

DOG ADOPTION REHOMING TERMS AND CONDITIONS

Made on the date shown in item 1 of the schedule.

BETWEEN

The party described below in Item 3 of the Schedule ("**Dog Adoption**")

AND

The party described below in Item 2 of the Schedule ("**Dog Owner**") and incorporates the standard *Terms and Conditions* (attached).

SCHEDULE 1

1.	<p>The Commencement Date of this Agreement is:</p> <p>The Date on the Rehoming Questionnaire.</p> <p>The Expiry Date of this Agreement is:</p> <p>At the completion of the two (2) week cooling off period or withdrawal of the dog by the Dog Owner for the purposes of keeping the dog.</p> <p>The Term of this Agreement is:</p> <p>.....</p>
2.	<p>Dog Owner Personal Details:</p> <p>As per the Rehoming Questionnaire</p>
3.	<p>Details of Dog Adoption</p> <p>Alyson Lyons trading as Dog Adoption (ABN 99 711 692 012)</p> <p>Contact person: Alyson Lyons</p> <p>Address: Karrinyup, Western Australia 6018</p> <p>Mobile: +61 411 056 722</p> <p>Email alyson@dogadoption.org.au</p>

4.	Dog Details As per the Rehoming Questionnaire
5.	Administration fee As per the Rehoming Questionnaire

Dog Adoption

SCHEDULE 2

BACKGROUND REPORT IN RELATION TO THE DOG

As per the Rehoming Questionnaire

SCHEDULE 3

MEDICAL REPORT ON THE DOG

As per the Rehoming Questionnaire

SCHEDULE 4

SPECIAL CONDITIONS

SCHEDULE 5

DANGEROUS DOG AND DANGEROUS DOG (DECLARED) AND DANGEROUS DOG (RESTRICTED BREED) DEFINED UNDER THE DOG ACT 1976 (WA) AND DOG REGULATIONS 2013 (WA)

Dog Act 1976 (WA)

3. Terms used

dangerous dog means a dog that is —

- (a) a dangerous dog (declared); or
- (b) a dangerous dog (restricted breed); or
- (c) a commercial security dog;

dangerous dog (declared) means an individual dog that under section 33E(1) is declared to be a dangerous dog (declared);

dangerous dog (restricted breed) means a dog that —

- (a) is of a breed prescribed by the regulations to be a restricted breed; or
- (b) is a mix of 2 or more breeds, one being a breed prescribed by the regulations to be a restricted breed;

33E. Individual dog may be declared to be dangerous dog (declared)

- (1) A local government, or on behalf of the local government an authorised person or person specifically authorised by the local government for the purposes of this section either generally or in a particular case, may, by a notice in writing given in accordance with section 33F, declare an individual dog to be a dangerous dog (declared) if, in the opinion of the local government or that person —
 - (a) the dog has caused injury or damage by an attack on, or chasing, a person, animal or vehicle; or
 - (b) the dog has, repeatedly, shown a tendency —
 - (i) to attack, or chase, a person, animal or vehicle even though no injury has been caused by that behaviour; or
 - (ii) to threaten to attack;or
 - (c) the behaviour of the dog meets other criteria prescribed for the purpose of this section.
- (2) For the purpose of subsection (1)(b), a dog to which section 30(3) applies shall not be taken to show a tendency to attack, or chase, in carrying out the activities referred to in section 30(3) in relation to a dog of that kind.
- (3) The owner of a dog declared to be a dangerous dog (declared), or detained under this Division, shall have the rights referred to in this Division to object and to apply for a review.

Dog Regulations 2013 (WA)

4. Dangerous dog (restricted breed) breeds

These breeds are prescribed as restricted breeds for the definition of *dangerous dog (restricted breed)* in section 3(1) —

- (a) dogo Argentino;

- (b) fila Brasileiro;
- (c) Japanese tosa;
- (d) American pit bull terrier;
- (e) pit bull terrier;
- (f) perro de presa Canario or presa Canario;
- (g) any other breed of dog the importation of which is prohibited absolutely by the *Customs (Prohibited Imports) Regulations 1956* (Commonwealth).

Dog Adoption

1. DEFINITIONS

Unless otherwise required by the context or subject matter:

Agreement means this Agreement as amended, supplemented or varied from time to time in writing by the Parties, and includes these Dog Adoption Rehoming Terms and Conditions and the Schedules;

C5 Vaccination is the minimum requirement;

Civil Liability Act means the *Civil Liability Act 2002 (WA)*;

Commencement Date means the date from which the Agreement commences and is specified in Item 1 of Schedule 1 of the Agreement;

Dangerous Dog and **Dangerous Dog (declared)** and **Dangerous Dog (restricted breed)** has the same meaning as the Dog Act and is specified in Schedule 5;

Dog Act means the *Dog Act 1976 (WA)* as amended from time to time;

Dog Adopter means the person permitted by the Dog Owner and Dog Adoption to care and home the Dog;

Dog Adoption means Alyson Lyons trading as Dog Adoption (ABN 99 711 692 012) as specified in Item 3 of Schedule 1;

Dog Owner means the client as specified in Item 2 of Schedule 1 of the Agreement;

Expiry Date means the date which the Agreement comes to an end as specified in Item 1 of Schedule 1;

Loss means

- (a) loss, including but not limited to direct loss, consequential loss, special loss, loss of anticipated profits and/or loss of business opportunity;
- (b) damage including but not limited to any damages or compensation and/or any damage to reputation; and/or
- (c) cost or expense including legal costs on a full indemnity basis;

Owner has the same definition provided by the Dog Act.

Pampered Pooch Motel means the Pampered Pooch Motel located at 660 Warton Road, Banjup, Western Australia. The Pampered Pooch Motel's contact number is 08 9397 0418 and 0417 185 431.

Party(ies) means the parties to this Agreement;

Personal Information has the same definition provided by the *Privacy Act 1998 (Cth)*.

Rehoming means the rehoming of the Dog as specified in Item 4 of Schedule 1;

Schedule(s) means a schedule to this Agreement and each of them;

Special Conditions means the conditions in Schedule 4 in accordance with clause 25.

Term means the term of this Agreement described in Item 1 of Schedule 1 of the Agreement.

2. INTERPRETATION

In the interpretation of this Agreement, no rule of contract interpretation applies to the disadvantage of a party on the basis that it put forward this Agreement or any part of it.

3. ENGAGEMENT OF DOG ADOPTION

The Dog Owner has agreed to engage Dog Adoption to rehome their Dog and the Dog Owner's acceptance of the rehoming service supplied by Dog Adoption will constitute acceptance of the terms and conditions of this Agreement.

4. FEES AND PAYMENT

4.1 The Dog Owner shall pay the fees to Dog Adoption as stated in Item 5 of Schedule 1.

4.2 Payment will be made by cash, cheque or bank cheque or by any other method agreed between the parties.

4.3 If payment is made by cheque, the Dog Owner's liability for any money payable under this Agreement is not extinguished until the cheque is cleared by the drawer's bank.

4.4 GST and other taxes, duties and credit card charges that may be applicable will be added to the fees except when they are expressly in the fees.

5. TERM

The Agreement shall commence from the Commencement Date and will continue for the Term (if Applicable) and expire on the Expiry Date, unless otherwise terminated in accordance with clause 15 of this Agreement.

6. CONSIDERATION

6.1 The Dog Owner acknowledges that Dog Adoption may collect an adoption fee from the Dog Adopter, to be agreed between Dog Adoption and the Dog Adopter.

6.2 The Dog Owner agrees that he/she will not have any claim on the adoption fee received by Dog Adoption.

7. DOG OWNER'S OBLIGATIONS AND DUTIES

7.1 Prior to the rehoming of the Dog, the Dog Owner will ensure the Dog is:

- (a) micro chipped in accordance with the Dog Act;
- (b) sterilised; and
- (c) vaccinated with the minimum C5 vaccination with an expiry date of more than 3 months from the date of adoption.

7.2 The Dog Owner must have paid all outstanding veterinarian fees in the relation to the Dog prior to engaging Dog Adoption for their Services.

7.3 The Dog Owner agrees that upon and during the engagement of Dog Adoption, the Dog Owner shall not under any circumstances seek to negotiate the sale and/or adoption of the Dog directly to the Dog Adopter or any third party unless the Dog Owner pays Dog Adoption the adoption fee.

7.4 In the event that the Dog cannot be rehomed and is placed into foster care, the Dog Owner is liable for all veterinarian costs until the Dog is adopted.

7.5 If Dog Adoption has incurred veterinarian costs, legal fees, Court costs and collection fees while the Dog is in foster care, the Dog Owner will reimburse Dog Adoption for any such expenses incurred.

7.6 In the event that the Dog enters into a foster care or kennel arranged by Dog Adoption, the Dog Owner will not remove the Dog from the rehoming program.

8. DOG ADOPTION'S OBLIGATIONS

8.1 Dog Adoption will use its best efforts to find a suitable home for the Dog in accordance with the reasonable criteria as set out by the Dog Owner.

8.2 In determining the suitability of the Dog Adopter, Dog Adoption will conduct a visit to the Dog's new home.

8.3 If the Dog Owner visits the Dog's new home the visit referred to in clause 8.2 will be deemed unnecessary.

9. DOG OWNER'S WARRANTIES

9.1 The Dog Owner warrants to Dog Adoption the following:

- (a) the Dog is not a Dangerous Dog, Dangerous Dog (declared) or

Dangerous Dog (restricted breed);

(b) Except as set out in Schedule 3, the Dog is in good medical health, has no known health conditions or non-prescription medicine for maintenance of its health.

(c) the medical history of the Dog given in Schedule 2 is current and true to the best of the Dog Owner's knowledge;

(d) the behavioural history of the Dog given in Schedule 2 is true and correct to the best of the Dog Owner's knowledge;

(e) Excepted as listed in Schedule 2, the Dog has exhibited no behavioural tendencies (eg. aggression towards other domestic animals or humans, biting, fear of humans, etc) that might require cautionary measures to be taken by Dog Adoption, or other persons charged with the Dog's care.

10. EXCLUSION OF LIABILITY AND INDEMNIFICATION

10.1 While Dog Adoption uses its best endeavours to find a suitable home for the Dog, Dog Adoption is not responsible for the future safety and health of the Dog once it is placed in a new home.

10.2 The Dog Owner shall be responsible for any claims, complaints, or causes of action whatsoever, whether in law or equity, against Dog Adoption, its directors, officers, members, volunteers and agents, as a result of a breach of this Agreement or for injury caused to any person or property by the Dog.

10.3 The Dog owner hereby indemnifies and holds harmless Dog Adoption for any loss, damage or injury or expense arising in any manner including but not limited to any such action or claim arising from this Agreement, the actions of the Dog or any prospective dog adopter or owner, any loss, expenses (i.e. veterinary costs, dog behavioural and medicals costs, etc.), damage or injury to third parties, or property owned by third parties, including any expenses or liability incurred in defending any action by third parties. This release of liability and indemnification shall apply to the Dog Owner, his/her heirs, personal representatives, successors or assigns.

10.4 Notwithstanding clause 8, Dog Adoption is not liable or responsible to the Dog Owner if the Dog Adopter was subsequently found to be an unsuitable carer for the Dog.

11. TRANSFER OF OWNERSHIP

11.1 The Dog Owner agrees and acknowledges that the Dog Owner will remain the Owner of the Dog until such time Dog Adoption successfully places the Dog with a suitable dog adopter and the relevant dog adoption agreement is executed, at which time, all right, title and ownership of the Dog shall immediately transfer from the Owner to the Dog Adopter.

- 11.2 The Dog Owner shall, if necessary sign any other documents or registration papers required to transfer the ownership of the Dog to the Dog Adopter.
- 11.3 The Dog Owner irrevocably appoints Dog Adoption as the Dog Owner's duly authorised attorney to sign on the Dog Owner's behalf any such documents or registrations papers required to transfer the ownership of the Dog to the Dog Adopter.
- 11.4 The Dog Owner ratifies all acts performed by Dog Adoption pursuant to clause 11.3.
- 11.5 For the avoidance of any doubt, Dog Adoption is not the owner of the Dog at all times.
- 12. COOLING OFF PERIOD**
- 12.1 The Dog Owner acknowledges and agrees that the Dog Adopter is entitled to a two (2) week cooling off period from the date the Dog is removed from the Dog Owner's premises.
- 12.2 The Dog Owner acknowledges and agrees that if the Dog Adopter returns the Dog, the Dog will be returned to the Dog Owner's premises.
- 12.3 In the event the Dog Owner is not available and/or refuses to accept the return of the Dog, the Dog Owner will pay Dog Adoption in advance the costs of two (2) weeks boarding kennel fees at Pampered Pooch Motel or any other kennel as approved by Dog Adoption.
- 13. DEFAULT & CONSEQUENCES OF DEFAULT**
- 13.1 The Dog Owner will be in default if they breach any of the terms set out in this Agreement.
- 13.2 If the default can be remedied, the Dog Owner will do so within twenty four (24) hours upon receiving written notice from Dog Adoption.
- 13.3 Interest on any overdue invoices incurred by Dog Adoption in relation to the Dog shall accrue daily from the date when payment becomes due, until the date of payment at 2.5% and such interest shall compound daily at such a rate after as well as before any judgment.
- 13.4 If the Dog Owner defaults in payment (including by way of dishonoured cheque) of any invoices related to the dog when due, the Dog Owner will indemnify Dog Adoption from and against all costs and disbursements incurred by Dog Adoption in pursuing the debt including legal costs on a solicitor and own client basis and Dog Adoption's debt recovery costs.
- 14. DISCLOSURES**
- The Dog Owner warrants that he or she has made all material disclosures about the Dog to Dog Adoption, relating to the health, temperament, behaviour, aggression and any previous injury or damage caused by the Dog to any person.
- 15. TERMINATION**
- 15.1 This Agreement shall terminate:
- (a) if either Party gives the other party a written notice of any breach of this Agreement and if the breach can be remedied, the party in breach fails to remedy the breach within twenty four (24) hours commencing from the date of the notice; or
- (b) if either Party gives to the other Party a written notice of its intention to terminate this Agreement.
- 15.2 In the event that the Dog Owner terminates the Agreement, the Dog Owner is liable for the costs or expenses incurred by Dog Adoption up to the time of termination.
- 15.3 The Dog Owner will remain liable to pay Dog Adoption's fees and disbursements in relation to the Dog up to the time of termination.
- 15.4 Notwithstanding anything in this Agreement, Dog Adoption may terminate the Agreement at any time in writing for any reason.
- 16. NOTICES**
- 16.1 Notices under the Agreement may be delivered by hand, by mail, facsimile or email to the addresses specified in Items 2 and 3 of Schedule 1 of the Agreement respectively.
- 16.2 Notice will be deemed given:
- (a) in the case of hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving Party;
- (b) in the case of posting, three days after despatch;
- (c) in the case of email, upon receipt of email if received on a Business Day or otherwise at the commencement of the first Business Day following transmission of the email.

17. CONFIDENTIAL INFORMATION

The Dog Owner shall not use or disclose any of Dog Adoption's confidential information or the Dog Adopter's Personal Information.

18. RELATIONSHIP AND LIMITED AGENCY

18.1 Nothing contained in the Agreement will constitute the relationship of partnership or employer and employee between the Parties and it is the express intention of the Parties that any such relationships are denied.

18.2 The Parties agree that their relationship is that of a Principal (Dog Owner) and Subcontractor (Dog Adoption).

19. ENTIRE AGREEMENT

The Agreement constitutes the entire agreement between the Parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

20. ASSIGNMENT AND NOVATION

20.1 The benefit of the Agreement shall not be assigned or transferred by the Dog Owner without Dog Adoption's written consent.

20.2 Dog Adoption may transfer, assign or novate the Agreement to a third party without the Dog Owners consent.

21. WAIVER

21.1 No right under the Agreement will be deemed to be waived except by notice in writing signed by each Party.

21.2 A waiver made by Dog Adoption pursuant to clause 21.1 will not prejudice its rights in respect of any subsequent breach of the Agreement by the Dog Owner.

21.3 Subject to clause 21.1, any failure by Dog Adoption to enforce any clause of the Agreement, or any forbearance, delay or indulgence granted by Dog Adoption to the Dog Owner will not be construed as a waiver of Dog Adoption's rights under the Agreement.

22. SURVIVAL OF AGREEMENT

22.1 Subject to any provision to the contrary, the Agreement will continue for the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but will not enure to the benefit of any other persons.

22.2 The covenants, conditions and provisions of the Agreement which are capable of

having effect after the expiration of the Agreement will remain in full force and effect following the expiration of the Agreement.

23. DISPUTE RESOLUTION

23.1 If any dispute arises out of or in connection with this Agreement or the interpretation of its terms ("Dispute"), a Party cannot commence any court proceedings relating to a dispute unless this clause has first been complied with, except where that Party seeks urgent interlocutory relief.

23.2 A Party claiming that a Dispute has arisen under or in relation to the Agreement must give notice in writing to the other party specifying the nature of the Dispute.

23.3 On receipt of that notice by the other Party, all of the Parties must use all reasonable efforts to expeditiously resolve the Dispute.

23.4 If the Parties have not resolved the dispute within fourteen (14) days of receipt of the notice or further period as is agreed in writing by them, the Dispute must (at the instigation of any Party) go to arbitration in accordance with clauses 23.5 and 23.6.

23.5 The arbitrator appointed to resolve the dispute will be:

(a) either as agreed in writing by the Parties or failing agreement within seven (7) days of a request by any Party to do so, then;

(b) as appointed by the President for the time being of the Law Society of Western Australia, or his nominee.

23.6 The costs of the arbitrator will be borne equally by the parties to the Dispute and each Party must bear its own legal costs.

23.7 Any legal action between the Parties must be commenced in the jurisdiction of Western Australian.

24. GENERAL

24.1 If any provision of the Agreement shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

24.2 This Agreement and any contract to which they apply shall be governed by the laws of Western Australia and the laws of the Commonwealth of Australia (where applicable) and the parties submit themselves to the jurisdiction of the courts of Western Australia and the Federal Courts of Australia.

24.3 Dog Adoption reserves the right to review the terms of the Agreement at any time. If following any such review, there is to be any change to the Agreement, then that change will take effect from

the date on which Dog Adoption notifies the Dog Owner of such change.

24.4 Neither party is liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

24.5 The failure by Dog Adoption to enforce any provision of the Agreement shall not be treated as a waiver of that provision,

nor shall it affect Dog Adoption's right to subsequently enforce that provision.

24.6 The Dog Owner may not assign or transfer any obligation under this Agreement without the written consent of Dog Adoption.

25. SPECIAL CONDITIONS

The Special Conditions in Schedule 4 form part of this Agreement. In the event of any inconsistencies, the Special Conditions will prevail.

Dog Adoption