



Host Compliance Services Agreement

THIS SERVICES AGREEMENT (the "**Agreement**") is entered into as of August 4, 2016 (the "**Effective Date**"), between Host Compliance LLC, ("**Host Compliance**") and City of Hermosa Beach, with an address at 1315 Valley Drive Hermosa Beach, CA 90254 (the "**Customer**"). This Agreement sets forth the terms and conditions under which Host Compliance agrees to license to Customer certain hosted software and provide all other services necessary for Customer's productive use of such software (the "**Services**") as further described in the attached Schedule 1.

1.0 Services.

- 1.1 Subscriptions.** Unless otherwise provided in the attached Schedule 1, (a) Services are purchased as subscriptions, (b) additional service subscriptions may be added during a subscription term, with the pricing for such additional services, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscription.
- 1.2 Provision of Services.** Customer and Customer's end-users ("End Users") may access and use the Services and any other Services that may be ordered by the Customer from time to time pursuant to a valid subscription in accordance with the terms of this Agreement.
- 1.3 Facilities and Data Processing.** Host Compliance will use, at a minimum, industry standard technical and organizational security measures to store data provided by Customer, or obtained by Customer through the use of the Services ("Customer Data"). These measures are designed to protect the integrity of Customer Data and guard against unauthorized or unlawful access.
- 1.4 Modifications to the Services.** Host Compliance may update the Services from time to time. If Host Compliance updates the Services in a manner that materially improves functionality, Host Compliance will inform the Customer.

2.0 Customer Obligations.

- 2.1 Customer Administration of the Services.** Host Compliance' responsibilities do not extend to internal management or administration of the Services. Customer is responsible for: (i) maintaining the confidentiality of passwords and accounts; (ii) managing access to Administrator accounts; and (iii) ensuring that Administrators' use of the Services complies with this Agreement.
- 2.2 Compliance.** Customer is responsible for use of the Services and will comply with laws and regulations applicable to customer's use of the Services, if any.
- 2.3 Unauthorized Use & Access.** Customer will prevent unauthorized use of the Services and terminate any unauthorized use of or access to the Services. Customer will promptly notify Host Compliance of any unauthorized use of or access to the Services.
- 2.4 Restricted Uses.** Customer will not and will ensure that its End Users do not: (i) sell, resell, or lease the Services; or (ii) reverse engineer or attempt to reverse engineer the Services, nor assist anyone else to do so.

2.5 Third Party Requests.

- 2.5.1** "Third Party Request" means a request from a third party for records relating to Customer's or an End User's use of the Services including information regarding an End User. Third Party Requests may include valid search warrants, court orders, or subpoenas, or any other request for which there is written consent from End Users permitting a disclosure.
- 2.5.2** Customer is responsible for responding to Third Party Requests via its own access to information policies and the California Public Records Act. Customer will seek to obtain information required to respond to Third Party Requests and will contact Host Compliance only if it cannot obtain such information despite diligent efforts.
- 2.5.3** If Host Compliance receives a Third Party Request, Host Compliance will make reasonable efforts, to the extent allowed by law and by the terms of the Third Party Request, to: (A) promptly notify Customer of Host Compliance's receipt of a Third Party Request; (B) comply with Customer's reasonable requests regarding efforts to oppose a Third Party Request; and (C) provide Customer with information or tools required for Customer to respond to the Third Party Request (if Customer is otherwise unable to obtain the information). If Customer fails to promptly respond to any Third Party Request, then Host Compliance may, but will not be obligated to do so.
- 2.5.4** If Customer receives a Third Party Request for access to the Services, or descriptions, drawings, images or videos of the Services' user interface, Customer will make reasonable efforts, to the extent allowed by law and by the terms of the Third Party Request, to: (A) promptly notify Host Compliance of Customer's receipt of such Third Party Request; (B) comply with Host Compliance's reasonable requests regarding efforts to oppose a Third Party Request; and (C) provide Host Compliance with information required for Host Compliance to respond to the Third Party Request. If Host Compliance fails to promptly respond to any Third Party Request, then Customer may, but will not be obligated to do so.
- 2.5.5** Notwithstanding anything to the contrary above, any action taken by Customer which is required by or taken for the purpose of complying with the California Public Records Act will not be deemed to violate the terms of this agreement.

3.0 Intellectual Property Rights; Confidentiality

- 3.1 Reservation of Rights.** Except as expressly set forth herein, this Agreement does not grant (i) Host Compliance any intellectual Property Rights in the Customer Data or (ii) Customer any Intellectual Property Rights in the Services, any other products or offerings of Host Compliance, Host Compliance trademarks and brand features, or any improvements, modifications or derivative works of any of the foregoing. "Intellectual Property Rights" means current and future worldwide rights under patents, copyright, trade secret, trademark, moral rights and other similar rights.
- 3.2 Suggestions.** Host Compliance may, at its discretion and for any purpose, use, modify, and incorporate into its products and services, and license and sub-license, any feedback, comments, or suggestions

Customer or End Users send Host Compliance with prior written consent of the Customer's City Manager.

3.3 Confidential Information. Customer understands and agrees that it will not reveal, publish or otherwise disclose to any person, firm or corporation, without written authorization of Host Compliance, or except as required by law, any Confidential Information of Host Compliance, including without limitation any trade secrets, confidential knowledge, data or other proprietary information relating to the Services. "Confidential Information" means all information, written or oral, relating to the business, operations, services, facilities, processes, methodology, technologies, intellectual property, research and development, customers, strategy or other confidential or proprietary materials of Host Compliance.

4.0 Fees & Payment.

4.1 Fees.

- 4.1.1** Customer will pay Host Compliance for all applicable fees upfront semi-annually.
- 4.1.2** Customer will pay any amounts related to the Services as per payment terms detailed on the applicable invoice. Unless otherwise indicated, all dollar amounts referred to in the Agreement are in U.S. funds.
- 4.1.3** Customer acknowledges that while it may choose to delay the implementation of the Services, this is not a valid reason for withholding payment on any invoices. Furthermore, the Customer will not withhold payment on any invoices for any other reason.
- 4.1.4** Except as expressly provided on Schedule 1, renewal of promotional or one-time priced subscriptions will be at Host Compliance's applicable list price in effect at the time of the applicable renewal. Unless Host Compliance provide Customer notice of different pricing at least 75 days prior to the applicable renewal term, the per unit pricing during any renewal term will increase by the larger of the 12-Month Consumer Price Index (not seasonally adjusted), as published by the United States Department of Labor, or five (5) percent. Notwithstanding anything to the contrary, any renewal in which the number of monitored short-term rental listings has increased or decreased from the prior term will result in re-pricing at the time of renewal of a new per-unit price based on the then-current number of short term rentals listings in the City.

4.2 Taxes. Customer is responsible for all taxes. Host Compliance will charge tax when required to do so. If Customer is required by law to withhold any taxes, Customer must provide Host Compliance with an official tax receipt or other appropriate documentation.

4.3 Purchase Orders. If Customer requires the use of a purchase order or purchase order number, Customer (i) must provide the purchase number at the time of purchase and (ii) agrees that any terms and conditions on a Customer purchase order will not apply to this Agreement or the Services provided hereunder to the extent any provisions are inconsistent with this Agreement. In the event of a conflict between a purchase order and this Agreement, the terms of this Agreement shall control.

5.0 Term & Termination.

5.1 Term. The initial term of this Agreement shall be one year commencing on the Effective Date, which term can be extended in writing by an amendment to this agreement, signed by both parties. That said, the time period until the earlier of (a) the 6-month anniversary of the Effective Date, or (b) the start date of Customer's systematic or mass outreach activities utilizing the data obtained through the Services (traditional mail, electronic mail, and/or telephone campaigns), or (c) termination by Host Compliance in our sole discretion, shall be considered a trial period ("Trial Period").

5.2 Termination for Convenience. If, for any reason during the Trial Period, Customer is dissatisfied with the Services, Customer may terminate the Subscription and all funds paid under this Agreement will be refunded and future commitments waived.

5.3 Effects of Termination for Convenience. If this Agreement is terminated by Customer in accordance with Section 5.2 (Termination for Convenience): (i) the rights granted by Host Compliance to Customer will cease immediately and Customer will no longer have the right to utilize the data obtained through the use of the Services for systematic or mass outreach activities (including traditional mail, electronic mail, and/or telephone campaigns); and (ii) after a reasonable period of time, Host Compliance may delete any Customer Data relating to Customer's account. The following sections will survive expiration or termination of this Agreement: 2.5 (Third Party Requests), 3.0 (Intellectual Property Rights; Confidentiality), 4.0 (Fees & Payments), 5.2 (Termination for Convenience), 5.3 (Effects of Termination for Convenience), 6.0 (Indemnification), 7.0 (Exclusion of Warranties; Limitation of Liability), and 8.0 (Miscellaneous).

5.4 Termination for Breach: Following the Trial Period, a party may terminate this Agreement for cause upon 45 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period.

5.5 Refund or Payment upon Termination for Breach. If this Agreement is terminated by Customer in accordance with Section 5.4 (Termination for Breach), Host Compliance will refund Customer any prepaid fees covering the remainder of the term of all Subscriptions after the effective date of termination. If this Agreement is terminated by Host Compliance in accordance with Section 5.3, Customer will pay any unpaid fees covering the term until the date of termination. In no event will Customer's termination after the first 6 months relieve Customer of its obligation to pay any fees payable to Host Compliance for the period prior to the effective date of termination.

5.6 Effects of Termination for Breach. If this Agreement is terminated in accordance with Section 5.4 (Termination for Breach): (i) the rights granted by Host Compliance to Customer will cease immediately (except as set forth in this section); (ii) Host Compliance shall provide Customer access to its account so the Customer may export its Customer Data; and (iii) after a reasonable period of time, Host Compliance may delete any Customer Data relating to Customer's account. The following sections will survive expiration or termination of this Agreement: 2.5 (Third Party Requests), 3.0 (Intellectual Property Rights; Confidentiality), 4.0 (Fees & Payments), 5.5 (Refund or Payment upon Termination for Breach), 5.6 (Effects of Termination for Breach), 6.0 (Indemnification), 7.0 (Exclusion of Warranties; Limitation of Liability), and 8.0 (Miscellaneous).



6.0 Indemnification and Insurance.

6.1 By Host Compliance. Host Compliance will indemnify, defend and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorney's fees) arising out of any claim by a third party against Customer to the extent based on an allegations that Host Compliance' technology used to provide the Services to the Customer infringes or misappropriates any copyright, trade secret, patent or trademark right of the third party or any wrongful conduct. In no event will Host Compliance have any obligations or liability under this section arising from: (i) use of any Services in a modified form or in combination with materials not furnished by Host Compliance and (ii) any content, information, or data provided by Customers, End Users, or other third parties.

6.2 By Customer. Customer will indemnify, defend, and hold harmless Host Compliance from and against all liabilities, damages, and costs (including settlement costs and reasonable attorney's fees) arising out of any claim by a third party against Host Compliance regarding: (i) Customer's use of Customer Data; (ii) Customer's use of the Services in violation of this Agreement.

6.3 Possible Infringement. If Host Compliance believes the Services infringe or may be alleged to infringe a third party's Intellectual Property Rights, then Host Compliance may (i) obtain the right for Customer, at Host Compliance' expense, to continue using the Services; (ii) provide a non-infringing functionally equivalent replacement for the Services; or (iii) modify the Services so that they no longer infringe. If Host Compliance does not believe the options described in this section are reasonable then Host Compliance may suspend or terminate this Agreement and/or Customer's use of the affected Services with no further liability or obligation to the Customer other than the obligation to provide the Customer with a pro-rata refund of pre-paid fees for the affected portion of the Services.

6.4 General. The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party will have full control and authority over the defense, except that: (i) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed and (ii) the other party may join in the defense with its own counsel at its own expense. The indemnities above are Host Compliance' and Customer's only remedy under this Agreement for violation by the other party of a third party's Intellectual Property Rights.

6.5 *The requirements as to the types and limits of insurance coverage to be maintained by Host Compliance as required by this Section, and any approval of said insurance by City, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by Host Compliance pursuant to this Agreement, including, without limitation, to the provisions concerning indemnification.*

6.6 *Insurance. The Host Compliance, at the its own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies:*

6.6.1 *General Liability Coverage. The HOST COMPLIANCE shall maintain commercial general liability insurance in an amount of not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. If a*



commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

6.6.2 Professional Liability Coverage. The HOST COMPLIANCE shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from the HOST COMPLIANCE'S operations under this Agreement, whether such operations are by the HOST COMPLIANCE or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than one million dollars (\$1,000,000) on a claims-made annual aggregate basis, or a combined single-limit-per-occurrence basis. When coverage is provided on a "claims made basis," HOST COMPLIANCE shall continue to renew the insurance for a period of three (3) years after this Agreement expires or is terminated. Such insurance will have the same coverage and limits as the policy that was in effect during the term of this Agreement, and will cover HOST COMPLIANCE for all claims made by CUSTOMER arising out of any errors or omissions of HOST COMPLIANCE, or its officers, employees or agents during the time this Agreement was in effect.

6.7 Endorsements. Each general liability and professional liability insurance policy shall be issued by a financially responsible insurance company or companies admitted and authorized to do business in the State of California, or which is approved in writing by City, and shall be endorsed as follows. HOST COMPLIANCE also agrees to require all contractors, and subcontractors to do likewise.

6.7.1 "The CITY, its elected or appointed officers, officials, employees, agents, and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the HOST COMPLIANCE, including materials, parts, or equipment furnished in connection with such work or operations."

6.7.2 This policy shall be considered primary insurance as respects the CITY, its elected or appointed officers, officials, employees, agents, and volunteers. Any insurance maintained by the CITY, including any self-insured retention the CUSTOMER may have shall be considered excess insurance only and shall not contribute with this policy.

6.7.3 This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

6.7.4 The insurer waives all rights of subrogation against the CITY, its elected or appointed officers, officials, employees, or agents.

6.7.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents, or volunteers.



6.7.6 The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the CITY.

6.7.7 HOST COMPLIANCE agrees to provide immediate notice to CUSTOMER of any claim or loss against Contractor arising out of the work performed under this agreement. CUSTOMER assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.

6.7.8 Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the CITY's option, the HOST COMPLIANCE shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

6.7.9 The HOST COMPLIANCE shall provide certificates of insurance with original endorsements to the CUSTOMER as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the CUSTOMER on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the CUSTOMER at all times during the term of this Agreement.

6.7.10 Failure on the part of the HOST COMPLIANCE to procure or maintain required insurance shall constitute a material breach of contract under which the CUSTOMER may terminate this Agreement.

6.7.11 The commercial general policy required by this Agreement shall allow City, as additional insured, to satisfy the self-insured retention ("SIR") and/or deductible of the policy in lieu of the Host Compliance (as the named insured) should Host Compliance fail to pay the SIR or deductible requirements. The amount of the SIR or deductible shall be subject to the approval of the City Attorney and the Finance Director. Host Compliance understands and agrees that satisfaction of this requirement is an express condition precedent to the effectiveness of this Agreement. Failure by Host Compliance as primary insured to pay its SIR or deductible constitutes a material breach of this Agreement. Should Customer pay the SIR or deductible on Host Compliance's behalf upon the Host Compliance's failure or refusal to do so in order to secure defense and indemnification as an additional insured under the policy, Customer may include such amounts as damages in any action against Host Compliance for breach of this Agreement in addition to any other damages incurred by Customer due to the breach.

7.0 Exclusion of Warranties; Limitation of Liability.

7.1 Exclusion of Warranties. Except as explicitly set forth in this Agreement, Host Compliance makes no other representation, warranty or condition, express or implied, and expressly excludes all implied or statutory warranties or conditions of merchantability, merchantable quality, durability or fitness for a particular purpose, and those arising by statute or otherwise in law or from a course of dealing or usage



of trade with respect to the Services. Host Compliance does not make any representations or warranties of any kind to client with respect to any third party software forming part of the Services

7.2 Limitation on Indirect Liability. To the fullest extent permitted by law, except for Host Compliance and Customer's indemnification obligations hereunder, neither Customer nor Host Compliance and its affiliates, suppliers, and distributors will be liable under this Agreement for (i) indirect, special, incidental, consequential, exemplary, or punitive damages, or (ii) loss of use, data, business, revenue, or profits (in each case whether direct or indirect), even if the party knew or should have known that such damages were possible and even if a remedy fails of its essential purpose.

7.3 Limitation on Amount of Liability. To the fullest extent permitted by law, Host Compliance' aggregate liability under this Agreement will not exceed the amount paid by Customer to Host Compliance hereunder during the twelve months prior to the event giving rise to liability, except for the indemnification obligations set forth in Section 6.1.

8.0 Miscellaneous.

8.1 Terms Modification. This Agreement may be modified by written amendment with signatures of all parties to this Agreement. CITY's city manager may execute any such amendment on behalf of CITY.

8.2 Entire Agreement. The Agreement constitutes the entire agreement between Customer and Host Compliance with respect to the subject matter of this Agreement and supersedes and replaces any prior or contemporaneous understandings and agreements, whether written or oral, with respect to the subject matter of this Agreement. If there is a conflict between this Agreement and any other document, the documents will control in the following order: this Agreement, then the purchase order, then the invoice, then the order form.

8.3 Governing Law. This Agreement will in all respects be governed exclusively by and construed in accordance with the laws of the State of California.

8.4 Severability. Unenforceable provisions will be modified to reflect the parties' intention and only to the extent necessary to make them enforceable, and the remaining provisions of the Agreement will remain in full effect.

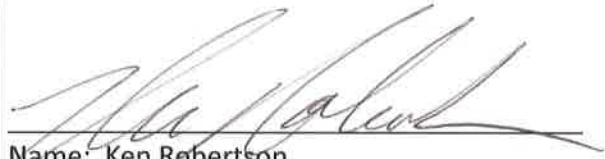

8.5 Waiver or Delay. Any express waiver or failure to exercise promptly any right under the Agreement will not create a continuing waiver or any expectation of non-enforcement.

8.6 Assignment. Customer may not assign or transfer this Agreement or any rights or obligations under this Agreement without the written consent of Host Compliance. Host Compliance may not assign this Agreement without prior written authorization by the Customer's City Manager **which shall not be unreasonably withheld or delayed.** Any other attempt to transfer or assign is void.

8.7 Force Majeure. Except for payment obligations, neither Host Compliance nor Customer will be liable for inadequate performance to the extent caused by a condition that was beyond the party's reasonable control (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action and Internet disturbance).



IN WITNESS WHEREOF Host Compliance and the Customer have executed this Agreement as of the Effective Date.

<p>City of Hermosa Beach by its authorized signatory:</p>  <hr/> <p>Name: Ken Robertson Title: Community Development Director Date: August 1, 2016</p> <p>Billing Contact: Kim Chafin Billing Email: kchafin@hermosabch.org Billing Direct Phone: 310-318-0240</p>	<p>Host Compliance LLC by its authorized signatory:</p>  <hr/> <p>Name: Ulrik Binzer Title: Chief Executive Officer Date: August 1, 2016</p> <p>Account Executive: Ulrik Binzer Account Executive Email: binzer@hostcompliance.com Account Executive Phone: 857-928-0955</p>
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Schedule 1

Scope of Services:

Compliance Monitoring

Ongoing monitoring of the short-term rentals operating in City of Hermosa Beach's jurisdiction for zoning and permit compliance coupled with systematic outreach to non-compliant short-term rental property owners (using City of Hermosa Beach's form letters)

- Ongoing monitoring of STRs for zoning and permit compliance
- Pro-active and systematic outreach to unpermitted and/or illegal short-term rental operators (using jurisdiction's form letters)
- Monthly staff report on jurisdiction's zoning and permit compliance:
- Up-to-date list of STRs operating illegally or without the proper permits
- Full case history for non-compliant listings

Rental Activity Monitoring and Tax Collection Support

Ongoing monitoring of jurisdiction's short-term rental properties for signs of rental activity and/or tax compliance:

- Automatic monitoring of calendar and review activity across 15+ STR websites
- Weekly screenshots of reviews and calendars for each active listing, including property address and property owner address
- Quarterly staff report on jurisdiction's STR tax revenue potential:
- Up-to-date list of short-term rental landlords
- Documentation of information that serves as the foundation for tax revenue potential
- Custom reports and analysis to support tax audits and other STR related investigations

Total Annual Subscription Service Price

\$25,084

Note: Above pricing assumes 454 short-term rental listings in City of Hermosa Beach's jurisdiction.