

GENERAL CONTRACT TERMS AND CONDITIONS

POO FREE PARKS SPONSORSHIP AGREEMENT

Current as of January 1st, 2013

The General Contract Terms and Conditions specified below, and as may hereafter be modified, amended and/or changed, are hereby incorporated by reference into all Poo Free Parks (PFP) Sponsorship Agreements (Agreement) as if fully and completely set forth therein in full text.

1. Definitions. The following definitions are in addition to the definitions set forth in the Agreement:

“Station” means that piece of equipment which PFP places in parks, greenways and other public spaces to provide to the dog owning persons free biodegradable bags to facilitate the disposal of their pet’s waste. The station also includes two Sponsor signage placards, which can carry two individual and unique sponsors on each sign.

“Cardholder” means a person or business who holds a credit card with an approved card issuing bank.

“Bags” means the biodegradable bags which are stocked by PFP personnel in the Stations.

“Park” means any public or private space at which pets, or substantial numbers of service animals, are or could be allowed.

“Authority” means the owner or operator of the Park. It may be a municipal, state or federal governmental agency, special district, homeowner association or private party.

“Location” means a specific market identified by the Authority owning or operating the Park.

“Zone” means a service area, generally of approximately 700 square miles, within a Location.

“Force Majeure Event” shall mean causes beyond the control and without the fault or negligence of the Parties. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Parties.

2. Station/Placard Design Information.

- a. Each Station includes two opposing placards upon which the Sponsor will be publically recognized. The placards are in the size of 18 inches tall by 12 inches

wide, of which approximately 12 inches wide by 13 inches tall is available to the Sponsor for recognition.

- b. Sponsor recognition can include:
 - i. Sponsor color logo, Company name, and tag line
 - ii. One point of Company contact information (e.g. web site URL, address, or phone number)
 - iii. Sponsor promotional copy not to exceed 50 words
 - iv. QR Code

c. As soon as possible, Sponsor will provide PFP:

- i. Digital versions of its logo for PFP's web site and iPhone app.
- ii. Sponsor web link to which PFP web and app users can be sent (pointed)

d. Artwork.

If Sponsor chooses to complete the artwork for the signage on their own, the print-ready file needs to be received as follows:

- i. The placards are in the size of 18 inches tall by 12 inches wide, of which approximately 12 inches wide by 13 inches tall is available to the Sponsor for recognition.
- ii. Please email artwork to info@poofreeparks.com in pdf format, 300 dpi, CMYK.

e. PFP Design Service.

If Sponsor chooses to have PFP design the signage label for additional cost, the following items must be emailed to info@poofreeparks.com within 5 business days of the execution of this Agreement:

- i. Digital logo in .jpg format, and one of the following formats:
- ii. .eps
- iii. .pdf
- iv. .ai
- v. Copy to include tag line, promotional language, and contact information
- vi. Any additional images or photos, font preferences, and special instructions
- vii. Design fee includes one (1) revision request. Additional revisions are available for an additional cost to Sponsor.

f. Bags. Bags are printable and biodegradable sacks designed for dog waste disposal. Sponsor may place an acknowledgment of its sponsorship on the bags at an additional cost as indicated in Exhibit I to the Sponsorship Agreement.

- g. Co-Location. When a Sponsor desires to imprint bags, every effort will be made to co-locate the Sponsor's bags with the Sponsor's Station. However, if the Sponsor does not imprint sufficient bags, the bags of another noncompetitive sponsor or neutrally imprinted bags may be substituted at Sponsor Stations.
- h. Approval of Sponsorship Acknowledgment Copy. All sponsorship acknowledgments require the approval of the Authority and of PFP as to content and appearance. The standards for copy approval may vary and will be provided to the Sponsor upon request for all Authorities in a given Location or Zone within the Location. Every effort will be made by PFP to standardize the requirements of Authorities within each Zone and across all locations. The Authority's rejection of any sponsorship acknowledgment shall be final and is not subject to appeal.
- i. Production. Sponsor shall provide a "print-ready" design for sponsorship acknowledgments which meet the standards provided to Sponsor by PFP. PFP will prepare artwork and graphics for the Sponsor, if so desired, for an additional production charge at the rate of \$100 per hour. In the event the Sponsor desires to change artwork or copy during the term of this contract, PFP will charge additional production fees of \$25 per sign, per change, to cover the cost of printing and the cost of the labor to implement the changeover, as mutually agreed by the Parties.

3. Billing and Payments.

Monthly invoices will be emailed on a monthly basis, and are due in advance of services being rendered.

- a. Invoicing System. For the convenience of the Sponsor and the Authority who are billed for services on a monthly basis, PFP will initiate the use of an automatic Invoicing System through a third party software program called FreshBooks.com.
- b. Payment Options. Payments may be made either by check or by using a Visa, MasterCard (MC), American Express, or Discover Card. Credit card payments may be made over the phone with a PFP representative, or via the Invoicing System's website at <http://poofreeparks.freshbooks.com>. The Cardholder hereby agrees that the signature and execution of the agreement they hold with PFP can and will be used as verification of the Cardholder's authorization for PFP to charge their credit card account.
 - a. For added convenience, the Sponsor/Authority may choose to pay by entering their credit card account information into the third party invoicing system. In doing so, the system will require that the Cardholder either indicate that the system should charge the credit card account manually each month, or indicate that the Cardholder approves to have the system automatically charge the amount due, as each monthly invoice is generated. When the initial attempt to charge Cardholder's card has been declined by the card issuer, the invoicing system may continue to attempt to charge the Cardholder's credit

card until the pending invoice is paid. Once the invoice has been paid, the system will no longer attempt to gain approval for the charge for that particular invoice.

- b. Fees. It may become apparent, at the sole discretion of PFP, that the Sponsor/Authority acted in bad faith, either by submitting a “bad check” as payment for an invoice, or by fraudulently disputing a credit card charge in an effort to gain the benefits of the service/products provided by PFP, without having to pay for them. Fees will be assessed against both the Sponsor/Authority, as well as to the Cardholder, personally. Collections may be placed against both the Cardholder, personally, as well as the Sponsor/Authority.
 - i. A Returned Check Fee of \$29.00 (USD) will be charged for all checks returned as unpaid.
 - ii. A fee of \$50 or 10%, whichever is greater, will be charged to the Cardholder and/or the Sponsor/Authority for unsubstantiated credit card payment disputes. A disputed charge will be considered as unsubstantiated, if the Cardholder disputes a transaction with their credit card’s issuing bank, and it is determined through the dispute process managed by the credit card charge processing company that the disputed charge has been reversed in favor of PFP.
 - iii. Additional fees may be assessed if the invoice falls into a past due status, as outlined in the Sponsorship Agreement.

4. Station Maintenance.

PFP assumes full responsibility for the maintenance and repairs to dispensers and signage at no additional cost to Sponsor. PFP will fix or replace any broken or vandalized Dispenser Stations within three (3) business days of notice or of discovery, whichever occurs first. The Dispenser Stations shall be kept graffiti free, at PFP’s expense. PFP will service the Dispenser Stations at least once per week or more often, if needed, and shall keep adequate supplies of biodegradable bags available for public use at all Dispenser Stations. PFP will provide contact information (telephone number or email address) for park patrons to notify it with respect to any required maintenance or service issues. If it is necessary to remove any advertising from the dispenser(s) during the Term due to vandalism or damage, PFP agrees to pay for reproduction and replacement of all advertisements/signage within a reasonable time at no cost to Sponsor. However, PFP shall not be responsible for lost advertising time resulting from the need for such reproduction and replacement that is accomplished within a reasonable time. Upon discovery of any vandalism or damage to a Sponsor station which appears targeted at the Sponsor or the Sponsor’s interests PFP agrees to notify Sponsor by email and will repair or replace sponsor station within 5 business days. PFP will supply Sponsor proof of repair upon repair completion (e.g. digital photograph). Repairs that exceed 5 business days to complete will result in a prorated adjustment applied to the next monthly invoice to sponsor for each day that exceeds 5 business days that a station is not repaired.

5. Promotion of Sponsor Participation.

- a. PFP Publication of Sponsorship. Sponsor agrees that PFP may place acknowledgement on its website and other promotional materials as to the participation of the Sponsor in this program. Sponsor agrees to license or otherwise permit PFP to use its trademarks and other branding for this limited purpose. Such uses will be subject to the pre-approval of the Sponsor, which shall not be unreasonably withheld. Sponsor will have five (5) business days to review, comment on and/or approve brand usage except in extenuating circumstances where best efforts will be made to provide comment and/or approval within 24 hours.
- b. Sponsor Publication of Sponsorship. PFP agrees that Sponsor may place acknowledgement on Sponsor's website and other promotional materials as to the participation of the Sponsor in this program. PFP agrees to license or otherwise permit Sponsor to use its trademarks, services description, and partnership with Sponsor and other branding for this limited purpose. Such uses will be subject to the pre-approval of PFP, which shall not be unreasonably withheld. PFP will have five (5) business days to review, comment on and/or approve brand usage except in extenuating circumstances where best effort will be made to provide comment and/or approval within 24 hours.
- c. Co-branding. The Parties agree to consider and not unreasonably withhold agreement to participate in co-branding activities as may be considered necessary to effectuate the purposes and intent of this Paragraph 5. The consent of either Party to such co-branding activities shall not be unreasonably withheld.
- d. Third party agreements. Neither PFP nor Sponsor shall enter into any agreements on behalf of the other without the other's express, written consent.
- e. PFP will promote Sponsor in its public relations efforts during the Term. References to Sponsor will be a positive representation of the company. Sponsor will have five (5) business days to review, comment on and/or approve brand usage except in extenuating circumstances where best effort will be made to provide comment and or approval within 24 hours.
- f. At Sponsor's request, PFP will support Sponsor promotional offers during the Term, including but not limited to posting a Sponsor supplied offer on the PFP web site, distributing a Sponsor supplied printed offer within PFP Zones, etc.
- g. PFP will use its best efforts to facilitate Sponsor requests to hold events within PFP Zones with the respective Authority for the purpose of promoting the Sponsor-PFP partnership or Sponsor initiatives. Sponsor understands that all such activities will be subject to Authority approval in its sole discretion.

6. Indemnification.

Sponsor Indemnification Obligations. To the fullest extent permitted by law, Sponsor hereby agrees to indemnify, defend, save and hold harmless PFP, its Affiliates, and its and their agents, officers, directors, employees, attorneys, heirs, successors, and assigns (the “PFP Indemnified Parties”), and each of them, from any and all claims, losses, deficiencies, damages, liabilities, costs, and expenses (including but not limited to reasonable outside attorney fees) incurred by the PFP Indemnified Parties as a result of any third party claim, judgment, or adjudication against the PFP Indemnified Parties to the extent arising from (a) the negligent acts or omissions or willful misconduct of Sponsor or any Sponsor Indemnified Parties in connection with this Agreement; (b) the use of any Sponsor Property by PFP in the form furnished and manner approved by Sponsor and otherwise in conformity with the terms of this Agreement, including, but not limited to, claims, demands, and litigation alleging that said Sponsor Property is libelous or obscene and/or violates any rights of any Person (including, but not limited to, any Intellectual Property, rights of publicity and/or rights of privacy); and/or (c) Sponsor’s breach of any of the terms, covenants, representations or warranties under this Agreement.

PFP Indemnification Obligations. To the fullest extent permitted by law, PFP hereby agrees to indemnify, defend, save and hold harmless Sponsor, its Affiliates, and its and their licensors, agents, officers, directors, employees, attorneys, heirs, successors, and assigns (the “Sponsor Indemnified Parties”), and each of them, from any and all claims, losses, deficiencies, damages, liabilities, costs, and expenses (including but not limited to reasonable outside attorney fees) incurred by the Sponsor Indemnified Parties as a result of any third party claim, judgment, or adjudication against the Sponsor Indemnified Parties to the extent arising from (a) the negligent acts or omissions or willful misconduct of PFP, or any PFP Indemnified Parties in connection with this Agreement; (b) the use of any PFP Property and/or other information, materials, content or media provided in the form furnished and manner approved by PFP, and otherwise in conformity with the terms of this Agreement, including, but not limited to, claims, demands, and litigation alleging that the same is libelous or obscene and/or violates any rights of any Person (including, but not limited to, any Intellectual Property, rights of publicity and/or rights of privacy); and/or (c) PFP’s breach of any terms, covenants, representations or warranties under this Agreement.

6. Confidentiality.

Definition. As used in this Agreement, the term “Confidential Information” shall mean any and all information prepared or delivered to the receiving party by the disclosing party or its representatives (including information or data received by the disclosing party from a third party and as to which the disclosing party has confidentiality obligations), that is (a) marked or designated by the disclosing party as “confidential” or “proprietary;” (b) disclosed orally or visually provided that such information is identified at the time of such disclosure as proprietary or confidential, and that within thirty (30) days thereafter a written summary of such oral and visual disclosure bearing the aforesaid type of label or legend, is provided to the receiving party; or (c) known to the receiving party, or should be known to a reasonable person given the facts and circumstances of the disclosure, as being treated as confidential or proprietary by the disclosing party. The terms of this

Agreement (but not the fact of its existence) shall constitute the Confidential Information of both parties.

Non-Disclosure and Non-Use. The receiving party shall keep in strictest confidence and trust all Confidential Information of the disclosing party and shall not (a) except as expressly provided herein, disclose any such Confidential Information to any other Person, or (b) use such Confidential Information except and solely for the performance of each party's respective obligations hereunder. The receiving party will not use any Confidential Information of the disclosing party for any purpose not expressly permitted by this Agreement and will disclose the Confidential Information of the disclosing party only to the employees, contractors or professional advisors of the receiving party who have a need to know such Confidential Information for purposes of this Agreement and who are obligated to maintain the confidentiality of such Confidential Information, and only after the receiving party has notified such Persons that such information is the Confidential Information of the disclosing party. The receiving party shall use the same care and discretion to avoid disclosure of the disclosing party's Confidential Information as it uses with its own similar Confidential Information, and in no event with less than reasonable care.

Exceptions. "Confidential Information" does not include information that demonstrably (a) is or becomes generally available to the public other than as a result of a disclosure by the receiving party; (b) was possessed by the receiving party prior to being furnished by the disclosing party, provided that the source of such information was not known by the receiving party to be bound by a confidentiality agreement with, or other obligation of confidentiality to, the disclosing party or any other party with respect to such information; (c) is independently developed by the receiving party without use of or reference to the Confidential Information of the disclosing party and without breach of this Agreement, or (d) becomes available to the receiving party from a source other than the disclosing party, provided that such source is not known by the receiving party to be bound by a confidentiality agreement with, or other obligation of confidentiality to, the disclosing party or any other party with respect to such information. Further, it shall not be a violation of this Section for a party to disclose Confidential Information of the other party in response to a subpoena or other legal process served upon the receiving party or where applicable law or regulation requires the disclosure of such information, provided that, if not prohibited under applicable law, the receiving party gives reasonable prior written notice to the disclosing party sufficient to permit the disclosing party to seek a protective order if it so chooses and discloses only that information that is legally required to be disclosed.

7. **Force Majeure.** Subject to the provisions of this Agreement, neither party shall be liable to the other for failure to perform hereunder if, and to the extent, such failure results from a Force Majeure Event. Upon occurrence of a Force Majeure Event and to the extent such occurrence interferes with either party's performance of this Agreement, such party shall be excused from performance of its obligations, provided such party gives prompt written notice to the other party of such Force Majeure Event and uses its commercially reasonable efforts to avoid or remove such causes of non-performance as soon as

possible. Force Majeure Event is further defined in the General Contract Terms and Conditions available at www.poofreeparks.com, which is incorporated herein by reference.

- 8. Assignment.** This Agreement and any rights, entitlements, duties and obligations arising from it, may not be assigned or otherwise transferred by either party, in whole or in part, without the other party's prior written approval; provided however, that each party may assign this Agreement without the other party's prior approval to an affiliate and/or to another person in the event of a merger or reorganization of such party or a sale of all or substantially all of such party's assets or a consolidation of such party with any of its Affiliates, so long as such Person assumes all of the assigning party's obligations hereunder in writing for the express benefit of the non-assigning party and the assigning party confirms, to the reasonable satisfaction of the non-assigning party, the assignee's ability to perform its financial obligations arising under this Agreement. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.
- 9. Independent Contractor.** The parties intend that this Agreement will create an independent contractor relationship between them. This Agreement does not create any partnership or joint venture between PFP and Sponsor. Neither PFP nor Sponsor will be, or hold itself out as, the agent of the other party in connection with, or as a result of, this Agreement. Further, in no event shall this Agreement or actions taken by PFP or Sponsor create an employee/employer relationship. Neither party will have authority, without the other party's prior written consent, to act for the other party. Neither party will be bound by any acts, obligations or undertakings of the other party.
- 10. Waiver; Amendment.** All modifications, amendments and waivers must be in writing and signed by the parties hereto. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Failure to enforce any provision in this Agreement or any rights in a particular instance or failure to exercise any election provided in this Agreement will not constitute a waiver of or preclude subsequent enforcement of these provisions.
- 11. Equitable Remedies.** Each party recognizes and acknowledges that a breach by it of any covenants, agreements or undertakings hereunder relating to the other party's Intellectual Property and/or Confidential Information may cause the other party irreparable damage that cannot be readily remedied in damages in an action at law, and under such circumstances such party may, in addition thereto, seek equitable remedies without having to post a bond or other security.
- 12. Miscellaneous Provisions.**

 - a. This Agreement constitutes the full and complete Agreement of the Parties and is not subject to modification except by a writing signed by both authorized representatives.
 - b. The Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed

against any party merely because this Agreement or any of its provisions have been prepared by a particular party.

- c. The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.
- d. The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.
- e. This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.
- f. If any suit or other action is required to enforce the terms of this Agreement, it is agreed that the Laws of the State of Colorado shall govern the Agreement and that the only appropriate venue are the Courts of and for the County of Denver, State of Colorado or the Federal District Court for the District of Colorado.
- g. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement which can be given effect without the invalid provision will continue in full force and effect and will not in any way be impaired or invalidated. Any alleged uncertainty or ambiguity in this Agreement shall not be construed for or against a party based on attribution of drafting to said party. If any clause, sentence, paragraph, provision, or part of this Agreement violates or conflicts with any law, governmental rule or regulation or judicial decree, including any requirements for judicial approval, or shall be adjudged invalid by a court of competent jurisdiction, such provision or provisions shall be deemed amended to the minimum extent necessary to effect compliance with such law, rule, regulation or decree, provided such provision continues to reflect the intent of the parties, and as so amended shall remain in full force and effect. Such judgment shall not affect the remainder of this Agreement, which shall continue in full force and effect.
- h. The headings contained herein are inserted for convenience only, and shall not affect the construction hereof.
- i. This Agreement, including all exhibits appended hereto, is intended by the Parties to be the final, complete and exclusive statement of the terms and conditions of their agreement and is intended to supersede all previous agreements and understandings between the parties relating to its subject matter. No amendment, modification, termination, notice or waiver of any provision of this Agreement shall be valid or enforceable unless in writing and signed by the party to be charged.
- j. Any provisions, which by their nature, are intended to survive, shall survive the expiration or termination of this Agreement.
- k. This Agreement may be signed in counterparts, which, together, shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic means (e.g., electronic mail or PDF) shall be effective as delivery of a manually executed counterpart to Agreement.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK