

Date 28 September 2020

AGREEMENT

BETWEEN

AUSTRALIAN CAPITAL TERRITORY
represented by

**TRANSPORT CANBERRA AND CITY SERVICES
DIRECTORATE**

AND

**THE ROYAL SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS
ACT INC**
ABN: 35 730 738 037

SERVICE FUNDING AGREEMENT
01 July 2020 – 31 December 2020

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This AGREEMENT is made the 25th day of September 2020

BETWEEN:

AUSTRALIAN CAPITAL TERRITORY, a body politic established under the *Australian Capital Territory (Self-Government) Act 1988* (Cth) represented by the Department or agency specified in **Item 1 Schedule 1** ("Territory")

AND:

The person, association or corporation specified in **Item 2 Schedule 1** ("Organisation").

BACKGROUND

- A. This Agreement is within the framework of "Community Sector Funding Policy" (as amended or superseded from time to time) and recognises that the delivery of Services to the community is best achieved through effective relationships between government agencies and organisations in the community sector that are delivering the Services.
- B. The parties to this Agreement commit to negotiating and working together in good faith in the spirit of collaboration and cooperation to achieve the best possible outcomes for Service Users and the parties, and in particular in fulfilling their obligations under this Agreement the parties will:
 - (1) communicate in a manner that shows mutual respect; and
 - (2) observe the spirit of the "Social Compact" (as amended or superseded from time to time) between the ACT government and the community sector.
- C. This Agreement seeks to focus on the achievement of agreed service outcomes and/or outputs for Service Users and also makes provision with respect to:
 - (1) the transparency of funding and service provision processes;
 - (2) accountability and responsibility of the Territory and the Organisation in the application and use of public funds; and
 - (3) principles, standards and values underpinning the delivery of the Services to Service Users.
- D. The Territory and the Organisation have agreed to the funding and provision of the Services on the terms and conditions of this Agreement.

NOW IT IS AGREED AS FOLLOWS:

1. Definitions and Interpretation

- 1.1 In this Agreement, unless the context otherwise requires:

“**ABN Act**” means *A New Tax System (Australian Business Number) Act 1999* (Cth);

“**Agreement Material**” means Material created or in any way brought into existence wholly or partly with Territory funds for the purpose of performing the Services, and any copy or representation thereof and does not include Territory Material;

“**Assets**” means all items of equipment, furniture, vehicles, buildings, real property and leasehold improvements, which:

- (1) are specified in **Item 1 Schedule 5**; or
- (2) have a value of \$3000.00 or more and are purchased, leased or hired, wholly or partly with the Funding Amount.

“**Funding Amount**” means the sums to be paid by the Territory as specified in **Schedule 4** for the provision of the Services;

“**GST**” has the same meaning as it has in the GST Act;

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

“**Issue**” means a difference, question or dispute that arises between the parties in relation to this Agreement or the Services;

“**Material**” means all documents, posters, literature, brochures, booklets, publications, audio or video recordings, Internet or other electronic representation and any other educational, publicity or other item or representation in any form;

“**Outcomes**” means the outcomes specified in **Item 2 Schedule 2**;

“**Outputs**” means the outputs specified in **Item 3 Schedule 2**;

“**Performance Indicators**” means the indicators specified in **Item 4 Schedule 2**;

“**Performance Requirements**” means the requirements specified in **Item 5 Schedule 2**;

“**Service**” or “**Services**” means the services specified in **Item 1 Schedule 2**;

“**Service User**” means the user or recipient of the Services;

“**Territory**” means:

- (1) when used in a geographical sense, the Australian Capital Territory; and
- (2) when used in any other sense, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth);

“**Territory Material**” means:

- (1) all Material provided by the Territory to the Organisation for purposes of this Agreement; and
 - (2) all Material specified in **Item 7 Schedule 2** and any copy or representation thereof.
- 1.2 Unless otherwise required by the context, the further definitions contained in **Item 3 Schedule 1** apply to this Agreement.
- 1.3 In this Agreement, unless the context otherwise requires:
 - (1) any specified provision of this Agreement will be construed as a reference to that provision as amended, varied or substituted in writing from time to time,
 - (2) words importing a gender include the others; words in the singular number include the plural and vice versa; and references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation;
 - (3) business day includes any day other than a Saturday, Sunday or public holiday in the Territory; and
 - (4) clause headings are for convenient reference only and do not affect interpretation.
- 1.4 Any term or condition of this Agreement which applies to more than one person, will apply to all of them jointly and each of them individually.

2. Duration of Agreement

This Agreement is for the period specified in **Item 3 Schedule 1** as the “Agreement Period” unless varied or terminated sooner in accordance with the terms of this Agreement.

3. The Services

- 3.1 The Organisation must provide the Services for the Agreement Period and in providing the Services must:
 - (1) achieve the Outputs specified in **Item 3 Schedule 2**;
 - (2) comply with the Performance Requirements specified in **Item 5 Schedule 2**; and
 - (3) provide the reports specified in **Schedule 3**.
- 3.2 In the purchase and provision of the Services, the parties will ensure that the

Services are delivered in a manner which recognises the diversity of needs of people in the Territory and in a manner which promotes fairness and opportunity for Service Users of diverse backgrounds and abilities so that they can participate fully in the economic, social and cultural life of the Territory.

4. Funding Amount, Assets and GST

4.1 Subject to the Organisation providing the Services and complying with all of its contractual obligations, the Territory will pay the Funding Amount to the Organisation at the times and in the manner set out in **Schedule 4**.

4.2 The parties acknowledge and agree that the Funding Amount payable by the Territory for the Services, is based upon the Territory's and/or the Department's policies and level of budgetary allocation by the Territory on the date this Agreement commences and that a significant change in policy or a reduction of the allocation in a subsequent Territory budget will entitle the Territory on a reasonable basis and in a reasonable manner to revise the quantity and/or level of the Services specified at the commencement of this Agreement.

4.3 The provisions in **Schedule 5** will apply in respect of Assets including as applicable, the ownership, maintenance, insurance and other matters concerning Assets.

GST- ABN and GST Registration

4.4 The Territory will:

(1) if the Organisation:

- (a) is registered in the Australian Business Register under the ABN Act ("ABN registration"), and
- (b) is registered under the GST Act ("GST registration"); and

(2) if the Funding Amount specified in **Item 1 Schedule 4** does not include GST,

pay to the Organisation an amount equal to the GST under the GST Act lawfully payable by the Organisation in respect of the provision of the Services to the extent that this constitutes a taxable supply for purposes of the GST Act.

4.5 Each party acknowledges that it has GST registration on the date this Agreement is entered into, and unless otherwise agreed, the parties agree that:

- (1) the Territory may issue recipient created tax invoices (where "recipient created tax invoice" has a meaning the same as it has in the GST Act) in respect of the supply of the Services;
- (2) the Organisation will not, if the Territory issues recipient created tax invoices, issue tax invoices in respect of the supply of the Services for the purposes of the GST Act.

GST – ABN Registration but no GST Registration

- 4.6 Where the Organisation has ABN registration but does not have GST registration, the Funding Amount will not include any amount on account of GST and the Territory is not liable to pay any further amount in relation to GST to the Organisation.

GST – No ABN Registration and no GST Registration

- 4.7 Where the Organisation has no ABN registration and no GST registration:
- (1) the Funding Amount will not include any amount on account of GST;
 - (2) the Territory will deduct from the Funding Amount such amounts as it is required by law to deduct; and
 - (3) the Territory is not liable to pay any amount on account of GST to the Organisation.

Warranties and Notifications

- 4.8 The Organisation warrants that:
- (1) for purposes of clause 4.4(1)(a), 4.5 and 4.6, it has ABN registration; and
 - (2) for purposes of clause 4.4(1)(b) and 4.5, it has GST registration.
- 4.9 The Organisation will, if requested by the Territory, produce satisfactory evidence of its ABN registration and GST registration within 14 days of the request.
- 4.10 Each party must notify the other if:
- (1) its registration in respect of either or both the ABN or the GST, pursuant to the GST Act ceases, or if, not having been so registered on the date of this Agreement, becomes registered; or
 - (3) it ceases to satisfy any of the requirements of rulings, or determinations under section 29-70 of the GST Act, issued by the Australian Taxation Office, or the Commissioner for Taxation, in respect of recipient created tax invoices.

5. Organisation's Obligations

Access to Premises

- 5.1 The Organisation will at the request of the Territory and within such time as is agreed by the parties or, if no agreement has been reached after 2 weeks of any request, within such period of time specified in a written notice (which provides reasons for access) from the Territory allow the Territory, its employees and agents

to enter onto the Premises of the Organisation:

- (1) to inspect and copy any records and documentation, of a financial nature or otherwise, relating to the Services but not including any Service User records; and/or
- (2) to inspect the operation and progress of provision of the Services as appropriate having regard to the privacy of the Service Users.

5.2 Having regard to the interest or protection of any Service User and to the circumstances of any request, the Organisation may require the Territory not to permit a Territory employee of a nominated gender to enter the Premises.

Insurances and Indemnities

5.3 From the commencement of the Agreement Period the Organisation will effect and maintain all insurance required to be effected by it by law and the following:

- (1) the insurance policies specified in **Item 1 Schedule 6** (unless otherwise approved by the Territory in writing);
- (2) appropriate and adequate insurance over Assets (including, where relevant, comprehensive motor vehicle insurance); and
- (3) adequate insurance to cover the Organisation's volunteers,

and will, on execution of the Agreement, on the renewal of any policy and on other occasions within a reasonable time of the Territory's request, produce satisfactory evidence of currency or renewal of insurance policies to the Territory.

- 5.4
- (1) Except to the extent that the Territory caused the relevant loss, damage or injury, the Organisation will be responsible for and will indemnify the Territory, its employees and agents against liability in respect of all claims, costs and expenses and for all loss, damage, injury or death to persons or property caused by the Organisation, its employees or agents in connection with the provision of the Services.
 - (2) The amount of all claims, loss, damage, costs and expenses the subject of the indemnity in clause 5.4(1) will be made good at the Organisation's expense.

Organisation Staff

5.5 The Organisation acknowledges that it is the employer of persons and may be supported by volunteers whose salary, wage or associated costs is paid from the Funding Amount and will ensure those employees and volunteers ("staff") are:

- (1) appropriately qualified and skilled; and
- (2) provided with appropriate working conditions, having regard to but not limited to:

- (a) employing employees under applicable Commonwealth or Territory laws and/or certified agreements or awards,
- (b) providing adequate support, training and debriefing and effectively directing staff to enable them to effectively perform their duties.

Service User Satisfaction

5.6 The Organisation will:

- (1) institute procedures for receiving feedback and resolving complaints by Service Users about the Services; and
- (2) advise Service Users and other persons with a relevant interest of the procedures available for the referral of feedback and complaints in relation to the receipt of the Services,

as specified in **Schedule 2**.

Provision of Information

5.7 The Organisation will, upon request of the Territory pursuant to clause 6.4, provide to the Territory requested information relevant to the Services.

5.8 The Organisation will as soon as practicable notify the Territory in writing of any of the following:

- (1) any change in the Organisation's address and its contact details;
- (2) any material change or proposed change to the Organisation's constitution and rules or memorandum and articles of association; and
- (3) any change in the chair of the board, public officer, chief executive or any equivalent positions or executive management of the Organisation.

5.9 The Organisation must immediately notify the Territory in writing of any of the following:

- (1) any action or proposed action relating to:
 - (a) the winding up or liquidation of the Organisation,
 - (b) the appointment of a receiver or manager, or
 - (c) any company arrangement between the Organisation and its creditors; and
- (2) any other event or circumstance which might reasonably affect the provision of the Services in accordance with this Agreement.

5.10 The Organisation undertakes that all information provided from time to time by the Organisation to the Territory in relation to this Agreement is true and complete in

all material respects on and from the date of the information being provided. The Organisation will notify the Territory in writing of any material change to such information as soon as is practicable.

Quality Standards

- 5.11 The Organisation will use its best endeavours to implement quality improvement processes and measures, including any specified in **Item 6 Schedule 2** and as recommended by the Territory from time to time.

Special Conditions

- 5.12 The Organisation will comply with any Special Conditions specified in **Schedule 6**.

6. Territory's Obligations

- 6.1 The Territory will:

- (1) pay the Funding Amount, or instalments of it, to the Organisation within the terms of this Agreement;
- (2) promote linkages among its agencies and programs relevant to the Services; and
- (3) act promptly and in good faith in the resolution of any questions, issues or disputes that may arise during the course of this Agreement.

- 6.2 If the costs for the Organisation of delivery of the Services increases substantially due to necessary cost increases outside the control of the Organisation, the Organisation may request in writing a joint review of the Services provided under this Agreement, and the Territory will consider and respond to this request. The parties may, as a result of any joint review, agree in writing to vary any of the Outputs, Performance Indicators or Performance Requirements.

- 6.3 The Territory will, as soon as practicable after receipt of a report pursuant to Schedule 3, provide to the Organisation a reasonable level of feedback concerning the sufficiency of the report.

- 6.4 The Territory may request the Organisation to provide it with information relevant to the Services that is reasonable having regard to the circumstances and any request will:

- (1) be in writing;
- (2) specify the information required, which may include but is not limited to:
 - (a) information about guidelines or rules provided for Service Users and/or about the Organisation,
 - (b) information required by a Minister or Auditor General,

- (c) fees, if any, charged by the Organisation to Service Users, and
 - (d) all financial records and documents relating to the Services; and
- (3) specify a reasonable time frame in which the Organisation must provide the information.

6.5 The Territory agrees to commence communications with the Organisation in good faith, at least 3 months prior to the expiration of this Agreement, concerning the Territory's intentions in relation to the continuation or otherwise of funding of the Services and the parties acknowledge that no representations or obligations will arise from those communications to enable frank and open communication.

7. Conflict of Interest

7.1 The Organisation warrants to the Territory that at the date of entering into this Agreement no undisclosed conflict of interest exists or is likely to arise in its provision of the Services or in the performance of its obligations under this Agreement whether by virtue of the position or conduct of any of its officers or members or otherwise.

7.2 If a conflict or risk of conflict of interest specified in clause 7.1 is subsequently discovered to have existed or arises or is likely to arise during the Agreement Period, the Organisation will:

- (1) notify the Territory immediately in writing of that conflict or risk; and
- (2) comply with such course of action as the Territory requires of the Organisation for the purpose of resolving the conflict.

8. Treatment of Personal and Agreement Information

8.1 In this clause:

- (1) "personal information" means information or an opinion (including information or an opinion forming part of a database), held, collected, created or otherwise obtained by the Organisation in connection with this Agreement, whether true or not, and whether recorded in a material form or not, about a natural person, whether a Service User or not, whose identity is apparent, or can reasonably be ascertained, from the information or opinion; and
- (2) "Agreement information" means all information relating to the Services or arising from this Agreement which by its nature is confidential or which the Territory notifies to, or agrees with, the Organisation as being confidential but does not include information which is or becomes public knowledge other than by breach of this Agreement.

8.2 The Organisation will:

- (1) use personal information only for the purposes of fulfilling its obligations under this Agreement and as legally required;
- (2) take all reasonable measures to ensure that personal information is protected against loss and unauthorised access, use, modification, disclosure or other misuse and that only authorised personnel have access to the information;
- (3) unless otherwise agreed with the Territory, comply with the Information Privacy Principles set out in section 14 of the *Privacy Act 1988* (Cth) which concern the collection, security, use and disclosure of personal information to the extent that those Principles apply to the Services the Organisation is providing under this Agreement, as if it were a collector or record-keeper as referred to in the Principles;
- (4) ensure that any person whom the Organisation enables to have access to any personal information, is made aware of, and undertakes in writing, to observe the Organisation's obligations under this clause 8 and is informed that failure to comply with the undertaking may be a criminal offence and may also lead the Organisation to take disciplinary action against the person if he or she is the Organisation's employee;
- (5) immediately notify the Territory of any complaint alleging an interference with the privacy of a Service User or any other person who is affected by the provision of the Services and similarly notify the Territory where the Organisation becomes aware of a breach of clause 8.2(2) or 8.3; and
- (6) co-operate with any reasonable requests or directions of the Territory arising from or in relation to the exercise of the functions of the Privacy Commissioner under the *Privacy Act 1988* (Cth), and comply as far as practicable with any reasonable direction of the Territory's Agreement Manager to observe any recommendation of the Privacy Commissioner relating to any acts or practices of the Organisation in relation to the Services.

8.3 The Organisation must not:

- (1) disclose personal information or Agreement information; nor
- (2) transfer personal information or Agreement information outside Australia, or allow any person outside Australia to have access to it;

unless:

- (3) the Territory gives its prior written consent to disclosure (which consent may be conditional);

- (4) necessary to be disclosed to the extent required for the proper discharge of the Organisation's provision of the Services and having regard for the interests and protection of Service Users;
- (5) required to be disclosed for the sole purpose of the Organisation obtaining legal, financial, medical or other relevant advice from suitably qualified persons; or
- (6) legally required to be disclosed, in which case the Organisation will immediately notify the Territory when it becomes aware that a disclosure may be required by law.

9. Agreement and Territory Material and Intellectual Property

Territory Material

- 9.1 Title to, and ownership of any intellectual property rights (including copyright) in all Territory Material will vest upon its creation in the Territory and will at all times remain in the Territory.
- 9.2 The Organisation will ensure that:
 - (1) Territory Material is only used, copied, supplied, communicated or reproduced, published, performed or adapted in accordance with and for the purposes of, this Agreement; and
 - (2) on expiration or termination of this Agreement, the Organisation will convey to the Territory all Territory Material.

Agreement Material

- 9.3 Title to, and ownership of any intellectual property rights (including copyright) in Agreement Material, will vest upon its creation in the Organisation.
- 9.4 The Organisation grants to the Territory a free licence (including a right of sublicense) to use, communicate (including make available online or electronically transmit), reproduce and adapt the Agreement Material for any Territory purpose including purposes for the benefit of Service Users and the conduct of the Territory Department or agency administering this Agreement, subject to clause 9.5. The Territory will acknowledge the Organisation's ownership of any intellectual property rights in the Agreement Material in any use of that Agreement Material under this clause 9.4.
- 9.5 If the Territory proposes to use the Agreement Material for commercial purposes, the Territory will seek the Organisation's prior written consent (which will not be unreasonably withheld) to the commercial use.
- 9.6 The Territory will notify the Organisation every 6 months in arrears of any substantial uses of the Agreement Material pursuant to clause 9.4.

- 9.7 Any Material or other information in any form of presentation, produced by the Organisation using the Funding Amount, must acknowledge the contribution of the Territory and where required, that of the Australian Government, including the naming of the relevant government program, if applicable, in the form set out in **Item 8 Schedule 2**.

10. Resolution of Issues

- 10.1 If an Issue arises, then one party may give written notice ("Notice") to the other that an Issue exists, giving details of the Issue in the Notice. Once the Notice is served, the parties will endeavour to promptly resolve the Issue in good faith.
- 10.2 If the Issue is not resolved within 10 business days of the Notice being served, or such other period as the parties may agree in writing, each party will refer the Issue to a senior executive officer who will endeavour to negotiate to resolve the Issue in a timely manner. The senior executive officer should not be a person who is involved in the day-to-day administration of the Agreement.
- 10.3 If the Issue is not resolved within 20 business days of the Notice being served, or such other period as the parties may agree in writing, the parties will undertake a mediation or conciliation process before resorting to litigation (except where urgent interlocutory relief is sought). The appropriate process and a suitable and independent mediator or conciliator will be:
- (1) as agreed by the parties in writing, or
 - (2) failing agreement, determined by the chairperson of The Institute of Arbitrators and Mediators Australia, ACT Chapter.
- 10.4 The parties will use their best endeavours to resolve any Issue within 40 business days of the Notice.
- 10.5 Unless agreed by the parties in writing no unresolved Issue will entitle the Organisation to suspend the provision of Services.

11. Suspension and Termination

- 11.1 Without prejudice to any other rights and remedies of the Territory in respect of any breach by the Organisation of this Agreement, the Territory may, upon written notice to the Organisation, suspend payment of any part of the Funding Amount if the Organisation fails in a timely manner to provide to the reasonable satisfaction of the Territory reports or information required under this Agreement.
- 11.2 If an Issue notified pursuant to clause 10.1, which involves a breach of this Agreement, is not resolved or remedied within the earlier of:
- (a) 40 business days of the notice being served pursuant to clause 10.1; and
 - (b) 20 business days of the issue being referred to a mediation or conciliation phase of the resolution of issues process pursuant to clause 10.3,

the Territory may, without prejudice to any other rights or remedies of the Territory in respect of any breach of the Organisation of this Agreement, immediately by written notice terminate this Agreement in whole or part.

11.3 For the purposes of this clause, "Compelling Reason" means a situation of urgency (including but not limited to substantial non-delivery of the Services or a situation concerning the safety or health of, or harm to, any person including any Service User) that necessitates action to be taken without undertaking or while undertaking a resolution of Issue process pursuant to clause 10.

11.4 Without limiting clause 11.5 and without prejudice to any other rights and remedies of the Territory in respect of any breach by the Organisation of this Agreement, the Territory may, in its absolute discretion, immediately by written notice suspend the parties' respective obligations under this Agreement in whole or in part if there is a Compelling Reason.

11.5 Without prejudice to any other rights and remedies of the Territory in respect of any breach by the Organisation of this Agreement, the Territory may immediately by written notice terminate this Agreement in whole or in part if:

- (1) there is a Compelling Reason;
- (2) the Organisation becomes insolvent, is wound up, or becomes subject to any form of insolvency administration; or
- (3) the Organisation has, or is in the process of having, its registration or incorporation cancelled.

11.6 Both parties may at any time agree in writing to terminate this Agreement.

11.7 Upon termination of this Agreement, the Organisation must immediately:

- (1) cease expending the Funding Amount (except such amounts as the Territory agrees in writing can be expended by the Organisation, having regard to the Organisation's pre-existing commitments at the time the termination is notified);
- (2) calculate and notify the Territory of any unexpended amount of the Funding Amount; and
- (3) pay to the Territory any amount of the Funding Amount remaining unexpended, any interest earned or income derived from the provision of Services not expended.

11.8 Upon termination of this Agreement, the Territory may, in addition to any other rights and remedies of the Territory under law or this Agreement:

- (1) cease any further payment of the Funding Amount to the Organisation;

- (2) reclaim any amount of the Funding Amount that was not applied in the provision of the Services; and
 - (3) subject to agreement or direction otherwise under clause 11.9, require the Organisation to refund to the Territory such amount of the Funding Amount as was expended by the Organisation in the purchase of any Assets.
- 11.9 If this Agreement is terminated, the Organisation may submit to the Territory a proposal about the transfer of the Assets to any other Organisation funded by the program under which the Organisation is funded under this Agreement to enable Service Users to have the benefit of the Assets. If the Territory does not approve the proposal or no proposal is received within 5 business days of termination, the Organisation will transfer the Assets (except any purchased only partly with the Funding Amount) to, or as directed by, the Territory upon the Territory's demand.

12. Entire Agreement, Variations and No Waiver

- 12.1 This Agreement comprises the entire agreement between the parties and supersedes any prior representations, negotiations, writings, memoranda and agreements.
- 12.1.1 This Agreement may be varied only by the written agreement of the parties.
- 12.2 Failure or omission by the Territory at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights of the Territory to avail itself of the remedies it may have in respect of any such provision.

13. Severance

Any provision of this Agreement that is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability without invalidating the remaining provisions of this Agreement.

14. Compliance with Applicable Laws

- 14.1 This Agreement will be construed and enforced in accordance with laws applicable in the Territory and the parties submit to the non-exclusive jurisdiction of the courts in the Territory.
- 14.2 The Organisation will comply, and will ensure it requires each of its employees, agents and contractors to comply, with all laws applicable to it and them in the Territory.
- 14.3 The Organisation may, in relation to its obligation to comply with the *Discrimination Act 1991*, obtain from the Discrimination Commissioner any exemptions under that Act, required by the Organisation in connection with the delivery of the Services. In that event, the Organisation will submit to the Territory any documentation which it may request in order to verify such exemption.

15. Notices

- 15.1 Any notice to be served by one party to the other will be served by delivering it, posting it by prepaid post or sending it by facsimile to the Territory's Agreement Manager or the Organisation's Agreement Manager at the relevant address specified in **Item 3 Schedule 1** for each Manager.
- 15.2 Any notice served in accordance with this clause will be deemed to be received:
- (1) if delivered by hand - on the day of delivery;
 - (2) if posted - three days after the date of posting; or
 - (3) if transmitted by facsimile - upon production of the transmitting machine's confirmation report unless either that report indicates a faulty or incomplete transmission of it, or within 24 hours of transmission the recipient informs the sender that the transmission was received in an incomplete or garbled form.

16. Agreement Managers

The Territory's Agreement Manager and the Organisation's Agreement Manager are as defined in **Item 3 Schedule 1** or as notified in writing from time to time by one party to the other. Each party's Agreement Manager is authorised to represent that party in relation to all matters arising under this Agreement.

17. No Employment, Agency or Partnership

The Organisation will not represent itself and will ensure that its employees do not represent themselves as the employees, agents or partners of the Territory nor will anything contained in this Agreement constitute or be deemed to constitute the Organisation or any of its employees as the employees, agents or partners of the Territory for any purpose. The Organisation will not have authority to bind the Territory in any manner.

18. No Assignment

Subject to any Special Conditions in **Schedule 6**, the Organisation will not assign or otherwise deal with its rights and obligations under this Agreement without the prior written consent of the Territory.

19. Continuation of Obligations

The Organisation's obligations under clauses 5.4, 8, 9, 11.7, 11.8 and 11.9 (and any outstanding obligation to provide reports under Schedule 3) will continue after the expiration or earlier termination of this Agreement.

SIGNED as an agreement on 25th day of September 2020.

SIGNED for and on behalf of the
AUSTRALIAN CAPITAL TERRITORY

by
Craig Jordan

PRINT FULL NAME

in the presence of:

Commercial in confidence

Signature of Witness

Jan Thunberg
Name of Witness

Personal information

Signature of Territory Delegate

SIGNED for and on behalf of the
ROYAL SOCIETY FOR THE PREVENTION
CRUELTY TO ANIMALS ACT INC

by

Michelle Robertson
PRINT FULL NAME

in Personal information

Signature of Authorised Officer/Director/
Company Secretary

Personal information

Name of Authorised Officer/Director/
Company Secretary

Personal information

Signature of Authorised Officer/Director

Affix common seal and witness in
accordance with its Rules and Constitution if
required:



SCHEDULE 1

AGREEMENT DETAILS AND FURTHER DEFINITIONS

SUMMARY

Name of Organisation: The Royal Society for the Prevention of Cruelty to Animals ACT Inc
Name of service: Supporting Animal Welfare
Agreement Period: 06 months
Funding Amount: \$421,722 (GST exclusive)
Description of Services: Delivery of animal welfare and management services.

Item 1: TERRITORY

TRANSPORT CANBERRA AND CITY SERVICES DIRECTORATE of 480
Northbourne Avenue, Dickson ACT 2602

Item 2: ORGANISATION

THE ROYAL SOCIETY FOR THE PREVENTION OF CRUELTY TO
ANIMALS ACT INC of 12 Kirkpatrick Street, Weston ACT 2611.
ABN:35 730 738 037

Item 3: FURTHER DEFINITIONS

In this Agreement unless the contrary intention appears:

“Agreement Period” means the period commencing 01 July 2020 and ending 31 December 2020;

“Department” means the Territory department or agency specified in Item 1 of this Schedule;

“Minister” means the Minister responsible for Transport Canberra and City Services;

“Premises” means any premises on which the Organisation operates including 12 Kirkpatrick Street, Weston ACT 2611;

“Organisation’s Agreement Manager” means:

Chief Executive Officer
12 Kirkpatrick Street
Weston ACT 2611

PO Box 3082
Weston ACT 2611

Facsimile: (02) 6288 3184

“Territory’s Agreement Manager” means:

Executive Group Manager, Territory and Business Services
480 Northbourne Avenue
Dickson ACT 2602

GPO Box 158
Canberra City ACT 2601

Facsimile: (02) 6207 5956

SCHEDULE 2

THE SERVICES

Item 1. THE SERVICES

Having regard to progressing the broad policy goals of the ACT becoming an Australian leader in animal welfare and management practice, the Organisation will deliver the following services:

A Animal welfare inspectorate services under the Animal Welfare Act 1992 (the Act).

1. Provide suitably qualified staff to be appointed as inspectors and to provide the services of an inspector under and in accordance with the *Animal Welfare Act 1992*, consistent with ACT Government procedures and protocols.

Staff of the Organisation to be appointed as inspectors under the Animal Welfare Act 1992 must complete required training provided or approved by the Territory in relation to the use of their inspector powers.

Those staff appointed as inspectors providing the services of an inspector under and in accordance with the Animal Welfare Act 1992, must not perform any duties under the Act until notified by the appropriate legislative instrument.

2. Conduct investigations into allegations of offences under the *Animal Welfare Act 1992*. Once the Organisation determines there is a reasonable prospect of the just conviction of a person or persons for those offences, the Organisation will provide a brief of evidence to the person appointed by the Territory to act as informant for prosecution by the DPP.
3. Notifying the Territory of:
 - i) all proceedings commenced in any court or tribunal, for or against the Organisation or its staff in connection to services provided under this Agreement, save for proceedings commenced via the Territory informant by way of Item 1A2— within 3 days of initiating or being served with the initiating process; and
 - ii) a summary of the circumstances relating to the seizure of any animal under section 82 of the *Animal Welfare Act 1992* - on a monthly basis.
4. Provision to the Territory a copy of:
 - i) a report provided to an occupier under the *Animal Welfare Act 1992* (section 89) – within 3 days of the report being provided to the occupier; and
 - ii) a warrant obtained under *Animal Welfare Act 1992* (section 90) – within 3 days of the court issuing the warrant.
5. Provide and meet costs associated with kennelling and animal husbandry for any animal being held in relation to an animal welfare offence that does not proceed to prosecution.

B Care for cats

1. As an approved provider under the *Domestic Animals Act 2000*, provide temporary care for a cat seized by the Territory with a view to returning animals to the owner, rehousing or destroying a cat when the following conditions are met:
 - (a) within 7 days after the day of the seizure, the Territory or approved provider cannot find out who is the keeper of the cat after making reasonable inquiries; or
 - (b) the keeper of the cat relinquishes ownership of the cat under section 91 of the *Domestic Animals Act 2000*; or
 - (c) within 7 days after the day notice under section 88 of the *Domestic Animals Act 2000* about the seizure was given by the Territory to the keeper of the cat, the keeper does not tell the Territory or the approved provider, in writing, that the keeper wishes to claim the cat.
2. If the Organisation does not have sufficient information to determine whether any of the above preconditions are met, the Organisation is to consult with the Territory for confirmation.
3. Accept and hold stray / roaming cats received from the public with a view to returning animals to the owner or rehousing; and
4. Accept and manage stray cats received from the public and assessed as displaying behavioural characteristics that would make the cat unsuitable to rehouse.
5. Trap, collect and manage unowned or colony cats as per information and or complaints received from the public.

C Care for dogs

1. Accept and rehabilitate dogs with a view to returning the animals to the owner or rehousing;
2. Accept and rehabilitate stray dogs transferred from DAS that are pregnant, sick, injured or below the age of six months. Unless notified by the Territory that the animal is seized under the *Domestic Animals Act 2000*, the organisation will assume that the animals can be returned to the owner or rehoused;
3. Accept and hold dogs received from the public. Depending on capacity requirements, dogs may be transferred to DAS, or returned to their owner if found, and if not found, for rehoming.
4. At the request of the Territory, provide temporary medical care and rehabilitation of dogs seized by the Territory in accordance with the protocols agreed between the Organisation and the Territory;
5. The Organisation may invoice the Territory for any reasonable medical treatment and boarding costs incurred for the care of dogs seized by the Territory;
6. Release a dog seized by the Territory to a person claiming its release where directed to do so by the Registrar of Domestic Animals and in accordance with that direction.

D Pest animals

Euthanise and dispose of an animal received from the public which is declared as a pest animal under the *Pest Plants and Animals Act 2005*.

E Emergency Transport

Provide emergency boarding transportation service for members of the public's animals that have been approved and can be accommodated in RSPCA ACT emergency boarding program.

Territory Responsibilities

The Territory, as part of its responsibilities in relation to this agreement and animal welfare in the ACT, will:

1. Undertake Animal Welfare Inspectorate services as required, including outside of RSPCA ACT hours of operation.
2. In respect of dogs:
 - (a) Accept all stray dogs suitable for transfer from RSPCA ACT to Domestic Animal Services (DAS) and collect within 24 hours of receiving email or telephone notification from RSPCA ACT;
 - (b) Manage regulatory compliance aspects of the *Domestic Animals Act 2000*
 - (c) The Territory will meet the Organisation's reasonable costs for boarding of dogs held pending transfer to DAS in excess of 24 hours from notification.
3. Manage non-rehomeable cats as well as stray/abandoned cats across the Territory in cat containment areas in accordance with the *Domestic Animal Act 2000*;
4. Manage animals declared as pest animal under the *Pest Plants and Animals Act 2005*;
5. Provide appropriately skilled and appointed Animal Welfare Inspectors to assist the RSPCA ACT in investigating any animal welfare matters;
6. Provide access to or approve required training to enable the Organisation's Animal Welfare Inspectors to undertake their duties, at the Organisation's cost.

Prosecutions under the Animal Welfare Act 1992

7. The Organisation acknowledges that the Director of Public Prosecutions (DPP) may only bring a criminal prosecution which has been informed by a public servant.
8. The Territory agrees to appoint a person to be informant for criminal prosecutions by the DPP on briefs of evidence provided by the Organisation. The Territory will assist the Organisation by undertaking the following
 - being the named party in proceedings;
 - serving subpoenas;
 - paying witness expenses and conduct money;

- reimbursing the Organisation for reasonable expenses incurred on behalf of the Territory as defined by section 101(5) of the *Animal Welfare Act 1992*;
 - in collaboration with the Organisation, coordinating correspondence with the DPP and/or with witnesses.
9. The Organisation agrees to assist the informant by ensuring the availability of witnesses within the Organisation and production of any documentary evidence upon request from the DPP.
 10. In circumstances where the prosecution is unsuccessful, the Organisation agrees to the following arrangement for payment of any costs orders:
 - a) the percentage of the defendant's costs payable as between the Territory and the Organisation will be determined on a case by case basis;
 - b) where there is prior agreement between the parties that there are no issues in contention between the parties with respect to promoting the matter to prosecution, the Territory agrees to pay 70% and the Organisation agrees to pay 30% of any costs awarded against the Territory.
 11. In circumstances where the prosecution is successful and the DPP obtains a costs order against the defendant, the Territory will apply the amount against any expenses incurred by the Territory in assisting the DPP with the prosecution.

Item 2. OUTCOMES

Animals in the ACT are effectively managed and appropriately cared for in a manner consistent with community expectations and legislation and guided by best practice.

Item 3. OUTPUTS

- 1) Animal welfare inspectorate services as described in Schedule 2 Item 1 Part A:
- 2) Cat management services as described in Schedule 2 Item 1 Part B.
- 3) Dog management services as described in Schedule 2 Item 1 Part C
- 4) Pest animal services as described in Schedule 2 Item 1 Part D.
- 5) Emergency Transport as described in Schedule 2 Item 1 Part E

Item 4. PERFORMANCE INDICATORS

- (1) Provide outputs in item 3 for the period of the agreement.
- (2) Provide the reports specified in Schedule 3.

Item 5. PERFORMANCE REQUIREMENTS

The Organisation's hours of operation for the purpose of this Agreement are 09:00am to 05:00pm Monday to Saturday (excluding public holidays). The operating hours of the Organisation's inspectorate service are 09:00am to 05:00pm Monday to Friday (excluding public holidays).

The Organisation's inspectorate service may extend its days of operations at its own initiative, notifying the Territory if it does so.

Item 6. QUALITY STANDARDS

The Organisation must perform the Services:

- (a) in accordance with any procedures or protocols set out by the Territory;
- (b) in a diligent manner and to a standard of skill and care expected of a specialist service provider experienced in the provision of services of a kind required under this Agreement;
- (c) expeditiously and efficiently; and
- (d) in accordance with or all relevant Territory codes of practice, Australian Standards and core RSPCA policies, vision, mission and values.

Item 7. TERRITORY MATERIAL – INTELLECTUAL PROPERTY RIGHTS

Not Specified

SCHEDULE 3

REPORTING

Item 1. REPORTS AND DOCUMENTATION

- (1) The Organisation will provide the Territory with Reports and notifications described in Schedule 2 Item 1 Part A.
- (2) The Organisation will provide the Territory with the Organisation's annual report required by law to be produced, within one month of the latest date the Organisation is legally required to lodge the report with the relevant regulatory authority.
- (3) The Organisation will provide the Territory with the following statistics (twice yearly, within 30 business days of 1 January and 1 July):
 - a. The number of animals seized under the Animal Welfare Act 1992, including:
 1. Sections of the Act under which the animal was seized;
 2. Details about the animal (such as species);
 3. Number of animals destroyed under the Act, and the sections of the Act under which they were destroyed;
 4. Number of entries into premises under section 81 of the Act.
 - b. Stray Dogs & Cats
 1. Number of animals received from the public;
 2. Number of animals received from the Territory.
 - c. Cats and Dogs Housed
 1. For stray cats and dogs received from the public or the Territory, the number of days housed against legislative compliance period for the relevant Acts.
 2. Number of days held for prosecution related matters.
 3. Number of dogs transferred to DAS
 - d. Animals Released
 1. Number of stray cats and dogs returned to owner.
 2. The average number of days housed until returned to the owner.
 - e. Euthanisation
 1. Number of pest or feral animals euthanised.
 2. Number of feral cats deemed not suitable to re-home euthanised.
 - f. Inspectorate Service
 1. Number of complaints/referrals received in relation to animal welfare.
 2. Number of investigations undertaken in accordance with the *Animal Welfare Act 1992*

3. Number of prosecutions under the *Animal Welfare Act 1992*.
 4. Summary of court outcomes by type.
 5. Record and outcome of letters issued for rehoming of seized animals (as per section 86C under the *Animal Welfare Act 1992*)
 6. Report on the number of trapped and collected unowned colony cats, outcomes achieved, and effectiveness of the additional funding provided to the Organisation
- h. A general statement highlighting any management issues affecting the delivery of the services identified in the contract including changes in animal welfare inspectors or executive officers.

SCHEDULE 4

FUNDING AMOUNT AND PAYMENT

Item 1. FUNDING AMOUNT

For the Services described in **Item 1 Schedule 2** - \$421,722 (GST exclusive) for the period 01 July 2020 to 31 December 2020.

Service	Funding Amount excluding GST
Dogs	\$1,304
Cats	\$223,062
Pest	\$913
Inspectorate	\$156,443
Animal transport service	\$40,000

Item 2. PAYMENT IN ADVANCE

- (1) The Territory will pay the Funding Amount, or part thereof, in advance by way of electronic funds transfer for the Services provided by the Organisation, subject to the provision of any reports under Schedule 3 within 10 business days of:
 - (a) 50% of this document being signed by both parties
 - (b) 50% 31 December 2020
- (2) In the case of any part of the Funding Amount having been paid in advance, the Organisation ceases to provide the Services or any part of the Services; and/or this Agreement is terminated; and/or it is discovered that the Organisation has been overpaid for any of the Services, then the Territory must reasonably determine the amount of any overpayment of the Funding Amount and that amount must be repaid to the Territory in accordance with the terms of this Agreement. If this Agreement is continuing, and at the Territory's discretion, the next payment due to the Organisation may be temporarily or permanently reduced by the amount overpaid.

Item 3. INDEXATION

Not used

SCHEDULE 5

SPECIAL CONDITIONS

Item 1. INSURANCES [Agreement clause 5.3(1)]

- (3) The Organisation will effect and maintain public liability coverage of not less than \$20 million in respect of each claim with an insurer prescribed for the purposes of a relevant determination ("Determination") made under the Financial Management (Public Liability Insurance) Guidelines 2005. For the purposes of the Determination, Items 1, 2 and/or 3 Schedule 2 constitute the Activity Schedule (as defined in the Determination).
- (4) The Organisation will effect and maintain professional indemnity insurance with coverage in the amount of not less than \$5 million in respect of each claim and in the annual aggregate.

Item 2. AFP CHECKS - RECRUITMENT OF EMPLOYEES AND VOLUNTEERS

- (1) For the purpose of this Item 2, "vulnerable adults" may include adults by reason of age, frailty and/or intellectual disability.
- (2) The Organisation will institute procedures to ensure that all persons (whether employees or volunteers or agents) engaged by the Organisation to be involved in any way with children and/or vulnerable adults for the purposes of this Agreement, are fit and proper persons, where 'fit and proper' means the person:
 - (a) is capable of providing an adequate standard of care in relation to the Services,
 - (b) understands the needs of Service Users and their children (where relevant), and
 - (c) is of good character and is suitable to be entrusted with the care of children and/or vulnerable adults.
- (3) The Organisation must be satisfied that any person referred to in paragraph (2) is 'fit and proper' for purposes of providing the Services. The Organisation will determine if, in respect of any such person, there has been any of the following recorded against him/her:
 - (a) convictions in Australia or overseas of any offence involving children and/or vulnerable adults (including but not limited to child abuse, assault and neglect), or
 - (b) any action taken in Australia or overseas in respect of the protection of children and/or vulnerable adults who were under the guardianship or custody of the person.
- (4) The Organisation's process for the selection of employees, volunteers and agents for purposes of the Services will be designed so that applicants are

required to demonstrate the qualities described in paragraph (2) and warrant that they have had no convictions or actions recorded or taken against them as described in paragraph (3).

- (5) As part of its employment practices in respect of persons who will or will be likely to have contact with children and/or vulnerable adults for purposes of the Services, the Organisation will:
 - (a) request from applicants personal references which must be checked by the Organisation with referees, and
 - (b) obtain a clearance from the Australian Federal Police ("AFP").
- (6) Without limiting the Organisation's obligations under paragraph (2) above, the Organisation will obtain an AFP check each time it engages employees and volunteers or contractors (including employees of contractors) who will or will be likely to have contact with children and/or vulnerable adults as part of the obligation to ensure that all staff are 'fit and proper'. For purposes of satisfying this requirement, it will be insufficient for the Organisation to rely upon the results of police checks tendered to the Organisation by an applicant or friend, relative, agent or representative of the applicant.

Item 3. GENERIC REQUIREMENTS OF FUNDING PROGRAM

Not used

Item 4. CONFIDENTIALITY OF AGREEMENT

Not Used

Item 5. RECORDS ON BEHALF OF TERRITORY

Records

- (1) The Organisation must make full and accurate records ("Records") of the information as follows:
 - (a) The activities of an inspector performing any function, including authority, duty and power, under the *Animal Welfare Act 1992*.
 - (b) The activities of an approved provider performing any function, including authority, duty and power, under the *Domestic Animals Act 2000*.

Ownership of Records

- (2) Despite Item 7 Schedule 2, title to, and ownership of any intellectual property rights (including copyright) in the Records, will vest in its creation in the Territory.

Maintaining Records.

- (3) The Organisation must ensure that:
 - (a) it maintains the Records in a manner agreed in writing by the Territory;
and
 - (b) that the Records are held under arrangements that provide for the safekeeping and proper preservation of the Records.

Delivery of Records to the Territory

- (4) The Organisation must:
 - (a) transfer the custody of the Records to the Territory on completion of the Agreement, or as otherwise requested in writing by the Territory; or
 - (b) dispose of the Records as specified in writing by the Territory.
- (6) In this Item 5, "Personal Health Information" means any personal information:
 - (a) relating to the health, an illness or a disability of a Service User; or
 - (b) collected by the Organisation in relation to the health, an illness or a disability of a Service User, whether or not the information is recorded in a health record.

Review of Record Management Practices

- (7) The Organisation must at the request of the Territory, within such time as is agreed by the parties or, if no agreement has been reached after 2 weeks of a request within such period of time specified in a written notice from the Territory, allow the Territory, to enter the Premises of the Organisation to inspect the Organisation's arrangements for the requirements of this Item 5, having regard to the privacy of Service Users.

**Item 6. SURVIVAL OF PROVISION OF INFORMATION REQUIREMENT IN
CLAUSE 6.4**

Clause 6.4 survives the expiration or earlier termination of the Agreement for a period of 6 months commencing on the date of the expiration or earlier termination.

Item 7. CHILD PROTECTION - REPORTING & TRAINING

- (1) The Organisation is required to have a written child protection policy that:
 - (a) clearly states and appropriately details (having regard to the activities, functions and powers of the Organisation) that the care

and protection of children and young people is paramount in the conduct of activities, powers and functions of the Organisation;

- (b) by reference to the *Children and Young People Act 2008* (ACT) ("Act"), outlines:
 - (i) that a person who believes or suspects that a child or young person is being abused, neglected or at risk of being abused or neglected may (under section 354 of the Act) report the relevant circumstances ("Voluntary Report"),
 - (ii) the persons, if any, for whom it would be an offence (under section 356 of the Act) not to report reasonable suspicions about a child or young person experiencing or having experienced sexual abuse or non-accidental physical injury ("Mandatory Report"), and
 - (iii) the procedures outlined in the Act for reporting suspected cases of children or young persons suffering sexual abuse or non-accidental physical injury or who are in need of care and protection;
 - (c) outlines training which is available to all employees, contractors or volunteers of the Organisation ("Personnel") for purposes of the Act, including the availability of training through any available Territory training program; and
 - (d) outlines the support which is available to any of the Organisation's Personnel who make either a Voluntary Report or a Mandatory Report.
- (2) The Organisation will monitor adherence by all of its Personnel (as relevant to the provision of the Services) to its child protection policy.
 - (3) Nothing in this Special Condition limits the Organisation's obligations under the Act or any other law applicable to the Organisation.

Item 8. POLICY SUBMISSIONS AND ADVOCACY DOCUMENTS

This Item 8 limits the licence granted by the Organisation to the Territory under clause 9.4 in respect of Agreement Material that are policy submissions made to government and advocacy documents. The Territory is instead granted a free licence (including the right to sublicense) to use, communicate (including make available online or electronically transmit), reproduce and adapt those specified materials, for the purpose of informing its policy and program development.

Item 9. OTHER SPECIAL CONDITIONS

- (1) The Organisation is to participate with the Territory, as requested by the Territory, to jointly develop strategies to improve animal welfare and compliance

efforts relevant to the operation of this Funding Agreement. A forum will be established to facilitate these discussions.

- (2) The Organisation may seek reimbursement from the Territory of costs to a maximum of \$40,000 over the period of the Agreement, as agreed in advance, for holding seized animals during the period of related prosecution for offences under an *Animal Welfare Act 1992* or during the period of related administrative reviews by a tribunal or a decision under legislation administered by the Territory. This fee is in addition to the fees in Schedule 4 Item 1. Such fees include but are not limited to:
- costs associated with kennelling;
 - costs of animal husbandry.
- (a) Note: for this part, prosecution action means a matter which has been accepted for prosecution by the DPP or referred to a tribunal for review or as otherwise agreed by the Territory.
- (3) The Territory has the option to purchase the following additional services from the Organisation. If used, these services will be invoiced separately on a monthly basis.

Service	Fee (exclusive of GST)
Canine Castrate (less than 15kg)	306.75
Canine Spey (less than 15kg)	306.75
Canine Castrate (more than 15kg)	414.88
Canine Spey (more than 15kg)	414.88
Feline Castrate	112.45
Feline Spey	194.25
Euthanasia and disposal of non-rehomable feline	51.15
Vet Checks for DAS Animals	322.10
Vaccinations for Dog	35.80
Vaccinations for Cat	25.55
Cat Dewormer	5.00
Dog Dewormer	10.00
Dog Boarding (only when space is available)	40.90 Processing Fee + 30.65/Day
Cat Boarding	40.90 Processing Fee + 20.45/Day
Pre-surgery medications	40.00

- (4) In relation to any stray dog left on premises occupied by the Organisation, the Organisation may ask the Territory to seize the dog under section 56(c) of the *Domestic Animals Act 2000*.
- (5) A seized dog which is sold or otherwise given by the Registrar of Domestic Animals to the Organisation becomes the property of the Organisation.
- (6) The Organisation will consult with the Territory prior to making any comment or communicating any information to a media source in relation to investigations and prosecutions arising from the operation of this Agreement that have not been resolved by either the Organisation's decision to discontinue an investigation, or acquittal, dismissal or sentencing of the matter by a court.