



THE CANINE ASSOCIATION OF WESTERN AUSTRALIA (Inc) - (DOGS WEST)

COUNCILLORS' NON-DISCLOSURE AGREEMENT

Version	Date	Author	Rationale
0.1	28/07/2020	D Kehoe	First Draft
1.0	30/07/2020	Sarah Clutterbuck	Legal Review – Final Version
1.1	07/12/2021	Sarah Clutterbuck (Solomon Hollett Lawyers)	Legal Review

COUNCILLORS' NON-DISCLOSURE AGREEMENT BACKGROUND

The Canine Association of Western Australian (Inc) (Dogs West) is a not for profit Association under the Associations Incorporation Act 2015 (WA).

In accordance with the terms of the Constitution of Dogs West, the Councillor is a Councillor of Dogs West. Under Dogs West's Constitution Councillors are elected by the Members of Dogs West or appointed by Dogs West's Council.

The Councillor acknowledges a duty of confidentiality to Dogs West and has agreed to enter into this Non-Disclosure Agreement.

THIS AGREEMENT PROVIDES:

1. DEFINITIONS

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

Agreement means this Agreement entered into between Dogs West and the Councillor.

Associations Act means Associations Act 2015 (WA).

Council means the Governing Council of the Association as prescribed in Section 15 of the Associations Constitution.

Councillor means a member of the Governing Council as prescribed in 15.3. of the Associations Constitution.

Council Papers means all written communications (including electronic documents and sound recordings) to the Councillor as a Councillor of Dogs West during his/her period in office including but not limited to monthly Council papers, agendas, finances, submissions, minutes, letters, memoranda, Council committee and sub-committee papers and copies of other documents referred to in any of the above mentioned documents made available to the Councillor as a Councillor of Dogs West during the time that the Councillor is a Councillor of Dogs West.

Confidential Information means all information or material, including intellectual property, treated by Dogs West as confidential whether disclosed in writing, orally or otherwise and whether disclosed directly or indirectly during the term of this Agreement or at any time before the termination of this Agreement and expressly includes but is not limited to information in:

- a) the Council Agenda/Papers/Documents/Finances;
- b) any Documents referred to or annexed to the Council Agenda/ Papers/ Documents/ Finances;
- c) any Documents that make reference to the Council Papers/Documents, or information contained in the Council Agenda/ Papers/ Documents /Finances;
- d) any discussions at Council meetings, informal or formal,
- e) any and all documentation sent to and received by the Council; and
- f) any Council decision which is not published or which the Council elects not to make public.

Document means any contract, note, memorandum, record, report, financial information, summary, analysis, calculation, strategic assessment, market survey, business plan, computer program, computer record, layout, drawing, specification, material or any other means by which information may be stored or reproduced.

Dogs West means The Canine Association of Western Australia (Inc) trading as Dogs West and a party to this Agreement which discloses Confidential Information to the other party.

Effective Date means the date the Councillor ceases to be a Councillor of Dogs West.

2. INTERPRETATION

In this Agreement:

- a) words importing the singular include the plural and converse;
- b) words importing a gender shall, where the context reasonably permits, include all genders;
- c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- d) an expression importing a natural person includes an individual, a firm, a body corporate, an unincorporated association and any government agency;
- e) the captions and headings to the clauses of this Agreement are for reference purposes only and will not affect the interpretation of any of the provisions to which they relate;
- f) a reference to anything (including any right) includes a part of that thing but nothing in this clause implies that performance of part of an obligation constitutes performance of the obligation;
- g) a reference to legislation or to a provision of legislation includes any modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- i) a reference to a party to a document includes that party's successors and permitted substitutes (including persons taking by novation) and assigns; and
- j) the meaning of terms is not limited by specific examples introduced by expressions "including" or "for example", or similar expressions.

3. CONFIDENTIALITY OF INFORMATION

Subject to clause 5 of this Agreement, the Councillor must keep confidential all information or discussions which is of its nature inherently confidential or designated by Dogs West Council to be confidential or defined by this Agreement as Confidential Information and ensure that unauthorised persons do not have access to this Confidential Information.

The Council may declare any material to be confidential, or in respect of any information to which Clause 4.2 of this agreement refers, may remove identifying information from any material if the Council deems it appropriate to do so. The Councillor's obligations under this Agreement commence on the day the Councillor signs this Agreement and ends 7 years following the day the Councillor ceases to be a Councillor of Dogs West.

4. USE OF CONFIDENTIAL INFORMATION

4.1. The Councillor shall:

- a) hold all Confidential Information in strict confidence;
- b) promptly notify the Dogs West President and Chief Executive if they suspect or becomes aware of any unauthorised use, storage, copying or disclosure of the Confidential Information; and
- c) take such reasonable action as is required by the Council to prevent or stop a breach or threatened breach of this Agreement or an infringement or threatened infringement of the Council's rights arising out of this Agreement by any person.

4.2. The Councillor shall not:

- a) disclose, or cause or permit the disclosure to any person any Confidential Information acquired by virtue of their position as a Councillor unless legally bound to do so or with the prior written consent of the Council;
- b) disclose, or cause or permit the disclosure to any person of, any opinion in respect of the Confidential Information unless legally bound to do so or with the prior written consent of the Council;

- c) create, or cause or permit to be created, a Document which reproduces, is based on, utilises or relates to the Confidential Information except as permitted by the Council;
- d) use any Confidential Information acquired by virtue of their position on the Council for their personal financial or commercial gain or other benefit, or the financial or commercial gain or other benefit of any other person; or
- e) release any material that would involve the unreasonable release of personal information regarding any person.

4.3. All Confidential Information should be clearly labelled as such.

4.4. The recipient of Confidential Information should be expressly told that it is confidential.

4.5. Failure to label any Document as confidential, or failure to inform any person that information is confidential, shall not prevent its classification as Confidential Information and such a failure cannot be relied upon by the Counsellor in disclosing that Confidential Information if the Confidential Information could be recognised as confidential by a reasonable person in the Counsellor's position.

5. EXCEPTIONS TO CONFIDENTIALITY OBLIGATIONS

5.1. Subject to Clause 5.2 of this Agreement, the obligations of the Councillor under Clause 3 shall not apply to any of the Confidential Information which:

- a) the Councillor (including the Councillor's employees or professional advisers) is/are required by statute or law to make a disclosure of;
- b) a decision of the Council;
- c) a decision of the Council, which the Council has elected to make public of a decision of the Council which is not published;
- d) is publicly known at the time of disclosure or subsequently becomes public through no fault of the Councillor;
- e) it is established by means of written records already known to the Council prior to the date of this Agreement; or
- f) to the Councillor's knowledge, is received by the Councillor from a person other than the Council (including any employee, officer, agent or adviser of the Council) legally entitled to possess that information and provide it to the Councillor.

5.2. Notwithstanding any other clause of this Agreement, if any Confidential Information is disclosed pursuant to Clause 5.1 of this Agreement, the Councillor must:

- a) only disclose the minimum Confidential Information required to comply with the applicable law, order or requirement; and
- b) before making such disclosure, to the extent legally permissible:
 - i. give the Dogs West President and Chief Executive reasonable written notice of the full circumstances of the required disclosure, and the Confidential Information which it proposes to disclose; and
 - ii. consult with the Dogs West President and Chief Executive as to the form of the disclosure.

6. BREACH

6.1. The Councillor acknowledges that any breach of their obligations under this Agreement may cause serious harm to Dogs West.

6.2. In addition and without prejudice to any other right or remedy available to Dogs West by law, in the event of a breach of this Agreement by the Councillor, Dogs West may take any action permitted under the terms of the Dogs West Constitution and Regulations, including but not limited to termination of the Councillor's term of office as a member of the Governing Council pursuant to Section 15.9 of the Dogs West Constitution.

7. TERMINATION AND RETURN OF DOGS WEST PROPERTY

- 7.1. The Councillor shall upon expiration of their term in office, return all Confidential Information and copies of Confidential Information to Dogs West, including Council correspondence, Documents, papers and property which may be in the Councillor's possession or under the Councillor's control.
- 7.2. Termination of this Agreement or the return of Confidential Information shall not affect any rights and obligations with respect to Confidential Information which will continue for a period of 7 years from the Effective Date.
- 7.3. Any part of the Confidential Information which cannot be conveniently returned to Dogs West by the Councillor shall be completely destroyed in such a manner as directed by Dogs West including deletion from all computer records and electronic storage devices.

8. INDEMNITY

The Councillor agrees to indemnify and keep indemnified Dogs West in respect of any damage, loss, cost (including legal costs on a full indemnity basis), fine liability or expense which Dogs West suffers or incurs as a direct result of any breach of this Agreement by the Councillor.

9. DISCLAIMER

Neither Dogs West nor any of its related bodies nor any of its respective officers, employees or advisers makes any representations or warranty as to the accuracy or completeness of the Confidential Information.

10. NOTICES

- 10.1.1 Any notice or other written communication including, but not limited to, any request, demand, consent, or approval to or by a party to this Agreement must be:
 - a) in writing and signed by the sender or a person duly authorised by the sender;
 - b) directed to the intended recipient at the address or email address known by the sender or as advised or varied by any notice; and
 - c) hand delivered or sent by priority registered post to that address or sent by email to that email address.
- 10.2. Any notice is regarded as being given by the sender and received by the addressee:
 - a) if by delivery in person, when delivered to that addressee;
 - b) if by post, three (3) business days after it is post marked;
 - c) if transmitted electronically shall be deemed to have been delivered the same day as transmission; and in all cases, a notice received after 5pm in the place of receipt or on a day that is not a business day in that place is taken to be received by the recipient at 9am on the next business day.
- 10.3. A reference to an addressee includes officers, agents or employees.

11. GOVERNING LAW

This Agreement shall be governed by and construed pursuant to the laws of the State of Western Australia and the parties agree to submit to the jurisdiction of the Courts of the State of Western Australia in connection with any dispute relating to this Agreement.

12. WAIVER

A failure or delay in exercise, or partial exercise, or a right, power, authority, discretion or remedy created or arising on breach of this Agreement does not result in a waiver of that right, power, authority, discretion or remedy.

13. COUNTERPARTS

This Agreement may be executed in any number of counterparts all of which, when taken together, will constitute one and the same instrument.

14. AMENDMENTS TO BE IN WRITING

This Agreement may only be amended, supplemented, replaced or novated by an instrument in writing signed by the parties to this Agreement.

15. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties regarding the subject matter of the Agreement, other than as expressly referred to in this Agreement. It supersedes and replaces any prior agreement, negotiation, discussion, representation, undertaking or arrangement regarding those terms.

16. SEVERANCE

If a provision of this Agreement is void, illegal or unenforceable, to the extent that it is void, illegal or unenforceable it may be severed from this Agreement without affecting the validity and enforceability of the other provisions of this Agreement.

EXECUTED AS A DEED

DATED THIS: _____ DAY OF _____ 20_____

EXECUTED BY

Councillor Name

Councillor Signature

In the presence of:

Witness signature

Witness name

Witness Address

EXECUTED BY THE CANINE ASSOCIATION OF WESTERN AUSTRALIA (Inc)

in accordance with the constitution in the presence of:

President

Chief Executive

Name

Name