

THE AUSSIE POOCH MOBILE REPRESENTATIVES AGREEMENT



Rev 4.4

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REPRESENTATIVES AGREEMENT

This Agreement is made the _____ day of _____ 20 .

BETWEEN: **The person whose name and address appears in Schedule 1 as
Licensor**
("Licensor ")

AND: **The person whose name and address appears in Schedule 1 as
Representative**
("Representative")

INTRODUCTION

- A. Aussie Pooch has developed the System and is the owner of or entitled to use the Intellectual Property.
- B. Aussie Pooch has expended time, effort and money to develop special Systems, techniques and procedures for the conduct of its business and to acquire knowledge and expertise and has established operational Systems and standards together with a substantial reputation and goodwill for the Services provided in the course of its business.
- C. Aussie Pooch has granted a number of Franchises. Both Aussie Pooch and its Franchisees have licensed a number of Representatives.
- D. The success of Aussie Pooch, its Franchisees and its Representatives depends on the highest levels of business practice and adherence to the standards, Systems and policies developed by Aussie Pooch together with the rendering of excellent and courteous service to Customers.
- E. The Representative acknowledges the benefits to be derived from being identified with Aussie Pooch and wishes to be granted a license to use the System.
- F. The Representative has requested the Licensor to grant it a Licence to supply Services or to continue to supply Services to Clients.
- G. The Licensor has agreed to Licence the Representative and hire the Representative a Mobile Unit to conduct the business or to continue to Licence the Representative and continue to hire the Mobile Unit on the terms and conditions set out in this Agreement.

TERMS

1. DEFINITIONS AND INTERPRETATION
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1.1 **Dictionary** - Defined words will begin with a capital letter in this Agreement and will, unless some other meaning is plainly intended, mean the following:

Advertising means newspaper, magazine, television, radio and online or electronic advertising arranged by and at the discretion of Aussie Pooch.

Agreement means this agreement and its schedules.

APM Online System means the computer software program developed by Aussie Pooch for use by the Franchisees and by the Representative in the operation of the Business which is to be used as a system for recording of Bookings, maintaining the Client Database and any other systems or procedures that may be introduced into the APM Online System from time to time.

APM Online System Fee means the amount set out in Item 9 of Schedule 6 as amended from time to time.

Access means the method by which Aussie Pooch will allow the Representative to access the APM Online System.

Aussie Pooch means The Aussie Pooch Mobile Pty Ltd ACN 056 734 528 a company incorporated according to law and having its registered office at 4/13 Brewers St, Burpengary in the state of Queensland

Bond means the amount set out in Item 2 of Schedule 4

Business means the business to be conducted by the Representative of providing Services to Clients using the System.

Client Database means the details of all Clients who use the Representative to provide Services or who obtain Services from any other Aussie Pooch Franchisee, Representative or another person associated with Aussie Pooch.

Clients or Customers or any person, firm or company that may at any time require Services or who is provided Services.

Computer Software Fee means the amount set out in item 8 of schedule 4 for the costs of the APM Online System.

Confidential Information includes:

- (a) the Operations Manual and all other Aussie Pooch manuals.
- (b) communications, marketing programs, methods of operation and information distributed in any format by the Licensor or Aussie Pooch to the Representative;
- (c) any marketing, sales, pricing and financial documents, policies or reports, or supplier lists;
- (d) the Client Database in any format whatsoever including any information regarding the Clients contained in the APM Online System;
- (e) information regarding trading results or other financial information for Franchisees; and
- (f) any other information or facts received by the Representative from the Licensor or Aussie Pooch in the course of the business, whether or not they are designated by the Licensor as Confidential Information.

but does not include information which has come into the public domain other than by a breach of an obligation of confidentiality by the Representative or information required to be disclosed by law.

Franchise means the rights granted under a Franchise Agreement to a Franchisee.

Franchise Agreement means the agreement under which rights are granted to a person to be a Franchisee and use the System.

Franchisee means any person who has entered into a Franchise Agreement.

GST means Goods and Services Tax within the meaning of the GST Legislation.

GST Legislation means *A New Tax System (Goods and Services Tax) Act 1999*.

Gross Income means the income received by the Representative (excluding GST):

- (a) for Services including any Services by any related persons, agents, employees, subcontractors, Representatives or companies all of which are deemed to be Services of the business;
- (b) for the sale of Products except income received on the sale of Products that were purchased by the Representative from the Licensor, Aussie Pooch or a Preferred Supplier;
- (c) whether the income is received by cash, credit, charge account, cheque, exchange or other valuable consideration or otherwise;
- (d) whether or not the Representative has received payment for same;
- (e) whether the orders for Services originated from the Representative or the Licensor.

Intellectual Property means the trademark owned or used by Aussie Pooch, all written and visual material produced by Aussie Pooch and used in connection with the System, the System, the Marks and copyrights of Aussie Pooch, the goodwill of Aussie Pooch in its business or arising from use of the System and the Marks and the good name and reputation of Aussie Pooch in the marketplace.

Licence means the Licence granted to the Representative under clause 2.1.

Marks means the trade names, logos and all trademarks of Aussie Pooch..

Mobile Unit means the pet care Mobile Unit or units supplied by or approved by the Licensor and used by the Representative in the operation of the business.

Minimum Performance Standard means the standard to be met by the Representative as set out in sub-clause 8.1(a) and schedule 5.

Online or Electronic means via the internet or world wide web.

Operations Manual means the manual developed in the System containing specifications standards and procedures for the operation of the business and referred to in clause 11.

Pager Costs means the payment of a regular monthly amount for on air and call costs of each pager necessary for the operation of the business as set out in item 4 of schedule 4.

Payments means the weekly amounts payable by the Representative to the Licensor as set out in clause 4 and set out in schedule 4

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, whether directly from the information or opinion or from the information or opinion when read in combination with other information in a generally available publication.

Preferred Supplier means a person who Aussie Pooch designates from time to time in the Operations Manual as being approved by Aussie Pooch to supply Products and who has satisfied either Aussie Pooch or the Licensor it is capable of:

- (a) maintaining continuing supply of Products in adequate quantities;
- (b) supplying quality Products in keeping with the standard of product required of the Licensor's business;
- (c) maintaining a service to Franchisees and Representatives in terms of technical, innovative and merchandising aids.

Products means all products used by the Representative to provide Services to Clients or otherwise in the operation of the business.

Renewal Term means each successive period of 6 months or any other period as agreed between the parties and set out in schedule 3, the first of which will begin on the day after the day the term ends.

Services means pet cleaning, grooming and clipping Services or any other Services as specified by the Licensor from time to time in the Operations Manual.

Social Media means social media networking sites of any kind or nature including web or internet based or mobile telephonic devices or medium such as *facebook*, *twitter*, *LinkedIn* which enable the creation and exchange of user generated content.

System means the distinctive and unique System of establishing and promoting pet care by travelling door-to-door with the utilisation of a Mobile Unit to provide Services.

Taxable Supply has the meaning given by the GST Legislation.

Telephone/Network Contribution means the amount to be paid by the Representative as a contribution towards the cost of the 1300 number and maintaining network communication to enable the customers to contact the Representative in accordance with **item 5 of schedule 4**.

Term means the period starting on the date of this Agreement and including the period set out in Schedule 3 and, where the context permits, includes any extension or renewal or until the earlier termination of this Agreement for any reason whatsoever.

Territory means the area specified in **Schedule 2**.

Website means the Aussie Pooch website www.aussiepm.com.au or any other website as specified by Aussie Pooch from time to time.

Website/Social Media Fee means the amount to be paid by the representative for support in this area as set out in item 7 of **schedule 4**.

Weekly Representative Fee or Mobile Unit Hire means the amount set out in Item 3 of Schedule 4.

1.2 **Interpretation** - Reference to:

- (a) the singular includes the plural and vice versa;

- (b) a person includes a body corporate and one gender includes all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a clause, schedule or annexure is a reference to a clause in or schedule or annexure to, this Agreement;
- (e) mentioning anything after include, includes or including does not limit what else might be included;
- (f) each paragraph or subparagraph in a list is to be read independently from the others in the list;
- (g) the covenants implied by law (statutory or otherwise) are not negated but are modified (where so permitted) to the extent of any inconsistency with this Agreement;
- (h) headings and any table of contents are for convenience only and do not form part of this Agreement or affect its interpretation;
- (i) no doctrine or rule of construction of documents will apply to the disadvantage of a party, on the basis that the party put forward this document or any relevant part of it;
- (j) a party includes the party's executors, administrators, successors and permitted assigns;
- (k) month or monthly means calendar month or calendar monthly;
- (l) if an act must be done on a specified day which is not a business day, it must be done instead on the next business day;
- (m) if a party consists of more than one person, this Agreement binds them jointly and each of them severally;
- (n) an obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly; and
- (o) any reference to an act includes all amendments to that act, all regulations and other subordinate legislation made under the act and any substitute legislation.

2.	LICENCE
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- 2.1 **Grant** – The Licensor Licences the Representative to use the Intellectual property to perform the Services or any other Services as requested by Clients and authorised by the Licensor in the Territory during the Term on the terms and conditions of this Agreement for the Term subject to early termination in accordance with the terms of this Agreement.
- 2.2 **Non-Exclusivity** – The Representative acknowledges that the Representative is not granted an exclusive Licence and that the Licensor may grant similar rights to those contained in this Agreement whether inside or outside the Territory and that Franchise Agreements may be granted to any person deemed appropriate to be a Franchisee inside or outside the Territory. Nothing in this Agreement gives the Representative the exclusive right to the sale of Products to Clients in the Territory and Aussie Pooch reserves to itself and its associates the right to sell Products inside or outside the Territory including Online.
- 2.3 **Grant of Franchise** – A Franchise may at any time be granted to a Franchisee which will cover the Territory. If a Franchise is granted over the Territory, then the Licensor shall give the Representative fourteen (14) days' notice of the following:
- (a) If a notice is given within the first Term (i.e. within the first three (3) months or as agreed between the parties from the date of this Agreement), then the Licensor shall advise the Representative that the Territory is to be changed to a different area than that set out in schedule 2. From the date of expiration of the notice period, the Representative shall perform the Services in the amended Territory; or
 - (b) If the notice is given after the first Term, the Licensor may either give a notice as referred to in 2.3(a) or a notice of termination under clause 20.1.

3. RENEWAL OF TERM

- 3.1 **Renewal Term** – If the Representative has complied with its obligations under this Agreement, and in particular with those set out in clause 3.3, this Agreement shall be renewed for successive Renewal Terms and it shall not be necessary for either party to give notice to the other party or to sign any documentation related to any Renewal Term.
- 3.2 **Renew Unless Terminate** – The parties acknowledge that this Agreement shall be extended under clause 3.1 for successive Renewal Terms unless the agreement is terminated in accordance with the provisions of this Agreement.
- 3.3 **Conditions** - In order for this Agreement to be renewed for any Renewal Term, the Representative must show to the reasonable satisfaction of the Licensor that:
- (a) the Business has and continues to increase during the preceding Term; and
 - (b) the Representative is carrying out the necessary rebooking techniques, marketing requirements and is delivering Services to achieve the weekly the Minimum Performance Standard by the first 6 months of the Term and has then maintained the Minimum Performance Standard as a minimum in the operation of the Business.

4. PAYMENT

- 4.1 **Amount of Payments** – In consideration of the grant of the Licence the Representative must pay to the Licensor upon execution of this Agreement:
- (a) the Representative **starter kit fee** in the amount set out in Item 1 of schedule 4 for the items listed on the initial invoice (shown as paid for on that invoice) and water efficiency registration where applicable; N.B. there are items provided for use by the Representative on this invoice (listed at no charge to the Representative on this invoice) that the Representative must maintain or replace and keep in good working order and upon leaving these items must be returned or replaced in good working order to the Licensor or the amounts for these items will be deducted from the Bond. The cost of these will be calculated at the price on the operator E commerce site at time of finishing.
 - (b) the amount of the Bond in the amount set out in item 2 of schedule 4 and subject to the terms of clause 22.4.
- 4.2 **Website/Social Media Fee** – The Representative must pay Aussie Pooch the Website/Social Media Admin Fee at the times as set out in Item 7 of Schedule 4 and the parties agree the amount of the Fee may be reviewed by Aussie Pooch from time to time.
- 4.3 **Computer Software** – The Representative must pay Aussie Pooch the APM Online System Fee at the times as set out in Item 8 of Schedule 4 and the parties agree the amount of the Fee may be reviewed by Aussie Pooch from time to time.
- 4.4 **Mobile Unit Hire** – The Representative must pay the Licensor the Weekly Representative Fee as set out in item 3 of schedule 4 in consideration of the Licensor:
- (a) providing the Mobile Unit to the Representative during the Term and any Renewal Term as set out in clause 7; and
 - (b) fulfilling its obligations in regard to the Mobile Unit as set out in clause 7; and
 - (c) arranging the insurance as set out in clause 9; and
 - (d) providing at its discretion brochures and advertising material to the Representative.
- 4.5 **Products** – The Representative must pay all money required to pay the Licensor or Aussie Pooch for any Products purchased by the Representative from the Licensor or Aussie Pooch at the time of the order or at the latest before the despatch of the Products from the Licensor or Aussie Pooch to the Representative. The Licensor or Aussie Pooch will be under no obligation to supply any product to the Representative if the Representative has not paid for the full amount of the order;
- 4.6 **Other Payments** – The Representative must pay:

- (a) for the provision of the pager service, the Monthly Pager Costs as set out in Item 4 of schedule 4;
- (b) towards the cost of the maintenance of the 1300 telephone number, the monthly Telephone Network Contribution as set out in item 5 of schedule 4;
- (c) the excess fee on any insurance claim as set out in item 6 of schedule 4;
- (d) all other monies due and owing under this Agreement within seven (7) days of receipt of an invoice from the Licensor or as directed by the Licensor;
- (e) the reasonable costs of and incidental to the preparation, execution and stamping of this Agreement;
- (f) interest calculated at the rate of 2% per annum above the rate currently being charged by the ANZ Bank on Trading Bank overdrafts, on any money not paid on the due date for payment.

- 4.7 **Time for Payment** - The Representative must pay the fees under clause 4 that are payable to the Licensor or as directed within this document or by the Licensor as set out in clause 4 or by 4.00pm on the Monday (or on the following working day if Monday is a holiday) of each week. All other fees payable by the Representative to the Licensor shall be paid monthly by the seventh day of each month in respect of the previous month's Gross Income or as otherwise stated in the Operations Manual. Any amounts payable to third parties must be paid by the due date for payment.
- 4.8 **Method of Payment** – The Representative must pay all Payments by cash, direct deposit or credit card on the due date for payment. For clarity, the parties agree that payment will not be made or accepted by any other method including cheques. If any payment is not paid by the due date, the Representative hereby irrevocably authorises the Licensor or Aussie Pooch to debit the amount due and any credit card fees to the Representative's credit card listed in Item 8 of Schedule 4. The Representative authorises the Licensor and Aussie Pooch to keep the Representative's credit card details on file in order to charge any amount due. If the Representative changes their credit card then the Representative must inform the Licensor and Aussie Pooch within 7 days which will act as an acknowledgment of authorisation. Any fees charged to the Licensor or Aussie Pooch because of failure of any debit made to the credit card will be payable by the Representative.
- 4.9 **Consequence of Non Payment** - Without prejudice to the rights of the Licensor to terminate this Agreement, the Licensor shall be entitled to withhold the referral of Clients to the Representative if the Representative delays the payment of amounts due under this Agreement beyond the due date for payment. So as to protect the goodwill of the Licensor and Franchisees and Representatives, the Licensor shall be entitled to refer any of the Clients under this clause to any other Franchisee or Representative until such time as the Representative remedies its default. The Licensor shall not in any circumstances be liable to the Representative for any action taken by the Licensor under this clause or for any loss that may be suffered by the Representative.
- 4.10 **Deductions** - The Licensor will have the right at any time during the Term or any Renewal Term to deduct any monies due by the Representative to the Licensor from any monies due by the Licensor to the Representative.
- 4.11 **Place of Payment** - All money payable by the Representative to the Licensor must be paid at the Licensor's address set out in this Agreement or such other place as the Licensor may from time to time direct.
- 4.12 **CPI Increase** - The parties agree that every cost, expense, charge, fee, outgoing or contribution referred to in this Agreement as a fixed amount shall be subject to increases in accordance with the CPI Increase on 1 July in each year.
- 4.13 **GST** –
- (a) **GST** – Unless otherwise set out, the parties confirm that any amount payable under this Agreement is calculated including GST.
 - (b) **Pay GST** – If any goods or Services supplied are taxable supplies then on payment of any amount under this Agreement, a party must also pay the other party GST.
 - (c) **include GST** – Any amount payable includes GST which forms part of that amount where the party who paid the amount can claim an input tax credit under GST

Legislation. Each party will be assumed to be entitled to full input tax credits unless the other party is otherwise satisfied before the date of the payment.

- (d) **Assist** – Each party must do everything reasonably necessary to assist the other to claim a GST input tax credit.
- (e) **Timing** – If a party wishes to make a claim on the other for GST which was not charged at the time of rendering the invoice for any reason, that claim must be made within six (6) months of the date of the invoice.
- (f) **Tax invoice** – Within seven (7) days of receiving a payment which includes GST, the party who receives the payment must give a tax invoice to the party making the payment (unless one has already been provided) so that the input tax credit may be claimed.

5. RECORDS AND INSPECTION

- 5.1 **The Representative to Keep Records** – The Representative must keep and maintain proper books of account and records as may be prescribed by the Licensor from time to time relating to all transactions in the course of performance of the Services. All books of account and records must be kept and preserved by the Representative for at least seven (7) years after the end of the financial year to which they refer.
- 5.2 **Inspections and Audit** – The Licensor shall have the right at any time without notice to the Representative during the Term or a Renewal Term and for a period of twelve (12) months after the expiration of the Term and all the Renewal Terms by itself or through its authorised Representative to inspect and audit all the books of account and statements, documents, returns, papers and files of the Representative relating in any way to the business conducted by the Representative at the location where those books and records are kept. The Licensor may nominate an auditor to examine the books and records and computer equipment and software used by the Representative.
- 5.3 **Discrepancy** – If, in the opinion of the auditor, the Representative's books of account are not in order or are inaccurate to the extent that the Representative's payments of any fees due to the Licensor are or have been understated to the extent of three percent (3%) or more for the period of the audit, then the cost of the audit (including without limitation the charges of any auditor and the travelling expenses, accommodation and compensation of its employees and Representatives) shall be paid by the Representative.
- 5.4 **Payment of Understatement** – If the audit or the inspection (as the case may be) discloses an understatement of fees for any period, then the Representative shall pay the amount due in accordance with the inspection report or the auditor's report within two (2) weeks of receipt of the report.
- 5.5 **Report is Binding** – The auditor's report shall be final and binding on all parties.
- 5.6 **Financial Reports** - The Representative must provide the Licensor in a form prescribed and approved by the Licensor the following:
 - (a) **Annual Profit & Loss and Balance Sheet** - Within three (3) months after the end of the Representative's financial year, the Representative must provide the Licensor a financial statement for the business for the previous financial year certified by a practising accountant. The financial statement must include profit & loss statement and balance sheet.
 - (b) **Other Reports** - The Representative must supply any other reports, order forms, records, calculations and indices as the Licensor may from time to time reasonably require which may include reports on a more frequent basis than as set out in this clause if the Licensor is of the reasonable opinion that the Representative needs additional assistance in the operation of the business.
- 5.7 **Privacy** – In relation to Personal Information held by the Representative in connection with the business, the Representative must:
 - (a) observe the provisions of the Privacy Act 1988 as if it were subject to that act;
 - (b) ensure that it does not do anything which may result in the Licensor being in breach of any of its legal obligations;

- (c) obtain all necessary permissions from all persons to whom the Personal Information relates to provide that Personal Information to the Licensor in order to fulfil the Representative's obligations under this Agreement.

5.8 **Privacy by Franchisor**– If the Licensor requires access to Personal Information of the Representative or a client to fulfil its obligations then they will use that Personal Information in accordance with the law. The Representative authorises the Licensor to use their Personal Information to carry out any enquiries or investigations permitted under this Agreement.

5.9 **Credit Reporting –**

- (a) Aussie Pooch abides by the National Privacy Principles established under the Privacy Act 1988 (the Privacy Act).
- (b) The Representative acknowledges that the Licensor has informed the Representative in accordance with the Privacy Act that certain items of personal information about the Representative contained in documents supplied to the Licensor or which may be subsequently obtained and permitted to be kept under the Privacy Act might be disclosed to a credit reporting agency. This information includes, among other things, particulars as to the Representative's identity and details of any amount at least 60 days overdue, failure of any debit made to the Representative's credit card and serious credit infringements.
- (c) The Representative authorises the Licensor in regard to the provision of credit and/or the recovery of any overdue account, to:
- (i) obtain information about the Representative's personal and/or commercial credit worthiness from their bank and any other credit provider and credit reporting agency for the purposes of the recovery of any overdue account;
 - (ii) use, disclose or exchange with other credit providers information about the Representative's personal and/or commercial credit arrangements in order to collect overdue accounts;
 - (iii) disclose the contents of the credit report by a credit reporting agency to the Licensor's solicitors or mercantile agents.
- (d) The authority contained in this clause remains in force until this Representatives Agreement ends for whatever reason. By signing this Agreement, the Representative confirms their written consent to the above requirements in accordance with the Privacy Act.

5.10 **Deliver Up Records** – the Licensor shall have the right at any time without notice to the Representative during the Term of this Agreement to inspect the original books of account and records.

6. TELEPHONE/NETWORK CONTRIBUTION
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- 6.1 **Acknowledgment** - The Representative acknowledges that a 1300 telephone number is maintained in the System to be used by Clients of all the Franchisees and Representatives. The 1300 telephone number is widely advertised within the System and appears on the Mobile Units.
- 6.2 **Telephone/Network Contribution** – The parties agree that the Representative must pay the Telephone/Network Contribution to Aussie Pooch to assist with the cost of the 1300 telephone number and maintaining the network and the reasonable costs incurred in the administration. The Licensor or Aussie Pooch will not be required to produce receipts for the 1300 telephone number to the Representative.

7. MOBILE UNIT

- 7.1 **Hiring of Mobile Unit** – In consideration of the payment of the Weekly Representative Fee, the Licensor must hire the Mobile Unit to the Representative for the Term. The parties agree that the Mobile Unit will remain the property of the Licensor and the Representative has no right to claim ownership of the Mobile Unit.
- 7.2 **Insurance and registration** – The Licensor must pay the insurance on the Mobile Unit as set out in clause 9 and must pay the cost of registration of the Mobile Unit with the appropriate government department.

- 7.3 **Restriction** – When delivering Services, the Representative must use only the Mobile Unit supplied by the Licensor and must not use the Mobile Unit for any other purpose whatsoever. On termination of this Agreement, the Representative must ensure that the Mobile Unit together with all contents listed on the first invoice as provided to the Representative at no charge, are delivered up to the Licensor in good order and condition.
- 7.4 **Conditions of Use** – The Representative must:
- (a) **Signs** – Not in any circumstances place any signs on the Mobile Unit or on the motor vehicles which tow the Mobile Unit unless they receive the prior written consent of the Licensor;
 - (b) **Promoting Products** – Not in any circumstances whatsoever recommend any product to Clients which competes with any product advertised on signs on the Mobile Unit;
 - (c) **Access to Mobile Unit** – Allow the Licensor access to the Mobile Unit at all times for the purpose of inspecting the condition of the Mobile Unit and so that the Licensor may affix advertising signs to the unit as the Licensor shall deem fit. Subject to clause 7.4(f), if the inspection reveals any work is required to be performed on the Mobile Unit, the Representative must carry out that work within a reasonable time taking into account the need for the work to be carried out. If the Mobile Unit is unsafe then the work must be carried out immediately. Otherwise, the work must be carried out within seven (7) days;
 - (d) **Removal of Sign** – Not remove any signs affixed to the Mobile Unit or deface those signs in any manner;
 - (e) **Maintenance of Signs** – Advise the Licensor if any signs affixed to the Mobile Unit require maintenance provided that if the Representative has complied with the terms of this Agreement the cost of maintaining the signs shall be borne by the Licensor;
 - (f) **Maintenance of Mobile Unit** – Keep the Mobile Unit in a clean and tidy condition and professional in appearance at all times. The Representative must, at the Representative's own cost and expense replace any of the unfixed contents of the Mobile Unit which wear out or are lost or damaged during the Term of this Agreement but the Licensor must at its own cost and expense replace all the fixtures in the Mobile Unit or the Mobile Unit itself if the same require replacement due to wear and tear not due to any act or default of the Representative.
 - (g) **Roadworthy condition** - Must ensure the Mobile Unit is in a roadworthy condition. If maintenance needs to be carried out on the Mobile Unit to ensure it remains in a roadworthy condition, then the Representative may organise this for items under \$100. Prior approval must be obtained from the Licensor for any items over \$100. The cost for items under this sub-clause is to be paid by the Licensor.
 - (h) **Test and Tag** – Must ensure the electrics in the Mobile Unit are tested and tagged on a 6 monthly basis or as required by law. The cost for this is to be paid by the Licensor.

8. GENERAL OBLIGATIONS OF REPRESENTATIVE

- 8.1 The Representative must:
- (a) **Minimum Performance Standard** - meet the Minimum Performance Standard set out in schedule 5
 - (b) **Attend Training** – attend and satisfactorily complete initial training before the commencement date which will - subject to clause 22.3 - be provided at the expense of the Licensor;
 - (c) **To Perform the Services** – subject to clause 8.1(e), faithfully and diligently perform the Services during the Term and the Renewal Terms (if applicable) in the Territory;
 - (d) **Clipping Services** – despite any other term of this Agreement, not deliver any clipping Services to Clients unless the Representative provides the Licensor with evidence that the Representative has received appropriate training in clipping Services and obtained the Licensor's approval to delivery of those Services to Clients. If the Representative has not received appropriate training before the commencement date then the Representative must not provide clipping Services to Clients until they have undertaken training as specified by the Licensor. The Representative may at any time after 3 months from the commencement date if agreed by the Licensor attend clipping training

as specified by the Licensor at the Representative's expense. The Representative agrees that all equipment required for clipping Services must be provided at the expense of the Representative;

- (e) **Relief Services** – perform Services in an area outside the Territory if required by the Licensor and if the Representative has sufficient time to carry out those Services taking into account its obligations under this Agreement;
- (f) **Products** – only use Products in the performance of the Services which are supplied by and approved by the Licensor and to comply with the Operations Manual with regard to pet care Products, plant and equipment used to provide Services;
- (g) **Branded Products** – use all Products which are branded "Aussie Pooch" or "Pooch Mobile" in the operation of the Business and must not in any circumstances use any product which competes with those Products;
- (h) **Prices** – charge prices to Clients in accordance with the recommended price list issued by the Licensor from time to time;
- (i) **Support Company** – support the person, firm or company and Products which are advertised on the signs on the Mobile Units;
- (j) **Promote Business** - at its own expense where necessary promote and make every effort to steadily increase its business by advertisements, signs and other forms of publicity in the Territory as may be approved by the Licensor but any written advertisements may include only the logos, signs and symbols as are approved by the Licensor;
- (k) **Initial 10 week marketing plan** – carry out the 10 week marketing plan as determined by the Licensor and provide weekly reports to the Licensor;
- (l) **Orderly Conduct** – conduct itself in an orderly and businesslike manner and in compliance with the policies and standards in the Operations Manual or as specified by the Licensor from time to time;
- (m) **Staff** – if required hire and train (to a standard satisfactory to the Licensor), at the Representative's expense, a sufficient number of trained employees to properly and efficiently operate the business. The Representative shall be exclusively responsible for all training, terms of employment and the provision of workers' compensation and other appropriate insurances;
- (n) **Confidentiality Agreement** – cause all employees to enter into Confidentiality Agreements with the Licensor which shall be approved by the Licensor prior to such employees commencing with the Representative;
- (o) **No Competition** – not during the Term or any Renewal Term either directly or indirectly to carry on any business similar to the business in any capacity or any business venture, competitive or in conflict with the business, without the written consent of the Licensor;
- (p) **Comply with Laws** – obtain any consents, Licences and permissions as may be necessary for the operation of the business and the exhibition of advertising signs and other matters and at all times comply with all rules, regulations, by-laws, ordinances and conditions of any government, local or other relevant authority affecting the operation of the business;
- (q) **Contact** - be able to be contacted at all times during business hours by pager/telephone messages and to answer all pager/telephone messages within the time stipulated in the message or within twelve (12) hours, whichever is the shorter time;
- (r) **To Attend Meetings as Required** – either itself or one of its shareholders or directors or one of its partners as the case may be, attend all meetings called by the Licensor in the state in which the Territory is situated requiring attendance by the Representative upon the Licensor giving to the Representative not less than two (2) week's notice in writing. The Licensor or a person nominated by the Licensor will chair such meetings. The cost of attending such meetings must be borne by the Representative which without limiting the foregoing will include the cost of travel, accommodation and meals;
- (s) **Not to Endanger Name** – not cause or permit anything to be done which may damage or endanger the Aussie Pooch name or the Intellectual Property or the title thereto or assist or suffer others to do so;

- (t) **Notice that Business Operates Under Representative** - give notice in such places as the Licensor may from time to time in writing require that the business is operated under a Representative agreement from the Licensor and to give such other information as the Licensor may deem necessary to inform third parties that the Licensor does not accept liability for the acts deeds and defaults of the Representative;
- (u) **Wear Uniform** – wear the uniform approved specified in the Operations Manual at all times whilst performing the Services;
- (v) **Cost of Default** – pay the costs and expenses including the Licensor's and Aussie Pooch's legal costs which either or them may in any way incur on account of any breach of the provisions of this Agreement or on account of default under this Agreement by the Representative;
- (w) **No Direct Mail Orders** - not conduct any direct mail out or blanket telemarketing except within the Territory without the consent of the Licensor;
- (x) **Stationery** - use only stationary including business cards, letterheads and other forms as specified in the Operations Manual. Stationery will be at the expense of the Representative;
- (y) **Take Action** - take any action as reasonably required under any notice issued by the Licensor. Action must be taken as quickly as possible depending on the circumstances.

8.2 **Be of Good Character** – The Representative and those representing the Representative must be of good character and must not indulge in unethical conduct or acts of moral turpitude during the Term or any Renewal Term. In this regard, the Representative must comply with all legal requirements, including the requirements of the Competition and Consumer Act (Commonwealth) the State Fair Trading Acts and all other applicable legislation;

8.3 **Clients** – The Representative acknowledges that it is essential that excellent service be given to Clients at all times in order to protect and enhance the Intellectual Property and the System. In particular the Representative must:

- (a) attend at all appointments arranged by the Licensor at the time that those appointments are arranged or to contact Customers to arrange appointments within twenty-four (24) hours of receiving advice from the Licensor unless other arrangements are made with the Licensor;
- (b) give prompt courteous friendly and efficient service to all Clients. The Representative must in all dealings with Clients, customers, suppliers and the public, adhere to the strictest standards of honesty, integrity, fair dealing and ethical conduct;

8.4 **Client complaints** – The Representative must pay the costs incurred by the Licensor or other persons in the event that costs are incurred to remedy a complaint made by a client in reference to service of the Representative under this Agreement. The Licensor may in its unfettered discretion take such action as it considers necessary to remedy such complaints. In particular the Representative agrees:

- (a) it is the Representative's responsibility to indemnify the Licensor and Aussie Pooch under clause 12 in regard to any loss or damage that may arise due to the Representative's conduct of the Business;
- (b) any action taken by the Licensor or Aussie Pooch under this clause will be taken on behalf of the Representative and the Representative confirms its granting of authority to the Licensor or Aussie Pooch to take such action;
- (c) if any amount is to be paid to any Client in settlement of a complaint that amount will be payable by the Representative and in no circumstances will the Licensor or Aussie Pooch be liable to pay any amount to any Client to settle any complaint in regard to the Business or the Representative's conduct of the Business.

8.5 **Social Media** -

- (a) The Representative must not in any circumstances post in any Social Media any adverse or negative content, statements, blogs, tweets or postings about the Business, Aussie Pooch, the Licensor, the Marks or the Intellectual Property in any way that can denigrate the Business, Aussie Pooch, the Licensor, the Marks or the Intellectual Property or which shows disloyalty to the Business, Aussie Pooch, the Licensor, the Marks or the Intellectual Property.

- (b) The parties agree that any conduct in breach of this clause can have an immediate detrimental effect on Aussie Pooch, the Marks and the Intellectual Property and Aussie Pooch's goodwill and reputation.
- (c) If the Representative acts in breach of this clause 8.3 then the Representative must indemnify Aussie Pooch for any loss, damage, cost or expense incurred or suffered by Aussie Pooch including legal costs (on a full indemnity basis). This indemnity is in addition to Aussie Pooch's other rights against the defaulting party under this Agreement.
- (d) The Representative must on demand immediately remove any post on any Social Media if directed to do so by Aussie Pooch and take any corrective action required by Aussie Pooch including posting a correction, an apology or both on any Social Media as directed by Aussie Pooch in its absolute discretion.
- (e) The Representative must obtain prior approval from Aussie Pooch to all Social Media handles or usernames proposed to be used by the Representative which will in any way be associated or connection with or capable of identifying the Business. Consent under this clause may be given or refused in the absolute discretion of Aussie Pooch.

8.6 **Online Sales –**

- (a) The Representative must not without the prior written consent of the Licensor and Aussie Pooch sell any Products Online. If consent is granted under this clause then the Representative must not sell any Product to any person who does not reside in the Territory;
- (b) Aussie Pooch may:
 - (i) conduct business and advertise Online; and
 - (ii) offer for sale Products Online and Aussie Pooch is not liable to the Representative for any money or benefits received by Aussie Pooch in connection with the sales of Products Online including sales within the Territory

8.7 **Computer** – The Representative must have access to and the ability to acquire the knowledge to operate a fully operational computer with internet, email, Microsoft word and Microsoft excel (compatible with the support office systems) that is to be used to complete the required functions of the Business including the compulsory APM Online System to utilise for Customer bookings. Information will be sent to the Representative to the Representative's email address which is to be provided on the commencement of the Business. If the Representative changes the email address, then they must inform the Licensor immediately of the new address.

8.8 **General Prohibitions** - The Representative or any of its directors or officers must not:

- (a) be convicted of any criminal offence other than a driving offence but the driving offence must not interfere with the Franchisee conducting the business;
- (b) make any material misrepresentations relating to the acquisition of the business or engage in conduct which reflects unfavourably in a substantial way on the operation and reputation of the business of the Licensor;
- (c) become of unsound mind or infirm or become a drug addict or an alcoholic or habitually use drugs or intoxicating liquor;
- (d) fail or refuse to submit any report, financial information or other information reasonably required by the Licensor.

8.9 **Credit Card and EFTPOS Facilities** – The Representative must have available facilities so that Customers may pay the Representative by way of credit card or EFTPOS arranged by the Representative through a reputable provider. The Representative must pay all fees associated with the provision of the credit card or EFTPOS facilities but may charge Customers the amount of any credit card fee actually incurred by the Representative in regard to the payment by the Customer.

8.10 **APM Online System**

- (a) **Use of APM Online System** - The Representative must use the APM Online System in the format as required by Aussie Pooch in the Business on the terms of this clause 8.10. The

Representative must not use any other system that has similar functionality to the APM Online System in regard to the operation of the Business.

- (b) **General Terms** – The Representative acknowledges that the APM Online System that the Representative is to use in the Business is owned by Aussie Pooch. The Representative:
- (i) is granted a non-transferable, non-exclusive licence to use the APM Online System only for the purposes of the Business;
 - (ii) must provide at its own expense, the computer hardware which at least meets the minimum requirements set out in the Operations Manual and must upgrade the computer hardware if it is needed to efficiently operate the APM Online System or any upgrades to the APM Online System;
 - (iii) acknowledges that the Representative is required to access APM Online System via the cloud;
 - (iv) must pay Aussie Pooch any reasonable fee imposed by Aussie Pooch for the software licence contained in clause 8.10(a) and must pay Aussie Pooch any reasonable annual fee for the maintenance of the APM Online System.
- (c) **Access and Reports** - The Representative agrees:
- (i) to allow Aussie Pooch to access the APM Online System and any information regarding the Business stored in the APM Online System at any time and authorises Aussie Pooch to do so;
 - (ii) and will give Aussie Pooch and/or the Licensor any reports it reasonably requires at any time to be generated using APM Online System; and
 - (iii) to provide any computer hardware or software needed to access the APM Online System which must also be upgraded as reasonably required by Aussie Pooch at any time.
- (d) **Restrictions on Use** – The Representative must not:
- (i) use the APM Online System in any manner that does or could potentially undermine the security of the APM Online System or any data or information stored on the APM Online System;
 - (ii) attempt to, interfere with, modify or disable any features, functionality or security controls of the APM Online System;
 - (iii) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any protection mechanisms for the APM Online System or any data or information stored on the APM Online System;
 - (iv) copy part or all of the APM Online System or any manual issued for the APM Online System;
 - (v) modify, adapt, translate, tamper with, reverse engineer or otherwise derive source codes underlying ideas, algorithms, structure or organisational form for the APM Online System or attempt to do any of those things;
 - (vi) use robots, spiders, scraping or other technology to access or use any information on any site where the APM Online System is located;
 - (vii) use the APM Online System for any other purpose other than the operation of the Business;
 - (viii) give, rent, lend or otherwise supply the APM Online System to any other person;
 - (ix) sub-licence, assign or otherwise transfer its rights to use the APM Online System as set out in this Agreement.
- (e) **Access**
- (i) APM will provide the Representative with Access to the APM Online System.
 - (ii) The Representative must not share Access or the means of Access with any third party and must keep it secure at all time.
 - (iii) The Access will be the sole means of the Representative accessing the APM Online System.

- (iv) The Representative acknowledges that Aussie Pooch can track the Representative's use of the APM Online System.
 - (1) Access may be revoked:
 - (2) if the Licensee shares Access or the means of Access with a third party;
 - (3) if the method of Access used by the Representative is compromised;
 - (4) if Aussie Pooch has reasonable grounds to believe that the method of Access is no longer secure in which case Aussie Pooch retains the right to invalidate Access and inform the Representative of a new method of Access. The Representative acknowledges that if this occurs then the Representative's use of the APM Online System may be temporarily interrupted; or
 - (5) if this Agreement is terminated for any reason.
 - (f) **Report Unauthorised access** - The Representative must immediately notify Aussie Pooch:
 - (i) of any security flaws it discovers in the APM Online System; or
 - (ii) any actual or suspected unauthorised access to the APM Online System using the Access.
 - (g) **Copyright in APM Online System** –
 - (i) The Representative acknowledges the APM Online System may be protected by copyright owned by Aussie Pooch and the Representative has no copyright or other intellectual property rights nor any property rights in part or all of the APM Online System.
 - (ii) The Representative must not copy the APM Online System or attempt to modify the APM Online System or related documents.
 - (iii) Aussie Pooch reserves the right to make alterations to the APM Online System without obligation either to advise the Representative of such alterations or to supply the Representative with access to the updated APM Online System unless the Representative has paid the Computer Software Fee.
 - (h) **No liability** – Aussie Pooch will not be liable for any direct, indirect, consequential or incidental loss or damage or claim howsoever caused or howsoever arising out of the use, the results of use or the inability to use the APM Online System even if Aussie Pooch has been advised of the possibility of such loss or damage or claim or any interruption or failure of telecommunication or digital transmission links, hostile network attacks or network congestion which restricts or prohibits the use of the APM Online System by the Licensee.
 - (i) **Errors** – Aussie Pooch makes no express warranty that the APM Online System is or will be complete or free from all errors.
- 8.11 **Termination** – If this Agreement ends for any reason then the licence granted under clause 8.10(b)(i) will also end.

9. INSURANCE

- 9.1 **Obligation** – The Licensor must obtain and keep in full force and effect at all times during the Term policies of insurance covering:
 - (a) property damage insurance to cover the Mobile Unit and the equipment therein;
 - (b) any other insurances as reasonably determined by the Licensor.
- 9.2 **Reimburse excess** - If:
 - (a) a claim is made by the Licensor on any insurance policy; and
 - (b) that claim arose because of an act of the Representative; and

- (c) the Licensor is required to pay an excess under its insurance policy,
- (d) then the Representative must reimburse the Licensor the amount of the excess within seven (7) days of a demand by the Licensor.

9.3 **Obligation** – The Representative must obtain and keep in full force and effect at all times during the term policies of insurance covering:

- (a) public liability insurance to the extent of \$10,000,000 which must include coverage for goods in physical and legal control;
- (b) Failure by the Representative to pay any insurance premium on time will be a breach of this Representatives Agreement.
- (c) Property damage insurance to cover the motor vehicle which tows the Mobile Unit (fully comprehensive is preferred);
- (d) Workers compensation insurance if the Representative employs any persons in the operation of the business.

All insurances must be for amounts and covers with an insurer approved by the Licensor from time to time but approval must not be unreasonably withheld.

9.4 **Observe Conditions** – The Representative must at all times observe the conditions of the policies and produce same to the Licensor when requested to do so by the Licensor but if the Representative at any time fails or refuses to maintain or effect any insurance coverage required by the Licensor or to furnish satisfactory evidence of insurance cover the Licensor is entitled to obtain insurance coverage on behalf of the Representative and the Representative must properly execute any applications or other forms or instruments required to obtain any such insurance and the Representative hereby appoints the Licensor's secretary his attorney to execute on its behalf any such documents. The Representative agrees to pay the Licensor on demand any costs incurred and premiums paid by the Licensor for any insurance.

9.5 **No Obligation** – The Representative acknowledges that there is no obligation on the Licensor to pay any insurance premium on behalf of the Representative which is not paid by the Representative by the due date.

9.6 **Income Protection** - The Representative acknowledges it is an independent contractor and not an employee and is not covered by the Licensor's work cover insurance. The Licensor recommends the Representative arrange income protection insurance at its own cost.

10. OBLIGATIONS OF LICENSOR

10.1 The Licensor hereby covenants and agrees with the Representative:

- (a) **Assistance to Representative** – The Representative may consult with the Licensor at usual times for business with respect to the efficient operation of the business. The Licensor will furnish to the Representative such assistance and advice as is from time to time reasonably required in the Licensor's opinion. Operating assistance will consist of advice and guidance with respect to:
 - (i) **Operational Procedures** – methods and procedures for the sale of Products and provision of Services;
 - (ii) **Manuals** – to make available to the Representative any Operations Manual issued in the System from time to time;
 - (iii) **New Developments** - new developments and Services as are approved in the System from time to time to be offered to Clients;
 - (iv) **Advertising and Promotion** - formulating and implementing advertising and promotional programs using such merchandising, marketing and advertising research, data and advice as may from time to time be developed in the System and deemed by it to be helpful in the conduct of the business;
 - (v) **Training** - providing any training the Licensor shall deem necessary;
 - (vi) **Administration and Accounting** - assisting the Representative in administration bookkeeping accounting and general operating procedures for the proper operation of the business;
- (b) **Advertising and Promotion** - To at its discretion conduct advertising campaigns and other promotional activities to promote the Licensor Representatives;

- (c) **Training** – Subject to clause 22.3, in further consideration of the payment of the Representative fee, to provide an initial training program for the Representative in the management, supervision and know how necessary for the administration and conduct of the business. All travelling living and other expenses and costs incurred by the Representative shall be fully paid by the Representative and shall be at no cost or expense whatsoever to the Licensor;
- (d) **Stationery and Equipment** - To supply to the Representative an initial supply of all sales aid, stationery, literature, signs and other sales and promotional material as the Representative may reasonably require to commence operation of the business;
- (e) **Ongoing Stationery** - To provide to the Representative, a reasonable supply of stationery to be used by the Representative in the operation of the business printed with the mark. The Representative may choose to purchase other marketing material from an approved supplier. Eg magnets, key rings;
- (f) **Refer All Enquiries** - To refer all enquiries from Clients to the Representative within twelve (12) hours of the first enquiry from the client;
- (g) **Further Products** - To notify the Representative of developments in Products, Services and concepts compatible with the operation of the System;
- (h) **Provide Information** - To make available to the Representative at all reasonable times such reasonable information as the Representative may require to answer client queries;
- (i) **Selling Techniques** - To use the best endeavours to provide initial sales aid and information relating to selling techniques together with a recommended structure for the selling price of Services along with suggested terms of payment;

11. OPERATIONS MANUAL

- 11.1 **Develop Manual** - The Licensor and Aussie Pooch will lend to the Representative during the Term the Operations Manual prescribed from time to time in the System for Representatives and containing information relative to the obligations of the Representative under this Agreement.
- 11.2 **Manual Essential** - The Representative must strictly observe and operate its business in accordance with all specifications, standards and operating procedures set out in the Operations Manual or otherwise communicated to the Representative in writing from time to time. Breach of any of the specifications, standards and operating procedures set out in the Operations Manual will be deemed a breach to this Agreement.
- 11.3 **Variation** – The parties acknowledge that the Operations Manual may be added to and otherwise modified from time to time to reflect changes in the standards and quality of the Products, Services and operations of the business provided however that no such addition or modification shall alter the Representative's fundamental status and rights under this Agreement.
- 11.4 **Confidential** - The Representative must keep the Representative's copy of the Operations Manual up to date with replacement pages and insertions as instructed. The Operations Manual contains proprietary information of the System and the Representative agrees to keep it and its contents confidential at all times and not to make any copies of it and to promptly return the Operations Manual to the Licensor on termination of this Agreement.

12. INDEMNITY OF LICENSOR AND AUSSIE POOCH

- 12.1 **Indemnity** - The Representative must indemnify and keep indemnified the Licensor and Aussie Pooch from and against any and all loss, damage and liability (including reasonable legal expenses) arising directly or indirectly from:
 - (a) any act, neglect or default of the Representative or its employees in carrying out the Services; or
 - (b) any other reason so long as such loss, damage, liability, fees or costs resulted from the Representative carrying out its Services and was not due to the default of the Licensor;
 - (c) any breach by the Representative of the terms of this Agreement or any other agreement entered into between the parties

- (d) any infringement by the Representative of rights in the Marks and breaches to this agreement;
- (e) the Representative's taxes, liabilities, costs and other expenses.

12.2 **Benefit of Covenants** - If Aussie Pooch is not the Licensor under this Agreement then the parties agree that this Agreement has also been entered into for the benefit of Aussie Pooch and that Aussie Pooch may at any time enforce any of the Representative's obligations against the Representative in its own name without the necessity to include the Licensor as a party to that enforcement. The signing of this Agreement by the Licensor will be deemed acceptance by Aussie Pooch of the benefit of this clause.

12.3 **Survival** – The Licensor's and Aussie Pooch's rights at law and under this Agreement including the right to be indemnified under clause 12.1 are not affected by:

- (a) termination of this Agreement for any reason; or
- (b) any other fact, matter or thing whatsoever.

13. LIABILITY UNDER COMPETITION AND CONSUMER ACT

13.1 The Representative acknowledges that the Licensor's and Aussie Pooch's liability for breach of any condition or warranty which may be implied under the Competition and Consumer Act 2010 (as amended) in connection with the supply of any goods or Services by the Licensor or Aussie Pooch to the Representative shall, if permitted under the Competition and Consumer Act, be limited to any one of the following, as determined by the Licensor:

- (a) In the case of products:
 - (i) the replacement of the product or supply of equivalent product; or
 - (ii) the payment of the cost of replacing the product or acquiring equivalent products.
- (b) In the case of Services:
 - (i) the supplying of Services again; or
 - (ii) the payment of the cost of having the Services supplied again.

13.2 Except for liability set out in this clause 13, or any obligation under the said act to indemnify the Representatives, the Licensor and Aussie Pooch will not be liable for any losses, claims, costs, damages or expenses (including, but not limited to, those arising through death, injury or illness caused to any person or loss of or any damage to any property, including, but not limited to the property of the Representative) arising out of or in any way connected with the supply of goods or Services by the Licensor, its employees or agents to the Representative.

14. RESTRAINTS

14.1 **Employment** - The Representative must not during the Term or for the period of six (6) months after the completion date without the consent in writing of the Licensor employ or offer any person who was at any time during the period of twelve (12) months immediately prior to the offer of employment, employed by or was an agent or sub-contractor of the Licensor or any person who was a Representative of the Licensor and must not directly or indirectly induce any person to leave his or her employment agency or sub-contract with the Licensor or any other Franchisee.

14.2 **Restraint** - The Representative must not for any of the periods mentioned in this clause either:

- (a) alone; or
- (b) jointly with or on behalf of any other person firm or corporation or as an employee independent contractor partner joint venturer or agent; or
- (c) as an officer of any person firm or corporation; or
- (d) as a shareholder of any corporation; or
- (e) as trustee of any trust

be engaged, concerned or interested in any business of the nature of the business or provide any Services which compete with all or any of the Services, or permit his name to be used in connection with any such business in any of the following areas:

- (i) within the Territory;
- (ii) within a radius of ten kilometres (10km) of the centre of the Territory;
- (iii) within a radius of fifty kilometres (50km) of the centre of the Territory;
- (iv) within a radius of fifty kilometres (50km) of the centre of any the Licensor or Aussie Pooch Franchisee's Territory; or

during any of the following periods:

- (1) for a period of two (2) years commencing on the date the Term ends for whatever reason;
- (2) for a period of three (3) years commencing on the date the Term ends for whatever reason ; or
- (3) the period of four (4) years commencing on the date the Term ends for whatever reason.

14.3 **Sever** - If any part of this clause 14 is held or found to be void or unenforceable, it will be severed from this clause to the extent of the voidness or unenforceability and the remainder of this clause will remain in full force and effect.

14.4 **Combination** - The parties agree Clause 14.2 will have effect as a number of separate clauses resulting from the combination of the commencement of Clause 14.2 with:

- (a) any one or more of the situations in Clauses 14.2(a)– 14.2(e) with
- (b) any one or more of the areas in Clause 14.2(e)(i)– 14.2(e)(iv); with
- (c) any one or more of the periods in 14.2(1) to 14.2(3).

If any of the resulting separate clauses is held to be void or unenforceable, it will be severed from the clause to the extent of the voidness or unenforceability and the remaining separate clauses will remain in full force and effect.

14.5 **Not Induce** – Without in any way limiting clause 14, the Representative must not during the Term or for a period of two (2) years from the completion date canvass, solicit, interfere with or entice away any person who has at any time been in the habit of being a Customers of the business.

14.6 **Reasonable** - The parties acknowledge that the restraints contained in this clause 14 are reasonable and necessary to protect the goodwill of the Licensor and Aussie Pooch.

15. CONFIDENTIAL INFORMATION

15.1 **Not to Disclose** – The Representative agrees not to disclose convey or otherwise transfer any of the Confidential Information or any trade secrets or use or attempt to use any Confidential Information without the prior consent of the Licensor except as may be provided by this Agreement or as may be required by law.

15.2 **Intellectual Property** – The Representative agrees not to disclose, convey or otherwise transfer any of the Intellectual Property or any part of the Intellectual Property in any form to any third party without the prior consent of the Licensor.

15.3 **Restrict Access** – The Representative agrees to restrict access to the Confidential Information to those directors, officers or employees of the Representative who require access to perform the Representative's obligations under this Agreement.

15.4 **Client Database** –

(a) The Representative agrees that the Client Database:

- (i) forms part of the Confidential Information belonging to Aussie Pooch to which the Representative will gain access during the Term of this Agreement because of the association between the Licensor and the Representative;
- (ii) is not in the public domain and is of commercial advantage to Aussie Pooch.

(b) The Representative must not in any circumstances copy, use, divulge or allow access to, or permit the copying or use of the Client Database to any person without Aussie Pooch's prior written consent;

16. SECRET COMMISSIONS

- 16.1 The Representative must not in any circumstances whatsoever accept a secret commission or payment in connection with the delivery of the Services.

17. RELATIONSHIP BETWEEN THE PARTIES

- 17.1 **No Agency** – It is understood and agreed that the only relationship between the parties shall be that of independent contractors and that no agency, employment or partnership is created by the parties to this Agreement.
- 17.2 **No Representations** – No representations will be made by either party which would create or suggest any agency employment or partnership and neither party shall have authority to act for the other in any manner so as to create obligations or debts which would be binding on the other party. No other party shall be responsible for any obligation or expenses or any act or omission of the other or any employee of the other.

18. ASSIGNMENT BY LICENSOR

- 18.1 **Right** - The Licensor may assign its rights and obligations under this Agreement to any other person firm or corporation who:
- (a) is financially responsible and economically capable of performing the obligations of the Licensor under this Agreement;
 - (b) expressly assumes and agrees to perform the Licensor's obligations.
- 18.2 **Obligations** - Upon the assignee agreeing in writing to assume the Licensor's obligations, the Licensor will be relieved from any of its obligations under this Agreement.

19. ASSIGNMENT BY REPRESENTATIVE

- 19.1 The Representative shall not have the right to assign its rights under this Agreement or the Business conducted under this Agreement or part with possession of the Mobile Unit at any time.

20. TERMINATION

- 20.1 **Events of Termination** – If the Representative:
- (a) **Payment** - defaults in payment of any money due and payable under this Agreement;
 - (b) **Breach of obligation** - fails to remedy a breach of its obligations under this Agreement within fourteen (14) days of service of written notice of the breach requiring it to be remedied;
 - (c) **No Licence** - no longer holds a Licence that the Representative must hold to carry on the business;
 - (d) **Company Liquidation** - being a company;
 - (i) is placed under official management;
 - (ii) enters into an arrangement with its creditors (except for the purpose of reconstruction or amalgamation);
 - (iii) has receivers or receivers and managers appointed to any of its assets;
 - (iv) is wound up either compulsorily or voluntarily;
 - (e) **Arrangement of Composition** - being a natural person:
 - (i) commits an act of bankruptcy;
 - (ii) makes an arrangement with his creditors or others;
 - (iii) become of unsound mind or infirm or become a drug addict or an alcoholic or habitually use drugs or intoxicating liquor;
 - (f) **Abandons Business** - Voluntarily abandons the business or the relationship created by this Agreement;

- (g) **Serious Offence** - Is convicted of any criminal offence other than a driving offence provided that such driving offence shall not interfere with the Representative's conduct of the Business;
- (h) **Endangers Public** - Operates the Business in a way that endangers public health or safety;
- (i) **Fraud** - Is fraudulent in connection with the operation of the Business;
- (j) **Execution** - has execution or distress levied upon any of his or her goods;
- (k) **Judgement** - has judgment obtained against him or her which is not set aside or satisfied within seven (7) days;
- (l) **Assignment** - assigns or attempts or purports to assign his or her rights under this Agreement;
- (m) **Cheque dishonoured** - any cheque or instrument given by the Representative in payment of any money due and payable under this Agreement is dishonoured on presentation and the Representative does not pay the amount of the dishonoured cheque and bank charges incurred by the Licensor to the Licensor by cash or bank cheque within seven (7) days;
- (n) **Absent without consent** - becomes incapable of conducting and/or does not operate or is otherwise absent from the Business without the written approval of the Licensor such approval not to be unreasonably withheld for a period in excess of one (1) week regardless of whether such absence or non-operation is due to or on account of illness, accident or injury to the Representative;
- (o) **Fails to attain skills** - fails to attain and display the skills of any nature whatsoever which the Licensor, at its discretion, believes are necessary in order to successfully conduct the Business;
- (p) **Fails to submit reports** - fails or refuses to submit any report, financial information or other information;
- (q) **Fails to take action** - fails to take any action required under any notice issued by the Licensor;
- (r) **Agree to Terminate** - Agrees to termination of this Agreement;

then the Licensor shall be at liberty, in addition to other rights and remedy conferred on it in law or in equity:

- (i) to sue the Representative for money due and payable under this Agreement; and/or
- (ii) to sue the Representative for damages for breach of contract; and/or
- (iii) to sue the Representative for specific performance of the contract; and/or
- (iv) to terminate this Agreement and sue the Representative for damages for breach of contract in which case its obligations to the Representative shall cease at the date of such termination.

20.2 **Breach** - If the Representative breaches a term of the Representative Agreement, then the Licensor must:

- (a) give the Representative reasonable notice that the Licensor proposes to terminate this Agreement because of the breach; and
- (b) tell the Representative what the Licensor requires to be done to remedy the breach; and
- (c) allow the Representative a reasonable time to remedy the breach

but if the Representative does not remedy the breach within that time then the Licensor may exercise its rights as set out in Clause 20.1.

21. TERMINATION BY REPRESENTATIVE

21.1 **Breach by the Licensor** – If the Licensor breaches any of its substantial obligations contained in this Agreement in the first Term and fails to remedy such breach within twenty-eight (28) days of receiving the notice specifying the breach from the Representative, the Representative may

by notice terminate this Agreement and this Agreement shall be deemed terminated from the date of such notice.

- 21.2 **Termination by Notice** – After the expiration of the first Term (i.e. six (6) months or as agreed between the parties from the date of this Agreement) either party may, at any time, by fourteen (14) days' notice in writing to the other, terminate the agreement. During the notice period the Representative must continue to provide the Services in accordance with this Agreement.

22. ACTION UPON TERMINATION

- 22.1 **Action Upon Termination** – When this Agreement ends for whatever reason the Representative must:

- (a) cease to enjoy all rights and privileges granted to it under this Agreement;
- (b) deliver to the Licensor any Operations Manual, unused stationery, up to date Client Database or lists (bookwork, daily run sheets), vehicle signage and Mobile Unit signage, items listed on your initial invoice (Clause 4 Payment - starter kit) not paid for, notes and other papers and things held by the Representative or under its control and shall immediately cease to use the Marks and the Intellectual Property of the Licensor;
- (c) agree not to retain any copy of the Client Database and that the Representative must not in any circumstances use, disclose or divulge the contents of the Client Database in any manner;
- (d) immediately deliver the Mobile Unit up to the Licensor in good working order and clean and tidy condition. If the Representative does not deliver up the Mobile Unit to the Licensor within 2 business days of the date of termination then the Representative consents to the Licensor or its representative entering the property of the Representative or any other location where the Mobile Unit is stored and removing and taking possession of the Mobile Unit. In exercising its rights under this clause, the Licensor must cause as little damage as possible to the property of the Representative;
- (e) cease to carry out the Services and shall not thereafter in any manner or for any purpose directly or indirectly use any of the Intellectual Property, procedures, techniques or materials acquired by the Representative by virtue of the relationship established by this Agreement;
- (f) cease using the APM Online System;
- (g) not be relieved of its obligations to pay any monies due to the Licensor or any other person pursuant to this Agreement on any account whatsoever.

- 22.2 **No Goodwill** – The parties agree that on termination of this Agreement for any reason, the Representative will not be entitled to any payment for goodwill in regard to customer services provided during the Term.

- 22.3 **No Loss of Rights** – Termination of this Agreement for whatever reason will be without prejudice to the rights of either party against the other and such termination shall not relieve either party of any of its obligations to the other existing at the time of termination or terminate those obligations of either party which, by their nature, survive the termination of this Agreement.

- 22.4 **Refund of Bond** – Provided that:

- (a) the Representative satisfactorily completes the initial training program provided by the Licensor prior to the commencement date; and
- (b) the Representative completes the initial marketing strategies as set out in clause 29 to the satisfaction of the Licensor; and
- (c) this Agreement is not terminated during the initial Term of this Agreement; and
- (d) the Representative complies with their obligations under clause 22.1 on or before the termination date and
- (e) the Representative complies with their obligations under clause 21.2 and

then as soon as possible after the date of termination the Licensor shall refund the Representative the amount of the Bond less:

- (i) any amount then due and owing to the Licensor under the terms of this Agreement; and
- (ii) such amount as may be necessary to reimburse the Licensor for the cost of rectification of the Mobile Unit if the Representative has not complied with the terms of this Agreement; and
- (iii) any amount payable to the paging service; and
- (iv) any amount owing to a Preferred Supplier or Aussie Pooch.

Provided that, if the amount of the Bond is insufficient to pay the total amounts due under subparagraphs (i) to (iv) then nothing in this clause shall be taken to relieve the Representative from the obligation to pay the Licensor or any other party to whom payment is due, the amount due in excess of the Bond.

23. NO WAIVER

- 23.1 No delay or omission to exercise any right power or remedy accruing to the Licensor upon any default under this Agreement shall impair any such right, power or remedy of the Licensor nor shall it be construed to be a waiver of any continuing breach or default or an acquiescence therein or of or in any similar breach or default thereafter occurring.

24. RIGHT TO CURE DEFECTS

- 24.1 In addition to all other remedies granted, if the Representative defaults in performing any of its obligation or breaches any term or condition of this Agreement, the Licensor may at its election immediately or at any time, without waiving any claim for breach and without notice to the Representative, cure the default on behalf of the Representative and the cost to the Licensor will be payable on demand by the Representative to the Licensor.

25. FORCE MAJEURE

- 25.1 **Inability to Supply** – If the Licensor or Aussie Pooch is unable:

- (a) by reason of any industrial dispute; or
- (b) by reason of the failure of any person to supply any goods or Services to the Representative; or
- (c) by reason of law, riot, government restrictions, civil commotion, act of God; or
- (d) by reason of any cause beyond the control of the Licensor;
- (e) to deliver any Services or supply any goods,

then the Licensor or Aussie Pooch will not be under any liability for any loss or damage suffered by the Representative (including consequential loss or damage) and the Licensor may give notice in writing to the Representative to terminate this Agreement or extend the time for performance of its obligations under this Agreement.

- 25.2 **No repudiation** – The Representative acknowledge that the failure of the Licensor or Aussie Pooch to deliver Services or supply goods under this Agreement because of anything set out in this clause 25 will not entitle the Representative to treat the agreement as repudiated.

26. NOTICES

- 26.1 A party shall give any notice required in the English language and in writing.
- 26.2 A party may address a notice to the other party at its address set out in this Agreement and may serve the notice at that address or an address or email provided.
- 26.3 A party may deliver a notice by hand, post, email transmission.
- 26.4 If before 4pm local time in the place of delivery, a party delivers a notice:
- (a) by hand
- the notice will be taken to be given on the day of delivery or transmission and in any other case on the next day.
- 26.5 If the party gives notice by post the notice will be taken as given on the second business day in the place of delivery after the notice is posted.

- 26.6 A notice may be sent in electronic form by email to that person's email address and will be deemed given and received on the first day on which it could have been ready by the addressee but if the notice is sent after 5:00pm (local time in the place of receipt) on a business day or a day that is not a business day, the notice is taken to have been received on the next business day.
- 26.7 The parties may give notice of another address or email (within Australia) to the other party and the new address shall be the address for service of the party for the purpose of this clause.

27. GOVERNING LAW

- 27.1 The parties agree that this Agreement will be governed by the law in force in the state of Queensland and agrees to submit to the non-exclusive jurisdiction of the courts of Queensland.

28. ENTIRE AGREEMENT AND SEVERANCE

- 28.1 **Entire Agreement** – This document represents the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings between the parties.
- 28.2 **Any provision void** - If any term of this Agreement is determined to be void by any court of competent jurisdiction. That determination will not affect any other term of this Agreement and the other terms will remain in full force and effect.
- 28.3 **Parties intention** – It is the intention of the parties that any if any term of this Agreement is capable of two meanings, one which would render it void and one which would render it valid, the term will have the meaning that renders it valid.
- 28.4 **Variation** - No variation to this Agreement will be valid unless it is in writing signed by all parties unless the variation is needed to comply with a change in a law or regulation, which affects a term of this Agreement. If that is the case, the Licensor will make the required amendment to the extent necessary and must notify the Representative in writing immediately of the amendment and the reason for the amendment.
- 28.5 **Trade Practices** - The parties to this Agreement shall do all things as are necessary to comply with the Competition and Consumer Act 2010. In the event that any party of this Agreement does not comply with the said act then this Agreement will be amended accordingly provided that such amendment does not defeat the substance of this Agreement in which event this Agreement shall come to an end. For the purposes of this clause the words "the substance of this Agreement" shall mean the capacity of the Licensor to grant the Licence and the ability of the Representative to lawfully conduct the business.

29. REPRESENTATIVE INITIAL MARKETING

- 29.1 **Application** – This clause only applies if it is stated to apply in schedule 6
- 29.2 **Compulsory** - It is one of the Representative's principle responsibilities under this Agreement to build the business to its maximum potential by providing the maximum amount of Services possible in the Territory.
- 29.3 **Additional definition** – The following is an additional definition to those contained in clause 1.1:
- 29.4 **Initial Marketing Strategies** means the compulsory marketing strategies to be carried out by the Representative during the first ten weeks from the commencement date which will contain both compulsory marketing strategies and optional marketing strategies. The Licensor will hand the Representative a list of the initial marketing strategies on the commencement of training. These take nothing but time and energy and compliment the advertising and marketing launch provided during your initial Term.
- 29.5 **Acknowledgment** - The Representative acknowledges that the initial marketing strategies have been formulated as part of the System to assist the Representative to commence operation of the business and it is in the best interest of the Representative to complete all the initial marketing strategies and to maintain marketing of the business throughout the Term and any Renewal Terms.
- 29.6 **Implement Strategies** - The Representative must implement the initial marketing strategies from week 1 of the commencement date, complete all the initial marketing strategies (minimum

10 weekly reports completed satisfactorily) in the manner set out in the Operations Manual and maintain marketing throughout the whole of the Term.

30. INCENTIVE TO ENTER INTO FRANCHISE
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30.1 **Application** – This clause only applies if it is stated to apply in schedule 7.

30.2 If the Representative enters into a Franchise Agreement with the Licensor then the parties agree as follows:

- (a) The amount of the franchise fee payable by the Representative will be the usual franchise fee at that time payable to the Licensor by a new Franchisee less the following amounts usually included in the franchise fee:
 - (i) training fees;
 - (ii) starter kit;
 - (iii) guaranteed income Aussie Pooch would generally pay out to a Franchisee deduction of \$1500 allowed.
 - (iv) the cost of the Mobile Unit adjusted as follows:
 - (1) if the Representative accepts the Mobile Unit that has been used by the Representative under this Agreement, then the Licensor will determine the market value of that Mobile Unit and deduct the difference between the cost of a new Mobile Unit and the value of the currently used unit; or
 - (2) if the Representative advises they would prefer a new Mobile Unit, then no amount will be deducted from the franchise fee.
 - (v) If the Representative enters into a Franchise Agreement within six months from the date of this Agreement, the Licensor will allow the Representative a reduction in the franchise fee equal to one-half of the amount paid by the Representative to the Licensor as Representative fee under this Agreement.
- (b) The franchise to be entered into between the parties will include a Territory of a size equivalent to one Licensor territory. That territory may not be the same area or may be an area smaller to that serviced by the Representative under this Agreement. The parties will agree on the territory to be included under the Franchise Agreement. The Licensor will provide a proposal for the new franchise to the Representative upon request being made by the Representative.
- (c) The advertising launch for a Representative has been carried out. A fee here of \$2000 will be added to the franchise cost to cover the costs of work already carried out.
- (d) The parties agree that to take advantage of the incentive set out in clauses 30.2 (a)(v), the Representative must enter into a Franchise Agreement no later than 6 months from commencement date.
- (e) Once the Franchise Agreement is entered into between the parties, this Representatives agreement will be deemed to be terminated as and from the date of the Franchise Agreement.

31. SPECIAL CONDITIONS

31.1 The special conditions, if any, set out in schedule 8 shall form part of this Agreement.

SCHEDULE 1

Name and Address of Licensor and Representative

Licensor

Choose either Aussie Pooch or the Franchisee the Representative is operating for.

Representative

SCHEDULE 2

Territory

Area known as –

Aussie Pooch Mobile _____ (Generally Largest dwelling count suburb)

If the new op is in a BRAND NEW AREA then you need to first find their suburb that has the biggest dwelling count. Note: this may not be the name of their area. You may like to check with the operator if the area is known as a certain suburb even though one of the suburbs in the POST CODE REGION has a higher dwelling count than this known suburb. Eg. Clontarf and Redcliffe may be the ops 2 suburbs under 1 postcode. Clontarf has more dwellings, but the region is known as Redcliffe you would place Redcliffe in. (Generally this will not occur but in some instances it is worth looking at this. If it does place a note to state this

This is used to create Facebook, Local Website and Online Postcode listings)

_____ is the 2nd largest dwelling count suburb (to create add online listings if required)

Consisting of (List ALL POSTCODES then suburbs with dwelling counts under this)

Postcode	Suburb	Dwelling	Postcode	Suburb	Dwelling

SCHEDULE 3

Term (Clause 2)

Commencement Date

The date the Representative starts operation of the business after completion of training.

Date of end of Term

6 months after the Commencement Date. (Full Time)

___ months after the commencement Date (Part Time)

This may be a specific date if someone is operating part time to help a franchisee that may be sick etc.

Renewal Term

Recurring periods of 6 months from the completion of the initial Term. (Full Time)

Recurring periods of ___ months from the completion of the initial term or as described here.

This may have no recurring period if **someone is operating part time to help a franchisee that may be sick etc.**

SCHEDULE 4

Payments (clause 4)

1. **Starter Kit Fee** \$365 or other sum you agree to

Refer to Clause 4 Payment:- For the Representative **starter kit fee** in the amount set out in item 1 of schedule 4 for the items listed on the initial invoice (shown as paid for on that invoice) and water efficiency registration where applicable; N.B. there are items provided for your use on this invoice (listed at no charge to you on this invoice) that you must maintain or replace and keep in good working order and upon leaving these items must be returned or replaced in good working order to Aussie Pooch or the amounts for these items will be deducted from your Bond. The cost of these will be calculated at the price on the operator e-commerce site at time of finishing.

2. **Bond**

\$500 or as agreed

3. **Mobile Unit Hire - Weekly Representative Fee**

25% per week of Gross Income plus GST **or it may be a fixed fee plus percentage.**

4. **Monthly Pager Cost**

Discuss which option best suits the applicable area and advise the office. If in doubt it is recommended that the Representative takes the option of the 20 call plan.

This will be invoiced from either the Licensor, Aussie Pooch Mobile Pty Ltd or to an outsourced company as advised from time to time.

Options	15 Call Plan	20 Call Plan	30 Call Plan
*Monthly Fee	\$44.83 Inc 15 Calls	\$51.70 Inc 20 Calls	\$69.85 Inc 30 Calls
*Calls Thereafter	\$2.26	\$2.15	\$2.04
Website SMS charges are averaged over all Operators and charged monthly through the Telephone Network Contribution.			
Invoiced on the 1st of each month in advance and overcalls are charged in arrears for the previous month approximately mid month			

Changing Options

The Representative may, from time to time make changes to the paging service option. If the Representative wishes to change the plan option, the Representative must advise the Aussie Pooch office by the 7th of the month prior to the month of change. Any overcalls from the previous month will be charged at the previous month's plan. This may change from time to time.

5. **Telephone/Network Contribution**

For the cost for the [1300 369 369](tel:1300369369) number and maintaining our network communication to enable the customers to contact you including text messages coming to you from the website. Approximately \$5 - \$10 per month or as otherwise determined by Aussie Pooch taking into the account the actual cost and a reasonable admin fee.

This will be invoiced directly from Aussie Pooch Mobile Pty Ltd on the 1st of every month in advance.

6. **Excess fee if insurance claim was to be made**

\$150-\$250 (approximate)

Insurances Licensor covers for you: Comprehensive on the Mobile Unit. You must have your own public liability Insurance.

7. Website/Social Media Fee

A payment of \$11-15 per month in advance by the representative to Aussie Pooch for Website/Social Media and the reasonable admin in carrying this out and to also enable the representative to access reasonable ongoing training and support in this area or as agreed between the parties from time to time.

The Website/Social Media Fee will be invoiced directly from Aussie Pooch on the 1st of every month and will be payable by the representative in advance.

8. Computer Software Fee

A monthly payment of \$28-33 for the cost of utilising the APM Computer Software program along with the cost of hosting this cloud based program.

This will be invoiced directly from Aussie Pooch Mobile Pty Ltd on the 1st of every month in advance.

This is in the process of being finalised.

9. Method of payment

The Representative acknowledges that if any payment is not paid by the due date then the amount of the payment and any credit card fees will be debited to the Representative's credit card (see clause 4.5)

Card number: / / /

Expiry date: /

Last 3 digits on back of credit card

Cardholder Name:

Cardholder Signature:

The Representative agrees that all payments due under this Agreement and any applicable credit cards fees are in all cases to be debited on the due date for payment to the Representative's credit card:

Yes No

SCHEDULE 5

Minimum Performance Standard (Clause 8)

Full time

There is an expectation that the Representative will build the business to a minimum income per week Gross Income plus GST, to be achieved within six (6) months from the commencement date and maintained as a minimum throughout the Term.

If the Representative has acquired an existing business with a Gross Income plus GST over or equal to the Minimum Performance Standard per week then the Representative's Minimum Performance Standard would be equal to the existing businesses average weekly payment.

Minimum Performance Standard

Minimum Performance Standard: \$700 per week* regularly by 3 months with it increasing to

Minimum Performance Standard: \$900 per week* regularly by 6 months

minimum or agreed at \$_____ per week Gross Income plus GST,

ATTENTION FRANCHISEES – Be sure that the Minimum you set here is equal to what you are required to do under your Minimum Annual Payment. Note the Minimum Performance Standard is worked out by taking GST from your Minimum Annual Payment.

Ask you support manager for help in this area.

Part time

There is an expectation that the Representative will build the business to a minimum gross income plus GST per week, to be achieved within six (6) months from the commencement date and maintained as a minimum throughout the Term.

If the Representative has acquired an existing business with a Gross Income plus GST over or equal to the Minimum Performance Standard per week then the Representative's Minimum Performance Standard would be equal to the existing businesses average weekly payment.

Minimum Performance Standard \$ ___ per week

SCHEDULE 6

Representative Initial marketing (clause 29)

Does the Aussie Pooch Mobile Representative's initial marketing apply? **YES IN ALL CASES**

SCHEDULE 7

Incentive to Enter Into Franchise (Clause 30)

Does the incentive to enter into Franchise Agreement apply to this Agreement? **YES/NO**

As a guide for the Representative. a franchise would be approximately 5,000 dwellings.

The Representative should refer to clause 30 in regard to the incentive that will be given if the Representative enters into a Franchise Agreement and the time during which that incentive will be offered.

SCHEDULE 8

Special conditions (Clause 31)

SC1. Clipping

Aussie Pooch Mobile's core business is washing dogs. Some Aussie Pooch Mobile operators offer clipping and some don't. The business System is proven to work for both those operators who clip and for those who do not. Even the operators who clip still rely on the core business of washing to generate most of their income. For this reason the Representative will only be given permission to offer a clipping service after the following criteria is met or as agreed from time to time eg. Prior clipping experience is demonstrated and Aussie Pooch has assessed.

SC1.1 Criteria required for clipping approval

- The Representative is required to build their business with regular washing Clients to an average of 25 dogs minimum per week for four consecutive weeks before the Representative can do a clipping course and commence clipping.
- The Representative must complete the Aussie Pooch Mobile clipping course and assessment prior to providing a clipping service.

If the Representative has commenced in an existing area where more than 25 dogs per week are being washed or the area has grown to 25 dogs per week within the first 8 weeks, the Representative must have been operating as an Aussie Pooch Mobile Representative for a minimum 8 weeks before the Representative may provide a clipping service.

SC2 Additional Territory

It is noted that additional territory may be requested to be serviced from time to time as relief services.. **Clause 14** applies to any additional territory that a Representative may service.

SIGNED by the parties as an Agreement.

Choose A Aussie Pooch as Licensor or B Franchisee as Licensor

A SIGNED by **THE AUSSIE POOCH MOBILE PTY LTD** in accordance with section 127 of the Corporations Act by **CHRISTINE PAMELA TAYLOR** the sole director and secretary)
)
)
)
Signature of Director

Signed for and on behalf of THE AUSSIE POOCH MOBILE PTY LTD by **VALDA JEAN MARSHALL** who certifies she has authority to sign on behalf of The Aussie Pooch Mobile Pty Ltd)
)
)
)
Signature

.....
Signature of Witness

.....
Name of Witness

B SIGNED by the Licensor)
)
)
)
Name) Signature

Signed sealed and delivered by the Representative

Document needs to be witnessed for all signatures of Representative
Signature of Representative

in the presence of:
Name of Representative in full

.....
Signature of Witness

.....
Name of Witness

This will be signed in all situations

RESTRAINT DEED – REPRESENTATIVE

This Agreement is made the _____ day of _____ 20__ .

BETWEEN: The person whose name and address appears in Item 1 of the Schedule
("Licensor")

AND: The individuals whose name and address appears in Item 2 of the Schedule
("Representative")

INTRODUCTION

- A. The parties have entered into or intend to enter into the Representative Agreement
- B. Clause 14 of the Representative Agreement contains the definitions of the Restraint Areas and Restraint Periods.
- C. Clause 14 of the Representative Agreement also contains the restraint conditions.
- D. In order to impress upon the Representative the importance of the restraint contained in the Representative Agreement, Aussie Pooch requires that the Representative to sign this deed

TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 **Dictionary** - Defined words will being with a capital letter in this Agreement and will, unless some other meaning is plainly intended, mean the following:

Aussie Pooch means The Aussie Pooch Mobile Pty Ltd ACN 056 734 528 a company incorporated according to law and having its registered office at 4/13 Brewers Street, Burpengary, 4505 in the State of Queensland

Representative Agreement means the agreement entered into between the Licensor and the Representative on or about the date of this deed under which the Representative is granted the right to conduct a business using the System in the Territory.

Restraint Areas means:

- (i) within the Territory;
- (ii) within a radius of ten kilometres (10km) of the centre of the Territory;
- (iii) within a radius of fifty kilometres (50km) of the centre of the Territory;
- (iv) within a radius of fifty kilometres (50km) of the centre of any Aussie Pooch Franchisee's territory or any Licensor's territory or any Representative's territory; or

Restraint Periods means:

- (a) for a period of two (2) years commencing on the date the Representative Agreement ends for whatever reason;
- (b) for a period of three (3) years commencing on the date the Representative Agreement ends for whatever reason; or
- (c) the period of four (4) years commencing on the date the Representative Agreement ends for whatever reason.

All terms defined in the Representative Agreement will have the same meaning in this deed.

2.	RESTRAINTS
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- 2.1 **Employment** - The Representative must not during the Term or for the period of six (6) months after the completion date without the consent in writing of Aussie Pooch and the Licensor employ or offer any person who was at any time during the period of twelve (12) months immediately prior to the offer of employment, employed by or was an agent or sub-contractor of Aussie Pooch or any person who was a Franchisee or Representative of Aussie Pooch or the Licensor and must not directly or indirectly induce any person to leave his or her employment agency or sub-contract with Aussie Pooch or any other Franchisee or Representative.
- 2.2 **Restraint** - The Representative must not for any of the periods mentioned in this clause either:
- (a) alone; or
 - (b) jointly with or on behalf of any other person firm or corporation or as an employee independent contractor partner joint venturer or agent; or
 - (c) as an officer of any person firm or corporation; or
 - (d) as a shareholder of any corporation; or
 - (e) as trustee of any trust
- be engaged concerned or interested in any business of the nature of the business or provide any Services which compete with all or any of the Services, or permit his name to be used in connection with any such business in the restraint areas during the restraint periods.
- 2.3 **Sever** - If any part of this clause 2 is held or found to be void or unenforceable, it will be severed from this clause to the extent of the voidness or unenforceability and the remainder of this clause will remain in full force and effect.
- 2.4 **Combination** - The parties agree Clause 2.2 will have effect as a number of separate clauses resulting from the combination of the commencement of Clause 2.3 with:
- (a) any one or more of the situations in Clauses 2.2 (a) – (e); with
 - (b) any one or more of the restraint areas; with
 - (c) any one or more of the restraint periods.
- If any of the resulting separate clauses is held to be void or unenforceable, it will be severed from the clause to the extent of the voidness or unenforceability and the remaining separate clauses will remain in full force and effect.
- 2.5 **Not Induce** – Without in any way limiting clause 2, the Representative must not during the Term or for a period of two (2) years from the completion date canvass, solicit, interfere with or entice away any person who has at any time been in the habit of being a Customers of the business.
- 2.6 **Reasonable** - The parties acknowledge that the restraints contained in this clause 2 are reasonable and necessary to protect the goodwill of Aussie Pooch and the Licensor.

3.	INJUNCTIVE RELIEF
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- 3.1 If there is a breach or threatened breach of the terms of this deed and the Representative Agreement by the Representative then that person acknowledges that Aussie Pooch and the Licensor will be entitled without in any way detracting from any other rights available to Aussie Pooch or the Licensor, to apply for an immediate injunction at the cost and expense of the Representative restraining the Representative from committing any breach or threatened breach or further breach of this deed and the Representative Agreement without Aussie Pooch or the Licensor having any obligation to show or prove any actual damage sustained by Aussie Pooch or the Licensor.
- 3.2 **Benefit of Covenants** - If Aussie Pooch is not the Licensor under the Representative Agreement then the parties agree that this deed has also been entered into for the benefit of Aussie Pooch and that Aussie Pooch may at any time enforce any of the Representative's obligations against the Representative in its own name without the necessity to include the Licensor as a party to that enforcement. The signing of this Agreement by the Licensor will be deemed acceptance by Aussie Pooch of the benefit of this clause.

SCHEDULE

ITEM 1 Name and address of Licensor

Item 2 Name and address of Representative

Signed by the parties as a Deed

Choose A Aussie Pooch as Licensor or B Franchisee as Licensor

A SIGNED by **THE AUSSIE POOCH MOBILE PTY LTD** in accordance with section 127 of the Corporations Act by **CHRISTINE PAMELA TAYLOR** the sole director and secretary)
)
)
) Signature of Director

Signed for and on behalf of THE AUSSIE POOCH MOBILE PTY LTD by **VALDA JEAN MARSHALL** who certifies she has authority to sign on behalf of The Aussie Pooch Mobile Pty Ltd)
)
)
) Signature

.....
Signature of Witness

.....
Name of Witness

B SIGNED by the Licensor)
)
)
) Name) Signature

Signed sealed and delivered by the Representative

Document needs to be witnessed for all signatures of Representative
 Signature of Representative

in the presence of:
 Name of Representative in full

.....
Signature of Witness

.....
Name of Witness

This will be signed in all situations

THE AUSSIE POOCH MOBILE Pty Ltd

"MOBILE HYDROBATH"



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Revision

- 1.1 Created from Walker Smith & Breen document POOCH.REP.AGR-280197-3. Added new front page March 00.
 - 1.2 Changed date from 19?? To 20?? On front page of Walker Smith & Breen's original document with liquid paper.
 - 1.3 Renewed with file emailed from Biggs and Biggs.
 - 1.4 Changed address.
 - 1.5 Updated signing page
 - 1.6 Added to Intellectual Property the goodwill of APM, Name and Reputation.
 - 1.7 Added Reps agreement bonus scheme and Special Conditions attachments.
 - 1.8 Added Telephone Contribution to terms, payment (clause 4) and schedule 6. Added Telephone Fund (clause 6). Updated stock list in schedule 3.
 - 1.9 24/8/10 Major rewrite to match many clauses in the Franchise agreement, added clauses re option to purchase and initial marketing bonus, added Minimum performance clause, added notices can be emailed, updated payment clauses, set schedule out so it was clear what was expected, special conditions clause added, weekly rep fee added \$165 for advertising for 6 months.
- Overall rewrite to suit our System, this had not had an overview for a number of years.
- This one document now is suited to everyone!**
- 2.0-Added Aussie Pooch name and Directors name to signing page (25)
 - 2.1 Clause 30.2 (c) referred to Clause 36 and was meant to refer to Clause 30 so it was changed
 - 2.2 Clipping added to special conditions and starter kit changed to \$330.
 - 2.3 Changed Clause 2.3 (a) to re Schedule 2 not Schedule 4 as 2 was incorrect.
 - 2.4 Reduced the online advertising contribution from \$165 per 6 months to \$65 per 6 months
 - 2.5 **Clause 30 – Incentive** to enter into a franchise. guaranteed income Aussie Pooch would generally pay out to a Franchisee Deduction of \$1500 allowed.
- Took out advertising launch will be deducted and added the following clause...

advertising launch for a Representative has been carried out. A fee here of \$2000 will be added to the Franchise cost to cover the costs of work already carried out.

- 2.6 Clause 14 Restraint 2,3,4 years restraint (This now matches the franchise agreement)

Added deed of restraint for Rep to sign. Updated signing page, SC. Clipping: agreed from time to time eg. Prior clipping experience is demonstrated and Aussie Pooch has assessed, bond clause 4 section updated to include return of items criteria for refund of bond. Schedule 4 Starter kit to include what needs to be returned.

2.7 Schedule 4 item 3 deleted in this section

The On Line Advertising is billed in May and November every year.

This amount will be taken from the Bond if the Representative terminates this Agreement

The On Line Advertising payment will start on the date the Renewal Term begins and the Representative must pay a prorated amount up to the date the next On Line Advertising payment is due. prior to this account being invoiced..

2.8 Changes

Clause 22 Action upon termination – Change as stated here - **Refund of Bond** – Provided that this Agreement is not terminated during the initial term of this Agreement and that the clause 22.1 has been actioned on or before the termination date and **clause 29 Initial marketing strategies have been completed satisfactorily** then as soon as possible after the date of termination the Licensor shall refund the Representative the amount of the bond less:

Clause 29.3 Added - These take nothing but time and energy and compliment the advertising and marketing launch provided during your initial term.

Clause 29.5 Rep initial Marketing Bonus. Deleted bonus in all cases but left requirement to do marketing in all cases.

Clause 29.5 reworded slightly to include marketing reports weekly for 10 weeks.

Clause 29.6 Taken out bonus all together – deleted.

Schedule 6 YES in all cases

Schedule 4 changed monthly pager cost from \$40 to \$50 a month and calls from \$1.50 to \$2 each. Also added that it is subject to change and may be charged from APM.

2.9 Changes –

Bond \$500 or as agreed

3.0 Changes -

Schedule 5 – Min Annual Payment –Reworded to have State MAP listed - **Monthly Pager Options** (Schedule) altered to show three options.

3.1 changes

Janice's added payment clauses – clause 4.5 and item 7 of schedule 4, added clause relating to credit providers clause 5.9, updated reference from Trade Practices Act to Competition and Consumer Act and fixed numbering

3.2Changes Format changes, special conditions – Additional territory

Telephone contribution reworded in schedule

Additional ad levy – reworded \$10 a month not \$65 per 6 months

Term of rep position changed from 3 months to 6 months. Added section in schedule to allow for a part timer plus someone helping out for a specific period.

3.3 mark fix various typos throughout document

3.4 Schedule 4 Payment item 7 restructured so credit card details are filled out in all cases.

changed definition of Payments from "Franchisee" to Representative

added " permitted under the Competition and Consumer Act" to clause 13.1

changed clause 21.2 to read 6 months not 3

3.5 Feb 2014 clause 22.3 Refund of Bond - added the Representative complies with their obligations under clause 21.2 (giving 2 weeks' notice)

All figures updated to INCLUDE GST. MPS figures left at gross income plus GST per week.

Added to clause 4.6 that payments must be paid only via cash, direct deposit or credit card. Removed clause 4.11 regarding Dishonoured cheques.

Added clause 8.5 re Credit card and eftpos facilities.

Added clause 22.3(e – rep complies with their obligations under 21.2

Added notes to Schedule 2 and 3 regarding territory and largest dwelling count suburb.

3.6 June 2014 Added notes to Schedule 2 and 3 regarding territory and largest dwelling count suburb.

3.7 July 2014 Updated insurance clause 9, social media clause 8.3, Notes to schedule 2 added second largest dwelling count suburb.

3.8 September \$150-\$250 (approximate) Insurances Licensor covers for you: Comprehensive on the Mobile Unit

3.9 November 4.2d Mobile Unit - Took out reference to advertising fund, added will provide brochures

Definition Telephone/network contribution

4.2 Website/social media admin fee, 4.3d took out reference to adv fund

6 Updated Telephone/Network contribution, 12.1c added and breaches to this agreement

Schedule 4 Payment added to 3. \$11 per month website/social media fee 4. Updated Telephone/Network,

Schedule 5. Minimum Performance Standard: \$700 per week* regularly by 3 months with it increasing to Minimum Performance Standard: \$900 per week* regularly by 6 months

4.0 May 2015 Changed starter kit fee to \$365

4.1 July 2015 Added authority for Val to sign if Chris is away (all signing pages)

4.2 October 2015 Added to the following terms- 1.1, 2.2, 8.3, 8.4, 8.6, 12.1, 12.3 and 22.1

4.3 March 2016 Added computer software being compulsory. Added website/social media as a standard monthly fee.

4.4 August 2016:

Clause 1.1 added definitions APM Online System, APM Online System Fee and Access, Client Database, Website, amended definitions of Computer Software Fee and Confidential Information.

Clause 5.2 amended to refer to software

Clause 8.1(g) Branded Products and 8.10 APM Online System added

Clause 8.7 amended to refer to APM Online System

Clause 15.4 Client Database added

Clause 22.1(b) amended to refer to Client Database

Clause 22.1(c) and (f) added

Clause 26 amended to delete reference to fax.

Schedule 8 Special conditions – changed clipping to 8 weeks and additional territory to be for Representative (previously stated Franchisee)

Schedule 7 changed dwellings from 10,000 to 5,000.