Delivered, commencing on

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the Effective Date and otherwise during the Initial Term and the Renewal Term, shall in no event be less than the following:

- (i) in respect of Direct Sale Product, US\$250 (the “**Direct Sale Product Price**”); and
 - (ii) in respect of Processed Product, US\$175 (the “**Processed Product Price**”).
- (b) Fertilizer Price Indexing. The Direct Sale Product Price and the Processed Product Price, will be adjusted commencing on April 1, 2021, on a Calendar Quarter basis with effect on the first day of each Calendar Quarter, by adding to or subtracting from the Direct Sale Product Price and the Processed Product Price (as applicable), a US\$ amount equal to the percentage by which the price of diammonium phosphate (“**DAP**”) has increased or decreased (as the case may be) during the immediately preceding Calendar Quarter as compared to the Baseline DAP Index Price, which calculation shall be based on the applicable average Calendar Quarter DAP prices set forth in the World Bank Commodities Price Data Sheet for the three (3) month period then ended relative to the corresponding average quarterly DAP prices for the preceding Calendar Quarter. If the World Bank Commodities Price Data Sheet is no longer published or is otherwise unavailable to the parties, the calculation of the applicable Calendar Quarter average DAP increase or decrease shall be undertaken with reference to such other reputable index or indices as the parties may agree from time to time each acting reasonably and in good faith.
- (c) Indexing and Price Adjustments. Ostara shall monitor the price of DAP to track increases and decreases in relation to the Direct Sale Product Price and the Processed Product Price, and report in writing to Customer regarding any associated Fertilizer Price adjustments. Ostara’s reports will support and document any Fertilizer Price adjustments, and Customer shall have the right, at its own cost, to audit any such adjustments.
- (d) Fertilizer Price Floor. Notwithstanding Section 6.1(b), for the duration of the Initial Term and the Renewal Term, the Fertilizer Price shall be subject to a “floor” (the “**Fertilizer Price Floor**”) as follows:
- (i) in respect of Direct Sale Product, a Fertilizer Price Floor of US\$250, such that if the Direct Sale Product Price indexing contemplated by this Section would result in a Direct Sale Product Price applicable to any Calendar Quarter, of less than US\$250, the Direct Sale Product Price for such Calendar Quarter shall be US\$250; and
 - (ii) in respect of Processed Product, a Fertilizer Price Floor of US\$175, such that if the Processed Product Price indexing contemplated by this Section would result in a Processed Product Price applicable to any Calendar Quarter, of less than US\$175, the Processed Product Price for such Calendar Quarter shall be US\$175.

6.2 Payment for Fertilizer. Customer will invoice Ostara for Fertilizer Delivered during a Calendar Quarter hereunder, on a Calendar Quarter basis, on the 15th day of the month immediately following the end of such Calendar Quarter (or the immediately following

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Business Day, if the 15th day of the applicable month is not a Business Day), of each year during the Term. The amount to be paid by Ostara for any Calendar Quarter, will equal the total Fertilizer Tons/Tonnes Delivered by Customer to Ostara hereunder during such Calendar Quarter, less any Tons/Tonnes of Seeding Product which may have been provided by Ostara to Customer, multiplied by the Fertilizer Price, less: (i) any shipping costs related to Seeding Product supplied as contemplated by this sentence, if applicable; and (ii) the aggregate of the agreed per Ton/Tonne reduction to the Fertilizer Price for each Ton/Tonne (if any) of Non-Conforming Fertilizer which Ostara has removed from the Site(s) in accordance with Section 2.6.

- 6.3 License Fees. During the Initial Term and the Renewal Term, the licenses set forth in Section 9.2 will be provided to Customer by Ostara at no charge.
- 6.4 Support Fees. Ostara will invoice Customer on a Calendar Quarterly for any Additional Support provided to Customer. Each such invoice will clearly specify the Additional Support provided.
- 6.5 Own Costs. Except as set forth otherwise in Section 2.6, Section 5 and this Section 6, each party is solely responsible for all costs and expenses associated with the performance of its obligations hereunder.
- 6.6 Payment of Invoices. Each party will make payment to the other of all undisputed invoice amounts within thirty (30) days of the date of invoice.
- 6.7 Records. Ostara and Customer will keep accurate and satisfactory records relevant to determining the weight, quality and price calculations of the Fertilizer Delivered and Additional Support provided under this Agreement and will provide the other party with copies of such records upon request. Each party will retain all such records for not less than period required by applicable law and five (5) years after the date of the creation of such records, whichever is greater.

7. AUDIT AND FINANCIAL REVIEW

- 7.1 Audit. Either party may at any time, but not more than semi-annually, at its own expense, and with not less than thirty (30) days' advance notice to the other party, conduct a confidential audit of the weight of Fertilizer Delivered to Ostara, related sales records and financial records of the other party, for the sole purpose of verifying the correct calculation and payment of amounts owing pursuant to this Agreement. Any person conducting an audit under this clause must agree to be bound by the terms of the confidentiality obligations set forth in Section 8.1 or be bound by terms providing no less protection over the audited party's Confidential Information than those contained in Section 8.1.
- 7.2 Financial Review. Customer shall have a right to, on a Calendar Quarter basis, review Ostara's financial statements and financial records as reasonably necessary to assess Ostara's financial ability to satisfy its obligations under this Agreement. Further, Ostara will keep Customer generally apprised of the status of Ostara's efforts to secure additional fertilizer granulation capacity and will engage in discussions with Customer relating thereto (upon reasonable advance notice) to the extent relevant in the context of this Agreement.

8. CONFIDENTIALITY

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- 8.1 Confidentiality. Each party warrants that it will hold in confidence and trust, and not disclose, directly or indirectly, any Confidential Information to any person or Entity other than its and its Affiliates' employees, contractors and other representatives that have a need to know such Confidential Information in connection with this Agreement (“**Recipients**”), without the prior written consent of the disclosing party. The receiving party and its Recipients will use the Confidential Information only to perform its obligations under this Agreement, and not for any other purpose whatsoever other than as set forth below. Each party shall be responsible for a breach of the confidentiality obligations hereunder by its Recipients.
- 8.2 Public Disclosure Requirements. Notwithstanding the restrictions and obligations set out in Section 8.1, if a party (the “**Disclosing Party**”) is required by law, judicial action, the rules or regulations of a recognized stock exchange, government department or agency or other competent regulatory authority law or court process to disclose Confidential Information, such disclosure shall not be considered a breach of Section 8.1 provided: (i) the Disclosing Party notifies the other party (the “**Confidential Information Owner**”) of the requirement at the earliest reasonable opportunity so that the Confidential Information Owner can seek an appropriate protective order; and (ii) in the event that such a protective order is not obtained, the Disclosing Party furnishes only that portion of the Confidential Information that is legally required to be disclosed.
- 8.3 Information Requests. Customer acknowledges that Ostara’s Fertilizer business, including the Crystal Green® brand, are core components to Ostara’s current and future success and that protection and considered stewardship thereof is paramount to the success of Ostara. Accordingly, Customer agrees that all branding, marketing, promoting and other similar communications, activities and initiatives relating to Fertilizer, shall be conducted by Ostara and/or through Ostara’s agents at Ostara’s sole direction and that Customer shall not (unless requested by Ostara in writing and in such case only to the extent expressly requested), make any representations or disclosures to any third parties (verbally, in writing or otherwise) or otherwise be involved in any of the foregoing activities or have any such rights relating to Fertilizer. Notwithstanding the foregoing, Ostara acknowledges that Customer may from time to time receive requests (“**Basic Information Requests**”) for information regarding Fertilizer and that engaging in such discussions at a basic level will be beneficial for both Customer and Ostara. Accordingly, Ostara shall provide Customer with a communications package that Customer may use to respond to Basic Information Requests; provided, however, that Customer hereby agrees that its response to any Basic Information Request shall not deviate from the parameters set forth in the aforementioned communications package. This provision is expressly subject to Customer’s right to market Clean Water Grow® and to use Crystal Green® as part of its packaging, marketing, and sale of Clean Water Grow products; provided, however, that Ostara shall have the right to consider and reasonably approve all references to Crystal Green® or references that otherwise relate to or associate with Crystal Green®, that Customer proposes for use in connection with Clean Water Grow®, to ensure accuracy and consistency with Ostara’s marketing of Crystal Green®.
- 8.4 Potential Advisory Opportunities. Ostara acknowledges that Customer may have opportunities (“**Ancillary Advisory Opportunities**”) to generate revenue through the provision of professional advisory services to municipalities, relating to water treatment and fertilizer production from nutrient recovery systems similar to the Nutrient Recovery

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Systems. Customer and Ostara agree, however, that Ancillary Advisory Opportunities would likely involve disclosure of Confidential Information and/or potentially involve discussions or other activities that could impact Intellectual Property owned or licensed by Ostara and therefore, engaging in Ancillary Advisory Opportunities (or portions thereof) may be prohibited by this Agreement. Notwithstanding the foregoing, in the event that Customer becomes aware of an Ancillary Advisory Opportunity, Ostara agrees to: (i) promptly engage with Customer in good faith discussions to determine whether participation by Customer in such Ancillary Advisory Opportunity can be accomplished in compliance with this Agreement; and (ii) consider (if necessary) what relief, if any, Ostara may in its sole discretion be willing to grant Customer from its obligations under this Agreement in order to accommodate participation by Customer in an Ancillary Advisory Opportunity. Customer shall promptly advise Ostara of all Ancillary Advisory Opportunities that Customer is genuinely considering.

9. INTELLECTUAL PROPERTY AND LICENSING, OUTSTANDING WASSTRIP® FEES

9.1 Ownership. Customer acknowledges and confirms that Ostara or its third-party licensors will retain exclusive ownership of all right, title and interest in and to any Intellectual Property in the Nutrient Recovery Systems, including any improvements made to the Nutrient Recovery Systems by Ostara, by Customer or by any third-party on behalf of Ostara or Customer, and no such rights or interests are conveyed to Customer by virtue of this Agreement, except as provided herein; notwithstanding the foregoing and for certainty, all improvements to the WASSTRIP™ Licensed Technology shall belong to Customer and otherwise be subject to the WASSTRIP® License Agreement. Neither Customer nor its Affiliates, nor any of their respective employees, contractors, representatives or agents will do any act or thing or permit the doing of any act or thing that may compromise or otherwise negatively affect any of the Intellectual Property contemplated by this Agreement (or Ostara's interests therein) and for certainty, such parties shall not assign or otherwise transfer all or any portion of such Intellectual Property.

9.2 Intellectual Property License.

(a) General. Ostara grants to Customer, during the Initial Term and the Renewal Term, a non-exclusive, non-transferable, royalty-free, non-sublicensable license to operate the Nutrient Recovery Systems, including the Software and any other technology covered by the License Agreement, and any improvements, advancements, and updates to such technology, and to use that licensed technology solely as is required for Customer to exercise its rights and perform its obligations under this Agreement. Additionally, this grant by Ostara to Customer includes, but is not limited to, Customer's license to use all referenced Intellectual Property and technology for its Clean Water Grow® product.

(b) Intellectual Property Rights Following Termination or Expiration. Notwithstanding Section 9.2(a), if: (i) this Agreement is terminated at any time by Ostara for any reason other than uncured Material Breach of this Agreement by Customer; (ii) the Renewal Term is not entered into as a result of acts or omissions of Ostara, or for any other reason other than uncured Material Breach of this Agreement by Customer; (iii) this Agreement is terminated by Customer for Ostara's uncured Material Breach; or (iv)

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Customer is not in Material Breach of this Agreement at the time of the natural conclusion of the Renewal Term, the parties agree that Customer shall have a continuing, non-exclusive, non-transferable, royalty-free, non-sublicensable license to the Intellectual Property and to operate the Nutrient Recovery Systems, including the Software and any improvements, advancements, and updates to such technology and to use that licensed technology solely as is required for Customer to operate the Nutrient Recovery Systems for so long as Customer wishes to operate the Nutrient Recovery Systems. Further and for certainty, in the event of termination or non-renewal of this Agreement in circumstances contemplated by any of subparagraphs (i), (ii), (iii) or (iv) above, the parties agree that Customer shall also have a continuing, non-exclusive, non-transferable, non-sublicensable license to use, consistent with past practice, the words “Crystal Green” in connection with its “Clean Water Grow” program for so long as Customer wishes to do so.

9.3 No Other Rights. Except as expressly permitted otherwise pursuant to this Article 9, no license or right in or to the Nutrient Recovery Systems, any trademark, trade name, service mark, logo, insignia, design or other Intellectual Property of Ostara, its subsidiaries, Affiliates, licensors, manufacturers or suppliers or any other Intellectual Property (“**Excluded Rights**”) is granted by this Agreement. Customer will not make use of or act in any way in respect of any Excluded Rights without the express prior written consent of Ostara which may be withheld in Ostara’s sole discretion.

9.4 WASSTRIP[®] Royalty Fees Payable. Concurrent with the execution hereof and in any event, not later than the Effective Date, Ostara shall pay Clean Water Institute, by way of wire transfer or other mutually agreeable method of funds delivery, the amount of US\$72,273, such amount reflecting the aggregate of royalty payments owing to CWI by Ostara under the WASSTRIP[™] License Agreement as per the quarterly calculation performed as at September 30, 2020.

10. WARRANTIES, LIMITATION OF LIABILITY, INDEMNIFICATION AND INSURANCE

10.1 Disclaimer of Warranty. Neither party makes any warranties to the other hereunder, and all warranties, express, implied or statutory are specifically disclaimed other than Customer’s warranties that the Fertilizer will meet the Specifications and the Deliveries will otherwise comply with the requirements.

10.2 Indemnity. Each party agrees to defend, indemnify and hold harmless the other party and its and its Affiliates’ employees, contractors and other representatives from and against any and all claims, including claims of third-parties, relating to personal injuries, fatalities or property loss, to the extent such claims arise from such party’s negligent acts or omissions or willful misconduct in its performance of its obligations under this Agreement or, in the case of Customer, related to the “Clean Water Grow” program. Ostara further agrees to defend, indemnify and hold harmless Customer against any and all claims of third-parties against Customer arising from the transportation, distribution, marketing, application and use of the Fertilizer.

10.3 Indemnification Procedure. A party claiming indemnification under this Article 10 (the “**Indemnified Party**”) will give prompt notice in writing to the party from whom such

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indemnification is or may be sought (the “**Indemnifying Party**”) of any action, proceeding, claim, or potential claim (each, a “**Claim**”) which could give rise to a right to indemnification hereunder, describing the Claim in reasonable detail, along with copies of any correspondence, court papers, or other writings setting forth the Claim. The Indemnified Party will have the right, at its option, to engage its own counsel to represent it in response to any Claim, but in all cases, the Indemnifying Party shall, except as herein agreed, maintain control and responsibility for the defense and/or settlement of the Claim, and shall promptly reimburse the Indemnified Party for all reasonable attorney fees, costs, expenses, and expert fees, if any. The Indemnified Party will reasonably cooperate with the Indemnifying Party and its counsel (if any, and at the Indemnifying Party’s cost) in the defense and/or settlement of any such Claim. The Indemnifying Party shall not, without the prior written consent of the Indemnified Party: (i) settle or compromise any Claim or consent to the entry of any final judgment that does not include as an unconditional term thereof the delivery by the claimant or plaintiff of a written release or releases from all liability in respect of such Claim of all Indemnified Parties affected by such Claim; or (ii) settle or compromise any Claim if the settlement imposes equitable remedies or material obligations on the Indemnified Party other than financial obligations for which such Indemnified Party shall be indemnified hereunder. The Indemnified Party will not enter into any settlement with respect to such Claim without the Indemnifying Party’s prior written consent.

- 10.4 **Limitation of Liability.** In no event will the liability, if any, of Customer or Ostara, or their respective Affiliates, licensors, manufacturers or suppliers for damages arising out of, related to, or in any way connected with this Agreement exceed US\$2,000,000, plus reasonable attorney fees, costs, expenses, and fees of experts, if any, regardless of the form of action, whether based on contract, negligence, tort, products liability, trade practices, or otherwise and regardless of whether any remedy herein fails of its essential purpose.
- 10.5 **Required Insurance.** The parties shall procure and maintain, for the duration of the Term, each at their own cost and shall require each of their respective subcontractors, agents and representatives contemplated by this Agreement to procure at their sole cost, the following insurance:
- (a) Commercial General Liability Insurance including contractual liability with a combined single limit of One Million Dollars (US\$1,000,000) for each occurrence and in the annual aggregate involving bodily injury, death or property damage;
 - (b) Workers Compensation Insurance in amounts and scope required by statute or applicable law but no less than One Million Dollars (US\$1,000,000); Stop Gap coverage must be provided if work and/or services are to be performed in a monopolistic state;
 - (c) Employers’ Liability Insurance in the amounts and scope required by statute or applicable law but no less than One Million Dollars (US\$1,000,000);
 - (d) Automobile Liability Insurance covering all vehicles either owned or non-owned used in connection with the performance of this Agreement. The insurance to be provided shall include coverage for bodily injury, passenger hazard and property damage in an amount of not less than One Million Dollars (US\$1,000,000) for any one occurrence;

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- (e) Umbrella/Excess Liability Insurance, follow form excess of Commercial General Liability, Employers' Liability and Automobile Liability. The insurance to be provided shall include drop-down coverage for reduction and/or exhaustion of underlying limits in an amount of not less than Three Million Dollars (US\$3,000,000);
 - (f) Property Insurance covering all loss of or damage to each party's property, including Fertilizer; and
 - (g) Insurance Required by Law – any other insurance which is required by law to be carried in connection with a party's acts or obligations contemplated by this Agreement.
- 10.6 Additional Insured. Each party shall add the other party as an Additional Insured for liability arising out of its operations, under the insurance required to be carried under Sections 10.5(a), 10.5(c) and 10.5(d) above. In addition, all insurance required to be carried under Section 10.5(a) shall waive all rights of subrogation in favour of the other party. Upon request, a party shall provide the other with evidence of compliance with these requirements, by way of a certificate of insurance and/or policy endorsement executed by an authorized representative of such party's insurers.
- 10.7 Essential Part of Bargain. The provisions of this Article 10 constitute an essential part of the bargain between the parties and have been reflected in the consideration flowing between the parties.
- 11. DISPUTE RESOLUTION**
- 11.1 Dispute Resolution Process. The parties will, to the extent permitted by applicable law, attempt to settle every dispute arising out of or in connection with this Agreement (“**Dispute**”) by following the dispute resolution process set forth in this Article 11.
- 11.2 Mutual Discussions. If any Dispute arises between the parties in connection with, or arising out of, this Agreement, the parties, within thirty (30) days of receipt of notice by one party to the other outlining the existence and general circumstances of a Dispute, will attempt to settle such Dispute in the first instance by way of discussions between representatives of Ostara and Customer who are authorized to settle the Dispute.
- 11.3 Non-Binding Mediation. If the parties are unable to resolve a Dispute pursuant to Section 11.2, then the parties agree that they will, not later than sixty (60) days following the date on which the notice contemplated by Section 11.2 is received, submit the Dispute to mediation administered by the Arbitration Service of Portland under its rules. The place of mediation will be a mutually acceptable location in the State of Oregon. If the Dispute is not resolved at the conclusion of sixty (60) days following the date of recognition of the submission of the Dispute for mediation by the Arbitration Service of Portland, the terms of this Section 11.3 shall be deemed satisfied and there shall be no further condition to initiating legal action as provided in this Article 11. Engagement in such mediation will be binding on the parties (as to the submission of a Dispute to mediation but not as to the outcome of such mediation) and, accordingly, all negotiations shall be conducted in strict confidence and without prejudice to the rights of the parties in future legal proceedings.

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- 11.4 Jurisdiction and Venue. In the event mediation fails for any reason, the parties consent to personal and subject matter jurisdiction in the State of Oregon for any Dispute, and agree that venue for any Dispute will be in the Washington County Circuit Court for the State of Oregon. Further, in the event any party challenges or disputes jurisdiction and/or venue, the party that prevails in enforcing this jurisdiction and venue clause will be entitled to an award of attorney fees, costs, and expenses, which shall be paid with thirty (30) days of an order enforcing this Article 11.4 and before final judgment is entered in the Dispute.
- 11.5 Attorney Fees. In the event any legal action is instituted to enforce, construe, or interpret the terms of the Agreement, or which relates or pertains to this Agreement, the prevailing party shall be entitled to be paid all reasonable court costs and expenses, attorney fees, expert or consultant fees, and all other reasonable fees or costs incurred therein.

12. TERM AND TERMINATION

- 12.1 Term. This Agreement will come into effect on the Effective Date and, subject to earlier termination in accordance with Section 12.2, will continue in force until the date which is five (5) years from the Effective Date (the “**Initial Term**”). Upon the written agreement of both parties, this Agreement may be renewed for one (1) additional successive five (5) year term (the “**Renewal Term**” and collectively with the Initial Term, the “**Term**”); provided, however, that each party shall, not later than one hundred and eighty (180) days prior to the end of the Initial Term, notify the other party in writing of its intent regarding renewal of the Term and shall make itself reasonably available to the other party for discussions regarding same.

In the event Customer is not in Material Breach of this Agreement at the applicable time and Customer elects to, but Ostara does not agree to, extend this Agreement for the Renewal Term, this Agreement shall terminate as contemplated herein; except that in such circumstances, Ostara shall, not later than the end of the Initial Term, pay Customer by way of wire transfer or other mutually agreeable method of funds delivery, the Early Termination Payment Amount reflected in Schedule C as calculated with reference to the Remaining Full Potential Term.

- 12.2 Termination for Cause. Notwithstanding any other provision of this Agreement, either party may give notice in writing to the other party terminating this Agreement with immediate effect if:
- (a) the other party commits or permits a Material Breach. For purposes of this Agreement, “**Material Breach**” means a breach by a party hereto of its material covenants or obligations under this Agreement coupled with the failure by such party to remedy the breach to the reasonable satisfaction of the party not in breach within thirty (30) calendar days after receipt by the party in breach of written notice of such breach from the party not in breach;
 - (b) bankruptcy, receivership, or insolvency proceedings are instituted, on good grounds only, by or against the other party, or the other party is adjudicated a bankrupt, becomes insolvent, makes an assignment for the benefit of creditors or proposes or makes any arrangements for the liquidation of its debts or a receiver or receiver and manager is appointed with respect to all or any part of the assets of the other party; or

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- (c) the other party ceases, or threatens to cease, to carry on business.
- 12.3 Material Breach by Ostara During Term. In the event Ostara commits a Material Breach at any time during the Term, and Customer (not being itself in Material Breach) duly terminates the Agreement for cause pursuant to Section 12.2, Ostara shall pay Customer by wire transfer or other mutually agreeable method of funds delivery, the US\$ amount reflected in Schedule C as being applicable based on the date on which such termination is effected, within sixty (60) days of such termination.
- 12.4 Owner Commitment Letter.
- (a) Delivery. Concurrent with the delivery by Customer and Ostara of this Agreement, Wheatsheaf, the sole shareholder of all of the issued and outstanding shares in the capital of Ostara as of the Effective Date, has provided Ostara with an executed version of the Owner Commitment Letter in the form set forth in Schedule D effective as of the Effective Date, a copy of which shall promptly be delivered to Customer.
- (b) Covenant to Enforce. Ostara shall take, or cause to be taken, all actions, and do, or cause to be done, all things necessary, proper or advisable in order to maintain the Owner Commitment Letter in force during the Term, provided that Customer acknowledges and agrees that: (i) the Owner Commitment Letter shall be terminated and will be of no further force or effect in the event that the circumstances contemplated by subsection 3(d) or 3(e) of the Owner Commitment Letter occur; and (ii) Wheatsheaf shall have the right to assign all or any portion of its obligation to the fund the Commitment (as defined in the Owner Commitment Letter) to any Permitted Assignee (as defined in the Owner Commitment Letter) on the terms set forth in the Owner Commitment Letter, such that Wheatsheaf may be released in full or in part from its obligations under the Owner Commitment Letter and such obligations may be assumed by a Permitted Assignee. In the event that all of the conditions in the Owner Commitment Letter to Wheatsheaf and/or a Permitted Assignee's obligation to fund the Commitment have been satisfied, Ostara shall use reasonable best efforts to cause Wheatsheaf and/or such Permitted Assignee to fund their respective commitments in accordance with the Owner Commitment Letter and to enforce its rights under the Owner Commitment Letter in the event of a breach by any party thereto.
- 12.5 Enforcement of Owner Commitment Letter. Each of the parties agrees that irreparable harm would occur to Customer in the event that any of the provisions of Section 12.4(b) of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that Customer may, in the event that Wheatsheaf and/or any applicable Permitted Assignee has failed to fund their respective commitments in accordance with the Owner Commitment Letter within ten (10) Business Days following the deadline for payment by Ostara of the amounts payable pursuant to Section 12.1 or Section 12.3, as applicable, upon application to a court of competent jurisdiction, obtain injunctive and other equitable relief to prevent breaches of Section 12.4(b), and to enforce compliance with the terms thereof by filing the Stipulated Judgement, and none of the parties shall object to the granting of such injunctive or other equitable relief on the basis that there exists an adequate remedy at law. Notwithstanding

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anything to the contrary in this Agreement and for certainty, it is acknowledged and agreed that Ostara's obligation to enforce the Owner Commitment Letter and Customer's right to specifically enforce such obligations and Customer's right to file the Stipulated Judgment as set out in this Section 12.5, shall be subject to the requirements that: (i) the conditions set out in Section 12.1 or Section 12.3 of this Agreement, as applicable, giving rise to the underlying payment obligation shall have been satisfied; (ii) this Agreement shall not have been amended in any way materially affecting the Owner Commitment Letter without the prior written consent of Warrantsheaf; (iii) the Owner Commitment Letter shall not have been terminated in accordance with its terms; (iv) Ostara shall not have Available Funds (as defined in the Owner Commitment Letter) to make the applicable payment; and (v) any such payment obligation under the Owner Commitment Letter shall be limited to the difference between the amount owing under Section 12.1 or Section 12.3 of this Agreement, as applicable, and the amount of Ostara's Available Funds. For certainty, the Stipulated Judgment shall not be filed prior to the satisfaction of the conditions precedent thereto as set forth in this Section 12.5.

- 12.6 Survival. Termination of this Agreement for any reason will not affect provisions which are expressed to survive the termination of this Agreement and/or provisions relating to payment, indemnification, warranties, liability, confidentiality, and the ownership (but not licensing) of Intellectual Property rights, which provisions will remain in full force and effect.

13. GENERAL PROVISIONS

- 13.1 Governing Law. This Agreement will be governed exclusively by and construed in accordance with the laws of the State of Oregon and the federal laws of the United States of America applicable therein. The *United Nations Convention on the International Sale of Goods* will not apply to this Agreement.
- 13.2 Successors/Assignment. Neither party will assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party, such consent not to be unreasonably withheld except Ostara may assign this Agreement or any rights or obligations hereunder without the prior written consent of the Customer in connection with a sale of all or substantially all of its assets, or if Ostara engages in a merger or other reorganization. This Agreement will inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns and all persons or Entities succeeding to or acquiring the business carried on by either of the parties.
- 13.3 Force Majeure. Dates or times by which either party is required to perform under this Agreement will be postponed to the extent that any party is prevented from meeting such dates or times by acts of God, including wind, ice and other storms, lightning, floods, earthquakes, volcanic eruptions, and landslides, and due to epidemics, war, blockades, acts of public enemies, acts of sabotage, civil insurrection, riots and civil disobedience (a "**Force Majeure Event**"). The right to any such postponement, however, will accrue only if the affected party: (i) provides prompt notice and relevant particulars to the other party of the Force Majeure Event, including the anticipated effect thereof on the affected party's ability to perform under this Agreement, together with solutions or other "work-arounds" being considered by the affected party; (ii) takes all reasonable steps to mitigate the impact and effect on this Agreement of the Force Majeure Event; and (iii) notifies the other party immediately following the abatement of the Force Majeure Event. Any postponement contemplated

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hereby shall be equal to the actual aggregate number of hours and days in which the applicable Force Majeure Event prevented a party's performance hereunder but, for certainty, neither party will be entitled to force majeure relief in connection with payment obligations arising under this Agreement, which shall remain valid obligations of the affected party notwithstanding the existence of a Force Majeure Event. The inability or failure of an affected party to secure financing or make any payment to a third party shall not be a Force Majeure Event.

- 13.4 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, under present or future laws, such provision shall be curtailed to the extent required to preserve its validity under the applicable law and, as so curtailed, shall be enforceable. Alternatively, the parties may agree to substitute for an offending provision another provision that is legal, valid and enforceable and that achieves the same or similar objectives as the offending provision. In the event neither of the proposed solutions is successful, the parties agree that the offending provision will be deemed to be ineffective to the extent of such illegality, invalidity or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
- 13.5 No Partnership. Nothing in this Agreement will be construed or deemed to create any form of partnership, joint venture, principal-agent relationship or employment relationship between the parties. Neither party will make commitments affecting the other party or representations relating to or on behalf of the other party, without that party's prior written consent.
- 13.6 Notice. All notices and demands required to be given to any party under this Agreement must be in writing and may be given by hand delivery or by nationally recognized overnight delivery service. Notices delivered personally will be deemed effective upon delivery. Notices sent by a nationally recognized overnight delivery service will be deemed delivered effective upon the date of receipt or rejection by the addressee. Notice by email to the email address customarily used for communications between the parties will also be acceptable for the purposes of this paragraph and will be deemed to have been effectively given at the time of transmission unless the sender receives an electronic delivery message indicating that the electronic submission was unsuccessful. All notices given by email shall also be followed up with delivery by mail (in such case, the mailed copy will not affect the time of deemed delivery which, for certainty, shall be based on the email transmission). In all cases, if deemed receipt occurs after 5:00 p.m. in the jurisdiction of the receiving party or on a day that is not a Business Day, receipt will be deemed to occur at 9:00 a.m. on the next regular Business Day. Notices required under this Agreement will be deemed effective only if sent as required by this Section and only if sent to the address of the other party as first set forth above (as may be amended by notice from time to time). For purposes hereof, the applicable email address(es) are: (i) for Ostara mkuzma@ostara.com, with a copy to Ostara's General Counsel, currently jcinnamon@ostara.com; and (ii) for Customer, is: Nate Cullen currently at CullenN@CleanWaterServices.org, with a copy to Customer's General Counsel, currently at linderg@cleanwaterservices.org.
- 13.7 No Waiver. The failure of either party to insist upon the strict performance of any of the terms and conditions herein will not be deemed a waiver of any rights or remedies of such party and will not be deemed a waiver of any subsequent default of terms and conditions hereof.

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- 13.8 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof and supersedes all prior agreements, terms, obligations, covenants, representations, statements or conditions, whether oral or written, express or implied, that are not expressly contained herein. No variation or modification of this Agreement, nor waiver of any of the terms and provisions hereof, will be deemed valid unless it is in writing and signed by both parties.
- 13.9 Further Assurances. Each party will at any time and from time to time, upon each request by the other party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request to evidence, carry out and give full effect to the terms, conditions, intent and meaning of this Agreement.
- 13.10 Counterparts and Scanned Signatures. This Agreement may be executed in counterpart, each of which, when so executed, will be deemed to be an original copy hereof, and all such counterparts together will constitute but one single agreement. The parties are authorized to provide and agree to accept from the other party electronically scanned (portable document format) signatures on a counterpart to this Agreement, and such portable document format file will be deemed to be an original counterpart signature page to this Agreement.

[Remainder of page intentionally left blank – signature page to follow]

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IN WITNESS WHEREOF, the parties hereto have, through duly authorized officials, executed this Agreement effective as of the Effective Date.

OSTARA USA, LLC

CLEAN WATER SERVICES

(Signature)

(Signature)

(Name)

(Name)

(Title)

(Title)

(Date)

(Date)

FERTILIZER OFFTAKE AGREEMENT

Schedule “A”

Fertilizer Specifications

The Fertilizer Delivered hereunder will conform to the following Specifications which may be in addition to and more stringent than those in the Governing Act:

Size Specifications

Fertilizer will be as determined by screens provided under the System Agreements per tolerance criteria applicable to the screens and the screening systems. All Fertilizer must be at least 50SGN in size (i.e. does not pass through the dewatering screen) and no more than 450SGN in size (i.e. not so large that it falls outside the range of the classifying screen), or as otherwise expressly agreed with Ostara in writing from time to time.

“**Direct Sale Product**” means, unless otherwise agreed in writing by Ostara and Customer, Fertilizer meeting SGN 150 or SGN 300 sizing criteria as retained on the mesh and gauge screens currently in use at the Nutrient Recovery Systems.

“**Processed Product**” means, unless otherwise agreed in writing by Ostara and Customer, Fertilizer that does not meet the sizing requirements set forth in the Direct Sale Product definition above, but for certainty, shall be at least 50SGN in size.

Fertilizer must meet or exceed all standards required for the US EPA; 40 CFR Part 503 (the Rule or Regulation), Standards for Class A “Exceptional Quality” Products per the following:

| Element | Unit | Range | Method |
|----------------------------|--------------------------|--|---|
| Bulk Density | Lbs/cuft | No less than 45 lbs/cuft | 100 ml grad. cyl |
| Aspect Ratio | N/A | Average > 0.45 and minimum of 80% of measurements > 0.4 | Calipers, minimum 10 granules, calculated by dividing granule height (thickest point) by width (widest point) |
| Hardness/Crushing Strength | Lbs of force per granule | Average crush strength of no less than 5.5 and no two values less than 3 | Digital force gauge, 10 granules |
| Color | N/A | White, cream or light gray | Visual inspection |
| Dust | % | <3% of sample in <70 SGN compartment | SGN sieve box |

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| | | | |
|-------------------------|-----|---------------------------------------|--|
| Debris | N/A | No obvious debris or foreign material | Visual inspection |
| Ground Moisture Content | % | <1% | Ground and dried at 40 C to measure moisture |

Guaranteed Analysis of Constituents

| Element | Unit | Range | Method |
|------------|------------------------------------|---------------|-----------------------|
| Magnesium | % as Mg | Minimum 9.5% | Per Operations Manual |
| Phosphorus | % as P ₂ O ₅ | Minimum 27.5% | Per Operations Manual |
| Ammonium | % as N | Minimum 5.0% | Per Operations Manual |

Pathogens

| Element | Unit | Level | Method |
|----------------|--------------------|----------|-----------------------|
| Total Coliform | MPN/1g | < 2 | Per Operations Manual |
| Fecal Coliform | MPN/1g | < 2 | Per Operations Manual |
| Salmonella | 4 gram sample size | Negative | Per Operations Manual |

Limits of Non-Nutritive Constituents

For each percent of P₂O₅ guaranteed, the maximum allowed level of a metal expressed in parts per million (ppm), must not exceed the limits as specified in the following table.

| Metals | ppm per 1% P ₂ O ₅ | Method |
|------------------------------------|--|-----------------------|
| Arsenic (As) | 1.4 | Per Operations Manual |
| Cadmium (Cd) | 1.4 | Per Operations Manual |
| Chromium (Cr) | 3.6 | Per Operations Manual |
| Hexavalent Chromium (Cr VI) | 0.07 | Per Operations Manual |

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| Metals | ppm per 1% P₂O₅ | Method |
|------------------------|--|-----------------------|
| Cobalt (Co) | 24 | Per Operations Manual |
| Copper (Cu) | 21 | Per Operations Manual |
| Lead (Pb) | 4.3 | Per Operations Manual |
| Mercury (Hg) | 0.04 | Per Operations Manual |
| Molybdenum (Mo) | 3.2 | Per Operations Manual |
| Nickel (Ni) | 3.6 | Per Operations Manual |
| Selenium (Se) | 2.2 | Per Operations Manual |
| Zinc (Zn) | 54 | Per Operations Manual |

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Schedule “B”

Bag Specifications

All Bags will be subject to Customer’s selection and design, if any (inclusion of Ostara branding not required), subject only to the below specifications; provided, however, that the parties will work together in good faith to procure Bag alternatives if at any time during the Term the Bags selected by Customer prove inadequate for their intended purpose.

Bag Type: Baffle

Size: 40x40x45

Capacity: 2200 lbs

Safety Ratio: 5:1

Fabric: Uncoated Fabric, 200 GSM

Top: Spout Top 14” Diameter x 18” Long

Bottom: Spout bottom 14” diameter x 18” long, with Iris Closure

Loops: 4 x 8” corner loops

Print: 4 Sides / 3 Colors

Doc. Pocket: 1-A4

Labels: TCI Label

Supplier: Conitex Sonoco or equal

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Schedule “C”

Schedule of Termination Payments

In the event of termination of the Agreement per Section 12.1, or termination for cause per Section 12.3 the Early Termination Payment Amount, as calculated with reference to the Remaining Full Potential Term, shall be due and payable by Ostara as contemplated by Section 12.3 of the Agreement:

| Remaining Full Potential Term | Early Termination Payment Amount |
|--------------------------------------|---|
| 9 | \$1,300,000 |
| 8 | \$1,170,000 |
| 7 | \$1,040,000 |
| 6 | \$910,000 |
| 5 | \$780,000 |
| 4 | \$650,000 |
| 3 | \$520,000 |
| 2 | \$390,000 |
| 1 | \$260,000 |
| 0 | \$130,000 |

For purposes hereof, “**Remaining Full Potential Term**” means the number of full calendar years remaining between the effective date of the termination of the Agreement that triggers the right to payment as contemplated by this Schedule, and the last day of the Full Potential Term.

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Schedule “D”

Form of Owner Commitment Letter

___, 2021

Ostara USA, LLC (“**Ostara US**”)
Ostara Nutrient Recovery Technologies Inc. (“**Ostara Parent**”)
Suite 690 – 1199 West Pender Street
Vancouver, BC, V6E 2R1
Canada

Re: Sponsor Financing Commitment

Dear Sirs/Mesdames:

Reference is made to the fertilizer offtake agreement dated as of the date hereof (the “**Offtake Agreement**”) between Ostara US and Clean Water Services (“**CWS**”), pursuant to which Ostara US has agreed, *inter alia*, to the following early termination payment amounts per Schedule C and Sections 12.1, 12.2 and 12.3 thereof:

- (i) pursuant to Section 12.1 thereof, in the event CWS is not in Material Breach of the Offtake Agreement at the applicable time, and CWS elects to, but Ostara US does not agree to, extend the Offtake Agreement for the first or the second Renewal Term (as applicable and as contemplated in Section 12.1 thereof), and the Offtake Agreement terminates as contemplated therein, pay CWS, not later than the end of the then-applicable Term, by way of wire transfer or other mutually agreeable method of funds delivery, the Early Termination Payment Amount reflected in Schedule C thereto as calculated with reference to the Remaining Full Potential Term (the “**Non-Renewal Payment Amount**”); and
- (ii) pursuant to Section 12.3 thereof, in the event that Ostara US commits a Material Breach at any time during the Term and CWS (not being itself in Material Breach) duly terminates the Offtake Agreement for cause pursuant to Section 12.2 thereof, pay CWS by wire transfer or other mutually agreeable method of funds delivery, the US\$ amount reflected in Schedule C thereto as being applicable based on the date on which such termination is effected (the “**Material Breach Payment Amount**”), within sixty (60) days of such termination.

Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Offtake Agreement.

1. Commitment. This letter confirms the commitment, on the terms and subject to the conditions set forth herein, of Wheatsheaf Group Ltd. (“**Wheatsheaf**”) to contribute or cause to

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be contributed, directly or indirectly, to Ostara US, an amount of cash equal to up to either the applicable Non-Renewal Payment Amount or the Material Breach Payment Amount to fund a shortfall in Ostara US' obligation to pay CWS either the Non-Renewal Payment Amount or the Material Breach Payment Amount to CWS (the "**Commitment**"). The Commitment may, in Warrantsheaf's sole discretion, be satisfied through either an equity or debt investment in Ostara Parent or Ostara US. Notwithstanding any other provision of this letter agreement, the parties hereto agree that Warrantsheaf shall not, under any circumstances, be obligated under this letter agreement to contribute to, purchase equity or debt of, or otherwise provide funds to, Ostara US or Ostara Parent in any amount in excess of the Early Termination Payment Amount at the applicable time as set out in Schedule C to the Offtake Agreement (the "**Cap**") (which in no event shall ever be greater than US\$2,000,000). In the event that, to Warrantsheaf's knowledge, Ostara US is in bankruptcy, or it is reasonably likely that Warrantsheaf's Commitment, when funded, would be diverted to other creditors or obligations other than being remitted to CWS, then in that circumstance, Ostara Parent and Ostara US hereby irrevocably direct Warrantsheaf to pay any funds in respect of the Commitment, when due in accordance with the terms of this letter agreement, to CWS, and otherwise will be subject to all of the same conditions stated in this Commitment. Any such payment made directly to CWS shall satisfy Warrantsheaf's obligations under this letter agreement as if it had been paid to Ostara US.

2. Conditions and Limitations. The obligation of Warrantsheaf to fund (or cause to be funded) the Commitment shall be subject to each of the following conditions and limitations: (a) all of the conditions to Ostara US' obligation to make payment of the Non-Renewal Payment Amount or the Material Breach Payment Amount, as applicable, to CWS under the Offtake Agreement shall have been satisfied in accordance with the terms thereof; (b) the Offtake Agreement shall not have been amended in any way materially affecting this Commitment without the prior written consent of Warrantsheaf, (c) Ostara US shall not have sufficient cash on hand or access to readily drawable credit facilities (together "**Available Funds**") to make payment of the Non-Renewal Payment Amount or the Material Breach Payment Amount, as applicable; and (d) such obligation shall be limited to the difference between the applicable Non-Renewal Payment Amount or Material Breach Payment Amount, as applicable, and the amount of the Available Funds.

3. Termination. This letter agreement, including Warrantsheaf's obligation to fund the Commitment, will terminate automatically upon the earliest to occur of (a) the payment, in full, of any Non-Renewal Payment Amount or Material Breach Payment Amount owing to CWS under the Offtake Agreement; (b) the termination of the Offtake Agreement in accordance with the terms thereof in circumstances which do not give rise to any obligation to pay the Non-Renewal Payment Amount or the Material Breach Payment Amount; (c) the date that is ten (10) years from the Effective Date; (d) the date on which Ostara US or Ostara Parent delivers to CWS either (i) a letter of credit or surety bond issued by a bank listed in Schedule 1 to the *Bank Act* (Canada) or another financial institution with an investment grade credit rating (as such terms are generally understood in North American financial market transactions) from Standard & Poor's, Moody's Investors Service, Fitch Ratings, DBRS or any of their respective successors (an "**Investment Grade Credit Rating**"), or (ii) cash collateral on reasonable and customary terms, in each case securing Ostara US' obligation to pay the Non-Renewal Payment Amount and the Material Breach Payment Amount; or (e) CWS or any of its Affiliates, or its or their directors or officers, or any successor or assign of the foregoing, asserting a Claim (i) against Warrantsheaf or any Investor Related Party

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(as defined herein) under or in connection with the Offtake Agreement or any other agreement or instrument contemplated thereby or entered into in connection therewith (including this letter agreement), other than as specifically contemplated by and reserved under the Offtake Agreement or this letter agreement, as applicable, and in all cases subject to the terms, conditions and limitations herein and therein, and (ii) that any of the limitations on liability under the Offtake Agreement or this letter agreement are illegal, invalid or unenforceable in whole or in part (including, without limitation, any assertion that the Cap on Warrants' liability hereunder is illegal, invalid or unenforceable in whole or in part). Sections 10, 12, 13 and 14 of this letter agreement shall survive any such termination; *provided that*, upon valid termination of this letter agreement, (a) the obligations of Warrants under this letter agreement shall terminate *ab initio* and shall be null and void, and (b) Warrants shall have no liability to CWS or any other person with respect to the transactions contemplated by the Offtake Agreement or under this letter agreement.

4. Representations and Warranties of Warrants. Warrants represents and warrants, to Ostara US, that: (a) Warrants is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has the requisite capacity and authority to execute and deliver this letter agreement and to fulfill and perform its obligations hereunder; (b) the execution, delivery and performance of this letter agreement by Warrants has been duly and validly authorized and approved by all necessary corporate action and no other such actions on the part of Warrants are necessary therefor; (c) this letter agreement has been duly and validly executed and delivered by Warrants and constitutes a legal, valid and binding agreement of Warrants, enforceable by Ostara US against Warrants in accordance with its terms (except as enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws related to or affecting the rights of creditors generally, and except as limited by the application of equitable principles (regardless of whether such enforcement is considered in a Claim in equity or at law)); (d) the execution, delivery and performance by Warrants of this letter agreement does not and will not violate Warrants' constituting documents; and (e) it has (and will have at the time the Commitment is to be funded hereunder) access to available funds equal to or in excess of the amount of the Commitment.

5. Assignment. The rights and obligations under this letter agreement may not be assigned by any party hereto without the prior written consent of each of the other parties hereto and any attempted assignment shall be null and void and of no force or effect; *provided that* Warrants may assign all or a portion of its obligation to fund the Commitment (and the rights and obligations of Warrants under this letter agreement with respect to such portion of the Commitment) to one or more Permitted Assignees (as defined herein) without the consent of any other party hereto, and any Permitted Assignee may further assign all or a portion of its obligation to fund the Commitment (and the rights and obligations of Warrants under this letter agreement with respect to such portion of the Commitment) to one or more other Permitted Assignees without the consent of any other party hereto, ad infinitum. For the purposes of this letter agreement, "**Permitted Assignee**" shall mean any person or Entity that acquires or subscribes for securities of Ostara Parent or its successor, or any Affiliate of any such person or Entity, in each case that either: (a) has an Investment Grade Credit Rating; (b) is an investment fund with assets under management equal to at least US\$50,000,000; or (c) is an Entity with audited financial statements prepared by a reputable accounting firm showing assets, net of current liabilities, in excess of US\$50,000,000.

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Upon any such permitted assignment of all or a portion of Warrantsheaf's obligation to fund the Commitment and the assumption by a Permitted Assignee thereof, Warrantsheaf's obligation in respect of the Commitment shall be deemed to be amended and reduced on a dollar-for-dollar basis by the amount so assigned and assumed, and such Permitted Assignee shall be deemed to be a party to this letter agreement as if such Permitted Assignee was an original signatory hereto (and this letter agreement shall be interpreted as if such Permitted Assignee was an original signatory hereto) and shall have the same obligations and be entitled to the same rights and protections afforded to Warrantsheaf hereunder. Warrantsheaf or, in the case of any subsequent assignment by a Permitted Assignee, such Permitted Assignee, shall provide Ostara Parent with written notice within 30 days of any such assignment, which notice shall include the name of the assignee.

6. Amendments and Waivers. Except as expressly contemplated herein, this letter agreement may not be amended, and no provision hereunder may be waived or modified, except by an instrument signed by each of the parties hereto. Upon any permitted assignment under Section 5, the parties hereto may (a) amend or amend and restate this letter agreement to reflect any such permitted assignment; and/or (b) cause the Permitted Assignee to whom rights and obligations hereunder have been assigned to deliver a new letter agreement to Ostara US in substantially the same form as this letter agreement providing for a commitment to fund the amount of the Commitment assumed by such Permitted Assignee.

7. Entire Agreement. Together with the Offtake Agreement, this letter agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among or between Ostara Parent, Ostara US and Warrantsheaf with respect to the subject matter hereof.

8. Relationship. Each party hereto acknowledges and agrees that (a) this letter agreement is not intended to, and does not, create any agency, partnership, fiduciary or joint venture relationship between or among any of the parties hereto and neither this letter agreement nor any other document or agreement entered into by any party hereto relating to the subject matter hereof shall be construed to suggest otherwise; and (b) the obligations of Warrantsheaf under this letter agreement are solely contractual in nature.

9. Third Party Beneficiaries. Except for the Investor Related Parties, each of which is an express third-party beneficiary of this letter agreement and shall be entitled to enforce the provisions hereof solely as contemplated herein (and for such purpose, Ostara Parent confirms that it is acting as trustee on their behalf, and agrees to enforce such provisions on their behalf), no person or Entity, other than the parties hereto, shall be entitled to rely upon this letter agreement, and this letter agreement shall be binding upon and, except as otherwise set forth in this Section 9 and Section 10, inure solely to the benefit of each party hereto and nothing herein or in any other agreement (including, without limitation, the Offtake Agreement), express or implied, is intended to or shall confer upon any other person or Entity any rights, benefits or remedies whatsoever under or by reason of this letter agreement.

10. Limited Recourse. Notwithstanding anything that may be expressed or implied in this letter agreement, or any document or instrument delivered in connection herewith, each of the parties hereto covenants, acknowledges and agrees that, notwithstanding the corporate, partnership or company status of Warrantsheaf or any of Permitted Assignee (a) this letter agreement may be

FERTILIZER OFFTAKE AGREEMENT

enforced only against, and any Claim based upon, arising out of, or related to this letter agreement or the transactions contemplated hereby may be brought only against, the entities that are expressly named as parties hereto (and their permitted assigns) and then only with respect to the specific obligations set forth herein and on the terms and subject to the conditions set forth herein with respect to such party; and (b) no Investor Related Party shall have any liability (whether in contract or tort, at law or in equity or otherwise, or based upon any theory that seeks to impose liability of an entity party against its owners or affiliates or by or through a claim by or on behalf of Ostara US or Ostara Parent against any Investor Related Party, or by virtue of any applicable law) for any of the representations, warranties, agreements or other obligations or liabilities of the parties hereto (or any successor or permitted assignee thereof) or for any claim based on, arising out of, or related to this letter agreement or the Offtake Agreement or the transactions contemplated hereby and thereby (and, in furtherance of the foregoing, no Entity or person shall have any right of recovery against, and no recourse under this letter agreement or under any document or instrument delivered in connection shall be had against, any Investor Related Party). In this letter agreement, the term “**Investor Related Parties**” means any of the past, present or future controlling person or Entity, director, officer, employee, incorporator, member, partner (including any general partner in its personal capacity (and not in its capacity as general partner) or limited partner), equityholder, affiliate, assignee, successor, agent, attorney, advisor, lender or representative of Warrantsheaf or any of the past, present or future controlling person or Entity, director, officer, employee, incorporator, member, partner (including any general partner in its personal capacity (and not in its capacity as general partner) or limited partner), equityholder, affiliate, assignee, successor, agent, attorney, advisor, lender or representative of any of the foregoing (but, for greater certainty, Investor Related Parties shall exclude Warrantsheaf, any assignee of Warrantsheaf, Ostara US and Ostara Parent). The provisions of this Section 10 are intended to be for the benefit of, and enforceable by, the Investor Related Parties and each such Investor Related Party shall be a third-party beneficiary of this Section 10, and, for such purpose, Ostara Parent confirms that it is acting as trustee on behalf of such Investor Related Party and agrees to enforce such provisions on their behalf. This Section 10 shall be binding on all successors and permitted assigns of Ostara US and Ostara Parent and shall survive the termination of this letter agreement. Ostara US and Ostara Parent’s remedies against Warrantsheaf under this letter agreement shall, and are intended to, be the sole and exclusive direct or indirect remedies available to Ostara US and Ostara Parent against Warrantsheaf in respect of any liabilities or obligations arising under, or in connection with, the Offtake Agreement and the transactions contemplated thereby, including in the event that Ostara US breaches its obligations under the Offtake Agreement. This letter agreement is solely for the benefit of Ostara US and Ostara Parent and is not intended to, nor does it, confer any benefits on, or create any rights or remedies in favor of, any person or Entity other than Ostara US and Ostara Parent and Warrantsheaf, except for the provisions of this letter agreement which refer to Investor Related Parties (each of which shall be for the benefit of and enforceable by each Investor Related Party).

11. Enforcement. Other than the provisions of this letter agreement that refer to Investor Related Parties (each of which shall be for the benefit of and enforceable by each Investor Related Party), this letter agreement may only be enforced by (a) Warrantsheaf; (b) Ostara US and Ostara Parent, at the direction of Warrantsheaf; or (c) Ostara US, as required pursuant to an order of specific performance obtained by the CWS pursuant to Section 12.5 of the Offtake Agreement. Notwithstanding anything to the contrary in this letter agreement, the creditors of Ostara Parent

FERTILIZER OFFTAKE AGREEMENT

and Ostara US (other than CWS pursuant to the terms and subject to the conditions of the Offtake Agreement) shall have no right to enforce this letter agreement or to cause Ostara Parent or Ostara US to enforce this letter agreement (except to the extent expressly provided for under the Offtake Agreement), and none of CWS' creditors shall have any right to enforce or cause Ostara Parent, Ostara US or Warrantsheaf to enforce this letter agreement.

12. Confidentiality. This letter agreement shall be treated as confidential and is being provided to Ostara Parent and Ostara US solely in connection with the Offtake Agreement and the transactions contemplated thereby. This letter agreement may not be used, circulated, quoted or otherwise referred to in any document, other than the Offtake Agreement and any ancillary agreement or document with respect thereto, including the Stipulation and General Judgment of Specific Performance attached to the Offtake Agreement, except with the prior written consent of Warrantsheaf; *provided* that no such written consent shall be required for disclosures by Ostara US to CWS and their respective officers, directors, employees, advisors, representatives and agents who need to know such information and so long as each such person agrees to keep such information confidential; *provided further*, that any party hereto may disclose the existence and terms of this letter agreement to the extent required by any applicable law, in connection with any audit, investigation, inquiry or examination by any governmental authority, or in connection with the enforcement of the terms of this letter agreement or the Offtake Agreement.

13. Notices. Any notice, or other communication given regarding the matters contemplated by this letter agreement will be sufficient if in writing and (a) hand delivered; (b) sent by certified or registered mail; (c) sent by express courier; or (d) if notice is also contemporaneously sent by one of the other methods of delivery, sent by facsimile or email, addressed as follows:

(a) If to Ostara Parent or Ostara US, to:

c/o Ostara Nutrient Recovery Technologies Inc.
690 - 1199 West Pender Street, Vancouver, BC V6E 2R1
Attention: Koert VandenEnden, Chief Financial Officer
E-mail: KVandenEnden@ostara.com

with a copy to:

Josh Cinnamon, General Counsel & Corporate Secretary
jcinnamon@ostara.com

(b) If to Warrantsheaf, to:

c/o Warrantsheaf Group US Inc.
3000 Sand Hill Road
Building 3, Suite 170
Menlo Park, CA 94025

Attention: Monty Bayer, Executive Director
E-mail: monty.bayer@warrantsheafgroup.com

Any notice or other communication is deemed to be given and received on the day on which it was delivered or, in the case of notices or other communications transmitted by facsimile or email, the day receipt is confirmed (or if such day is not a Business Day or if such notice or

FERTILIZER OFFTAKE AGREEMENT

communication was delivered or transmitted after 5:00 p.m. (local time in the place of receipt), on the next following Business Day). Sending a copy of a notice or other communication to a party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice or other communication to that party. The failure to send a copy of a notice or other communication to legal counsel does not invalidate delivery of that notice or other communication to a party.

14. Governing Law and Jurisdiction. This letter agreement, including the validity hereof and the rights and obligations of the parties hereunder, all amendments and supplements hereto and the transactions contemplated hereby, and all actions or proceedings arising out of or relating to this letter agreement, of any nature whatsoever, shall be construed in accordance with and governed by the laws of the Province of Alberta and the federal laws of Canada applicable therein without giving effect to any choice of law or conflicts of law provision or rule that might otherwise cause the application of the laws of any other jurisdiction. The parties hereto hereby irrevocably submit to the jurisdiction of the courts of the province of Alberta located in the City of Calgary in connection with any dispute arising out of or relating to this letter agreement or any of the transactions contemplated hereby and each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum or lack of personal jurisdiction in respect of such dispute. Each of the parties hereto agrees that a judgment rendered in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of the parties hereto irrevocably agrees that service of process upon such party in any such action or proceeding shall be effective if notice is given in accordance with Section 13 of this letter agreement.

15. Counterparts. This letter agreement may be signed in any number of counterparts (and may be delivered by facsimile transmission or via email as a portable document format (.pdf)) with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this letter agreement.

16. Severability. If any term, condition or other provision of this letter agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, provisions and conditions of this letter agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision hereof is invalid, illegal or incapable of being enforced, (a) a suitable and equitable term or provision determined by a court of competent jurisdiction shall be substituted therefor in order to carry out, so far as may be valid, legal and enforceable under applicable law, the intent and purpose of such invalid, illegal or unenforceable term or provision; and (b) the remainder of this letter agreement and the application of such terms and other provision to other persons, Entities or circumstances shall not be affected by such invalidity, illegality or unenforceability, nor shall such invalidity, illegality or unenforceability affect the validity, legality or enforceability of such term or provision, or the application of such term or provision, in any other jurisdiction.

17. Miscellaneous. The parties hereto have participated jointly in negotiating and drafting this letter agreement. If an ambiguity or a question of intent or interpretation arises, this letter agreement shall be construed as if drafted jointly by the parties, and any rule of construction or interpretation otherwise requiring this letter agreement to be construed or interpreted as favoring

FERTILIZER OFFTAKE AGREEMENT

or disfavoring any party by virtue of the authorship of this letter agreement shall not apply to the construction and interpretation hereof. The headings contained in this letter agreement are for convenience purposes only and will not affect the meaning or interpretation hereof. No failure or delay by any party hereto in exercising any right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

Yours very truly,

WHEATSHEAF GROUP LTD.

by: _____
name:
title:

Accepted and acknowledged by:

OSTARA USA, LLC

by: _____
name:
title:

OSTARA NUTRIENT RECOVERY TECHNOLOGIES INC.

by: _____
name:
title:

FERTILIZER OFFTAKE AGREEMENT

Schedule “E”

Process Control Transition Plan

As contemplated by Section 3.4 of the Agreement, Ostara shall provide information technology and automation services to support Customer’s initiative to transfer the Nutrient Recovery System process controls at Durham AWWTF and Rock Creek AWWTF to Customer’s SCADA systems.

Services will be limited to tasks set forth in the table below and will be provided on dates reasonably agreed by both parties, commencing on or around the Effective Date and will be capped at a maximum of 320 hours.

Ostara will act in a supporting role in respect of this project, with additional hours or services not listed below to be accommodated by Ostara acting reasonably and charged at Ostara’s then current rates.

| Category | Description | Estimated Hours |
|--------------------|--|-----------------|
| Scope | Scope Setup Support | 4 |
| Source Code | Source Code Software Assembly | 12 |
| | Source Code Documentation Assembly | 28 |
| Drawings | Loop Drawings Confirmation Support (PLC only) | 12 |
| PLC Data | Provide Instrument Register Addresses | 20 |
| | Provide Profibus Addresses | 20 |
| | VFD Register Mapping Support | 20 |
| PRISM | PRISM One-time Data Transfer to Customer | 40 |
| | New Bag Data Transfer Configuration (Ostara side) | 36 |
| Meetings | I/O Logic Interpretation Support | 24 |
| | Harvest & Dryer Logic Interpretation Support | 60 |
| | Bagging System Logic Support | 24 |
| | Attendance of Project Meetings | 20 |
| Total | | 320 |

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**Schedule “F”
Form of Stipulation and General Judgment of Specific Performance**

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

CLEAN WATER SERVICES,

Plaintiff,

vs.

OSTARA USA, LLC, a Delaware limited
liability company,

Defendant.

No. _____
**STIPULATION AND GENERAL
JUDGMENT OF SPECIFIC
PERFORMANCE**

The parties to this Stipulation and General Judgment of Specific Performance are Clean Water Services (“Plaintiff”) and Ostara USA, LLC (“Defendant”) (collectively, “Parties”). The Parties hereby stipulate to the following uncontested facts:

1. Plaintiff and Defendant stipulate to personal jurisdiction, subject matter jurisdiction, and venue before the Washington County Circuit Court for the State of Oregon.

2. Effective January 5, 2021, the Parties entered into a Fertilizer Offtake Agreement in the form attached hereto as Exhibit 1, inclusive of Schedules A – F (“Agreement”).

3. Defendant agreed that in the event the Initial Term (as defined in the Agreement) of the Agreement is not extended per Article 12.1, or Defendant commits a “Material Breach” of the Agreement per Article 12.2, then Defendant shall pay Plaintiff by wire transfer or other mutually agreeable method of funds delivery, the “Early Termination Payment Amount” reflected in Schedule C to the Agreement and as calculated with reference to the Remaining Full Potential Term (as defined in the Agreement), and that such payment

Page

1 will be made: (i) in the context of payment required under Article 12.1 of the Agreement, not
2 later than the end of the Initial Term; and (ii) in the context of payment required under
3 Article 12.3 of the Agreement, within sixty (60) days of termination for “Material Breach” as
4 contemplated by Article 12.3 of the Agreement.

5 4. Pursuant to Article 12.4 of the Agreement, Defendant entered into a
6 commitment letter (the “**Owner Commitment Letter**”) with its sole shareholder,
7 Wheatsheaf Group Limited (“**Wheatsheaf**”), in the form attached to the Agreement as
8 Schedule D, obligating Wheatsheaf and its Permitted Assignees (as defined in the Owner
9 Commitment Letter) to fund Defendant as stated in the Owner Commitment Letter but
10 subject to the qualifications therein, for purposes of securing Defendant’s obligation to pay
11 Plaintiff the Early Termination Payment Amount as reflected in Schedule C to the
12 Agreement.

13 5. Defendant covenanted to use reasonable best efforts to enforce the Owner
14 Commitment Letter as set forth in Article 12.4(b) of the Agreement and has further agreed to
15 deliver this Stipulation and General Judgment of Specific Performance in accordance with
16 Article 12.5 of the Agreement.

17 6. Defendant authorizes Plaintiff to file this Stipulation and General Judgment of
18 Specific Performance in the Washington County Circuit Court, for the State of Oregon, in the
19 event the Early Termination Payment Amount becomes due and payable pursuant to the
20 Agreement, Defendant has not paid the Early Termination Payment within the time required
21 pursuant to the Agreement and Defendant has not actually and successfully enforced the
22 Owner Commitment Letter as contemplated therein and in the Agreement, by the due date
23 stated in Article 12.5 of the Agreement.

24 7. Plaintiff’s act of filing this Stipulation and General Judgment of Specific
25 Performance shall be a representation and warranty by Plaintiff to Defendant and to the Court
26

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OF SPECIFIC PERFORMANCE**

1 that all conditions precedent to such filing and entitlement to the Early Termination Payment
2 Amount have been fully satisfied.

3 NOW, THEREFORE, IT IS HEREBY ADJUDGED that a judgment and decree of
4 specific performance is rendered by the Court in favor of Clean Water Services, and against
5 Ostara USA, LLC, as follows:

- 6
- 7 A. Ostara USA, LLC shall immediately use reasonable best efforts to enforce the
8 Owner Commitment Letter as set forth in Article 12.4(b) of the Agreement;
- 9 B. Clean Water Services' sole remedy for Ostara USA, LLC's failure or inability
10 to enforce the Owner Commitment Letter as set forth in Article 12.4(b) of the
11 Agreement, is a claim for money damages against Ostara USA, LLC. Clean
12 Water Services specifically waives any right to initiate a contempt of court
13 proceeding under ORCP 78B, ORS 33.055 or to seek the imposition of any of
14 the sanctions authorized for contempt of court under ORS 33.105 to 33.155 or
15 any other applicable law;
- 16 C. Upon any partial or full compliance by Wheatsheaf and any Permitted
17 Assignees with the Owner Commitment Letter, all such funds shall be
18 promptly remitted to Clean Water Services by wire transfer or other mutually
19 agreeable manner of funds delivery;
- 20 D. Ostara USA, LLC shall be responsible to pay all reasonable attorney fees,
21 expert fees, costs, and disbursements incurred by Clean Water Services in
22 preparing, filing, and obtaining this Stipulation and General Judgment of
23 Specific Performance, and for all litigation associated with or arising from
24 said proceedings, upon proper filing of this Stipulation and General Judgment
25 of Specific Performance;
- 26 E. The Court shall retain jurisdiction over this matter to resolve any dispute that
may arise with respect to the terms and provisions of this Stipulation and

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OF SPECIFIC PERFORMANCE**

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General Judgment of Specific Performance, and for all litigation associated with or arising from said proceedings; and,

F. Pursuant to ORCP 67.B, the Court expressly finds that there is no just reason for delay, and directs that this Stipulation and General Judgment of Specific Performance be entered as a final judgment, subject to further proceedings for an award of attorney fees and costs pursuant to ORCP 68.

DATED this ____ day of _____, 20__.

The Honorable _____
CIRCUIT COURT JUDGE

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SO STIPULATED:

OSTARA USA, LLC

CLEAN WATER SERVICES

(Signature)

(Signature)

(Name)

(Name)

(Title)

(Title)

(Date)

(Date)

SUBSCRIBED AND SWORN TO
before me this ____ day of January,
2021.

SUBSCRIBED AND SWORN TO before me
this ____ day of January, 2021.

Notary Public for Oregon
My Commission Expires: _____

Notary Public for Oregon
My Commission Expires: _____

1080422

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OF SPECIFIC PERFORMANCE**

MARKOWITZ HERBOLD PC
1455 SW BROADWAY, SUITE 1900
PORTLAND, OREGON 97201
(503) 295-3085
Fax: (503) 323-9105

1 **ATTORNEY CERTIFICATE OF SERVICE**

2 I hereby certify that on December ____, 2020, I have made service of the foregoing
3 **STIPULATION AND GENERAL JUDGMENT OF SPECIFIC PERFORMANCE** on
4 the party listed below in the manner indicated

- 5 U.S. Mail
- 6 Facsimile
- 7 Hand Delivery
- 8 Overnight Courier
- 9 Email
- 10 Odyssey File & Serve™

11 DATED this _____ day of December, 2020.

12 _____
 13 Kerry J. Shepherd
 14 OSB #944343
 15 Attorney for Plaintiff

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0 - STIPULATION AND GENERAL JUDGMENT OF SPECIFIC PERFORMANCE

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Exhibit 1

Fertilizer Offtake Agreement

* Executed Stipulated Judgment to include executed version of the Agreement.

Page

1 - STIPULATION AND GENERAL JUDGMENT OF SPECIFIC PERFORMANCE