



# SERVICES CONTRACT

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Cassowary Coast Regional Council  
For Services at Innisfail Pound

**PARTIES:**

**Cassowary Coast Regional Council** ABN 20 889 787 211 of 70 Rankin Street, Innisfail in the State of Queensland.

(Principal)

[Insert Supplier's Name] ACN [Insert ACN] of [Insert Supplier's address].

(Supplier)

**BACKGROUND:**

The Parties wish to enter into this Contract to record the terms on which the Supplier will provide the Services to the Principal during the Term.

**THE PARTIES AGREE:****1. REFERENCE SCHEDULE**

Item		Details
1.	Term (Clause 5)	(a) Start Date:
		(b) End Date:
2.	Principal's Representative (Clause 7)	(a) Name:
		(b) Address:
		(c) Telephone:
		(d) Email:
3.	Supplier's Representative (Clause 8)	(a) Name:
		(b) Address:
		(c) Telephone:
		(d) Email:
4.	Invoices:(Clause 15)	(a) Invoices submitted on:
		(b) Invoices emailed to:
5.	The Supplier must effect the following insurances: (Clause 19)	<div><input checked="" type="checkbox"/> Public and product liability insurance of at least \$20,000,000 for any one occurrence and for an unlimited number of claims</div> <div><input type="checkbox"/> Professional indemnity insurance of at least \$5,000,000 in respect of any one occurrence and for an unlimited number of claims</div> <div><input type="checkbox"/> Third party and comprehensive motor vehicle insurance for each vehicle used by the Supplier in performing its obligations</div> <div><input type="checkbox"/> Plant and equipment insurance for each item of plant for the full replacement value of the plant</div> <div><input checked="" type="checkbox"/> Workers' compensation insurance in respect of the Supplier's Personnel as required by law</div>

**2 DEFINITIONS**

2.1 In this Contract, unless inconsistent with the context or subject matter:

- (a) **Business Day** means a day that is not a Saturday, Sunday or a public holiday in the place where the Services are to be performed;
- (b) **Claim** includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including under the Contract or at law or in equity;

- (c) **Confidential Information** means the Contract and any information provided by one party (**Discloser**) to the other (**Disclosee**), or which comes to the knowledge of a party in connection with the Contract which is identified as or is by its nature confidential, but does not include information which is in the public domain other than through a breach of **clause 20**;
- (d) **End Date** subject to **clause 5.2**, means the date described as such in the Reference Schedule;
- (e) **Exceptional Circumstances** means disclosure:
  - (i) for the purpose of complying with the Disclosee's obligations in connection with the Contract;
  - (ii) with the Discloser's prior written consent;
  - (iii) to a professional adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential and to whom it is necessary to disclose the information;
  - (iv) to the extent necessary to comply with the law, a court order or a party's reasonable corporate governance or insurance requirements;
  - (v) to any of its Personnel who are bound to keep the information confidential and to whom it is necessary to disclose the information;
  - (vi) to the extent necessary to enforce its rights or defend a Claim in connection with the Contract;
  - (vii) by the Principal to properly discharge its functions as a local government authority.
- (f) **Force Majeure** means:
  - (i) an act of God, earthquake, lightning, cyclone, tsunami, flooding, fire, explosion, landslide, drought or meteor, but excluding any other weather conditions regardless of severity;
  - (ii) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
  - (iii) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
  - (iv) health direction or order issued by the State or Federal government in response to a pandemic.
- (g) **Good Industry Practice** means the standard of skill, care and diligence and the practices, methods, techniques and acts of a skilled and competent supplier engaged in the business of providing services similar to the Services;
- (h) **GST** means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST;
- (i) **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and/or associated Commonwealth legislation, regulations and publicly available rulings;
- (j) **Insolvency Event** in respect of a party, means the party:
  - (i) becomes insolvent or bankrupt, or being a company goes into liquidation, or being an incorporated association is deregistered
  - (ii) enters into a debt agreement, a deed of assignment or a deed of arrangement under the *Bankruptcy Act 1966* (Cth), or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or
  - (iii) has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets;
- (k) **Personal Information** has the meaning given in the *Information Privacy Act 2009* (Qld);
- (l) **Personnel** includes the officers, employees, volunteers, agents, representatives, consultants, contractors and subcontractors of a party;
- (m) **Price** means the amount payable for the provision of Services as specified in **Schedule 1**;
- (n) **Principal's Representative** means the person identified in the Reference Schedule or otherwise notified to the Supplier pursuant to **clause 7**;
- (o) **Reference Schedule** means the schedule contained in **clause 1**;

- (p) **Services** means the services to be provided by the Supplier described in **Schedule 1** to this Contract;
- (q) **Site** means the site or sites made available by the Principal to the Supplier for the purpose of the Supplier carrying out its obligations under the Contract;
- (r) **Start Date** means the time stated in the Reference Schedule by which the Supplier is required to commence performing its obligations under the Contract;
- (s) **Supplier's Representative** means the person identified as the Supplier's representative in the Reference Schedule or as otherwise approved by the Principal pursuant to **clause 8**;
- (t) **Term** means the period determined in accordance with **clause 5**;
- (u) **WHS Legislation** means *Work Health and Safety Act 2011* (Qld) as amended or replaced from time to time together with the *Work Health and Safety Regulation 2011* (Qld) as amended or replaced from time to time.

### **3 CONTRACT**

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- 3.1 **(Final agreement)** The Contract constitutes the entire, final and concluded agreement between the parties as to its subject matter. It supersedes all prior representations, agreements, statements and understandings between the Supplier and the Principal (whether oral or in writing).

### **4. PERFORMANCE AND PAYMENT**

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- 4.1 **(Performance)** The Supplier must throughout the Term provide the Services and perform the Supplier's other obligations under the Contract, in accordance with the Contract and all directions of the Principal issued pursuant to it.
- 4.2 **(Payment)** Subject to the Contract, the Principal must pay the Supplier the Price for Services provided in accordance with the Contract.

### **5. TERM**

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- 5.1 **(Term)** Subject to **clause 5.2**, the Term shall commence on the Start Date and end on the End Date, unless the Contract is earlier terminated.
- 5.2 **(Extension of Term)** The Principal may by notice in writing to the Supplier at any time prior to the End Date, extend the End Date for a period of up to 12 months on the same terms as the Contract.

### **6. RELATIONSHIP OF THE PARTIES**

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- 6.1 **(Relationship)** The Supplier is an independent contractor of the Principal. The Contract does not create any partnership, joint venture or employment relationship.
- 6.2 **(No Representations)** The Supplier must not represent itself as being a manager, agent, partner, joint venturer, officer or employee of the Principal.

### **7. PRINCIPAL'S REPRESENTATIVE**

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- 7.1 **(The Principal's Representative)** The Principal's Representative is appointed as the Principal's agent to exercise any of the Principal's rights or functions under the Contract. The Principal may notify the Supplier of a change in the Principal's Representative at any time.
- 7.2 **(Rights and powers of the Principal's Representative)** The Principal's Representative may exercise any rights and powers granted to the Principal under this Contract. The Principal's Representative may give a direction in respect of any matter relating to this Contract.
- 7.3 **(Compliance)** The Supplier and its Personnel must comply with all directions given by the Principal's Representative.

## 8. SUPPLIER'S REPRESENTATIVE

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- 8.1 **(Supplier's Representative)** The Supplier's Representative is appointed by the Supplier to manage the Supplier's performance of the Contract.
- 8.2 **(Change)** The Supplier may seek the approval of the Principal to change the Supplier's Representative. The Principal may refuse to approve a replacement person if the Principal reasonably believes that the person is inappropriate to take the role of Supplier's Representative.

## 9. PRIMARY OBLIGATIONS, WARRANTIES AND REPRESENTATIONS

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- 9.1 **(Obligations, Warranties and Representations)** The Supplier:
- (a) warrants and represents that the Supplier and, to the extent applicable to them, its Personnel:
    - (i) have the experience, skills, expertise, resources and judgement;
    - (ii) hold all necessary competencies, licences, accreditations, qualifications, permits, clearances or other authorisations,which are required for the Supplier to comply with its obligations under the Contract and will maintain such competencies, licences, accreditations, qualifications, permits, clearances or other authorisations at all times until the Supplier's obligations under the Contract are at an end;
  - (b) must, and to the extent applicable to them must ensure that its Personnel, provide the Services and carry out the Supplier's other obligations in connection with the Contract in accordance with Good Industry Practice and so that the Services are suitable for the purpose stated in the Contract.

## 10. SUPPLIER'S PERSONNEL

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- 10.1 **(General)** The Supplier must ensure that its Personnel involved in the performance of the Services:
- (a) act, professionally and courteously in all dealings with the Principal, the Principal's Personnel and the general public in connection with the Contract;
  - (b) do not cause any unreasonable nuisance or interference to the owners, tenants or occupiers of properties on or adjacent to the Site or to the public generally;
  - (c) perform their allocated role competently, safely and in accordance with Good Industry Practice and where the role involves the operation of plant or equipment, in accordance with all manufacturer's recommendations; and
- 10.2 **(Police checks)** If requested the Supplier must obtain a national police certificate in respect of any of the Supplier's Personnel and must not permit those Personnel to perform any part of the Services or to have access to the Site until approved by the Principal.
- 10.3 **(Industrial relations)** The Supplier must promptly inform the Principal of any potential or actual industrial relations issues which could affect the Supplier's ability to comply with its obligations under the Contract.
- 10.4 **(Removal)** The Principal may at any time direct the Supplier to remove any of the Supplier's Personnel from the performance of the whole or part of the Supplier's obligations under the Contract if the Principal reasonably believes that the Supplier or the Supplier's Personnel are in breach of **clause 10.1**.

## 11. SUBCONTRACTING, ASSIGNMENT AND NOVATION

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- 11.1 **(By the Supplier)** The Supplier must not subcontract, assign or novate the whole or any part of its rights and/or obligations under the Contract unless it has first obtained the written consent of the Principal which consent may be withheld by the Principal in its absolute discretion.
- 11.2 **(By the Principal)** The Principal may contract, assign or novate the whole or any part of its obligations under the Contract in its absolute discretion and without obtaining the consent of the Supplier.

## 12. SITE

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- 12.1 **(Access for Supplier)** The Principal will give the Supplier sufficient access to the Site to carry out the Supplier's obligations under the Contract. The Principal may refuse to give such access until the Supplier has given the Principal:

- (a) evidence of insurance required by **clause 19**;
- (b) copies of all licences, accreditations, qualifications, permits, clearances or other authorisations which are required for the Supplier to comply with its obligations under the Contract;
- (c) any other documents or information which the Principal reasonably requires.

12.2 (**Site specific requirements**) The Supplier must comply with the requirements of the Principal in relation to the Supplier's access to or conduct on the Site including any Site induction training.

### 13. MEETINGS

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13.1 The Supplier must, at the times reasonably required by the Principal, meet and discuss the performance of the Supplier and/or any other matter concerning the Principal in connection with the Contract.

### 14. VARIATIONS

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14.1 (**Direction for Variation**) The Principal may at any time prior to the End Date and for any reason direct a variation by giving written notice to the Supplier. The Principal cannot direct a variation which is outside the general scope of the Contract.

14.2 (**Variation proposal**) The Principal may direct the Supplier to provide an estimate or quotation for a variation and/or a statement as to the impact of a variation on the Services.

14.3 (**No entitlement**) The Principal shall not be liable upon any Claim in connection with a direction for a variation, unless the Principal's Representative has expressly agreed to that variation in writing.

14.4 (**Variations requested by the Supplier**) The Principal may approve a request for a variation by the Supplier. Unless the Principal agrees otherwise in writing, a variation approved under this **clause 0** shall have no effect.

### 15. INVOICES AND PAYMENT

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15.1 (**Timing of invoices**) Subject to **clause 15.6**, the Supplier may submit invoices to the Principal for Services provided in accordance with the Contract at the times stated in the Reference Schedule.

15.2 (**Requirements of invoices**) Each invoice must comply with the GST Law and all other requirements which the Principal reasonably directs.

15.3 (**Due date for payment**) Subject to the Contract, the Principal shall pay the amount due to the Supplier (if any) including any applicable GST within 30 days of receipt of the Supplier's invoice.

15.4 (**Disputed Invoice**) If the Principal disputes an invoice issued by the Supplier:

- (a) the Principal will pay the undisputed portion of the invoice (if any) and dispute the balance; and
- (b) if the resolution of the dispute determines that the Principal must pay any additional amount to the Supplier, the Principal will pay that amount upon resolution of that dispute.

15.5 (**Liability for GST**) If GST is imposed on any supply made pursuant to the Contract, the amount payable for the supply is to be increased by the amount of that GST. Each party agrees to do all things necessary to enable the other party to claim any input tax credit, adjustment or refund in relation to any GST paid or payable pursuant to any supply made under or in connection with this Contract.

15.6 (**Recipient created tax invoices**) Where the Principal is the recipient of a taxable supply under this Contract the Principal may issue recipient created tax invoices or recipient created adjustment notes in respect of these supplies in accordance with the GST Law and direct the Supplier not to issue tax invoices or adjustment notes in respect of the same supplies.

### 16. LAW AND POLICIES

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16.1 (**Compliance**) The Supplier must, and must ensure that its Personnel involved in the performance of the Services, comply with:

- (a) all law, standards and codes of practice applicable to the Supplier, the Supplier's business or the Supplier's obligations under the Contract; and
- (b) any applicable policies, guidelines, procedures and codes of the Principal which are publicly available or otherwise made known to the Supplier from time to time.

## **17. WORK HEALTH AND SAFETY**

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- 17.1 **(Primary obligations of Supplier and Personnel)** The Supplier must ensure that its Personnel engaged in performing the Supplier's obligations under the Contract:
- (a) comply with all law (including the WHS Legislation) and codes of practice that are in any way applicable to this Contract;
  - (b) discharge the duties and comply with all relevant duties, obligations, standards and requirements under the WHS Legislation.
- 17.2 **(Incident notification)** The Supplier must:
- (a) report any incidents as per the WHS Legislation;
  - (b) immediately notify the Principal of any accident, incident or injury at the Site; and
  - (c) assist the Principal with any investigation by the Principal into any accident, injury or other health and safety incident in connection with the Contract.
- 17.3 **(Site specific induction)** Unless otherwise directed by the Principal, the Supplier must ensure that each of its Personnel working at the Site receives a site-specific induction and that each person visiting the Site receives a site-specific induction or is accompanied by someone who has received such an induction.

## **18. INDEMNITY**

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- 18.1 **(Indemnity)** To the extent permitted by law, the Supplier shall indemnify and keep indemnified the Principal and the Principal's officers, employees and related bodies corporate against:
- (a) loss of or damage to property of the Principal;
  - (b) Claims by any person against the Principal in respect of personal injury or death, or loss of or damage to property of any party; and
  - (c) Claims by any person against the Principal and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by the Principal,
- to the extent caused or contributed to by the negligence of the Supplier or its Personnel in connection with the Contract and/or the breach of Contract by the Supplier. The indemnity will be reduced to the extent that the act or omission of the Principal or the Principal's Personnel caused or contributed to the cost, expense, fine, penalty, loss, damage, injury or death.

## **19. INSURANCE**

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- 19.1 **(Insurances to be effected and maintained)** The Supplier must effect and maintain throughout the Term the insurances stated in the Reference Schedule and any other insurance which the Supplier considers is necessary to protect its interests or which is required by law.
- 19.2 **(Evidence of insurance)** If requested by the Principal, the Supplier must provide the Principal with a copy of the relevant certificate of currency and other evidence reasonably required by the Principal of the Supplier's compliance with this clause.

## **20. HANDLING OF INFORMATION**

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- 20.1 **(Obligation of confidence)** A party must not use the other party's Confidential Information for any purpose other than complying with its obligations or exercising its rights in connection with the Contract ("Permitted Purpose") or in the Exceptional Circumstances. The parties must take reasonable steps to prevent the unauthorised disclosure to or use by any other person, firm or company of the Confidential Information.
- 20.2 **(Return of Confidential Information)** The Disclosee of Confidential Information must return all Confidential Information when it is no longer required by the Disclosee for the Permitted Purpose or when otherwise directed by the Discloser.

- 20.3 **(Personnel)** The parties must make every reasonable effort to ensure that only its Personnel that have a need to know any Confidential Information for the Permitted Purpose are permitted to access and use the other party's Confidential Information and its Personnel are aware of and comply with the obligations of confidentiality in this clause.
- 20.4 **(Collection of information by the Supplier)** If the Supplier collects or has access to Personal Information as that term is defined in the *Information Privacy Act 2009* (Qld) in order to carry out its obligations under the Contract, the Supplier must comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under this Contract as if the Supplier was the Principal.
- 20.5 **(Collection of information by the Principal)** The Principal collects Personal Information and other information in connection with the Contract so that it can properly administer the Contract and otherwise carry out its functions as a local government authority. The Principal is authorised to collect this information under the *Local Government Act 2009* (Qld) and the *Local Government Regulation 2012* (Qld) and other law. The information will be accessible by Personnel of the Principal engaged to assist the Principal in connection with the Contract or otherwise carrying out the functions of the Principal. Information may also be disclosed as otherwise permitted under the Contract or at law, including under the *Local Government Regulation 2012* (Qld) and the *Right to Information Act 2009* (Qld).
- 20.6 **(Right to Information)** The Supplier acknowledges that:
- (a) the *Right to Information Act 2009* (Qld):
    - (i) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including the Principal);
    - (ii) requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to public interest; and
  - (b) information provided by the Supplier in connection with the Contract is potentially subject to disclosure to third parties, including information marked as confidential;
  - (c) the Principal will assess any application for disclosure in accordance with the terms of the *Right to Information Act 2009* (Qld).
- 20.7 **(Media)** The Supplier must not, either on its own account or in conjunction with other parties, issue any publication, advertisement, document, article or information whether oral or written, in connection with the Contract in any media without the prior written approval of the Principal.

## 21. NON-CONFORMANCE

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- 21.1 **(Non-conformance)** Where any part of the Services provided by the Supplier does not conform strictly to the requirements of the Contract, or the Supplier fails to comply with any other obligation of the Supplier under the Contract, the Principal may, in addition to or as an alternative to exercising its rights under **clause 24**, exercise the rights provided in **clause 21.2**.
- 21.2 **(Principal's rights)** Where permitted by **clause 21.1**, the Principal may direct the Supplier to provide a detailed proposal as to how the Supplier proposes to rectify the non-conformance.
- 21.3 **(Step-in rights)** Where the Supplier fails to comply with a direction under **clause 21.2**, the Principal may:
- (a) after giving at least 5 Business Days written notice to the Supplier (except in the case of emergency, in which case no notice is required) take any of the steps contemplated by **clause 21.2** itself or engage a third party to do so; or
  - (b) accept the non-conformance or failure and adjust the Price as if the Principal had directed a Variation for the non-conformance or failure.

## 22. SUSPENSION

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- 22.1 **(Right to suspend)** The Principal may direct the Supplier to suspend the performance of the whole or part of the Supplier's Services at any time and for any reason and may direct the Supplier to recommence performing those Services by giving written notice to the Supplier. The Supplier must not suspend the performance of its obligations under the Contract without the prior written consent of the Principal.



- 22.2 **(Costs of suspension)** If the suspension is directed due to any act or omission of the Supplier or its Personnel (including a breach of the Contract by the Supplier) then the Supplier shall bear the costs of the suspension. Otherwise, the Principal shall be liable for the direct costs which the Supplier demonstrates it has reasonably incurred by reason of the suspension and which the Supplier demonstrates it cannot reasonably mitigate.

## 23. FORCE MAJEURE

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- 23.1 **(Notification of Force Majeure)** If either party is unable to carry out any of its obligations under the Contract due to a Force Majeure, that party ('the Affected Party'), shall give to the other party written notice of such Force Majeure and the extent to which it will be unable to perform its obligations.
- 23.2 **(Suspension)** On the giving of a notice under **clause 23.1**, the obligations of the Affected Party detailed in the notice shall be suspended for the duration of the Force Majeure.
- 23.3 **(Mitigation)** The Affected Party shall use all reasonable diligence to mitigate the effect of the Force Majeure on its obligations as quickly as possible. The Affected Party must notify the other Party as soon as it is no longer affected by such Force Majeure.
- 23.4 **(Principal's rights)** Where the Supplier gives a notice under **clause 23.1**, the Principal may at its election:
- (a) itself perform, or engage others to perform the obligations which the Supplier is unable to perform and may continue to perform such obligations until the later of the time that the Principal is reasonably satisfied that the Supplier is able to resume performance of those obligations;
  - (b) take such other action as the Principal, acting reasonably, considers appropriate.
- 23.5 **(Termination)** If Force Majeure extends for a period of greater than 20 consecutive Business Days then the Principal may terminate the Contract immediately by giving written notice to the Supplier.

## 24. TERMINATION, DEFAULT AND INSOLVENCY

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- 24.1 **(Termination for convenience)** The Principal may at any time and for any reason in its absolute discretion terminate the Contract by giving 25 Business Days written notice to the Supplier.
- 24.2 **(Notice to show cause)** If a party ("the Defaulting Party") commits a breach of the Contract, then the other party may give the Defaulting Party a notice to show cause. The notice to show cause must state:
- (a) the alleged breach;
  - (b) that the Defaulting party is required to show cause in writing why the other party should not exercise a right referred to in **clause 24.3** or **clause 24.4** (as the case may be);
  - (c) the date and time by which the Defaulting Party must show cause (which must be a reasonable period taking into account the nature of the breach).
- 24.3 **(Principal's rights)** If:
- (a) the Supplier is subject to an Insolvency Event;
  - (b) the Supplier commits a breach of this Contract which is incapable of remedy; or
  - (c) by the time specified in the notice to show cause given by the Principal to the Supplier under **clause 24.2**, the Supplier fails to show reasonable cause why the Principal should not exercise a right under this **clause 24.3**,
- the Principal may by giving written notice to the Supplier immediately terminate this Contract.
- 24.4 **(Supplier's rights)** If the Principal commits a breach of this Contract which is incapable of remedy, the Supplier may at its election:
- (a) suspend the whole or part of the Services (but only after ensuring that the Site is left in a secure and safe condition); or
  - (b) if the breach is not capable of remedy, terminate the Contract by giving written notice to the Principal.

If the Supplier suspends the whole or part of the Services, the Supplier shall lift the suspension if the Principal remedies the breach but if, within 45 Business Days after the suspension, the breach is not remedied then the Supplier may terminate the Contract by notice in writing to the Principal.

24.5 (**Consequences of termination**) If the Contract is terminated by either Party for any reason, then:

- (a) the Supplier must immediately remove all of its Personnel, plant and equipment from the Site;
- (b) the Principal may carry out any obligation of the Supplier which has not been carried out and completed as at the date of termination itself or engage others to do so on the Principal's behalf; and
- (c) the Principal shall, subject to the Contract, pay the Supplier:
  - (i) the amount which the Supplier is entitled to be paid under the Contract for Services provided by the Supplier up to and including the date of termination; and
  - (ii) if the termination is solely due to the act or omission of the Principal, without any fault on behalf of the Supplier, the amount of any other direct costs which the Supplier demonstrates it cannot reasonably mitigate and has reasonably, necessarily and not prematurely incurred:
    - (A) prior to the termination in the expectation of completing its obligations under the Contract; or
    - (B) as a direct consequence of the termination,

except that the total amount payable to the Supplier under the Contract shall not under any circumstances exceed the amount to which the Supplier would have become entitled to be paid had the Contract not been terminated and the Supplier had completed those obligations itself.

24.6 (**Effect on other rights**) To the extent permitted by law the Supplier shall not be entitled to any monetary compensation in respect of the termination of the Contract other than as expressly provided in this **clause 24**. Nothing in this **clause 24** shall prejudice the Principal's right to claim and recover or set-off damages for breach of contract by the Supplier.

## 25. DISPUTE RESOLUTION

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25.1 (**Mandatory process**) Unless otherwise stated in this Contract, any dispute between the parties must be resolved in accordance with this **clause 25**.

25.2 (**Notice of dispute**) If a dispute arises between the parties in connection with this Contract, then either party must give written notice to the other, setting out the particulars of the dispute and stating that the notice is given under this **clause 25**.

25.3 (**Initial conference**) If a party gives written notice to the other of a dispute under the Contract, representatives of the parties shall promptly confer to attempt to resolve the dispute.

25.4 (**Mediation**) If the dispute is not resolved within 10 Business Days after the giving of the notice (or such longer period as may be agreed by the parties) a party may by written notice to the other party refer the dispute for mediation in accordance with the Mediation Rules of the Resolution Institute. The mediation must be conducted by a mediator to be appointed by agreement of the Parties or in default of agreement to be appointed by the President of the Queensland Law Society or his nominee at the request of a party.

25.5 (**Legal proceedings**) If the dispute is not resolved within 20 Business Days after the appointment of the mediator any party may take legal proceedings to resolve the dispute.

25.6 (**Urgent relief**) This **clause 25** does not prevent any party from taking any steps under any law out of which the parties cannot contract or obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

25.7 (**Obligation to continue**) Notwithstanding the existence of a dispute, the parties shall, subject to **clauses 22 and 24** continue to perform the Contract.

## 26. INTERPRETATION

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26.1 (**Headings**) Headings are for reference purposes only and must not be used in interpretation.

- 26.2 **(No limitation)** The words 'include', 'includes' and 'including' are not words of limitation.
- 26.3 **(Time)** Where time is to be reckoned from a day or event, the day or the day of the event must be excluded. If any time period expires on a day which is not a Business Day, the period shall expire at the end of the next Business Day.
- 26.4 **(Contra proferentem)** The contra proferentem rule and other rules of construction will not apply to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.
- 26.5 **(Severance)** If a provision of the Contract is void or unenforceable it must be severed from the Contract and the provisions that are not void or unenforceable are unaffected by the severance.
- 26.6 **(Special Conditions)** The special conditions (if any) set out in **Schedule 1** to this Contract ("Special Conditions") shall form part of this Contract. In the event of any inconsistency between terms the Special Conditions and the remaining terms of this Contract, the terms of the Special Conditions shall prevail but only to the extent of any such inconsistency.

## **27. GENERAL PROVISIONS**

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- 27.1 **(Joint and several obligations)** If either party consists of two or more persons the Contract binds such persons and their respective executors, administrators, successors and permitted assigns jointly and severally.
- 27.3 **(Governing law)** The Contract is governed by the law of Queensland and the law of the Commonwealth of Australia in force in Queensland. The parties submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.
- 27.4 **(Binding on successor)** The Contract shall be for the benefit of and binding upon the parties and their heirs, executors, successors and permitted assigns.
- 27.5 **(Further assurance)** The parties must execute all documents and do all things as are necessary for the complete performance of their respective obligations under the Contract.
- 27.6 **(Service of notices)** A notice or other communication shall be deemed to have been given and received upon the earlier of actual receipt, or delivery to a party's representative at the address or email address stated in the Reference Schedule or as last notified in writing by the receiving party, but a notice or communication sent only by email shall not be deemed to have been given and received if:
- (a) the sender receives a notification from the email system of the sender or the intended recipient which indicates that the email cannot be read by the intended recipient; or
  - (b) the intended recipient demonstrates that the notice or communication could not be legibly displayed by the intended recipient's email system at that time.
- 27.7 **(Amendments)** This Contract may only be amended by written agreement executed by or on behalf of each party.
- 27.8 **(Electronic execution)** The Contract may be executed in any number of counterparts and when executed communication of the fact of execution to the other party may be made by sending evidence of execution by email.
- 27.9 **(Clauses to survive termination)** In addition to any other clauses which may be found to survive termination, **clauses 18, 20, 24.5 and 24.6** survive the expiration or earlier termination of the Contract.

# Schedule 1 – Services, Price and Special Conditions

## SERVICES

**DESCRIPTION OF SERVICES:** Caring for the welfare of animals seized by the Principal in its role as a local authority and located at the Site and for the days specified below. The Services comprise:

- Feed and water animals
- Clean and sanitise kennels
- Clean food and water bowls
- Arrange for veterinary care for animals when required. The cost of veterinary care will be payable by the Principal.
- Ensure the Site is secure at all times in accordance with the directions of the Principal.
- Any other services as directed from time to time by the Principal related to the care and welfare of animals at the Site.

The Principal will be responsible for the following costs incurred in providing the Services:

- Cleaning and sterilising materials
- Veterinarian costs
- Food for animals

**SITE:** Innisfail Pound located at 26 Downing Street, Mighell, Innisfail

**DAYS:** Saturdays, Sundays and public holidays

**HOURS:** As reasonably required

## PRICE

**Price:** \$ per annum excluding GST.

**Price Review:** If the Term exceeds 12 months then the Price will be increased by 3% on each anniversary of the Start Date.

**When Payable:** Quarterly in advance from the Start Date

## SPECIAL CONDITIONS

### 1. Animal Welfare Legislation and Guidelines

Without limiting the generality of **clauses 10.1 and 16** of the Contract, the Supplier will comply with all legislation, orders and directions relating to the welfare and care of animals. If the Supplier or any of its Personnel are convicted of any offence under any welfare legislation, then the Principal may immediately terminate this Contract by notice in writing to the Supplier.

### 2. Contemporaneous Agreement

If the Supplier operates its own animal refuge facility at the Principal's premises located at 27 Downing Street, Mighell pursuant to a Facility Use Agreement ("Facility Use Agreement") then the following provisions apply to this Contract:

- (a) If the Facility Use Agreement is terminated for any reason then the Principal may terminate this Contract by giving 30 days notice in writing to the Supplier.

## Execution

### EXECUTION BY THE PRINCIPAL

**SIGNED** for and on behalf of Cassowary Coast Regional Council by its duly authorised representative in the presence of:

.....

Signature of witness

.....

Name of witness (block letters)

.....

Date

.....

Signature of authorised representative

.....

Name of authorised representative

.....

Date

### EXECUTION BY THE SUPPLIER (WHERE SIGNATORY IS A CORPORATION)

**SIGNED** for and on behalf of the Supplier in accordance with its Constitution and Section 127 of the *Corporations Act 2001*:

.....

Director

.....

Name (block letters)

.....

Date

.....

Director/Secretary

.....

Name (block letters)

.....

Date

### EXECUTION BY SUPPLIER (WHERE SIGNATORY IS NOT A CORPORATION)

**SIGNED** for and on behalf of the Supplier by its authorised representative (who warrants and represents that it has the power to execute this Contract on behalf of the Supplier) in the presence of:

.....

Signature of witness

.....

Name of witness (block letters)

.....

Date

.....

Signature

.....

Name of authorised representative

.....

Date