



## DEED OF AGREEMENT

THIS AGREEMENT is made this *Seventh* day of *July* 2011

**BETWEEN: CESSNOCK CITY COUNCIL**, 62-78 Vincent Street, Cessnock in the State of New South Wales 2325 ABN: 60 919 148 928 ("The Council")

**AND: THE ROYAL SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, NEW SOUTH WALES** ACN: 000 001 641, ABN: 87 000 001 641 ("The RSPCA")

**HEREINAFTER REFERRED TO AS "A PARTY" or "THE PARTIES"**

### INTRODUCTION

- (a) The Council currently operates its own pound facilities and undertakes various functions under Animal Control Laws; and
- (b) The Council intends to cease operation of its pound facilities and to contract for the provision of an alternative pound facility and other services in relation to some of its functions under the Animal Control Laws; and
- (c) The RSPCA offers to provide certain services to allow the Council to discharge its functions under the Animal Control Laws at the RSPCA's Animal Shelter; and
- (d) The Council has accepted the RSPCA's offer to provide those Services on the terms as set out in this Agreement.

### OPERATIVE

In consideration of the Council paying to the RSPCA remuneration as detailed in Schedule A - Remuneration, the RSPCA agrees to provide the Services for the Term and any extension of the Term in accordance with the following terms and conditions:-

#### 1. Definitions

In this Agreement, the following words have the following definitions:

**"Animal"** includes, but is not limited to, Companion Animals and Livestock;

**"Agreement"** means this Deed including all schedules and annexures to it;

**"Animal Control Laws"** means the CAA and the IA;

**“Animal Shelter”** means the whole of the RSPCA facility situated at 6/10 Burlington Place, Rutherford and includes the Impound Facility and the Council Pound;

**“Authorised Officer”** means an employee of the Council authorised by the Council, or a police officer for the purposes of Animal Control Laws;

**“Authorisations”** includes any consent, registration, certification, approval, permit, authority or exemption by, with or from a relevant government, semi-government, professional, judicial or other regulatory authority;

**“Australian Standard”** means a document published by Standards Australia Limited which sets out specifications and procedures designed to ensure that a material, product, method or service is fit for its purpose and consistently performs in the way it was intended;

**“Business Day”** means a day that is not a Saturday, Sunday or public holiday as recognised in the state of New South Wales;

**“CAA”** means Companion Animals Act 1998 and the Regulations under that Act;

**“Cadavers”** means dead bodies of any seized, impounded or destroyed animals;

**“Claim”** means any claim, notice, demand, debt, account, action, expense, cost, lien, liability proceeding, litigation (including reasonable legal costs), investigation or judgement of any nature, whether known or unknown;

**“Companion Animal”** means a dog or cat, or any other animal that is so prescribed by the CAA or its Regulations;

**“Companion Animal Register (CAR)”** means the Register of Companion Animals as required under S74 of the CAA;

**“Commencement”** means 1 August 2011, being the date upon which formal delivery of the Services commences;

**“Confidential Information”** In relation to a Party, means information that is by its nature confidential; and

- (a) is designated by a Party as confidential; or
- (b) the receiving Party knows or ought reasonably to know is confidential;

**“Council Fees”** means the fees and charges prescribed by the Council for a service as may be amended from time to time by the Council;

**“Council Pound”** means those areas situated at the Animal Shelter approved as a Council pound under the CAA;

**“Council’s Representative”** means Colin Davis, Acting Director City Planning;

**“Dangerous Dog”** means a dog for the time being the subject of a declaration by an Authorised Officer of a Council as defined under the CAA or a Court order under the CAA that the dog is dangerous;

**“Facility Access Fee”** means the fee payable by the Council to the RSPCA under clause 24 and 34 for access to the Animal Shelter for the purposes of this Agreement;

**“Financial Year”** means 1 July to 30 June;

**“Fixed Management Fee”** means the fees payable by the Council to the RSPCA under clause 24 and Schedule A – Service Fees.

**“Force Majeure Event”** means war, invasion, riot, civil or military disturbances, fire, flood, cyclone, earthquake or other event over which a Party could not reasonably have exercised control;

**“Function”** includes a power, authority and duty;

**“GST”** means the Goods and Services Tax payable on any supplies made under this Agreement which are taxable supplies within the meaning of *A New Tax System (Goods and Services Tax) Act 1999*;

**“Holding Period”** has the meaning in section 64(1) of the CAA;

**“IA”** means Impounding Act 1993;

**“Impound Facility”** means those areas situated at the Animal Shelter used as an impound facility under the IA;

**“Impounded Animal”** means an “animal” that is “impounded” (as both of those terms are defined under the IA) to Council;

**“Impounding Period”** is the period specified in section 24(5) of the IA;

**“Impounding Register”** means the Impound Register which is required under S30 of the IA;

**“Insolvency Event”** means when:

- (a) a Party becomes insolvent or bankrupt;
- (b) a Party goes into liquidation, official management, receivership, arrangement, administration, winding up, enters into an assignment for the benefit of creditors or compromise with creditors; or
- (c) a receiver and/or manager, administrator or other similar person is appointed in respect of a Party or a substantial part of its assets or undertakings;

**“Intellectual Property”** means all present and future rights conferred by Law in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results in the industrial, commercial, scientific, literary or artistic fields, whether or not registerable, registered or patentable. These rights include:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights,

but excludes Moral Rights (as that term is defined by Law);

**“Law”** means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
  - (b) any applicable policies with which the Council or the RSPCA is required to comply;
  - (c) any required approval, including any condition or requirement under it; and
- any fees and charges payable in connection with the things referred to in paragraphs (a ) and (b);

**“Livestock”** means cattle, horses, donkeys, mules, asses, camels, sheep, goats, pigs and deer;

**“Material”** means any document, article or other thing in tangible form, in whatever medium, including documented methodologies, processes, instructions, business rules, specifications, plans, drawings, requirements, manuals, guides and reports;

**“POCTA”** means the Prevention of Cruelty to Animals Act 1979 and any subsequent amendments;

**“Private Seizure”** means the seizure and taking of a stray Companion Animal to the Council pound by a person other than the Council. It does not include an animal surrendered by its owner;

**“Privacy Laws”** means:

- (a) the Privacy Act 1988 (Cth);
- (b) the National Privacy Principles or any approved privacy code that applies to a Party; and
- (c) any other applicable Laws which require a person to observe privacy or confidentiality obligations in receipt of personal or other information;

**“Restricted Dog”** means a dog as defined by section 55 of the CAA;

**“RSPCA Animal”** means an animal in the care, custody and control of the RSPCA excluding Seized Animals or Impounded Animals as prescribed in this Agreement;

**“Seized Animal”** means an animal seized under the authority of the CAA;

**“Seizure Notice”** means the notice required to be given under S63 of the CAA;

**“Services”** means the services to be provided by the RSPCA to the Council under this Agreement;

**“Service Fees”** means the fees specified as such in Clause 24 and Schedule A – Service Fees;

**“Tax”** means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding, including the GST (together with any related interest, penalty, fine or

expense in connection with any of them) levied or imposed by any government the Council, other than any imposed on net overall income;

“**Term**” means the duration of this Agreement commencing on Commencement and including any option (if exercised), as described in clause 5.1;

“**Transition Plan**” means the transition plan attached to this Agreement as Annexure “B”.

## **2. Rules for Interpreting this Agreement**

The following rules apply in interpreting this Agreement, except where the context makes it clear the rule is not intended to apply:

- 2.1 Statutes, regulations, ordinances or by-laws include for all purposes a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing the same from time to time;
- 2.2 Words importing the singular include the plural and vice versa;
- 2.3 Words importing a gender include any gender;
- 2.4 A reference to a person, includes a reference to the person/s personal representatives, executors, administrators, successors and assigns and a reference to a corporation includes a reference to the corporation/s successors and assigns;
- 2.5 A reference to a clause or paragraph is a reference to a clause or paragraph in this Agreement, as the case may be;
- 2.6 Any organisation, association, society, group, body, corporation or Government department shall, in the event that any ceases to exist or is reconstituted, renamed or replaced or that any of its powers or functions are transferred to any other entity, body or group, refer respectively to any such entity, body or group established or constituted in lieu thereof or succeeding to similar powers or functions;
- 2.7 Any index and all headings are for convenience only and do not affect the interpretation of this Agreement;
- 2.8 A reference to a right or obligation on two (2) or more persons confers that right or imposes that obligation jointly and severally; and
- 2.9 A reference to \$ or dollars means Australian dollars.

## **3. Governing Law**

This Deed of Agreement is governed by the laws of the State of New South Wales and the Commonwealth of Australia and the parties submit to the non-exclusive jurisdiction of the Courts of the State of New South Wales.

## **4. General provisions relating to the Services**

### **4.1 Objectives**

Each Party acknowledges that the objectives of the Parties under this Agreement are:

- (a) to allow the Council to cease operations at its existing pound facilities;
- (b) for the RSPCA to provide its Animal Shelter for the purpose of this Agreement for the Term and any extension of it;
- (c) for the RSPCA to provide all other Services required under this Agreement for the Term and any extension of it;
- (d) for the Council to pay the RSPCA the Service Fees provided for in this Agreement and the remuneration set out in Schedule A; and
- (e) for the RSPCA to provide at its cost entirely all facilities, buildings, personnel, plant, equipment, technology and communication systems, administration and management necessary or incidental to the provision of the Animal Shelter and the other Services under this Agreement.

#### 4.2 **Co-operation**

- (a) Without limiting the rights and obligations of the Parties under this Agreement, each Party agrees to cooperate with the other in order to achieve the objectives set out in clause 4.1 and the performance by each Party of their obligations under this Agreement.
- (b) The parties must negotiate in good faith to resolve problems that arise from the operation of this Agreement or changes in Law that affect the carrying out of the terms of this Agreement. Any resolution is to be subject of a written variation of this Agreement.
- (c) The Parties acknowledge that their respective community standing may be influenced by the operation of this Agreement and therefore agree to at all times act in good faith and in a professional manner having regard to each party's established Code of Conduct.
- (d) Each Party agrees to consult with the other party prior to making any comment or communicating any information to a media source in relation to a matter arising from the operation of this Agreement.

#### 4.3 **Scope of Services**

The Services comprise:

- (a) the provision of the Animal Shelter for the purpose of this Agreement and in accordance with the requirements of clause 4.4;
- (b) the provision of the other Services described generally in clauses 4.5 and in detail in clauses 6 to 23 inclusive and clause 26 and the doing of all other things necessary or incidental to the provision of the other Services and performance of the RSPCA's obligations under this Agreement.

#### 4.4 **Animal Shelter**

The RSPCA must for the Term and any extensions of it:

- (a) provide the Animal Shelter for the purpose of this Agreement; and
- (b) ensure at its cost entirely that the Animal Shelter and all plant, equipment, technology and communication systems associated with it is constructed, maintained and operated to a standard which:

- (1) complies with all Authorisations;
- (2) complies with Law;
- (3) complies with the requirements of this Agreement;
- (4) allows the Council to approve the use of the Animal Shelter as a 'Council pound' under the CAA and as a 'private pound' under the IA; and
- (5) satisfies the objectives set out in clause 4.1.

#### 4.5 **Other services: general description**

- (a) Subject to sub-clauses (b), (c) and (d) of this clause 4.5 the RSPCA must for the Term and any extension of it do all things and provide all services which the Council is required to undertake under:

- (1) Part 7 of the CAA; and
- (2) Part 3 of the IA.

from the time the relevant animal is delivered at the Council Pound or the Impound Facility under the relevant Animal Control Laws.

- (b) The RSPCA has no right, authority or obligation to set or otherwise determine any fees or charges payable to the Council under the Animal Control Laws;
- (c) Some of the Services and other activities to be provided by the RSPCA and sub-clause (a) require the prior approval of the Council under Law or under the provisions of this Agreement, namely;

Clause 6.3  
Clause 15.1  
Clause 16.1  
Clause 16.3;  
Clause 19.4; and  
Clause 23.2

- (d) To the extent that there is any conflict or inconsistency between the provisions of this clause 4.5 and the other provisions of this Agreement detailing the Services, this clause 4.5 shall prevail.

#### 4.6 **Performance standards**

The RSPCA must perform the Services:

- (a) in accordance with this Agreement;
- (b) in accordance with all applicable Law;
- (c) in a diligent manner and to a standard of skill and care expected of a service provider experienced in the provision of services of a kind required under this Agreement;
- (d) expeditiously and efficiently; and
- (e) in accordance with all relevant codes of practice.

#### 4.7 **Warranties**

- (a) The RSPCA warrants that prior to entering into this Agreement it:

- (1) has satisfied itself as to the information that was made available in writing by the Council and satisfied itself that the Services can be provided in accordance with the requirements of this Agreement;
  - (2) examined and relied solely upon its own assessment, skill, expertise and enquiries in respect of all information relevant to the risk, contingencies, liabilities and obligations (including any and all liabilities and obligations under any Law) and other circumstances having an affect on its Services under this Agreement; and
  - (3) satisfied itself as to the adequacy of the allowance made for the costs of complying with all the liabilities and obligations of and all matters and things necessary for the due and proper performance of the Services.
- (b) The RSPCA warrants that except for the information contained in Annexure C it did not in any way rely upon information, data, representations, statements or other material made available by the Council and that it enters into this Agreement based on its own investigations, information and determinations.
- (c) The Council warrants that:
- (1) if it becomes aware of anything that may be a breach of, or inconsistent with any of the information disclosed, any representation, warranty or undertaking in this agreement, Council will notify the RSPCA of the particulars promptly in writing;
  - (2) the information contained in Schedule C is true and correct.
- (d) The RSPCA represents and warrants that:
- (1) it has the capacity and power to execute deliver and perform its obligations under this Agreement and all necessary corporate and other actions have been taken to authorise that execution, delivery and performance;
  - (2) this Agreement contains valid, legal and binding obligations enforceable against the RSPCA in accordance with its terms; and
  - (3) the execution delivery and performance of the Services by the RSPCA will not contravene any Law or any other agreement or arrangement binding on the RSPCA.

## **5. Duration of Agreement**

- 5.1 Subject to clause 5.2, this Agreement commences on 1 August 2011 and ends on 31 July 2016 unless terminated earlier pursuant to this Agreement.
- 5.2 This Agreement is subject to a five (5) year option to extend, exercisable at the sole discretion of the Council by notice in writing served on the RSPCA at any time not less than 3 months prior to the expiry of the initial Term. This Agreement, under the option to extend, will continue to operate on the same terms and conditions except that:
- (a) no Facility Access Fee is payable for the five year option term;
  - (b) the Fixed Management Fee is varied in accordance with clause 5.3; and
  - (c) clause 5.2, clause 5.3, clause 34 and clause 36.6 are deleted.



5.3 The Fixed Management Fee payable for each year of the five (5) year option (in this clause the "Revised Fixed Management Fee") shall be determined as follows:

- (a) the Parties agree to enter bona fide negotiations and to use their best endeavours to agree the Revised Fixed Management Fee not later than six months prior to the expiry of the initial Term having regard to the profitability of the RSPCA's operations in supplying the Services by utilizing its proposed Care Centre at Lot 102, DP 777631, 75 Elizabeth Street, Tighes Hill, with their profitability analysis to be assisted by an independent expert agreed between the Parties; and
- (b) If the Parties have not agreed the Revised Fixed Management Fee then it shall be determined by applying the following formula:

$$\text{RFMF} = \text{FMF} \times \frac{\text{Current CPI}}{\text{Previous CPI}}$$

Where:

- "**RFMF**" means the Revised Fixed Management Fee payable for each year of the 5 year option Term.
- "**FMF**" means the Fixed Management Fee payable under this Agreement in an amount of \$323,000 inclusive of GST.
- "**Current CPI**" means the CPI number for the quarter last published before the expiry of the initial Term.
- "**Previous CPI**" means the CPI number for the quarter last published before the date which is 12 months before the expiry of the initial Term.
- "**CPI**" means the Sydney Consumer Price Index (All Groups) published by the Australian Bureau of Statistics or any similar index which replaces it.

## 6. Services

The RSPCA must perform the following Services: -

- 6.1 To receive Seized Animals to the Council Pound and Impounded Animals to the Impound Facility.
- 6.2 To provide written and verbal notification to identified owners of Seized Animals and Impounded Animals.
- 6.3 Council may, at its discretion and expense, in cases of 'hardship', either waive or reduce the Council Fees. Should an animal owner instigate the issue of 'hardship' the RSPCA shall seek instruction from Council's Representative. In the absence of written approval by Council's Representative Council's advertised release, maintenance and/or euthanasia fees will apply.
- 6.4 To receive fees on behalf of the Council (as notified by Council) payable for the release, maintenance and euthanasia of Seized Animals and Impounded Animals.
- 6.5 To undertake microchipping of Companion Animals being returned to their owner in accordance with the CAA.

- 6.6 To register Companion Animals seized in accordance within the provisions of the CAA.
- 6.7 To receive fees (as notified by Council) on behalf of the Council payable for the registration of Seized Animals.
- 7. Seized Animals and Impounded Animals Registers**
- 7.1 The RSPCA must provide to the Council the names of those RSPCA employees who it is intended will have access to the CAR and the Impounding Register and information provided by the Council under this clause 7, together with all changes in those employees, upon Council's request.
- 7.2 The RSPCA warrants that only employees with authorisation under the CAA will have access to the CAR.
- 7.3 Council acknowledges some RSPCA employees will require access to the CAR to enable those employees to update and process records in accordance with the CAA and the operation of this Agreement. Council will assist RSPCA in securing the necessary authorisations.
- 7.4 The Council must supply at no cost to the RSPCA the necessary resources, including Seized Animals and Impounded Animals Registers, to enable the RSPCA to perform its functions under this clause 7. The resources supplied in accordance with this sub-clause remain the property of the Council.
- 7.5 The RSPCA must make accurate and proper records in the relevant Register showing in respect of each animal delivered into its care in accordance with this Agreement:
- the date of receipt of the animal
  - a description of the animal
  - the date of the giving of the seizure/impoundment notice.
  - the manner of service of the seizure/impoundment notice.
  - the date the animal was claimed (if applicable)
  - the date the animal was sold (if applicable).
  - the date the animal was euthanased (if applicable).
  - the fees and charges paid by the person claiming the animal separating those fees into release fees, maintenance and care charges, and registration fees, and euthanasia fees (if applicable).
  - any other matters prescribed by the Animal Control Laws.
- 7.6 RSPCA warrants the Seizure and Impounding Registers and Council resources will be used only for it to carry out its obligations in accordance with this Agreement.
- 7.7 The RSPCA must comply and make all reasonable steps to ensure that its employees comply with all laws applicable to privacy in relation to the information accessed under this clause 7 in addition to the obligations of confidentiality imposed by this Agreement.
- 7.8 The RSPCA must make Seizure and Impounding Registers available to the Council upon request.
- 7.9 The Council must advise the RSPCA in writing of any additional seizure or impound fees or charges as per Council's history of seizure/impoundment records.

## **8. Impounding of Animals**

- 8.1 The Council stipulates that it is only responsible for animals seized in accordance with the provisions of the CAA and in respect of the IA, animals impounded under that Act.
- 8.2 The RSPCA acknowledges that Council has no responsibility for the acceptance or welfare of surrendered animals except those expressly surrendered to Council officers under the CAA or the IA. The RSPCA must keep accurate records of all animals surrendered at the Council Pound and the Impound Facility, including whether the person surrendering the animals has elected to surrender them to the Council or to the RSPCA.
- 8.3 In the case of Companion Animals surrendered to Council for the specific purpose of resultant euthanasia the relevant provisions of clauses 11, 12 and 13 of this Agreement shall apply.
- 8.4 The Council must provide Authorised Officers under the CAA employed by the Council to transport Companion Animals and Livestock seized or impounded from their location to the Impound Facility.
- 8.5 RSPCA undertakes to ensure animals delivered to the Council Pound and the Impound Facility are processed promptly.

## **9. Acceptance of Surrendered Animals**

All animals surrendered to the RSPCA are the responsibility of the RSPCA and not included under this Agreement. The RSPCA is responsible for all costs associated with animals surrendered to the RSPCA.

## **10. Housing of RSPCA Animals**

- 10.1 The RSPCA may place animals which are received into its Animal Shelter in the Council Pound and the Impound Facility where there is insufficient room in the RSPCA's Animal Shelter so long as the placing of such animals in the Council Pound and the Impound Facility does not restrict the ability of the Council Pound and the Impound Facility to house animals presently seized or impounded and for incoming Council Seized Animals or Impounded Animals. Adequate empty kennels/cages/yards must be available at all times for incoming Council Seized Animals or Impounded Animals (in Council's reasonable opinion, based on Council seizure/impound history).
- 10.2 Any such animal placed in the Council Pound and the Impound Facility pursuant to this clause must be kept in the Council Pound and the Impound Facility at the full cost, expense and liability of the RSPCA.
- 10.3 Council has relied on the location and nature of the Animal Shelter when entering into this Agreement.

## **11. Injured or Sick Seized Animals and Impounded Animals**

All veterinary costs associated with sick or injured Seized Animals or Impounded Animals will be the responsibility of the RSPCA.

## **12. Euthanasia of Feral, Infant or Surrendered Companion Animals**

- 12.1 Pursuant to the provisions of S64 (2) and S64A (1) of the CAA the RSPCA will perform Council authorised euthanasia of feral, infant or surrendered Companion Animals during their Holding Period.
- 12.2 Council will provide the RSPCA with a written copy of the policy referred to in S64 (2) of the CAA prior to the commencement of this Agreement.
- 12.3 An Authorised Officer under the CAA employed by Council will notify the RSPCA in writing of a Companion Animal which is required to be euthanased subject to clause 12.1.
- 12.4 RSPCA warrants that euthanasia will be performed in a manner that causes the animal to die quickly and without unnecessary pain.

## **13. Restricted/Dangerous/Nuisance Dogs and Nuisance Cats**

- 13.1 In the event a Companion Animal which was either seized or surrendered to the Council is determined under the CAA to be a restricted breed or proposed restricted breed (pursuant to S57A) or a declared dangerous dog or proposed dangerous dog (pursuant to S52A) which are prohibited from sale, an Authorised Officer under the CAA employed by Council will stipulate in writing to the RSPCA that ownership of the animal is not to be transferred to the RSPCA at the expiration of the holding period and is to be euthanased.
- 13.2 In the event a Companion Animal which was seized or surrendered to the Council is determined under the CAA to be a nuisance dog (pursuant to S21 CAA) or a nuisance cat (pursuant to S31 CAA) an Authorised Officer under the CAA employed by Council will stipulate in writing to the RSPCA whether the animal may be transferred to RSPCA ownership or is to be euthanased.
- 13.3 RSPCA warrants that euthanasia will be performed in a manner that causes the animal to die quickly and without unnecessary pain.

**14.** [Not used]

## **15. Cadavers**

- 15.1 Cadavers will not be used for experimentation without the prior written approval of Council. They are not to be given or sold to agencies for scientific or experimentation purposes.
- 15.2 Cadavers will be disposed of in accordance with current RSPCA Procedures as agreed by Council.

## **16. Holding and Impounding Periods**

- 16.1 The RSPCA must hold and retain Companion Animals and Livestock delivered to the Council Pound and the Impound Facility for the periods stipulated under the CAA (S64) or the IA (S24) respectively, or as prescribed in writing by Council, subject to clauses 11, 12, 13, 14 and 17 of this Agreement.

- 16.2 On the expiration of the Holding Period referred to in clause 16.1, the RSPCA will at its discretion assume ownership of such Companion Animals, excluding Companion Animals pursuant to clauses 13 and 14, provided that such animals are deemed suitable to be rehomed in accordance with current RSPCA Policies and Procedures as varied from time to time. The RSPCA will assume responsibility for all costs associated with the maintenance of such Companion Animals and liability associated with ownership from the expiration of the Holding Period onwards. Any animals not accepted by RSPCA pursuant to this clause will not be reflected in RSPCA incoming/outgoing animal statistics and will remain the responsibility of Council for statistical purposes.
- 16.3 Any dog declared dangerous by Council will, in compliance with S52A of the CAA, be euthanased at the expiration of its Holding Period or on the receipt of a written authorisation by Council prior to the expiration of the Holding Period pursuant to clause 13 of this Agreement.
- 16.4 The RSPCA will be taken to be the lawful owner of Companion Animals retained at the expiration of their Holding Period and will be entitled to retain, sell, give away or euthanase such animals provided that the RSPCA must not sell or give away any seized animal to any person who, to the knowledge of the RSPCA, after reasonable inquiry, was a prior owner of the animal.
- 16.5 The RSPCA will retain the proceeds of sale of any such Companion Animal owned by it in accordance with clause 16.4.
- 17. Release of Seized Animals or Impounded Animals to Owners**
- 17.1 Where in accordance with the CAA, the owner of a seized Companion Animal pays to the RSPCA on behalf of Council, the release, maintenance, and registration fees, as applicable, and such other fees as shall be prescribed from time to time by the Council pursuant to the CAA, the RSPCA must release such animal to the owner provided that the RSPCA has satisfied itself of the identity of the owner; that the owner has a current Lifetime Registration form and/or Permanent Identification form or other appropriate records for the animal and if not already registered, lifetime registration is completed at the time of release of the said Companion Animal.
- 17.2 Where in accordance with the IA, the owner of impounded Livestock pays to the RSPCA on behalf of Council, the applicable fees and such other fees as shall be prescribed from time to time by the Council pursuant to the IA; the RSPCA must release such animal to the owner. The RSPCA must release, and receipt and record the release, in accordance with sections 23 and 30 of the IA.
- 17.3 The release of all Seized Animals and Impounded Animals must be receipted and recorded in accordance with clause 22 of this Agreement.
- 17.4 The RSPCA must ensure that any Companion Animal that is not already permanently identified in accordance with the CAA at the time of release is implanted with a microchip by an authorised microchip implanter at the RSPCA's own cost. The fee for this service will be retained by and receipted to the RSPCA.

## **18. Livestock**

The RSPCA undertakes to provide for the care and maintenance of impounded Livestock subject to the acceptance of Livestock at the discretion of the Shelter Manager having regard to the ground conditions at the Impound Facility.

## **19. Hours of Operation**

19.1 The RSPCA must open the Council Pound and the Impound Facility for the purpose of performing its obligations under this Agreement during the Opening Hours. The Council Pound and the Impound Facility will be closed to the public on all NSW public holidays; however, RSPCA staff will attend the Council Pound and the Impound Facility for the provision of animal welfare needs.

Opening Hours:       Monday to Friday 9.00am to 5.00pm  
                              Saturday 9.00am to 12 noon  
                              Closed Sunday and Public Holidays

19.2 Council acknowledges the hours of operation on public holidays when the Council Pound and the Impound Facility is closed to the public may be reduced in accordance with RSPCA policies and procedures as varied from time to time.

19.3 Except in the event of an emergency notice of any closure or significant variation to opening hours must be provided to Council forty eight (48) hours prior to the occurrence.

19.4 Council agrees that in order to meet occupational health and safety legislative requirements the RSPCA will close to facilitate training on days and times approved by the Council.

19.5 The RSPCA may release a Seized Animal or Impounded Animals outside of the Opening Hours upon payment of an after-hours service fee by the owner. The after-hours service fee will be determined, receipted and applied by the RSPCA at its discretion (acting reasonably). Any such after-hours service fee will be retained by the RSPCA.

19.6 RSPCA acknowledges that an Authorised Officer employed by Council may require the Council Pound and the Impound Facility to be re-opened outside the nominated Opening Hours. The RSPCA will provide contact numbers of at least two (2) employees to facilitate such re-opening.

## **20. Care of Animals**

The RSPCA must ensure that every animal delivered into its care and held at the Council Pound and the Impound Facility is cared for in accordance with the relevant provisions of POCTA and relevant Codes of Practice including but not limited to:

- is provided with adequate food, water and veterinary care; and
  - is kept in a place that is well drained and maintained in a clean condition, and
  - is provided with appropriate shelter, and
  - is afforded the opportunity for adequate exercise, and
  - is kept secure, and
  - is separated from other animals that are diseased or, if the animal is or appears to be diseased, is kept separate from other animals,
- subject to any power or duty to destroy an animal under this Agreement or by Law.

## **21. Rehoming of Animals**

- 21.1 Animals retained by the RSPCA at the expiration of their Holding Period or Impounding Period are subject to the RSPCA's Animal Placement Policies and related Procedures.
- 21.2 The RSPCA will consider the involvement of animal rescue groups to assist in the rehoming of animals relevant to the agreed contract.

## **22. Receipt Books**

- 22.1 The RSPCA must separately receipt all Council Fees received on behalf of Council.
- 22.2 Council will supply the RSPCA with Council Release and Receipt Books as required for the management of Seized and Impounded animals. Such resources will remain the property of Council and must be maintained and used in accordance with written directions supplied by Council.
- 22.3 RSPCA must issue a Council receipt to every person from whom it receives money on behalf of the Council. RSPCA warrants that correct fees will be collected by its employees and receipts will be issued.
- 22.4 The RSPCA must immediately make available to the Council all record keeping resources kept by it in accordance with clause 22 upon request by Council.
- 22.5 Nothing in clause 22 shall prohibit Council employed Authorised Officers under the CAA/IA from entering information in the record keeping resources in relation to monies received by them whilst performing duties for the Council.
- 22.6 RSPCA accepts no responsibility for monies received and record keeping entries made pursuant to clause 22.5.

## **23. Fees Received on Behalf of the Council**

- 23.1 All monies received by the RSPCA on behalf of the Council must be deposited into a bank account nominated by Council. Banking must be done a minimum of once per week or as otherwise agreed in writing between the parties.
- 23.2 Council will provide RSPCA with a current schedule of Council Fees for both Seized Animals and Impounded Animals and RSPCA warrants that it will collect fees strictly in accordance with that Schedule, unless it has the prior written approval of Council's Representative.

## **24. Service Fees, Invoicing, Disbursements and Audit**

### **24.1 Service Fees**

The Service Fees comprise:

- (a) the Facility Access Fee payable under clause 34; and
- (b) the Fixed Management Fee payable for each year of the Term under Schedule A and payable by 12 monthly instalments.

## **24.2 Invoicing**

The RSPCA will submit a monthly valid tax invoice to the Council for the Fixed Management Fees. Except in the case of a dispute the Council must pay the amount of the invoice within 30 days of receipt of the invoice.

## **24.3 Audit**

The Council may conduct a full audit of the operation of the Council Pound and Impound Facility at the end of each Financial Year. The RSPCA must cooperate with and provide any information reasonably requested by Council appointed auditors and produce any books and records reasonably required by the Council appointed auditors.

## **25. Compliance with Requests**

25.1 The RSPCA undertakes to comply with all reasonable requests made by the Council to improve the operation of the Council Pound and the Impound Facility necessary for the Council to carry out its obligations and functions in its capacity as a local authority under the Animal Control Laws or necessary due to changes in the powers and functions of the Council as a local government authority, to the extent that such undertakings by RSPCA are not already contained in this Agreement.

25.2 Any request by Council made under clause 25.1 will be served on the RSPCA in accordance with clause 31.1 and any agreed outcome will be subject to a written variation to this Agreement pursuant to clause 29.

25.3 Costs associated with complying with Council requests under clause 25.1 will be at the expense of Council.

## **26. Further Obligations**

In addition to any obligations contained elsewhere in this Agreement, the RSPCA must:

26.1 Comply with obligations prescribed by Law including but not limited to:

- (a) Maintaining the Register of Companion Animals (section 74 CAA) and impounded animals Register (section 30 IA);
- (b) The procedures for dealing with Seized Animals and Impounded Animals (Part 7 CAA and Part 3 and sections 41(3) and 44 IA);
- (c) Ensuring written authorisation is obtained prior to the destruction of any animal pursuant to section 48 CAA or section 26AA POCTA;
- (d) Comply with the confidentiality provisions pursuant to section 89 CAA and public inspection of records pursuant to section 31 IA; and
- (e) Comply with the POCTA, in particular Sections 8, 9 and 22.

26.2 Keep under strict control all keys, access codes and records as will be required to perform its obligations in accordance with this Agreement.

26.3 As far as is reasonable and lawful keep order at the Animal Shelter and maintain security and safeguard against accident or unlawful entry.

26.4 Ensure that the requirements of any Laws so far as same may apply to the conduct of the Council Pound and the Impound Facility are fully complied with.



- 26.5 Act promptly on all matters requiring repair and attention and all other matters creating a hazard or danger and shall, where possible and practical, take immediate remedial action.
- 26.6 Ensure that NSW Fire Inspections are carried out at prescribed intervals and all protection systems are adequately maintained.
- 26.7 Ensure that at all times no potential fire hazards are in or about the Animal Shelter.
- 26.8 Ensure compliance with the Law and principles of occupational health and safety, access and equity and equal employment opportunity.
- 26.9 Provide the Council promptly upon request with a full written report of its operation of the Council Pound and the Impound Facility, and any other activity in association therewith.
- 26.10 Maintain and provide toilet facilities and hosing of vehicle facilities for use by Authorised Officers employed by Council for the purpose of animal control.
- 26.11 Accept and process registration applications upon request from members of the public.
- 26.12 Allow Council to inspect the Council Pound and the Impound Facility premises at any time.

**The Council must:**

- 26.13 Retain responsibility for line connection fees, line rental and all fees associated with the dedicated Council EFTPOS line and services.
- 26.14 Provide the RSPCA with updates as received from the Department of Local Government for legislative and operational changes/issues as they affect the operation of this Agreement.
- 26.15 Provide registers for both Seized Animals and Impounded Animals for record keeping purposes in accordance with clause 7.
- 26.16 Supply Council stationery to the RSPCA to facilitate Notices of Seizure to identified owners of seized Companion Animals and impounded Livestock.
- 26.17 Not organise or promote Companion Animal registration or microchipping events at the Impound Facility without the prior approval of the RSPCA which approval is not to be unreasonably withheld.

**27. Sufficient Officers**

- 27.1 The RSPCA must provide sufficient appropriately skilled and knowledgeable employees to carry out RSPCA functions pursuant to this Agreement. The Council does not accept responsibility for any proceedings, claims, actions, suits, costs, liabilities or demands whatsoever, nor injury, death, loss or damage to the extent that it is incurred or suffered as a result of acts or omissions by RSPCA employees, its agents or contractors.
- 27.2 The Council must provide sufficient appropriately skilled and knowledgeable employees to perform its functions pursuant to this Agreement. The RSPCA does not accept responsibility for any proceedings, claims, actions, suits, costs, liabilities or demands whatsoever, nor injury, death, loss or damage to the extent that it is incurred or suffered as

a result of acts or omissions by Council employees, its agents or contractors other than the RSPCA.

## **28. Relationship between the Parties**

- (a) Nothing in this document:
  - (1) constitutes a partnership between the Parties;
  - (2) makes a Party an agent of another Party for any purpose; or
  - (3) creates a relationship of employer and employee between the Parties or as between a Party and the personnel of the other Party.
- (b) A Party cannot in any way or for any purpose:
  - (1) bind another Party; or
  - (2) contract in the name of another Party.
- (c) If a Party must fulfil an obligation and that Party is dependent on the other Party, then that other Party must do each thing reasonably within its power to assist the other in the performance of that obligation.

## **29. Variations**

No subsequent Agreement shall operate to vary or modify this Agreement unless such subsequent Agreement is in writing and is executed by both the Council and the RSPCA.

## **30. GST**

### **30.1 Imposition of GST**

Subject to clause 30.2 where one party (supplying party) makes a Taxable Supply to another party (receiving party) and the consideration for that supply is not expressed to be inclusive of GST, the receiving party must pay an additional amount when it pays or provides that GST exclusive consideration equal to the value of the GST exclusive consideration (without deduction or setoff) multiplied by the prevailing GST rate.

### **30.2 Tax Invoice**

The receiving party is not required to pay any amount of GST to the supplying party unless the supplying party has issued a Tax Invoice to the receiving party.

### **30.3 Adjustment of consideration for a supply**

If the amount of GST recovered by the supplying party from the receiving party differs from the amount of GST payable at law by the supplying party (or an entity grouped with the supplying party for GST purposes) in respect of the supply the supplying party will adjust the amount payable by the receiving party accordingly.

### **30.4 Indemnity and reimbursement payments exclude input tax credit entitlements**

If one party (payer) is required to indemnify or reimburse another party (payee) for any cost, loss or expense incurred by the payee, the required payment does not include any part of such cost, loss or expense that the payee (or an entity grouped with the payee for GST purposes) is entitled to claim as an Input Tax Credit, but will be increased under clause

30.1 if the payment is consideration for a Taxable Supply.

**30.5 Change in the GST rate**

If there is a change in the GST rate which comes into effect after the date of this Agreement, any consideration which is stated as being inclusive of GST will be adjusted to reflect the change in the GST rate.

**31. Notices**

31.1 Any notice or demand to be given hereunder must be given in writing and shall be deemed to be duly served upon the RSPCA if it is:-

- (a) By hand at the RSPCA premises at 201 Rookwood Road, Yagoona; or
- (b) By prepaid security mail addressed to the RSPCA at 201 Rookwood Road, Yagoona in the State of NSW; or
- (c) By email to the Chief Executive Officer, RSPCA NSW or Representative.

31.2 Any notice or demand to be given hereunder must be in writing and shall be deemed to be duly served upon the Council if it is:

- (a) By hand at the office of the Council's General Manager; or
- (b) By prepaid security mail addressed to the General Manager, Cessnock City Council, PO Box 152, Cessnock, NSW 2325; or
- (c) By email to the Council's General Manager.

**32. Confidentiality and Privacy**

**32.1 Compliance with Privacy Laws**

The Parties must, and must ensure that their employees and contractors, comply with the Privacy Laws in performing their obligations under this Agreement.

**32.2 Disclosure**

Subject to clause 32.3, a Party must not disclose the other Party's Confidential Information or disclose or make public the terms of this Agreement.

**32.3 Exceptions**

A Party will not be in breach of clause 32 to the extent that the Confidential Information:

- (a) is or becomes part of the public domain otherwise than by breach of this Agreement;
- (b) is lawfully obtained by the Party from another person without any restriction as to use or disclosure;
- (c) was in the Party's possession prior to disclosure by the other Party;

- (d) is required to be disclosed by the operation of any Law, stock exchange, judicial or parliamentary body or governmental agency;
- (e) has been authorised in writing by the disclosing Party to be disclosed; or
- (f) is disclosed to its professional advisers who have agreed to keep it confidential.

#### **32.4 Personnel**

- (a) Each Party must take all reasonable steps to ensure its employees and contractors do not make public or disclose the other Party's Confidential Information.
- (b) A Party may at any time require any employees and contractors of the other Party with access to Confidential Information to execute a suitable confidentiality agreement. Such other Party must arrange for all such agreements to be executed within the time frame reasonably proposed by the requesting Party.

### **33. Insurance and Indemnity**

33.1 The parties agree to indemnify the other party and keep the other party so indemnified against all proceedings, claims, actions, suits, costs, liabilities or demands whatsoever, injuries, death, losses or damages arising out of the breach of; or negligent performance; or failure in performance by the other party of the terms of this Agreement.

33.2 Both parties agree to have current insurances in place in respect of the following for the duration of the Agreement and to make such copies available to the other party on request:

33.2.1 Workers' Compensation insurance in accordance with applicable prevailing legislative requirements;

33.2.2 Public and Products Liability insurance of not less than \$10,000,000.00;

33.2.3 Professional Indemnity Insurance of not less than \$1,000,000.00.

#### **33.3 Risk in relation to the Services**

The RSPCA bears all risk and will be solely liable for any Claim made arising from or in connection with the Services, including any Claim arising from:

- (a) the RSPCA's use of the Animal Shelter for the purposes of carrying out the Services;
- (b) loss of or damage to any property including that owned or controlled by the Council or any other person;
- (c) personal injury to or the death of any person;
- (d) the performance or non-performance by the RSPCA of its obligations in relation to the Services in accordance with this Agreement,

except to the extent such loss, damage, injury, death and any matters raised in this clause 33 is caused or contributed to by the Council's negligent or unlawful act or omission, or default under this Agreement.

- 33.4 The parties agree that where one party bears the risk of a relevant loss or damage under the Agreement or is required to indemnify the other party under this Agreement, the party assuming the risk will bear the cost of any excesses in its own insurance.
- 33.5 A party's liability to indemnify the other party is reduced proportionally to the extent that an act or omission of the indemnifying party or employees or agents (other than the indemnified party) of the indemnifying party may have contributed to the injury, damage or loss.
- 33.6 The RSPCA must release and indemnify and keep the Council indemnified on demand against any Claim referred to in clause 33.3.

#### **34. Facility Access Fee**

For the provision of that part of the Services described in clause 4.3(a) and 4.4, the Council must pay the RSPCA a Facility Access Fee of \$869,000 inclusive of GST payable as follows:

- (a) An amount of \$69,000 inclusive of GST payable on Commencement; and
- (b) An amount of \$800,000 inclusive of GST payable on or before 30 September 2011.

#### **35. Dispute Resolution**

- 35.1 If any dispute arises concerning this Agreement a party to the Agreement must not commence any court proceedings, unless the parties to the dispute have complied with the following provisions of this clause except where a party seeks urgent interlocutory relief.
- (a) A party to this Agreement, claiming that a dispute has arisen out of or in relation to this Agreement must give written notice within fourteen (14) days of the dispute arising to the other party to this Agreement specifying the nature of the dispute.
  - (b) In the event of a dispute the Chief Executive Officer (CEO) of RSPCA NSW and the General Manager of the Council, or their respective representatives, shall use their best endeavours to resolve the dispute.
  - (c) If the parties do not agree within fourteen days (14) days of receipt of the notice by the other party (or such further period as agreed in writing by them) as to a resolution to the dispute an independent person, herein after referred to as a mediator, agreed to by the CEO and the General Manager, or their respective representatives, will be engaged to mediate the dispute. If there is no agreement as to the mediator either party may request the President of the Law Society of New South Wales or his/her nominee to nominate a mediator.
  - (d) Each party is responsible for fifty percent (50%) of the mediator's fees unless the mediator orders that payment be differently apportioned.
  - (e) A mediator cannot make a decision that is binding on a party unless both parties have agreed in writing.
  - (f) Any information disclosed during mediation must be kept confidential and must not be used except to attempt to resolve the dispute.

- (g) If the dispute is not resolved within thirty (30) Business Days after the appointment of a mediator, any party who is not in breach of this clause may terminate the mediation process immediately by giving notice to the other party and then either party may start a claim.
- (h) In the event of a dispute the parties must continue to perform those services and obligations under the Agreement not affected by the dispute.

## **36. Termination**

### **36.1 Termination generally by the Council**

The Council may terminate this Agreement immediately by notice in writing to the RSPCA if the RSPCA:

- (a) materially breaches a material term of this Agreement and does not remedy the breach within 15 Business Days of written notice by the Council to rectify the breach;
- (b) suffers an Insolvency Event; or
- (c) ceases to provide the Services or to providing the Services in the normal manner.

### **36.2 Termination for Force Majeure Event**

The Council may terminate this Agreement immediately by written notice to the RSPCA if a Force Majeure Event continues for three (3) months.

### **36.3 Termination by RSPCA**

The RSPCA may terminate this Agreement immediately by notice in writing to the Council if the Council materially breaches a material term of this Agreement and does not remedy the breach within 15 Business Days of written notice by the RSPCA to rectify the breach.

### **36.4 Consequences of termination**

If this Agreement is terminated for any reason:

- (a) the Council may engage a third party to provide the Services; and
- (b) each Party must promptly return to the other all Confidential Information of the other Party in its possession, power and control;
- (c) All Registers under the CAA and the IA must be returned to the Council; and
- (d) All Council Material must be returned to the Council.

### **36.5 Continuing liability**

Termination of this Agreement by a Party will not release any other Party from liability in respect of any breach, or non-performance, of any obligation under this Agreement, including obligations under clause 36.6.

### **36.6 Recovery of Facility Access Fee**

- (a) The Parties acknowledge that the Facility Access Fee payable under clause 34 is calculated and paid by the Council in the first year of the Term in the expectation that the Council will obtain the benefit of the Services to which that fee relates over the full Term of 5 years.
- (b) Accordingly, in the event that this Agreement does not continue for the full Term, subject to subclause (c), the RSPCA must repay to the Council that amount of the Facility Access Fee which relates pro-rata to the part of the Term for which the Council does not have the benefit of such Services.
- (c) The obligations of the RSPCA under sub clause (c) do not apply in circumstances where this Agreement is terminated as a result of default by the Council.

### **37. Transition**

#### **37.1 Co-operation on Handover**

The RSPCA agrees to co-operate with the Council:

- (a) From the date of this Agreement; and
- (b) During the operation of the Transition Plan; and
- (c) Before (and for such reasonable time as is necessary after) the expiry or termination of this Agreement, with the Council and/or its nominee incoming service provider,;

to ensure seamless delivery of the Services is maintained and an appropriate professional standard of service continues during the handover period.

#### **37.2 Transition Plan**

Without limiting the generality of clause 37.1, the RSPCA must in collaboration with the Council implement the Transition Plan in the manner and at the time specified in the Transition Plan.

### **38. Subcontracting and Assignment**

- (a) The RSPCA must not assign or otherwise dispose of all or any of the benefit, right or interest under this Agreement or subcontract any of its obligations under this Agreement without the Council's prior written consent, which may be withheld in the Council's absolute discretion or given on such conditions as the Council deems appropriate.
- (b) Despite any subcontract consented to by the Council, the RSPCA remains fully responsible for performing its obligations under this Agreement and for the acts or omissions of its subcontractors.

### **39. Access to Information (GIPA Act Section 121)**

- 39.1 In accordance with the NSW GIPA Act Council may have immediate right of access to information:

- relating directly to the performance of the Services by the RSPCA in accordance with this Agreement,
- collected by the RSPCA from members of the public to whom it provides, or offers to provide, the Services in accordance with this Agreement, and
- received by the RSPCA from Council to enable the RSPCA to provide the Services in accordance with this Agreement.

Information does not include:

- information that discloses or would tend to disclose the RSPCA financing arrangements, financial modelling, cost structure or profit margin;
- information that the RSPCA is prohibited from disclosing to Council by a provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
- information that, if disclosed to Council, could reasonably be expected to place the RSPCA at a substantial disadvantage in relation to the Council, whether at present or in the future.

39.2 The RSPCA will provide copies of any of the information in clause 39.1, as requested by Council, at the RSPCA's own expense within a reasonable time.

39.3 Any failure by the RSPCA to comply with any request pursuant to this clause 39 may be considered a breach of an essential term and will allow Council to terminate the Agreement by providing a written notice of its intention to do so with the termination to take effect fifteen Business Days days after the receipt of notice. Once the RSPCA receives the notice, if it fails to remedy the breach within the 15 Business Day day period to the satisfaction of Council acting reasonably, then the termination will take effect seven (7) days after the receipt of notice.

#### **40. Consultation (GIPA Act, s. 54)**

(a) The Council will take reasonably practicable steps to consult with the RSPCA before providing any person with access to information relating to the RSPCA, in response to an access application under the *Government Information (Public Access) Act 2009 (GIPA Act)*, if it appears that:

(1) the information:

- A. includes personal information about the RSPCA or its employees;
- B. concerns the RSPCA's business, commercial, professional or financial interests; or
- C. concerns research that has been, is being, or is intended to be, carried out by or on behalf of the RSPCA;

(2) the RSPCA may reasonably be expected to have concerns about the disclosure of the information; and

(3) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.

(b) If, following consultation between the Council and RSPCA, the RSPCA objects to disclosure of some or all of the information, the RSPCA must provide details of any such objection (including the information objected to and the reasons for any such objection) within 5 days of the conclusion of the consultation process.



- (c) In determining whether there is an overriding public interest against disclosure of government information, the Council will take into account any objection received by the RSPCA.
- (d) If the RSPCA objects to the disclosure of some or all of the information but the Council nonetheless decides to release the information, the Council must not provide access until it has given the RSPCA notice of the Council's decision and notice of the RSPCA's right to have that decision reviewed.
- (e) Where the Council has given notice to the RSPCA in accordance with sub-clause (4), the Council must not provide access to the information:
  - (1) before the period for applying for review of the decision under Part 5 of the GIPA Act has expired; or
  - (2) where any review of the decision duly applied for is pending.
- (f) The reference in sub-clause (5)(a) to the period for applying for review of the decision under Part 5 of the GIPA Act does not include the period that may be available by way of extension of time to apply for review.

## **41 Intellectual Property Rights**

### **41.1 Ownership**

- (a) The RSPCA acknowledges that the Council owns all rights (including Intellectual Property rights) in the Council Material and nothing in this Agreement confers on the RSPCA any ownership rights or Intellectual Property Rights in any Council Material;
- (b) The Council acknowledges that the RSPCA owns all rights (including Intellectual Property rights) in the RSPCA Material and nothing in this Agreement confers on the Council any ownership rights or Intellectual Property rights in any RSPCA Material.

### **41.2 Licence**

- (a) The Council grants the RSPCA a non-exclusive, royalty-free licence to use the Council Material for the purpose of providing the Services. This licence will terminate on the expiry or earlier termination of this Agreement.
- (b) The RSPCA grants the Council a non-exclusive, royalty-free licence to use the RSPCA Material for the purpose of this Agreement. This licence will terminate on the expiry or earlier termination of this Agreement.

### **41.3 Infringement**

A Party must not do anything or permit anything to be done which would infringe, harm, challenge, deny, question or contest the Intellectual Property rights of another Party and will inform the other Party immediately it learns of any actual or threatened infringement.

## **42 General**

### **42.1 Invalidity**

- (a) A word or provision must be read down if:
  - (1) this Agreement is void, voidable, or unenforceable if it is not read down;
  - (2) this Agreement will not be void, voidable or unenforceable if it is read down; and
  - (3) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (1) despite the operation of clause 41.1(a), the provision is void, voidable or unenforceable if it is not severed; and
  - (2) the Agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Agreement has full effect even if clause 41.1(b) or 41.1(b)(2) applies.

### **42.2 Legal expenses and stamp duty**

- (a) Each Party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Agreement.
- (b) A Party that requests any consent, waiver, amendment, supplement, replacement, novation or assignment under this Agreement will pay all costs associated with such consent, waiver, amendment, supplement, replacement, novation or assignment.
- (c) The RSPCA must pay all taxes and duties on or in relation to this Agreement and any instrument or transaction required by or necessary to give effect to this Agreement, including the provision of the Services and the acquisition of all Equipment.

### **42.3 Entire agreement**

The contents of this Agreement constitute the entire agreement between the Parties and supersede any prior negotiations, representations, undertakings or arrangements made between the Parties regarding the subject matter of this Agreement, whether orally or in writing.

### **42.4 Waiver**

A right or remedy created by this document cannot be waived except in writing signed by the Party entitled to the right. Delay by a Party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (whether wholly or in part) by a Party of a right operate as a subsequent waiver of the same right or of any other right of that Party.

### **42.5 Survival after termination**

Clauses 32, 33.6, 36, 37 and this clause 42.5 continue to apply after expiration or termination of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as a Deed on the day and year first hereinbefore written.

The Common Seal of Cessnock City )  
Council was hereunto affixed this )  
7<sup>th</sup> day of July 2011 )  
in pursuance of a resolution of the Cessnock City )  
Council passed on the 15<sup>th</sup> day of )  
June 2011. )



.....  
Mayor

Handwritten signature of the Mayor in cursive script.

.....  
General Manager

Handwritten signature of the General Manager in cursive script.

GIVEN UNDER the Common Seal of )  
THE ROYAL SOCIETY FOR THE )  
PREVENTION OF CRUELTY TO )  
ANIMALS - NSW in the presence of: - )

.....  
President  
.....  
Chief Executive Officer

Handwritten signature of the President in cursive script.

Handwritten signature of the Chief Executive Officer in cursive script.

..... 38 121018  
Justice of the Peace in and for the State of  
New South Wales.



## SCHEDULE A – SERVICE FEES

### Fixed Management Fees

The Council must pay the RSPCA a Fixed Management Fee of \$323,000 inclusive of GST for each year of the Term and payable by 12 equal monthly payments such Fixed Management Fee being for the provision of all Services required under this Agreement other than that part of the Services described in clause 4.3(a) in relation to which the Facility Access Fee is payable under clause 34.

## **SCHEDULE B – TRANSITION PLAN**

- From 1 August 2011 all animals impounded or surrendered to Cessnock City Council will be impounded at the RSPCA shelter at Rutherford.
- Cessnock City Council will continue to operate the animal shelter at Kurri Kurri until all the existing impounded and surrendered animals are managed in accordance with legislative requirements.
- Council will implement a community awareness program.

**SCHEDULE C – WARRANTY**

**NUMBER OF ANIMALS IMPOUNDED AT CESSNOCK CITY COUNCIL ANIMAL  
SHELTER, MITCHELL AVENUE, KURRI KURRI**

**2008/2009 & 2009/2010**

<b>ANIMALS IMPOUNDED</b>	<b>2008/2009</b>	<b>2009/2010</b>
Dogs	740	778
Cats	351	341
Cattle	16	4
Horses	6	8
Goats	2	3
Pigs	2	1
Poultry	0	20
Ducks	0	4
Sheep	0	1