

## HOSTED SERVICES AGREEMENT (HSA)

This is a Hosted Service Agreement (“**Agreement**”) between the Platform provider, URBANISE.COM Limited ABN 70 095 768 086 (“**we**”, “**us**” or “**our**”) and the organisation who uses our Platform to provide services to Building(s)/owner(s)/occupant(s), the details of which are set out in your COMMERCIAL AGREEMENT SCHEDULE 1 (“**you**” or “**your**”). The Agreement defines the rights and responsibilities of each of you and us with respect to the hosting, access, use and support of the Platform.

It is agreed as follows.

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### 1. GENERAL

In this Agreement unless the context otherwise requires:

- (a) “**Agent End User**” means an employee, sub-contractor, supplier or other related party that you have authorised to use the administration features of the Platform;
- (b) “**Customer End User**” means a person or organisation that you have authorised to use the self-service and online store features of the Platform;
- (c) “**Buildings**” means any physical or virtual group (or cross grouping) of residential, commercial, industrial, defence or other structures within the Territory;
- (d) “**Platform**” means the platform specified in your COMMERCIAL AGREEMENT SCHEDULE 1, whether the Platform is hosted by us or by a third-party designated by us;
- (e) “**Territory**” means the territory specified in your COMMERCIAL AGREEMENT SCHEDULE 1 from which you and each Authorised User may access and use the Platform; and
- (f) headings are for ease of reference only and do not affect the meaning of this Agreement; a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; a reference to the word ‘including’ or ‘includes’ is to be construed without limitation to the preceding words; the word “acknowledge” is to be interpreted as “acknowledge and agree”; and a reference to “\$” or “dollar” is to the currency specified at Item 7 of Schedule 1.

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### 2. TERM

The Commencement Date and Term of this agreement is defined in your COMMERCIAL AGREEMENT SCHEDULE 1, in the event that your COMMERCIAL AGREEMENT SCHEDULE 1 does not define a specific Commencement Date and Term, this Agreement commences on the date of you accepting this Agreement either electronically or via paper signature, and will continue on a rolling monthly subscription basis while you continue to pay the Fees (as defined below) for that month (unless terminated earlier in accordance with clause 6).

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### 3. THE PLATFORM

#### 3.1 Access and use by you

Provided you pay to us the required Fees as and when they fall due, we grant you a non-exclusive, non-transferable licence, during the term of this Agreement to:

- (a) access the Platform and use the functionality available on the Platform from within the Territory in conjunction with your management of the Buildings and/or provision of services to persons, companies or Buildings; and
- (b) permit (authorise) an Agent End User or Customer End User (each an “**Authorised User**”) to access and use the Platform to conduct transactions in the Territory.

The Platform (and software made available through the Platform) will only be made available to you (and Authorised Users) as a hosted service.

#### 3.2 Authorised Users

- (a) You may permit an Authorised User to access and use the Platform subject to the terms and conditions of the relevant Platform Terms of Services (“**TOS**”), without amendment, which for (i) Customer End Users is available at <http://www.urbanise.com/customer-user-terms-of-service> ; or (ii) Agent End Users is available

at <http://www.urbanise.com/agent-user-terms-of-service>. Nothing in the TOS operates to limit the rights or obligations of each of you and us under this Agreement.

- (b) You acknowledge that we have no control over what you, any Authorised User or other third party does with or on the Platform, and the transactions that are made using the Platform. We are not a party to any transaction you and/or Authorised User(s) enter into with each other or between themselves using the Platform. Accordingly (and with the exception of liability that cannot be excluded), we accept no liability for any claims or demands by any Authorised User relating to this Agreement, the TOS, the Platform, transactions made using the Platform or the User Data (as that term is defined below).
- (c) Where you permit an Authorised User to access or use the Platform under clause 3.1 above, then you will:
  - (i) ensure that the Authorised User complies with the terms and conditions of the relevant TOS; and
  - (ii) indemnify us against any losses, liabilities, damages or penalties (inclusive of reasonable legal fees) suffered or incurred by us as a result of any: (A) breach of the TOS by an Authorised User (or its employees, contractors, agents or officers); or (B) claim by an Authorised User relating in any way to this Agreement, the TOS, the Platform, the transactions made using the Platform or the User Data.
- (d) You will promptly notify us of any breach of the TOS by an Authorised User that you become aware, and do all that is reasonably necessary (at your cost) to halt any such breach. You will also provide us with reasonable assistance were we elect (in our discretion) to take legal action against an Authorised User or other third party to protect or enforce our rights under this Agreement or the relevant TOS.

### 3.3 User Data

- (a) The Platform may offer features that allow you and Authorised Users to upload data or information (of any kind) to the Platform (“**User Data**”).
- (b) We will use best commercial efforts to retain User Data on the Platform for the term of this Agreement and for a subsequent period of 12 months. We will do so by storing User Content in a RAID disk arrangement and maintaining an hourly, daily and weekly backup regime. We make no other representations, and give no other warranties and have no other obligations, in relation to the retention, recovery, or recoverability of User Data.
- (c) We will provide you with access tools (via the functionality of the Platform) for you to download specific sets of User Data at any time during the term of this Agreement.
- (d) You may request that we provide you a full extract of all User Data in a flat file format for a fee of US\$500 per extract. You may request this after the termination or expiry of this Agreement, provided all outstanding Fees have been paid in full and we still hold a copy of such User Data.
- (e) We will host the User Data from locations specified in your COMMERCIAL AGREEMENT SCHEDULE 1.
- (f) The User Data will otherwise be treated in accordance with the terms of the relevant TOS.

### 3.4 Platform Support Services

- (a) We will provide the support services to you as outlined in the Support Services Agreement (**SSA**) available at <http://www.urbanise.com/support-services-agreement>, using all reasonable efforts to do so in accordance with the service levels set out therein. We may use our related companies or subcontractors to provide the Support Services.
- (b) We are not required to provide any Support Services (or any other services) to an Authorised User or any other third party.
- (c) Where we provide you with a device (being either a sensor for use in relation to the Platform or a smart meter for the measurement of consumption of energy, water or other consumables) (each a “**Device**”), then:
  - (i) we will support that Device to the extent detailed in the SSA. Except as otherwise stated in the SSA, the data supplied by Devices to the Platform may not be complete or up to date due to matters beyond our control. If such data is temporarily unavailable for any reason, we will use all reasonable efforts to later recover any historical stored data from the Device once connectivity is restored. We have no liability in respect of any data that is unable to be recovered (using the functionality incorporated in the Platform) for any reason; and

- (ii) such Device is only rented to you for the term of this Agreement, and while risk of loss of, or damage to the Device is passed to you on delivery, we always retain title to each Device (except where stated otherwise in your COMMERCIAL AGREEMENT SCHEDULE 1).

### 3.5 Intellectual Property in the Platform

- (a) We retain all right, title, copyright, patent, trademark, trade secret and all other proprietary interests to the Platform (and related documentation) and any modifications or derivatives thereof. Your sole rights to the Platform are set out at clause 3.1.
- (b) You agree to comply with the licence terms applicable to the open source components which are embedded in the Platform.
- (c) You may include on each portal to the Platform “Powered by URBANISE” or similar logo (to be supplied by us) provided this includes an embedded link to our website. We may revoke this right at any time on notice to you.

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## 4. FEES AND PAYMENT TERMS

### 4.1 Fees

Our fees for the use of the Platform are set out and calculated in accordance with your COMMERCIAL AGREEMENT SCHEDULE 1 (“Fees”). The Fees specified as being a fixed amount per month per usage unit of the Platform or Device will be due and payable by you at the end of each month, based on your maximum usage of corresponding units during that month. Where a payment schedule is specified, you will pay the applicable instalment of the Fees by the corresponding date specified in the payment schedule, in the event of termination of this agreement all remaining Fees due under this payment schedule shall be immediately due and payable. All other Fees are payable by you upon completion by us of the relevant services or provision of the relevant products. You will make all payments without deduction or set off within thirty (30) days from receipt of our invoice, and also pay to us any applicable VAT, GST, sales tax, and any other applicable taxes assessed on this Agreement, or the transactions the subject of this Agreement, when making such payment.

### 4.2 Overdue amounts

Should you fail to pay the Fees within forty five (45) days of the due date, then we may suspend your (and Authorised Users) rights to access and use the Platform until such time as all overdue Fees are paid in full.

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## 5. PLATFORM AVAILABILITY

### 5.1 Modifications to the Platform

You agree to us modifying the Platform (including its functionality, data formats and other matters) and the Support Services from time to time, so long as any such modifications do not substantially impact upon your ability to continue to use the Platform in the manner contemplated by this Agreement.

### 5.2 Platform suspension

- (a) We may suspend access to and use of the whole or any part of the Platform, where we have a reasonable basis to believe that:
  - (i) there is a detected or suspected denial of service attack or other attack on the Platform (or other event that we determine, in our reasonable discretion, may create a risk to the Platform, or to you, an Authorised User or other third party, if the Platform was not suspended);
  - (ii) you are in breach of this Agreement;
  - (iii) you have failed to pay the Fees within forty-five (45) days of the start of the relevant subscription month;
  - (iv) an Authorised User is in breach of the relevant TOS (although suspension will be limited to that Authorised User only); or
  - (v) access to or use of the Platform is prohibited by law in a relevant jurisdiction, or we otherwise determine that it is necessary or prudent to do so for legal or regulatory reasons,(collectively, “Platform Suspension”).
- (b) We will use reasonable efforts to ensure that the period of suspension is limited to the extent that is required to specifically address such issue or non-compliance and only for such period as the issue or non-compliance persists.

### 5.3 Our Commitments To You

- (a) We warrant that the Platform will be available for your access and use for 99.5% (maximum 3.5 hours outage in each month) of the time during each calendar month. This warranty excludes unavailability due to:
- (i) Platform Suspension;
  - (ii) scheduled maintenance requirements, which we will use reasonable efforts to notify you in advance;
  - (iii) faults or outages in equipment, software or systems provided by you (or provided by a third party on behalf of you); or
  - (iv) your acts or omissions, or that of an Authorised User or third party in breach of this Agreement or the relevant TOS,
- and you acknowledge that we shall have no liability to you, Authorised Users or any other third party for any losses, liabilities or damages arising from any of these events.
- (b) If we fail to meet the warranty in clause 5.3(a) above and you are not in breach of this Agreement, then you will, as your sole and exclusive remedy for a breach of that warranty, be eligible for a credit of 5% of the Fees in respect of the relevant calendar month for each whole hour of Platform unavailability. The maximum total credit for the relevant month, shall not exceed 75% of the Fees for that month. Credits will not be carried forward to future billing periods.
- (c) Except as expressly stated in this clause 5.3 and the SSA, we provide the Platform and the Support Services on an "as is" and "as available" basis. In particular, we disclaim all other warranties and representations of any kind, whether express or implied, with respect to this Agreement, the Platform or the Support Services including, without limitation, that the Platform is error-free or that the Platform will be continuously available, or any implied warranties of merchantability and fitness for a particular purpose, in each case to the extent permitted by law. Our liability in relation to any warranty or condition implied into this Agreement by law which cannot be excluded, is limited to one or more of the following at our option (i) in the case of goods, the replacement or repair of the goods or payment of the cost of having the goods replaced; or (ii) in the case of services, the supply of the services again or payment of the cost of having the services supplied again.

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## 6. TERMINATION

- (a) You may terminate this Agreement for any reason by providing us with written notice, provided you have complied with your obligations under clause 6(c) below.
- (b) We may terminate this Agreement immediately on notice to you where you: (i) breach this Agreement and fail to remedy that breach within 30 days after receiving written notice from us; or (ii) are, or likely to become, insolvent; or (iii) you have failed to pay the Fees within ninety (90) days of the start of the relevant subscription month .
- (c) On expiry or termination of this Agreement you will:
- (i) pay all amounts owed to us until the date of termination or expiry;
  - (ii) pay any remaining amounts under any payment schedule contained within COMMERCIAL AGREEMENT SCHEDULE 1.
  - (iii) you acknowledge that your (and your Authorised Users) rights to access and use the Platform will cease; and
  - (iv) recover and return all Devices to us at your cost or pay to us the lost Device fee in accordance with COMMERCIAL AGREEMENT SCHEDULE 1.
- (d) Termination or expiry of this Agreement will not affect any accrued rights or remedies either party may have.
- (e) Clauses 1, 3.2(c), 3.2(d), 3.5(a), 6(c) and 7 - 9 (and any other provision of this Agreement which by its nature survives termination or expiry) continue in full force and effect, notwithstanding such termination or expiry.

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## 7. LIMITATION OF LIABILITY

### 7.1 Acknowledgement

You are solely responsible for ensuring that the Platform and the requested Support Services: (a) are suitable and adequate for your requirements; and (b) comply with all laws and regulations applicable to you and your business.

## 7.2 Liability

Except for liability arising under or in relation to clauses 3.2(c), 7.4, 7.5, 8 or 9(c) of this Agreement:

- (a) each party shall not be liable for any indirect or consequential loss, lost data or lost profits, or costs of procuring substitute goods, software or services, however arising, even if it has been advised of the possibility of such damages; and
- (b) the liability of each of you and us for damages in relation to this Agreement whether in contract, tort (including without limitation negligence), statute or otherwise, for all claims in the aggregate shall be limited to the Fees actually paid to us in the three (3) months immediately preceding the act or omission most closely linked with the most recent claim (or if such amount cannot be readily ascertained, the liability limit shall be US\$25,000).

## 7.3 High risk activities

You acknowledge that the Platform is not intended for use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Platform could lead directly to death, personal injury, or severe physical or environmental damage ("**High Risk Activities**"). Accordingly, we specifically disclaim any express or implied warranty of fitness for High Risk Activities and will not be liable for any claims, loss and/or damage arising from the use of the Platform in such circumstances.

## 7.4 Indemnity by you

You indemnify us against any amount we are finally ordered to pay to a third party by a Court of competent jurisdiction (or settlement agreed by you) which arises from a claim alleging that our use of the any material or information provided by you or an Authorised User to us under this Agreement or the relevant TOS (inclusive of the User Data) infringes the intellectual property rights or other rights of that third party.

## 7.5 Indemnity by us

We indemnify you against any amount you are finally ordered to pay to a third party by a Court of competent jurisdiction (or settlement agreed by us) which arises from a claim alleging that your use of the Platform in accordance with this Agreement infringes the intellectual property rights or other rights of that third party in the Territory (although always excluding (i) any intellectual property rights in any open source components embedded in the Platform; and (ii) patent rights).

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## 8. NON-DISCLOSURE OBLIGATION

### 8.1 Confidential Information

Both you and us must keep confidential, all information of or relating to the other party, or its products (which in our case includes the Platform), methods, processes, techniques, systems, customers and business affairs, which becomes available to the first party or its personnel (the "**Confidential Information**"). Confidential Information: (a) of us, includes the Platform and related documentation (and any methods, processes, systems, formulae, formats or ideas included / described in, or arising from, it) and terms and conditions of this Agreement (inclusive of the Fees); (b) excludes information which is or becomes readily available in the public domain without breach of this Agreement or an obligation of confidence.

### 8.2 Confidentiality

Each party must keep secret and may only use Confidential Information of the other solely for its internal business purposes connected with the purpose of this Agreement and (except as otherwise required by law) will protect the Confidential Information of the other from disclosure not authorised by the other.

### 8.3 Return of materials

The receiving party must on demand by the disclosing party return (and must cause recipient's personnel to return) to disclosing party all copies (including partial copies) of the disclosing party's Confidential Information, except that the recipient may retain, on a confidential basis, one copy of discloser's Confidential Information for record keeping and quality assurance purposes.

### 8.4 Public announcements

Neither party may make statements to the media, or public statements generally, relating to the other party or to such other party's Confidential Information. However, either party may make such statements about the general nature of the commercial relationship between the parties.

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**9. GENERAL**

- (a) **(Notices)** All notices hereunder shall be delivered to the other party identified in Schedule 1 either personally, via certified mail, facsimile or overnight courier. If delivered personally, notice shall be deemed effective when delivered; if delivered via facsimile, notice shall be deemed effective upon electronic confirmation; and if delivered via certified mail or overnight courier, notice shall be deemed effective upon confirmation of delivery.
- (b) **(No Agency)** Nothing in this Agreement will deem you, or any person engaged by you, as our employee, servant or agent.
- (c) **(Export control)** You will comply with all laws and restrictions and regulations of any relevant government or regulatory body in the access to and use of the Platform.
- (d) **(Governing law)** The governing law and venue for resolution of disputes are as specified in your COMMERCIAL AGREEMENT SCHEDULE 1.
- (e) **(Entire agreement)** This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it. This Agreement may be amended only by a written document executed by a duly authorised representative of each of the parties.
- (f) **(Force majeure)** No party is liable for any failure or delay in performing its obligations under this Agreement to the extent due to anything beyond that party's reasonable control, including faults in, or the non-availability power and communications infrastructure necessary for you or an Authorised User to access or use the Platform. This clause does not apply to any obligation of you to pay the Fees.
- (g) **(Severance and waiver)** If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision. The failure by a party to exercise any right under this Agreement shall not operate as a waiver of such party's right to exercise such right or any other right in the future.

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