

LICENCE AGREEMENT

Between:

Gympie Regional Council

("Licensor")

And:

Name of Person/Organisation

("Licensee")



LICENCE AGREEMENT

THIS AGREEMENT dated the _____ day of _____ 2021.

BETWEEN: **GYMPIE REGIONAL COUNCIL**, of 242 Mary Street, Gympie in the State of Queensland, (hereinafter referred to as "the Licensor")

AND: **Name of Person/Organisation**, of **Person/Organisation's address**, in the State of Queensland, (hereinafter referred to as "the Licensee")

RECITALS

- A. The Licensor is the trustee of property located at Cinnabar Road (Kilkivan Tansey Road), Cinnabar more particularly described as Lot 468 on Crown Plan L37573 (Reserve for Camping) and hereinafter referred to as "the Property".
- B. The arrangement is for the use of the whole of the Licensed Area, including any buildings, by the Licensee, as per the attached plan in Annexure B.
- C. The terms and conditions are set out in this Licence Agreement and herein after referred to as the "Agreement".

AGREEMENT

The Licensor and the Licensee each covenant and agree to the terms and conditions set out in this Agreement and to abide by those terms and conditions in every respect for the entire period of operation of this Agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 Defined Terms

In the Agreement:

"Adjustment Date" means the first day of each Fee Period (excluding the first Fee Period).

"Agreement" means the Agreement that exists between the Licensor and the Licensee in relation to the Licensed Area as evidenced by this document;

"Agreement Fee" means, at the Date of Commencement, the amount set out in **Item 4** of the Reference Schedule;

"Capital" means any major improvements to ensure the facility is able to be maintained as a long term asset;

"Cost" includes loss, liability and expense.

"Date of Commencement" means the date stated in **Item 1** of the Reference Schedule;

"Date of Expiration" means the date stated in **Item 2** of the Reference Schedule;

"Event of Force Majeure" means any occurrence occurring beyond the reasonable control of the Party affected by it and, without limiting the generality of the above, includes:

- i. an act of a public enemy, a war (declared or undeclared), explosion, insurrection, public riot,

- civil commotion, military action, act of terrorism and an act of sabotage;
- ii. a strike, blockade, lockout, an industrial action, dispute or disturbance of any kind;
- iii. an act or restraint of any government or any governmental authority, including foreign governments and authorities;
- iv. a storm, tempest, lightning, fire, flood, earthquake or other natural calamity.

"Fee Period" means each 12-month period of the Term, beginning on the Date of Commencement.

"General Maintenance" means any minor improvements to ensure the facility is able to be operated and managed on a daily basis;

"Government Agency" means any government or any governmental, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

"GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth), and includes other GST related legislation.

"Licensed Area" means the area described in **Item 3** of the Reference Schedule;

"Licensee" means the party described on the front page of this Agreement and its permitted successors and assigns and where the context permits its employees, agents and contractors and is an incorporated association;

"Licensor" means the party named on the front page of this Agreement and its successors and assigns and where the context permits its employees, agents and contractors;

"Party" means each or either of:

- i. the Licensor; and
- ii. the Licensee.

"Permitted Use" means the use specified in **Item 6** of the Reference Schedule;

"Property Identification Code" means the eight-character code allocated by the Department of Primary Industries (DPI) or an equivalent State authority to identify a livestock-producing property.

"Reference Schedule" means the schedule so described which is included in this document;

"Statute" means any statute, regulation, proclamation, ordinance or by-law of the Commonwealth of Australia or the State of Queensland and includes all statutes, regulations, proclamations, ordinances or by-laws varying consolidating or replacing them and all regulations, proclamations, ordinances and by-laws issued under that statute;

"Term" means the term of the agreement set out in **Item 5** of the Reference Schedule;

"WHS ACT" means *Work Health and Safety Act 2011*;

"Work Cover" means Insurance under the *Workers Compensation Act*; and

"Workers Compensation Act" means *Workers Compensation and Rehabilitation Act 2003*.

2. TERM OF AGREEMENT

2.1 Term of the Agreement

- a) The Term commences on the Date of Commencement and expires on the Date of Expiration, subject to the provisions of the Agreement.
- b) If the Licensee continues to occupy the Licensed Area after the Date of Expiration with the Licensor's consent, the terms of this Agreement are to apply as a monthly hold over licence.

- c) If the Licensee holds over in accordance with **Clause 2.1(b)**, either the Licensee or Licensor may terminate the monthly hold over licence by giving at least 1 months' notice to the other.

3. AGREEMENT FEES & CHARGES

3.1 Agreement Fee

The Agreement Fee is the amount set out in Item 4 of the Reference Schedule.

4. USE OF LICENSED AREA

4.1 Permitted Use

The Licensee must use the Property for the Permitted Use only and no other purpose without the prior written consent of the Licensor.

4.2 Overnight camping

The Licensee must not permit any person, to sleep overnight upon the property without the Licensor's written consent unless this is in conjunction with the Permitted Use.

4.3 Nuisance

The Licensee will not do or suffer to be done anything in, upon or about the Property which shall be or may be or may become a nuisance at law.

4.4 Advertising signs

No advertising sign, bill, placard, notice or poster is to be affixed, painted or exhibited upon the Property without the Licensor's written consent (which consent the Licensor may grant (absolutely or conditionally) or may refuse, at its discretion), which is not directly in relationship to the operation of the Permitted Use.

4.5 Alterations and/or additions by the Licensee

The Licensee may construct improvements, alterations and/or additions to the Property subject to the Licensor's prior written consent (which consent the Licensor may grant (absolutely or conditionally) or may refuse, at its discretion).

4.6 Requirements of government agencies

The Licensee must comply promptly with any Statute in respect of the Licensee's use of the Licensed Area and any requirements, notices or orders of any government agency having jurisdiction or authority in respect of the Licensed Area or the use of the Licensed Area, and including but not exclusive to, comply with all WHS Act, *Electrical Safety Act 2002* and *Environmental Protection Act 1994* requirements.

5. INSURANCE, INDEMNITIES AND RELEASES

5.1 Obligation to insure

- a) The Licensee must insure against any loss or damage which is commonly covered by a public risk or liability insurance to an amount of at least \$20,000,000.00 or any greater amount as may be reasonably required by the Licensor throughout the Term of the Agreement.
- b) The Licensee must furnish to the Licensor evidence that all insurances required to be procured under this clause have been effected with a registered insurer and will supply particulars of those policies, together with certificate of currency on an annual basis.
- c) The Licensee must maintain Work Cover with an insurer licensed under the Workers Compensation Act to provide accident insurance for all persons it employs in the Licensed

Area.

- d) The Licensee must pay promptly all premiums, duty, GST, and other money due to any authority concerning Work Cover.

5.2 Release and indemnity of Licensor

The Licensee hereby releases and holds harmless and indemnifies the Licensor from and against all damages, costs, charges, expenses, actions, claims and demands which may be incurred or made against the Licensor or the Licensee or their employees or contractors or invitees or agents or any other person which arises from any damage to any property or injury to any person, including death, arising from the occupation of the subject premises and activities by the Licensee, or a breach of this agreement by the Licensee, unless and to the extent the same arises directly from the negligence of Licensor or its employees or contractors.

5.3 Property of the Licensee

The Licensee hereby releases and indemnifies the Licensor from and against all damages, costs, charges, expenses, actions, claims and demands for damage to or destruction of property of the Licensee left at the premises, unless and to the extent the same arises directly from the negligence of the Licensor or its employees or contractors.

5.4 Negligence or default of Licensor

The releases, responsibilities and indemnities in **Clauses 5.2 and 5.3** do not apply to any act, matter, thing or consequence if it arises directly out of the negligence or default of the Licensor.

5.6 Notice of claim

Each Party must give immediate written notice to the other of any circumstances (including death, personal injury or property damage or loss) likely to give rise to a claim under any policy of insurance affected in accordance with this Agreement.

6. DUTIES & OBLIGATIONS

6.1 The Licensee agrees with the Licensor that it will:

- a) Not de-pasture more livestock on the Licensed Area than the Licensed Area is capable of carrying from time to time so as to cause destruction of pasture and degradation of the Licensed Area;
- b) Provide supplemented feed to the livestock as and when required and as would be considered good grazing practice;
- c) Comply with relevant legislation and local laws regarding the keeping of livestock;
- d) Comply with all notices issued by a competent authority, requiring any practice to be observed or work to be done on the Licensed Area required as a result of the use of the Licensed Area by Licensee, whether that notice is served on the Licensor or the Licensee;
- e) Provide for fencing of the Licensed Area at the Licensee's cost and at all times repair and maintain those fences on and enclosing the Licensed Area in good stock-proof condition to prevent the escape of livestock from the Licensed Area and, if necessary, engage an expert fencing contractor to fence and undertake such repair and maintenance works;
- f) Keep all livestock de-pastured on the Licensed Area free from disease or illness, that all livestock are inoculated prior to being brought on to the Licensed Area, and to ensure that all livestock are kept free from tick infestation;
- g) At all times keep the Licensed Area free from noxious weeds, and ensure that no livestock

shall be brought on to the Licensed Area if such livestock have grazed in areas where either Giant Rats Tail Grass or Parthenium Weed are or were present;

- h) Not cut or remove from the Licensed Area any timber (whether live or dead) growing or lying on the Licensed Area;
- i) Not undertake any earthworks or alterations to the drainage or overland flow of the stormwater over the Licensed Area;
- j) Not allowing dumping, disposal or accumulation of rubbish on the Licensed Area;
- k) The Licensee must obtain and maintain at all times during the term a Property Identification Code, and ensure all livestock are fitted with National Livestock Identification System endorsed tags;
- l) To undertake and maintain the prevention and control of erosion including:
 - i. using the land according to its capacity;
 - ii. protecting the soil surface by retaining and maintaining adequate silage and vegetation;
 - iii. controlling run-off before it develops into an erosive force;
 - iv. stabilising banks of watercourses including any river, creek, gully or natural watercourse.
- m) Licensee will be, for the purposes of the WHS Act, the principal contractor and the person in control of the Licensed Area.

7. FORCE MAJUERE

- a) If any Party is unable to perform, or is prevented, hindered or delayed from performing, either wholly or in part, any of its obligations under this Licence (except an obligation to make money payments) due to an Event of Force Majeure, that Party is not liable for that non-performance, and its obligations shall be suspended for so long as the Event of Force Majeure renders the Party unable to so perform its obligations.
- b) A Party affected by an Event of Force Majeure under Clause 7(a) shall as soon as is reasonably practicable notify the other Party in writing of its occurrence and of any anticipated delay in arising from it.
- c) A Party affected by an Event of Force Majeure under Clause 7(a) shall take all reasonable steps to remove the event and resume performance of its obligations under this Licence as soon as is reasonably practicable.
- d) The obligation to take reasonable steps under Clause 7(c) shall not oblige the Party to settle any strike, blockade, lock-out or industrial action, dispute or disturbance in manner contrary to the interests of the Party affected.

8. TERMINATION

8.1 Events of termination

If:

- a) the Licensed Area is damaged or destroyed or if there is interruption to access to the Licensed Area so as to render the Licensed Area or any part of the Licensed Area wholly or substantially unfit for the occupation or use of the Licensee or inaccessible by any means of access; or
- b) the Licensee commits a material breach of any of its obligations and has not remedied that breach within a reasonable period after receiving written notice from the Licensor directing it to do so; or

- c) the use by the Licensee of the Property interferes in any way with the Licensor's operations on the Property; or
- d) there is a serious breach of the WHS Act and/or the *Electrical Safety Act 2002* and/or the *Environmental Protection Act 1994* by the Licensee;

then the Agreement may be terminated immediately by written notice, by the Licensee in the case of **subclauses (a) and (c)** and by the Licensor in the case of **subclauses (a), (b), (c), and (d)**.

Notwithstanding anything contained herein, either Party may at any time by written notice terminate this Agreement upon giving thirty (30) days' notice. No compensation shall be payable by the Licensor upon termination prior to the completion of this Agreement.

8.2 Effects on rights or liabilities

Termination of the Agreement does not affect the rights or liabilities of the parties in relation to any cause of action accruing prior to the date of termination (unless otherwise stated under the provisions of this Agreement).

8.3 The Licensee to yield up

- a) The Licensee must at the expiration or sooner termination of the term yield up the Licensed Area in good repair and clean condition fair wear and tear excepted having regard to its condition at the Date of Commencement of this Agreement.
- b) Nothing in this clause or any other provision of this Agreement obliges the Licensee to remove any road surface or other improvements constructed on the Licensed Area for the purposes of **Clause 6.1** nor to repair any damage done or want of repair to the Licensed Area not caused by the Licensee.
- c) In the event that this Agreement is terminated, then the Licensee must immediately deliver up possession of the Licensed Area to the Licensor or its delegate.

8.4 Failure to remove Livestock and Property

- a) If this Licence terminates (by cancellation or expiry) and the Licensee fails to remove its livestock and other property from the Licensed Area within 2 business days of a notice given by the Council requiring such removal, the Council may remove the livestock and property from the Licensed Area at the Licensee's cost.
- b) The Council may keep the livestock at the Council's pound and the Licensee shall pay the Council's fees of keeping the livestock before the livestock are released to the Licensee;
- c) The provisions of the Council's *Local Law No 2 (Animal Management) 2011* and any subordinate local law made under that Local Law shall apply to any action by the Council under **subclause (b)**.

9. NOTICES

9.1 Method of service

Any notice to be given under this Agreement by one of the Parties to the other must be in writing and is given for all purposes by delivery in person, by pre-paid post, by email or by facsimile addressed to the receiving party at the address set out in **Item 7** of the Reference Schedule in the case of the Licensor and in **Item 8** of the Reference Schedule in the case of the Licensee.

9.2 Time of service

Any notice given in accordance with this Agreement will be deemed to have been duly served in the case of posting at the expiration of four (4) business days after the date of posting and in the case of facsimile or email, on the first business day after the date of transmission.

9.3 Change of contact details

Upon change of contact details of either party, written notice must be given to the other Party within fourteen (14) days.

10. ASSIGNMENT AND LICENCING

10.1 The Licensee not to assign, sub-licence or sub-let

- a) The Licensee must not assign this Agreement, sub-licence or sub-let the whole or any part of the Licensed Area, without the prior written consent of the Licensor, which consent the Licensor may grant (absolutely or conditionally) or may refuse, at its discretion.
- b) The Licensee must not mortgage or otherwise encumber its interest in this Agreement.

11. GOODS & SERVICES TAX

11.1 Interpretation of Terms

Each of the following expressions bears the meaning the GST Act ascribes to it:

- a) adjustment event;
- b) adjustment note;
- c) Commissioner;
- d) consideration;
- e) creditable acquisition;
- f) GST;
- g) GST group;
- h) input tax credit;
- i) recipient;
- j) recipient created tax invoice;
- k) registered;
- l) representative member;
- m) supplier;
- n) taxable supply;
- o) tax invoice.

11.2 GST Grouping

Also, references to a supplier, a recipient, a payer, or a payee who is a member of a GST group¹ include the representative member for that person's GST group.

11.3 Character of Payments

Each of the following expressions bears the meaning the GST Act ascribes to it:

- a) Non-monetary consideration for a taxable supply under this Agreement is GST-inclusive;
- b) However, unless the Agreement states otherwise, monetary consideration for a taxable supply under the Agreement is GST-exclusive

¹ Companies within a 90%-owned group, and in some cases other entities (such as non-profit bodies), can be approved by the Commissioner as a GST group. One member of the group then deals with all the GST liabilities and entitlements of the group (excepting GST on most taxable importations), and (in most cases) intra-group transactions are excluded from GST.

11.4 Responsibility for Payment

The recipient must:

- a) bear the GST upon a taxable supply under the Agreement;
- b) pay the tax to the supplier with the consideration for the supply.

11.5 Input Credit Adjustment (Reimbursements)

- a) If the Agreement requires a recipient to reimburse a supplier the cost of a creditable acquisition, the cost is to be net of the input tax credit to which the supplier is entitled for the cost.
- b) If the Agreement requires the reimbursement of a percentage of the cost of a creditable acquisition, the percentage is to be net of an equivalent percentage of the input tax credit to which the supplier is entitled for the cost.
- c) If the reimbursement of all or part of the cost of a creditable acquisition constitutes consideration for a taxable supply, the recipient must pay the supplier, in conjunction with the reimbursement payment, the GST referable to the supply.
- d) If the Agreement obliges a Party to indemnify the other Party against a Cost the other incurs or sustains, the Cost will be net of all input tax credits the payee is entitled to claim concerning that Cost.
- e) For clarity, if the net Cost to be indemnified constitutes the consideration for a taxable supply, the payer must bear the GST for the taxable supply.

11.6 Adjustments

- a) This Clause 11.6 applies if an adjustment event occurs concerning a taxable supply made under this Agreement.
- b) The consideration for the supply will be recalculated to reflect the adjustment event.
- c) As the case requires:
 - i. the recipient must pay the resultant GST shortfall to the supplier; or
 - ii. the supplier must refund the resultant GST overpayment to the recipient.

11.7 Registration Tax Invoices and Adjustment Notes

- a) The supplier need not give the recipient a tax invoice or adjustment note for a taxable supply under the Agreement if:
 - iii. the Commissioner has issued a written determination or ruling permitting the recipient to issue a recipient created tax invoice for the supply; and
 - iv. the recipient gives the supplier a recipient created tax invoice or an adjustment note (as the case requires) for that supply.
- b) Otherwise, however, the supplier must give the recipient, when it makes the taxable supply or in exchange for the consideration, a tax invoice for the supply.
- c) The supplier also must give the recipient an adjustment note:
 - i. in exchange for payment of a GST shortfall; or
 - ii. in conjunction with the payment of a GST refund.

- d) If the consideration for a taxable supply is non-monetary, the tax invoice for the supply, and a relevant adjustment note, must state as the consideration the GST-inclusive market value of the supply.
- e) A Party that has been issuing recipient created tax invoices for taxable supplies under the Agreement must notify the other Party promptly if it loses its entitlement to issue such invoices

11.8 Registration

- a) Each Party declares that it is registered.
- b) A Party must notify the other promptly if it ceases to be registered.

12. MISCELLANEOUS

12.1 Governing law

This Agreement is governed by the laws of the State of Queensland and the Commonwealth of Australia and the Local Government and the Licensee submit to the non-exclusive jurisdiction of the courts of the State of Queensland.

12.2 Entirety of Agreement

- a) This instrument details the entire arrangement between the Parties concerning this Agreement:
 - i. irrespective of negotiations or discussions preceding its execution and delivery; and
 - ii. irrespective of the content of any brochure, report, correspondence, or other document produced by or on behalf of a Party.
- b) Each Party acknowledges that no representation, verbal or written, made by or on behalf of the other Party but not detailed in this instrument has induced it to enter the Agreement.
- c) The waiver of an entitlement under the Agreement is not binding unless effected in writing.

12.3 Variation of Agreement

A purported variation of this Agreement is ineffective unless encapsulated in a deed.

12.4 Survival of Provisions

A provision of the Agreement capable of continued application after the Agreement has terminated will remain enforceable despite termination.

REFERENCE SCHEDULE

- Item 1** **Date of Commencement**
Day Month Year
- Item 2** **Date of Expiration**
Day Month Year
- Item 3** **Licensed Area**
The whole of the property located at Cinnabar Road (Kilkivan Tansey Road), Cinnabar more particularly described as Lot 468 on Crown Plan L37573 (Reserve for Camping) shown on the plan attached in Annexure B 'Licence Area' hereto.
- Item 4** **Agreement Fee**
The amount prescribed in Council's Fees and Charges for an agistment licence fee, indexed annually (being \$TBC (TBC head x \$3.00 x 52 weeks) (including GST) as at the Date of Commencement of this Agreement).
- Item 5** **Term**
The term commences on the Date of Commencement and expires on the Date of Expiration, subject to the provisions of the Agreement.
- Item 6** **Permitted Use**
Grazing of livestock
- Item 7** **Contact at the Licensor**
Name: Coordinator – Property Management
Address: Corporate & Community Services Directorate
 Gympie Regional Council
 PO Box 155
 GYMPIE QLD 4570
Email: property@gympie.qld.gov.au
Telephone No: 1300 307 800
- Item 8** **Contact at the Licensee**
Name: [REDACTED]
Address: [REDACTED]
Telephone No: [REDACTED]
Email Address: [REDACTED]

EXECUTED AS A DEED

Executed by **GYMPIE REGIONAL COUNCIL**)
as trustee by its Chief Executive Officer)
in the presence of:)

.....
SHANE MICHAEL GRAY

.....
Witness

.....
Full Name (print)

.....
Address of Witness (print)

Executed by the Licensee)
in the presence of:)

.....
[Name of Licensor]

.....
Witness

.....
Full Name (print)

.....
Address of Witness (print)

ANNEXURE A - TITLE SEARCH

INTERNAL CURRENT RESERVE SEARCH
QUEENSLAND TITLES REGISTRY PTY LTD

Search Date: 25/06/2021 15:30

Title Reference: 49007859
Date GAZETTED: 05/11/1898
PAGE: 1129

Opening Ref: GYM 98-18634
Purpose: CAMPING
Sub-Purpose:
Local Name:
Address: WIDE BAY CREEK
County (R) No: R92
File Ref: RES 98-095

TRUSTEES

GYMPIE REGIONAL COUNCIL GAZETTED ON 17/02/1917 PAGE 643

LAND DESCRIPTION

LOT 468 CROWN PLAN L37573 GAZETTED ON 01/10/1938 PAGE 1084
Local Government: GYMPIE

Area: 63.637000 Ha. (ABOUT)

EASEMENTS AND ENCUMBRANCES

ADMINISTRATIVE ADVICES - NIL
UNREGISTERED DEALINGS - NIL

** End of Current Reserve Search **

ANNEXURE B- LICENCE AREA (as outlined in red below)

