



**HOUSEANDLAND.COM.AU PTY LTD**

**TERMS & CONDITIONS**

**'HAPI' INTELLECTUAL PROPERTY LICENSE**



HOUSEANDLAND.COM.AU PTY LTD

Registered Address: Level 1, 183 Melbourne Street, North Adelaide 5006, South Australia

Office Address: Level 4, 468 St Kilda Road, Melbourne, 3004, Victoria

## GENERAL TERMS AND CONDITIONS

### 1. DEFINITIONS

In these Terms and Conditions:

**Activation Date** is the date the contract is executed by both parties and the customer is provided access to the HAPI Console

**“Agreement”** means the total agreement between you and us (of which these General Terms and Conditions form a part of) as otherwise defined in clause 2.1;

**“API”** means an ‘Application Programming Interface’ otherwise general described as a set of subroutine functions, protocols and procedures that allow the creation of applications or ‘widgets’ which access the features or data of an operating system, application, or other service (which may or may not be affiliated with, or controlled by, us);

**Customer Platform** is identified in the Agreement as the platform in which the HAPI License will be used. For example, the Customer’s website or mobile application.

**Client Admin** is the administration platform for House and Land’s website and houses secure accounts with the Customer’s listings

**“Developer Organisation”** means a builder, property developer, retirement community operator, project or property marketer, media agency or real estate agent, who is authorised to sell the Developer Listings.

**“Development(s)”** means any of the following:

- (a) a collection of individual blocks of land forming part of a residential land release project;
- (b) a new multi-dwelling apartment project (not individual apartments); or
- (c) a retirement, lifestyle or 55+ lifestyle village or aged care facility project for properties.

**Fees Agreement** means the agreement between the parties as to fees as expressed in the agreement schedule

**“Further Term”** has the meaning given in clause 3 of these General Terms and Conditions.

**“General Terms and Conditions”** means these terms and conditions which form part of this Agreement;

**“HAPI”** means the houseandland.com.au Pty Ltd/our API developed by us, licenced to you, managed by us, operated by us (from time to time) and utilised by you on the terms of these Terms and Conditions and pursuant to the Specific Terms of Use – HAPI expressed in Schedule 1 to these General Terms and Conditions;

**HAPI Network** – the House and Land database required to distribute matched listings to platforms licensing the HAPI and include output onto the House and Land Platform.

**“House and Land Platform”** means the houseandland.com.au desktop website, mobile website and mobile applications (including mobile phone, tablet and wearable applications) and related systems tablet and apps and any other website that we operate and to which we allow you to upload your Listings;

**“Initial Term”** has the meaning given in the Agreement Terms as well as clause 3 of these General Terms and Conditions

**Knockdown Rebuild** is a listing with a ready-built house that the Customer deems worthy of a Knockdown and Rebuild opportunity for the consumer and the consumer can therefore match house designs to fix the block on the listing

**“License”** means your licence selected and granted pursuant to this Agreement

**“Listings”** means any listings on the Customer Platforms or House and Land Platforms that advertise real estate property or Developments and include listings created by using the Developer Subscriptions within the House and Land Client Admin

**Matching Button** is the ‘Match with House’ button that appears on the Customer Listings via the HAPI License product selected in the Agreement.

**Member(s)** means, contractually, a member of the Customer authorised to use the Customer Platform for its intended purposes

**“Privacy Policy”** means the privacy policy adopted by us from time to time.

**“Service”** may include any of the following or a combination thereof:

- (a) a process that will facilitate you uploading Listings, details and images to the Client Admin;

(b) having your Listings featured on our platform and the HAPI Network;

(c) phone support; and

(d) any associated or ancillary service we agree in writing to provide to you.

**“Term”** means any Initial Term or Further Term described and defined in the Agreement Terms and clause 3 of these General Terms and Conditions

**“We/our/us”** means Houseandland.com.au Pty Ltd (ACN 141 724 389).

**“Website”** means the websites that form part of the Platform operated by us.

**“Website Terms of Use”** means the website terms of use for the Platform adopted by us from time to time.

**“You/your/the client”** means you, our customer.

## 2. YOUR AGREEMENT WITH US

2.1 Your Agreement with us (Agreement) consists of:

(a) these General Terms and Conditions (including the Schedule(s) to these or any agreed Addendum(s) to these Terms and Conditions); and

(b) any physical document or electronic interface that we make available to you, which you sign or otherwise indicate your agreement to and which identifies your license or product purchase

(c) the terms and conditions of any credit application accepted from you.

2.2 This Agreement is the entire agreement between us about its subject matter and supersedes all prior agreements and undertakings between us.

## 3. TERM (INITIAL AND FURTHER TERMS)

3.1 The Term of this Agreement is the initial term set out in the Agreement Terms of this document. For example, if a 24-month term is selected, the Initial Term is a term of 24-months from the Activation Date. All terms under this agreement are subject to termination provisions as expressed in this Agreement.

3.2 For the avoidance of doubt, those terms referred to in clause 3.1 are expressly taken to also be reflected within these General Terms and Conditions.

3.3 Following expiry of the Initial Term, your License will, subject to your rights below, continue for further periods of the same period as the Initial Term (Further

Terms) until terminated in accordance with this Agreement. If you do not wish for your License to continue for a Further Term, then you must, at least 30 days before the expiration of the Initial Term or the then current Further Term, provide us with a clear written notice that you do not wish for your subscription to continue beyond the Initial Term or the then current Further Term.

## 4. YOUR WARRANTIES AND REPRESENTATIONS

You represent and warrant to us that at all times during the Term of this Agreement:

(a) you hold all required licenses or accreditation to sell or lease all properties or Developments that you list using the Service; and

(b) you have authority to sell or lease all properties or Developments that you list using the Service and have the proper authorities in place required by State or Territory regulations; and

(c) you own, or are licenced to use, all intellectual property associated with the Customer Platform; and

(d) you will comply with all of your obligations set out in clause 6

## 5. YOUR ACKNOWLEDGMENTS

You acknowledge and agree that at all times during the Term of the Agreement:

(a) in consideration for us granting you a right to upload Listings to the HAPI Network and the other services we provide (including, access to the HAPI for use by you), you grant us an irrevocable, perpetual, world-wide, royalty free licence to commercialise, copy, licence to other persons, use and adapt for any purpose related to our business any content or material you provide to us during the Term, and this licence survives termination of this Agreement by you or us;

(b) we may, at our discretion, remove or amend some or all of your listings if you are, in our reasonable opinion, in breach of your obligations under clause 6(g) below;

(c) you are solely responsible for the content of your listings and any errors or omissions in your listings – our role is one of publisher;

(d) we may vary this Agreement or any of its constituent documents provided that if the variation would result in a material change to either party's rights or obligations and, for that reason, may cause you material detriment, we will give you at least 30 days' written notice via email before the variation is to take effect and you may terminate this Agreement during this period if you consider the variation will cause you

material detriment. For variations that do not result in a material change to either party's rights or obligations or would not cause you material detriment, we will give you at least 30 days' written notice before the variation is to take effect and you may not terminate this Agreement during this period under this clause 5(d);

(e) this Agreement consists of the documents referred to in clause 2 above, as varied from time to time in accordance with clause 5(d) above;

(f) all features of our license and products are subject to change, development and discontinuation and, as such, we may vary or discontinue any feature of a License or product, provided that if the variation or discontinuation would result in a material change to your rights and, for that reason, may cause you material detriment, we will give you at least 30 days' written notice via email before the variation or discontinuation is to take effect and you may terminate this Agreement during this period if you consider the change will cause you material detriment. For variations or discontinuations that do not result in a material change to your rights or would not cause you material detriment, we will give you at least 30 days' written notice before the variation or discontinuation is to take effect and you may not terminate during this period under this clause 5(f);

(g) we will use our best endeavours to provide you with continuous and fault-free operation of the HAPI License, website and the other services we provide to, however we cannot guarantee this and technological failures or delays may prevent us from doing so;

(h) where you have provided us with your contact details or your employees have provided us with their contact details (verbally or in writing, including by the provision of a business card to our employees), we may contact you and your employees from time to time in relation to products and services offered by us or our business partners and you authorise us:

(i) to contact you or your employees via phone, email, text message, push notifications and other electronic media, unless you explicitly request us not to contact you via these media; and

(ii) to contact you or your employees via any of these methods without including an unsubscribe facility, to the extent permitted by law.

## 6. YOUR OBLIGATIONS

Your obligations to us are as follows:

(a) you will not allow anyone else to use your License or access to Client Admin to list on the HAPI Network including, but not limited to:

- a person working in another business; or
- any individual that is not using your License in the course of their employment for your business;

(b) if you are, in our reasonable opinion, in breach of clause 6(g) below, you will promptly comply with any direction we give to you in relation to your relevant listing(s) including any direction to delete, amend or update any relevant listing(s);

(c) where you provide us with personal information of an individual you must inform that individual that their personal information will be used and disclosed by us in accordance with our Privacy Policy;

(d) you will comply with our Privacy Policy available at <http://www.houseandland.com.au/privacy-policy/> and Website Terms of Use available at <http://www.houseandland.com.au/privacy-policy/terms-conditions/> (as varied from time to time) and the Specific Terms of Use – HAPI in Schedule 1

(e) you will only upload listings to the HAPI Network yourself or via an authorised third party who has been provided with and agreed to each of the documents comprising part of this Agreement (subject always to clause 6 (a) above);

(f) where you authorise or request us (in writing or verbally) to upload a listing on your behalf or create a listing using material from your website or material that you or your agency have provided to us or directed us to use, this listing and the material comprising it will be considered a Developer Listing and subject to the terms of this Agreement;

(g) you will ensure that any statement you make to us or any content or material supplied by you (including content uploaded to the HAPI Network or House and Land Platform):

- is not unlawful;
- is not uploaded for an improper purpose;
- is not misleading or deceptive or likely to mislead or deceive (including for the reason that the branding on a listing would, or would be likely to, mislead or deceive consumers about the Developer Organisation, Office or individual agent that was responsible for selling the relevant property);
- does not include information that is defamatory, fraudulent, in breach of copyright or would otherwise expose us to any liability, legal proceedings or other sanction; and
- does not otherwise breach any acceptable use policy adopted by us from time to time.

(h) you will comply with all applicable laws, including without limitation, the Competition and Consumer Act 2010 (including Australian Consumer Law), local fair trading legislation, real estate agent legislation and regulations (including rules governing the disclosure, retention and payment of any rebates or benefits) and any other applicable advertising standards and regulations including the Privacy Act 1988 and regulations thereunder;

(i) you will comply with any guidelines and codes issued by your local and national body for your type of organisation;

(j) you will ensure that your username and password for accessing any service supplied by us are kept secure at all times and are only disclosed to persons employed by you or engaged to provide services to you and who are authorised to incur charges on your behalf. However you are responsible for any use of any service supplied by us using your username and password by any person (whether authorised or otherwise) and, without limitation, you must pay any charges incurred as a result of that use;

(k) you will ensure that you and all employees of your Office will treat our employees with courtesy at all times and not threaten, harass, abuse, assault, use offensive language towards, defame or repeatedly and unnecessarily contact our employees, contractors or agents or otherwise cause them distress or discomfort;

(l) you undertake that you will only collect, use, disclose and store personal information obtained through the use of the HAPI License, HAPI Network and House and Land Platform including through leads generated by users submitting enquiries for the sole purpose of contacting the person enquiring in relation to the specific property they have enquired about, unless advised otherwise by us;

(m) unless we waive this requirement, you must have one License per Office and per Customer Platform and;

(n) if you do choose to provide us with an individual's personal information (as defined in the Privacy Act 1988 (Cth)), you warrant and represent to us that:

(i) before providing the details, you have received consent from the individual to disclose their details to third party advertisers and that those third party advertisers may contact them regarding the marketing of their property; and

(ii) you have not breached any regulatory or contractual obligations in providing the details; and

(o) You will use your best endeavours to maintain active listings on the HAPI Network and update listings in a

timely and accurate manner in connection with your use of our services.

## **7. TERMINATION OR SUSPENSION BY US**

7.1 Without limiting our other rights, we may immediately terminate this Agreement or suspend or temporarily remove any of your listings if:

(a) you fail to pay any fees or charges due to us within 30 days after the due date;

(b) any of your warranties or representations in clause 4 are incorrect;

(c) you are in material breach of your obligations under this Agreement which includes the Specific Terms of Use – HAPI in Schedule 1 (and, for these purposes, any breach of any obligation under clause 6 above will be regarded as material);

(d) you are in breach of this Agreement (whether or not the breach is material) and fail to rectify the breach within 7 days of us giving you notice of the breach and requiring that it be remedied;

(f) you enter into bankruptcy, liquidation, provisional liquidation, administration, receivership, receivership and management, a composition of arrangement with your creditors, or appoint a receiver, manager or controller over all or any part of your assets, or are protected from creditors under any statute, or become or are deemed to become insolvent; or

(h) you die, or if you are in a partnership, are dissolved or an application to dissolve is filed, or if you are a company, are wound up or an application for winding up is filed.

7.2 In the event that we exercise our right to suspend or temporarily remove your listings pursuant to clause 7.1 above, you remain liable for all subscription and product fees until the termination or expiration of this Agreement

## **8. TERMINATION BY YOU**

8.1 In addition to any rights of termination you may have under another clause of this Agreement, you may immediately terminate this Agreement if:

(a) we are in material breach of any of our obligations under this Agreement;

(b) we are in breach of any of our obligations under this Agreement (whether or not the breach is material) and fail to rectify the breach within 7 days of you giving us notice of the breach and requiring that it be remedied;

(c) we enter into bankruptcy, liquidation, provisional liquidation, administration, receivership, receivership

and management, a composition of arrangement with our creditors, or appoint a receiver, manager or controller over all or any part of your assets, or are protected from creditors under any statute, or become or are deemed to become insolvent;

(d) we are wound up or an application for winding up is filed; or

(e) we exercise our right to suspend or temporarily remove your listings under clause 7.1 for a period of 30 days or more.

## 9. EFFECT OF TERMINATION OR SUSPENSION

9.1 Termination of this Agreement or suspension or temporary removal of listings pursuant to clause 7 does not:

(a) relieve you of your liability to pay fees up to the effective time of termination and, for the avoidance of doubt, invoices will still be issued and payable for periods of suspension and during notice periods leading to termination;

(b) relieve either party of its accrued obligations and liabilities pursuant to this Agreement which may be enforced before or after termination; or

(c) waive any accrued rights in respect of any breach of this Agreement by either party.

9.2 We may, at our option decide, at our sole discretion, not to enter into a new agreement with you if you have previously terminated an Agreement or contract of any type with us.

9.3 The sums payable by you on termination shall be a debt due to us payable within 30 days of notice of termination.

## 10. FEES AND BILLING

10.1 The initial fees for your license and products are specified in The Agreement. Fees are payable from the date specified in the Agreement. License fees, and pay per listing fees are payable monthly in advance. Fees for pay per listing products will be notified to you at the time of purchase.

10.2 We reserve the right to change the fees for any subscription or product at any time. You will be notified 30 days in advance of any changes to fees and may terminate prior to these changes taking effect if you consider these will cause you a material detriment.

10.3 Current and amended fees will be made available to you through a channel notified to you for the applicable product, such as our Platform, these terms and conditions, price look-up tools or marketing materials. It is your responsibility to quote up-to-date

prices and the fees apply regardless of your ability to recoup the fees from the vendor.

10.4 If we incur a third party cost to process a card payment or other transaction, we may charge a reasonable transaction fee.

10.5 The initial month's fees may be billed in advance or in arrears to fall within our regular billing cycle. Fees for subsequent months are payable in accordance with the invoice we submit to you.

10.6 At our discretion, we may send invoices to you by email or such other electronic method as we notify to you. Upon request you will advise us an email address to which we may send your invoices. It is your responsibility to ensure that email address is accurate, is up-to-date, is functioning properly and is regularly monitored by an authorised person on your behalf. It is also your responsibility to advise us of any changes to the email address to which invoices should be sent. If an email address notified by you ceases to function properly or otherwise should be amended, you will promptly provide an alternate email address for the purpose of receiving invoices. Invoices are deemed to be received by you on the day immediately following the date shown by our email system as the sent date. Any failure to receive an invoice does not relieve you of liability for payment of fees by the due date shown on the invoice.

10.7 You will pay all taxes, duties and other government charges payable in connection with this Agreement whether applying as at the date of this Agreement or in the future including, without limitation, any applicable goods and services tax (GST), other value added tax, sales tax, stamp duty and turnover tax, but excluding taxes, duties and government charges based on our income.

10.8 Fees for licenses are determined on the basis of the physical location of the Office holding the license, not the billing address listed for the Office.

## 11. CREDIT PROVISIONS

11.1 You acknowledge and agree that we may at any time:

(a) obtain from a credit reporting agency, a credit report containing personal credit information about you or your directors and officers, in relation to any commercial credit we provide or consider providing to you;

(b) receive from a credit reporting agency, a credit report containing personal information about you or

your directors and officers in relation to overdue payments;

(c) give information to, or seek information from, any credit provider named in a credit report issued by a credit reporting agency, and any existing, previous or future supplier of goods to your or any related party of you and such information may include details of your (or your related parties') credit arrangements, credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other; and

(d) in circumstances where we request a director's guarantee to secure the repayment of any amount you owe to us from time to time and this is not provided to us, charge the interest you have now or in the future either solely or jointly in all present and after-acquired personal property.

11.2 You acknowledge that the security interest granted to us pursuant to clause 11.1(d) is capable of being registered pursuant to the Personal Property Securities Act 2009 ("PPS Act"). You further acknowledge that the security interest will continue until we give a final release in relation to the secured goods.

11.4 You acknowledge that we may take all necessary steps to register the security interest granted to us pursuant to clause 11.1(d) under the PPS Act, and you consent to us doing so. You further undertake to promptly provide any information and do all things as required by us to enable us to perfect our security interest in the goods.

## **12. LIMITATION OF LIABILITY AND INDEMNITY**

12.1 Subject to clause 12.3 below, to the extent allowable under the Competition and Consumer Act 2010 (including the Australian Consumer Law) or any other applicable law, each party:

(a) excludes all conditions, warranties and guarantees implied into this Agreement;

(b) excludes liability for consequential, special or indirect loss or damage (including but not limited to loss of opportunity, loss of revenue, loss of data and loss of profits); and

(c) limits its liability for breach of any consumer guarantee, condition or warranty that cannot be excluded to (at the party's option) resupplying the relevant service or paying the cost of having the relevant service resupplied.

12.2 Each party must take all reasonable steps to minimise any loss it suffers or is likely to suffer and that is the subject of a claim under this Agreement. If a party does not take reasonable steps to minimise that loss, then liability for the relevant claim will be reduced accordingly.

12.3 Neither party will be liable under this Agreement to the extent that liability is caused by:

(a) the other party's breach of its obligations under this Agreement or its negligent act or omission; or

(b) any delay in performance or breach of this Agreement which arises as a result of any matter beyond its control (including, in our case, viruses, other defects or failure of the server hosting the Platform).

12.4 You indemnify us and our officers, employees and agents ("those indemnified") against any direct or consequential liabilities, losses, damages, expenses and costs (including legal expenses on a solicitor and own client basis) incurred or suffered by any of those indemnified as a result of any claim or proceedings brought by a third party against those indemnified in connection with any content or material uploaded or submitted by you in connection with this Agreement or any other act or omission by you in connection with your use of the Platform or our other services.

12.5 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Agreement for whatever reason.

## **13. ASSIGNMENT**

13.1 You must not assign this Agreement without our prior written consent, which will not be unreasonably withheld.

13.2 We may assign this Agreement at any time. If we assign this Agreement, we will notify you of the assignment.

## **14. NOTICES**

14.1 We will send all notices and other communications to you at the email address and/or facsimile number you have provided to us. It is your sole responsibility to ensure that you provide us with your current contact email address and/or facsimile number.

14.2 All notices from you to us (including termination notices) must be sent:

(a) by email to sales@houseandland.com.au; or

(b) by fax to (08) 8312 4918

Emails will not be accepted from Hotmail, Gmail or similar accounts. These contact details may be amended from time to time. It is your responsibility to check these General Terms and Conditions for the current contact details.

15. General provisions relating to rights and remedies

15.1 No delay or failure by either party to enforce any provision of this Agreement will be deemed a waiver or create a precedent or will prejudice its rights. No waiver by either party will be effective unless it is in writing and signed.

15.2 If any term of this Agreement is void, unenforceable or illegal, that term is severed. The remainder of this Agreement has full force and effect.

15.3 Each party's rights and remedies provided in this Agreement are in addition to other rights and remedies given by law and equity independently of this Agreement.

16. **GOVERNING LAW**

16.1 The laws of Adelaide, South Australia govern this Agreement.

16.2 Each party submits to the exclusive jurisdiction of the Courts of South Australia, Australia and waives any right it has to object to an action being brought in the Courts of South Australia (including that the action has been brought in an inconvenient forum, or that those Courts do not have jurisdiction).



## **SCHEDULE 1. SPECIFIC TERMS OF USE – HAPI**

Your right to access and use the HAPI and its associated interface and HAPI Console (together defined in this Schedule 1 as the “HAPI”) is subject to the terms set out in this Schedule 1.

You indicate your acceptance of all the terms of this Schedule 1 by downloading, following our directions for the use of the HAPI or using the HAPI in any way. We may update these terms and conditions in this Schedule 1 at any time. If we do, we will notify you and your continued use of the HAPI will indicate your acceptance of the revised terms.

### **1. OUR LICENCE TO YOU FOR USE OF THE HAPI**

1.1. In consideration of your acceptance and compliance with this Schedule 1, we grant you a non-exclusive, non-assignable, revocable right to use the HAPI. You may use the HAPI for the purpose as expressed as part of the set-up of the HAPI Application process (“HAPI Application”), and for related testing only.

1.2. Except as permitted under this Schedule 1 or as expressly permitted by Schedule 2 (resale terms) , you will not and will not allow anyone else to:

1.2.1. copy, transfer, sell (or resell), sub-licence, lease, mortgage, rent, loan, publish, distribute or otherwise make the HAPI available to any other person, whether or not for commercial gain (unless within any subsequent addendum thereto agreed between House and Land and the Customer);

1.2.2. use the HAPI to enable, permit or facilitate any person (including yourself) to use the HAPI in any way not permitted under the relevant terms and conditions of use;

1.2.3. other than to the extent permitted by law, alter, adapt, merge, modify, translate, reverse engineer, de-compile, disassemble, create derivative works of the whole or any part of the HAPI or the HAPI, except with our prior written consent;

1.2.4. remove, change or obscure any of our proprietary notices, labels or marks associated with the HAPI; or

1.2.5. for the purpose of incorporation into or the development of any software or other product or technology which competes with the HAPI, use or copy (irrespective of the extent of copying) the whole or any part of the HAPI’s or the HAPI’s graphic user interface, operating logic or underlying database structure and database fields.

1.3. You acknowledge that we will retain ownership of the intellectual property rights in and to the HAPI including any copies.

1.4. We may update, modify, suspend or discontinue the HAPI at any time and make no guarantee that the HAPI will be suitable for your intended use or that it will be error or bug-free. You use the HAPI solely at your own risk and, subject to clause 1.5, we exclude all liability and responsibility for any loss or damage arising out of or in connection with the HAPI, even if we have been advised of the likelihood of such loss or damage.

1.5. Save as provided in clause 1.4, our entire liability to you under this Schedule 1 shall be limited in the manner as provided in the Agreement.

1.6. We may, at our sole and absolute discretion, terminate your use of our HAPI immediately on notice at any time.

### **2. YOUR RIGHTS AND OBLIGATIONS**

2.1. You may use your own HAPI Application subject to the following, you will:

2.1.1. ensure that prior to distribution to a third party, your HAPI Application is sufficiently tested to ensure that it:

a) provides the functions and facilities and performs as described in writing by you including in any associated documentation prepared by you. If requested by us, you will provide to us copies of such test results, written descriptions and associated documentation; and

b) will not adversely affect the functions and facilities of the HAPI (or any other software owned by us or any company in our group) with which your HAPI Application is intended to or may be used;

2.1.2. make clear to every licensee or third party user of your HAPI Application that your HAPI Application belongs to you and that you are not our agent, partner or authorised representative and that no legal relationship, whether contractual or otherwise, exists between that licensee and us and that we are not responsible for your HAPI Application or other documentation licensed, made available or otherwise distributed by you;

2.1.3. not use (nor permit any third party to use) any name, trade mark, trade name, insignia, logo, symbol or slogan (whether registered or not) owned or used by us or any company in our group now or in the future anywhere in the world (“HAL Mark”), or any mark, words, logo, device or any other branding which is similar to or mimics any HAL Mark, without our prior written consent or unless otherwise expressly permitted by HAL via the HAPI (for example, the HAPI and HAL associated ‘widget’ expressly includes HAL’s trademarked ‘Match with House’ and ‘Match with Land’ buttons and these must be used in any website or application used by you in connection with the HAPI).

This means, for example, that you will not use HAL Marks in your HAPI Application name or in a domain name; and

2.1.4. at all times defend and indemnify us against any claim made against us relating to the use by any third party of your HAPI Application. Without limiting the previous sentence, you warrant that your HAPI Application is and will be developed and owned by you and you will defend us and other companies in our group from and against any claim or action that the use or possession of your HAPI Application (or any part) infringes the intellectual property rights of a third party (“IPR Claim”) and you will indemnify us and other companies in our group from and against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against us or any other company in our group as a result of, or in connection with, that IPR Claim. The indemnities and warranty in this clause 2.1.4 will remain in full force and effect irrespective of any termination of the provisions in this Schedule 1.

2.1.5. As a condition of using HAPI, you agree to as follows:

(a) all users of HAPI, will actively add listings to their own website as well as via the HAPI widget or an API (and accordingly, references to the quality of that data should reference data appearing on that website, other ancillary external websites and applications.

(b) If an external website or application not affiliated by us displays your listing, you are obligated to manage any associated enquiries (or procure that the third party manages such enquires) from such listings that appear on those websites or applications directly with the listing owner (and, for the avoidance of doubt, agree that we are not responsible for handling or otherwise dealing with such leads).

(c) as part of using the HAPI (including utilising any ancillary API or ‘widget’ element of that HAPI), you acknowledge and understand that:

(i) you will have external listings or leads appearing on your website, application or platform (“Your Platform”) from our other customers or users of the HAPI (“HAL Customers”); and

(ii) if you receive enquiries on a HAL Customer listing or lead on Your Platform, then you are obliged to manage those enquires in a prudent and professional manner and HAL is not in any way responsible for managing those enquires (will ensure that any Customers using the HAPI manage your leads or listing in the manner expressed in this clause by ensuring they accept these terms prior to being granted access to the HAPI).

(d) We are not responsible for external costs relating to development, maintenance or downtime of yours or any other third party website or applications that are not related to the functioning of our products including your use of the HAPI.

(e) Once your use of HAPI has been approved by us and you have followed the instructions outlined by us for its use, we will provide access to the HAPI Console to you, which signifies access to our database and (therefore the customers’ license to access our database and match technology as outlines otherwise in accordance with this Schedule 1). We are not liable for delays in your internal or external resource to implement the HAPI technology or widget onto your website or applications.

(f) Any data delivered via HAPI cannot be stored by you or any third-party system and you will procure any third party’s compliance with this obligation on you.

### **3. HAPI THIRD PARTY PAGE USE**

3.1. You will provide to us such materials as we may reasonably request (including without limitation text, pictures, graphics, icon buttons, weblinks and marketing materials) relating to your HAPI Application (the “HAL Materials”). We may, but are under no obligation to, display your HAL Materials on the HAPI Page, make references to your HAPI Applications or display your Materials on social media and other of our marketing channels. We may take down or remove the displayed HAL Materials at any time in our sole discretion.

3.2. We may disclose our brand images and associated materials for The HAPI to be utilised by you in relation to your promotion of the HAPI Application (the “HAL Materials”) at our sole discretion. All materials, displays and use of the HAL Materials must be preapproved in writing and in strict accordance with any guidelines we advise from time to time. You will immediately take down or remove displayed HAL Materials at our request.

3.3. You shall defend, indemnify and hold us harmless against any loss or damage (including without limitation reasonable attorneys’ fees) arising from claims, demand, suits or proceedings (“Claims”) brought against us by a third party alleging that (a) the HAL Materials infringe the intellectual property rights of a third party, or (b) any act or omission by you or made on your behalf of fraud, dishonesty, reckless or wilful misconduct or misrepresentation.

### **4. USER PRIVACY, PROHIBITED ACTIONS AND PLATFORM USAGE:**

4.1. You may not facilitate or encourage the publishing of private or confidential information.

4.2. You may not use, display, mirror or frame (including in meta-tags or hidden text) on the HAPI websites, or

any individual element of the websites without our written consent.

4.3. You must be transparent with users and may not mislead, confuse, or otherwise surprise users. Your HAPI Application must clearly identify its purpose, functions, access permission and other requirements and you may not request or obtain any personal or confidential information, nor make changes to a user's system that is not directly required for the proper functioning of the HAPI Application. For example, the HAPI Application should not unnecessarily modify a user's account settings, data, device, store, share user's data, or attempt to gain any rights to users' data.

4.4. The HAPI is continually being developed, and will be updated to refine (or remove) existing features and to add additional features as required. You will be solely responsible to maintain and update your HAPI Application as necessary.