

Marketing Partner Agreement

Version: 20th November 2023

Parties: Angel's Capital Consulting Pty Ltd ABN 44 628 533 255
of 29-31 Joseph Street Lidcombe, NSW 2141
(airHomes Sale)

The persons who from time to time submit and application to become a Marketing Partner under clause 2.1 who is accepted by Airhomes under clause 2.3 (**Marketing Partner**)

Introduction

- A. airHomes Sale has established at Platform for the purposes of marketing property purchasing opportunities on behalf of Licensee/s primarily for Developers or Developers.
- B. The Marketing Partner wishes to use the Platform to introduce Clients to Licensee/s or Developers in return for the payment of Marketing Fees and on the terms set out in this document.

It is agreed

1 Definitions and interpretation

1.1 Definitions

1.2 In this document unless the context requires otherwise:

- (1) **Agency Agreement** means an agreement under which a Licensee/s performs or agrees to perform services in the capacity of a real estate agent for a Developer.
- (2) **Agency Fee** means any commission or other fee paid by a Developer under an Agency Agreement to a Licensee/s as real estate agent/s for the performance of the Licensee/s acting as real estate agent on the sale of a property by the Developer.
- (3) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.
- (4) **Marketing Partner** means a person who applies to be appointed by airHomes Sale to use the Platform as a "marketing partner".
- (5) **Clawed Back** means where airHomes Sale is obliged to repay a received from a Licensee/s for the sale of any Property Stock where the Licensee/s is required to repay its Agency Fee for that Property Stock.
- (6) **Client** in relation to a Marketing Partner means a person who completes their registration on the Platform nominating the Marketing Partner as their nominated Marketing Partner and includes any permitted assignee of that Marketing Partner.
- (7) **Confidential Information** means any information provided by the parties to each other for the purposes of this document or the use of the Platform that:
 - (a) is specifically designated as confidential by a party;
 - (b) by its nature may reasonably be understood to be confidential;
 - (c) relates to any of Client's identity, contact details, addresses or requirements;
 - (d) relates to any agreements, arrangements or terms of trade with a Client or prospective Client, whether under negotiation, proposed, offered, accepted or finalised; or
 - (e) relates to the business systems, procedures or manuals of airHomes Sale or a Marketing Partner.
- (8) **Dashboard** means airHomes Sale's supplied dashboard which has marketing function and information which partner can upload their clients and able to check their incentives and clients' details who purchased the property and its property transaction information. Clients' details in partner's dashboard can only show to partner who added that clients and airHomes Sale admin.
- (9) **Developer** means an owner of real property who engages a Licensee/s to list Property Stock for sale.
- (10) **Developer's Agents** means a Licensee/s of that Developer
- (11) **document** means this document including any schedule or annexure to it.
- (12) **Final Property Sales Price** means property sales price if any after promotional rebate or discount amount deducted from marketing price.
- (13) **Intellectual Property** includes any:
 - (a) copyright (as defined in the Copyright Act 1968 (Cth));

- (b) design, patent, trademark, semiconductor, circuit layout or plant breeder rights (whether registered, unregistered or applied for);
- (c) trade, business, company or domain name;
- (d) know-how, inventions, business model, processes (whether in writing or recorded in any form); and
- (e) any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields whether registered or not.

- (14) **Law** means any applicable statute, regulation, by law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction, and includes the common law and equity as applicable from time to time and any applicable mandatory industry codes of conduct or practice.
- (15) **Licensee/s** means a real estate agent who lists Property Stock for promotion, marketing and sale using the Platform under an agreement with airHomes Sale.
- (16) **Marketing Fee** means the fees payable to a Marketing Partner following the sale of Property Stock being 0.5% of the sale price (excluding any adjustments) for each Property Stock purchased by a Client of that Marketing Partner.
- (17) **Platform** means the means the internet based platform (<https://airhomes.com.au/>) and app developed and maintained by airHomes Sale to access, research and purchase off the plan real estate investments.
- (18) **Property Stock** means real property owned by a Developer listed for sale with a Licensee/s under an Agency Agreement who lists the real property for promotion, marketing and sale using the Platform under an agreement with airHomes Sale.
- (19) **Property Settlement** means when Client successfully completes the purchase of Property Stock.
- (20) **Rights** means include all Intellectual Property in relation to:
 - (a) the Platform; and
 - (b) the arrangements between airHomes Sale, each Marketing Partner and others concerning the use of the Platform including the provisions of any agreement, arrangement or understanding.
- (21) **Unconditional Exchange of Contract** means when a Client exchanges contracts for the purchase of Property Stock and commits to pay a with 10% deposit payment to the Developer, providing that such a contract does not include a "subject to finance", "subject to sale of existing property" or similar clause allowing the Client to terminate.

1.3 Interpretation

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a party includes the party's executors, administrators, successors and permitted assigns;
 - (e) a thing includes the whole and each part of it separately;
 - (f) a statute, regulation, code or other law or a provision of any of them includes:
 - (i) any amendment or replacement of it; and
 - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
 - (g) dollars means Australian dollars unless otherwise stated.
- (2) "Including" and similar expressions are not words of limitation.
- (3) Where a word or expression is given a meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this document or affect its interpretation.
- (5) A provision of this document must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this document or the inclusion of the provision in this document.
- (6) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

2 Appointment of Marketing Partner

- 2.1 A person may apply to become a Marketing Partner by submitting an application to airHomes Sales in such form as Airhomes may from time to time specify and providing such information as airHomes Sales may require, whether in physical form or by completion of an online inquiry form.
- 2.2 At the time of submitting the application of the person will need to agree to be bound as a Marketing Partner under the provisions of this document by checking and submitting a box on the application.
- 2.3 airHomes Sales may accept an application made by any person under this clause in writing and providing a current version of this document in electronic form.
- 2.4 This document will operate as an agreement between the Marketing Partner and airHomes Sales from the date that the acceptance is sent by Airhomes to the Marketing Partner.
- 2.5 airHomes Sale will not agree to appoint a person as Marketing Partner unless the person:
- (1) has a proven track record of relationship management;
 - (2) has good character; and
 - (3) is a fit and proper person to meet airHomes sale's business practice and objectives
- 2.6 This document will operate as an agreement between the Marketing Partner and airHomes Sale from the date that the acceptance is sent by airHomes Sale to the Marketing Partner until terminated.

3 Marketing Partner role and duties

- 3.1 The principal role of a Marketing Partner is to encourage its Clients to use the Platform to evaluate Stock Properties listed by Licensee/s or Developers and owned by Developers.
- 3.2 The Marketing Partner warrants and represents to airHomes Sale that it holds any necessary authority or consent from Clients to enable it to conduct its obligations as a Marketing Partner under this document.
- 3.3 A Marketing Partner must:
- (1) make sure their Clients are registered to the Platform and make direct enquiry through the Platform before they contact any other real estate agent or any Developer/s' direct salespeople for any Property Stock;
 - (2) be committed to upholding airHomes Sale's stringent standards of service and to promote the Platform to its Clients;
 - (3) act in accordance with its Client's instructions;
 - (4) maintain strict independence as Marketing Partners in order to avoid conflicts of interest;
 - (5) must maintain privacy, confidentiality and individual interests of each of their Clients in each transaction as the highest priority;
 - (6) take all necessary steps to comply with its disclosure obligations imposed by any Law, including any disclosure obligations to Clients, including any required explanation of the Marketing Fee;
 - (7) where lawful and subject to having necessary Client permission, provide airHomes Sale or Licensee/s with all requisite Client information to undertake their services;
 - (8) hold Australian business number (ABN);
 - (9) maintain valid public liability and workers' compensation insurance;
 - (10) manage all relevant employees including paying them any minimum wages and superannuation entitlements;
 - (11) establish and maintain effective security measures to safeguard Client information from unauthorised access, use, copying or disclosure and use the same degree of care used to protect its other Confidential Information or which a prudent person would use to protect that person's Confidential Information (whichever is higher) as required by privacy laws; and
 - (12) send out property information and promotional material provided by airHomes Sale to the Marketing Partner's Clients and encourage their Clients to register on and use the Platform.
 - (13) partner must not register if clients will bring conflict of interest to airhomes sale platform.
- 3.4 The Marketing Partner must disclose to its Clients that it is receiving a Marketing Fee from the Platform when Clients successfully purchase the Property Stock using the Platform.
- 3.5 Marketing Partners must not:
- (1) direct clients to other Licensee/s or Developers out of Platform once Clients obtain relevant property information from the Platform; or
 - (2) use the name of airHomes Sale or any Rights except in the manner contemplated under this document or with the prior written consent of airHomes Sale.

4 airHomes Sale Obligations

- 4.1 The principal role of airHomes Sale is to establish and maintain the Platform and provide a stellar marketing fee structure to generously reward Marketing Partners for completed sales of Stock Properties to Clients.
- 4.2 airHomes Sale must use contract with Licensee/s so that Licensee/s are obliged to:
- (1) provide advice on direct Australian property markets to the Marketing Partner and Clients as requested;
 - (2) introduce Property Stock of a standard and at a price appropriate to and as requested by the Client and/or the Marketing Partner;
 - (3) liaise and communicate with the Developer, the Developer's solicitor, the Client and the Client's solicitor to ensure timely exchange and settlement of the purchase of the property;
 - (4) provide regular updates to the Marketing Partner at each relevant stage of the property purchase;
 - (5) all other services throughout the transaction from introduction to the property to settlement;
 - (6) maintain all necessary licences and regulatory approvals required to provide the services;
 - (7) provide the services based on Client instructions; and
 - (8) carry out their services in a timely and efficient manner for the Client and to a professional standard;
- 4.3 airHomes Sale will:
- (1) contract highly qualified and competent Licensee/s or Developers to seek to list the best and exclusive listings of Property Stock on the Platform using Agency Agreements that provide for payments to be made to the Licensee/s;
 - (2) establish and maintain effective security measures to safeguard Client information entered through the Platform from unauthorised access, use, copying or disclosure and use the same degree of care as used to protect its other Confidential Information, or which a prudent person would use to protect that person's Confidential Information (whichever is higher) and as required by privacy laws;
 - (3) establish and maintain a Marketing Partner dashboard on the Platform that enables a Marketing Partner to track Client leads, Client transactions and past and anticipated revenue accruing to Marketing Partners as a consequence of a sales to Clients;
 - (4) ensure that all Clients who use at the Platform need to enter Marketing Partners' unique ID by manual typing or registration link which contains Marketing Partner ID so as to identify the prospective purchaser as a Client of the Marketing Partner;
 - (5) not allow a Client to be transferred to another Marketing Partner except at the request or prior consent of the first Marketing Partner or the Client;
 - (6) set appropriate policy and system safeguards to protect Marketing Partner's Client's details are protected from other Marketing Partners and Marketing Managers;
 - (7) facilitate communications between the Client and the Licensee/s so as to allow the prompt exchange and completion of sales of Property Stock;
 - (8) comply with all relevant laws; and
 - (9) generally maintain and enhance the Platform so that it provides information and assistance to Clients to enable them to evaluate the potential purchase of Property Stock.
- 4.4 airHomes Sale warrants and represents to Marketing Partners that it owns or has licences to use all necessary Rights in the Platform and to conduct its obligations under this document.
- ## **5 Marketing Fees**
- 5.1 airHomes Sale:
- (1) is not paying any marketing fee to its registered marketing partners and its clients,
 - (2) is not handling fee payment to any of its members.
- 5.2 Marketing fee payments will be made from marketing managers directly to its marketing partners who is under marketing managers. Marketing partners must have separate marketing agreement with marketing managers. Airhomes sale is not involving marketing agreements between marketing managers and its marketing partners.
- ## **6 Gift payment to clients**
- 6.1 airHomes Sale:
- (1) is not paying any gift to partner's clients or any users.
 - (2) is not handling gift payment to any of its members.

6.2 Gift payment or any gift from marketing partner to its clients are purely responsibility of partners.

7 Intellectual Property

- 7.1 The Marketing Partner acknowledges that airHomes Sale owns:
- (1) the Rights; and
 - (2) any development or enhancement of the Rights created in as part of the operation of the Platform or the performance of this document.
- 7.2 The Marketing Partner must:
- (1) not register or seek to register any interest in any of the Rights without the prior written consent of airHomes Sale;
 - (2) not challenge airHomes Sale's entitlement to use the Rights;
 - (3) not grant to any person the right to use or display the Rights without the prior written consent of airHomes Sale; and
 - (4) if requested by airHomes Sale, execute any document to evidence or perfect airHomes Sale's entitlement to ownership of 8.3 any development or enhancement of the Rights created in as part of the performance of use of the Platform or under this document.
- 7.3 The Marketing Partner must notify airHomes Sale immediately in writing of any actual, suspected, threatened or anticipated infringement of, or challenge or claim to airHomes Sale's interests in the Rights that come to the attention of the Marketing Partner. 8.4
- 7.4 If requested by airHomes Sale, the Marketing Partner must, at the expense of the airHomes Sale, co-operate reasonably with airHomes Sale in stopping any infringement. 8.5
- 7.5 airHomes Sale may take such action as it deems appropriate in connection with any such infringement, challenge or claim, and has the right to control any settlement, litigation, arbitration or administrative proceedings arising from any such action or claims.
- 7.6 The Marketing Partner must give to airHomes Sale, at airHomes Sale's reasonable expense, all assistance in relation to any infringement proceedings.

8 Exclusivity

- 8.1 In this clause:
- (1) Capacity means any capacity whatsoever whether:
 - (a) direct or indirect; and
 - (b) as a member, shareholder, unitholder, director, partner, joint venturer, employee, trustee, beneficiary, principal, agent, advisor, contractor, consultant, manager, associate to representative or financier;
 - (2) Restraint Area means each of the following areas separately:
 - (a) The world;
 - (b) Australia;
 - (c) New South Wales;
 - (d) Queensland;
 - (e) Victoria;
 - (f) South Australia;
 - (g) Western Australia;
 - (h) Canberra;
 - (i) Tasmania; and
 - (j) Northern Territory.
 - (3) Restraint Period means during the time that the person is appointed as a Marketing Partner and for the following periods separately:
 - (a) 2 years from the termination of their appointment;
 - (b) one year from the termination of their appointment;
 - (c) 6 months from the termination of their appointment; and
 - (d) 3 months from the termination of their appointment.
- 8.2 Each Marketing Partner must not in any Capacity during any Restraint Period (except to the extent agreed by airHomes Sale):
- (1) in any Restraint Area in any Capacity be interested in any business that is the same or substantially similar to or be competitive to that of airHomes Sale;
 - (2) enter any agreement, arrangement or understanding with any person in relation to services similar to those provided by airHomes Sale in providing the Platform or under this document;
 - (3) solicit or approach or accept an approach from any person to enter any agreement, arrangement or understanding competitive to airHomes Sale or similar to those provided by airHomes Sale under the Platform or under this document;
 - (4) liaise, communicate with, or conduct a referral business with any Licensee/s or Developers who has provided Property Stock

to the Platform apart from using the Platform and if that behaviour competing with airHomes Sale's business principle for the term of this document and a further period of 24 months following termination of this document;

- (5) interfere with the business of airHomes Sale, the operation of the Platform or any relationship between airHomes Sale and any person using the Platform;
 - (6) endorse or promote any product or service that includes services similar to that provided by the Platform or which is competitive with the Platform;
 - (7) create and work with or selling their Clients' data without consent from airHomes Sale; and
 - (8) approach, participate in or other encourage action by Marketing Managers, Marketing Partners, Clients, Developers, Licensee/s, contractor, employees, agents or any other third parties in any activities which could cause or create any negative impacts or disadvantage to airHomes Sale or the Platform.
- If:
- (1) any Client purchases properties directly from Developers or Licensee/s that are not listed on the Platform;
 - (2) the Marketing Partner receives a referral fee, commission, marketing fee or other payment from the Developer or Licensee/s (other than under this document),
- the Marketing Partner must pay to airHomes Sale the payment received from the Developer or Licensee/s, less such amount as the parties agree is fair in all the circumstances.
- The Parties acknowledge that:
- (1) if any of the parts of this clause is or becomes unenforceable for any reason, this clause is to be read by deleting the relevant activity or reducing the period or area to the minimum extent necessary become enforceable; and
 - (2) the restraints provided in this clause are reasonable to protect the Rights and the substantial investment made by airHomes Sale in developing and marketing the Platform.

9 Confidentiality

- 9.1 Each Marketing Partner must:
- (1) keep the Confidential Information in the strictest of confidence;
 - (2) following a request by airHomes Sale after the termination of the Marketing Partners rights under this document, return to airHomes Sale any of the Confidential Information held by the Marketing Partner at that time;
 - (3) keep secure and safe from unauthorised use the Marketing Partner's manager's dashboard log in details to prevent other parties using dashboard;
 - (4) not personally use or allow anyone else to use airHomes Sale dashboards and its email, sms function or other function other than for airHomes Sale's business purpose;
 - (5) warrant that it will not copy any Confidential Information or use Confidential Information to compete with airHomes Sale's business;
 - (6) not make any public announcement or communication relating to the negotiations of the parties, the details of Clients, Developers, Licensee/s and Property Stock or the subject matter or terms of this document without the prior written approval from airHomes Sale; and
 - (7) not disclose any part of the Confidential Information except:
 - (a) to any of its Representatives who is bound by the same obligations of confidentiality as the Marketing Partner is under this clause;
 - (b) as required by court order or any law; and
 - (c) to the extent that the Confidential Information is in the public domain before that disclosure for reasons other than a breach of a confidentiality obligation owed to airHomes Sale.

10 Remedies

- 10.1 Each Marketing Partner acknowledges that:
- (1) a breach of clauses 5, 8 and 8.2(7) would be harmful to airHomes Sale or its representatives;
 - (2) monetary damages alone would not be a sufficient remedy for a breach of these clauses;
 - (3) in addition to any other remedy which may be available in law or equity, airHomes Sale is entitled to any injunctive relief to prevent a breach of clauses 5, 8 and 8.2(7) and to compel specific performance of them;

- (4) clauses 5, 8 and 8.2(7) are in addition to any other rights held by airHomes Sale or its Representatives under any other document or law; and
- (5) clauses 5, 8 and 8.2(7) and this clause are reasonably necessary to protect the commercial interests of airHomes Sale and its Representatives including the substantial investment they have made in developing and promoting the Platform.
- 10.2 The obligations of the Marketing Partner under clauses 5, 8 and 9 continue for 2 years from the Marketing Partner ceasing to be appointed under this document or their last dealing using the Platform, whichever is the later.
- 11 Privacy**
- 11.1 The Marketing Partner acknowledges:
- (1) the Marketing Partner can add their Clients' data using airHomes Sale dashboard for previously unregistered clients, but must ensure that they first have the authority of the Client to do so;
- (2) the Marketing Partner can edit unregistered clients' details in Chanel Partner's dashboard;
- (3) each Client will need to separately register creating their own password to become registered as a Client and able to use the Platform;
- (4) subject to any limitation or withdrawal of consent advised by the Client to airHomes Sales or effected through the Platform:
- (a) a Marketing Partner can not edit registered clients' details from their dashboard but can see their details and send out marketing emails; and
- (b) Marketing Partner and airHomes Sale can send marketing email to both unregistered and registered clients.
- 11.2 Where airHomes Sale and/or Licensee/s provide Client details to the Marketing Partner, the Marketing Partner shall keep all such information secure and private and not use it for any purpose unless authorised to do so by the Client.
- 12 Electronic Communications**
- 12.1 The parties acknowledge:
- (1) electronic communications will be used as the primary means of communications for the purposes of the Platform and this document;
- (2) no party warrants that any electronic communication sent by them is error or virus free;
- (3) the parties may use software to quarantine electronic communications that are suspected of being spam or containing dangerous content;
- (4) as a consequence, there is a risk that electronic communications may not reach their destination;
- (5) no party shall be liable if they do not receive an electronic communication as a consequence;
- (6) no party is liable if any electronic communication is altered without the authority of the sender or not received by the addressee; and
- (7) bank account details should be verified independently of electronic communications.
- 13 Use of Platform**
- 13.1 The Marketing Partner acknowledges that each person who uses the Platform will be required to:
- (1) to register an account and provide personal information; and
- (2) warrant that they have the authority to legally bind the user and grant airHomes Sale all permissions and warranties provided in the website terms and conditions.
- (3) uses double authentication function from their dashboard to prevent other users log in with their account.
- (4) must not use sms and email function to their clients for own business promotion or any other purpose rather than purely marketing and recommendation of properties in the platform.
- (5) must not send spam or junk sms or email to their clients that is not related to marketing of airhomes sale platform.
- (6) must not create email template which is not relevant to airHomes sales platform and its purpose.
- 13.2 Each user will:
- (1) be allocated a username and must choose a password;
- (2) be responsible to maintain the confidentiality and security of their account;
- (3) be required to notify airHomes Sale immediately if they know, or reasonably suspect that their credentials may have been lost, stolen, misappropriated or otherwise compromised, or in the case of any actual or suspected unauthorised use of their account;
- (4) be liable for any and all activities conducted through their account;
- (5) be liable to have their account suspended or terminated as a consequence of any fraudulent, abusive, or otherwise illegal activity or other action that may bring the Platform or airHomes Sale into disrepute.
- 13.3 Each user will be required to acknowledge and warrant that they will:
- (1) use the Platform to access their information or Client information (with the consent of the Client), and the user has the authority to access and view that personal information and data; and
- (2) keep all information obtained by use of the Platform confidential and as such acknowledge that they will abide by airHomes Sales privacy policy as available from time to time on the Platform.
- 13.4 airHomes Sales:
- (1) is able to edit, archive or remove any information stored on the Platform for any Client or Marketing Partner without giving notice, for any reason and at any time; and
- (2) is not be responsible or liable for any and all costs, losses or expenses incurred as a result of the negligent use of the Platform by the Marketing Partner or any of its agents.
- (3) can remove the marketing manager and its partner under if necessary to modify and refresh the platform with the new updates and new versions with prior notice.
- (4) will notify to manager if necessary to remove or revoke manager's account with version upgrade or function upgrades.
- 13.5 The Marketing Partner acknowledges that information contained or available from the Platform is airHomes Sales' Confidential Information.
- 14 Nature of relationship**
- 14.1 The parties are not by virtue of the Platform and this document, employees, franchisees/franchisors, agents or partners of each other.
- 14.2 Neither party has authority to act on behalf of the other except as expressly set out in this document.
- 15 Exclusions and limitations**
- 15.1 The Marketing Partner acknowledges that:
- (1) any supply of goods using the medium of the Platform is not a supply of goods by airHomes Sale;
- (2) there are no guarantees given by airHomes Sale implied into such sales under *Competition and Consumer Act 2010* (Cth) or otherwise; and
- (3) to the fullest extent permitted by any law, all conditions and warranties implied by law arising out of the supply of goods or services by airHomes Sale, are excluded.
- 15.2 airHomes Sale does not limit or exclude the application of any provision of any statute (including the *Competition and Consumer Act 2010* (Cth) or any similar law) were to do so would contravene that statute or cause any part of this clause to be void.
- 15.3 To the extent permitted by statute the liability, if any, of airHomes Sale arising from its breach is, at airHomes Sale's option, limited to and completely discharged by either:
- (1) the supply by airHomes Sale of equivalent goods or services; or
- (2) the replacement by airHomes Sale of the goods or services supplied by airHomes Sale.
- 15.4 The Marketing Partner acknowledges that the Marketing Partner does not rely on and it is unreasonable for the Marketing Partner to rely on the skill or judgment of airHomes Sale as to whether any goods supplied are reasonably fit for any purpose for which they are being acquired.
- 15.5 Except to the extent provided under any nonexcludable law or in this clause, airHomes Sale and its Representatives have no liability (including liability in negligence) to any person for:
- (1) any loss or damage, consequential or otherwise, suffered or incurred by that person in relation to the goods or advice, recommendations, information or services; and
- (2) without limitation, any loss or damage, consequential or otherwise, suffered or incurred by that person caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind of or in the goods or advice, recommendations, information or services.

16 Termination

- 16.1 A party may terminate this document and the right to use the Platform by notice to the other party:
- (1) by giving 10 Business Days' notice to the other party;
 - (2) if the other party:
 - (a) fails to perform a material obligation and does not remedy that default within 7 days of being required by notice to do so;
 - (b) has caused or is likely to cause serious harm to airHomes Sale's reputation; or
 - (c) becomes subject to "external administration" or "insolvent under administration" within the meaning of the *Corporations Act 2001*.

16.2 If a Marketing Partner who is working as a sales agent for the Licensee/s ceases to work as a sales agent for that Licensee/s, the Marketing Partner's rights under this document (including any right to use the Platform) will terminate immediately.

16.3 A termination under this clause does not affect:

- (1) any rights or obligations of the Marketing Partner to payment under any transaction with an Unconditional Exchange of Contract entered into before the date the termination takes effect;
- (2) any payment obligations arising in relation to a sale of Property Stock that was exchanged before the date the termination takes effect;
- (3) any obligation to repay an amount that is Clawed Back regardless of when the Clawed Back event takes place; and
- (4) any right airHomes Sale to recover damages for any breach whether before or after the date of the termination.

16.4 A termination for any reason does not affect any rights of the parties expressed by this document to continue beyond termination.

16.5 A Marketing Partner is not entitled to any compensation following a termination for any reason, except to the extent that they are entitled to payment under clause 16.3(1).

17 Indemnities

17.1 Each party indemnifies (**Indemnifier**) the other (**Other Party**) against:

- (1) all losses incurred by the Other Party;
- (2) all liabilities incurred by Other Party; and
- (3) all legal costs (on a solicitor and own client or full indemnity basis, whichever is greater) and other expenses incurred by Other Party in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal);

17.2 related to the and arising directly or indirectly because of or in connection with:

- (1) the performance or non-performance of the obligations of Indemnifier under this document, whether express or implied, unless caused by wilful misconduct on the part of the Other Party;
- (2) an Indemnifier acting in connection with this document in good faith on information, notices or other communications provided to the Indemnifier by the Other Party, or its Representatives, including any Client instructions and any email communications; or
- (3) the fraud, wilful misconduct or negligence of the Indemnifier, or its Representatives directly or indirectly in connection with the performance of this document, or any act or transaction contemplated by this document.

18 Assignment

18.1 A Marketing Partner may assign some or all of their rights as Marketing Partner by notice given to airHomes Sale, including their rights to receive particular Marketing Fees providing however:

- (1) the assignee must be a fit and proper person approved by airHomes Sale;
- (2) the assignee must agree to be bound by the terms of this document and provide airHomes Sale with a signed copy of this document;
- (3) airHomes Sale can charge a reasonable administration cost to the assignee to transfer data and to establish the assignee's dashboard (airHomes can deduct that cost from amounts payable under this document to the assignee or the assignor).

18.2 Any assignment:

- (1) is not effective as against airHomes Sale until notice is given to airHomes Sale and the assignee gives notice to airHomes Sale that assumes an obligation to reimburse any Clawed Back amount, such assumption to be in such form as is reasonably satisfactory to airHomes Sale;

- (2) does not release any obligation of the Marketing Partner to make a repayment in respect of a Clawed Back amount; and
- (3) must approved and receive written confirmation from airHomes Sale.

19 Goods and Services Tax

19.1 In this clause:

- (1) **GST** means GST as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended (**GST Act**) or any replacement or other relevant legislation and regulations;
- (2) words or expressions used in this clause which have a particular meaning in the GST law (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
- (3) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
- (4) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
- (5) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

19.2 Unless GST is expressly included, the consideration to be paid or provided under any other clause of this document for any supply made under or in connection with this document does not include GST.

19.3 To the extent that any supply made under or in connection with this document is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided. A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.

19.4 To the extent that 1 party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

20 General

20.1 Assignment

20.2 A party may only assign their rights under this document with the consent of all other parties.

20.3 Further assurance

20.4 Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this document.

20.5 Entire understanding

20.6 This document:

- (1) is the entire agreement and understanding between the parties on everything connected with the subject matter of this document; and
- (2) supersedes any prior agreement or understanding on anything connected with that subject matter.

20.7 Amendment

- (1) airHomes Sale may amend the terms of this document by posting a notice on the Platform or any other of its websites.
- (2) Any amendment must take effect on a date set out in the notice, being a date at least 10 Business Days after the amendment is first posted.
- (3) An amendment cannot affect the Marketing Fees that are payable or the time for payment for any sale that is exchanged before the date of publication of the notice.
- (4) Earlier versions of this document are available from airHomes Sale on request.

20.8 Waiver

- (1) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (2) The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- (3) A waiver is not effective unless it is in writing.
- (4) Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

20.9 Severability

- (1) If any provision in this document is unenforceable, illegal or void or makes this document or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this document remains in force.
- (2) If any payment under this document is later avoided by law, the parties will be restored to their respective rights and obligations as if the document had been entered but the payment had not been made.

20.10 Notices

- (1) A notice or other communication connected with this document (**Notice**) has no legal effect unless it is in writing.
- (2) In addition to any other method of service provided by law, the Notice may be:
 - (a) Sent by prepaid priority post to the address of the addressee set out in this document or notified from time to time, including at the time the Marketing **Partner** completes the online application seeking appointment under clause 2.1 ;
 - (b) Sent by email to the email address of the addressee notified from time to time, including at the time the Marketing Partner completes the online application seeking appointment under clause 2.1; or
 - (c) delivered at the address of the addressee set out in this document or subsequently notified.
- (3) If the Notice is sent or delivered in a manner provided by clause (2), it must be treated as given to and received by the party to which it is addressed:
 - (a) if sent by post, on the 3rd Business Day (at the address to which it is posted) after posting;
 - (b) if sent by email before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
 - (c) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- (4) A Notice may be signed by any director or solicitor for a party.

20.11 Choice of law and forum

- (1) The law of New South Wales governs this document.
 - (2) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.
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Schedule: Marketing Fee Payment from Manager

The Marketing Partner must have separate marketing agreement with marketing manager referring their clients to those listing agent(s), developer(s) and builder(s). airHomes Sale platform does not involving marketing contract between parties.