

Services Agreement

This Service Agreement (the “**Agreement**”) between Silvernest, Inc., a Delaware corporation (“**Silvernest**”) and South Bay Cities Council of Governments (“**SBCCOG**”) is entered into Dec. 31, 2021 (the “**Effective Date**”). Silvernest and SBCCOG are individually referred to as a “**Party**” and collectively referred to as the “**Parties**.”

Silvernest and SBCCOG desire to enter into this Agreement pursuant to the terms and conditions set forth herein.

1. Services. Silvernest shall provide the services to SBCCOG as set forth in Exhibit A attached hereto (the “**Services**”) SBCCOG agrees to (i) promote the Silvernest Homesharing Services only within connection with its Homesharing Services and not for reselling or transferring to a third party.
2. Definitions. The capitalized terms defined below and elsewhere in this Agreement shall have the respective meanings ascribed to them for purposes of this Agreement.
 - a. “**Silvernest Homesharing Services**” means the services provided within the Silvernest comprehensive platform as defined under the Silvernest Terms of Use available at www.silvernest.com.
 - b. “**Partner Services**” means homesharing services promoted.
3. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall expire on Dec. 31, 2022 unless earlier terminated as provided herein. Either Party may terminate this Agreement upon fifteen (15) days’ written notice to the other Party. SBCCOG may terminate this agreement if 10 new host signups are not achieved by March 31, 2022. Any terms of this Agreement that by their nature extend beyond its termination shall remain in effect. In the event that this Agreement is terminated, the Parties shall immediately cease using the collaborative marketing materials and remove any reference to the other party on its website or marketing materials.
4. License Grant. Each Party hereby grants the other Party a non-exclusive, non-transferable license to use and display the other Party’s marketing materials during the Term. Notwithstanding the foregoing, any modification of the other Party’s marketing materials must be approved by the other Party in writing prior to being used. Any modification in the marketing materials of the other Party is assigned back to that Party who shall continue to retain all rights, title, and interest in all its marketing materials. Each Party will comply with the other Party’s trademark usage guidelines.
5. Warranty Disclaimer. SILVERNEST’S SERVICES ARE PROVIDED “AS IS”, WITH ANY AND ALL FAULT AND WITHOUT ANY WARRANTY OF ANY KIND AND EACH PARTY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.
6. Indemnity.
 - a. Silvernest shall indemnify, defend and hold SBCCOG and its directors, officers, employees and agents harmless from and against any and all third-party claims, liability, damages, losses, expenses, penalties, fines, and interest (including reasonable attorney

- fees and litigation expenses) arising from or related to a claim that the Silvernest Homesharing Services infringe the intellectual property rights of such third party.
- b. SBCCOG shall indemnify, defend and hold Silvernest and its respective directors, officers, employees and agents harmless from and against any and all third-party claims, liability, damages, losses, expenses, penalties, fines, and interest (including reasonable attorney fees and litigation expenses) arising from, related to or caused in whole or in part by the grossly negligent act, intentional act, omission, willful misconduct or bad faith of Partner.
 - c. The Party seeking indemnity (“**Indemnified Party**”) shall promptly notify the Party from whom it seeks indemnity (the “**Indemnifying Party**”) promptly in writing of any claim, demand, suit or proceeding or of any act, omission or occurrence for which the Indemnified Party may seek indemnification from the Indemnifying Party. In the case of any claims, demand, suit or proceeding, any notice must be in time to allow the Indemnifying Party to timely file an answer or otherwise defend such claim. The Indemnifying Party shall control the defense of any claim.

7. Limitation of Liability.

- a. EXCEPT FOR THE INDEMNITY PROVISIONS SET FORTH IN SECTION 6 OR A BREACH OF THE CONFIDENTIALITY PROVISIONS SET FORTH IN SECTION 8, IN NO EVENT SHALL EITHER PARTY BE LIABLE ONE TO THE OTHER FOR ANY LOST PROFITS, LOSS OF BUSINESS, LOST SAVINGS OR OTHER CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY BREACH OF THIS SERVICE AGREEMENT EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.
- b. EXCEPT FOR THE INDEMNITY PROVISIONS SET FORTH IN SECTION 6 OR A BREACH OF THE CONFIDENTIALITY PROVISIONS SET FORTH IN SECTION 8, EACH PARTY’S TOTAL LIABILITY TO THE OTHER IN CONTRACT OR IN TORT (INCLUDING, WITHOUT LIMITATION, BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT) SHALL NOT TO EXCEED TWENTY THOUSAND DOLLARS (\$20,000) IN THE AGGREGATE FOR ALL CLAIMS.
- c. NOTWITHSTANDING THE FOREGOING, A PARTY’S AGGREGATE LIABILITY PURSUANT TO THE INDEMNITY PROVISIONS SET FORTH IN SECTION 6 SHALL IN NO EVENT EXCEED TWO HUNDRED THOUSAND DOLLARS (\$200,000) IN THE AGGREGATE FOR ALL CLAIMS.

8. Confidential Information.

- a. During the Term and at all times thereafter, each Party shall not disclose, and shall maintain the confidentiality of, all Confidential Information received from the other Party. “**Confidential Information**” means (i) this Agreement and the terms hereof, (ii) all information marked “confidential,” “proprietary” or with a similar legend by either Party, and (iii) any technical and non-technical information related to a Party’s business and current, future and proposed products and services of each of the Parties, including for example and without limitation, each Party’s respective information concerning research, development, design details and specifications, financial information, procurement requirements, engineering and manufacturing information, customer lists, business forecasts, sales information and marketing plans and any information a Party has received from others that may be made known to the other Party and which a Party is obligated to treat as confidential or proprietary, except that information disclosed by a Party to this Agreement (the “**Discloser**”) will be considered Confidential Information of Discloser by

the other Party (the “**Recipient**”), only if the information is designated as “Confidential” (or with some other similar legend) or identified as confidential at the time of disclosure or any other information that is treated as confidential by the disclosing Party or would reasonably be understood to be confidential, whether or not so marked.

- b. Recipient will not use any Confidential Information except to the extent necessary for the purpose described in this Agreement and Recipient will not disseminate or in any way disclose any Confidential Information to any person, firm, business or governmental agency or department, except as such disclosure is expressly permitted in this Agreement. Furthermore, neither Party may disclose the existence of any negotiations, discussions or consultations in progress between the Parties to any person, firm or business or to any form of public media without the prior written approval of the other Party. Recipient shall treat all of Discloser’s Confidential Information with the same degree of care as Recipient accords to Recipient’s own Confidential Information, but not less than reasonable care. Recipient shall disclose Discloser’s Confidential Information only to those of Recipient’s employees, consultants and contractors who need to know the information to assist Recipient with respect to the Purpose. Recipient certifies that each of its employees, consultants and contractors will have agreed, either as a condition of employment or in order to obtain Discloser’s Confidential Information, to be bound by terms and conditions substantially similar to those terms and conditions applicable to Recipient under this Agreement. Recipient shall immediately give notice to Discloser of any unauthorized use or disclosure of Discloser’s Confidential Information. Recipient shall assist Discloser in remedying the unauthorized use or disclosure of Discloser’s Confidential Information.
- c. Recipient’s obligations shall not apply to any of Discloser’s Confidential Information that Recipient can document: (a) was in the public domain at or subsequent to the time the Confidential Information was communicated to Recipient by Discloser through no fault of Recipient; (b) was rightfully in Recipient’s possession free of any obligation of confidence at or subsequent to the time the Confidential Information was communicated to Recipient by the Discloser; (c) was developed by employees or agents of Recipient independently of and without reference to any of Discloser’s Confidential Information; or (d) was communicated by Discloser to an unaffiliated third party free of any obligation of confidence. A disclosure by Recipient of any of Discloser’s Confidential Information (a) in response to a valid order by a court or other governmental body; (b) as otherwise required by law; or (c) necessary to establish the rights of either party under this Agreement shall not be considered to be a breach of this Agreement by the Recipient; provided, however, that Recipient provides prompt prior written notice thereof to the Discloser to enable Discloser to seek a protective order or otherwise prevent the disclosure.
- d. All of Discloser’s Confidential Information are the property of Discloser and no license or other rights to the Discloser’s Confidential Information is granted or implied hereby. All materials (including, without limitation, documents, drawings, papers, models, apparatus, sketches, designs and lists) furnished by Discloser to Recipient (whether or not they contain or disclose Discloser’s Confidential Information) are the property of the Discloser. Within five (5) days after any request by Discloser, Recipient shall destroy or deliver to Discloser, at Discloser’s option, (a) all Discloser-furnished materials and (b) all materials in Recipient’s possession or control (even if not Discloser-furnished) that contain or disclose any of the Discloser’s Confidential Information. Recipient will provide Discloser a written certification of Recipient’s compliance with Recipient’s obligations under this Section.

9. Miscellaneous.

- a. Waiver. Either Party's failure or delay in enforcing the terms and conditions of the Agreement or in insisting upon strict performance of any obligations shall not be interpreted as a waiver thereof. Waiver of any provision of this Agreement shall only be effective if in writing and shall not be interpreted as a waiver of any subsequent breach or failure under the same or any other provision of this Agreement. No conduct, statement, course of conduct, course of dealing, oral expression, or other action shall be construed as a waiver.
- b. Assignment. Neither Party shall assign its rights or delegate its duties under the Agreement, or otherwise dispose of any right, title, or interest in all or any part of this Agreement without the prior written consent of the other Party except a Party may assign or transfer this Agreement to a successor in interest by way of merger or acquisition of all or substantially all of its assets or equity.
- c. Governing Law. This Agreement shall be governed and interpreted pursuant to the laws of the State of Delaware, without giving effect to conflict of laws principles
- d. Public Announcement. The parties agree that any announcement concerning the subject of this SERVICE AGREEMENT, or any subsequent binding and definitive agreement shall be a mutually agreed joint announcement.
- e. Entire Agreement. This Agreement contains the final and complete agreement between the Parties for performance of the services specified herein and supersedes all prior and contemporaneous conduct, agreements, statements, representations, negotiations, course of conduct, course of dealing, and communications pertaining to those services, whether written or oral. This Agreement may not be altered or amended except by a writing signed by the parties.
- f. Severability. If any term or condition of the Agreement is held to be invalid, void, or otherwise unenforceable by any court of competent jurisdiction, that holding shall in no way affect the validity or enforceability of any other term or condition of the Agreement, unless enforcing the balance of the Agreement would deprive either party of a fundamental benefit of its bargain.

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IN WITNESS WHEREOF, SBCCOG and Silvernest each has caused this Agreement to be duly executed as of the day and year first above written.

Silvernest, Inc.

South Bay Cities Council of Governments

Signature

Signature

Riley Gibson, President
Print Name and Title

Drew Boyles, Board Chair
Print Name and Title

Date

Date

EXHIBIT A

Description of Services:

As part of this Agreement, Silvernest will provide the following Services:

- Silvernest shall permit the use of Silvernest platform for Home Share South Bay program participants.
- Silvernest agrees to offer 12 months of access to Home Share South Bay users free of cost, and when launched, Silvernest Plus subscriptions for all homeowner (host) and housemate (seeker) signups for the contract period.
- Silvernest will provide up to seventy-four (74) background checks at no cost to the host or seekers. Each user shall be required to accept Silvernest's Terms of Use.
- Silvernest will provide a dedicated landing page for Home Share South Bay, hosted by Silvernest, to specifically capture traffic and users of the South Bay program and provide the free membership or background checks to eligible hosts and seekers. Home Share South Bay can promote this URL as part of their services and in all marketing materials.
- Silvernest will provide South Bay data on traffic to the dedicated landing page and high-level data on member activity including number of signups, number of qualified matches, general demographic data and other data as mutually agreed by both Parties and allowed within Silvernest's stated Privacy Policy. Home Share South Bay may only use the data for its own marketing or fundraising purposes. Home Share South Bay may share the data with funders and its leadership but shall not provide the data to any other third party, unless otherwise agreed in writing by Silvernest.
- Silvernest's staff will provide strategic partnership guidance that includes training, development of marketing materials, program management, recurring check-in meetings, and reporting as well as other services mutually agreed by both parties, targeting 42 hours of time.
- Silvernest's marketing team will invest in digital marketing efforts in the Los Angeles area to boost traffic, sign ups, and overall inventory in support of the Home Share South Bay program, at no cost to Home Share South Bay.
- Silvernest's marketing team will continue email nurtures that come from Silvernest to encourage users to sign up with the South Bay program.

As part of this Agreement, Home Share South Bay will:

- Promote the dedicated partner landing page in order achieve the goal of host and seeker signups.
- Promotion of the program/homesharing through local networks and community partners.
- Continue to provide a dedicated point of contact to work with Silvernest to operationalize and execute the program.
- Determine and help Silvernest manage the eligibility requirements and parameters for program participation (i.e. location parameters).

Fees for Services:

- Home Share South Bay will pay Silvernest fees equal to \$9,240 for the Services outlined above. The fees include allocated staff service hours for monthly meetings, reporting, marketing consulting, and ad hoc support as needed up to 42 hours; rolling over 74 background checks; and ongoing digital marketing.
- These fees are payable as follows: 50% (\$4,620) upon execution of the Agreement and 50% (\$4,620) on June 30, 2022. If the Agreement is terminated prior to the expiration of the Term, Silvernest will refund remaining fees prorated to the time between the termination and expiration of the Term. Silvernest will not be responsible to refund any fees if less than 74 background checks are utilized by Home Share South Bay users by December 31, 2022.
- Outside of the Services provided above, expenses associated with the production of marketing materials and campaigns will be assumed by Home Share South Bay. Additionally, unless otherwise agreed in this Agreement, each Party shall be responsible for its own costs and expenses with respect to its obligations under this Agreement. Silvernest will invoice SBCCOG for the fees due hereunder and SBCCOG will pay upon receipt.