

## PLATFORM SERVICES AGREEMENT

36539

This Platform Services Agreement (this "*Agreement*") is made and entered into effective as of January 10, 2023 (the "*Effective Date*"), by and between THE CUDDLY GROUP, INC. dba CUDDLY, a Delaware corporation ("*Provider*"), and the undersigned municipal shelter ("*Shelter*"), acting by and through its duly authorized officers, which governs the rights and responsibilities of Provider and Shelter relating to the provision and use of the Pet Pantry Service (as defined below) for the purposes described in this Agreement.

### **1. Identification of Parties to Agreement.**

(a) Shelter is a facility operated by a public entity devoted to the rescue, care, adoption, impound, harbor, sale, or placement of seized, stray, distressed, homeless, or unwanted animals.

(b) Provider is a for-profit corporation engaged in the business of commercial fundraising and wish list fulfillment for charitable animal welfare purposes.

(c) Subject to the terms of this Agreement, Shelter desires to engage the services of Provider, and Provider desires to engage in providing such services, and a technology platform and national brand association (commonly known as Pet Pantry) (the services and technology platform together, the "*Pet Pantry Service*") to assist Shelter in the fulfillment of wish list items offered via the Pet Pantry Service.

### **2. Term of Agreement.** This Agreement shall commence as of the Effective Date for a period of four (4) years from January 1, 2023 to December 31, 2026.

### **3. Cancellation of Agreement.**

(a) Shelter shall have the right to cancel this Agreement for a period of ten (10) days following the Effective Date, by delivering a written notice of cancellation (the "*Cancellation Notice*") to Provider. The Cancellation Notice shall be sufficient if it indicates that Shelter does not intend to continue this Agreement.

(b) Following the initial ten (10) day cancellation period set forth above in Subsection (a), either Shelter or Provider may terminate this Agreement upon thirty (30) days' Cancellation Notice to the other party.

(c) Following the initial ten (10) day cancellation period set forth above in Subsection (a), Shelter may terminate this Agreement, without payment or compensation of any kind to Provider, at any time upon written notice to Provider, if Provider or its agents, employees or representatives: (i) make any material misrepresentations with respect to Shelter or other material subject matter under this Agreement; (ii) are found by Shelter to have been convicted of a crime arising from the conduct of a charitable solicitation punishable as a misdemeanor or a felony; or (iii) otherwise conduct activities in a manner (as reasonably believed by Shelter) that causes or could cause public disparagement of Shelter's good name or goodwill.

(d) Provider may immediately terminate this Agreement (i) in the event of a material breach of this Agreement by Shelter which continues without cure for thirty (30) or more days following the giving of notice of such breach to Shelter or (ii) at any time upon written notice to Shelter, if Shelter or its agents, employees or representatives otherwise conduct activities in a manner (as reasonably believed by Provider) that causes or could cause public disparagement of Provider's good name or goodwill.

(e) Upon any cancellation or termination of this Agreement, within ten (10) days of the effective date of such cancellation or termination, Provider will take down Shelter's wish list page and remove all uses of Shelter Marks (defined below).

#### **4. Description of Obligations.**

(a) In connection with Provider's activities, Provider shall have the right to use Shelter's name, only, to the Pet Pantry Service pursuant to Section 5(a) below or as otherwise provided or identified to Provider by Shelter in connection with this Agreement ("**Shelter Marks**") for marketing of the Pet Pantry Service to drive overall awareness. Through the Pet Pantry Service, Shelter will have the ability to create a "wish list" webpage that lists items ("**In-Kind Goods**") that third parties ("**Donors**") may purchase as a donation to Shelter. Shelter shall exercise exclusive control and approval over the content and frequency of any donation activities. Shelter acknowledges that it will be solely responsible to drive traffic to its specific platform page(s) through its own efforts and campaigns conducted through email and social media. From time to time, Provider may, but shall not be obligated to, grant Shelter the right to participate in any national campaigns that Provider may promote, or provide additional benefits offered by corporate sponsors secured by Provider.

(b) Shelter acknowledges and agrees that Provider may collect and store information about Shelter's use of Pet Pantry Service, including any information transmitted through the Pet Pantry Service subject to the publicly posted privacy policy applicable to Pet Pantry Service. Provider may use that information to provide the Pet Pantry Service's functionality, fulfill requests, improve such service's quality, engage in research and analysis relating to the Pet Pantry Service, personalize Shelter's experience, track usage of the services, display relevant advertising, market the Pet Pantry Service, provide customer support, back up Provider's systems, enhance the security of the service, and comply with legal obligations. Provider shall promptly provide to Shelter information collected from Donors by Provider in connection with the purchase of In-Kind Goods ("**Transaction Information**"). Shelter shall use the Transaction Information solely in accordance with the publicly posted privacy policy applicable to Pet Pantry Service and any public privacy policy posted by Shelter that complies with applicable laws.

#### **5. Description of Marketing Methods.**

(a) In connection with all marketing activities, a party, and its agents, representatives and employees may not misrepresent the other party's name and activities. Shelter will set up its own account on the Pet Pantry Service and upload a description of its organization

and its activities which will be used to support the marketing and fulfillment of wish list items.

(b) All activities undertaken by Provider pursuant to the terms of this Agreement shall be performed by Shelter, Provider, and their agents, servants, representatives and employees via Provider's platform.

6. **In-Kind Goods.** Each In-Kind Good purchased under Section 8 which as a result thereof is in the control or custody of Provider shall be delivered to Shelter in person, by U.S. express mail, or by another method of delivery determined by Provider (in its sole discretion). Provider and Shelter hereby acknowledge and agree that any such In-Kind Goods shall be and shall remain the property of Shelter at all times.
7. **Compensation of Provider.** Provider will charge a flat \$0.95 fee per transaction to the Donor and receive all optional tip income as reimbursement for, and otherwise defray, Provider's operating costs for supporting Shelter's use of the Pet Pantry Service. There shall be no cost to the Shelter to request in-kind donations through the Pet Pantry Service.
8. **Issuance of Acknowledgement and Receipt for Charitable Contributions.** Shelter hereby authorizes Provider to prepare and directly issue to Donors substantiation receipts of charitable contributions for the purchase of In-Kind Goods.
9. **Confidentiality.** For purposes of this Agreement, "***Confidential Information***" means and will include: (i) any information, materials or knowledge regarding Shelter or Provider and their business, financial condition, products, programming techniques, customers, suppliers, technology or research and development and (ii) the terms and conditions of this Agreement. Confidential Information will not include any information that: (a) is or becomes part of the public domain through no fault of a party; (b) was rightfully in a party's possession at the time of disclosure, without restriction as to use or disclosure; or (c) a party rightfully receives from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure. Except as required under state or federal law, including but not limited to the Cal. Gov. Code 6250, *et al.*, (California Public Records Act), each party agrees to hold all Confidential Information in strict confidence, not to use it in any way, commercially or otherwise, except in performing its obligations under this Agreement, and not to disclose it to others. Except as required under state or federal law, including but not limited to the Cal. Gov. Code 6250, *et al.*, (California Public Records Act), each party further agrees to take all actions reasonably necessary to protect the confidentiality of all Confidential Information including, without limitation, implementing and enforcing procedures to minimize the possibility of unauthorized use or disclosure of Confidential Information.
10. **Warranty and Disclaimers.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PET PANTRY SERVICE, AND ANY OTHER PROVIDER MATERIALS ARE PROVIDED ON AN "AS IS" BASIS, AND PROVIDER MAKES NO WARRANTIES OR REPRESENTATIONS TO SHELTER, DONORS OR ANY OTHER THIRD PARTIES REGARDING THE PET PANTRY SERVICE OR ANY OTHER SERVICES OR MATERIALS PROVIDED IN CONNECTION WITH THIS AGREEMENT. TO

THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER HEREBY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, PROVIDER HEREBY DISCLAIMS ANY WARRANTY THAT USE OF THE PET PANTRY SERVICE WILL BE ERROR-FREE, BUG-FREE OR UNINTERRUPTED, OR PROVIDE ANY RESULTS.

**11. Indemnification.**

(a) Shelter shall indemnify, defend and hold Provider harmless from any and all claims, demands, causes of action, liabilities, losses, damages and expenses (including but not limited to court costs and reasonable attorneys' fees), arising from, out of or in connection with any third party claim related to or which may arise from (a) the performance by Provider of its obligations under this Agreement at the direction of Shelter, or (b) Provider's use of the rights granted by Shelter to Provider under this Agreement.

(b) Provider shall indemnify, defend and hold Shelter harmless from any and all claims, demands, causes of action, liabilities, losses, damages and expenses (including but not limited to court costs and reasonable attorneys' fees), arising from, out of or in connection with any third-party claim that the Pet Pantry Service infringes or misappropriates the intellectual property rights of any third party.

**12. Limitation of Liability.** PROVIDER WILL NOT BE LIABLE TO SHELTER FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF INCOME, DATA, PROFITS, REVENUE OR BUSINESS INTERRUPTION, OR THE COST OF COVER OR SUBSTITUTE SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN NO EVENT WILL PROVIDER'S TOTAL LIABILITY TO SHELTER IN CONNECTION WITH THIS AGREEMENT, EXCEED THE GREATER OF: (A) THE TOTAL VALUE OF THREE MONTHS OF DONATIONS PRIOR TO THE EVENTS GIVING RISE TO THE CLAIM AND (B) \$1,000, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON WHICH THE CLAIM OR LIABILITY IS BASED, AND WHETHER OR NOT PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

**13. Shelter's Representations and Warranties.** Shelter hereby represents and warrants to Provider as follows:

(a) Shelter is a public animal shelter formed and operated under a department of a municipal government, is funded exclusively by local government taxes, and uses contributions or gifts exclusively for public purposes.

(b) Shelter has the requisite power and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(c) Shelter is, and will continue to be, in possession of, and in compliance with, all grants, authorizations, licenses, permits, variances, exemptions, consents, certificates, approvals and orders necessary to carry on its business and in compliance with all applicable Federal, State and local statutes, rules, regulations, and policies and procedures.

(d) Neither the execution, delivery, or performance of this Agreement, nor the consummation of the transactions contemplated hereby is prohibited by, or requires Shelter to obtain any consent, authorization, approval, or registration under any law, statute, rule, regulation, judgment, order, write, injunction, or decree which is binding upon Shelter which has not been previously obtained.

**14. Governing Law/Jurisdiction.** The validity, interpretation, construction and performance of this Agreement, and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the state of California, without giving effect to principles of conflicts of law. For purposes of litigating any dispute that may arise directly or indirectly from this Agreement, the Parties hereby irrevocably submit and consent to the exclusive jurisdiction of the State of California, County of Orange, and no other courts. The parties submit to the exclusive jurisdiction of these courts and waive the defense of inconvenient forum to the maintenance of any action or proceeding in such venue.

**15. Amendments and Waivers.** No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance.

**16. Successors and Assigns.** Except as otherwise provided in this Agreement, this Agreement, and the rights and obligations of the parties hereunder, will be binding upon and inure to the benefit of their respective successors, assigns, heirs, executors, administrators and legal representatives. Provider may assign any of its rights and obligations under this Agreement. No other party to this Agreement may assign, whether voluntarily or by operation of law, any of its rights and obligations under this Agreement, except with the prior written consent of Provider.

**17. No Exclusivity.** This Agreement contemplates a non-exclusive arrangement between Shelter and Provider. Nothing in this Agreement shall limit Shelter's or Provider's right to conduct business with third parties in its sole discretion.

**18. Notices.** Any notice, demand or request required or permitted to be given under this Agreement shall be in writing and shall be deemed sufficient when delivered personally or by overnight courier or sent by email, or forty-eight (48) hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be

notified at such party's address as set forth below or provided in writing to the notifying party, as subsequently may be modified by written notice.

19. **Waiver.** No waiver by any part of any provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
20. **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of this Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of this Agreement shall be enforceable in accordance with its terms.
21. **No Attorneys' Fees.** In the event any arbitration or proceeding is instituted by a party related to, or to enforce, this Agreement, the prevailing party in such action (as determined by the arbitrator, judge, agency or other authority before which such proceeding is commenced), shall NOT be entitled to such reasonable attorneys' fees (including, without limitation, reasonable outside counsel fees and in-house paralegals' and attorneys' time computed at similar rates), costs and expenses as may be fixed by the decision maker.
22. **Construction.** This Agreement is the result of negotiations between and has been reviewed by each of the parties hereto and their respective counsel, if any; accordingly, this Agreement shall be deemed to be the product of all of the parties hereto, and no ambiguity shall be construed in favor of or against any one of the parties hereto.
23. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same agreement. Execution of a scanned copy will have the same force and effect as execution of an original, and a scanned signature will be deemed an original and valid signature.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date hereof.

**PROVIDER:**

The CUDDLY Group, Inc.  
dba CUDDLY

By: [Signature]  
Name: AURORA VELAZQUEZ  
Title: DIRECTOR OF COMMUNITY PROGRAMS

Address:  
909 Electric Avenue, Suite 208  
Seal Beach, CA 90740

[Signature] Paula  
CEO & Hussey  
FOUNDER SECRETARY

John J. Hussey  
CEO and Founder  
2/8/2023

Paula Hussey  
Secretary  
2/27/2023

**SHELTER:**

City of Long Beach  
Long Beach Animal Care Services  
(Municipal Shelter)

By: [Signature]  
Name: 3-9-2023  
Title: City Manager

Address:  
City of Long Beach  
Long Beach Animal Care Services  
7700 East Spring Street  
Long Beach, CA 90815

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

Approved as to form:  
Date: 02/28/2023

By: [Signature]  
For: Dawn McIntosh, City Attorney