

COMMERCIAL IN CONFIDENCE

THIS AGREEMENT is made the day of

BETWEEN

TYRE STEWARDSHIP AUSTRALIA LIMITED (ABN 44 164 971 939) of 2/59 Keele Street, Collingwood, 3066, in the State of Victoria (**TSA**)

AND

CONTRACTING PARTY as identified in Item 1 of Schedule 1 (**Contracting Party**).

RECITALS

- A. TSA has been established to operate a scheme which aims to:
- (a) increase resource recovery and recycling and minimise the environmental, health and safety impacts of end-of-life tyres generated in Australia; and
 - (b) develop Australia's tyre recycling industry and markets for tyre derived products, (**Scheme**).
- B. The Scheme has been authorised by the Australian Competition and Consumer Commission (**ACCC**).
- C. TSA wishes to provide funds to selected organisations in order to establish projects to further the objects of the Scheme.
- D. TSA and the Contracting Party have agreed that TSA will provide funds to the Contracting Party to support the Project on the terms and conditions of this Agreement.

IT IS AGREED

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, the following definitions will apply except where the context otherwise requires:

Agreement means this agreement (including the Recitals, the Schedules and the Annexures) and any amendment made to it in accordance with clause 21.4.

Australian Derived Crumb means tyre crumb which is derived solely from tyres which reached their end of life in Australia.

Business Day means a day on which trading banks are open for business in Melbourne, Victoria other than a Saturday or a Sunday or a public holiday.

Commencement Date means the date specified in Item 2 of Schedule 1.

Confidential Information means any information (in any form or media) relating to the Project or this Agreement disclosed by one Party to another and which the disclosing Party identifies as confidential or that is by its nature confidential, including Project Material and the terms of this Agreement, financial and other commercially valuable information and

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information relating to the disclosing Party's IPRs, but does not include information which is:

- (a) in the public domain prior to disclosure or becomes part of the public domain subsequent to disclosure other than as a result of a breach of the receiving Party's obligations to the disclosing Party;
- (b) received by the receiving Party from a third party without any obligation to hold in confidence and which has not been obtained by that third party directly or indirectly from the receiving Party; or
- (c) independently developed by an employee or officer of the receiving Party while having no knowledge of the disclosing Party's Confidential Information.

Contracting Party means the Party specified in Item 1 of Schedule 1.

Deliverables means:

- (a) the deliverables that the Contracting Party is required to provide to TSA, as set out in Schedule 2; and
- (b) all reports that the Contracting Party is required to provide to TSA under this Agreement (including under clause 8).

Funding or **Funds** means the amounts as specified in Schedule 2, being payable by TSA to the Contracting Party under this Agreement and which includes all the Instalments.

GST has the meaning as given in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Instalment means the portion of the Funds to be paid to the Contracting Party upon the achievement of a Milestone as set out in Schedule 2.

Insolvency Event means, in relation to a body corporate, a liquidation or winding up or the appointment of a voluntary administrator, receiver, manager or similar insolvency administrator to that body corporate or any substantial part of its assets; in relation to an individual or partnership, the act of bankruptcy, or entering into a scheme or arrangement with creditors; in relation to a trust, the making of an application or order in any court for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court under its control; or the occurrence of any event that has substantially the same effect to any of the preceding events.

Intellectual Property Rights or **IPRs** means all and any intellectual and industrial property rights anywhere in the world, including but not limited to the rights comprised in any trade marks, patents, design, eligible layouts, plant breeders rights, copyrights, confidential information, know-how and all other similar rights whether at common law or conferred by statute, rights to apply for registration under a statute in respect of those or like rights and rights to protect trade secrets and know how, throughout the world for the full period of the rights and all renewals and extension.

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Loss means all costs (including legal costs and expenses on a solicitor and own client basis), fees, expenses, losses, damages, charges, taxes, outgoings, claims, liabilities, causes of action, proceedings, awards and judgments.

Milestone means the Deliverables set out in Schedule 2 which are to be achieved by the relevant Milestone Date.

Milestone Date means the date on which any Milestone is to be achieved as set out in Schedule 2 as may be varied pursuant to clause 4.3(a).

Parties means the parties to this Agreement, their respective successors and permitted assigns, and “**Party**” means either one of them.

Project means the program of activities to be carried out by the Contracting Party as set out in the Proposal.

Project Life means the period during which the Project is to be carried out and Funds provided to the Contracting Party as specified in Item 3 of Schedule 1.

Project Material means material, in whatever form, including personal property, information, software (including source code and object code), firmware, documents, designs, plans, products, equipment, information, data, concepts, inventions, processes, formulae, know-how, graphic layouts, images, reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, which is created, produced, discovered or comes into existence under or otherwise in connection with, for the purpose of, or as a result of undertaking the Project and includes any Deliverable.

Project Material IP means the Intellectual Property Rights in any and all Project Material.

Proposal means the Contracting Party’s submission to TSA for funding for the Project along with any amendments agreed by the Parties and attached to this Agreement as **Annexure A**.

Records means the books of accounts and records to be kept and maintained in accordance with clause 13.2.

1.2 In this Agreement, unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) a reference to a clause, Schedules, Annexures or Recital is a reference, respectively, to a clause of, schedule to, annexure to or recital of this Agreement;
- (c) a reference to a statute or regulation includes an amendment or re-enactment to that legislation and includes subordinate legislation in force under it;
- (d) a reference to dollars or \$ is to an amount in Australian currency;
- (e) the singular includes the plural and vice versa;
- (f) a reference to a gender includes reference to every gender;

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- (g) a provision of this Agreement will not be interpreted against a Party just because that Party prepared the provision; and
- (h) the rights, obligations, representations, warranties and indemnities of a Party are given, undertaken, made or offered (as the case may be) jointly and separately by each of the parties who together constitute that Party under this Agreement and each of the rights, obligations, representations, warranties and indemnities of that Party is to be read accordingly.

2. ENTIRE AGREEMENT & PRIORITY

- 2.1 This Agreement, including the Schedules and Annexures constitutes the entire agreement between the Parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the Parties with respect to the subject matter of this Agreement.
- 2.2 If any part of this Agreement is inconsistent with any other part, the following order of precedence shall apply to the extent of the inconsistency:
 - (a) the terms and conditions contained in the clauses in the body of the Agreement;
 - (b) Schedule 1 (Details);
 - (c) Schedule 2 (Funding);
 - (d) Schedule 3 (Budget); and
 - (e) Annexure A (Proposal).

3. TERM

This Agreement will commence on the Commencement Date and will remain in force until the earliest of the following:

- (a) the Project Life expires;
- (b) the Parties agree by written agreement to terminate this Agreement; or
- (c) this Agreement is terminated pursuant to clause 18.

4. PAYMENT OF FUNDING

- 4.1 Subject to the other terms of this Agreement (including clause 4.2), TSA shall pay the Funds to the Contracting Party by paying each Instalment to the Contracting Party on the Milestone Date for that Instalment if the Contracting Party has achieved the relevant Milestone for that Instalment by the relevant Milestone Date.
- 4.2 The payment of Funds to the Contracting Party is subject to the following continuing conditions:
 - (a) that the Contracting Party:

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- (i) achieves, to TSA's satisfaction, any Milestone which is linked to the payment of a specific Instalment by the relevant Milestone Date;
 - (ii) submits a GST compliant tax invoice to TSA within 30 days from completion of the relevant Milestone, which is for the relevant Instalment to be paid by TSA in respect of the achievement of that Milestone as set out in Schedule 2; and
 - (iii) spends or otherwise applies all Funds in accordance with Schedule 3 and in accordance with the requirements of this Agreement; and
 - (b) that all information contained in the Proposal and all reports required to be provided by the Contracting Party under this Agreement are complete, accurate and not misleading as and when these are provided to TSA.
- 4.3 Without limitation to the rights of termination specified in clause 18, if the Contracting Party does not meet a condition specified in clause 4.2, TSA may, by notice in writing to the Contracting Party, do any or all of the following:
- (a) waive that condition or extend the date for the achievement of that condition (including any Milestone Date);
 - (b) not pay the Contracting Party any further Funds, excluding payments due prior to the date of non-compliance, until the condition has been met;
 - (c) recover all or some of the Funds paid under this Agreement as reasonably associated with the failure to meet the specified condition; and
 - (d) vary the amount of Funding by an amount reasonably associated with the failure to meet the specified condition.
- 4.4 The Contracting Party must pay to TSA the amount specified in any notice received under clause 4.3(c), within 30 days of the date of that notice.
- ### 5. USE OF FUNDING
- 5.1 The Contracting Party must only use the Funds towards the conduct of the Project in accordance with the budget specified in Schedule 3 (**Budget**).
- 5.2 Subject to clause 5.3, the Budget may not be amended without the prior written agreement of TSA.
- 5.3 The Contracting Party may reallocate the spending of Funding as between each head of expenditure specified in the Budget, provided that:
- (a) the Contracting Party may not vary the allocation of Funding under a head of expenditure by more than ten percent (10%); and
 - (b) the Contracting Party immediately provides TSA with written notice of each proposed reallocation of Funding.
- 5.4 Without limiting clause 5.1, the Contracting Party must not use the Funding:

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- (a) for items, goods, services or activities which do not directly support, or form part of, the Project; or
- (b) to fund any activities as part of the Project for which other third party financial assistance is provided and which is not disclosed in the Proposal or the Budget.

6. PROJECT

6.1 The Contracting Party must ensure that:

- (a) the Project is conducted in accordance with the Proposal;
- (b) the Project is conducted in accordance with any agreed timeframes;
- (c) each Milestone is achieved by the relevant Milestone Date;
- (d) the Project is carried out in accordance with this Agreement in a diligent and effective manner, to a high professional standard;
- (e) all persons who undertake work in respect of the Project have appropriate qualifications, skills and experience;
- (f) the Project is conducted in accordance with all applicable laws, regulations and industry standards;
- (g) it keeps TSA regularly informed of all matters relevant to the Project; and
- (h) it complies with any reasonable direction from TSA.

7. USE OF TYRE CRUMB

- (a) During the Project Life if tyre crumb is required to be used in connection with the Project the Contracting Party must only use Australian Derived Crumb.
- (b) Subject to clause 7(a), the Parties acknowledge that it is TSA's preference for the Contracting Party to utilise Australian Derived Crumb which is acquired from a person who is an accredited agent of TSA.

8. REPORTING

8.1 The Contracting Party must, during the Project Life:

- (a) provide to TSA reports in respect of the achievement and progress of the Milestones at the times specified in Schedule 2 and in the format reasonably specified by TSA;
- (b) procure its personnel to be available on reasonable notice to meet with TSA representatives to discuss the progress of the Project; and
- (c) if there has been a delay in meeting a Milestone of 30 days or more and if requested by TSA, provide TSA with progress reports in respect of the Milestone every 2 weeks until TSA advises otherwise.

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- 8.2 Without limiting any other rights of TSA under this Agreement, if TSA notifies the Contracting Party within 10 Business Days from receiving a report under clause 8.1 that it does not accept the report, then TSA may:
- (a) require the Contracting Party to submit a revised report which address any issues, questions or concerns identified by TSA;
 - (b) require the Contracting Party to provide additional information;
 - (c) require an audit as per clause 13.3; and/or
 - (d) immediately terminate the Agreement by providing written notice to the Contracting Party.
- 8.3 Without limiting its other obligations under this Agreement, the Contracting Party must upon written request from TSA, provide TSA with any other reports or information which TSA may require as soon as possible after receipt of the request from TSA (including how the Funds provided by TSA have been used and the amount of Australian Derived Crumb used in connection with the Project).
- 8.4 The Contracting Party will prepare all reports and written material in a format suitable for publication by TSA and agrees that the confidentiality provisions in clause 10 shall not apply to any use or disclosure of a report by TSA unless:
- (a) the relevant Confidential Information in the report is identified in accordance with clause 10.4; and
 - (b) TSA, acting reasonably, believes that disclosure of the Confidential Information will have a material adverse impact on the Contracting Party.

9. INTELLECTUAL PROPERTY

- 9.1 Unless the Parties otherwise agree in writing, all Project Material IP vests in, exclusively belongs to and is irrevocably assigned to the Party that created, produced or discovered the Project Material IP immediately upon creation, production or discovery.
- 9.2 The Contracting Party grants to TSA a perpetual, irrevocable, royalty-free, non-exclusive licence including the right to sub-license such rights (including under any form of creative commons licence (available at creativecommons.org.au) that TSA considers appropriate) to use, reproduce, modify, adapt and further develop all Project Material IP to the extent necessary for TSA:
- (a) to publish any findings from the Project;
 - (b) to use, reproduce and publish any information or content contained in the Proposal and Deliverables (including any reports provided to TSA under clause 8);
 - (c) to promote the Project, Scheme or TSA;
 - (d) to comply with its obligations under this Agreement;
 - (e) to comply with any applicable law or regulations; and

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- (f) to comply with any conditions imposed on the Scheme, comply with a request from the ACCC or other government authority, or to ensure that the Scheme continues to be authorised by the ACCC.
- 9.3 If the Deliverables or the Proposal contain IPRs belonging to a third party the Contracting Party must ensure that it has in place and has obtained from the third party all necessary copyright permissions, licences and approvals to allow TSA to deal with the Deliverables and Proposal in accordance with its rights under this clause.
- 10. CONFIDENTIALITY**
- 10.1 Subject to clause 10.2, each Party agrees not to:
- (a) disclose any Confidential Information of the other Party; or
 - (b) use any Confidential Information of the other Party other than for the purposes of the Project or this Agreement,
- without the other Party's prior written consent.
- 10.2 A Party may disclose Confidential Information of the other Party:
- (a) to its officers, employees, agents, external professional advisers or contractors solely to the extent necessary to comply with obligations, or to exercise rights, under this Agreement on the condition that:
 - (i) the Party has made the relevant persons fully aware of the confidential nature of the Confidential Information; and
 - (ii) if requested by the other Party, the Party ensures that the officers, employees, agents, external professional advisers or contractors sign a confidentiality deed or undertaking in a form approved by the other Party; or
 - (b) as and to the extent required by any applicable law, a lawful requirement of any government or governmental body, authority, regulations of a securities exchange or an express provision of this Agreement.
- 10.3 Each Party must:
- (a) take all reasonable proper and effective precautions to maintain the confidential nature of the Confidential Information of the other Party; and
 - (b) immediately notify the other Party of any potential, suspected or actual unauthorised access, disclosure, copying or use or breach of this clause 10.
- 10.4 The Contracting Party is responsible for ensuring that each report provided to TSA under this Agreement specifically identifies any information contained in the report which the Contracting Party considers to be Confidential Information and must disclose such Confidential Information in a separate schedule to that report.
- 10.5 Subject to clause 8.4, in respect of any information which is contained in a report provided to TSA under this Agreement, TSA will only have to comply with its obligations in clause

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10.1 in respect of that information to the extent that information is specifically identified as Confidential Information in accordance with clause 10.4.

11. PUBLICITY

- 11.1 The Contracting Party must obtain written approval from TSA prior to the release of any information concerning the Project, the Parties, or the Agreement and TSA may, as part of any approval, require that the release acknowledge the funding provided by TSA.
- 11.2 The Contracting Party must not, and must ensure that its employees, agents, officers and subcontractors do not, engage in any conduct or activity which does, or may, bring into disrepute or otherwise damage the brand, reputation or image of the Contracting Party, TSA, any member of TSA, the Project or any employee, agent, officer or subcontractor of TSA or the Contracting Party.
- 11.3 TSA may withdraw its permission for the Contracting Party to use its name and logo at any time, in its absolute discretion, and the Contracting Party must cease all use of TSA's name and logo immediately upon such notice. TSA's instructions to the Contracting Party to discontinue using its name and logo must be complied with immediately upon notice by TSA.
- 11.4 This clause survives the expiration or earlier termination of this Agreement for a period of five years from the date of such expiration or earlier termination.

12. CONFLICT

- 12.1 If the Contracting Party becomes aware of any matter or thing which has the potential to influence, or appear to influence, the activities, publications and media reports, or requests for funding related to the Project (**Conflict of Interest**), then the Contracting Party must:
- (a) notify TSA immediately of the nature and details of the Conflict of Interest; and
 - (b) have established processes in place for managing the actual or potential Conflict of Interest for the duration of the Project.
- 12.2 If the Contracting Party fails to comply with clause 12.1, TSA may terminate this Agreement by providing written notice to the Contracting Party.

13. RECORDS AND AUDIT

- 13.1 If at any time, in the opinion of the Contracting Party or TSA, the Funding is not being expended in accordance with this Agreement, the Contracting Party must take all action necessary to minimise further expenditure of the Funding and inform TSA immediately.
- 13.2 The Contracting Party must:
- (a) keep accurate books of account and records of all transactions and matters relating to the Project and other subject matter and terms of this Agreement including without limitation sufficient detail to enable:
 - (i) all receipts and payments related to the Project to be identified and reported in accordance with this Agreement, including the expenditure of any Funding and acquisition and use of Australian Derived Crumb; and

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- (ii) the amounts payable by TSA to the Contracting Party under this Agreement (including all Funding) to be determined; and
 - (b) retain for a period of 7 years from the termination or expiration of this Agreement all books and records relating to this Agreement and the Project (including those required to be kept in accordance with clause 13.2(a)).
- 13.3 During the Project Life and at any time up to 7 years from the date of termination or expiration of this Agreement, the Contracting Party must permit TSA and its representatives, upon reasonable notice, to enter any premises at which the Contracting Party carries on business or at which the Records are stored to inspect and make extracts from or copies of the Records and all other documents and material relating to the subject matter and terms of this Agreement to audit and ensure that the terms of this Agreement are being, or were, met and that reports submitted to TSA are an accurate statement of compliance by the Contracting Party and are not misleading. Persons nominated to conduct these reviews or audits are to be given full access by the Contracting Party, if required, to all accounts, records, documents, persons and premises in relation to the Project and the Funding and the administration of the Funds in general.
- 13.4 The Contracting Party must, upon notice from TSA, grant the same rights of inspection granted to TSA under clause 13.3 to any government authority or regulatory body (including without limitation the ACCC), for the purpose of that authority or body performing or exercising any of its functions or powers.
- 13.5 The requirement for, and participation in, audits does not in any way reduce the Contracting Party's responsibility to perform its obligations in accordance with this Agreement.

14. WARRANTIES AND INDEMNITY

- 14.1 The Contracting Party warrants to TSA that:
- (a) it has the necessary experience, skill, knowledge, expertise and competence to undertake its obligations under this Agreement;
 - (b) it is the legal and beneficial owner of, or is entitled to use (or will on creation own or be entitled to use) the Project Material IP which is licensed to TSA under clause 9.2;
 - (c) it has obtained all necessary consents, licences, permits and approvals needed to undertake the Project;
 - (d) it will ensure that the Project is not interfered with, delayed or hindered by any other work or activities which the Contracting Party may be doing;
 - (e) it has made full and adequate allowance in the Funding for the costs of:
 - (i) all matters and things necessary for undertaking all activities in respect of the Project and completion of the Project in accordance with this Agreement; and

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- (ii) complying with all of the Contracting Party's obligations under this Agreement.
- 14.2 Each Party acknowledges that the other Party has not made, and does not make, any representation or warranty, express or implied, about the subject matter of this Agreement, except as expressly provided by the written terms of this Agreement.
- 14.3 Where any statute implies in this Agreement any term, and that statute voids or prohibits provisions under a contract which exclude or modify the operation of such term, such term is deemed to be included in this Agreement. However, a Party's liability for breach of such term will be, if permitted by law, limited (at the option of the Party not in breach) to the resupply of the relevant services or the payment of the cost of resupplying the relevant services.
- 14.4 The Contracting Party will carry out the Project and use any of its Intellectual Property Rights at its own risk.
- 14.5 The Contracting Party will indemnify TSA, its officers, employees and agents against any Loss where such Loss was caused by:
 - (a) a wilful, unlawful or negligent act or omission of the Contracting Party, its employees, agents or subcontractors in connection with this Agreement;
 - (b) a claim by a third party that any Project Material (including any Project Material in the possession of, or used by, TSA) infringes that third party's Intellectual Property Rights;
 - (c) a breach of this Agreement by the Contracting Party;
 - (d) loss of, or damage to, any real or personal property owned, leased, licensed or controlled TSA, or any real or personal property of any third party, caused by arising out of or in connection with this Agreement or any activity for which the Contracting Party is directly or indirectly responsible; or
 - (e) personal injury (which includes illness) or death of any person caused by, arising out of, or in connection with this Agreement and for which the Contracting Party is directly or indirectly responsible.
- 14.6 The Contracting Party's liability to indemnify TSA under clause 14.5 shall be reduced proportionally to the extent that any act or omission of TSA or its employees or agents contributed to the Loss and provided always that TSA takes all appropriate action to mitigate any Loss and prevent additional costs being incurred.
- 14.7 Nothing herein shall cause either Party to be liable to the other Party for any special, consequential, incidental or indirect damages, loss of profits, revenue, goodwill or opportunities in contract, tort, under any statute or otherwise arising under or pursuant to this Agreement.

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15. INSURANCE

- 15.1 The Contracting Party must effect and maintain adequate insurance or similar coverage to cover all reasonably insurable liabilities arising as a result of undertaking the Project, including without limitation:
- (a) workers' compensation insurance for the maximum amount required by the relevant State (being any 'State' in which any part of the Project is carried out, not merely the State of Victoria) or Territory legislation which covers any employees of the Contracting Party involved in the Project;
 - (b) public liability insurance for \$10,000,000 or more per claim which relates in any way to the Project; and
 - (c) professional liability insurance for \$10,000,000 or more per claim to cover loss or damage to property which relates in any way to the Project, including insurance covering the sites at which the Project is undertaken,
- and will, if requested, provide TSA with a copy of the relevant certificates of currency.
- 15.2 The Contracting Party must comply with the terms of the insurance policies required to be maintained under clause 15.1, and the Contracting Party must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the insurance policies.
- 15.3 The Contracting Party must maintain the insurances specified in clauses 15.1(b) and 15.1(c) during the Project Life and for a run off period of 6 years thereafter.

16. COMPLIANCE WITH LAW AND OHS POLICY

- 16.1 The Contracting Party must in carrying out this Agreement and the Project comply with the provisions of any relevant statutes, regulations, by-laws, and requirements of any Commonwealth, State (being any 'State' in which any part of the Project is carried out, not merely the State of Victoria), Territory or local authority, including but not limited to any laws relating to workplace relations, equal opportunity, workers compensation and occupational health and safety.
- 16.2 TSA takes the safety and welfare of its personnel seriously. A copy of TSA's occupational health and safety policy is available on request. The Contracting Party warrants to TSA that it has and will adhere to in the course of the Project a comprehensive occupational health and safety policy. The Contracting Party is responsible for educating its own personnel regarding its occupational health and safety policy and for ensuring that its personnel comply with such policy.

17. RESOLUTION OF DISPUTES

- 17.1 If a dispute or difference arises between the Parties as to the construction of this Agreement or as to any matter or thing of whatever nature arising under or in connection with this Agreement (**Dispute**), the Parties agree to negotiate in good faith on a confidential basis to resolve the Dispute and will refer resolution of the Dispute to their chief executive officers, equivalent thereof or their nominees.

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- 17.2 If the Dispute has not been resolved by negotiation under clause 17.1 within thirty (30) days of the date upon which notice of the Dispute is given by a Party then either Party may refer the Dispute to mediation and will do so before initiating proceedings in a court to resolve the Dispute.
- 17.3 A Dispute which is referred to mediation will be referred to the Australian Disputes Centre Limited (**ADC**) and be conducted in Melbourne in accordance with the ADC Guidelines for Commercial Mediation on a confidential basis.
- 17.4 The mediator may fix the costs for mediation which must be paid equally by the Parties.
- 17.5 If the dispute is settled, all Parties to the dispute must sign the terms of agreement and these terms are binding on the Parties.
- 17.6 The mediation is confidential and statements made by the mediator or the Parties and discussions between the Parties to the mediation before after or during the mediation, cannot be used in the legal proceedings.
- 17.7 If the Dispute has not been resolved within sixty (60) days of referral to ADC under clause 17.2 then the Parties may refer the Dispute to an agreed arbitration, however if none has been agreed either Party is free to initiate proceedings in a court.
- 17.8 Nothing in this clause will prevent a Party from seeking urgent interlocutory relief through courts of appropriate jurisdiction.

18. TERMINATION

- 18.1 TSA may terminate this Agreement without default in accordance with clause 2.2, 8.2(d) or 12.2.
- 18.2 TSA may immediately terminate this Agreement by notice in writing to the Contracting Party if:
- (a) TSA reasonably considers there is fraud, misleading or deceptive conduct on the part of the Contracting Party in connection with the Project or this Agreement;
 - (b) the Contracting Party commits any breach of this Agreement that TSA, acting reasonably, considers is capable of remedy, and has failed to rectify that breach within 30 days of receiving an earlier notice from TSA requiring the breach to be remedied;
 - (c) the Contracting Party commits any material breach of this Agreement which TSA, acting reasonably, considers is not capable of remedy; or
 - (d) the Contracting Party is subject to an Insolvency Event
- 18.3 The Contracting Party may immediately terminate this Agreement by notice in writing to TSA:
- (a) if TSA commits any breach of this Agreement and has failed to rectify that breach within 30 days of receiving an earlier notice from the Contracting Party requiring the breach to be remedied; or

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- (b) TSA is subject to an Insolvency Event.
- 18.4 On the expiry or termination of this Agreement:
- (a) the Contracting Party must immediately take reasonable steps to stop any further expenditure of Funding;
 - (b) the Contracting Party must provide all reports required by this Agreement for work conducted to the date of termination or expiry (or reduced reporting as otherwise notified by TSA), within the timeframes specified in this Agreement (or as otherwise reasonably notified by TSA); and
 - (c) subject to clause 18.6, TSA will immediately cease and will not be responsible for payment of any further Funding under this Agreement and may recover from the Contracting Party (by notice in writing) any:
 - (i) unspent Funds (provided that such unspent Funds are not legally committed, as at the date of termination); and
 - (ii) Funds not spent in accordance with this Agreement.
- 18.5 Any amount notified to the Contracting Party as payable under clause 18.4(c) is a debt due to TSA (without further proof of the debt being necessary), payable within 30 days of the date of the notice from TSA.
- 18.6 Subject to clause 18.7, if this Agreement is terminated TSA is liable to the Contracting Party only for:
- (a) payments for any unpaid work actually performed up to the date of termination; and
 - (b) payment for Funds which are legally committed for expenditure by the Contracting Party in accordance with this Agreement and payable by the Contracting Party as a current liability as a direct result of termination (written evidence of which will be required).
- 18.7 The Contracting Party acknowledges and agrees that TSA is not liable to pay compensation under clause 18.6 for an amount which would, in addition to any amounts paid or due, or becoming due, to the Contracting Party under this Agreement, exceed the total Funds payable under this Agreement.
- 18.8 The termination or expiry of this Agreement does not operate to terminate any rights or obligations under this Agreement that by their nature are intended to survive termination or expiration, and those rights or obligations remain in full force and binding on the Party concerned including without limitation the rights and obligations under clauses 7(a), 8.2, 8.3, 8.4 9, 10, 11 13, 14, 15, 17, 18, 19, 20 and 21.
- 19. NOTICES**
- 19.1 Any notice, consent, approval, waiver, demand or other communication in connection with this Agreement must be in writing and signed by the sender or a person authorised by the sender.

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- 19.2 A notice may be given if delivered or sent by prepaid post or electronic communication to the attention of the contact person and to the details specified in Item 4 of Schedule 1.
- 19.3 Either Party may change its nominated contact person or details for the purposes of this Agreement by giving notice of such change to the other Party.
- 19.4 Any notice or other communication will be deemed to have been received by the Party to which it was sent:
- (a) in the case of hand delivery, upon the date of such delivery;
 - (b) in the case of prepaid post within Australia, on the third Business Day following the date of dispatch;
 - (c) in the case of prepaid post to or from an address outside Australia, on the tenth Business Day following the date of dispatch; or
 - (d) in the case of electronic communication, when the sender receives an automated message confirming delivery or eight hours after the message has been sent (as recorded on the device from which the sender sent the message) unless the sender receives an automated message that the electronic message was not delivered or the sender knows or reasonably should know that there is a network failure and accordingly knows or suspects that the electronic message was not delivered,

unless a notice is received after 5.00 pm on a Business Day in the place of receipt or at any time on a non Business Day, in which case, that notice is deemed to have been received at 9.00 am on the next Business Day.

20. GST

- 20.1 Words and expressions used in this clause which are defined in the GST Act have the same meanings given to them in the GST Act.
- 20.2 The consideration for any supply made under or in connection with this Agreement does not include an amount for GST, unless it is expressly stated in this Agreement to be inclusive of GST.
- 20.3 If GST is or becomes payable on any supply made under or in connection with this Agreement (not being a supply for which the consideration is expressly stated in this Agreement to be inclusive of GST), the Party required to provide the consideration for the supply must pay, in addition to and at the same time as the consideration is provided, an amount equal to the amount of GST on the supply.
- 20.4 If the amount for GST recovered by a Party under clause 20.3 differs from the amount of GST payable by the Party or its representative member on the supply, the amount of the difference must be paid to or refunded by the Party (as the case requires).
- 20.5 If a Party is required under this Agreement to reimburse or indemnify another Party for any amount incurred by the other Party, the amount to be reimbursed or paid by the Party will be the amount incurred reduced by an amount equal to any input tax credit that the other Party or its representative member is entitled to claim for the amount incurred and increased by the amount of any GST payable in respect of the reimbursement or payment.

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20.6 A Party is not obliged under this Agreement to pay an amount for GST on a taxable supply until the Party making the taxable supply provides a tax invoice for the supply.

20.7 The rights and obligations of the Parties under this clause 20 do not merge on completion or termination of this Agreement.

21. GENERAL

21.1 Governing Law

(a) This Agreement is governed by and is to be construed in accordance with the law in force in the State of Victoria, Australia.

(b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

21.2 Severability

Any illegal or invalid provision of this Agreement will be severable and all other provisions will remain in full force and effect.

21.3 Waiver

Any failure by a Party to compel performance by the other Party of any of the terms or conditions of this Agreement will not constitute a waiver of those terms or conditions, nor will it affect or impair the right to enforce those rights at a later time or to pursue remedies for any breach of those terms or conditions. A waiver of any right under this Agreement will be in writing.

21.4 Amendment

Except as expressly provided for in this Agreement, this Agreement may only be amended by a written instrument signed by each of TSA and the Contracting Party.

21.5 Entire Agreement

This Agreement contains the whole of the agreement between TSA and the Contracting Party with respect to its subject matter and supersedes any and all other representations or statements by either Party whether oral or in writing and whether made prior or subsequent to the date of this Agreement.

21.6 Relationship

Each Party enters this Agreement as an independent contractor and nothing in this Agreement will create any other relationship between them.

21.7 Force Majeure

A Party will not be liable for any failure to carry out its obligations under this Agreement where such failure is due to any cause beyond the reasonable control of that Party.

21.8 Assignment

A Party will not assign its rights under this Agreement without the prior written consent of the other Party.

21.9 Further Assurance

Each Party agrees to do all acts, including the signing of documentation, necessary or desirable to give effect to this Agreement.

21.10 No Authority

Neither Party may enter into any agreement or incur any liabilities on behalf of the other Party without that other Party's prior written consent and may not represent to any person that it has any authority to do so.

21.11 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts executed separately when taken together constitute one agreement and counterparts executed separately may be consolidated into a single document.

21.12 Costs and Expenses

Each Party will bear its own costs and expenses in relation to the negotiation, preparation, execution, delivery and completion of this Agreement and any other related documentation.

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EXECUTED BY THE PARTIES AS AN AGREEMENT

EXECUTED by TYRE
STEWARDSHIP

)
AUSTRALIA LIMITED in
accordance with section 127 of the
Corporations Act 2001 (Cth) by
being signed by the following
officers:

Signature of director	Signature of director/company secretary	Signature of witness
Name of director <i>(please print)</i>	Name of director/company secretary <i>(please print)</i>	Name of witness <i>(please print)</i>
Date	Date	Date

EXECUTED by Upper Hunter Shire
Council by being signed by the following
persons:

Signature of director	Signature of authorised representative
Name of director <i>(please print)</i>	Name of authorised representative <i>(please print)</i>
Date	Date

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SCHEDULE 1 – DETAILS

Item number	Item title	Item details
1.	Contracting Party:	[#insert]
2.	Commencement Date:	[#insert]
3.	Project Life:	[#insert life of project] from the Commencement Date.
4.	Notices:	<p>Tyre Stewardship Australia Ltd Att: Tammie Miller Address: 2/59 Keele Street, Collingwood Victoria 3066 Tel: 0491 272 805 Email: tammie.miller@tyrestewardship.org.au</p> <p>Contracting Party[#insert] Att: [#insert] Address: [#insert] Tel: [#insert] Email: [#insert]</p>

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SCHEDULE 3 - Budget

ANNEXURE A – PROPOSAL

As per proposal submitted

To be inserted