



## Host Compliance Services Agreement

THIS SERVICES AGREEMENT (the "Agreement") is entered into as of the December 20, 2017 (the "Effective Date"), between Host Compliance LLC, ("Host Compliance") and Town of Fountain Hills, with an address at 16705 E. Avenue of the Fountains, Fountain Hills, AZ 85268 (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 by written agreement 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 authorized employees ("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 use reasonable efforts to 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. 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.

**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 or post in Host Compliance' online forums without any obligation to Customer.

**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 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 Customer 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 renewal without regard to the prior term's per-unit pricing.

**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 and are null and void.

#### 5.0 Term & Termination.

**5.1 Term.** The initial term of this Agreement shall be one year commencing on the Effective Date, which shall automatically renew for a further period of one year upon each expiry of the then current term, unless



either party provides written notice to the other party of its intention not to renew at least 45 days prior to the end of the then current term. 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 and obligations will be 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 5.4 (Termination for Breach), Customer will pay any unpaid fees covering the remainder of the term of the Agreement. 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 may provide Customer access to its account at then-current fees so the Customer may export its Customer Data; and (iii) after a reasonable period of time and written notice to Customer, 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.

**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 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. 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 Data; (ii) Customer's use of the Services in violation of this Agreement; or (iii) End Users' 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 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.

## 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. Notwithstanding the foregoing, Host Compliance represents and warrants that it has the legal right to use any such 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.

## 8.0 Miscellaneous.

**8.1 Terms Modification.** Host Compliance may wish to revise this Agreement from time to time. If a revision, in Host Compliance' sole discretion, is material, Host Compliance will notify Customer and request that an Amendment to this Agreement be agreed upon and signed. If Customer does not agree to the revised Agreement terms, Customer may terminate the Services within 30 days of receiving notice of the change.

**8.2 Entire Agreement.** The Agreement including the invoice and order form provided by Host Compliance, 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 the documents that make up this Agreement, the documents will control in the following order: this Agreement, then the invoice, then the order form.

**8.3 Governing Law.** This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Agreement shall be proper in the Superior Court of Maricopa County, Arizona and both parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

**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 providing notice to Customer, except Host Compliance may assign this Agreement or any rights or obligations under this Agreement to an affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets without providing notice. 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



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HOST COMPLIANCE, LLC  
Short-term Rental Compliance Monitoring and Associated Services  
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control (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action and Internet disturbance).

**8.7 Procurement Piggybacking.** Host Compliance agrees to reasonably participate in any "piggybacking" programs pertinent to local government.

**8.8 Conflict of Interest.** Pursuant to the provisions of A.R.S. § 38-511, the Customer may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Customer is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect the subject matter of the contract.

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

<p><b>Town of Fountain Hills</b> by its authorized signatory:</p>  <hr/> <p>Name: Grady E. Miller  Title: Town Manager  Date: _____</p> <p>Billing Contact: Craig Rudolph  Billing Email: crudolph@fh.az.gov  Billing Direct Phone: 480-816-5162</p>	<p><b>Host Compliance LLC</b> by its authorized signatory:</p>  <hr/> <p>Name: Ulrik Binzer  Title: Chief Executive Officer  Date: 12/8/2017</p> <p>Account Executive:  Account Executive Email:  Account Executive Phone:</p>
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CB  
12/6/17



## Schedule 1

### Scope of Services:

#### Address Identification

Monthly email-delivered report and live web-delivered dashboard with complete address information and screenshots of all identifiable STRs in Town of Fountain Hills's jurisdiction:

- Up-to-date list of jurisdiction's active STR listings
- High resolution screenshots of all active listings (captured weekly)
- Full address and contact information for all identifiable STRs in jurisdiction
- All available listing and contact information for non-identifiable STRs in jurisdiction

**Total Annual Subscription Service Price**

**\$7,895**

*Note: Above pricing assumes 277 short-term rental listings in Town of Fountain Hills's jurisdiction.*

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