

RESOLUTION NO. 29768

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT TO ENTER INTO AN OPTION TO RENEW AN AGREEMENT WITH HOST COMPLIANCE, LLC, IN SUBSTANTIALLY THE FORM ATTACHED, FOR THE PROVISION OF HOSTED SOFTWARE AND SERVICES TO SUPPLY SHORT-TERM VACATION RENTAL ADMINISTRATION AND COMPLIANCE FOR ONE (1) ADDITIONAL YEAR, WITH THE OPTION TO RENEW FOR UP TO THREE (3) ADDITIONAL ONE (1) YEAR RENEWAL TERMS, FOR A TOTAL OF NO MORE THAN FOUR (4) YEARS, FOR AN AMOUNT NOT TO EXCEED FORTY THOUSAND DOLLARS (\$40,000.00).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that it is hereby authorizing the Administrator for the Department of Economic and Community Development to enter into an option to renew an agreement with Host Compliance, LLC, in substantially the form attached, for the provision of hosted software and services to supply Short-Term Vacation Rental Administration and Compliance for one (1) additional year, with the option to renew for up to three (3) additional one (1) year renewal terms, for a total of no more than four (4) years, for an amount not to exceed \$40,000.00.

ADOPTED: January 15, 2019

/mem



Host Compliance Services Agreement

THIS SERVICES AGREEMENT (the "**Agreement**") by and between Host Compliance LLC, ("**Host Compliance**"), a limited liability company registered in the state of California, and City of Chattanooga, a Tennessee municipal corporation, with an address at 101 East 11th Street, Suite G13 Chattanooga, TN 37402 (the "**City**" or "**Customer**") is entered into as of the date signed by the City of Chattanooga (the "**Effective Date**"). 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 service subscriptions 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 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. Customer shall mean the City of Chattanooga and its official, administrators and staff.
- 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 Data Security.** Host Compliance's software as a service solutions are built on top of Amazon Web Services (AWS). AWS is a secure, durable technology platform with industry-recognized certifications and audits: PCI DSS Level 1, ISO 27001, FISMA Moderate, FedRAMP, HIPAA, and SOC 1 (formerly referred to as SAS 70 and/or SSAE 16) and SOC 2 audit reports. Host Compliance affirms that all the datacenters used by Host Compliance have multiple layers of operational and physical security to ensure the integrity and safety of our data.
- 1.5 PCI DSS compliance** – Host Compliance acknowledges that it and its 3rd party transaction processor is responsible for the security of cardholder data possessed by them. Host Compliance further acknowledges that it will ensure that its 3rd party transaction processor maintains all applicable Payment Card Industry (PCI) Data Security Standards and any and all applicable local, state and federal regulations applicable to the handling, processing and storage of payment card data. Host Compliance will ensure that its 3rd party transaction processor will submit to the Customer on an annual basis a PCI DSS Attestation of Compliance and/or Report of Compliance promptly upon Customer's reasonable request.



1.6 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's 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 by Customer's employees. Customer will promptly notify Host Compliance of any unauthorized use of or access to the Services.

2.4 Restricted Uses. Customer will 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 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 user 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, including any and all Host Compliance code. "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. Notwithstanding, the Customer shall at all times remain in compliance with relevant public records disclosure requirements in local, state or federal law.
- 3.4 Data Use.** Host Compliance may not use Customer Data for any purpose other than the administration of Services defined in this Agreement.

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 it may choose to delay the implementation of the Services, this is not a valid reason for withholding payment on any invoices. In no event shall the Customer be invoiced prior to City acceptance that the system is fully implemented and live.
- 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. Customer shall provide Host Compliance appropriate proof of tax exempt status.

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 expiration of the then current term for up to four one year renewal terms for a total of no more than five years inclusive of the initial terms and any and all voluntary renewals. Said renewals shall be automatic 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), shall be considered a trial period ("Trial Period"). During said Trial Period, the Customer may cancel this Agreement for any reason and obtain a full refund of any and all funds paid to Host Compliance.

5.2 Termination for Convenience. In the event of termination for convenience, (i) the rights granted by Host Compliance to Customer will cease immediately and Customer will no longer have the right to access the data through the use of the Services and (ii) after a reasonable period of time, but no earlier than ninety (90) days after notice of termination, 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), 6.0 (Indemnification), 7.0 (Exclusion of Warranties; Limitation of Liability), and 8.0 (Miscellaneous).

5.3 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.

5.4 Refund or Payment upon Termination for Breach. If this Agreement is terminated by Customer in accordance with Section 5.3 (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 (Termination for Breach), Customer will pay any unpaid fees covering the remainder of the current 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.

5.5 Effects of Termination for Breach. If this Agreement is terminated in accordance with Section 5.3 (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 so the Customer may export its Customer Data; and (iii) after a reasonable period of time, but in no event earlier than ninety (90) days, 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), 5.4 (Refund or Payment upon Termination for Breach), 5.5 (Effects of Termination for Breach), 6.0 (Indemnification), 7.0 (Exclusion of Warranties; Limitation of Liability), and 8.0 (Miscellaneous).

6.0 Indemnification. v

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's 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 **By Customer. Subject to the limits of the Tennessee Governmental Tort Liability Act**, Customer will indemnify and hold harmless Host Compliance from and against all liabilities, damages, and costs (including settlement costs and reasonable attorney's fees), for which Customer is found negligent, arising out of any claim by a third party against Host Compliance regarding Customer's use of the Services in violation of this Agreement.

6.2 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's 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.

6.3 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.

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, 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. **Limitation on Amount of Liability.** To the fullest extent permitted by law, Host Compliance's 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. Any revisions to this Agreement must be in writing and signed by both parties to this Agreement. If Customer does not agree to the revised Agreement terms, Customer may terminate the Services within 30 days of receiving notice of the change. Termination due to modification of the terms by Host Compliance shall not be considered termination for cause, and Customer shall be entitled to a prorated refund of fees paid to Host Compliance for any outstanding term.

8.2 Entire Agreement. This Agreement, City Purchase Order, the City Purchase Order Standard Terms and Conditions (attached hereto as Exhibit 1 and incorporated herein by reference), and any agreed upon addendum thereto constitute 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: the City Purchase Order Standard Terms and Conditions, City Purchase Order, this Agreement, and any subsequent addendum thereto.

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 Tennessee. . Both Host Compliance and Customer acknowledge their responsibility to provide and/or utilize the software and services in compliance with all applicable local, state and federal laws.





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- 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 control (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action and Internet disturbance).
- 8.8 Procurement Piggybacking.** Host Compliance agrees to reasonably participate in any "piggybacking" programs pertinent to local government.
- 8.9 Maintenance and Support.** Host Compliance provides free unlimited technical support and training via email, phone and video conference as part of its subscription services. Technical support is provided Monday through Friday between 8AM PT and 5PM PT.
- 8.10 Availability.** Provider will use commercially reasonable efforts to make its short-term rental compliance monitoring and enforcement software-as-a-service solution available with an Uptime Percentage of at least 99.9%. Provider will notify the City's Systems Administrators and designated backups of any system outage, and take steps to remedy any issues to make the system accessible as quickly as possible. In the event of a scheduled outage, the Provider will notify the City's Systems Administrators and designated backups at least two weeks prior to the outage. Notices will be sent via e-mail. During the system outage, a notification page will be displayed stating the system is undergoing maintenance and also stating the scheduled outages times.
- 8.11 Price Warranty.** Host Compliance warrants that the prices for goods and services sold to the Customer are not less favorable than those currently extended to any other customer for the same or similar goods or services in similar quantities as determined after factoring in the scale, scope and complexity of Customer's short-term rental market and the Customer's specific information technology and other requirements.
- 8.12 Communications.** Send notice and communications to the following parties:



Customer: City of Chattanooga, Economic and Community Development, Attn: Deputy Administrator, 101 East 11th Street, 2nd Floor, Chattanooga, TN 37402. rbeeland@chattanooga.gov. Host Compliance: Ulrik Binzer, Host Compliance, 735 Market Street, Floor 4, San Francisco, CA 94103, binzer@hostcompliance.com

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

<p>City of Chattanooga by its authorized signatory:</p>  <hr/> <p>Name: Donna C. Williams Title: Administrator, Economic and Community Development Date: 1.2.18 Billing Contact: Billing Email: Billing Direct Phone:</p>	<p>Host Compliance LLC by its authorized signatory:</p>  <hr/> <p>Name: Ulrik Binzer Title: Chief Executive Officer Date: 1/3/2018 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:

Trend Monitoring

Monthly email-delivered report and live web-delivered dashboard with aggregate statistics on the short-term rental activity in City of Chattanooga's jurisdiction:

- Active monitoring of jurisdiction's short-term rental listings across 24+ STR websites
- Monthly analysis of jurisdiction's STR activity scale, scope and trends

Mobile Enabled Web Based Registration/Permitting Forms

The development and hosting of an electronic web-based short-term rental registration and permitting forms. The capabilities of the forms include:

- 24/7 availability
- Mobile adaptive design
- The ability to validate inputs whenever possible as to minimize data-entry errors
- Electronic signature capabilities
- Electronic credit, debit card and electronic check payment capabilities
- Ability to collect supporting documents (if required)
- SSL encryption
- Data available through app.hostcompliance.com
- Data downloadable into csv format via app.hostcompliance.com

Address Identification

Monthly email-delivered report and live web-delivered dashboard with complete address information and screenshots of all identifiable STRs in City of Chattanooga'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

Compliance Monitoring



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Ongoing monitoring of the short-term rentals operating in City of Chattanooga's jurisdiction for zoning and permit compliance coupled with systematic outreach to non-compliant short-term rental property owners (using City of Chattanooga'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 review activity across 15+ STR websites
- Weekly screenshots of reviews and calendars for each active listing
- Quarterly pro-active, systematic and data-informed outreach to short-term rental operators regarding their tax remittance obligations (using jurisdiction's form letters)
- Quarterly staff report on jurisdiction's STR tax compliance:
- Up-to-date list of short-term rental landlords suspected of under-reporting taxes
- Documentation of information that serves as the foundation for the suspicion of tax under-reporting
- Custom reports and analysis to support tax audits and other STR related investigations

Note: Detailed rental activity monitoring requires 6 months of data accumulation to be most effective.

24/7 Short-term Rental Hotline

24/7 staffed telephone and email hotline for neighbors to report non-emergency problems related to STR properties:

- Incidents can be reported by phone or email
- Full documentation of all reported incidents
- Digital recordings and written transcripts of all calls
- Ability for neighbors to include photos, video footage and sound recordings to document complaints
- Real-time outreach to owners of problem properties (whenever owner's contact info is known)
- Weekly staff reports containing:
 - The # and types of reported incidents
 - List of properties for which incidents have been reported
- Custom reports and analysis of hotline related activities

Project Schedule



HOST COMPLIANCE

Host Compliance shall coordinate a kick-off meeting within one week after contract signing. Host Compliance will work directly with Customer's designated project manager or project coordinator (Land Development Office) to obtain certain property information. Host Compliance agrees to provide the necessary implementation, testing and training necessary to ensure the system is live and ready for use within four (4) weeks from the date of contract signing.

Total Annual Subscription Service Price**\$33,174**

The total annual subscription service price is based on an estimated 647 short-term rental listings in the City of Chattanooga's jurisdiction. In no event shall an increase in rental listing during the term of this Agreement result in an increase in pricing.