

FACILITY USE AGREEMENT

Cassowary Coast Regional Council



FACILITY USE AGREEMENT

PARTIES: OWNER: Cassowary Coast Regional Council
70 Rankin Street (PO Box 887)
Innisfail QLD 4860
T: 1300 763 903 E: enquiries@ccrc.qld.gov.au

USER: The party specified in **Item 1**

BACKGROUND: The Owner owns or is the trustee of the Land and has agreed to allow the User to use the Facility situated on the Land on the terms contained in this Agreement.

THE PARTIES AGREE AS FOLLOWS

1. REFERENCE SCHEDULE

Item No.	Description
Item 1 User	Name: Address: Contact Person: Telephone No.: Email Address:
Item 2 Facility	Address: 27 Downing Street, Mighell, Innisfail Description: Lot 214 on Plan NR6943 As shown on the site map in Schedule A attached.
Item 3 Commencement Date	The day of 20 .
Item 4 Expiry Date	The day of 20 .
Item 5 Permitted Use	Refuge for rehoming Animals
Item 6 Fee	Fee amount: \$1.00 if demanded
Item 7 Shared Facility	<input type="radio"/> Yes <input checked="" type="radio"/> No If Yes then clause 20 applies
Item 8 Special Conditions (if any) NOTE: do not amend the standard terms in this Agreement. Insert any additional terms or variation to the standard terms here.	<ol style="list-style-type: none">Contemporaneous Agreement If the User provides services to the Owner in relation to caretaking Animals at the Owner's pound situated at 26 Downing Street, Mighell, Innisfail ("Pound Service Agreement") then the following provisions apply to this Agreement: (a) If the Pound Service Agreement is terminated for any reason then the Owner may terminate this Agreement by giving 30 days notice in writing to the User.Payment of Outgoings and Utility Charges Notwithstanding the provisions of clause 5.2, the Owner will be responsible for the payment of electricity and water charges for the Facility.Repairs and Maintenance of Facility Notwithstanding clause 10.1, the Owner will at its own cost: (a) repair and maintain the buildings and improvements (including fixtures and fittings) on the Land other than those: (i) constructed by or belonging to the User; or (ii) damaged by any act or omission on the part of the User or its servants agents, volunteers and invitees.

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| | (b) pay for regular pest control services;
(c) pump out the septic tanks at the Facility when required. |
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2. DEFINITIONS AND INTERPRETATION

- 2.1 a) **Animals** means cats and dogs only.
- b) **Commencement Date** means the date specified in **Item 3**.
- c) **Expiry Date** means the date specified in **Item 4**.
- d) **Facility** means the Land together with all fixtures, fittings, drains, water pipes, installations and other improvements thereon.
- e) **Fee** means the annual fee (if any) specified in **Item 6**.
- f) **GST** has the meaning under the GST Law.
- g) **GST Law** means any law under the New Tax System (Goods and Services Tax) Act 1999 or any act or regulation made in addition to or in substitution thereof.
- h) **Land** means the land described in **Item 2**.
- i) **Owner** means the Cassowary Coast Regional Council or any successor in title.
- j) **Permitted Use** means the use specified in **Item 5**.
- k) **Quarter** means each 3 month period of a financial year ending 31 March, 30 June, 30 September and 31 December.
- l) **Special Conditions** means the special conditions (if any) specified in **Item 8**.
- m) **Term** means the term of this Agreement commencing on the Commencement Date and ending on the Expiry Date.
- n) **User** means the person or entity specified in **Item 1**.
- 2.2 Every covenant agreement or obligation expressed or implied in this Agreement by which two or more persons covenant, agree, or are bound, binds those persons jointly and each of them severally.
- 2.3 References to an "Item" is a reference to the corresponding item in **clause 1** Reference Schedule.

3. TERM

The Owner grants to the User a licence to use the Facility for the Term subject to the terms and conditions contained in this Agreement. If the User remains in occupation of the Facility after the Expiry Date, then it does so on the same terms as this Agreement provided that the Owner may by giving 14 days notice in writing to the User require the User to vacate the Facility and the provisions of **clause 15.2** shall apply.

4. FEE FOR USE

- 4.1 The User shall pay to the Owner the Fee (if any) for the use of the Facility. The Fee shall be paid yearly in advance or as otherwise directed by the Owner.
- 4.2 The Fee shall be reviewed and adjusted on 30 June each year in accordance with the percentage movement in the Consumer Price Index (All Groups) for the City of Brisbane for the 12 month period immediately prior to the review date.
- 4.2 The amount of the Fee is exclusive of GST. If this Agreement constitutes a taxable supply to the User which is not exempt under the GST Law, then the Fee shall be increased by the relevant rate under the GST Law and the Owner shall provide the User a taxable invoice in respect of the Fee.

5. SERVICES AND OUTGOINGS PAYABLE

- 5.1 The User will not use any form of light, telephone, power, or heat other than electric current or gas supplied through meters. This does not prevent the use of auxiliary power or lighting (other than an exposed flame) during any period of power failure or power restrictions.
- 5.2 The User will pay all assessments for water, sewerage, electricity, telephone or gas charges relating to the Facility by their due dates for payment directly to the service provider. If the User shares the Facility with other users or if any service (including electricity) is not separately assessed, then the User shall pay to the Owner within 14 days of receipt of an invoice from the Owner the amount of that assessment that the Owner reasonably attributes to the Users' proportionate use of those services.
- 5.3 The User will pay to the Owner upon demand the amount of any additional costs and expenses incurred by the Owner at the request of the User in respect of any alterations of repairs to the Facility or any appurtenances in the Facility or in providing any special, additional, or unusual services for the User.
- 5.4 If the relevant Local or other Authority provides a waste or refuse service for the Facility (whether at the request of the User or by direction of any officer of that Authority), the User will pay the cost of the service to the relevant assessing Authority on or before the due date if assessed directly against the User but otherwise to the Owner within 14 days of being billed by the Owner.

6. USE OF FACILITY

- 6.1 The User shall use and occupy the Facility for the Permitted Use only and for no other purpose without the prior written consent of the Owner which may be withheld by the Owner at its' absolute discretion. The Owner does not warrant or represent to the User that the Facility is suitable for the Users' intended use.
- 6.2 When receiving Animals in the Facility the User will give priority to Animals seized and impounded by the Owner under its local laws which the Owner reasonably determines as being suitable for rehoming by the User.
- 6.3 The User will at all times at its own cost protect and promote the health and welfare of Animals housed in the Facility. Without limiting the generality of the foregoing, the User shall:
 - (a) ensure that the Animals at the Facility are properly fed, watered and receive appropriate and timely veterinarian care when required;
 - (b) ensure that the User's employees, contractors and volunteers are properly trained in caring for Animals;
 - (c) keep the Facility in a clean and tidy condition and regularly clean and sanitise Animal cages and food and water bowls;
 - (d) use their best endeavours to rehome as many Animals as possible to suitable homes;
 - (e) promote responsible pet ownership across the Cassowary Coast region;
 - (f) establish and maintain a website and other social media to promote the activities of the User.
- 6.4 The User must within 14 days of the end of each Quarter provide to the Owner the following information ("Data"):
 - (a) the number of Animals currently housed in the Facility and where the Animals came from (for example, the Owner's pound or the general public);
 - (b) details of any Animals in the Facility which have remained in the Facility for greater than 90 days;
 - (c) the number and types of Animals rehomed by the User in the previous Quarter;
 - (d) the number of Animals desexed by the User in the previous Quarter;
 - (e) details of any complaints, orders or directions received in the previous Quarter from any authority or the general public regarding the treatment or welfare of Animals at the Facility;
 - (f) any other information that the Owner reasonably requires.

The User must provide the Data to the Owner in a report adopting a format specified by the Owner.

If, based on the Data, the Owner reasonably believes that the Facility is not being adequately used by the User or is no longer suitable for the User's needs, then the Owner may:

- (i) meet with the User to discuss the Owner's concerns and how to address those issues;

- (ii) if after 3 months following the above meeting the Owner's concerns have not been addressed to the satisfaction of the Owner, the Owner may terminate this Agreement by giving not less than 30 days notice in writing to the User whereupon the provisions of **clause 15.2** and **clause 16** shall apply.

6.5 The User will not allow any person to reside in the Facility other than the User's manager or caretaker of the Facility.

6.6 Taking into account the Permitted Use of the Facility, the User shall not carry on in any part of the Facility any annoying, noxious, offensive, or illegal business, or do any act or thing which through noise, odours, vibrations, or otherwise may create an annoyance, nuisance, damage, or disturbance to the Owner, or the occupiers of neighbouring premises.

7. SAFETY AND SECURITY

The User must:

- 7.1 keep any windows, doors and other openings in the Facility locked and fastened when not in use;
- 7.2 use its best endeavours to ensure the safety of all persons attending at the Facility;
- 7.3 pay the Owner upon demand the costs of remedying or repairing any damage to the Facility which may arise as a result of the use of the Facility by the User or its invitees and guests.

8. COMPLIANCE WITH STATUTES, REGULATIONS ETC.

- 8.1 The User will duly and punctually comply with and observe all statutes, regulations, and local laws relating to the use or occupation of the Facility and all requirements and orders lawfully given or made by any public body or authority relating to the Facility within the time required by the notice or order. The User will notify the Owner of any allegation of neglect or mistreatment of Animals at the Facility within one business day of becoming aware of such allegation.
- 8.2 The User will not do or omit to do any act or thing whereby the Owner may become liable to pay any penalty imposed under any statute, ordinance, regulation, by-law or order.

9. NOT TO MAKE VOIDABLE INSURANCE

The User will not do or permit anything to be done on or about the Facility or bring or keep anything in the Facility that may in any way make void or voidable any policy or policies of insurance applicable to the Facility or cause the amount of premium payable in respect of any insurance policy maintained by the Owner to be increased. Without prejudice to the rights of the Owner to determine this Agreement due to any such act or neglect on the part of the User, the User will pay to the Owner on demand any increase of its insurance premium which may be occasioned by a breach of this clause.

10. MAINTENANCE AND REPAIR

- 10.1 The User shall throughout the term of this Agreement keep the Facility in a state of good repair and condition as at the Commencement Date save for repairs of a structural nature or due to fair wear and tear or acts of God. Without limiting the generality of the foregoing, the User shall:
 - (a) promptly repair and replace all broken lights, windows, glass, doors and locks in the Facility;
 - (b) regularly mow all lawns and maintain all gardens and grounds in the Facility (if any) in a tidy state;
 - (c) regularly clean and replace all consumables in any toilets in the Facility;
 - (d) keep the Facility clean and free of rubbish;
 - (e) if the Facility is air-conditioned and the Facility is used solely by the User then, if directed by the Owner, the User shall enter into a maintenance agreement with a reputable contractor for the regular servicing and maintenance of any air-conditioners which service the Facility.
- 10.2 The User will at all times permit the Owner or its representatives to enter upon and view the condition of the Facility and immediately upon notice being given to the User by the Owner the User will carry out all repairs and work which is the responsibility of the User under this Agreement. The User will also

permit the Owner and its contractors at all reasonable times to enter upon the Land or the Facility for the purpose of effecting any repairs or alterations to the Land or the Facility which the Owner may wish to carry out provided however that nothing herein imposes any liability or obligation on the Owner to carry out any such repairs or alterations to the Facility. The Owner will give reasonable notice to the User (except in the case of emergency when no notice is required) of its intention to carry out works on the Land or the Facility and the Owner will carry out such works in a manner so as to minimise so far as is practicable any inconvenience or interruption to the activities of the User.

11. ACCESS TO FACILITY

- 11.1 The User must not restrict or impede access to the Facility by the Owner and any persons authorised by the Owner, including where applicable shared Users of the Facility.
- 11.2 In the event of any dispute between the User and any member of the public with respect to the use and/or control of the Facility then the Owner reserves the right to intervene, and the User agrees to abide by any order or direction of the Owner to resolve any such dispute.
- 11.3 In the event of an emergency (including but not limited to a cyclone or other severe weather event) the Owner may by notice to the User occupy the Facility for the duration of the emergency event.

12. INDEMNITY AND INSURANCE

- 12.1 The User shall indemnify and keep indemnified the Owner against all actions, claims, demands, losses, damages, costs and expenses which the Owner may sustain or incur or for which the Owner may become liable whether during or after the term of this Agreement in respect of or arising from:
 - (a) the User's use of the Facility;
 - (b) loss, damage, or injury from any cause to property or persons occasioned or contributed to by any act or omission of the User or any servant, agent, licensee, invitee, subtenant, or other person claiming through or under the User or any failure to observe or perform any of the covenants, conditions, regulations, and restrictions on the part of the User in this Agreement whether positive or negative, expressed or implied;
 - (b) the negligent use, by the User or any servant, agent, licensee, invitee, subtenant, or other person claiming through or under the User of any water, gas, or electricity, or other services to the Facility;
 - (c) the improper or faulty erection or construction of any improvements, or equipment installed on or in the Facility by the User; and
 - (d) any personal injury sustained by any person in or about the Facility however caused other than by the wilful or negligent act of the Owner, its servants, or agents.
- 12.2 Prior to the Commencement Date the User must take out and maintain throughout the term of this Agreement, public risk liability insurance applying to all operations of the User with respect to the use and occupation of the Facility. The policy will be written on a comprehensive basis with limits of not less than twenty million dollars (\$20,000,000.00) per occurrence or any higher amount as the Owner reasonably requires from time to time. The insurance policy shall note the Owner as an insured party. The User will provide to the Owner upon request a copy of the certificate of currency of its insurances.

13. DEFAULT

- 13.1 If the User makes default in the observance, performance or fulfilment of any of the terms or conditions of this Agreement, whether positive or negative, express or implied, or in the compliance with any request, order or direction given by the Owner, then notwithstanding the waiver by the Owner of any previous default, the Owner may exercise any of the following rights and powers, which are in addition to any other rights and powers which the Owner may have under this Agreement or otherwise:
 - (a) give the User notice in writing requiring the User to remedy any such default in a reasonable time to be set out therein, failing which the Owner may forthwith terminate this Agreement by notice in writing to the User; or
 - (b) by notice in writing to the User terminate this Agreement and take immediate possession of the Facility.

14. RELATIONSHIP BETWEEN PARTIES

14.1 The rights granted to the User under this Agreement:

- (a) are personal to the User and do not constitute a permit under the *Land Act 1994* nor create a relationship of landlord and tenant;
- (b) cannot be transferred, sublet or mortgaged to any other person or entity without the prior written consent of the Owner which may be refused or given subject to conditions that the Owner may impose in its absolute discretion;
- (c) do not create any partnership, joint venture, manager, agent or employment relationship.

15. NO ALTERATIONS AND REMOVAL

- 15.1 The User shall not make any alterations to the Facility without prior written consent of the Owner which may be refused or given subject to compliance with conditions that the Owner may impose in its' absolute discretion.
- 15.2 Upon the expiry or termination of this Agreement the User shall within a reasonable time after such expiry, remove all of its equipment, fixtures and fittings and make good any damage caused by such removal, failing which the Owner may remove those items and make good any damage and recover the cost thereof as debt immediately due and owing by the User to the Owner.

16. TERMINATION DUE TO DAMAGE OR SUITABILITY FOR USE

16.1 If at any time during the term of this Agreement:

- (a) the Facility is damaged or destroyed;
- (b) in the reasonable opinion of the Owner the Facility becomes unsuitable or unfit for use by the User or the User is not using the Facility for its intended purpose or the User is not making adequate use of the Facility,

then the Owner may by giving 30 days' notice in writing to the User terminate this Agreement.

- 16.2 Upon termination of this Agreement pursuant to **clause 16.1** above, the Owner may offer to relocate the User to an alternate facility.
- 16.3 The Owner shall in no circumstances be liable to the User for any compensation due to the termination of this Agreement or the User's relocation pursuant to this **clause 16**.

17. RULES FOR FACILITY AND CODE OF CONDUCT

- 17.1 The Owner may from time to time prepare rules for the use of the Facility. Upon notice of any such rules being given to the User, the User shall forthwith perform and observe any such rules and the rules shall form a part of the terms of this Agreement.
- 17.2 The User shall ensure that its representatives at all times conduct themselves in a proper, professional and courteous manner in all of their dealings with the Owner, members of the public and other users of the Facility. A breach of this clause is an act of default under **clause 13** of this Agreement.

18. SPECIAL CONDITIONS

The Special Conditions (if any) set out in **Item 8** form part of this Agreement. In the event of any inconsistency between the Special Conditions and the remaining terms of this Agreement, the terms of the Special Conditions shall prevail but only to the extent of any such inconsistency.

19. SERVICE OF NOTICES

Any notice to a party shall be in writing and served on the address of that party specified in this Agreement by either pre-paid post, personally or by email transmission. Notices served by pre-paid post shall be deemed received 3 business days after posting. Notices served personally or by email shall be deemed received on the day of such service or email transmission.

20. IF A SHARED FACILITY

- 20.1 If the User shares or occupies the Facility with the Owner or other users then the User shall ensure that immediately after it uses the Facility it will leave the Facility in a clean and tidy condition free of all rubbish and with its' equipment properly stored in its designated area. The User will provide to the Owner copies of any keys and codes to access the Facility. The Owner may from time-to-time issue to the User rules under **clause 17.1** for the proper and orderly shared use of the Facility.
- 20.2 If there is any dispute between shared users of the Facility then such dispute shall be resolved by the Owner's Chief Executive Officer. The decision of the Chief Executive Officer shall be final and binding on the parties to the dispute. The User acknowledges that the Chief Executive Officer may terminate this Agreement as a consequence of or means to resolve that dispute.

EXECUTED AS AN AGREEMENT

CASSOWARY COAST REGIONAL COUNCIL

.....
(Signature) Chief Executive Officer

/ /
Execution Date

SIGNED by the USER

.....
Print Name and Position

.....
(Signature) User

/ /
Execution Date

.....
Print Name and Position

.....
(Signature) User

/ /
Execution Date

Schedule A - Site Map



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