

PROCESSOR AGREEMENT

THIS AGREEMENT is made the ___ day of _____, 20___, (the “Effective Date”) between ONTARIO TIRE STEWARDSHIP, a corporation without share capital continued under the *Waste Diversion Act, 2002*, with a principal office address of 300 The East Mall, Suite 100, Toronto, Ontario, M9B 6B7 (“OTS”) and _____, a _____ constituted under the laws of _____, with a principal office address of _____ (the “Processor”).

WHEREAS:

- A. OTS has been designated as the industry funding organization under the Act to be responsible for the collection and environmentally responsible recycling of Used Tires;
- B. The Processor wishes to operate as a processor and/or recycler of Used Tires, to receive delivery of Used Tires from Registered Haulers, and to receive Incentives in accordance with the Plan;
- C. The Processor has been approved by OTS as an approved processor in accordance with the Plan; and
- D. The purpose of this Agreement is to set out the terms and conditions under which the Processor will operate as an approved processor under the Plan.

NOW THEREFORE the parties hereto agree as follows as of the Effective Date:

ARTICLE 1 **DEFINITIONS**

1.1 **Definitions.** In addition to the words and phrases defined in the recitals or elsewhere in this Agreement, as used in this Agreement, in any schedule hereto, in any amendment hereof, and in any documents to be executed and delivered pursuant to this Agreement, the following words and phrases have the following meanings, respectively:

- (a) “Act” means the *Waste Diversion Act, 2002*, S.O. 2002 c.6 as may be amended from time to time;
- (b) “Act of Default” has the meaning given in Section 7.1;
- (c) “Agreement” means this Agreement, including the schedules to this Agreement, as it or they may be amended or supplemented from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement;
- (d) “Applicable Laws” has the meaning given in Section 2.1(q);
- (e) “Approved Purpose” means a purpose for the use of Recycled Tires which is found on the list of Approved Purposes for Recycled Tires maintained by OTS and published on OTS’s website;
- (f) “Arbitration Guidelines” has the meaning given in Section 13.3;

- (g) “**Audit**” has the meaning given in [Section 4.2](#);
- (h) “**Change Notice**” has the meaning given in [Section 13.6](#);
- (i) “**Collection Incentives**” means the financial incentives, from time to time determined and payable by OTS to support the participation [of Registered Collectors](#) in the Plan;
- [\(j\) “Culled Used Tires” has the meaning given in Section 2.5;](#)
- (k) “**Effective Date**” has the meaning given to that term in the listing of parties to this Agreement;
- (l) “**Environmental Laws**” means any and all applicable laws, statutes, regulations, treatise, orders, [judgments](#), decrees, official directives and all authorizations of any department or body of any federal, provincial, regional or municipal government of any agency thereof relating to the protection of the environment, including in particular, but without limiting the generality of the foregoing, the manufacture, use, storage, disposal and transportation of any Hazardous Substance;
- [\(m\) “Exemption Order” means a written confirmation issued by OTS that certain Used Tires, tire parts or processed rubber which would otherwise be Non-Eligible Material, are eligible for the claiming of certain financial incentives, on the terms set out therein;](#)
- [\(n\) “False Statement” has the meaning given in Section 7.1\(f\);](#)
- [\(o\) “Guidelines” means any directives, forms, procedure manuals, administrative guidance, or other document regarding the implementation of the Plan published by OTS from time to time on its web site;](#)
- (p) “**Hazardous Substance**” includes any contaminant, pollutant, dangerous substance, liquid waste, industrial waste, hauled liquid waste, toxic substance, hazardous waste, hazardous material, or hazardous substance as defined in or pursuant to any law, judgement, decree, order, injunction, rule, statute or regulation of any court, arbitrator or federal, provincial, state, municipal, county or regional government or governmental authority, domestic or foreign, or any department, commission, bureau, board, administrative agency or regulatory body of any of the foregoing to which the [Processor is](#) subject;
- [\(q\) “Incentives” means any or all of the Collection Incentives, Transportation Incentives, and Processing Incentives;](#)
- (r) “**Inventory Statement**” means any report submitted by the Processor with regard to the inventory of Used Tires and/or parts thereof held on the Processor’s premises and/or in the Processor’s inventory, as at a certain date;
- (s) “**Mediation Guidelines**” has the meaning given in [Section 13.3](#);
- (t) “**Minister**” means the Minister of the Environment for Ontario;
- (u) “**Non-approved Sale**” has the meaning given in [Section 2.7](#);

- (v) “Non-Eligible Material” means:
 - (i) Used Tires, tire parts or processed rubber held in Processor’s inventory prior to September 1st, 2009, unless the subject of an Exemption Order issued by OTS; and/or
 - (ii) Used Tires or parts thereof originating outside Ontario or obtained by the Processor directly or indirectly from any source outside Ontario;
 - (iii) any material, article or item that is not a Used Tire;
- (w) “OTS” has the meaning given to that term in the listing of parties to this Agreement;
- (x) “Party” means a party to this Agreement and any reference to a Party includes its successors and permitted assigns; and Parties means every Party;
- (y) “Performance Bond” has the meaning given in Section 2.4;
- (z) “Plan” means the Used Tires Program Plan submitted by OTS on 27 February 2009 and approved by Waste Diversion Ontario and the Minister of Environment, as amended;
- (aa) “Processing Incentives” means the financial incentive, as from time to time determined and payable by OTS to the Processor for undertaking the Used Tires recycling initiative contemplated under the terms of this Agreement;
- (bb) “Processor” has the meaning given to that term in the listing of parties to this Agreement;
- (cc) “Processor Delivery” means delivery by a Registered Hauler of eligible Used Tires to the Processor, in accordance with the Plan and this Agreement;
- (dd) “Program Participant” means any collector, hauler, or processor which has registered and entered into an agreement with OTS to provide services under the Plan;
- (ee) “Registered Collector” means an entity that has registered and remains in good standing with OTS and has entered into a Collector Agreement with OTS for the collection of Used Tires;
- (ff) “Registered Hauler” means an entity engaged in the business of Used Tire Pickup and Processor Delivery, which has registered and remains in good standing with OTS and entered into a Hauler Agreement with OTS;
- (gg) “Registration System” means the electronic database maintained by OTS in which registration and other information regarding Processors is kept;
- (hh) “Regulations” means the regulations passed pursuant to the Act;
- (ii) “Rejection Notice” has the meaning given in Section 13.6;
- (jj) “Repayment Amounts” has the meaning given in Section 7.2;

- (kk) “Report” means any report or submission made by the Processor from time to time regarding Used Tires, tire parts, processed rubber, or TDPs;
- (ll) “Subcontractor” has the meaning given in Section 2.3;
- (mm) “Subcontracted Obligations” has the meaning given in Section 2.3;
- (nn) “TDP” means marketable tire-derived products, made or derived from recycled or processed Used Tires or parts thereof, and which are included on the list of approved TDPs published on the OTS web site from time to time, and which conform to the specifications or definitions set out in such list; for greater clarity, TDP may be classified by grades;
- (oo) “Transportation Incentives” means those certain financial incentives from time to time determined and payable by OTS, to a person designated by OES from time to time, to support the participation of Registered Haulers in the Plan;
- (pp) “Used Tire Pickup” means the retrieval of eligible Used Tires from Registered Collectors by Registered Haulers, in accordance with the Plan and this Agreement;
- (qq) “Used Tires” means used tires or parts of tires that that have not been refurbished for road use, or that, for any reason, are not suitable for their intended purpose; for greater clarity, “Used Tires” refers only to the tire body (or parts thereof), and does not include rims or any other component which is not an integral part of the tire body;
- (rr) “WDO” means Waste Diversion Ontario; and
- (ss) “Yard Count” has the meaning given in Section 2.1(f).

1.2 Interpretation. Unless otherwise specified, all references to currency herein shall be to lawful money of Canada. Headings, table of contents, and Article and Section names and divisions are for convenience of reference only and shall not affect the meaning or interpretation of the Agreement. Any accounting terms not specifically defined shall have the meanings ascribed to them in accordance with Canadian generally accepted accounting principles. Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. The words “hereto”, “herein”, “hereof”, “hereunder”, “this Agreement” and similar expressions mean and refer to this Agreement. All references to laws or statutes include all related rules, regulations, interpretations, amendments and successor provisions. All references to any document, instrument or agreement include any amendments, waivers and other modifications, extensions or renewals. The words “includes” or “including” shall mean “includes without limitation” or “including without limitation”, respectively.

1.3 Agreements as Covenants. Each agreement and obligation of any of the Parties hereto in this Agreement even though not expressed as a covenant, is considered for all purposes to be a covenant.

ARTICLE 2 OBLIGATIONS OF THE PROCESSOR

2.1 Processor Obligations. In addition to the other obligations of the Processor set out in this Agreement, the Processor shall:

- (a) abide by the requirements set out in this Agreement and its schedules, the Plan, and all Guidelines applicable to Processor;
- (b) use the system of Guidelines and paper-based or electronic manifests and documents created by OTS to accurately, correctly, and completely record and report all transactions involving Used Tires, as such system is modified by OTS from time to time in its sole discretion;
- (c) post and maintain the Performance Bond;
- (d) recycle Used Tires received by it, specifically by:
 - (i) accepting delivery of, at no cost to Registered Haulers, Used Tires delivered by Registered Haulers;
 - (ii) processing all Used Tires received from Registered Haulers and not Culled by the Processor into TDP; and
 - (iii) selling processed TDP on to end users;all in accordance with the Plan.
- (e) promptly complete and submit to OTS each month, or as otherwise directed by OTS from time to time, all documentation required under the Plan, including without limitation:
 - (i) delivery receipt documentation for Used Tires received by Processor;
 - (ii) reports and other documents as directed by OTS from time to time regarding sale of processed TDP to end users; and
 - (iii) such other documentation as may be required by OTS from time to time regarding the receipt of Used Tires, the disposition of Used Tires or processing material or any other residue of processing, or inventories of Used Tires or partially processed materials of final processed TDP in the possession of the Processor.
- (f) once per calendar quarter, or more or less often as OTS may in its sole direction require, complete an inventory of all Used Tires in the Processor's possession or on the Processor's premises (a "Yard Count") and provide OTS with the results of each such Yard Count, using such Guidelines and forms as OTS may create for the purpose from time to time and post on its web site. For greater clarity, each Yard Count must specify the total quantity/weight of Used Tires in the Processor's possession or on the Processor's premises, the weights of all materials in process, TDPs not yet claimed for Processing Incentives with OTS and any residual materials including but not limited to steel and fibre which have not yet been reported to OTS, as well as a breakdown of the quantity/weight of all Used Tires received from each specific Registered Hauler, and the Registered Collectors from which the Used Tires were retrieved, since the previous Yard Count.

- (g) provide advance notice of, or advise OTS immediately upon, any material change in the operating status of the Processor, including notice of all operating shutdowns or slowdowns that are expected to exceed five working days;
- (h) conduct itself in a professional and business-like manner in dealings with Registered Collectors, Registered Haulers, members of the public and OTS;
- (i) not use any trade-mark, trade name, or logo owned by OTS in any way not specifically authorised by OTS in writing, to provide samples of any proposed use to OTS for written approval which must be received before use begins, and to comply in all respects with any Guideline in effect from time to time regarding the use of OTS's trade-marks;
- (j) store all Used Tires with all requirements of Applicable Law, including without limitation all requirements of the Ontario Ministry of the Environment and the Ontario Office of the Fire Marshal;
- (k) at all times maintain clean and tidy premises and where it is necessary to store or stockpile Used Tires and/or processed TDP, such is to be undertaken in an organized and safe fashion. In particular, but not limited to the generality of the foregoing, the Processor shall take reasonable steps to protect any Used Tires and processed TDP safe from fire and leaching;
- (l) update any registration information provided to OTS in the Registration System as soon as possible after the information is changed;
- (m) sell, transfer or dispose of all Culled Used Tires and TDP in accordance with the letter and spirit of all protocols, treaties or agreements affecting international or interprovincial trade;
- (n) within five days after receiving the request from OTS, provide an Inventory Statement regarding Used Tires on the Processor's premises and/or in the Processor's inventory at the time of the request, in such format as OTS shall direct;
- (o) provide detailed information to OTS regarding the final destinations and end-uses of TDP sold by the Processor for reuse within or outside Canada, in the form required by OTS from time to time;
- (p) submit to periodic inspections of the Processor's premises and equipment by OTS or OTS's designated representative, at intervals which are reasonable in the sole judgement of OTS;
- (q) comply at all times with all laws issued by any government or governmental authority of Canada or any province of Canada, or any municipal, regional or other authority, including, without limitation, any governmental department, commission, bureau, board or administrative agency ("**Applicable Laws**"), which affect or govern the conduct and operation of the Processor, its business, and its performance under this Agreement; for greater clarity, the Applicable Laws include, without limitation, all laws relating to taxation, employment standards and compensation of workers, and the Environmental Laws;

- (r) obtain and maintain all permits, certificates, licences and other qualifications required under any Applicable Law;
- (s) use equipment, supplies and service provided by OTS only for their intended purposes and in an efficient manner;
- (t) file all required documents and reports in the manner directed by OTS from time to time;
- (u) respond in a timely manner to all requests by OTS for information relating to Used Tires;
- (v) comply, abide by and carry into effect, as may be required, the objectives of, and the obligations imposed upon the Processor contained in and set out in this Agreement, all applicable Guidelines, and the Plan;
- (w) provide notice to OTS of any fines or regulatory orders relating to the Processor's business made against it in the previous five years; and
- (x) provide notice to OTS within 24 hours after any fine or regulatory order relating to the substance of this Agreement made against it after the date hereof.

2.2 **Conflict Between Plan, Agreement, and Guidelines.** To the extent any provision of the Plan may conflict with a term or terms of this Agreement or any Guideline, other than those dealing with the amount or payment of any incentive, then the Plan shall prevail. For greater clarity, in the event of any conflict between the Plan and any Guideline dealing with the amount or payment of any incentive, such Guideline shall prevail.

2.3 **Subcontractors.** The Processor agrees that if any third party (a "**Subcontractor**") performs all or part of any of Processor's obligations hereunder ("**Subcontracted Obligations**") at any time, while this Agreement is in effect:

- (a) Processor shall be solely responsible for ensuring that a Subcontractor complies fully with all requirements set out in this Agreement, the Plan, and any Guidelines which are applicable to Subcontractor or any Subcontracted Obligations;
- (b) Any act or omission by Subcontractor which would constitute a default if performed by the Processor shall constitute an actual default by the Processor; and
- (c) Processor may not engage as a Subcontractor any person having any unresolved default(s) of which Processor is aware under any agreement with OTS; if Collector does engage such a person as a Subcontractor, the Collector shall become jointly and severally liable with such person for all amounts owed to OTS with respect to the default(s). For greater clarity, in addition to the actual knowledge of Processor from time to time, Processor shall be deemed to have awareness of any unresolved default included in any list published by OTS from time to time of persons in default of obligations to OTS.

2.4 **Performance Bond.** The Processor shall be required to post a performance bond in favour of OTS (the "**Performance Bond**"), and maintain the Performance Bond in effect at all times during the term of this Agreement. The Performance Bond must be in such form and amount as may be specified by OTS from time to time, and must be obtained from a surety acceptable to OTS in its sole discretion.

2.5 Culled Tires.

- (a) Processor may transfer, divert or use Used Tires for lawful purposes other than processing them into TDP as set out herein (such Used Tires referred to as “Culled Used Tires”), subject to the requirements set out in this Section 2.5.
- (b) Processor agrees that all dealings in connection with Culled Used Tires, including without limitation the selection, use, or sale of Culled Used Tires, shall be at Processor’s own risk absolutely.
- (c) Processor shall provide detailed information to OTS regarding the quantities, final destinations and end-uses of all Culled Used Tires transferred, diverted, used, or otherwise dealt by the Processor, in the form required by OTS from time to time.
- (d) Processor shall have no entitlement to Incentives of any kind in respect of any Culled Used Tires, and Processor agrees that it shall not misrepresent any Culled Used Tires in any Report as being eligible for the payment of Incentives, or include any Culled Used Tires in any request for the payment of Incentives, and that submission of such a Report or request for payment with respect to Culled Used Tires shall constitute a False Statement.
- (e) Processor shall not sell, transfer or dispose of Culled Used Tires for any final purpose which is not an Approved Purpose, and which the Processor can demonstrate as such to OTS’s satisfaction, acting reasonably.

2.6 Non-Eligible Material.

- (a) Except where OTS has issued an Exemption Order with respect thereto, no Incentives of any kind shall be paid in respect of any Non-Eligible Material, and Processor agrees that it shall not accept Processor Delivery of any Non-Eligible Material, or represent to any person including any Registered Collector or Registered Hauler that Used Tire Pickup or Processor Delivery is available with respect to any Non-eligible Material, or misrepresent any Non-Eligible Material in any Report as being eligible for or actually having been subject to Used Tire Pickup or Processor Delivery. Processor agrees that submission of such a Report with respect to Non-Eligible Material shall constitute a False Statement.
- (b) Processor agrees that all its dealings in connection with Non-Eligible Material, including without limitation the selection, use, or sale of Non-Eligible Material, shall be at Processor’s own risk absolutely.
- (c) Upon request by OTS, Processor shall provide detailed information to OTS regarding the final destinations and end-uses of Non-Eligible Material transferred, diverted, used, or otherwise dealt by the Processor, in the form required by OTS from time to time.

2.7 Non-approved Sales. Processor shall not sell, transfer or dispose of TDP for any purpose which is not an Approved Purpose, and which the Processor can demonstrate as such to OTS’s satisfaction, acting reasonably (any sale for a purpose which is not an Approved Purpose is a “Non-approved Sale”). Processor agrees that it shall have no entitlement to Incentives of any kind in respect of any Non-approved Sale.

ARTICLE 3

PROCESSOR'S REPRESENTATIONS AND WARRANTIES

3.1 **Representations and Warranties.** The Processor hereby represents and warrants to OTS that:

- (a) The Processor is duly constituted and is validly existing and in good standing under the laws of its home jurisdiction, and has the necessary corporate or other powers, authority and capacity to own its property and assets and to carry on the business as presently conducted and contemplated by the terms of this Agreement;
- (b) The Processor is not a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act*;
- (c) The Processor holds all permits, licences, consents and authorities issued by all government or governmental authorities of Canada or any province of Canada, or any municipal, regional or other authority, including, without limitation, any governmental department, commission, bureau, board or administrative agency which are necessary and/or desirable in connection with the conduct and operation of the Processor's business and is not in breach of or in default of any term or condition thereof; and
- (d) All Reports, documentation and other instruments provided to OTS by the Processor are complete and correct.
- (e) The registration of the Processor with OTS as an approved Processor, the provision of all required information to OTS, and the entering into of this Agreement by Processor and the performance of its obligations hereunder have been duly authorized by all necessary corporate action.

3.2 **Statements.** All statements contained in any Reports, documents or other instruments delivered by or on behalf of the Processor to OTS shall be deemed to be representations and warranties of the Processor of the facts therein contained.

3.3 **Reliance.** The Processor acknowledges and agrees that OTS has entered into this Agreement relying on the warranties, representations and other terms and conditions set out in this Agreement notwithstanding independent searches or investigations that may have been undertaken by or on behalf of OTS and that no information which is now known or should be known or which may hereinafter become known to OTS or its officers, directors or professional advisors shall limit or extinguish any right of indemnification contained herein or otherwise limit, restrict, negate or constitute a waiver of any of the rights or remedies of OTS hereunder.

ARTICLE 4 AUDITS AND INSPECTION

4.1 **Inspection.** The Processor agrees to permit OTS or its agents to inspect the Processor's business site upon reasonable notice, during normal business hours, from time to time.

4.2 **Audit.** The Processor agrees that OTS may, from time to time, audit any records of the Processor maintained in support of the Processor's claims, and further, may examine and review, and audit records relating to the Processor's compliance with the terms of this Agreement, the Plan and all Applicable Laws, and in the course of doing so may review or inspect the Processor's operations to determine the Processor's compliance (hereinafter referred to as the "Audit").

- 4.3 **Spot Count.** The Processor agrees that OTS or its designated representative(s) may, from time to time and without advance notice to the Processor, attend at the Processor's premises to perform a spot audit count of all Used Tires in the Processor's possession or on the Processor's premises, including Used Tires located in any vehicles which are at Processor's premises, including without limitation the vehicles of a Registered Collector or Registered Hauler or any other person, and may also at this time review any records which OTS may review in the course of an Audit as described in Section 4.2.
- 4.4 **Provision of Records.** The Processor shall provide OTS's auditor with any and all records requested and shall cooperate with the Audit at no expense to OTS. It is agreed that OTS shall pay the costs of the Audit except in circumstances where the auditor determines that the Processor has not complied with the terms of this Agreement and the Plan in which case OTS' reasonable costs of the Audit, including any follow-up review or inspection undertaken as a result of a finding of non-compliance, shall be paid by the Processor within 30 days of demand therefor being transmitted from OTS to the Processor. In the event the Processor fails to pay OTS' reasonable costs of the Audit as aforesaid, such costs of the Audit shall be treated as Repayment Amounts and subject to set-off in accordance with Section 7.3.

ARTICLE 5

OBLIGATIONS OF OTS

- 5.1 **Processor Delivery.** OTS shall allow and/or facilitate Processor Delivery of Used Tires by Registered Haulers to Processor.
- 5.2 **Information and Support.** OTS shall provide promotional and informational material and telephone support to Processor, as OTS deems necessary.
- 5.3 **Incentives.** OTS shall pay such Incentives to the Processor at such rate and upon such schedule as may be determined by OTS from time to time in its sole discretion, all as may be published by OTS in one or more Guidelines from time to time, within 35 days of receipt by OTS of the completed Claims documentation as specified by OTS from time to time.

ARTICLE 6

OPERATIONAL MATTERS

- 6.1 **Incentives.** Incentives contemplated by this Agreement for payment to the Processor shall be based on the Passenger / Light Truck/ Medium Truck/ Off-the-Road Tire Incentives as posted on the OTS website and as amended from time to time.
- 6.2 **Agreements Between Processor, Registered Collectors, and/or Registered Haulers.** Notwithstanding any other provision of this Agreement, Processor may in its own right enter into any number of contracts with Registered Collectors and/or Registered Haulers:
- (a) regarding the pickup from such Registered Collector(s) and/or delivery to Processor by such Registered Hauler(s) of tires which are not Used Tires as defined in the Plan, or delivery schedules which are different from those contemplated hereunder; such contracts may provide for fees charged by or to Processor with respect to the services described in such contracts; and/or

(b) containing additional terms as between Processor and such Registered Collector(s) and/or Registered Hauler(s) regarding Used Tire Pickup and/or Processor Delivery; such contracts may provide for payments by or to the Processor.

6.3 **Third Party Monies.** The Processor shall not collect monies on behalf of OTS from any other person but in the event that such does occur notwithstanding the requirements of this section, those monies shall be held for the benefit of, and remitted (without deduction or set-off), forthwith to OTS.

6.4 **Anti-dumping.** OTS reserves the right at any time to reduce, refuse to pay or recover all or part of Processing Incentives in respect of TDPs sold or delivered to a person situated outside of the Province of Ontario (the “**export jurisdiction**”) which may, in the opinion of OTS, result in a violation of the laws of Canada or the export jurisdiction or which may result in the possibility of administrative or legal action against OTS, Waste Diversion Ontario or the Governments of Ontario or Canada or the possibility of trade sanctions against TDPs originating from Ontario. Trade problems could include sale at local prices which are lower than Ontario prices (“dumping”) or sale at any price of subsidized goods which could trigger under local laws the right to take administrative or legal action, including the imposition of countervailing duties or interprovincial trade sanctions.

ARTICLE 7 **PROCESSOR DEFAULT**

7.1 **Events of Default.** The occurrence of any of the following while this Agreement is in effect shall constitute an “Act of Default” by the Processor under this Agreement:

(a) If the Processor fails to make payment of any amount required in this Agreement, including any Repayment Amount, when such payment becomes due and payable, and fails to pay such amount in full within five days of written demand therefor being sent by OTS;

(b) If Processor breaches or fails to perform, observe or comply with any provision of this Agreement, the Plan, or any Guideline, and does not rectify such breach or failure to OTS’s reasonable satisfaction within 15 days of written notice of the breach or failure being sent by OTS;

(c) If Processor defaults in the due observance or performance of any covenant, undertaking, obligation or agreement given to OTS at any time, whether contained in this Agreement, the Plan, or any Guideline, or otherwise, and Processor does not rectify such default to OTS’s reasonable satisfaction within 15 days of written notice of the breach or failure being sent by OTS;

(d) If Processor fails to post or maintain the bond required under Section 2.4;

(e) If Processor fails to submit any document or Report required under this Agreement or any Guideline, or to maintain records as required under this Agreement or any Guideline;

(f) If any Report, representation, warranty, certificate, submission, or statement made by Processor to OTS is in any respect untrue, erroneous, incomplete, inaccurate, misleading, inconsistent with any Yard Count or Audit or results of a spot count pursuant to Section

4.3, or not able to be supported by Processor's records in a Yard Count or Audit, all in OTS's sole determination (each a "False Statement");

- (g) If Processor commits any default or breach under any other agreement between Processor and OTS;
- (h) If Processor engages any Subcontractor who has an unresolved default contrary to Section 2.3(c);
- (i) If Processor conspires or colludes with or assists any other person in making any False Statement to OTS or obtain under false pretenses the payment of any amount from OTS;
- (j) If Processor fails to comply with any applicable law affecting the Processor's operation;
- (k) If Processor is convicted of an offense under the *Environmental Protection Act* (Ontario);
- (l) If Processor becomes insolvent or bankrupt or subject to the *Bankruptcy and Insolvency Act* (Canada) or the *Companies Creditors Arrangement Act* (Canada), or goes into winding-up or liquidation, either voluntarily or under an order of a court of competent jurisdiction, or makes a general assignment for the benefit of its creditors or otherwise acknowledges itself insolvent;
- (m) If any execution, sequestration, extent, or any other process of any court becomes enforceable against Processor or if a distress or analogous process is levied on the property and assets of the Processor; or
- (n) any proceedings shall be commenced for the winding-up, dissolution or liquidation of the Processor or under which the Processor could lose its corporate status, such proceedings not being *bona fide* opposed by the Processor within five days of the date of commencement or service on the Processor.

7.2 Repayment of Payments Based on False Statements or with Respect to Non-approved Sales.
Processor acknowledges and agrees that:

- (a) if any Incentives are paid to Processor as a result of or in connection with any False Statement of the Processor or any other person, in OTS's sole determination, Processor shall forthwith upon demand repay the full amount of such payments to OTS, together with an amount equal to 10 per cent thereof as a reasonable pre-estimate of OTS's liquidated damages and administrative expenses arising therefrom;
- (b) if any payment or Incentive of any kind is paid by OTS to any third party as a result of or in connection with any False Statement of the Processor, in OTS's sole determination, Processor shall forthwith upon demand reimburse OTS for the full amount of such payments, together with an amount equal to 10 per cent thereof as a reasonable pre-estimate of OTS's liquidated damages and administrative expenses arising therefrom; and
- (c) if any Processing Incentives are paid to Processor in connection with any Non-approved Sales, Processor shall forthwith upon demand repay the full amount of such payments to OTS, together with an amount equal to 10 per cent thereof as a reasonable pre-estimate of OTS's liquidated damages and administrative expenses arising therefrom.

Amounts payable by Processor in accordance with this Article are collectively “Repayment Amounts”. OTS may, in its sole discretion, waive all or a portion of any Repayment Amount.

7.3 **Set-off.** Processor agrees that OTS may set off Repayment Amounts owing by Processor to OTS against any future payments of Incentives or any other amount of any kind to Processor under this Agreement or any other agreement between Processor and OTS. If such future payment amounts are insufficient to recoup Repayment Amounts owed by Processor to OTS, Processor agrees that such Repayment Amounts are recoverable from Processor as liquidated damages.

7.4 **Consequences of Default.** Immediately following any Act of Default, OTS may, in its sole and absolute discretion, do any, some or all of the following by written notice to the Processor:

- (a) suspend payment to the Processor of any or all Incentives and other amounts hereunder, with immediate effect, until the Act of Default is resolved to OTS’s satisfaction;
- (b) require Processor to pay any Repayment Amount arising in connection with an Act of Default;
- (c) terminate this Agreement, with immediate effect;
- (d) include the Processor on a published list of persons having unresolved defaults under agreements with OTS, until the Act of Default is resolved to OTS’s satisfaction; or
- (e) exclude Processor from future participation in the Used Tires Program in any capacity, on a temporary or permanent basis.

7.5 **Claim against Performance Bond.** In addition to any other remedy which OTS has under this Agreement or at law, and without limiting the ability of OTS to pursue any such other remedy at any time, OTS may make a claim against the Performance Bond, with 30 days’ written notice to the Processor, at any time following:

- (a) an Act of Default, whether or not curable or cured, which results in the payment by OTS of any Incentive which should not have been paid; or
- (b) any action, failure to act, or series of actions or failures to act by the Processor, which result, individually or cumulatively, in OTS incurring any costs which it would not otherwise have incurred,

ARTICLE 8 TERM & TERMINATION

8.1 **Term.** This Agreement shall commence on the Effective Date and continue thereafter until terminated as provided for herein.

8.2 **Termination by OTS.** OTS may immediately terminate this Agreement by written notice to the Processor, in addition to any other remedies available at law or in equity, in any of the following events:

- (a) if the Processor commits an Act of Default;

- (b) if the Plan is terminated by the Minister or any other governmental authority, or the program agreement between OTS and WDO is terminated, provided that prior notice of such termination is communicated to the Processor as soon as it is available;
- (c) if the Processor transfers by sale, assignment, bequest, inheritance, by operation of law or other disposition, or shares issued by subscription or allotment, or shares cancelled or redeemed, so as to result in a change in the effective voting or other control of the Processor from the person or persons holding control on the date of execution of this Agreement without the written consent of OTS, such consent not to be unreasonably withheld; or
- (d) in the event any other legal proceeding involving the Processor is instituted that in the reasonable opinion of OTS materially impairs the ability of the Processor to discharge its obligations hereunder.

8.3 **Termination for Convenience.** Either Party may terminate this Agreement for convenience upon 365 days' written notice to the other Party.

8.4 **Reports Following Termination.** Following Termination, Processor agrees that it will submit any Reports required hereunder with respect to any activity involving Used Tires or TDPs occurring before the Termination of this Agreement.

8.5 **Incentive Payment Following Termination.**

- (a) In the event of termination by OTS where Processor has committed an Act of Default, OTS may in its sole and absolute discretion cancel or redirect all payments of Incentives to the Processor which are pending as of the date on which notice of termination is given or which may arise at any time thereafter.
- (b) Upon termination of this Agreement, provided that payment has not been cancelled by OTS in accordance with Section 8.5(a), OTS shall continue to pay Incentives to the Processor with respect to Used Tire transactions performed before the termination of this Agreement (notwithstanding that claims for such services may be submitted to OTS after the termination of this Agreement).

8.6 **Processing Following Termination.** Within ninety days of termination of this Agreement, the Processor shall process all inventory of Used Tires in its possession at the time of delivery of the notice of termination into TDP on the terms and conditions as set out in this Agreement and, provided that payment has not been cancelled by OTS in accordance with Section 8.5(a), OTS shall continue to pay Incentives to the Processor with respect to such processed Used Tires, notwithstanding the termination of this Agreement.

ARTICLE 9 INDEMNITY & INSURANCE

9.1 **Indemnity.** The Processor covenants and agrees with OTS to indemnify and hold harmless OTS, its directors, officers, employees and agents against all costs, charges, expenses, legal fees and any other losses or claims which OTS may hereinafter suffer, sustain or may incur or be compelled to pay as a result of any performance or non-performance by Processor of its obligations hereunder, or any claim, action or proceeding which is brought, prosecuted or threatened against OTS, its directors, officers, employees and agents for any act, deed or omission

of the Processor related in any way to Culled Used Tires or arising from the breach of this Agreement, the Plan, or any applicable law.

9.2 **Release.** The Processor, for itself, its successors and assigns, agrees to release OTS and its officers, directors, employees and agents from all manners of action, causes of action, claims, demands, losses, damages, charges, expenses and the like, of any nature whatsoever which the Processor ever had, now has or hereafter can, shall or may have against OTS and its officers, directors, employees and agents related in any way to Culled Used Tires or arising out of or in connection with this Agreement provided that all acts, deeds or omissions or the alleged acts, deeds or omissions in respect of which any action, cause of action, claim, demand, loss, damage, charge, expense and the like is based or performed in good faith, and when not performed or omitted to be performed fraudulently or in bad faith by OTS, its directors, officers, employees or agents.

9.3 **Indemnity.** Processor shall maintain comprehensive “occurrence” general liability insurance, including personal injury liability, property damage, contractual liability insurance and employer’s liability coverage, with minimum limits of liability of \$5,000,000, containing a severability of interests and cross-liability clause, and deliver to OTS on request a certificate thereof with OTS named as an additional insured thereon.

ARTICLE 10

NO OTS LIABILITY FOR USED TIRES OR TDP

10.1 **Exclusion of Liability.** Processor acknowledges and agrees that at no time shall OTS take possession of any Used Tires or TDP and that OTS shall not, in any event, be liable under any theory of liability to Processor, the previous owner(s) or user(s) of any Used Tires or TDP or any other party or parties for any damages, losses, expenses, liabilities and/or other amounts of any nature or kind whatsoever, including without limitation, any direct, indirect, incidental, special, consequential, exemplary and/or punitive damages, arising out of or related to any loss, improper use, improper culling, improper transfer or sale, improper disposal or environmental degradation resulting, proceeding or connected in any way to Used Tires or TDP.

ARTICLE 11

PUBLICATION OF INFORMATION

11.1 **Publication of Information.** The Processor understands that its name, main contact information, and the registration number assigned to it by OTS, as well as information regarding the Processor’s operation, may be published by OTS on OTS’s website or other publically-accessible websites. OTS will take commercially reasonable and appropriate precautions to maintain the confidentiality of information in its database, but will not be liable to the Processor, or anyone claiming by, through or under it, for any losses, claims and damages arising out of negligent disclosure of any confidential information.

11.2 Release of Information Following Act of Default. The Processor agrees that, in the event the Processor commits an Act of Default, OTS may publish its name and registration number on a list of persons with unresolved defaults, as described in Section 7.4(d), and may release details of the Act of Default to any Program Participant who may be affected thereby.

ARTICLE 12

MODIFICATIONS TO PLAN

- 12.1 **Modifications to Plan.** The parties agree and understand that the Plan may be revised from time to time without the input or consent of the Processor, and the Processor shall be bound by each revised version of the same as each revision may be issued, as though each was set out herein and formed a contractual obligation upon the Processor and the Processor covenants and agrees to abide by, comply with and satisfy such revised Plan.
- 12.2 **Notice.** In the event of the Plan or any part of it being cancelled or altered, then OTS shall issue notice to that effect.
- 12.3 **Modifications to Incentives.** The incentives payable and the payment schedule implemented by OTS may be modified from time to time. All changes will be posed on OTS's internet web site no less than 60 days before the effective date of such change.

ARTICLE 13 GENERAL

- 13.1 **Assignment.** The parties hereby agree that the Processor's rights under this Agreement are not assignable or transferable, in any manner, without the prior written consent of OTS, which consent may not be unreasonably withheld.
- 13.2 **Agreement Binding.** This Agreement shall enure to the benefit of and be binding on the parties, their heirs, legal personal representatives, successors and permitted assigns.
- 13.3 **Dispute Resolution.** The parties agree that in the event of a dispute between them with respect to the terms or performance of this Agreement then such dispute shall first be subject to Mediation under Appendix 12 in the Plan, "**Mediation Guidelines**", and if such dispute is not able to be resolved through mediation, then it shall be subject to arbitration under Appendix 13 in the Plan, "**Arbitration Guidelines**".
- 13.4 **Notices.** Any notice, determination, consent, request or other communication from one party to the other or others or other documents required or which may be given under this Agreement may be delivered or transmitted by means of electronic communication with confirmation of transmission, personal service, facsimile with confirmation of transmission or by prepaid first class postage to the party at the addresses, in the case of the Processor at the address on the registration form completed by the Processor and in the case of OTS at the address noted at the top of page 1 of this Agreement, to the attention of the "Executive Director". Such notifications shall be deemed to have been received on the third day after posting and on the first day after the date of electronic or facsimile transmission, in each case which is not a Saturday, Sunday or public holiday in Ontario. In the event of a postal disruption, notices must be given by personal delivery, e-mail or by a signed back facsimile and all notices delivered by post within one week prior to the postal disruption must be confirmed by a signed back facsimile to be effective.
- 13.5 **Independent Contractors.** The Parties hereto are and shall at all times in the performance of this Agreement be independent contractors and neither Party shall have the authority to assume or create any obligations expressed or implied, in the name of the other Party, nor to contractually bind the other Party in any manner whatsoever.
- 13.6 **Amendment.** OTS retains the right to revise or amend this Agreement. OTS will give notice to the Processor of such change (the "**Change Notice**"). Unless the Processor gives notice to OTS (the "**Rejection Notice**") within 45 days of receipt of the Change Notice that the Processor does not accept the revisions or amendments in the Change Notice, this Agreement, as amended,

remains in effect and is binding. If the Processor gives a Rejection Notice to OTS, this Agreement shall be terminated 30 days after the delivery by the Processor of the Rejection Notice and the Approved Collection Site will forgo its approval status and not be compensated under the OTS program.

- 13.7 **Waiver.** No failure by any of the parties to insist on strict performance of any covenant, agreement, term or condition (the “**provision**”) of this Agreement, or to exercise any right or remedy consequent on the breach of any provision, and no acceptance of partial payment during the continuance of any such breach, shall constitute a waiver of any such breach or provision. No waiver of any breach shall affect or alter this Agreement, but each and every provision of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach of such provision.
- 13.8 **Severability.** If any provision of this Agreement or the application of the provision to any circumstances shall be held to be invalid or unenforceable, then the remaining provisions of this Agreement or the application of them to other circumstances shall not be affected by the invalidity or unenforceability and shall be valid and enforceable to the fullest extent permitted by law.
- 13.9 **Entire Agreement.** This Agreement constitutes the entire agreement among the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties. There are no warranties, representations or other agreements among the parties in connection with the subject matter of this Agreement, except as specifically set forth in it. Except as specifically provided herein, no supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the parties to be bound by it.
- 13.10 **Remedies.** No remedy herein conferred upon or reserved in favour of any party hereto shall exclude any other remedy herein or existing at law or in equity or by statute, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereinafter existing.
- 13.11 **Force Majeure.** Neither party shall be liable for delay or failure in performance resulting from acts beyond the control of such party, including but not limited to Acts of God, acts of war, riot, fire, flood or other disaster, acts of government, strike, lockout or communication line or power failure.
- 13.12 **Governing Law.** This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws in force in the Province of Ontario.
- 13.13 **Headings.** The headings used throughout this Agreement are solely for convenience of the parties and are not to be used as an aid in the interpretation of this Agreement.
- 13.14 **Time of Essence.** Time shall be of the essence of this Agreement and every part of it.
- 13.15 **Survival.** All provisions of this Agreement which are expressed or which by their nature are intended to survive termination of this Agreement shall survive termination, and continue to bind the parties.
- 13.16 **Electronic Commerce.** Any execution or amendment of this agreement which is conducted electronically by any of the parties is made in accordance with and governed by the *Electronic Commerce Act*, 2000, (Ontario). If this Agreement is executed on behalf of any party

| electronically, the natural person who selects the “Agree” button at the bottom of the “**Agreement Ratification**” page on [OTS’s](#) web site on behalf of the executing party certifies that by selecting the “Agree” button, the natural person represents and warrants that he or she is at least eighteen years of age, and has been duly appointed with the authority to bind the executing party.

[intentionally blank below this line]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date.

ONTARIO TIRE STEWARDSHIP

By: _____

Name

Title

I have authority to bind the Corporation

[PROCESSOR]

By: _____

Name

Title

I have authority to bind the Corporation

|