

## CRIME LAB™ PROGRAM TERMS OF SERVICE

### Effective for Agreements Executed On or After: January 1, 2015

These CRIME LAB™ PROGRAM TERMS OF SERVICE ("**Terms**") are entered into by and between Mr Dog Poop, Inc., a Florida corporation ("**Company**") and the entity purchasing the services under an executed CRIME LAB™ Services Proposal ("**Customer**") to be effective on the Effective Date. Company and Customer each may be referred to in these Terms as a "**Party**" and collectively as the "**Parties**".

These Terms, a signed CRIME LAB™ Services Proposal ("**Services Proposal**"), any Services Order or Change Form (each a "**Services Order**"), the Website Terms and Conditions of Use, and each of their respective attachments and exhibits, each incorporated herein and made part hereof together comprise the agreement ("**Agreement**") between the Parties.

### 1. DEFINITIONS.

1.1. "**Affiliate**" means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity.

1.2. "**Authorized User(s)**" means Customer and its employees, authorized agents, and Affiliates.

1.3. "**Canine Data**" means the data, information and materials related to a canine or other animal, including breed, weight, and sex, that is provided to Company by Customer or Resident in connection with the Services. Canine Data does not include any DNA Data.

1.4. "**Control**" and its derivatives means possessing, directly or indirectly, the power to direct or cause the direction of the management policies or operations of an entity, whether through ownership of voting securities, by contract or otherwise.

1.5. "**Customer Data**" means the data, information and materials related to Customer and Authorized Users provided by or on behalf of Customer under the Agreement, including Authorized User's Personally Identifiable Information. Customer Data does not include any Resident Data.

1.6. "**DNA Data**" means the data, information and materials obtained or developed by Company under the Agreement, including the canine genetic fingerprint and all data derived through the processing of the DNA sample.

1.7. "**Documentation**" means, without limitation, all written or electronic documentation pertaining to the Software that relate to the functional, operational or performance aspects of the Software, including but not limited to manuals, functional or technical specifications, user guides, help pages, screenshots, training materials, sales and marketing literature, "technical white papers," and videos, which Company makes available to Customer pursuant to the Agreement.

1.8. "**Effective Date**" is the date the Services Proposal signed by Customer is countersigned by Company.

1.9. "**Improvement**" means any enhancement, error correction, update, upgrade, modification, revision or addition to, or derivative work of the Software that Company may develop or acquire and incorporate into its standard version of the Software or which the Company has elected to make generally available to its Customers, who are paying the annual CRIME LAB™ database management fee as contemplated in **Section 3.2.1(c)**.

1.10. "**Internal Business Purposes**" means use of the Software and Documentation, by Customer and its Authorized Users, for purposes of supporting the permitted uses of the Software and Documentation as contemplated in the Agreement.

1.11. "**Licensed Works**" means collectively, the Software and Documentation.

1.12. "**Personally Identifiable Information**" means any personal information that individually identifies an Authorized User or Resident, including personally identifiable information as may be defined by an applicable state law.

1.13. "**Residents**" means the individuals residing within a Customer's community.

1.14. "**Resident Data**" means the data, information and materials related to Residents provided by or on behalf of Customer under the Agreement, including but not limited to, Personally Identifiable Information. Resident Data does not include any Canine Data.

1.15. "**Software**" means any of Company's proprietary software, including that certain software marketed as CRIME LAB™, together with all Improvements thereto, made available to Customer in connection with the Services.

1.16. "**Third Party Products**" means those third party products, services, and software programs, data and databases that are embedded or included within the Software, including those subject to open source licenses.

## 2. SERVICES.

2.1. **Description of Services.** Company offers canine DNA matching services ("**Services**") to property management firms, commercial properties, home owners associations, cities and municipalities, where Company matches the DNA fingerprint retrieved from viable canine fecal samples, with the DNA fingerprint retrieved from viable canine saliva samples that are logged in the Company's CRIME LAB™ canine DNA database.

2.2. **Purchased Services.** In exchange for Customer's compliance with the Agreement, including the timely payment of Fees, Company agrees to perform for Customer the Services listed in the executed Services Proposal and any Services Order as may be executed by the Parties from time to time. Nothing contained in the Agreement will obligate Company to provide the Services to Customer unless and until (a) Customer has executed and delivered to Company the Services Proposal and any Services Order, as applicable; and (b) Company has received the Fees set forth in the Services Proposal and Services Order, as applicable, as further contemplated in **Section 3 (Fees and Payment Terms)** of these Terms.

## 3. FEES AND PAYMENT TERMS.

3.1. **Fees.** In consideration for the Services and the rights granted in the Agreement, (a) Customer will pay Company the fee(s) set forth in the Services Proposal and any applicable Services Order, including the fees contemplated in **Section 3.2 (Payment Terms and Invoices)** (the "**Fees**"); or (b) in the event Customer has elected for its Residents to remit payment for the Fees (or any portion thereof) directly to Company, Customer will take the appropriate steps to inform its Residents of the payment obligations, Customer will reasonably cooperate with Company to enable Company to collect such Fees, and such Residents will pay Company their apportioned amount of the Fees set forth in the Services Proposal and any applicable Services Order, *provided, however*, that Customer remains solely liable for any such Fees (but only to the extent Company provided the Services to Customer).

### 3.2. **Payment Terms and Invoices.**

3.2.1. Unless otherwise expressly stated in the Services Proposal or any Services Order, as applicable, payment for the Fees is due as follows:

(a) *For the initial DNA processing from saliva samples*, if Customer is paying the Fees to Company, then (i) the deposit and set up fees, if any, are due to Company before Company will deliver to Customer the initial DNA collection kits and supplies; and (ii) the balance (minus any deposit) of the Fees is due with the submission of the saliva samples. If Customer elected for its Residents to remit payment for the Fees (or any portion thereof) directly to Company, then the Fees apportioned to each such Resident are due from such Resident to Company no later than the submission of the saliva sample(s) to Company. In the event such Resident fails to pay its apportioned amount of the Fees, (1) if Company has provided the Services with respect to such Resident, then within thirty (30) days from a written request from Company, Customer will remit to Company any such outstanding Fees; or (2) if Company has *not* provided the Services with respect to such Resident but the Resident has used the DNA collection kit and supplies, then within thirty (30) days from a written request from Company, Customer will remit to Company the Fees for the DNA collection kit and supplies used by such Resident.

(b) *For the DNA processing from fecal samples*, Company will invoice Customer for the fecal sample fees during the month following the month on which the fecal samples were processed.

(c) *For the CRIME LAB™ database management fee*, Company will invoice Customer on an annual basis no later than the last day of the annual anniversary month of the Effective Date for

the CRIME LAB™ database management fee as set forth in the Services Proposal or any Services Order, as applicable.

(d) For a DOGdex ID™ license transfer, Company will invoice Customer for the then in effect license transfer fee no later than the last day of the month on which the license transfer was processed.

(e) For any custom software development, the Parties will enter into a Services Order, which will set forth the applicable fees, if any.

3.2.2. All invoices are due, and Customer agrees to pay all undisputed amounts in such invoices, within thirty (30) days of such invoice date, with no deductions or setoffs. Undisputed amounts not paid on or before thirty (30) days from the date of Customer's receipt of the invoice will be considered past due, and Company will issue a written notice of default. Customer will have fifteen (15) calendar days from the date of such notice to cure the default. Customer agrees to pay a late payment charge equal to the lesser of: (a) one and one-half percent (1.5%) per month, compounded; or (b) the maximum amount allowed by law, as applied against the past due amounts. If Customer fails to make payments when due and Company incurs any costs to collect such past due sums, Customer will be responsible for any reasonable and documented collection costs that may apply and such costs will immediately become due and payable to Company. Collection costs will include collection agency fees and expenses, attorneys' fees, court costs, collection bonds and reasonable Company staff costs at the then applicable billing rates for Company's time spent in efforts to collect. Any returned checks will incur an administrative fee of \$75.00. Customer will reimburse Company for any Fees charged-back by its Residents, together with any chargeback fees charged to Company by the merchant processor and a \$75.00 chargeback administration fee. All payments will be made in U.S. dollars.

3.2.3. If Customer wishes to dispute any invoices, Customer must (a) pay the undisputed portion of the applicable invoice; and (b) submit a good faith claim regarding the disputed amount with such documentation as may reasonably be required or requested to support the claim, within forty-five (45) days of the invoice date. If Company does not receive a documented claim within such time period then, notwithstanding anything in the Agreement to the contrary, Customer waives all rights to dispute or otherwise make any claim of any kind with respect to such disputed amount.

3.2.4. Any (a) undisputed invoice not paid in full within fifteen (15) days after the date of notice to cure default in payment, and/or (b) settled disputed amount of any invoice not paid within ten (10) days after resolution of such dispute will be deemed delinquent. Any such delinquent invoices will subject Customer to suspension of Services at the sole discretion of Company effective immediately upon written notice to Customer. Customer may reinstate suspended Services by paying to Company, within fifteen (15) days from the date the suspension commences, a service reinstatement fee of \$150.00 plus all outstanding amounts due as of the effective date of the suspension. Customer's failure to pay the reinstatement fee and outstanding Fees within the fifteen (15) day period will be deemed a termination notice by Customer, and Company will have the right to terminate the Agreement without further notice. The Parties agree that Customer's failure to pay any invoices in accordance with this **Section 3 (Fees and Payment Terms)** will be a material breach of the Agreement.

3.3. **Fee Increases.** Company reserves the right to increase the Fees (or any portion thereof) paid by Customer on an annual basis, *provided that* (a) any such increase will not exceed five percent (5%); and (b) Company provides Customer with at least forty-five (45) days' prior written notice (which may be provided via e-mail to Customer's primary e-mail address on file with Company). Any such increase will take effect on the annual anniversary of the Effective Date of the Agreement.

3.4. **Taxes.** The Fees are exclusive of all international, federal, state and municipal taxes (including sales taxes and withholding taxes), levies, duties or similar charges, however designated, levied or imposed, that may be assessed by any jurisdiction, under current laws or regulations or as a result of any change in laws or regulations following the Effective Date (collectively, "**Taxes**"). Customer will pay, indemnify, and hold Company harmless from all such Taxes as may be assessed against Company, during the Term, which are levied or imposed by reason of the performance by Company of the Services for Customer; *provided that* (a) Customer will not be responsible for any Taxes based on Company's net income, Company's property taxes, or fees related to any licenses and requirements for Company to conduct its business (including penalties and interest); and (b) Customer does not provide Company with a valid tax exemption certificate.

#### **4. CUSTOMER RESPONSIBILITIES.**

4.1. **Cooperation.** Customer understands and acknowledges that Company cannot perform the Services contemplated in the Agreement without the assistance and cooperation of Customer, its employees,

agents, contractors, and residents. To that end, Customer will: (a) cooperate, in good faith, with Company with respect to such reasonable activities as they relate to the Services; (b) provide such information and make such staff resources available to Company as it may reasonably request for purposes of performing activities related to the Agreement; (c) use commercially reasonable efforts to educate and inform Customer's Residents about the CRIME LAB™ program; and (d) devote such time and resources, at its sole expense, as may reasonably be required to roll-out and undertake the CRIME LAB™ program and to consult with, assist, and advise Company with respect to activities as they relate to the Agreement. Notwithstanding the foregoing, nothing in this **Section 4.1** will require Customer to enroll a Resident and its canine into the CRIME LAB™ program, *provided, however* that Customer agrees and understands that canine fecal samples can only be matched to DNA samples that are logged in the Company's CRIME LAB™ canine DNA database.

4.2. **Customer Data.** Customer may need to provide to Company certain Customer Data and Resident Data to permit Company to provide the Services and for the proper operation of the Software and Customer will use commercially reasonable efforts to provide such Customer Data and Resident Data to Company in a timely manner. Customer will be responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness and consistency of all Customer Data and Resident Data. Customer will, at its own expense, obtain all third party consents and/or permissions that may be necessary and appropriate for Company's use and display of the Customer Data and Resident Data in accordance with the Agreement.

4.3. **Update Records.** Customer understands that the CRIME LAB™ database management fee is based on the number of canine and Resident records Customer maintains in the database. Customer is solely responsible for ensuring that all canines and Residents are current residents in Customer's community.

## **5. LICENSE, RESTRICTIONS, AND PROPRIETARY RIGHTS.**

5.1. **License to Licensed Works and DNA Data.** In consideration of the Fees, as of the Effective Date, and subject to the terms and conditions of the Agreement, Company hereby grants Customer and its Authorized Users and Customer hereby accepts and affirms that its Authorized Users accept, a non-exclusive, non-transferable (except in accordance with **Section 12.8 (Assignment)**), non-sublicenseable, revocable, limited license to the Licensed Works and DNA Data during the Term to: (a) use the Software solely as hosted by Company, in the form of machine-readable, executable object code, and solely for Customer's Internal Business Purposes; (b) to use the Deliverables and DNA Data for Internal Business Purposes; and (c) permit Authorized Users, subject to **Section 6 (Authorized Users)**, to use the features and functions of the Software in accordance with the Agreement.

5.2. **Copies.** In accordance with the license granted in **Section 5.1 (License)**, Customer may make a reasonable number of copies of the Services Proposal and Documentation solely to use for Customer's Internal Business Purposes, including for backup or archival purposes; *provided* that all titles, trademarks, proprietary, and confidential notices and copyright notices are reproduced. Such copies are Confidential Information as defined herein. For the avoidance of doubt, no right is granted to make a copy of the Software, resell any component of the Software, or to actually receive a copy of any Software.

### **5.3. Third Party Products.**

5.3.1. Use of the Software may require a commercial license or an open source license to and use of Third Party Products. To the extent applicable, Company will identify Third Party Products included in the Software in or through the Software itself.

5.3.2. All the commercial Third Party Products are licensed to Customer subject to the terms and conditions of an end user license agreement ("**Commercial Third Party Terms**") provided as either a document accompanying such Third Party Products or as a pop-up screen during initial use of such Third Party Products. All of the open source Third Party Products are licensed to Customer subject to the open source license agreement ("**Open Source Licenses**"). Some of the Open Source Licenses may require Company to provide the open source software to Customer on the terms of the applicable open source license instead of the terms of the Agreement and, in such event, the terms of the open source license will apply. Notwithstanding the foregoing, if Customer is using the Software in the form made available to Customer and in accordance with the license granted in **Section 5.1 (License)**, then none of the Open Source Licenses impose any obligations on Customer beyond those provided in the Agreement.

5.3.3. Company does not control, endorse, or accept responsibility for Third Party Products. Any and all agreements, services, or transactions between Customer and such third party in connection with the Third Party Products, including but not limited to such third party's privacy policies, delivery of services, and any

other terms, conditions, warranties, or representations associated with such agreements, services, or transactions, are solely between Customer and such third party. Company may, in its sole discretion, modify or discontinue the availability of any Third Party Products provided with the Software at any time.

5.4. **Restrictions.** COMPANY RETAINS ALL RIGHT, TITLE AND INTEREST IN AND TO THE INTELLECTUAL PROPERTY, INCLUDING THE SERVICES PROPOSAL, SERVICES ORDER AND THE LICENSED WORKS AND DNA DATA AND ALL RIGHTS NOT EXPRESSLY GRANTED HEREUNDER ARE RESERVED. Without limiting the generality of the foregoing, Customer will not, nor will it permit any Authorized Users or third party, over which it exercises control, to: (a) except as set forth in **Section 5.2 (Copies)**, copy or reproduce the Services Proposal, Documentation or DNA Data in whole or in part; (b) modify, adapt, translate, publicly display, publish, create derivative works of or distribute the Services Proposal, the Services Order, the Licensed Works, or DNA Data, or any component thereof; (c) reverse engineer, decompile, disassemble or otherwise attempt to gain, perceive, or obtain the source code to the Software or from which any component of the Software is compiled or interpreted and Customer hereby acknowledges that nothing in the Agreement will be construed to grant Customer any right to obtain or use such source code; (d) distribute, sublicense, assign (except as permitted in **Section 12.7 (Assignment)**), share, timeshare, sell, rent, lease, grant a security interest in, use for service bureau purposes or otherwise transfer the Services Proposal, the Services Order, or the Licensed Works; (e) export, re-export, divert or transfer the Licensed Works to any country that is embargoed by the United States; (f) remove or modify any copyright, trademark or other proprietary notice of Company or any third parties contained on or within the Services Proposal, the Services Order, the Licensed Works, or DNA Data; (g) access the Services Proposal, the Services Order, or the Licensed Works to build a competitive product or service; or (h) unless expressly authorized by Company in writing, authorize or undertake a penetration test, vulnerability scan, social engineering test or any other similar activity against the Software or the Company. Customer acknowledges and agrees that the Software constitutes a trade secret and the Services Proposal, the Services Order and Documentation each constitute Confidential Information of Company. Customer will not permit any person under the control of Customer other than Authorized Users to access or use the Services Proposal, the Services Order, the Licensed Works or the DNA Data, Customer will promptly notify Company of any threatened or actual infringement thereof, and will cooperate without charge in Company's efforts to protect its rights therein.

5.5. **Restriction on Government Rights.** The Agreement does not transfer ownership of the Licensed Works or any copy thereof, or any other Intellectual Property of Company. In the event that Customer or Authorized User is a Government end-user that may be entitled to limited government rights, including but not limited to FARs 48 C.F.R. §§ 52.227-13, 52.227-14, and 52.227-15 in its contracts, such Government end-user specifically agrees that rights conferred to the Government by such regulations will be restricted in accordance with the terms and conditions of the Agreement. Such Government end-user acknowledges and agrees that each of the components that constitute the Services Proposal, Services Order, and License Works is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, any use, modification, reproduction, release, performance, display, provision, or disclosure of the Services Proposal, Services Order, and License Works by the U.S. Government will be governed solely by the terms of the Agreement and will be prohibited except to the extent expressly permitted by the terms of the Agreement.

5.6. **Ownership of Intellectual Property Rights.** Except as expressly set forth in **Section 5.3 (Third Party Products)** and an applicable Services Order, Customer agrees and acknowledges that all right, title and interest in and to the Company's Confidential Information, including the Services Proposal, the Services Order, the Licensed Works and the DNA Data and any components thereof, and all copyrights, patents, trademarks, service marks or other intellectual property or proprietary rights relating thereto existing from time to time under any law or regulations, including patent law, copyright law, semiconductor chip protection law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, or privacy rights law, and any and all other proprietary rights, and any and all applications, renewals, extensions and restorations of any of the foregoing, now or hereafter in force and effect worldwide (collectively, the "**Intellectual Property**"), are and will remain the sole and exclusive property of Company and its licensors, except for any Customer Data, Resident Data or Canine Data therein. Except for the limited license provided in **Sections 5.1 (License)** and **5.2 (Copies)**, Customer acknowledges and agrees that no such right, title or interest in the Intellectual Property is granted under the Agreement.

5.7. **Feedback.** Company may, in its sole discretion, use all comments, suggestions, recommendations, or ideas for modifications, customizations, improvements or enhancements to the Licensed Works, the DOGdex ID™ program or the Services (collectively, the "**Feedback**") submitted, whether in writing or

otherwise, by Customer or its Authorized Users to Company or its personnel without any compensation to or any attribution or acknowledgment of Customer or its Authorized Users. Customer hereby grants to Company and Company hereby accepts a worldwide, non-exclusive, irrevocable, perpetual, royalty-free right and license to incorporate the Feedback into Company products and services as Company deems appropriate, in its sole and absolute discretion.

5.8. **Intellectual Property Waiver.** Customer hereby waives any right to challenge the validity and enforceability and agrees that it will not challenge, directly or indirectly, the validity of the Intellectual Property or Company's ownership thereof.

5.9. **Customer Data and Communication with Authorized Users.** As between Company and Customer, Customer retains all right, title and interest in and to the Customer Data. Company acknowledges that Customer retains the right to use the Customer Data for any purpose in Customer's sole discretion. Notwithstanding the foregoing, Customer hereby grants to Company and Company hereby accepts a worldwide, royalty-free, non-exclusive, non-transferrable (except in accordance with **Section 12.8 (Assignment)**) license: (a) on a revocable, limited license basis, during the Term to access, host, use, copy, reproduce, reformat, display, disclose and distribute the Customer Data solely for the purpose of providing the Services; and (b) on a perpetual basis, to use, copy, modify, create derivative works of (such as reformatted versions and aggregated, anonymized or de-identified versions), and display Customer Data or statistics and to use, copy, disclose and distribute such data and statistics for Company's business purposes, including for service improvement, product improvement, and system monitoring.

5.10. **Communication with Residents, Resident Data and Canine Data.** Customer understands and acknowledges that in providing the Services, Company may need to communicate with Residents from time-to-time (e.g., to remind them to update their DOGdex ID™ address). Customer hereby grants to Company and Company hereby accepts the right to communicate with Residents in Company's reasonable discretion, and Customer represents and warrants that Customer has all necessary rights and consents to authorize Company to take such actions. Customer further understands that Residents are entered into the DOGdex ID™ database when a DOGdex ID™ is issued to them in connection with the Services. To the extent permitted under applicable law and notwithstanding anything contrary in the Agreement, Customer hereby grants to Company (and hereby affirms that its Residents have granted any appropriate rights to Customer to permit Customer to make such grant) and Company hereby accepts a perpetual, worldwide, royalty-free, non-exclusive, irrevocable, license to the Resident Data and Canine Data to access, host, use, copy, reproduce, display, disclose, distribute and create derivative works of (such as reformatted versions and aggregated, anonymized or de-identified versions) the Resident Data and Canine Data (a) for providing the Services; (b) delivering the DOGdex ID™ program; (c) for Company business purposes, including service improvement, product improvement, and system monitoring; (d) to disclose to law enforcement as reasonably determined by Company, in the event a Resident's canine has been identified in the DOGdex ID™ database as stolen or otherwise lost or missing, *provided that* in any such instance Company will provide advanced notice to Customer prior to making any such report; or (e) engage in any other activities as permitted by such Resident.

## 6. AUTHORIZED USERS.

6.1. **Access Credentials.** Company will provide to Customer a unique user name and password to access and use the Software ("**Access Credentials**"). Customer will (a) ensure the security and confidentiality of the Access Credentials and will be responsible for the use of, and all acts or omissions performed under, such Access Credentials, and any act or omission by an Authorized Users which, if undertaken by Customer, would constitute a breach of the Agreement, will be deemed a breach of the Agreement by Customer; and (b) promptly notify Company in the event Customer or any of its Authorized Users have any reason to believe or become aware of any loss, theft or unauthorized use of the Access Credentials, the loss of a mobile device that stored or otherwise saved the Access Credentials, or access to the Software may have been in any way compromised.

6.2. **Management of Authorized Users.** Customer agrees and understands that Customer, and not Company, is responsible for managing whether Customer's Authorized Users are authorized to access the Software and otherwise to share, disclose, create and use Personally Identifiable Information with the Software and Company will have no obligations relating thereto.

6.3. **Security Measures.** Customer agrees and understands that the protection of Personally Identifiable Information stored in the Software is not the sole responsibility of Company given the types of services being provided under the Agreement. Customer agrees and acknowledges that it will take appropriate administrative, physical, and technical safeguards to secure the Customer-side environment and to protect

access into the Software by, for example, protecting Access Credentials, using secure Wi-Fi, locking mobile devices and computers, training Authorized Users on security, and taking other commercially reasonable steps as may be applicable.

6.4. **Malicious Code.** Customer will use commercially reasonable efforts and will implement and will cause its Authorized Users to implement technical and administrative safeguards intended to prevent transmission of any “computer viruses,” “time bombs,” “malware,” worms, trojans, malicious software or any code that is designed to delete, disable, deactivate, interfere with, or otherwise harm or disrupt the Software or that in any way affects the use, enjoyment or service of the Software, or any user’s computer or other medium used to access the Software.

## 7. CONFIDENTIALITY.

7.1. **Confidential Information.** In contemplation of the provision of the Services hereunder, the Parties may have access to information that is confidential or proprietary to one another (“**Confidential Information**”). Confidential Information includes (i) the Services Proposal, the Services Order, Licensed Works, and Customer Data; (ii) the pricing under the Agreement; (iii) information relating to the disclosing party’s business or financial affairs, such as financial results, business methods, pricing, competitors, and product information; and (iv) all other information that should reasonably have been understood by the recipient (because of legends or other markings, the circumstances of disclosure, or the nature of the information itself) to be proprietary or confidential to the disclosing party. When Confidential Information is disclosed in a manner other than in writing, it will be reduced to written form, marked “Confidential Information” and transmitted to the receiving Party within five (5) business days of the disclosure to the receiving Party. Confidential Information will not include any information which the receiving Party can prove by competent written proof:

(a) at the time of disclosure or thereafter is generally available to and known by the public (other than as a result of its disclosure by the receiving Party or its Representatives);

(b) was available to the receiving Party on a non-confidential basis prior to its disclosure by the disclosing Party or their Representatives;

(c) becomes available to the receiving Party on a non-confidential basis from a person who is not otherwise bound by a confidentiality agreement with Company or Customer or their Representatives, or by any other obligation of secrecy;

(d) is independently developed by the receiving Party without the aid, application or use of the Confidential Information;

(e) subject to **Section 7.4 (Required by Law)**, is required by law to be disclosed; or

(f) is Resident Data, which the Parties agree may be disclosed in connection with the DOGDex ID™ program or as otherwise contemplated in **Section 5.10 (Communication with Residents, Resident Data and Canine Data)**.

7.2. **Limited Use and Disclosure.** Each Party agrees that the Confidential Information will be used solely for the purpose of the activities contemplated in the Agreement, limited to the purpose for which it was disclosed, and not in a manner in any way detrimental to the disclosing Party. Neither Party will disclose any Confidential Information to any third party other than its directors, officers, employees, advisors (including without limitation financial advisors, counsel and accountants), agents or Affiliates (collectively, the “**Representatives**”) of such Party who have a reasonable need for access thereto, *provided that* the Party agrees to be responsible for any breach of the Agreement by its Representatives. The Parties agree that nothing in the foregoing will prohibit Company from engaging in the activities contemplated in **Section 5.9 (Customer Data and Communication with Authorized Users)** or **Section 5.10 (Communication with Residents, Resident Data and Canine Data)**.

7.3. **Obligation to Protect.** The Parties agree to maintain the confidentiality of the Confidential Information and to protect as a trade secret any portion of the other Party’s Confidential Information by maintaining at least the same procedures regarding Confidential Information that it maintains with respect to its own Confidential Information, but in no case less than using commercially reasonable efforts, to prevent any unauthorized copying, use, distribution, disclosure, installation or transfer of possession of such information. Without limiting the generality of the foregoing, Customer will not permit any Authorized User to remove any proprietary or other legend or restrictive notice contained or included in any material provided by Company.

7.4. **Required by Law.** In the event that the receiving Party or any of its Representatives receives a request to disclose all or any part of the information contained in the Confidential Information under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, unless otherwise prohibited in such subpoena or order, the receiving Party agrees to (a) immediately notify the disclosing Party of the existence, terms and circumstances surrounding such a request; (b) consult with the disclosing Party on the advisability of taking legally available steps to resist or narrow such request; and (c) if disclosure of such information is required, upon request by the disclosing Party, cooperate with the disclosing Party at the disclosing Party's expense in obtaining an order or other reliable assurance that confidential treatment will be accorded to such portion of the information which the disclosing Party so designates.

7.5. **Equitable Relief.** The Parties acknowledge that any use or disclosure of the other party's Confidential Information in a manner inconsistent with the provisions of these Terms may cause the non-disclosing Party irreparable damage for which remedies other than injunctive relief may be inadequate, and the Parties agree that the non-disclosing Party will be entitled to receive from a court of competent jurisdiction injunctive or other equitable relief to restrain such use or disclosure. Either Party may bring suit in court to enjoin any violation of the Agreement without the posting of a bond or security, in addition to whatever remedies such Party might have at law.

## **8. REPRESENTATIONS AND WARRANTIES.**

8.1. **By Company.** Company hereby represents and warrants to Customer that: (a) Company is the lawful owner of the Licensed Works and that it has the full power and authority to grant the licenses granted hereunder; and (b) it will implement appropriate commercially reasonable technical, physical and administrative safeguards to protect Personally Identifiable Information and Confidential Information.

8.2. **By Customer.** Customer hereby represents and warrants that it will: (a) not violate or tamper with the security of the Software and use commercially reasonable efforts to prevent transmission of any malicious software to the Software in accordance with its obligations under **Section 6.4** (*Malicious Code*); (b) implement commercially reasonable technical, physical and administrative Customer-side safeguards to protect Personally Identifiable Information and Confidential Information; (c) manage Access Credentials and Authorized Users as further contemplated in **Sections 6.1** (*Access Credentials*) and **6.2** (*Management of Authorized Users*), respectively; and (d) has full authority and authorization to grant the licenses and rights contemplated herein. Customer further represents and warrants that it has accepted and is abiding by the terms and conditions of Third Party Terms associated with any Third Party Products, if any, provided by Company with the Software.

8.3. **By Both Parties.** Each Party represents and warrants to the other Party that: (a) it has the right and authority to enter into the Agreement and that no consent, approval or authorization of or designation, declaration or filing with any governmental authority is required in connection with the valid execution, delivery and performance of the Agreement; (b) entering into the Agreement does not violate any agreement or obligation existing between a Party and any third party; and (c) it will, at its own expense, comply with all laws, regulations and other legal requirements that apply to it with respect to the Agreement and the use of the Licensed Works.

8.4. **Void.** The representations and warranties set forth in **Section 8.1** (*By Company*) will be void if the breach of a warranty is caused by: (a) Customer's or any Authorized User's modification of the Licensed Works (unless such modification was done at the express direction of or with the written consent of Company); (b) Customer's or any Authorized User's use of the Services Proposal, Services Order, or Licensed Works in a manner that is not allowed under the Agreement (unless such modified use was at the express direction of or with the written consent of Company); or (c) use of the Licensed Works by an unauthorized person that has been given access by any Authorized User.

8.5. **Changes in Technology.** Company is not responsible for errors, interruption or any and all other problems caused by changes in, or modifications to, the operating characteristics of any mobile technology, device, computer, hardware, operating system, or any other technology in whatever form, through which the Software is accessed, nor is Company responsible for errors, interruption or any and all other problems which occur as a result of the use of the Software in conjunction with software of third parties or with hardware which is incompatible with the Software.

8.6. **No Other Warranties.** THE WARRANTIES SET FORTH IN THIS **SECTION 8** (*Representations and Warranties*) ARE THE ONLY WARRANTIES MADE BY COMPANY AND EXCEPT AS EXPRESSLY SET FORTH IN THIS **SECTION 8**, THE COMPANY'S SERVICES, LICENSED WORKS, AND ANY OTHER MATERIALS, THIRD PARTY SOFTWARE, DATA OR SERVICES ARE PROVIDED "AS IS" AND "WITH ALL



FAULTS" AND COMPANY MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, LICENSED WORKS, OR ANY OTHER MATERIALS, SOFTWARE, DATA OR SERVICES, OR THE FITNESS OF THE SOFTWARE FOR CUSTOMER'S OR ITS AUTHORIZED USER'S USE. COMPANY HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING OR COURSE OF PERFORMANCE OR TRADE USAGE, OR WARRANTIES THAT THE SOFTWARE WILL BE UNINTERRUPTED, DELIVERED FREE FROM DEFECTS OR ERRORS WHICH DO NOT MATERIALLY AFFECT PERFORMANCE, OR THAT ALL DEFECTS OR ERRORS WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION GIVEN BY COMPANY, ITS EMPLOYEES, LICENSORS OR THE LIKE WILL CREATE A WARRANTY. COMPANY'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS AND COMPANY IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

**9. INDEMNIFICATION.** Subject to **Section 10** (*Limitation of Liability*), each Party will indemnify, defend and hold harmless the other Party and its respective officers, directors, employees, agents, and licensors from and against any and all losses, expenses, damages and costs, including reasonable attorneys' fees actually incurred for any third-party claims, resulting from the indemnifying Party's breach of its representations and warranties contained in the Agreement, gross negligence, or willful misconduct. Each Party will use commercially reasonable efforts to provide the other with prompt written notice of any indemnifiable claim(s) and of all related claims; *provided however*, that failure to provide such notice will not diminish the indemnifying Party's indemnity obligations hereunder except and only to the extent that the indemnifying Party forfeits rights or defenses by reason of such failure. Each Party's indemnification obligations under this Section 10 are conditioned upon the indemnified Party cooperating in good faith with the indemnifying Party in the investigation and defense of any indemnifiable claim.

#### **10. LIMITATION OF LIABILITY.**

10.1. **Limitations.** In no event will either Party be liable to the other or to any third party, whether in contract, tort (including negligence or strict liability), warranty or otherwise, for any indirect, incidental, special, consequential, exemplary or punitive damages (including, without limitation, loss of profits) for any reason, including without limitation the breach of the Agreement or any termination of the Agreement, even if such Party has been advised of the possibility of such damages, and notwithstanding any failure of essential purpose of any limited remedy. THE CUMULATIVE LIABILITY OF COMPANY TO CUSTOMER (OR ANY THIRD PARTY CLAIMING BY OR THROUGH CUSTOMER) FOR ALL CLAIMS ARISING FROM OR IN ANY WAY RELATED TO THE SUBJECT MATTER OF THE AGREEMENT, AND REGARDLESS OF WHETHER A CLAIM IS BASED IN CONTRACT, NEGLIGENCE, TORT OR STRICT LIABILITY WILL NOT EXCEED GREATER OF (A) FIVE THOUSAND DOLLARS (U.S. \$5,000), OR (B) THE FEES PAID BY CUSTOMER TO COMPANY HEREUNDER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM.

10.2. **Essential Elements.** The Parties acknowledge that the Fees, limitations of liability, waivers, and Customer's express waiver in Section 5.8 (*Intellectual Property Waiver*) for the license granted hereunder and the Company's provision of Services reflect the allocation of risk between the Parties, are essential elements of the basis of the bargain between the Parties and absent such provisions, including the limitation of liability, the economic terms would be substantially different.

#### **11. TERM AND TERMINATION.**

11.1. **Term.** Unless otherwise set forth in the Services Proposal, the Agreement will commence on the Effective Date and will remain in effect for an initial term of three (3) years (the "**Initial Term**"). Thereafter, the Agreement will automatically renew for successive terms of one (1) year (each a "**Renewal Term**") at the then current fees at the end of the Initial Term, unless either Party provides the other Party with written notice of non-renewal not less than ninety (90) days prior to the expiration date of the then-current term (the Initial Term and each Renewal Term, collectively, are the "**Term**").

11.2. **Termination.** Either Party, upon giving written notice to the other Party, may terminate the Agreement: (a) if the other Party materially breaches the Agreement and fails to cure such breach, or fails to commence and continuously maintain substantial efforts to cure, within thirty (30) days after receipt of written notice thereof from the other Party; or (b) if the other Party becomes insolvent or otherwise unable to pay its obligations when due, or upon the institution against such Party of proceedings by or against the Party under any federal or state bankruptcy or insolvency law, or if such Party is subject to or makes an assignment for the benefit

of all or substantially all creditors, or such Party ceases operations or business for any reason. Customer may terminate the Agreement for any or no reason upon ninety (90) days' written notice to Company and Company may terminate the Agreement for any or no reason upon one-hundred and eighty (180) days' written notice to Customer. The Parties agree that without limitation, **Sections 3 (Fees and Payment Terms), 5 (License, Restrictions, and Proprietary Rights), 7 (Confidentiality), and 8 (Representations and Warranties)** will be considered material.

### 11.3. **Obligations Upon Expiration or Termination.**

11.3.1. **Return of Confidential Information.** Upon expiration or termination of the Agreement for any reason, each Party will promptly return to the other Party or, at such other Party's request, destroy, any Confidential Information of the other Party, including all copies and portions thereof, and provide such Party with an officer's written statement certifying to its compliance with the foregoing. Notwithstanding the foregoing, Customer agrees and understands that the return of Confidential Information stored in backup media is not feasible and that the Confidential Information will be destroyed in the normal course of Company data management activities. Customer agrees and understands that this **Section 11.3.1** does not apply to Customer Data as contemplated in **Section 5.9 (Customer Data and Communication with Authorized Users)** and Resident Data and Canine Data as contemplated in **Section 5.10 (Communication with Residents, Resident Data and Canine Data)**.

11.3.2. **Payment of License Fees.** Customer will, within thirty (30) days of receipt of Company's invoice, pay all undisputed Fees accrued by Customer as of the effective date of any expiration or termination.

11.4. **Effect of Termination.** Upon termination of the Agreement for any reason, Customer and its Authorized Users will no longer be authorized to use the Services Proposal, the Services Order, the Licensed Works, or the DNA Data. Access to the Software will be terminated and any further access by or on behalf of Customer and its Authorized Users is expressly prohibited. Company may further delete all Customer Data and Resident Data, as applicable.

11.5. **Survival.** The rights and obligations of the Parties under **Sections 3.1 (Fees), 3.2 (Payment Terms and Invoices), 3.4 (Taxes), 5.4 (Restrictions), 5.5 (Restriction on Government Rights), 5.6 (Ownership of Intellectual Property Rights), 5.7 (Feedback), 5.8 (Intellectual Property Waiver), 5.9 (Customer Data and Communication with Authorized Users), 5.10 (Communication with Residents, Resident Data and Canine Data), 6.1 (Access Credentials), 6.2 (Management of Authorized Users), 7 (Confidentiality), 8 (Representations and Warranties), 9 (Indemnification), 10 (Limitation of Liability), 11.3 (Obligations Upon Expiration or Termination), 11.5 (Survival), and 12 (Miscellaneous)** will survive any expiration or termination of this Agreement.

## 12. **MISCELLANEOUS.**

12.1. **Waiver of Jury Trial.** EACH PARTY TO THE AGREEMENT IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR IN ANY WAY RELATING TO THE AGREEMENT OR THE TRANSACTION CONTEMPLATED BY THE AGREEMENT.

12.2. **Negotiation.** In the event that any dispute relating to the Agreement arises between the Parties either Party will, by written notice, call a meeting regarding the dispute to be attended (either in person or by phone) by executive officers of each Party who will attempt in good faith to resolve the dispute. If a dispute cannot be resolved through good faith negotiations within a thirty (30) calendar days from the initial meeting between the officers, then the Parties, subject to **Section 12.1 (Jury Waiver)**, may pursue other applicable legal remedies.

12.3. **Governing Law and Venue.** The Agreement will be deemed to have been made in Hillsborough County, Florida, U.S.A. Any and all questions concerning the validity, interpretation and performance of the Agreement will be governed by and decided in accordance with the Laws of the State of Florida, without regard to any conflicts of laws and principles thereof. The Parties consent to the exclusive jurisdiction and venue of the state and federal courts residing in Hillsborough County, Florida for the resolution of any and all disputes arising under the Agreement or in any manner related to the Services.

12.4. **Independent Contractors.** The Parties are independent contractors and nothing in the Agreement is to imply an agency, joint venture, partnership, or fiduciary relationship between the Parties. Neither Party is authorized to make any representations, contracts, or commitments on behalf of the other Party.

12.5. **No Third Party Beneficiary.** Nothing express or implied in the Agreement is intended to confer, nor will anything herein confer, upon any person other than Company, Customer, or their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

12.6. **Counterparts.** The Agreement may be executed by facsimile signature pages and in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

12.7. **Assignment.** Neither Party may assign the Agreement or any right or obligation under the Agreement, by operation of law or otherwise, without prior written consent from the other Party, not to be unreasonably withheld, *provided, however*, that either Party may assign its rights and obligations hereunder to (i) a parent or subsidiary of an Affiliate; (ii) a purchaser of all or substantially all assets related to the Agreement; or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization of a Party. Any assignment in violation of the **Section 13.6** is null and void. The Agreement is binding on, inure to the benefit of, and is enforceable against the parties and their respective successors and assigns.

12.8. **Amendment.** Any amendment or modification to the Agreement will be effective only if in writing, signed by duly authorized representatives of both Parties, and specifically references the Agreement. Any terms and conditions stated on a purchase order or other accounting statement of Customer, whether delivered prior to or subsequent to the Agreement, will not modify the terms and conditions of the Agreement and all such conditions and modifications are void.

12.9. **Severability.** If any provision of the Agreement is held to be illegal, invalid or unenforceable in any respect by a court of competent jurisdiction, then the Parties will substitute such provision with a legal, valid and enforceable provision which attempts to obtain the same result as the provision declared illegal, invalid or unenforceable. The provisions hereof are severable, and in the event any provision of the Agreement is held to be illegal, invalid or unenforceable in any respect, then the remaining provisions of the Agreement will remain in full force and effect.

12.10. **Waiver.** The waiver by either Party of a breach by the other Party of any provision set forth herein or of any right contained herein will not operate as or be construed as a continuing waiver or a waiver of any subsequent breach or right granted herein.

12.11. **Entire Agreement.** These terms, a signed Services Proposal, the Services Order(s), the Website Terms and Conditions of Use, and each of their respective attachments and exhibits, together constitute the entire agreement between the Parties relating to the subject matter of the Agreement and will supersede all previous communications between the Parties with respect to the subject matter hereof, including but not limited to, any associated purchase order or prior agreement, quotation, proposal, correspondence or oral discussion relating to the subject matter hereof.

12.13. **Order of Precedence.** The following order of precedence will be followed in resolving any inconsistencies in the terms: (a) the signed Services Proposal; (b) the express terms contained in the body of these Terms; (c) any Services Order(s); (d) the Website Terms and Conditions of Use; and (e) any schedules, exhibits, attachments, or addenda.

12.14. **Usage.** Wherever any provision of this Agreement uses the term “including” (or “includes”), such term will be deemed to mean “including without limitation” and “including but not limited to” (or “includes without limitation” and “includes but is not limited to”) regardless of whether the words “without limitation” or “but not limited to” actually follow the term “including” (or “includes”). The word “any” means “any and all.” The Section headings appearing in the Agreement are inserted for convenience only and in no way define, limit, construe, or describe the scope or extent of such Section or in any way affect such Section.

12.15. **Notices.** Any notice, request, demand or other communication required or permitted to be given under the Agreement will be given in writing, will reference this Agreement and will be deemed properly given: (a) when actually delivered in person; (b) five (5) business days after deposit with a nationally recognized mail courier; (c) three (3) business days after mailing via certified mail, postage prepaid; or (d) when delivered by electronic mail, *provided that* a Party obtains either a delivery confirmation receipt, the electronic mail is not returned, and such Party sends a copy of such notice using methods (a) – (c) herein with attention to the General Counsel. Any such notice, request, demand or other communication will be sent to the addresses identified on, in the case of Company, on the address set forth in the signed Services Proposal and, in the case of Customer, the last address listed in the Customer-side management portal for the Software.